

May 10, 2013

Via www.regulations.gov
Docket number USTR–2013–0019

Douglas Bell
Chair, Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Attn: David Weiner, Deputy Assistant USTR for Europe

**Re: Transatlantic Trade and Investment Partnership Agreement (TTIP);
Comments of Libbey Inc.**

**Products: Glass Tableware (HTS 7013)
Glass Stoppers and Lids (HTS 7010.20)
Glass Lamps and Lighting Fittings (HTS 9405)**

Dear Mr. Bell:

On behalf of Libbey Inc. (“Libbey”), we hereby submit comments concerning the proposed Transatlantic Trade and Investment Partnership Agreement (“TTIP”) in response to your request for such comments. *See Request for Comments Concerning Proposed Transatlantic Trade and Investment Agreement*, 78 Fed. Reg. 19566 (April 1, 2013) (request for public comments and notice of public hearing).

Libbey’s position is that the U.S. Trade Representative should pursue the following objectives in the TTIP negotiations:

- (1) Market Access: adoption of market access negotiating modalities that account for the import-sensitivity of low-value glass tableware (*i.e.*, under \$5) and provide low-value glass tableware products of heading 7013 (HTS) with the longest tariff phase-out period considered;

- (2) Rules of Origin: eligibility for preferential tariff treatment for glass tableware products of heading 7013 and for certain other glass products of subheading 7010.20, and subheading 9405.50.4000 should be limited to products that are formed, finished, and packaged in TTIP countries;
- (3) Trade Remedies: TTIP negotiations should not affect, weaken or diminish U.S. rights or obligations with respect to the ability to use antidumping duty, countervailing duty, and safeguard laws; and
- (4) Regulatory Compatibility: the U.S. should seek to maintain the *status quo* with respect to regulations affecting trade in glassware. The U.S. should not agree to any convergence of U.S. regulations with EU regulations that would result in more stringent standards, increased costs, and greater administrative burdens being imposed on U.S. producers.

I. INTRODUCTION

A. About Libbey Inc.

Libbey Inc. (“Libbey”) is the leading manufacturer of glass tableware in the Western Hemisphere and the second largest glass tableware manufacturer in the world. Libbey is headquartered in Toledo, Ohio, where its production facility has been in continuous operation since 1888. In addition, Libbey operates a production facility in Shreveport, Louisiana. The Libbey® brand name is a leading brand name in glass tableware in the United States.

Libbey designs, manufactures and markets an extensive line of high-quality, machine-made glass tableware, including tumblers, stemware, mugs, plates, bowls, ashtrays, bud vases, salt and pepper shakers, canisters, candle holders and various other items. In addition to its manufacturing plants in Ohio and Louisiana, Libbey produces glassware in Mexico, Portugal, the Netherlands, and China. Libbey’s product portfolio also includes a selection of ceramic dinnerware, metal flatware, hollowware and serveware.

Libbey sells its products to foodservice, retail, and business-to-business customers in over 100 countries, and is the largest manufacturer and marketer of casual glass beverageware in North America for the foodservice and retail channels. The company also believes that it has the largest manufacturing, distribution and service network among glass tableware manufacturers in the Western Hemisphere. Libbey's sales to customers within North America accounted for approximately 74 percent of its total sales in 2012, which were over \$825 million.

B. Libbey's Glass and Glass Tableware Products

The following table lists the products that are of primary interest to Libbey. Most important are glass tableware products of heading 7013, as classified and described in the U.S. Harmonized Tariff Schedule (HTSUS 2013) at the 6-digit subheading level. *See* table below. In addition, Libbey produces certain glass products that are classified under headings 7010 (*e.g.*, glass lids, stoppers) and 9405 (*e.g.*, candle holders). These products are also listed in the table below at the 6-digit (7010) and 10-digit (9405) levels (HTSUS 2013).

7013 Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):

7013.28 Stemware drinking glasses, other than of glass-ceramics:
Other

7013.37 Other drinking glasses, other than of glass-ceramics:
Other

7013.49 Glassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass-ceramics:
Other

7013.99 Other glassware:
Other

7010 Carboys, bottles, flasks, jars, pots, vials, ampoules and other containers, of glass, of a kind used for the conveyance or packing of goods; preserving jars of glass; stoppers, lids and other closures, of glass:

7010.20 Stoppers, lids and other closures

9405 Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:

9405.50.4000 Non-electrical lamps and lighting fittings: Other: Other

II. TTIP SHOULD RECOGNIZE IMPORT SENSITIVE GLASS TABLEWARE

A. Low Value Glass Tableware Is Highly Import-Sensitive

Low-value glass tableware (*i.e.*, under \$5) has historically been treated as a highly import-sensitive product.¹ Libbey is most concerned with the following import-sensitive low-value glass tableware.

¹ Glass products are primarily commodity products and, therefore, highly price-sensitive. See C.P. Ross & G.L. Tincher, *Glass Melting Technology: A Technical and Economic Assessment*, at 28 (GMIC Oct. 2004).

Libbey Products	MFN Rate for U.S. Imports	HTSUS (2013)
Stemware (tempered)	12.5%	7013.28.05
Stemware (less than \$0.30)	28.5%	7013.28.10
Stemware (between \$0.30 and \$3.00)	22.5%	7013.28.20
Drinking glasses (tempered)	12.5%	7013.37.05
Drinking glasses (less than \$0.30)	28.5%	7013.37.10
Drinking glasses (between \$0.30 and \$3.00)	22.5%	7013.37.20
Other types of glass tableware produced by Libbey	11.3% -- 38.0%	7013.49.10
		7013.49.20
		7013.49.50
		7013.99.20
		7013.99.40
		7013.99.50
		7013.99.80

The playing field for low-value glass tableware is not level. Low-value glass tableware is an import-sensitive product due to long-standing market distorting practices in other countries that have disadvantaged the U.S. industry. Such practices range from domestic subsidies on key inputs (*e.g.*, energy), non-tariff barriers that discourage or prevent U.S. exports, trade-distorting effects of centrally-controlled economies, and state-owned or state-directed enterprises. These practices have left a legacy of market distortions whose effects continue to be felt. Reflecting its import-sensitivity, U.S. tariff rates applicable to glass tableware products generally have been higher than average U.S. tariff rates.

Thus, in past trade negotiations and preference programs, glass tableware products have been recognized as, and have been treated as, import-sensitive products. For example:

- **GSP:** GSP treatment on low-value glassware applies to certain designated “least developed countries,” but generally not to all developing countries. When Congress enacted the original General System of Preferences (“GSP”) program, “[i]mport-sensitive semimanufactured and manufactured glass products” were specifically excluded from GSP eligibility. *See* 19 U.S.C. § 2463(b)(1)(F) (emphasis added).

Many past GSP petitions have requested eligibility for glassware products under heading 7013 (HTS), but the majority of such requests have been rejected or denied.² Thus, as a general matter, low value glass tableware has not received GSP treatment.

- **NAFTA:** The NAFTA negotiations recognized the import sensitivity of glass tableware. Certain glassware products were accorded longer tariff phase-out periods than were applied generally.³ Under NAFTA, such glassware products were provided a 15-year phase-out period. *See* 58 Fed. Reg. at 67226-27 (Presidential Proclamation 6641) (Dec. 20, 1993).
- **Uruguay Round:** Although tariffs on glass tableware products were reduced pursuant to the Uruguay Round agreements, the United States retained higher tariff rates for glass tableware products compared to average U.S. tariffs after the Uruguay Round (*i.e.*, 3.5%).⁴

For instance, for certain low value glass tableware products, which are the most import-sensitive and price-sensitive, tariffs remained at their pre-Uruguay Round levels, without scheduled reductions:

² For instance, in 1995: petitions on 13 subheadings of glassware were rejected; in 1992: petitions on 3 subheadings of glassware were rejected; in 1990: petitions on 34 subheadings of glassware were rejected; in 1989: petitions on 4 subheadings of glassware were rejected and 1 petition was considered and denied. In certain instances, GSP petitions on glassware have been granted (*e.g.*, in 1990, 3 subheadings covering lead crystal), but they concerned higher-value articles (such as lead crystal) for which tariffs were relatively low. By contrast, GSP petitions on import-sensitive lower-value glassware with relatively high tariffs have been routinely rejected.

³ The Statement of Administrative Action to the NAFTA implementing legislation specifically noted that “[f]or a few products [including ‘household glass’], which are particularly import sensitive, the U.S. tariff will be phased out more gradually over an even longer period to provide further opportunity for U.S. industry to adjust to competition from Mexico.” H.R. Doc. 103-159, Vol. 1, at 683, 103d Cong., 1st Sess. (Nov. 4, 1993).

⁴ World Trade Organization and International Trade Centre UNCTAD/WTO, *World Tariff Profiles*, at 167 (2009).

<i>Low-value glassware</i> ⁵	<i>Before URAA</i>	<i>After URAA</i>
7013.99.40 (HTS)	38%	38%
7013.99.50 (HTS)	30%	30%
7013.10.50 (HTS)	26%	26%
7013.91.10 (HTS)	20%	20%

For other glassware products, a 10-year phase-in of tariff reductions implemented under the Uruguay Round still left significant tariffs:

<i>Low-value glassware</i> ⁶	<i>Before URAA</i>	<i>After URAA</i>
7013.29.10 (HTS)	38%	28.5%
7013.29.20 (HTS)	30%	22.5%
7013.32.20 (HTS)	30%	22.5%
7013.39.20 (HTS)	30%	22.5%
7013.21.10 (HTS)	20%	15%
7013.31.10 (HTS)	20%	15%
7013.99.10 (HTS)	20%	15%

- **FTAs:** In a number of the free trade agreements negotiated by the United States (*e.g.*, Singapore, Chile, Australia), many of the tariff lines in the glassware heading, HTS 7013, were provided 8-to-10 year tariff phase-outs.⁶

Moreover, the U.S. International Trade Commission has repeatedly predicted that tariff elimination for all glass imports would have a negative, not positive, effect on the U.S. glassware industry generally. In an August 2009 report, the Commission concluded that the direct effects of tariff removal would be a reduction in import prices, increased imports, and

⁵ In 2007, the United States modified HTS 7013. For correlation tables comparing the 2002 and 2007 versions of the Harmonized System, see http://www.wcoomd.org/home_wco_topics_hsoverviewboxes_tools_and_instruments_hsc_orrelationtables20022007.htm.

⁶ See *Modifications to the Harmonized Tariff Schedule of the United States Under Section 1206 of the Omnibus Trade and Competitiveness Act of 1988*, USITC Pub. 3898, at Annex II (Dec. 2006).

falling domestic output and employment.⁷ In a later, updated report issued in August 2011, the Commission reached similar conclusions, finding that tariff liberalization for glass and glass products would result in increased imports, a decline in the price of imports, a decline in output, a decline in employment, and a net welfare loss.⁸

B. Increased Glassware Imports Have Captured More Than Half of the U.S. Market

The U.S. Census Bureau's Current Industrial Reports shows data for U.S. establishments producing "table, kitchen, art, and novelty glassware." This category corresponds closely to the U.S. glass tableware industry. Reduced tariffs on glass tableware over the 15 years have led to steadily increasing imports. Although the major economic disruption of 2008-2009 slowed U.S. glass imports in 2009, imports resumed their increasing trend in 2010. Imports have captured over half of the U.S. market (almost two-thirds in 2008 and 2010) despite declining U.S. apparent consumption. As Table 1 below shows, imports' share of the domestic market almost doubled from 1996 to 2010, from 35.4% of the market to 60.7%. These data also show that the value of shipments by U.S. manufacturers of "table, kitchen, art, and novelty glassware" declined by 51% between 1996 and 2010. While Census data on domestic shipments has not been released for 2011-12, it is possible, if not likely, that the trend shown has continued, if not intensified, and that imports' share of the market continued to increase in 2011-2012. Surely, imports continued to increase in 2011-2012. As shown in Table 3, below, imports increased by 10.1% from 2011 to 2012.

⁷ See *The Economic Effects of Significant U.S. Import Restraints*, Sixth Update 2009, Inv. No. 332-325, USITC Pub. 4094, at 50, 54 (Aug. 2009).

⁸ See *The Economic Effects of Significant U.S. Import Restraints*, Seventh Update 2011, Inv. No. 332-325, USITC Pub. 4352 at 2-39 (Aug. 2011).

Table 1
Table, Kitchen, Art, and Novelty Glassware
NAICS 327210
(Thousands of dollars)

Year	Shipments	Imports	Apparent Consumption	% Imports to Apparent Consumption
2010	885,480	981,241	1,617,734	60.7
2009	822,961	818,804	1,424,513	57.5
2008	788,101	1,079,440	1,627,178	66.4
2007	1,317,291	1,213,025	2,306,533	52.6
2006	1,301,417	1,317,565	2,411,503	54.6
2005	1,330,789	1,321,472	2,462,372	53.7
2004	1,213,767	1,351,524	2,377,991	56.8
2003	1,463,521	1,320,661	2,616,920	50.5
2002	1,634,930	1,256,974	2,712,815	46.3
2001	1,839,421	1,186,549	2,813,943	42.2
2000	2,031,522	1,295,046	3,130,202	41.4
1999	1,889,903	1,167,765	2,871,527	40.6
1998	1,851,772	1,052,235	2,722,583	38.6
1997	1,716,402	979,075	2,443,762	40.1
1996	1,805,387	874,287	2,473,004	35.4

Source: U.S. Census Bureau, Current Industrial Reports, Consumer, Scientific, Technical, and Industrial Glassware: 1997-2010 (MA327E).

C. Employment in the U.S. Glassware Industry Has Steadily Declined

The domestic glassware industry has also experienced losses in employment in recent years. For the glassware industry as a whole (“Other pressed and blown glass and glassware manufacturing” -- NAICS 327212), U.S. Census data over the last 15 years show a continuing decline in the number of employees and production workers. From 1997 to 2011, the glassware industry suffered a 54% decrease in employment, losing over 19,000 employees (of which nearly 16,000 were production workers). In the economic disruption of 2008-2009, employment fell sharply. Since then, while imports have increased, employment has remained relatively flat at historically low levels.

Table 2
Other Pressed and Blown Glass and Glassware Manufacturing
NAICS 327212
U.S. Employment

Year	All employees	Production workers
2011	16,315	13,441
2010	16,252	13,410
2009	16,491	13,438
2008	20,371	16,642
2007	21,189	16,964
2006	18,754	15,224
2005	20,017	16,385
2004	21,593	17,815
2003	24,689	20,117
2002	27,814	22,875
2001	33,379	27,369
2000	34,799	28,974
1999	34,301	28,648
1998	35,089	29,539
1997	35,383	29,423

Sources: U.S. Census Bureau, 2002 Economic Census, Manufacturing Industry Series, Other Pressed and Blown Glass and Glassware Manufacturing (NAICS Code 327212); 2007 Economic Census, Manufacturing Industry Series, Other Pressed and Blown Glass and Glassware Manufacturing (NAICS Code 327212); 2005-2011 Annual Survey of Manufacturers.

D. TTIP Market Access Negotiations Should Recognize and Account for the Import-Sensitivity of Low Value Glass Tableware

The Final Report of the High Level Working Group on Jobs and Growth (February 11, 2013) recommended that the TTIP negotiations should seek to “eliminate all duties on bilateral trade” and phase out “all but the most sensitive tariffs in a short time frame.” *HLWG Final Report* at 3 (emphasis added). It also recognized that “both sides should consider options for the treatment of the most sensitive products.” *Id.* Similarly, in the U.S. Trade Representative’s letter to Speaker Boehner notifying Congress of the administration’s intent to enter into the TTIP negotiations, USTR stated that the United States would “seek to

eliminate all tariffs and other duties and charges on trade in agricultural, industrial, and consumer products between the United States and the EU, with substantial duty elimination on entry into force of an agreement, transition periods where necessary for sensitive products, and appropriate safeguard mechanisms to be applied if and where necessary.” Letter from Ambassador Demetrios Marantis, Acting United States Trade Representative to House Speaker John Boehner (March 20, 2013) at 2 (emphasis added). Thus, both the HLWG and USTR recognize that import-sensitive products should be accorded longer transition periods for tariff reduction and elimination.

The increasing competition from glassware imports underscores the importance of tariffs to U.S. glassware producers. As reviewed above, glass tableware products are import-sensitive products, and have been considered as such for more than 30 years. This categorization and treatment is critical to the industry’s continued survival and ability to continue to invest in plant, technology and training. A too rapid elimination or reduction of the standard tariff rates for glass tableware would hamstring the industry’s ability to adapt and constitute a major blow to the domestic industry. Thus, the TTIP market access negotiations should account for the import-sensitivity of the U.S. glass tableware industry by providing that U.S. imports of low-value glass tableware products receive the longest tariff phase-out period provided for any product in any existing agreement. Extended tariff phase-out periods are essential to provide U.S. glassware producers adequate time to adapt to tariff liberalization.

Of the 27 countries that are members of the European Union, in 2012 18 EU countries were among the top 29 sources of U.S. imports of glass and glassware products of HS 7013

(“Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes”). And, of that group, imports from Germany, Italy, France, Poland, and Austria are among the leading 7 sources of glassware imports. Thus, the EU is a major source of glass and glassware products imported into the United States, all of which are currently subject to the US MFN duty rates. Moreover, Turkey, the eighth largest source of glassware imports, is in the process of applying for accession to the EU.

Table 3
7013: Customs Value by HTS Number and Customs Value
for ALL Countries
U.S. Imports for Consumption
Annual Data
(In 1,000 Dollars)

	Country	2007	2008	2009	2010	2011	2012	% Change 2011 - 2012
1	China	337,212	334,238	272,944	340,842	349,551	390,725	11.8%
2	Germany	69,567	61,657	45,341	60,130	57,277	64,933	13.4%
3	Mexico	34,872	41,554	41,011	50,394	56,670	58,094	2.5%
4	Italy	56,127	45,301	33,615	37,586	43,892	45,991	4.8%
5	France	65,867	53,455	32,115	36,195	35,845	36,441	1.7%
6	Poland	50,089	38,228	22,065	31,981	29,155	31,110	6.7%
7	Austria	59,912	48,396	28,626	24,865	24,063	30,082	25.0%
8	Turkey	27,680	22,747	17,333	22,355	24,845	27,530	10.8%
9	India	12,196	11,106	6,487	10,846	15,530	25,919	66.9%
10	Korea	1,488	2,611	20,496	22,568	17,005	21,573	26.9%
11	Czech Republic	26,616	16,436	6,007	9,472	12,703	15,162	19.4%
12	Slovenia	11,116	11,326	8,722	14,094	16,224	14,677	-9.5%

	Country	2007	2008	2009	2010	2011	2012	% Change 2011 - 2012
13	Canada	7,258	15,275	18,919	15,693	11,012	10,307	-6.4%
14	Slovak Republic	14,440	8,796	10,116	10,897	10,331	10,047	-2.8%
15	Spain	7,512	6,900	9,669	8,764	7,698	9,285	20.6%
16	Taiwan	10,446	7,733	6,503	5,698	5,629	6,588	17.0%
17	Indonesia	6,049	3,653	3,316	3,291	4,217	6,211	47.3%
18	Colombia	3,271	2,563	4,066	4,848	4,652	5,192	11.6%
19	Ireland	50,581	37,172	9,522	7,787	4,528	5,147	13.7%
20	Bulgaria	2,458	3,827	5,877	5,941	5,149	4,759	-7.6%
21	Sweden	10,497	9,129	3,649	4,670	5,369	4,071	-24.2%
22	Thailand	5,867	4,198	4,259	3,464	4,264	3,734	-12.4%
23	Japan	6,443	5,604	4,386	5,402	4,701	3,616	-23.1%
24	Hungary	5,197	3,584	1,854	2,645	3,505	3,552	1.3%
25	Portugal	2,998	1,774	1,255	2,271	4,229	2,511	-40.6%
26	United Kingdom	6,165	2,786	1,464	1,470	1,633	2,215	35.6%
27	Belgium	3,080	1,773	1,237	1,848	2,274	2,113	-7.1%
28	Netherlands	5,331	3,773	1,840	2,854	1,859	1,618	-13.0%
29	Romania	3,742	1,570	733	1,194	1,467	1,557	6.1%
TOTAL for All Countries		918,731	822,829	631,999	758,372	776,312	854,690	10.1%

Sources: USITC DataWeb, compiled from tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission.

Therefore, market access negotiating modalities established for the TTIP negotiations with respect to tariff elimination on glassware products from the EU should reflect the

import-sensitive nature of the product and the U.S. industry. Glassware, especially low-value glass tableware, should be provided an extended, backloaded phase-out staged over the longest period that is considered and agreed to in the negotiations.

III. RULES OF ORIGIN

A. Glass Tableware Production Steps

1. Forming

The primary raw materials used by Libbey to produce glass tableware products are sand, lime, soda ash, and colorants. Generally, Libbey forms or produces glass tableware products through the use of one of two manufacturing methods. Most tumblers, stemware and other glass tableware products are produced through the “blown” glass method by forming molten glass in molds with the use of compressed air. Other glass tableware products and the stems of certain stemware are produced through the “pressed” glass method by pressing molten glass into the desired product shape. Some stemware products use a combination of the two methods.

2. Finishing or Processing

There are a variety of finishing or processing operations that may be performed on glass tableware products after basic forming. These include tempering (toughening through heat treatment), etching, cutting, engraving, combining (*e.g.*, attaching handles to a mug), and decoration, among others.

3. Retail Packaging

Some glass tableware products may be packaged for retail sale before exportation.

For example, a set of drinking glasses could be packaged in a corrugated box ready for retail sale.

B. TTIP Rules of Origin for Glass Tableware Products of HS Heading 7013 Should Limit Eligibility for Preferential Tariff Treatment to Glassware Products That Are Formed, Finished, and Packaged in TTIP Countries

TTIP negotiations over the rules of origin that will determine the eligibility of glass tableware products for preferential tariff treatment require careful consideration. Libbey is primarily interested in the rules of origin that will apply to glass tableware products classified under heading 7013 of the Harmonized System, as well as to certain glass products classified under headings 7010 and 9405.

The USTR's letter to Speaker Boehner said that the United States would "seek to establish rules of origin that ensure that duty rates under an agreement with the EU apply only to goods eligible to receive such treatment and define procedures to apply and enforce such rules." Letter from Ambassador Demetrios Marantis, Acting United States Trade Representative to House Speaker John Boehner (March 20, 2013) at 3. Libbey believes that the TTIP preferential rules of origin for glass tableware products of heading 7013 and certain other glass products of subheading 7010.20 (glass lids & stoppers), and subheading 9405.50.4000 (glass lamps and lighting fittings) should be objective, transparent, predictable, and effective in limiting preferential tariff treatment only for goods of heading 7013 and subheadings 7010.20 and 9405.50.4000 that are formed, finished, and packaged in TTIP countries.

In any free trade agreement (“FTA”), the preferential rules of origin establish whether a product from a country that is a party to the FTA qualifies for preferential tariff treatment when imported into a country that is also a party to the FTA. The advantages of preferential tariff treatment under an FTA encourage production in the FTA countries and are intended to provide benefits only to FTA-member countries. In other words, FTA rules of origin should prevent “free rider” benefits. That is, non-FTA products should not receive preferential tariff treatment merely as a result of transshipment through the FTA countries or because some minor processing operations occur in an FTA country.

Applying this principle and objective to the TTIP rules of origin for glass tableware products of heading 7013 (HS) and certain other glass products of subheading 7010.20 (glass lids & stoppers), and subheading 9405.50.4000 (glass lamps and lighting fittings), TTIP preferential treatment should be conferred only on glass tableware products that are:

- (1) manufactured, produced, or formed entirely in a TTIP country;
 - (2) finished or further processed entirely in a TTIP country;
- and
- (3) packaged for retail sale entirely in a TTIP country.

The rules should ensure that, to the extent a glass tableware product goes through all of these steps before importation into a TTIP country, all of these steps must occur in a TTIP country in order for the product to be eligible for preferential tariff treatment. If the imported glass tableware product has not undergone all of these steps in a TTIP country, it should not receive TTIP preferential tariff treatment.

Libbey believes that the objective of limiting eligibility for preferential tariff treatment to glass tableware products that are formed, finished, and packaged in TTIP countries may be achieved by resort to the rules of origin provisions that are found in other free trade agreements. Provisions such as tariff shift/regional value content rules, rule for sets, transshipment and subsequent production rule, and retail packaging rule, all of which have been included in recent U.S. FTAs, would be effective in limiting preferential eligibility only to glass and glassware products that are formed, finished, and packaged in TTIP countries.

Libbey believes that these same criteria for preferential treatment – forming, finishing, and packaging in TTIP countries -- should also apply to the glass products of subheadings 7010.20 and 9405.50.4000.

C. Proposed TTIP Rules of Origin for Glass Tableware Products of Heading 7013 and Certain Glass Products of Subheadings 7010.20 and 9405.50.4000

1. Tariff Shift Rule

a. Heading 7013 and Subheading 7010.20

Libbey proposes that the basic rule of origin for TTIP-preference eligibility be similar to the following rule from Article 6.1 of the US-Korea FTA.

Except as otherwise provided in this Chapter, each Party shall provide that a good is originating where it is:

- (a) a good wholly obtained or produced entirely in the territory of one or both of the Parties;
- (b) produced entirely in the territory of one or both of the Parties and
 - (i) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in Annex 4-A (Specific Rules of Origin for Textile or Apparel Goods) or Annex 6-A, or

- (ii) the good otherwise satisfies any applicable regional value content or other requirements specified in Annex 4-A or Annex 6-A, and the good satisfies all other applicable requirements of this Chapter;
or
(c) produced entirely in the territory of one or both of the Parties exclusively from originating materials.

With respect to the “change in tariff classification” requirement (Article 6.1(b)(i) above), Libbey proposes that the TTIP tariff shift rule of origin applicable to glass tableware products classifiable under heading 7013 and glass stoppers and containers classified under subheadings 7010.20 should be similar to the following tariff shift rule found in Annex 6-A of the US-Korea FTA.

70.09 – 70.18
A change to heading 70.09 through 70.18 from any other heading outside that group, except from heading 70.07 through 70.08.

Similar tariff shift rules applicable to products of heading 7013 are also found in the rules of origin for NAFTA, DR-CAFTA, Australia FTA, Chile FTA, Singapore FTA, Peru FTA, Colombia FTA, and Panama FTA. *See Appendix 1* (attached).

Under this proposed rule, the raw materials used to produce a glass tableware product (*e.g.*, sand, lime, soda ash, and colorants) could be sourced from non-TTIP countries and be transformed into a TTIP-originating glass tableware product because these raw materials would undergo a tariff shift change to a product of heading 7013 or subheading 7010.20 from headings outside the specified group.

However, this proposed tariff shift rule would prevent a glass tableware product that was formed in a non-TTIP country from achieving TTIP-origin status by means of having finishing or processing operations performed in a TTIP country. This is because none of the

finishing or processing operations that could be performed on a basic-formed glass tableware product of heading 7013 or subheading 7010.20 (*e.g.*, tempering, etching, cutting, engraving, combining, decorating, etc.) would accomplish the tariff shift requirement. Both the pre-finished glass tableware product and the finished product would be classifiable under heading 7013, or subheading 7010.20. While the processing or finishing operations might change the subheading of the finished product, it should still be a product classifiable under headings 7013 or 7010. Moreover, such a finished product would not qualify for TTIP preference because it would not have been “produced entirely” in a TTIP country.

b. Subheading 9405.50.4000

With respect to glass lamps and lighting fittings that are products of subheading 9405.50.4000, Libbey proposes that the TTIP rules be similar to the following tariff shift/regional value content rules found in Annex 6-A of the US-Korea FTA.

9405.10 – 9405.60

A change to subheading 9405.10 through 9405.60 from any other chapter; or
A change to subheading 9405.10 through 9405.60 from subheading 9405.91 through 9405.99, whether or not there is also a change from any other chapter, provided that there is a regional value content of not less than:

- (a) 35 percent under the build-up method, or
- (b) 45 percent under the build-down method.

9405.91 – 9405.99

A change to subheading 9405.91 through 9405.99 from any other heading

Similar tariff shift/regional value rules applicable to products of subheading 9405.50.4000 are also found in the rules of origin for NAFTA, DR-CAFTA, Australia FTA, Chile FTA, Singapore FTA, Peru FTA, Colombia FTA, and Panama FTA. *See Appendix 2* (attached).

This proposed rule would require that where glass “parts” of lamps and lighting fittings are transformed in a TTIP country into glass lamps and lighting fittings classified under subheading 9405.50.4000, a certain percentage of the final product’s value must be sourced from TTIP countries. This rule would apparently prevent a glass lamp of subheading 9405.50.4000 from qualifying for TTIP preference if all of its parts were sourced from non-TTIP countries.

2. Rule for Sets of Goods

Libbey proposes that the TTIP rules of origin include a provision addressed to sets similar to the following rule found in Article 6.9 of the US-Korea FTA.

1. Each Party shall provide that if goods are classified as a set as a result of the application of rule 3 of the General Rules of Interpretation of the Harmonized System, the set is originating only if each good in the set is originating.
2. Notwithstanding paragraph 1, a set of goods is originating if the value of all the non-originating goods in the set does not exceed 15 percent of the adjusted value of the set.

Similar rules for sets are also found in the rules of origin for DR-CAFTA, Peru FTA, Colombia FTA, and Panama FTA.

Under this proposed rule, a set of glass tableware products (*e.g.*, a box set of 4 drinking glasses) would acquire TTIP-origin status only if all of the products making up the set are produced, packaged, and, if they underwent finishing operations, finished in a TTIP country.

3. Transshipment and Subsequent Production Rule

Libbey proposes that the TTIP rules of origin include a provision addressed to transshipments and operations in non-TTIP countries, such as the following rule found in Article 6.13 of the US-Korea FTA.

Each Party shall provide that a good shall not be considered to be an originating good if the good:

- (a) undergoes subsequent production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or
- (b) does not remain under the control of customs authorities in the territory of a non-Party.

Similar transshipment and subsequent production rules are also found in the rules of origin for DR-CAFTA, Peru FTA, Colombia FTA, and Panama FTA. *See Appendix 3* (attached).

This proposed rule would prevent TTIP eligibility for a glass tableware product that was formed or produced in a TTIP country but subsequently processed in a non-TTIP country. It also would disallow TTIP eligibility for a glass tableware product that was transshipped through a non-TTIP country and that left the control of customs authorities in the course of the transshipment.

4. Retail Packaging Rule

Libbey proposes that the TTIP rules of origin include a provision regarding retail packaging similar to the following rule from Article 6.10 of the US-Korea FTA.

1. Each Party shall provide that packaging materials and containers in which a good is packaged for retail sale shall, if classified with the good, be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4-A (Specific Rules of Origin for Textile or Apparel Goods) or Annex 6-A.

Similar retail packaging rules are also found in the rules of origin for NAFTA, DR-CAFTA, Australia FTA, Chile FTA, Singapore FTA, Peru FTA, Colombia FTA, and Panama FTA.

General Rule of Interpretation (“GRI”) 5(b) HTSUS provides that “packing materials and packing containers entered with the goods therein shall be classified with the good if they are of a kind normally used for packing such goods.” In keeping with GRI 5(b), the retail packaging rule in the US-Korea and other FTAs disregards retail packaging in determining originating-good status under the tariff shift rules of the respective FTA.

Notwithstanding that the origin of retail packaging (when classified with the good packaged) is traditionally disregarded in tariff shift determinations, this rule would disqualify from TTIP eligibility a glass tableware product that is formed and finished in a TTIP country but packaged for retail sale in a non-TTIP country because the tariff shift rule (as proposed above) would still require a TTIP-originating good to be “produced entirely” in the territory of one or more TTIP countries. To be “produced entirely” in TTIP countries would, seemingly, require that any process of packaging of the good also occur in a TTIP country.

Moreover, the transshipment and subsequent production rule (discussed above) would also require that any retail packaging of a TTIP-eligible product occur in a TTIP country. This is because packaging for retail sale in a non-TTIP country of a product that is formed and finished in a TTIP country would constitute “subsequent production or any other operation outside the territories of the Parties,” and such further “production” or “operation” would disqualify the product from TTIP tariff preference.

IV. TRADE REMEDIES

Libbey believes that the continued survival of the domestic glassware industry requires vigorous enforcement of the trade laws to ensure that the industry can fight unfair trade practices. Libbey strongly supports the maintenance of effective trade remedy laws in the United States. Antidumping duty, countervailing duty, and safeguard laws are essential tools to building domestic support for further trade liberalization. Thus, Libbey believes that TTIP negotiations should not affect, weaken or diminish U.S. rights or obligations with respect to the use of trade remedies.

V. REGULATORY COMPATIBILITY

A. The U.S. Should Not Seek or Agree to Impose More Onerous Standards, Costs, and Administrative Burdens on U.S. Manufacturers Through Convergence With EU Regulations.

One of the objectives for the TTIP negotiations specified in the USTR's letter to Speaker Boehner was that of "greater compatibility of U.S. and EU regulations and related standards development processes, with the objective of reducing costs associated with unnecessary regulatory differences and facilitating trade, *inter alia* by promoting transparency in the development and implementation of regulations and good regulatory practices, establishing mechanisms for future progress, and pursuing regulatory cooperation initiatives where appropriate." *See* Letter from Ambassador Demetrios Marantis, Acting United States Trade Representative to House Speaker John Boehner (March 20, 2013) at 3.

Libbey agrees that the aim of efforts to harmonize U.S. and EU regulations should be to reduce costs and lessen administrative burdens on manufacturers through elimination of unnecessary regulatory differences. However, Libbey believes that the objective of

regulatory compatibility should not be a conduit for adopting EU regulations and subjecting U.S. manufacturers to the generally more onerous European regulations that govern production processes and goods. In addition, regulatory convergence should not be used as a means to allow EU producers to target U.S. industries.⁹

In sum, Libbey believes that the U.S. should seek to maintain the *status quo* with respect to regulations affecting trade in glassware. The U.S. should not agree to any convergence of U.S. regulations with EU regulations that would result in more stringent standards, increased costs, and greater administrative burdens being imposed on U.S. producers.

The following are some examples of EU regulations that give Libbey concern, which, if “converged” with U.S. regulations by the U.S. accepting EU provisions, would impose more stringent standards than exist now, and whose implementation would inflict higher costs and greater administrative burdens on Libbey.

1. *Food Contact Safety Regulations*

Both the U.S. and EU maintain standards for substances that can come into contact with food. In the U.S., the Food and Drug Administration (“FDA”) maintains food contact safety regulations.¹⁰ In the EU, there are food contact safety regulations as well.¹¹ In

⁹ For example, the current trade flow of tumblers and stemware from the EU to the U.S. is on an order of magnitude larger than the flow from Libbey-US to the EU, and is likely much larger than the flow from all U.S. producers to the EU. Libbey believes that if regulatory convergence occurred with unnecessarily stringent EU regulations imposed on U.S. producers, the existing trade deficit for glass tableware would widen.

¹⁰ See FDA Compliance Policy Guides 7117.06, 7117.07, 545.400, and Relevant Test Methods: ASTM C-738-94; ASTM C-927-80.

particular, both the U.S. and EU regulate the amount of lead and cadmium in glass that can be used for food and drink.

Libbey considers that the U.S. regulations on food contact safety are superior to the EU rules because the U.S. utilizes better testing methods. In the U.S., testing generally measures whether a glass article “leaches” too much lead or cadmium onto food. In the EU, however, tests have at times focused not on leaching, but on the mere presence of lead or cadmium in the product. In other words, if a drinking glass contains a high amount of lead, but the lead would not transfer to food, it might pass the U.S. “leaching” test but fail the EU test. Compared to the U.S. rule, the EU approach is not practical and is overly onerous in its effect. This type of regulation should not be imposed on U.S. producers through TTIP regulatory compatibility negotiations. It would neither lessen costs nor relieve administrative burdens, but would in fact increase both for U.S. producers, without producing a gain in food safety.

2. Regulations on the Use of Chemicals

While both the U.S. and EU regulate the use of chemicals, the EU regulations pose a much greater burden on producers than the U.S. regulations. In the U.S., the relevant legislation is the Toxic Substances Control Act (“TSCA”).¹² This statute prohibits the use of

¹¹ See Framework Regulation EC 1935/2004 (general requirements for all food contact materials); legislation on categories of materials (*e.g.*, ceramics -- Directive 84/500/EEC); directives on individual substances or groups of substances used in the manufacture of materials and articles intended for food contact; and national legislation covering groups of materials and articles (currently 12 EU countries maintain mandatory national legislation regarding food contact safety for glass: http://ec.europa.eu/food/food/chemicalsafety/foodcontact/sum_nat_legis_en.pdf).

¹² See 15 U.S.C. §§ 2601–2692.

chemicals that are not listed. However, nearly any chemical that would be used on a glass article is listed, and, therefore, is a permitted chemical. As a result Libbey rarely encounters any problems with the regulation of chemicals through the TSCA. In the EU, chemicals are regulated through the REACH regulation.¹³ REACH is a broad-ranging regulation that governs the use of chemicals, including any chemical that is part of any product sold in the EU. For most chemicals, REACH requires companies to register the chemical with authorities. In addition, there are potentially significant restrictions over chemicals that are listed as “Substances of Very High Concern” (SVHC).

The EU’s REACH poses a much greater, and in Libbey’s view unnecessary, regulatory burden on glass tableware producers than TSCA because chemicals which producers have traditionally used in the U.S. can suddenly come under the scrutiny of REACH. One prime example of this is *diboron trioxide*, which was recently listed as an SVHC under REACH because the chemical was found to be harmful to human health. For many years, however, glass tableware producers had been using a similar chemical, borax (also known as sodium borate), to produce borosilicate glass. Borax and diboron trioxide both contain the same chemical element, boron.

The EU’s listing of diboron trioxide as an SVHC under REACH has caused uncertainty and confusion to glass producers. This is because standard tests of borosilicate glass would indicate the presence of diboron trioxide. In fact, however, what standard tests detect is the level of elemental boron in the glass, not the substance of concern, diboron

¹³ See Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), Regulation (EC) No 1907/2006.

trioxide. In other words, borosilicate glass does not contain diboron trioxide, but many tests results might falsely indicate that it does.

Moreover, finished glass does not contain borax either. Glass is produced through a chemical reaction whereby the “mix” (sand, soda ash, borax, etc.) is transformed into a new substance. Even though borax is a raw material used in glass production, it is transformed in the manufacturing process and is not present in the final product.

Thus, despite the fact that finished glass contains neither diboron trioxide nor borax, there has been much concern in the glass community regarding the listing of diboron trioxide as an SVHC under REACH. This led an industry group in Europe to issue its interpretation that borosilicate glass is compliant with REACH.¹⁴ Because European authorities so far have not yet made any definitive statement on this issue, glass producers have been left in a state of uncertainty. Libbey fears that REACH could continue to cause regulatory uncertainty with respect to additional aspects of glassware production.

3. *Air Pollution Regulations*

The U.S. and EU both regulate air pollution. In the U.S., the relevant statute is the Clean Air Act.¹⁵ In the EU, there is a directive that regulates most industrial plants, including those producing glass tableware, and covers such air pollutants as sulfur dioxide

¹⁴ See <http://www.glassfibreeurope.eu/uploads/files/20120628REACHBoronStatementFINAL.pdf>.

¹⁵ See 42 U.S.C. § 7401 *et seq.*

(SO₂), nitrogen oxides (NO_x), carbon monoxide (CO), volatile organic compounds (VOC), and others.¹⁶

Currently, the EU's IPPC contains much more stringent regulations regarding the release of SO₂ and NO₂ (nitrogen dioxide) than the U.S.'s Clean Air Act. In Libbey's case, while there are NO₂ and SO₂ emissions standards under the Clean Air Act, Libbey's plants in Toledo, Ohio and Shreveport, Louisiana are "grandfathered" and are limited only by historical emissions. If Libbey were to modify or increase its capacity at either of its plants, then the Clean Air Act's general standard for NO₂ and SO₂ emissions would apply to Libbey's plants. In the EU, a normal rebuild of a glass furnace *does* trigger a requirement to comply with the latest emissions standards.¹⁷ Thus, if as a result of TTIP regulatory compatibility negotiations, the EU's IPPC regulations were imposed on the U.S., and Libbey's U.S. plants were required to implement the EU's IPPC regulations, then Libbey would have to make unprecedented investments in infrastructure simply due to the common occurrence of furnace rebuilds. The U.S. should not countenance such a result – it goes counter to the objective of reducing costs and administrative burdens on U.S. producers.

In addition to the matter of NO₂ and SO₂ emissions, there are also potential issues with particulate emissions controls. In the EU, any glass furnace with a capacity of more than 20 metric tonnes per day must have particulate emissions controls attached. In the U.S., however, there are no such regulations. Again, if the EU rule were to be imposed on U.S. producers, it would result in increased costs and administrative burdens.

¹⁶ See Integrated Pollution Prevention and Control (IPPC) Directive (Directive 2008/1/EC).

¹⁷ See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:070:FULL:EN:PDF>.

4. Greenhouse Gas Regulations

The U.S. glass tableware industry would also suffer if it were subject to the EU Emissions Trading Scheme (“EU ETS”) for greenhouse gases (“GHG”). This EU “cap and trade” system is considerably more burdensome than the straightforward GHG reporting requirements under the U.S. Greenhouse Gas Reporting Program (“GHGRP”).¹⁸

EU ETS requires glass tableware plants to purchase additional GHG emission reduction credits to cover any shortcoming in plant emission controls. This EU program gradually increases the percentage of GHG emissions required to be reduced, so the cost of compliance generally increases over time. Furthermore, EU ETS requires each glass tableware plant to utilize an outside company (representing an additional cost) to verify and certify its annual calculations of GHG emissions.

As with EU ETS, the US GHGRP mandates that each glass manufacturing plant calculate and report their annual GHG emissions. The formulas and emission factors used to calculate GHG emissions in the U.S. are similar to those used in the EU ETS. The main difference, of course, is that the U.S. program does not currently place caps on GHG emissions. Applying EU GHG regulations in the U.S. would place a significant burden on domestic glass manufacturers. This result would be contrary to USTR’s stated objective of reducing costs associated with unnecessary regulatory differences.

VI. CONCLUSION

In summary, Libbey believes that in the TTIP negotiations the United States should seek the following objectives:

¹⁸ See 40 CFR Part 98, Subpart N – Glass Production.

- Market access modalities should account for the import-sensitivity of low-value glass tableware (*i.e.*, under \$5) and provide low-value glass tableware products of heading 7013 (HTS) with the most extensive (and backloaded) tariff phase-out period;
- Eligibility for preferential tariff treatment for glass tableware products of heading 7013 (and for certain other glass products of subheading 7010.20, and subheading 9405.50.4000) should be limited to products that are entirely formed, finished, and packaged in TTIP countries;
- The right to use trade remedies should not be weakened or diminished by any TTIP agreement; and
- The *status quo* should be maintained with respect to regulations affecting trade in glassware. No convergence of U.S. regulations with EU regulations should occur because it would result in more stringent standards, increased costs, and greater administrative burdens being imposed on U.S. glassware producers.

Respectfully submitted,

/s/ Terence P. Stewart

Terence P. Stewart
Patrick J. McDonough

STEWART AND STEWART

Special Counsel for Libbey Inc.

Appendix 1 – Tariff Shift Rules: Headings 7010 and 7013

NAFTA HTSUS General Note 12(t)	3. A change to headings 7010 through 7020 from any other heading, except from headings 7007 through 7020.
Singapore FTA HTSUS General Note 25(o)	16. A change to heading 7013 from any other heading, except from headings 7007 through 7011 or 7014 through 7020.
Chile FTA HTSUS General Note 26(n)	19. A change to headings 7010 through 7018 from any other heading, except from headings 7007 through 7018, or glass inners for vacuum flasks or other vacuum vessels of heading 7020.
Australia FTA HTSUS General Note 28(n)	18. A change to headings 7010 through 7018 from any other heading, except from headings 7007 through 7018 or glass inners for vacuum flasks or other vacuum vessels of heading 7020.
DR-CAFTA HTSUS General Note 29(n)	8. A change to headings 7009 through 7018 from any other heading outside that group, except from headings 7007 through 7008.
Peru FTA HTSUS General Note 32(n)	13. A change to subheadings 7009.91 through 7018.90 from any other heading outside that group, except from headings 7007 through 7008.
KORUS FTA Annex 6-A	70.09 – 70.18 A change to heading 70.09 through 70.18 from any other heading outside that group, except from heading 70.07 through 70.08.
Colombia FTA Annex 4.1	7009.91 – 7018.90 A change to subheading 7009.91 through 7018.90 from any other heading outside that group, except from heading 70.07 through 70.08.
Panama FTA Annex 4.1	70.11 – 70.18 A change to heading 70.11 through 70.18 from any other heading outside the group, except from heading 70.07 through 70.08.

Appendix 2 – Tariff Shift and Regional Value Content Rules: Heading 9405

<p>NAFTA HTSUS General Note 12(t)</p>	<p>8. (A) A change to subheadings 9405.10 through 9405.60 from any other chapter; or (B) A change to subheadings 9405.10 through 9405.60 from subheadings 9405.91 through 9405.99, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than: (1) 60 percent where the transaction value method is used, or (2) 50 percent where the net cost method is used.</p> <p>9. A change to subheadings 9405.91 through 9405.99 from any other heading.</p>
<p>Singapore FTA HTSUS General Note 25(o)</p>	<p>9. (A) A change to subheadings 9405.10 through 9405.60 from any other chapter; or (B) A change to subheadings 9405.10 through 9405.60 from subheadings 9405.91 through 9405.99, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than 35 percent based on the build-up method or 45 percent based on the build-down method.</p> <p>10. A change to subheadings 9405.91 through 9405.99 from any other heading.</p>
<p>Chile FTA HTSUS General Note 26(n)</p>	<p>9. (A) A change to subheadings 9405.10 through 9405.60 from any other chapter; or (B) A change to subheadings 9405.10 through 9405.60 from subheadings 9405.91 through 9405.99, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than: (1) 35 percent when the build-up method is used, or (2) 45 percent when the build-down method is used.</p> <p>10. A change to subheadings 9405.91 through 9405.99 from any other heading.</p>

<p>Australia FTA HTSUS General Note 28(n)</p>	<p>9. (A) A change to subheadings 9405.10 through 9405.60 from any other chapter; or (B) A change to subheadings 9405.10 through 9405.60 from subheadings 9405.91 through 9405.99, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than 35 percent based on the build-up method or 45 percent based on the build-down method.</p> <p>10. A change to subheadings 9405.91 through 9405.99 from any other heading.</p>
<p>DR-CAFTA HTSUS General Note 29(n)</p>	<p>6. (A) A change to subheadings 9405.10 through 9405.60 from any other chapter; or (B) A change to subheadings 9405.10 through 9405.60 from subheadings 9405.91 through 9405.99, whether or not there is also a change from any other chapter, provided there is a regional value content of not less than: (i) 35 percent when the build-up method is used, or (ii) 45 percent when the build-down method is used.</p> <p>7. A change to subheadings 9405.91 through 9405.99 from any other heading.</p>
<p>Peru FTA HTSUS General Note 32(n)</p>	<p>7. (a) A change to subheadings 9405.10 through 9405.60 from any other chapter; or (b) A change to subheadings 9405.10 through 9405.60 from subheadings 9405.91 through 9405.99, whether or not there is also a change from any other chapter, provided that there is a regional value content of not less than: (1) 35 percent under the build-up method; or (2) 45 percent under the build-down method.</p> <p>8. A change to subheadings 9405.91 through 9405.99 from any other heading.</p>

<p>KORUS FTA Annex 6-A</p>	<p>9405.10 – 9405.60 A change to subheading 9405.10 through 9405.60 from any other chapter; or A change to subheading 9405.10 through 9405.60 from subheading 9405.91 through 9405.99, whether or not there is also a change from any other chapter, provided that there is a regional value content of not less than: (a) 35 percent under the build-up method, or (b) 45 percent under the build-down method. 9405.91 – 9405.99 A change to subheading 9405.91 through 9405.99 from any other heading.</p>
<p>Colombia FTA Annex 4.1</p>	<p>9405.10 – 9405.60 A change to subheading 9405.10 through 9405.60 from any other chapter; or A change to subheading 9405.10 through 9405.60 from subheading 9405.91 through 9405.99, whether or not there is also a change from any other chapter, provided that there is a regional value content of not less than: (a) 35 percent under the build-up method; or (b) 45 percent under the build-down method. 9405.91 – 9405.99 A change to subheading 9405.91 through 9405.99 from any other heading.</p>
<p>Panama FTA Annex 4.1</p>	<p>9405.10 – 9405.60 A change to subheading 9405.10 through 9405.60 from any other chapter; or A change to subheading 9405.10 through 9405.60 from subheading 9405.91 through 9405.99, whether or not there is also a change from any other chapter, provided that there is a regional value content of not less than: (a) 35 percent under the build-up method, or (b) 45 percent under the build-down method. 9405.91 – 9405.99 A change to subheading 9405.91 through 9405.99 from any other heading.</p>

Appendix 3 - Transshipment and Subsequent Production Rules

<p>NAFTA HTSUS General Note 12(l)</p>	<p>(l) <u>Transshipment</u>. A good shall not be considered to be an originating good by reason of having undergone production that satisfies the requirements of this note if, subsequent to that production, the good undergoes further production or any other operation outside the territories of the NAFTA parties, other than unloading, reloading or any other operation necessary to preserve it in good condition or to transport the good to the territory of Canada, Mexico and/or the United States.</p>
<p>Singapore HTSUS General Note 25(c)(iii)</p>	<p>(iii) A good shall not be considered to be an originating good if, after it has undergone production that satisfies the requirements of this note, the good undergoes subsequent production or any other operation outside the territory of Singapore and of the United States, other than unloading, reloading or any other operation necessary to preserve it in good condition or to transport the good to the territory of Singapore or of the United States.</p>
<p>Chile FTA HTSUS General Note 26(c)(iii)</p>	<p>(iii) A good that has undergone production necessary to qualify as an originating good under this note shall not be considered to be an originating good if, subsequent to that production, the good undergoes further production or any other operation outside the territory of Chile or of the United States, other than unloading, reloading or any other process necessary to preserve the good in good condition or to transport the good to the territory of Chile or of the United States.</p>
<p>Australia FTA HTSUS General Note 28(c)(iii)</p>	<p>(iii) A good that has undergone production necessary to qualify as an originating good under this note shall not be considered to be an originating good if, subsequent to that production, the good undergoes further production or any other operation outside the territory of Australia or of the United States, other than unloading, reloading or any other operation necessary to preserve the good in good condition or to transport the good to the territory of Australia or of the United States.</p>

<p>DR-CAFTA HTSUS General Note 29(c)(iii)</p>	<p>(iii) A good that has undergone production necessary to qualify as an originating good under this note shall not be considered to be an originating good if, subsequent to that production, the good--</p> <ul style="list-style-type: none"> (A) undergoes further production or any other operation outside the territories of the parties to the Agreement, other than unloading, reloading or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a party to the Agreement; or (B) does not remain under the control of customs authorities in the territory of a country other than a party to the Agreement.
<p>Peru FTA HTSUS General Note 32(c)(iii)</p>	<p>(iii) A good that has undergone production necessary to qualify as an originating good under this note shall not be considered to be an originating good if, subsequent to that production, the good--</p> <ul style="list-style-type: none"> (A) undergoes further production or any other operation outside the territory of Peru or the United States, other than unloading, reloading or any other operation necessary to preserve the good in good condition or to transport the good to the territory of Peru or the United States; or (B) does not remain under the control of customs authorities in the territory of a country other than Peru or the United States.
<p>Korea FTA Article 6.13</p>	<p>Each Party shall provide that a good shall not be considered to be an originating good if the good:</p> <ul style="list-style-type: none"> (a) undergoes subsequent production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or (b) does not remain under the control of customs authorities in the territory of a non-Party.
<p>Colombia FTA Article 4.13</p>	<p>Each Party shall provide that a good shall not be considered to be an originating good if the good:</p> <ul style="list-style-type: none"> (a) undergoes subsequent production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or (b) does not remain under the control of customs authorities in the territory of a non-Party.

<p>Panama FTA Article 4.12</p>	<p>Each Party shall provide that a good shall not be considered to be an originating good if the good:</p> <ul style="list-style-type: none">(a) undergoes subsequent production or any other operation outside the territories of the Parties other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or(b) does not remain under the control of customs authorities in the territory of a non-Party.
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