

May 12, 2003

U.S. Customs Service
Office of Regulations and Rulings
Attention: Joe Clark, Regulations Branch
1300 Pennsylvania Avenue, NW
Washington, DC 20229

RE: Customs Service (Customs) Notice of Proposed Rulemaking on the Tariff Treatment Related to Disassembly Operations Under the North American Free Trade Agreement (68 Fed. Reg. 12011, March 13, 2003)

Dear Sir or Madam:

The Office of Advocacy of the U.S. Small Business Administration (SBA) was created in 1976 to represent the views and interests of small business in Federal policy making activities.¹ The Office of Advocacy (Advocacy) monitors and reports on agencies' compliance with the Regulatory Flexibility Act of 1980 (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).² These laws require Federal agencies to assess the impact of their policies and rulemakings on small entities.

Executive Order (EO) 13272, signed by President Bush on August 13, 2002, essentially requires agencies to do a better job of complying with the RFA and to engage Advocacy earlier in the rulemaking process. Because the Office of Advocacy is independent, the views of the Chief Counsel do not necessarily represent the views of the SBA or the Administration.

The Office of Advocacy is writing regarding a Notice of Proposed Rulemaking published in the *Federal Register* on March 13, 2003, on Tariff Treatment Related to Disassembly Operations Under the North American Free Trade Agreement. Advocacy is concerned that the proposed rule's certification is deficient and urges Customs to bring this rulemaking into compliance with the RFA.

Section 605(b) of the RFA states that the head of an agency may certify that a proposed rule will not have a significant impact on a substantial number of small entities. The certification must be supported by a statement of factual basis. Customs has certified that the proposed rule will not have a significant economic impact on a substantial number of small entities, but no data to support the certification is provided. There is no information on the number of small entities that

¹ Pub. L. No. 94-305 (codified as amended at 15 U.S.C. §§634a-g, 637).

² Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. § 601 et seq.) amended by Subtitle II of the Contract with America Advancement Act, Pub. L. No. 104-121, 110 Stat. 857 (1996). 5 U.S.C. § 612(a).

would be impacted by this rule or the magnitude of the impact. In fact, it is not clear that any analysis has been done to determine whether this certification has merit.

Based on our discussions with potentially impacted small entities in the automotive recycling business, Advocacy recommends that Customs revisit their certification and at a minimum provide a factual basis for that certification. Consistent with the RFA, to certify this proposed rule properly, Customs must show which small entities will be affected and whether those affected constitute a substantial number within the regulated industry. Customs must also determine what the economic impacts of the proposed rule are and whether that impact is significant. Although Customs asserts that “the proposed rule is intended to promote economic activity as well as the protection of the environment in North America” in the certification; it does not provide an appropriate factual basis for a certification. If in the final rule Customs cannot provide a factual basis to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities, then Customs must conduct an initial regulatory flexibility analysis and publish it for comment.

For information on how to certify the proposed rule properly, Customs should refer to Advocacy’s recently revised RFA guide, *The Regulatory Flexibility Act: An Implementation Guide for Federal Agencies*. This guide can be found on Advocacy’s website at <http://www.sba.gov/advo/laws/rfaguide.pdf>.

The Office of Advocacy is willing and available to work with Customs to ensure compliance with the RFA. Thank you for the opportunity to comment on this proposal. If you have any questions, feel free to contact the Office of Advocacy at (202) 205-6533.

Sincerely,

Thomas M. Sullivan
Chief Counsel for Advocacy

Viktoria D. Ziebarth
Special Assistant

cc: Dr. John D. Graham, Administrator, Office of Information and Regulatory Affairs