

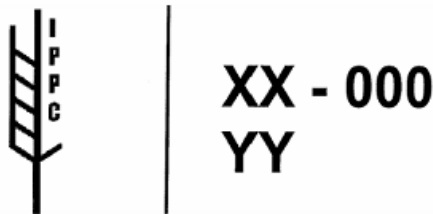
Operating Procedures for Implementation of the Wood Packaging Materials (WPM) Regulation

Background:

The United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) revised its import regulation for wood packaging materials (WPM), 7 CFR § 319. The final rule was posted in the Federal Register September 16, 2004, with an effective date of September 16, 2005.

The regulation requires non-exempt WPM used in international trade to be treated to kill harmful insects that may be present. WPM must be marked with the International Plant Protection Convention (IPPC) logo, the two-letter International Organization for Standardization (ISO) code for the country that treated the WPM, the treatment facility number assigned by the national plant protection organization, and either HT for heat treatment or MB for methyl bromide. USDA must approve any abbreviations other than HT for heat treatment and MB for methyl bromide. A listing of approved exceptions will be maintained in Appendix A.

The rule requires regulated WPM to be marked in a visible location on each article, preferably on at least two opposite sides of the article, with a legible and permanent mark that indicates that the article meets the requirements of the regulation. Paper treatment certificates will no longer be required or accepted. An example of an acceptable WPM mark is:



XX represents the ISO country code.
000 represents the unique number assigned by the national plant protection organization.
YY represents either HT for heat treatment or MB for methyl bromide fumigation.

The regulation restricts the importation of many types of wood articles, including wooden packaging materials such as pallets, crates, boxes, and pieces of wood used to support or brace cargo. The regulations formerly referred to these types of wood packaging materials as solid wood packing materials, defined as “wood packing material other than loose wood packing material, used or for use with cargo to prevent damage, including, but not limited to, dunnage, crating, pallets, packing blocks, drums, cases, and skids.” Effective September 16, 2005, the

U.S. regulation allows for violative regulated WPM to be exported; there are no treatment options available for importers of violative WPM into the United States.

For the purposes of this rule, WPM that are imported as cargo, such as a container or truckload of new or unused pallets, are to be considered WPM and subject to the rule. Its status as merchandise is irrelevant.

Non-regulated and Exempt Wood and Wood Products:

Regulated WPM do not include any manufactured items, such as worked wood items, even if those items are used to contain other non-regulated merchandise. Examples of non-regulated manufactured items might include such things as carved or formed wooden bottle stoppers, wooden boxes built to house fuel gauges or armaments, and ammo crates. Wine crates for any vintage year prior to 2006 are also non-regulated; wine crates for vintage year 2006 and beyond are regulated. Exemptions and exceptions are found in Appendix B.

Regulated WPM do not include any manufactured wood, such as fiberboard, plywood, polywood, strandboard, whisky and wine barrels, and veneers, nor do they include "loose wood packing materials" as defined in 7 CFR § 319.40-1. Examples of loose wood packing materials include excelsior (wood wool), sawdust, and wood shavings produced as a result of sawing or shaving wood into small, slender, and curved pieces. Dunnage is not always "loose wood packing materials"; when it is not, it is regulated.

The regulation allows several exemptions and exceptions. WPM made from Canadian origin wood are excepted from the marking requirements; for purposes of enforcement of this exception and absent any proof to the contrary or a statement from the importer, U.S. Customs and Border Protection (CBP) will consider the country of origin of merchandise coming from Canada to be the country of origin of the accompanying WPM.

An exemption allows importation without marking of otherwise-regulated WPM used by the U.S. Department of Defense to package non-regulated articles, including commercial shipments pursuant to a DOD contract.

Also permitted is the importation of unmarked firewood, mesquite wood for cooking, and small, noncommercial packages of un-manufactured wood for personal cooking or personal medicinal purposes as long as these items arrive directly from Mexican Border States and are entered as such.

CBP will enforce the WPM regulation on goods moving under T&E or IT bond. In instances where officers of a contiguous country detect that WPM moving on a T&E are violative, the shipments will be allowed to transit out of the U.S. for exportation to a country other than Canada or Mexico.

Phased Compliance:

CBP conducted a special operation during the month of July 2005 to determine the baseline level of WPM compliance. Based on examination results, CBP is performing phased-in compliance enforcement of the USDA WPM regulation.

Phase I began on September 16, 2005, and served as an informed compliance period, with no stoppage or exportation of shipments for violative WPM. During this phase, all visual exams of cargo performed by CBP Officers or Agriculture Specialists included a WPM component. If WPM were found to be violative, the broker and importer were informed of the non-compliance and given further information.

Phase I was successfully completed on January 31, 2006.

Phase II began February 1, 2006. CBP began full enforcement of the ban on violative crates and pallets. CBP continued informed compliance measures on all regulated WPM except crates and pallets. Immediate export of all shipments found to contain violative crates and pallets was ordered if the Port Director determined that it was not feasible to separate merchandise from violative WPM.

Phase II ended successfully on July 4, 2006.

Phase III began July 5, 2006. This phase represents full enforcement of the WPM ban regulated by 7 CFR § 319. CBP will no longer conduct informed compliance at the shipment level. Immediate export of all shipments containing violative WPM will be ordered if the Port Director determines that it is not feasible to separate merchandise from violative WPM.

Requests to separate merchandise from violative WPM must be made in accordance with the process outlined in Appendix C of this document.

All expenses incurred for the services of CBP Officers and Agriculture Specialists involved in the separation of cargo will be billed to the importer or other party of interest. Arrangements for the reimbursement of expenses must be made prior to any manipulation. WPM and associated merchandise will be exported at the expense of the importer or party of interest.

Public detail can be found on the www.cbp.gov WPM pages, particularly in this document and in the frequently asked questions (FAQ) section. The FAQ are updated as necessary to provide WPM processing guidance for the trade. The public may also contact USDA directly at 1-866-738-8197 for further information on the requirements of the regulation; USDA will not comment on implementation policies of CBP.

Phase I -- Informed Compliance
September 16, 2005 through January 31, 2006

Phase I of the WPM implementation, which focused on an aggressive informed compliance initiative relative to CBP efforts to implement and enforce the WPM rule, began on September 16, 2005, and was successfully completed on January 31, 2006.

Phase II -- Wooden Crates and Pallets
February 1, 2006 through July 4, 2006

Phase II continued the informed compliance initiative on cargo shipments that contained violative WPM other than wooden crates and pallets and marked the beginning of enforced compliance of cargo shipments containing violative crates and pallets. Phase II began on February 1, 2006, and was successfully completed on July 4, 2006.

Phase III -- Full Enforcement
July 5, 2006, and beyond

Phase III represents full enforcement of the WPM ban regulated by 7 CFR § 319. Informed compliance at the shipment level is discontinued, and immediate export of all shipments containing violative WPM will be ordered if the Port Director determines that it is not feasible to separate merchandise from violative WPM.

This phase began on July 5, 2006, and is ongoing.

Implementation Matrix for USDA Wood Packing Materials Rule

| Phase I | Phase II | Phase III |
|---|---|---|
| September 16, 2005- January 31, 2006 | February 1, 2006-July 4, 2006 | July 5, 2006 and Ongoing |
| Informed Compliance via account managers and notices posted in cargo with noncompliant WPM | Enforcement of requirement for violative crates and pallets via exportation Informed Compliance via account managers and notices posted in cargo with other types of noncompliant WPM | Full enforcement on all types of WPM |

Wood Packaging Material found to be infested with pests is outside the scope of the phase-in implementation. If pests are detected, established safeguarding and/or treatment will be used to mitigate the pest risk.

Details of Phase III -- Enforced Compliance

If CBP Officers or Agriculture Specialists discover violative WPM (that is, WPM that lack the proper IPPC marking **OR** WPM that are found to be infested with the timber pests named in Appendix F) during the course of any visual examination of any cargo, the shipment will be considered in violation of the WPM rule and the following processes are established.

- 1. If CBP Officers or Agriculture Specialists discover violative WPM, the following actions will be taken:**
 - a. The shipment will be held and will not be released.
 - b. An Agriculture Specialist will complete a USDA Emergency Action (EAN) Notification (PPQ-523) on the violative WPM, citing 7 CFR § 319.40 as the authority and listing options in "Action".
 - c. The importer, or the importer's representative (if one is available), will be notified by CBP of the situation.
 - d. The importer or other party of interest may request separation of the imported merchandise from the violative WPM. The request must be submitted and considered using the process in Appendix C.

- 2. If separation is not requested or if the Port Director determines that separation of the violative WPM is not feasible, the following actions will be taken:**
 - a. The entire shipment (violative WPM, compliant WPM, and merchandise) shall be ordered exported from the U.S. in accordance with the rule.
 - b. The Port Director shall order the shipment to be exported from the U.S. at the expense of the importer or party of interest. It is irrelevant if the shipment contains a mixture of compliant and violative WPM.
 - c. The authority to order exportation of violative WPM is contained in the USDA regulations at 7 CFR § 319.40.
 - d. If the entire shipment is ordered exported, any original entry must be cancelled and an Immediate Exportation entry (IE) (entry type 63) must be executed and provided to the Port Director to document the export movement.
 - e. If movement outside of the original U.S. port becomes necessary to cause the ordered exportation, it will be on a restrictive Transportation and Exportation (T&E) (entry type 62) in conjunction with an appropriately

executed USDA Emergency Action Notification (EAN) (PPQ-523). The EAN will provide and document restrictions as to routing, diversion and authorized timeframe to complete the restricted T&E movement.

- f. In the event that the identity of the importer is unknown or otherwise not available to CBP, the importing carrier may be held liable for expenses related to the costs of exportation of the violative WPM and associated cargo.

3. If the Port Director determines that separation of the violative WPM from the cargo is feasible, the following steps will be taken:

- a. The cargo will be separated at the importer's expense at a time and place determined by the Port Director. Arrangements for the reimbursement of expenses must be made prior to any manipulation as required by Appendix C of this document.
- b. If only the violative WPM are to be exported, the importer (working in conjunction with the exporting carrier) must supply evidence sufficient to Port Director's satisfaction that the violative WPM have been, or will be, removed from the U.S. This proof may include, but is not limited to, a bill of lading, statement on carrier letterhead, U.S. export or foreign entry documents, *etc.*
- c. After separation, the Port Director will order violative WPM to be exported per 7 CFR § 319.40 at the importer's expense.
- d. In the event that the identity of the importer is unknown or otherwise not available to CBP, the importing carrier may be held liable for expenses related to the costs of exportation of the violative WPM.

4. The enforcement of the WPM requirements is a separate process from the normal course of pest interdiction duties.

In every case of the discovery of a pest infestation, the protocol associated with safeguarding or eradication of the pest threat will supersede WPM enforcement. Pests are treated under normal protocol and reported as required. USDA has determined that unmarked WPM are to be assumed to be untreated WPM. Therefore, once a pest threat has been eliminated, the affected WPM must be exported.

6. For purposes of enforcement of this regulation as it relates to dunnage, CBP intends to exercise its discretionary authority so that if CBP believes that cut or damaged pieces of dunnage are part of a larger piece of properly marked wood, CBP will determine that the unmarked dunnage has been

treated and marked, and consider the unmarked dunnage to be non-violative. This decision is left to the officer's discretion.

In addition, ships dunnage may be discharged without prior approval if it is properly marked. This is contrary to instruction (4) of the Safeguard Notice on the Ship Inspection Report, CBP Form AI-288. In other words, non-violative dunnage may be removed from vessels without "specific permission of an Agricultural Officer".

Appendix A – Approved Abbreviations

USDA must approve any abbreviations other than HT for heat treatment and MB for methyl bromide. USDA will consider and decide upon exceptions as appropriate.

To date, USDA has approved only the following:

Guatemala (country code GT) may use TT to indicate heat treatment and BM to indicate treatment with methyl bromide.

Appendix B – Exemptions and Exceptions

The USDA import regulation for WPM at 7 CFR § 319 offers the following definition of regulated wood packaging materials: Wood or wood products (excluding paper products) used in supporting, protecting or carrying a commodity, including dunnage, other than:

- manufactured wood materials,
- loose wood packing materials (defined as excelsior [wood wool], sawdust, and wood shavings, produced as a result of sawing or shaving wood into small, slender, and curved pieces), and
- pieces of wood that are less than 6 mm thick in any dimension,

that are used or for use with cargo to prevent damage, including, but not limited to, dunnage, crating, pallets, packing blocks, drums, cases, and skids, whether in actual use as packing for regulated or non-regulated articles or imported as cargo.

Regulated WPM may be imported into the United States under a general permit in accordance with the following conditions:

- The WPM must have been either heat treated to achieve a minimum wood core temperature of 56 °C for a minimum of 30 minutes or fumigated with methyl bromide in an enclosed area for at least 16 hours at approved dosages and then aerated to reduce the concentration of fumigant below hazardous levels.
- The wood packaging materials must be marked in a visible location on each article, preferably on at least two opposite sides of the article, with a legible and permanent mark that indicates that the article meets the treatment requirements.

The regulation outlines specific exemptions for some WPM. These exemptions are:

1. Manufactured wood materials such as fiber board, plywood, whisky and wine barrels, and veneer,
2. Loose wood materials as defined above,
3. Pieces of wood that are less than 6 mm (0.24 in) in any dimension,
4. WPM used by the U.S. Department of Defense (DOD) to package non-regulated articles, including commercial shipments pursuant to a DOD contract, and
5. Firewood, mesquite wood for cooking, and small, noncommercial packages of unmanufactured wood for personal cooking or personal medicinal purposes coming directly from Mexican border states.

Additional Exceptions to the Rule:

By reciprocal regulations in Canada and the U.S., WPM made entirely from Canada origin wood is exempt from the treatment and marking requirements when accompanying shipments being imported into the U.S. directly from Canada.

USDA has grandfathered all wine crates for vintage years preceding 2006. This means that wine crates for any wine with a vintage year through 2005 are exempt from treatment and marking requirements. Wines of vintage year 2006 and beyond are required to be in crates that have been treated and marked.

Articles of wood that are manufactured to transport a specific non-regulated commodity are not considered to be WPM and are not required to be treated and marked. This exception refers to worked wood boxes, usually containing hinges, handles, and a molded or partitioned interior cradling feature, which are intended to be reused for the life of the non-regulated commodity. These boxes are usually (but not always) manufactured at the time of initial shipment of the commodity and generally are used for a unique item. They may, for example, house a unique antique armament or a specific, numbered fuel gauge. The exception does not refer to WPM used to contain articles on a one-time basis even if the box is made specifically for the commodity (for example, to ship a motorcycle, a generator, or airplane parts, or for articles being returned for repair).

WPM that are part of any bundle of imported lumber are excepted from the rule. Since all lumber shipments entering the U.S. require an Animal and Plant Health Inspection Services (APHIS) permit, and this permit covers all the wood within the bundle, any spacers and sacrificial wood within the bundled lumber are considered to be part of the shipment. WPM used outside the bundle in the transport of bundled lumber (for example, manufactured pallets or skids on which bundles are laden) are not exempt from the WPM rule and must be marked.

Appendix C -- Protocol for Separation of Violative WPM

1. The regulation does not authorize domestic destruction of violative WPM. The rule does not authorize fumigation in lieu of proper marking for WPM. Exportation of violative WPM is the only recourse available to importers under the U.S. regulation.
2. Separation of violative WPM from compliant WPM or associated merchandise is not an absolute right; it is an option left to the government's discretion. All expenses related to the movement, inspection, separation, safeguarding, storage, and ultimate disposition of violative WPM are at the expense of the importer or party of interest.
3. When a shipment is held by CBP for violation of the WPM rule, the importer (or their representative or other party of interest, as defined in item five of this Appendix) may make a request to CBP for the ability to separate WPM from the imported commodities. The requesting party shall submit a completed CBP 3499 — Application and Approval to Manipulate, Examine, Sample or Transfer Merchandise, to the CBP Port Office within one business day after the hold has been placed. In the case of a consolidated shipment, any affected importer or party of interest may make application under the guidelines of this protocol. All appropriate forms and evidentiary materials required by this Appendix must be presented to the Port Director, and all expense will accrue to the applicant.
4. The importer, or their representative or other party of interest, must submit to the Port Director evidence of commitment to export the violative WPM that is separated from the merchandise referenced in the CBP 3499. This evidence must be presented at the time of submission of the CBP 3499 and may consist of various elements, but will usually include the participation of a carrier. This requirement is critical, as the Port Director must ensure that the violative WPM is properly exported and the government does not incur any expense.
5. If WPM are to be exported due to non-compliance with the WPM rule, the importer (working in conjunction with the exporting carrier) must supply evidence sufficient to Port Director's satisfaction that the violative WPM have been, or will be, removed from the U.S. This proof may include, but is not limited to, a bill of lading, statement on carrier letterhead, U.S. export or foreign entry documents, etc.
6. Other parties of interest may apply to CBP for the WPM separation process only if the importer has no U.S. presence. These other parties must define for CBP their interest in the merchandise. Carriers may not apply for the WPM separation process solely based on regaining or repositioning their property (containers). All parties applying for WPM separation must provide for the

continuity of the cargo and the prompt and proper exportation of the violative WPM.

7. The Port Director will consider many factors when reviewing the CBP 3499. Among the factors that may be considered are the following:
 - a. Is it feasible to separate the merchandise from the violative WPM?
 - b. Is the facility selected adequate for the task?
 - c. Can the facility properly control or isolate a pest risk should an infestation be present?
 - d. Does CBP have the resources to supervise this activity without adverse impact to the agency mission?
 - e. Has the importer made all necessary arrangements and provisions for successfully completing this task?
 - f. Is the government adequately protected from exposure to expenses?
8. After considering the above factors, the Port Director will determine whether to approve the CBP 3499. Once the decision is made, the Port Director will notify the importer. The decision of the Port Director is final.
9. If the decision is made to approve the separation request, the Port Director will determine the time, place, and supervision requirements of the separation. The process should commence under CBP supervision as soon as practical.
10. The final decision to supervise or not supervise an approved separation process will reside with the Port Director.
11. Under normal circumstances, services performed under a CBP 3499 may only be performed at CBP Bonded Warehouses. For the purposes of this application, the services may be performed at any location that the Port Director deems appropriate for that purpose. This will usually be where CBP Officers or Agriculture Specialists perform examination work, such as a CES, carrier facility, or bonded warehouse.
12. After the cargo is successfully separated from the non-conforming WPM, CBP will remove the hold and complete any entry-related processing that would normally occur to release the merchandise from CBP custody.
13. CBP will bill the importer or other party of interest for CBP their services. Importers or other parties of interest will receive a bill from CBP. Payment

must be made to CBP per the instructions on the bill, not paid at the port and not paid to USDA.

14. Considering the restrictions above, the importer (or their representative or other party of interest) must consider that in many cases it may be cost prohibitive or logistically impractical to do the WPM separation process.
15. If the decision is made to disapprove the separation request, the importer must make arrangements with the importing carrier to export the entire shipment at the first available opportunity. If the importer fails to make those arrangements, CBP and/or USDA will make the arrangements for the importer, and the importer will be billed accordingly. Because CBP and USDA are not in the shipping business, any billing to the importer for these logistics services may be exceptionally significant.
16. Shipments will not be authorized to move in bond to another port for separation consideration under the WPM program.
17. An importer may choose to appeal to USDA Headquarters whether certain types of WPM are covered under the rule. CBP employees will not encourage or discourage an importer from exercising this option. USDA may choose to intervene in selected circumstances. Because this is a USDA regulation, USDA Headquarters decisions on scope issues are final. Any issues relating to any operational implementation feasibility reside and remain solely with CBP.

Appendices D and E Intentionally Left Blank Appendix F — Pest Interceptions

The U.S. Department of Agriculture has made the following policy determination: “Plant pests that attack live trees prior to being manufactured into WPM will not survive treatments prescribed in 319.40-3(b)(1). Insects in the families *Cerambycidae*, *Buprestidae*, *Siricidae*, *Cossidae*, *Curculionidae*, *Scolytidae*, *Platypodidae*, or *Sesiidae* represent timber pests that, when found live in WPM, confirm that the WPM has not been treated in accordance with 319.40-3(b)(1). Marked WPM containing pests in the above mentioned families is considered WPM that has not been treated and marked in accordance with 319.40-3, and shall be immediately reexported pursuant to (b)(3). The importer of record is responsible for any costs or charges associated with reexport.”

This is a USDA policy. Questions about the policy should be directed to USDA by calling USDA directly at 1-866-738-8197.

If a live wood boring pest in one of the above families is found in marked WPM, the WPM are to be considered to be violative and must be exported. Any mitigation treatment will be conducted only as a safeguarding measure if such treatment is required to minimize pest dispersal. **Whether or not treatment is applied, CBP will require the export of any marked or unmarked WPM determined to be infested with any live wood-boring pest of the families *Cerambycidae*, *Buprestidae*, *Siricidae*, *Cossidae*, *Curculionidae*, *Scolytidae*, *Platypodidae*, or *Sesiidae*.**

Appendix G Intentionally Left Blank Appendix H – Approved and Unapproved Marks

Missing Marks on Dunnage:

It is anticipated that CBP Officers and Agricultural Specialists will encounter situations where markings on dunnage are not present, not visible, or have been damaged so as to make them illegible. Dunnage presents unique challenges. Often, pieces of dunnage are cut to fit a load and may, during that process, be separated from the IPPC marking. Other times, during the course of transit, dunnage is broken, crushed, abraded, or otherwise damaged; in these cases, too, pieces of dunnage will likely be separated from their compliance mark.

For purposes of enforcement of this regulation as it relates to dunnage, CBP intends to exercise its discretionary authority so that if CBP believes that cut or damaged pieces of dunnage are part of a larger piece of properly marked wood, CBP will determine that the unmarked dunnage has been treated and marked, and consider the unmarked dunnage to be non-violative. This decision is left to the officer's discretion.

In addition, ships dunnage may be discharged without prior approval if it is properly marked. This is contrary to instruction (4) of the Safeguard Notice on the Ship Inspection Report, CBP Form AI-288. In other words, dunnage may be removed from vessels without "specific permission of an Agricultural Officer".

Unacceptable or Fraudulent Markings:

It is anticipated that CBP Officers and Agricultural Specialists will encounter incidents where they believe that a shipment contains fraudulent WPM compliance markings. While this may be an unethical business practice, nothing in the USDA regulation makes this practice illegal.

CBP has informed USDA that entities officially recognized to authenticate U.S. origin WPM as compliant should request recordation of their U.S. trademark with CBP, as outlined in 19 CFR 133, Subpart A. Only then can CBP take enforcement action against certain fraudulent U.S. trademarks.

Language variations or treatment codes other than "MB" for methyl bromide and "HT" for heat treatment are not acceptable. Any markings other than MB and HT are to be considered as violative unless those marks are specifically approved by USDA and included in Appendix A of this document.

Appendix I – Procedures for Processing Returning WPM

The WPM rule is based on an international standard with 138 signatory countries actively participating in its enforcement. It is likely that some shipments of U.S. exports will contain WPM that are not compliant with the standard. CBP counterparts in other countries may detect shipments containing violative WPM, and they may determine the WPM to be inadmissible and order that the violative WPM be exported from their country.

If CBP encounters a shipment of returned U.S. merchandise that contains violative WPM, CBP will provide a sectional release for the merchandise and WPM upon reasonable submission of proof that the merchandise did not enter the foreign country's commerce as provided for under 19 CFR 4.35(g).

If CBP encounters a shipment that consists only of supposedly returned U.S. WPM that are not in compliance with the standard, the shipment will be allowed entry only if there is acceptable proof that ties the WPM to the original export from the U.S. Examples of acceptable documentation may be the original shipment documentation or a rejection notice from the foreign country. Any shipments of supposedly returned U.S. WPM that do not have acceptable documentation will be refused entry. If there is a pest risk, appropriate safeguarding and treatment is required prior to exportation.

There is no requirement for treatment or marking of WPM in domestic circulation.

Returns To or From Canada & Mexico

CBP has been working very closely with our counterparts in both Canada and Mexico to develop the most effective methodology for implementing this WPM initiative. All three countries have agreed to implement WPM initiatives modeled on U.S. CBP's phased implementation approach.

Canada, Mexico, and the U.S. will allow their own origin shipments with violative WPM to be returned providing the shipment did not leave the customs custody of the second country.

In cases of other country violative WPM that have transited Canada or Mexico en route to the U.S. and are discovered at a U.S. port of entry, Canada or Mexico may allow the shipment to move in bond and under close scrutiny to an exit port. The reciprocal is also true; that is, other country violative WPM that have transited the U.S. en route to Canada or Mexico and are discovered at a Canadian or Mexican port of entry, may transit the U.S. on a T&E as long as any pest risk is mitigated and a PPQ Form 523 (clearly stating the transit and export conditions) accompanies the shipment. If there is a paper inbond CBP document, it must be marked to indicate the intended disposition of the shipment.