

Bureau of Customs and Border Protection

CBP Decisions

(CBP Dec. 05–21)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR May, 2005

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in CBP Decision 05–18 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): May 30, 2005

Brazil real:

May 2, 2005	0.397662
May 3, 2005	0.399680
May 4, 2005	0.404040
May 5, 2005	0.404858
May 6, 2005	0.405383
May 7, 2005	0.405383
May 8, 2005	0.405383
May 9, 2005	0.407697
May 10, 2005	0.404171
May 11, 2005	0.403226
May 12, 2005	0.406339
May 13, 2005	0.406009
May 14, 2005	0.406009
May 15, 2005	0.406009
May 16, 2005	0.403551
May 17, 2005	0.403633
May 18, 2005	0.406091
May 19, 2005	0.408914
May 20, 2005	0.407747
May 21, 2005	0.407747
May 22, 2005	0.407747
May 23, 2005	0.411523
May 24, 2005	0.410863
May 25, 2005	0.415369
May 26, 2005	0.415110

FOREIGN CURRENCIES—Variances from quarterly rates for May 2005
(continued):

Brazil real: (continued):

May 27, 2005	0.417362
May 28, 2005	0.417362
May 29, 2005	0.417362
May 30, 2005	0.417362
May 31, 2005	0.414766

South Africa rand:

May 20, 2005	0.152870
May 21, 2005	0.152870
May 22, 2005	0.152870
May 23, 2005	0.153081
May 24, 2005	0.152497
May 26, 2005	0.151400
May 27, 2005	0.152323
May 28, 2005	0.152323
May 29, 2005	0.152323
May 30, 2005	0.152323
May 31, 2005	0.148258

Dated: June 3, 2005

MARGARET T. BLOM,
Acting Chief,
Customs Information Exchange.



(CBP Dec. 05-22)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR
May, 2005

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): May 30, 2005

European Union euro:

May 1, 2005	1.291900
May 2, 2005	1.285700
May 3, 2005	1.288900
May 4, 2005	1.293600
May 5, 2005	1.293600
May 6, 2005	1.283200

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly
list for May 2005 (continued):

European Union euro: (continued):

May 7, 2005	1.283200
May 8, 2005	1.283200
May 9, 2005	1.283900
May 10, 2005	1.287700
May 11, 2005	1.280300
May 12, 2005	1.270600
May 13, 2005	1.264500
May 14, 2005	1.264500
May 15, 2005	1.264500
May 16, 2005	1.263000
May 17, 2005	1.264400
May 18, 2005	1.266000
May 19, 2005	1.262800
May 20, 2005	1.255300
May 21, 2005	1.255300
May 22, 2005	1.255300
May 23, 2005	1.257500
May 24, 2005	1.258800
May 25, 2005	1.260200
May 26, 2005	1.251700
May 27, 2005	1.256800
May 28, 2005	1.256800
May 29, 2005	1.256800
May 30, 2005	1.256800
May 31, 2005	1.234900

South Korea won:

May 1, 2005	0.001003
May 2, 2005	0.000999
May 3, 2005	0.000998
May 4, 2005	0.001003
May 5, 2005	0.001000
May 6, 2005	0.001001
May 7, 2005	0.001001
May 8, 2005	0.001001
May 9, 2005	0.000999
May 10, 2005	0.001001
May 11, 2005	0.001003
May 12, 2005	0.001001
May 13, 2005	0.001000
May 14, 2005	0.001000
May 15, 2005	0.001000
May 16, 2005	0.000991
May 17, 2005	0.000996
May 18, 2005	0.000997
May 19, 2005	0.000994
May 20, 2005	0.000993
May 21, 2005	0.000993
May 22, 2005	0.000993
May 23, 2005	0.000996
May 24, 2005	0.000997

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly
list for May 2005 (continued):

South Korea won: (continued):

May 25, 2005	0.001000
May 26, 2005	0.000998
May 27, 2005	0.001000
May 28, 2005	0.001000
May 29, 2005	0.001000
May 30, 2005	0.001000
May 31, 2005	0.000995

Taiwan N.T. dollar:

May 1, 2005	0.032020
May 2, 2005	0.031918
May 3, 2005	0.031990
May 4, 2005	0.032258
May 5, 2005	0.032206
May 6, 2005	0.032103
May 7, 2005	0.032103
May 8, 2005	0.032103
May 9, 2005	0.032010
May 10, 2005	0.032051
May 11, 2005	0.032279
May 12, 2005	0.031949
May 13, 2005	0.031980
May 14, 2005	0.031980
May 15, 2005	0.031980
May 16, 2005	0.031878
May 17, 2005	0.031857
May 18, 2005	0.031908
May 19, 2005	0.031908
May 20, 2005	0.031776
May 21, 2005	0.031776
May 22, 2005	0.031776
May 23, 2005	0.031867
May 24, 2005	0.031949
May 25, 2005	0.031878
May 26, 2005	0.031837
May 27, 2005	0.031959
May 28, 2005	0.031959
May 29, 2005	0.031959
May 30, 2005	0.031959
May 31, 2005	0.032123

Dated: June 3, 2005

MARGARET T. BLOM,
Acting Chief,
Customs Information Exchange.

*General Notices***19 CFR PART 146****RIN 1505-AB27****EXPANDED WEEKLY ENTRY PROCEDURE FOR
FOREIGN TRADE ZONES**

AGENCY: Customs and Border Protection, Homeland Security; Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a notice of proposed rulemaking published in the **Federal Register** by Customs and Border Protection (CBP) on July 25, 2002, which proposed to amend the CBP Regulations in accordance with the Trade and Development Act of 2000 to expand the weekly entry procedures for foreign trade zones. Public comment on the proposed rulemaking was solicited. Commenters uniformly expressed concern that the proposed rule limited weekly entry procedures to consumption entries, and that amendments to the regulations were unnecessary because the law was self-effectuating. After careful consideration, CBP has decided to withdraw the proposed rulemaking pending assessment of a more comprehensive regulatory scheme for weekly entry procedures from foreign trade zones.

EFFECTIVE DATE: The effective date of this withdrawal is June 7, 2005.

FOR FURTHER INFORMATION CONTACT: William G. Rosoff, Chief, Duty and Refund Determination Branch, Office of Regulations and Rulings, Customs and Border Protection, Tel. (202) 572-8807.

SUPPLEMENTARY INFORMATION:**Background**Prior NPRM

On July 25, 2002, Customs and Border Protection (CBP) published a notice of proposed rulemaking (NPRM) in the **Federal Register** (67 FR 48594) proposing changes to part 146 of the CBP Regulations (19 CFR part 146). Part 146 pertains to the documentation and recordkeeping requirements governing, among other things, the admission of merchandise into a foreign trade zone, its manipulation, manufacture, storage, destruction, or exhibition while in the zone, and its entry or removal from the zone. The proposed changes were intended to implement amendments to that part's underlying statu-

tory authority (19 U.S.C. 1484) as effected by section 410 of the Trade and Development Act of 2000 (the "Act"), (Pub. L. 106-200, 114 Stat. 251).

Amendments to 19 U.S.C. 1484 effected by the Act

Section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), sets forth the procedures generally governing the entry of imported merchandise for customs purposes.

Section 410 of the Act amended 19 U.S.C. 1484 by adding a new paragraph (i) that provided for an expanded weekly entry procedure for foreign trade zones under limited circumstances. Specifically, section 1484(i):

- Expanded the weekly entry system beyond its previous coverage to allow all merchandise (other than merchandise the entry of which is prohibited by law or for which the filing of an entry summary is required before the merchandise is released from customs custody) withdrawn from a foreign trade zone during any 7-day period, to be the subject of a single estimated entry or release.
- Provided that merchandise falling within this expanded procedure is eligible for treatment as a single estimated entry or release of merchandise for purposes of the merchandise processing fee that CBP assesses on importers in order to offset administrative costs incurred in processing imported merchandise that is formally entered or released. See 19 U.S.C. 58c(a)(9)(A).
- Authorized the Secretary of the Treasury to require that foreign trade zone operators or users employ a CBP-approved electronic data interchange system to file entries and pay applicable duties, fees, and taxes with respect to the entries.

Proposed conforming amendments to § 146.63(c)
of the CBP Regulations

Section 146.63 of the CBP Regulations (19 CFR 146.63) sets forth the procedures applicable to consumption entries from a foreign trade zone. Section 146.63(c) pertains to weekly consumption entries, and is limited to merchandise that is manufactured or otherwise changed in a zone within 24 hours of physical transfer from the zone for consumption.

In the July 25, 2002, **Federal Register** document, CBP proposed amendments to § 146.63(c) to reflect the terms of newly amended 19 U.S.C. 1484(i). In this regard, it was proposed to amend § 146.63(c) to expand the weekly entry procedures applicable to foreign trade zones to include merchandise involved in activities other than exclusively assembly-line type production operations. Additionally, pursuant to 19 U.S.C. 1484 (i)(2)(A)(i) and (ii), it was proposed that all weekly entry procedures covering estimated removals of merchandise from a foreign trade zone for any consecutive 7-day period, and

the associated entry summaries, would have to be filed exclusively through the Automated Broker Interface with duties, fees and taxes scheduled for payment through the Automated Clearinghouse. The proposed rulemaking also provided that the estimated weekly entry or release would be treated as a single entry or release for purposes of assessing merchandise processing fees under 19 U.S.C. 58c(a)(9)(A).

Discussion of Comments

Fifty-seven comments were received from Foreign Trade Zone users, operators, municipalities and brokers in response to the solicitation of comments. All were critical of the proposed rule. Most commenters objected to the issuance of proposed regulations because, in their view, the legislation was self-implementing and no regulations were necessary to give the law effect. The commenters were also uniformly critical of the proposed rule's limitation to consumption entries, and expressed the view that the Act was intended to permit the use of weekly entry procedures for other types of entries (*i.e.*, zone-to-zone transfers, transfer for transportation and transportation for exportation).

Withdrawal of Proposal

In view of the comments received, and following further consideration of the matter, CBP has determined to withdraw the notice of proposed rulemaking that was published in the **Federal Register** (67 FR 48594) on July 25, 2002. CBP will continue to assess the feasibility of a more comprehensive regulatory scheme for zone removals in cooperation with interested members of the public.

ROBERT C. BONNER,
Commissioner;
Bureau of Customs and Border Protection.

Approved: June 2, 2005

TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, June 7, 2005 (70 FR 33046)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.

Washington, DC, June 8, 2005,

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

MICHAEL T. SCHMITZ,
*Assistant Commissioner,
Office of Regulations and Rulings.*

19 CFR PART 177

**PROPOSED MODIFICATION OF RULING LETTER AND
TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF CERTAIN DISPOSABLE COVERALLS**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed modification of tariff classification ruling letter and revocation of treatment relating to the classification of certain disposable coveralls.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain disposable coveralls. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before July 22, 2005.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., dur-

ing regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Brian Barulich, Textiles Branch, at (202) 572-8883.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify one ruling letter relating to the tariff classification of certain disposable coveralls. Although in this notice CBP is specifically referring to the modification of New York Ruling Letter (NY) L80753, dated November 30, 2004 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP in-

tends to revoke any treatment previously accorded by CBP to substantially identical merchandise. Any person involved with substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY L80753, CBP classified three styles (Style A, Style B, and Style C) of certain disposable coveralls in subheading 6210.10.5000, HTSUSA, which provides for, among other articles, "Garments, made up of fabrics of heading . . . 5603: Of fabrics of heading . . . 5603: Other: Nonwoven disposable apparel designed for use in hospitals, clinics, laboratories or contaminated areas." Based on our analysis of the scope of the terms of subheading 6210.10.5000, HTSUS, the physical design and properties of the coveralls, and how they are advertised and sold, we now believe that two styles in NY L80753 (Style A and Style B) are classified in subheading 6210.10.9010, HTSUSA, which provides for "Garments, made up of fabrics of heading . . . 5603: Of fabrics of heading . . . 5603: Other: Other, Overalls and coveralls."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY L80753 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 967599 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

DATED: June 3, 2005

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachment A

**DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY L80753
November 30, 2004
CLA-2-62:RR:NC:3:353 L80753
CATEGORY: Classification
TARIFF NO.: 6210.10.5000**

**Ms. CHERYL STOCKSTAD
FORWARD LOGISTICS GROUP
1500-B Tradeport Drive
Orlando, FL 32824**

RE: The tariff classification of disposable coveralls from China.

DEAR Ms. STOCKSTAD:

In your letter dated November 9, 2004, on behalf of ShuBee Customer Care Wear, you requested a tariff classification ruling.

You have submitted three samples. Style A is a disposable coverall composed of SMS polypropylene non-woven fabric. The garment features a full frontal opening with a zipper closure, a tight fitting collar, long sleeves with elasticized cuffs and separate elasticized shoe covers.

Style B is a disposable coverall composed of polypropylene non-woven fabric with a clear polyethylene coating. The garment features a full frontal opening with a zipper closure, a tight fitting collar, long sleeves with elasticized cuffs and separate elasticized shoe covers.

Style C is a disposable coverall composed of a microporous film laminated polypropylene non-woven fabric. The garment features a full frontal opening with a zipper closure, an elasticized hood, long sleeves with elasticized cuffs, elasticized leg openings and separate elasticized shoe covers.

You state workers in contaminated areas will use the garments. The design features of the items, especially the hood, tight fitting collars, elasticized wrist and shoe covers, are characteristics associated with garments designed for use in contaminated areas.

The applicable subheading for Styles A, B and C will be 6210.10.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for garments, made up of heading 5602,5603,5903,5906 or 5907: of fabrics of heading 5602 or 5603: other: nonwoven disposable apparel designed for use in hospitals, clinics, laboratories or contaminated areas. The rate of duty will be Free.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the rul-

ing, contact National Import Specialist Kenneth Reidlinger at 646-733-3053.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

Attachment B

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967599
CLA-2 RR:CR:TE 967599 BtB
CATEGORY: Classification
TARIFF NO.: 6210.10.5000

MR. JAMES R. CAHILL
CAHILL CUSTOMS CONSULTING, INC.
P.O. Box 821067
South Florida, FL 33082-1067

Re: Classification of disposable coveralls; NY L80753 Modified

DEAR MR. CAHILL:

On November 30, 2004, U.S. Customs and Border Protection (CBP) issued New York Ruling Letter (NY) L80753 classifying three styles of disposable coveralls (Style A, Style B, and Style C) to Forward Logistics Group on behalf of ShuBee Customer Care Ware ("ShuBee"). As you now represent ShuBee in this matter, this ruling is addressed to you.

Upon review of NY L80753, we have found that the classifications provided for two of the styles (Style A and Style B) are in error. This ruling, Headquarters Ruling Letter (HQ) 967599, hereby modifies NY L80753 in regard to Style A and Style B. The classification set forth in NY L80753 for Style C is correct and this ruling does not modify it.

FACTS:

In NY L80753, Style A was described as:

... a disposable coverall composed of SMS polypropylene non-woven fabric. The garment features a full frontal opening with a zipper closure, a tight fitting collar, long sleeves with elasticized cuffs and separate shoe covers.

Marketing material that you submitted to CBP states the following about Style A's construction:

SMS barrier fabric is a unique trilaminate construction that offers a high tensile strength and toughness. Top layer is Spunbonded polypropylene, middle layer is Meltblown polypropylene, and bottom layer is Spunbonded polypropylene.

SMS provides a fluid and particulate barrier to protect the worker without sacrificing mobility and comfort. Garments constructed of SMS fabric are strong and durable, yet offer outstanding comfort, breathability,

softness, and wearability. SMS is lightweight and resistant to tears and punctures.

In NY L80753, Style B was described as:

... a disposable coverall composed of polypropylene non-woven fabric with a clear polyethylene coating. The garment features a full frontal opening with a zipper closure, a tight fitting collar, long sleeves with elasticized cuffs and separate elasticized shoe covers.

Marketing material that you submitted to CBP states the following about Style B's construction:

PP+CPE [referred to as "polypropylene non-woven fabric with a clear polyethylene coating" in NY L80753] is a lightweight, spunbonded polypropylene fabric with a clear polyethylene coating. Polyethylene film is impervious and non-linting. Garments made of PP+CPE material protect workers against chemical dusts, paint sprays, asbestos and other airborne dusts. PP+CPE is a strong fabric with excellent tensile and tear resistance.

In NY L80753, Style A and Style B were classified in subheading 6210.10.5000, HTSUSA, which provides for, among other articles, "Garments, made up of fabrics of heading . . . 5603: Of fabrics of heading . . . 5603: Other: Nonwoven disposable apparel designed for use in hospitals, clinics, laboratories or contaminated areas."

The marketing material that Forward Logistics Group provided and the ShuBee website show styles substantially similar to Style A and Style B being used only by service professionals such as technicians and painters, not by professionals in hospitals, clinics, laboratories or contaminated areas. To support that Style A and Style B are used in hospitals, clinics, laboratories or contaminated areas, you submitted spreadsheets listing the direct customers and their uses of all ShuBee coveralls, Style A individually, and Style B individually. You also submitted a page from ShuBee's latest catalog advertising a substantially similar pair of coveralls to Style A and Style B.

ISSUE:

Whether Style A and Style B are classified in subheading 6210.10.5000, HTSUSA, which provides for, among other articles, "Garments, made up of fabrics of heading . . . 5603: Of fabrics of heading . . . 5603: Other: Nonwoven disposable apparel designed for use in hospitals, clinics, laboratories or contaminated areas."

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes." If the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied, in order.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary

on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

The subheadings under consideration for Style A and Style B are: subheading 6210.10.5000, HTSUSA, which provides for "Garments, made up of fabrics of heading . . . 5603: Of fabrics of heading . . . 5603: Other: Nonwoven disposable apparel designed for use in hospitals, clinics, laboratories or contaminated areas" and subheading 6210.10.9010, HTSUSA, which provides for "Garments, made up of fabrics of heading . . . 5603: Of fabrics of heading . . . 5603: Other: Other: Other, Overalls and coveralls."

Style A and Style B are both disposable nonwoven garments. It is undisputed that Style A and Style B are classified at the six-digit level in subheading 6210.10, HTSUSA, which provides for "Garments, made up of fabrics of heading . . . 5603: Of fabrics of heading . . . 5603."

Whether Style A and Style B are classified in subheading 6210.10.5000, HTSUSA, or 6210.10.9010, HTSUSA, solely depends on whether the styles are "designed for use in hospitals, clinics, laboratories or contaminated areas." If they are, they are classified in 6210.10.5000, HTSUSA. If they are not, they are classified in subheading 6210.10.9010, HTSUSA.

CBP will classify a garment in subheading 6210.10.5000, HTSUSA, if it has an established commercial acceptability for the uses set forth in that subheading. See HQ 958389, dated September 7, 1995, on the classification of coveralls. CBP has previously determined whether a garment will qualify for classification as a garment of subheading 6210.10.5000, HTSUSA, on the basis of the garment's physical design and properties, as well as how it is marketed, advertised and sold. *Id.*

While Style A and Style B possess some of the characteristics of coveralls designed for use in hospitals, laboratories, or contaminated areas such as elasticized wrist and foot cuffs, they do not possess other design features normally associated with such coveralls, like a snug fit in the neck area or an elasticized/drawstring closure hood.

A review of the marketing material that Forward Logistics Group submitted and the ShuBee website does not show Style A and Style B being used by professionals in hospitals, laboratories, or contaminated areas. Rather, the marketing material shows substantially similar ShuBee styles being used by other service professionals such as technicians and painters. And, the marketing material refers to the wearers of the styles as "workers" or "technicians" and makes no references to the wearers being in hospitals, laboratories, or contaminated areas.

The spreadsheets that you submitted are not persuasive in establishing that Style A and Style B have a commercial acceptability for the uses set forth in subheading 6210.10.5000, HTSUSA. First, the spreadsheet listing the direct customers of all ShuBee coveralls does not provide any evidence specific to the sale or use of Style A and Style B. Second, all of the spreadsheets show direct sales and do not include sales to wholesalers and, therefore, do not provide a complete picture of the sales or users of the styles. Third, many of the uses listed on the spreadsheets do not support that the styles are being principally used in the environments listed in subheading 6210.10.5000, HTSUSA. For example, use of the styles in the "food processing" industry to prevent cross-contamination is not tantamount to being "designed for use in . . . contaminated areas."

While the spreadsheets are not persuasive in establishing that Style A and Style B are principally used in hospitals, clinics, laboratories or contaminated areas, they are illustrative of the multi-purpose nature of Style A and Style B. The fact that both styles can be used by plumbing companies, duct cleaning companies, food processing companies, hospitals, and other entities in a wide-array of environments demonstrates that Style A and Style B are not particularly suited for any single environment. Additionally, the page from ShuBee's latest catalog that you submitted states:

[The coveralls] . . . can be used for a variety of situations including asbestos removal, mold remediation, bacteria and cross contamination environments, and inspections, to name a few. Commonly used for painting and spraying as well as in labs, cleanroom environments and for the many conditions which require protective apparel in order to meet health code requirements.

In light of the foregoing, we find that Style A and Style B are not specifically designed for use in hospitals, clinics, laboratories or contaminated areas. Rather, the styles are multi-purpose garments that can be used in many different environments.

HOLDING:

Style A and Style B disposable coveralls are classified in subheading 6210.10.9010, HTSUSA, which provides for "Garments, made up of fabrics of heading . . . 5603: Of fabrics of heading . . . 5603: Other: Other: Other: Overalls and coveralls." The applicable column one, general duty rate under the 2005 HTSUSA is 16% *ad valorem*.

NY L80753, dated November 30, 2004, is hereby modified.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

**PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
A PLASTIC-COATED LEATHER COSMETICS BAG**

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed revocation of a ruling letter and revocation of treatment relating to the tariff classification of a coated leather cosmetics bag.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) intends to revoke a ruling letter pertaining to the tariff classification of a cosmetics bag with outer surface of plastic-coated leather, and to revoke any treatment previously accorded by CBP to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before July 22, 2005.

ADDRESS: Written comments are to be addressed to Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at CBP, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by contacting Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Greg Deutsch, Textiles Branch, at (202) 572-8811.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI") became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that, in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(1)), this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the tariff classification of a cosmetics bag with outer surface of plastic-coated leather. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) J88218, this notice covers any rulings relating to the specific issues of tariff classification set forth in the ruling, which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No additional rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a

ruling letter, an internal advice memorandum or decision, or a protest review decision) on the issues subject to this notice, should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions, or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of the final decision on this notice.

In NY J88218, dated December 3, 2003, a zippered cosmetics bag identified by Product Profile (PP) number 1015940, and made up of a grain leather that was coated or covered on the exterior surface with a clear plastic film, was classified in subheading 4202.12.2050, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which in pertinent part provides for "Trunks . . . vanity cases . . . and similar containers: With outer surface of plastics or of textile materials: With outer surface of plastics, Other. . . ." NY J88218 is set forth as Attachment A to this document.

The Harmonized System Committee recently adopted a new Subheading Explanatory Note in heading 4202. On web-based forms of the Harmonized System Explanatory Notes, the new EN is inserted on page 792 before the present EN to subheadings 4202.31, .32, and .39. The new subheading EN states:

"Subheadings 4202.11, 4202.21, 4202.31 and 4202.91

For the purposes of these subheadings, the expression "with outer surface of leather" includes leather coated with a thin layer of plastics or synthetic rubber which is invisible to the naked eye (usually less than 0.15 mm in thickness), to protect the leather surface, no account being taken of a change in colour or shine."

For classification purposes, the new EN essentially allows a layer of plastic or synthetic rubber to be present on the otherwise uncoated leather surface of trunks, cases, bags, wallets, pouches, and similar containers of heading 4202, if the layer is: 1) invisible to the naked eye; and 2) present to protect the leather surface.

Upon review of NY J88218, the guidance of the new EN, and a memorandum dated February 23, 2005, from CBP's Acting Executive Director of Trade Compliance and Facilitation, Office of Field Operations, to CBP's Directors of Field Operations, for dissemination to port personnel, brokers, and other interested importing parties, we find that the plastic-coated grain leather of the cosmetics bag constitutes an outer surface of leather. The container should therefore be classified in subheading 4202.11.0090, HTSUSA, which

provides, in pertinent part, for “Trunks . . . vanity cases . . . and similar containers: With outer surface of leather, of composition leather, or of patent leather, Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP intends to revoke NY J88218 and any other rulings not specifically identified, to reflect the proper classification of the cosmetics bag according to the analysis in proposed Headquarters Ruling Letter (HQ) 967505, which is set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment that CBP may have previously accorded to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: June 3, 2005

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments



Attachment A

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY J88218

December 3, 2003

CLA-2-42:RR:NC:3:341 J88218

CATEGORY: Classification

TARIFF NO.: 4202.12.2050

MR. DANNY GABRIEL
AVON PRODUCTS, INC.
1251 Avenue of the Americas
New York, NY 10020

RE: The tariff classification of a cosmetics bag with outer surface of sheeting of plastic from China

DEAR MR. GABRIEL

In your letters dated August 21, 2003 and July 28, 2003, you requested a tariff classification ruling.

The submitted sample is identified as Product Profile (PP) 1015940. It is a zippered cosmetics bag made-up of a grain leather that is coated or covered on the exterior surface with a film of plastics. The interior is lined with a rayon satin textile material. You have indicated that the exterior surface consists of a composite of pigments and dyes, mica, leather wax and leather binders. The Customs Laboratory has verified the exterior surface constituent material consists of plastics.

The bag will be presented with a fitted storage bag of woven polypropylene (PP) yarns.

In your letter of July 28, 2003, you suggested classification within tariff number 4202.21.6000 which provides, in part, for HANDBAGS, of leather, with outer surface of leather, other. However, the classification is precluded by the application of law as described in Customs Ruling 963618, August 02, 2002, previously requested and issued on behalf of Avon Products, Inc.

The applicable subheading for PP1015940, zippered cosmetic bag with storage bag, will be 4202.12.2050, Harmonized Tariff Schedule of the United States (HTS), which provides, in part, for vanity cases, with outer surface of plastics. The rate of duty will be 20 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kevin Gorman at 646-733-3041.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

Attachment B

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967505
CLA-2 RR:CR:TE 967505 GGD
CATEGORY: Classification
TARIFF NO.: 4202.11.0090

MR. DANNY GABRIEL
AVON PRODUCTS, INC.
1251 Avenue of the Americas
New York, New York 10020

RE: Revocation of NY J88218; Cosmetics Bag with Outer Surface of Plastic-Coated Leather; EN to Subheadings 4202.11, 4202.21, 4202.31 and 4202.91

DEAR MR. GABRIEL:

In New York Ruling Letter (NY) J88218, issued to you December 3, 2003, a cosmetics bag was classified in subheading 4202.12.2050, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). This subheading provides, in pertinent part, for "Trunks . . . vanity cases . . . and similar containers: With outer surface of plastics or of textile materials: With outer surface of plastics, Other. . . ." We have reviewed NY J88218 and have found it to be in error. Therefore, this ruling revokes NY J88218.

FACTS:

In NY J88218, the item at issue, identified by Product Profile (PP) number 1015940, was described as a zippered cosmetics bag made-up of a grain leather that was coated or covered on the exterior surface with a film of plastics. The interior was lined with a rayon satin textile material. You indicated that the exterior surface consisted of a composite of pigments and

dyes, mica, leather wax and leather binders. The Customs and Border Protection (CBP) Laboratory verified that the exterior surface's constituent material consisted of clear plastics. It was found that classification as a container with outer surface of leather was precluded by the application of law as described in Headquarters Ruling Letter (HQ) 963618, dated August 2, 2002.

The Harmonized System Committee recently adopted a new Subheading Explanatory Note in heading 4202. Please find the enclosed memorandum (TC# TCF 05-0858) dated February 23, 2005, from CBP's Acting Executive Director of Trade Compliance and Facilitation, Office of Field Operations, to CBP's Directors of Field Operations, for dissemination to port personnel, brokers, and other interested importing parties. On web-based forms of the Harmonized System Explanatory Notes, the new EN is inserted on page 792 before the present EN to subheadings 4202.31, .32, and .39. The new subheading EN states:

“Subheadings 4202.11, 4202.21, 4202.31 and 4202.91

For the purposes of these subheadings, the expression “with outer surface of leather” includes leather coated with a thin layer of plastics or synthetic rubber which is invisible to the naked eye (usually less than 0.15 mm in thickness), to protect the leather surface, no account being taken of a change in colour or shine.”

For classification purposes, the new EN essentially allows a layer of plastic or synthetic rubber to be present on the otherwise uncoated leather surface of trunks, cases, bags, wallets, pouches, and similar containers of heading 4202, if the layer is: 1) invisible to the naked eye; and 2) present to protect the leather surface.

ISSUE:

Whether the cosmetics bag identified by Product Profile no. 1015940 is classified in subheading 4202.12.2050, HTSUSA, as a vanity case having an outer surface of plastics; or in subheading 4202.11.0090, HTSUSA, as a vanity case with an outer surface of leather.

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

In NY J88218, CBP found that the bag at issue had an outer surface of sheeting of plastic, following the analysis applied in HQ 963618. In HQ 967504, dated April 28, 2005, this office reviewed HQ 963618, concluding that the classification result was correct, but that aspects of that ruling's legal analysis should be clarified.

The handbag at issue in HQ 963618 was constructed of two types of materials: 1) a textile-backed plastic sheeting, and 2) a plastic-coated split leather. To classify the bag, CBP employed a longstanding “visible and tac-

tile” standard (*See, e.g.*, HQ 954021, dated November 1, 1993), and a definition of “sheeting” (i.e., “material in the form of a continuous thin covering or coating”) that was derived by the Court of International Trade in *Sarne Handbags Corp. v. United States*, 100 F. Supp. 2d 1126 (Ct. Int’l Trade 2000). In *Sarne*, the court applied chapter 42’s Additional U.S. Note 2, and the definition of “sheeting” to classify a handbag composed of plastic-coated textile material, and held that the bag had an outer surface of sheeting of plastic. The *Sarne* court’s analysis and rationale remain relevant to coated textile material but, upon further consideration and in light of the new EN, not to coated leather.

Recognizing what are now commonly accepted practices in the leather industry, and mindful of the new subheading EN in heading 4202, CBP considers containers of split leather or grain leather coated with a protective layer of plastic or synthetic rubber that is invisible to the naked eye to have an outer surface of leather. To this extent, and to the extent that certain rulings previously considered for revocation were found to be correct, the analysis used in HQ 963618 was clarified.

In the instant case, a clear plastic film is coated only on grain leather in order to protect, not change, its natural appearance. We find that the bag has an outer surface of leather. As stated in the enclosed memorandum, questions as to outer surface material, its visibility, etc., will often require resolution on a case by case basis. Importers are advised to use reasonable care in classifying their goods, and encouraged to submit binding ruling requests, with samples, to U.S. Customs and Border Protection, Customs Information Exchange (Attn: Binding Rulings Section), One Penn Plaza, 10th Floor, New York, New York 10119.

HOLDING:

NY J88218, dated December 3, 2003, is hereby revoked.

The zippered cosmetics bag identified by Product Profile (PP) number 1015940, is classified in subheading 4202.11.0090, HTSUSA, the provision for “Trunks . . . vanity Cases . . . and similar containers: With outer surface of leather, of composition leather, or of patent leather, Other .” The general column one rate of duty is 8 percent ad valorem.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

Enclosure

February 23, 2005

MEMORANDUM FOR: DIRECTORS, FIELD OPERATIONS

FROM: Acting Executive Director, Trade Compliance and
Facilitation Office of Field Operations

SUBJECT: New Subheading Harmonized System Explanatory
Note on Leather Coated with Plastics or Synthetic
Rubber (TC# TCF 05-0858)

The purpose of this memorandum is to inform U.S. Customs and Border Protection (CBP) and interested importing parties that the terms of a new

Harmonized System Explanatory Note (EN) should be applied to certain containers of heading 4202 imported on or after January 1, 2005 and to unliquidated and protested entries of such containers which have not been denied in whole or in part.

BACKGROUND:

The new EN is inserted before the present EN to Harmonized Tariff Schedule (HTS) subheadings 4202.31, .32, and .39. The new subheading EN states:

“Subheadings 4202.11, 4202.21, 4202.31 and 4202.91

For the purposes of these subheadings, the expression “with outer surface of leather” includes leather coated with a thin layer of plastics or synthetic rubber which is invisible to the naked eye (usually less than 0.15 mm in thickness), to protect the leather surface, no account being taken of a change in colour or shine.”

The new EN, for classification purposes, allows a layer of plastic or synthetic rubber to be present on the otherwise uncoated leather surface of containers of heading 4202, if the layer is: 1) invisible to the naked eye, and 2) present to protect the leather surface.

In applying the new EN, the term “leather” is interpreted to mean only “grain leather” (e.g., the hair or outermost side) or “split leather” (the result of splitting the hide or skin into thicknesses other than the hair or outermost side). The term “leather” in the new EN does not apply to “composition leather” or “patent leather.” Neither does the term “leather” encompass “bonded leather” or “reconstituted leather” (also referred to as “ground,” “pulverized,” or “shredded” leather, which generally are materials made of leather fibers held together with a bonding agent).

In interpreting the EN term “invisible to the naked eye,” no account should be taken of a layer of plastic or synthetic rubber whose visibility results merely from a change in the leather’s color or shine. If the layer is opaque, it is not considered to be “invisible,” whether or not its opacity is due to color or shine. If the coated grain or split leather is not visible, the layer is not considered “invisible.” The container’s outer surface in such instances is considered to be “plastics” (subheading 4202.12) or “sheeting of plastic” (subheadings 4202.22, .32, and .92).

The EN term “to protect the leather surface” is interpreted to permit a layer of plastic or synthetic rubber that provides waterproofing, stain or scratch resistance, or other such protective characteristics. A layer that is used to change or upgrade the appearance of a split leather to imitate a grain leather is not used “to protect.” The container’s outer surface in such instances is considered to be “plastics” or “sheeting of plastic,” whether or not the layer is “invisible to the naked eye.”

In *Sarne Handbags Corp. v. United States* the Court of International Trade applied chapter 42 Additional U.S. Note 2 of the Harmonized Tariff Schedule of the U.S., and a court-derived definition of plastic “sheeting,” to determine that a handbag of plastic-coated textile material had an outer surface “of sheeting of plastic.” The court decision in *Sarne* will generally not be applied to 4202 containers with outer surface of coated leather.

In light of commonly accepted practices in the leather industry and of the new EN, CBP no longer applies the terms of Additional U.S. Note 2, nor *Sarne's* sheeting-related principles, to split leather or grain leather coated with a protective layer of plastic or synthetic rubber that is invisible to the naked eye. CBP is reviewing several rulings on containers whose outer surfaces consist, at least in part, of coated leather, and will propose clarification, modification, or revocation of any rulings in material conflict with the above analysis.

ACTION:

CBP recognizes that in this area, it is often difficult to discern precisely what material is visible, and whether any plastic or synthetic rubber that is present constitutes a "layer" as opposed to an "application" that is neither visible nor tactile. Questions as to these matters will often require resolution on a case-by-case basis. Importers should be advised to use reasonable care in classifying their goods, and are encouraged to submit binding ruling requests to U.S. Customs and Border Protection, Customs Information Exchange (Attn: Binding Rulings Section), One Penn Plaza, 10th Floor, New York, New York 10119.

This notice should be distributed to all Port Directors, Assistant Port Directors, Import and Entry Specialists, brokers, importers, and other interested parties.

Questions from the importing community concerning this notice should be referred to their local Customs port of entry. The Customs port may refer questions to National Import Specialists Kevin Gorman, at (646) 733-3041, or Ken Reidlinger at (646) 733-3053.

/S/

Lawrence J. Rosenzweig

cc: NIS Kevin Gorman
NIS Ken Reidlinger



19 CFR PART 177

**REVOCATION OF TREATMENT AND MODIFICATION OR
REVOCATION, AS APPROPRIATE, OF RULINGS RELATING
TO TARIFF CLASSIFICATION OF FLAME CUT NONALLOY
STEEL CIRCLES**

AGENCY: U. S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: Notice of revocation of treatment and modification or revocation, as appropriate, of rulings relating to tariff classification of flame cut nonalloy steel circles.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Imple-

mentation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking the treatment received by the importer subject to Headquarters Ruling (HQ) 967410, and is modifying or revoking, as appropriate, any rulings concerning the classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of certain flame cut nonalloy steel circles. Notice of CBP's proposed action was published on March 23, 2005, in the Customs Bulletin.

EFFECTIVE DATE: This modification and/or revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 21, 2005.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 572–8779.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are based on the premise that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's rights and responsibilities under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable CBP to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to CBP's obligations, a notice was published on March 23, 2005, in the Customs Bulletin, Volume 39, Number 13, proposing to revoke the treatment received by the importer subject to Headquarters Ruling (HQ) 967410, and to modify or revoke, as appropriate, any rulings concerning the classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of certain flame cut nonalloy steel circles. No comments were received in response to this notice.

As stated in the proposed notice, this modification and/or revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should have advised CBP during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any other treatment it previously accorded to substantially identical transactions of other importers. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c), CBP is revoking the treatment received by the importer subject to Headquarters Ruling (HQ) 967410 concerning the classification of disc-shaped circles flame cut from hot-rolled nonalloy steel plates. CBP is also modifying or revoking, as appropriate, any rulings on the merchandise to reflect the proper classification of the goods as other flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated, in subheading 7208.90.0000, HTSUSA, in accordance with the analysis in HQ 967410, which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment it has previously accorded to substantially identical transactions of other importers.

In accordance with 19 U.S.C. 1625(c), HQ 967410 will become effective 60 days after publication in the Customs Bulletin.

DATED: June 6, 2005

MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967410

June 6, 2005

CLA-2 RR:CR:GC 967410 JAS

CATEGORY: Classification

TARIFF NO.: 7208.90.0000

BARBARA DAWLEY, ESQ.
MEEKS & SHEPPARD
1735 Post Road, Suite 4
Fairfield, CT 06824

RE: Revocation of Treatment; Flame Cut Nonalloy Steel Circles

DEAR MS. DAWLEY:

This is in reference to your letter of October 14, 2004, on behalf of World Metals Corporation, which supplements an Application for Further Review of Protest 1101-04-100162, timely filed at the Port of Philadelphia on May 20, 2004. At issue is the classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of certain flame cut circles of iron or nonalloy steel.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of treatment received by the importer in Protest 1101-04-100162, was published on March 23, 2005, in the Customs Bulletin, Volume 39, Number 13. No comments were received in response to that notice.

FACTS:

The merchandise at issue is steel circle blanks, products of Brazil. They are disc-shaped articles which are oxyacetylene flame cut from hot-rolled steel plates. After importation, they are heated, then spun into tank heads for use on pressure vessel tank cars for the rail industry and general purpose tanks for the conveyance of water, gas, etc.

Beginning in 1998, World Metals had sought to import the merchandise under a provision in heading 7208, HTSUSA, for other flat-rolled products of iron or nonalloy steel. However, CBP advised World Metals that a provision in heading 7326, HTSUSA, for other articles of iron or steel, forged or stamped, but not further worked, represented the correct classification.

The HTSUS provisions under consideration are as follows:

7208 Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated:

7208.90.00 Other

* * * *

7326 Other articles of iron or steel:
Forged or stamped, but not further worked:

7326.19.00 Other

ISSUE:

Whether the steel circle blanks, processed as indicated, are goods of heading 7208; whether CBP has accorded a treatment to World Metals Corpora-

tion for the classification of these goods under subheading 7326.19.0000, HTSUSA.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The original determination that the flame cut steel circles were provided for in subheading 7326.19.0000, HTSUSA, was based on the belief that the goods were, in fact, made by a stamping process in accordance with *Motor Wheel Corp. v. United States*, 19 CIT 385 (1995). In that case, the Court found that circular or octagonal shapes cut from flat-rolled steel by an automated cookie cutter process sufficiently advanced the flat-rolled steel such that the resulting blank, created in a single press stroke as by a stamp, is distinct from the flat-rolled steel and had, in fact, become a stamped article of iron or steel, described by subheading 7326.19.0000, HTSUSA. The steel circle blanks at issue here, which are oxyacetylene flame cut from hot-rolled steel plates, are not produced by a recognized stamping process and, therefore, are not stamped articles of the type classifiable in subheading 7326.19.0000, HTSUSA. They remain flat-rolled products of iron or non-alloy steel, classifiable in subheading 7208.90.0000, HTSUSA.

As to the claim of treatment under subheading 7326.19.0000 for World Metals importations, Section 177.12(c), CBP Regulations, sets forth the rules for determining under that section whether a treatment was previously accorded by CBP to substantially identical transactions of a person. These rules involve, among other things, an actual determination by a CBP officer regarding the facts and issues involved in the claimed treatment, the CBP officer being responsible for the subject matter on which the determination was made, and over a 2-year period immediately preceding the claim of treatment, CBP consistently applied that determination on a national basis as reflected in liquidations of entries or reconciliations or other CBP actions with respect to all or substantially all of that person's CBP transactions involving materially identical facts and issues. The determination of whether the requisite treatment occurred will be made by CBP on a case-by-case basis and will involve an assessment of all relevant factors.

The claim of treatment for World Metals importations is made in a Memorandum of Law, filed in support of Protest 1101-04-100162, timely filed with the Port Director, Philadelphia, on May 20, 2004. The record indicates that beginning in April of 1998, these circle blanks were sought to be entered at the Port of Hartford, CT, under the provisions of subheading 7208.90.0000, HTSUSA, as other flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated. A Notice of Action, dated April 16, 1998, advised that the correct classification was under subheading 7326.19.0000, HTSUSA, as other articles of iron or steel, forged or stamped, but not further worked, eligible duty-free, as products of Brazil, under the Generalized System of Preferences (GSP). Additional communication followed in the form of a letter, dated May 8, 1998, in which the Port confirmed that subheading 7326.19.00, HTSUS, was the correct classification. Six entries of this merchandise followed at Hartford from

June of 1998 through and including July of 1999, all of which liquidated under subheading 7326.19.0000, HTSUSA. Numerous additional entries of the merchandise liquidated at the Ports of Houston and Philadelphia from May of 1998 through and including April of 2003 under subheading 7326.19.0000, HTSUSA.

Upon the facts presented, we conclude under Section 177.12(c), CBP Regulations, that a treatment does, in fact, exist in classifying World Metals importations as steel circle blanks which are oxyacetylene flame cut from hot-rolled steel plates, in subheading 7326.19.0000, HTSUSA.

HOLDING:

Under the authority of GRI 1, steel circle blanks which are oxyacetylene flame cut from hot-rolled steel plates, are provided for in heading 7208. They are classifiable as other flat-rolled products of iron or nonalloy steel, in subheading 7208.90.0000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The 2004 general rate of duty is Free. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov/tata/hts.

Pursuant to 19 U.S.C. 1625(c)(2), the treatment previously accorded World Metals importations of this merchandise is revoked. This ruling will become effective 60 days after its publication in the Customs Bulletin.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

**PROPOSED MODIFICATION AND REVOCATION OF
RULING LETTERS AND TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF SILYMARIN (MILK
THISTLE) AND LEUCOANTHOCYANIN**

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security

ACTION: Notice of proposed modification and revocation of tariff classification ruling letters and treatment relating to the classification of silymarin (milk thistle) and leucoanthocyanin.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CPB intends to revoke a ruling concerning the tariff classification of silymarin (milk thistle), and modify a ruling concerning the tariff classification of silymarin and

leucoanthocyanin, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB intends to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before July 22, 2005.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulation and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at 799 9th St. N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch, (202) 572-8784.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation

Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of silymarin (milk thistle) and modify a ruling pertaining to the classification of silymarin and leucoanthocyanin.

Although in this notice CPB is specifically referring to Headquarters Ruling Letter (HQ) 964338, dated March 28, 2001, and New York Ruling Letter (NY) 814027, dated February 2, 1996, (Attachments "A" and "B", respectively) this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to those identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

The classification of silymarin in NY 814027 contradicts that in Headquarters Ruling Letter (HQ) 964338, dated March 28, 2001. The classification of leucoanthocyanin in NY 814027 contradicts that in HQ 966566, dated October 21, 2003. In NY 814027, both silymarin and leucoanthocyanin were classified in subheading 1302.19.4040, HTSUS, the provision for "Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products: Vegetable saps and extracts: Other: Ginseng; substances having anesthetic, prophylactic or therapeutic properties: Other: Other."

In HQ 964338 and in HQ 966566, silymarin and leucocyanin were each respectively classified in subheading 3824.90.28, HTSUS, the provision for "Prepared binders for foundry molds or cores; chemical

products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included: Other: Other: Mixtures containing 5% or more by weight of one or more aromatic or modified aromatic substances: Other.” We consider this the correct result for leucoanthocyanin, because it is purified from the plant matter well beyond that of an extract, yet it does not contain a separate chemically defined compound, or isomers of such a compound, as necessary for classification in Chapter 29, HTSUS.

However, in HQ 964338, we excluded classification of silymarin in Chapter 29, HTSUS, because the product consists of more than isomers of a separate chemically defined compound under Chapter 29, note 1(b). We now believe that the remaining mixture can be considered impurities within the definition of the chapter note. Hence, the correct classification for silymarin is in subheading 2932.99.61, HTSUS, the provision for “Heterocyclic compounds with oxygen hetero-atom(s) only: Other: Other: Aromatic: Other.

CBP, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke HQ 964338, and modify NY 814027, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 967575, and proposed HQ 967629, set forth as Attachments “C” and “D,” respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: June 6, 2005

Robert F. Altneu for MYLES B. HARMON,
Director;
Commercial Rulings Division.

Attachments

[Attachment A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 964338
March 28, 2001
CLA-2 RR:CR:GC 964338 AM
CATEGORY: CLASSIFICATION
TARIFF NO.: 3824.90.28

PORT DIRECTOR OF CUSTOMS
CHIEF, RESIDUAL LIQUIDATION AND PROTEST BRANCH
6 World Trade Center, Room 761
N.Y., New York 10048-0945

Re: Protest 1001-99-103909; Silymarin 80% (Milk Thistle Standardized Extract)

DEAR PORT DIRECTOR:

This is in regard to protest 1001-99-103909, concerning your classification of Silymarin under the Harmonized Tariff Schedule of the United States (HTSUS). The merchandise was entered on May 30, 1998 classified in subheading 1302.19.4040, HTSUS, as a vegetable extract, and the entry was liquidated on April 9, 1999 and subsequently reliquidated on July 2, 1999, under subheading 3824.90.28, HTSUS, as a preparation of the chemical or allied industries, not elsewhere specified or included. A protest was timely filed on August 10, 1999.

FACTS:

According to Customs lab report #2 1999 20518, dated January 25, 1999, Silymarin 80% is a yellow powder which contains 80% mixture of isomers of silymarin (silybin, silicristin and silidianin). It is imported in bulk. Although requested, Protestant has not submitted any evidence to support a claim that the other 20% of the imported product consist only of isomers of silymarin and the exact composition of this portion of the merchandise remains unknown.

Silymarin 80% is produced from milk thistle seeds. The seeds are milled into a cake. The cake is then subjected to 3-4 percolations in acetone for about 24 hours at 45 degrees centigrade. The filtered percolate is then concentrated by distillation under vacuum at 50-60 degrees centigrade to remove as much acetone as possible. This concentrate is then washed two times with 50 kg of cyclohexane to defat the product. The remaining concentrate is then dried under vacuum at 65-70% centigrade.

ISSUE:

What is the proper classification, under the HTSUS, of Silymarin 80%.

LAW AND ANALYSIS:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any related section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See T.D. 89 80, 54 Fed. Reg. 35127 (August 23, 1989).

The HTSUS headings under consideration are as follows:

1302 Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products:

Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included:

EN 13.02(A) states “The heading covers saps and extracts (vegetable products usually obtained by natural exudation or by incision, or extraction by solvents) . . . [t]hese saps and extracts differ from the essential oils, resinoids, and extracted oleoresins of heading 33.01, in that, apart from volatile odoriferous constituents, they contain a far higher proportion of other plant substances (e.g., chlorophyll, tannins . . .).”

Although considered, classification of the product in Chapter 29, HTSUS, is excluded because there is no evidence that the merchandise, as imported, consists only of isomers of silymarin. Heading 1302, HTSUS, likewise does not describe this merchandise. The protestant argues that this product should be classified under subheading 1302.19.90, HTSUS, as milk thistle extract. Traditional extracts are obtained by decoction, percolation, maceration, and digestion, or infusion. See United States Pharmacopeia, Twenty First Revision, p.1334 and Remington’s Pharmaceutical Sciences, Eighteenth Edition , p 1543. These processes produce an extract described in

EN 1302. Here, the milk thistle seeds undergo a process of solvent extraction, yielding milk thistle extract. This extract is then further subjected to distillation and defatting steps which remove a large portion of plant substances from the product. These additional steps prevent classification in heading 1302, HTSUS. (See HQ 961715, dated August 20, 1998).

Furthermore, the protestant cites two cases to support his proffered classification which do not, in fact, support his argument. First, NY 859656, dated February 13, 1991, classifies "Silymarin a plant extract also known as silybin" in heading 1302, HTSUS. Silymarin is confusingly known as the single compound Silybin as well as products like the instant merchandise which consist of substances other than Silybin. It is therefore likely that the merchandise described in NY 859656 is different from the subject merchandise and, therefore, that ruling has no relevance to the classification of the product at issue. Second, HQ 953679, dated February 3, 1994, simply classifies encapsulated milk thistle extract in heading 2106, HTSUS, as a food preparation. There is no discussion of the extract question presented in the instant case.

Next, we consider heading 3824, HTSUS. A chemical mixture is "a heterogeneous association of substances which cannot be represented by a chemical formula. Its components may or may not be uniformly dispersed and can usually be separated by mechanical means." Hawley's Condensed Chemical Dictionary, 12th Ed., p. 788, (Van Nostrand Reinhold company, 1993). Silimaryin 80% is thus described as a "mixture of natural products" classifiable in heading 3824, HTSUS. At GRI 6, Silymarin 80% is classified under subheading 3824.90.28, the provision for "[P]repared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included: [O]ther: [O]ther: [O]ther."

HOLDING:

The protest is DENIED. Silymarin 80% is classified in subheading 3824.90.28, HTSUS, the provision for "[P]repared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included: [O]ther: [O]ther: [O]ther."

In accordance with Section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, you are to mail this decision, together with the Customs Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry or entries in accordance with the decision must be accomplished prior to mailing the decision.

Sixty days from the date of the decision, the Office of Regulations and Rulings will make the decision available to Customs personnel, and to the public on the Customs Home Page on the World Wide Web at www.customs.gov, by means of the Freedom of Information Act, and other methods of public distribution.

JOHN DURANT,
Director;
Commercial Rulings Division.

[Attachment B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY 814027
February 2, 1996
CLA-2-13:RR:NC:FC:238 814027
CATEGORY: Classification
TARIFF NO.: 1302.19.4040

BRIAN S. GOLDSTEIN, ESQ.
TOMPKINS & DAVIDSON
One Astor Plaza
1515 Broadway, 43rd Floor
New York, NY 10036-8901

RE: The tariff classification of four vegetable extracts, imported in bulk form, from Italy

DEAR MR. GOLDSTEIN:

In your letter dated August 17, 1995, on behalf of your client, Indena USA Inc., you requested a tariff classification ruling.

The four subject products, which your client describes as "standardized herbal extracts", consist of four plant extracts, namely: Ginkgo biloba dry extract; Milk thistle (*Silybum marianum*); Leucoanthocyanins [(grape seed) *Vitis vinifera*]; and Bilberry (*Vaccinium myrtillus*). You have submitted flow charts from the manufacturer outlining the solvent extraction process used for each product, and have indicated in your letter that these extracts will be imported in bulk-powder form. You further indicate that, subsequent to importation and sale by your client, the extracts are combined with other ingredients and further processed into capsules and other similar forms for retail sale. The applicable subheading for the four subject products will be 1302.19.4040, Harmonized Tariff Schedule of the United States (HTS), which provides for: "Vegetable saps and extracts: Other: Ginseng; substances having anesthetic, prophylactic or therapeutic properties: Other: Other." The rate of duty will be 1.3 percent ad valorem.

This merchandise may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (301) 443-6553.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist C. Reilly at 212-466-5770.

**ROGER J. SILVESTRI,
Director,
National Specialist Division.**

[Attachment C]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967575
CLA-2 RR:CR:GC 967575 AM
CATEGORY: CLASSIFICATION
TARIFF NO.: 2932.99.61

MR. MICHAEL R. TARTARO
BYRON CHEMICAL COMPANY, INC.
40-11 23rd Street
Long Island City, NY 11101

Re: Revocation HQ 964338: Silymarin 80% (Milk Thistle Standardized Extract)

DEAR MR. TARTARO:

This is in regard to Headquarters Ruling Letter (HQ) 964338, dated March 28, 2001, concerning the classification of silymarin under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, we issued a decision on Protest 1001-99-103909, in which the silymarin was classified in subheading 3824.90.28, HTSUS, as a preparation of the chemical or allied industries, not elsewhere specified or included.

Under *San Francisco Newspaper Printing Co. v. United States*, 9 CIT 517, 620 F. Supp. 738 (1985), the liquidation of the entries covering the merchandise which was the subject of Protest 1001-99-103909 was final on both the protestant and CBP. Therefore, this decision has no effect on those entries.

FACTS:

According to Customs Lab Report #2-1999-20518, dated January 25, 1999, Silymarin 80% is a yellow powder that contains 80% mixture of isomers of silymarin (silybin, silicristin and silidianin). It is imported in bulk.

Silymarin 80% is produced from milk thistle seeds. The seeds are milled into a cake. The cake is then subjected to 3-4 percolations in acetone for about 24 hours at 45 degrees centigrade. The filtered percolate is then concentrated by distillation under vacuum at 50-60 degrees centigrade to remove as much acetone as possible. This concentrate is then washed two

times with 50 kg of cyclohexane to defat the product. The remaining concentrate is then dried under vacuum at 65–70% centigrade.

ISSUE:

What is the proper classification of Silymarin 80% under the HTSUS?

LAW AND ANALYSIS:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any related section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The HTSUS headings under consideration are as follows:

2932	Heterocyclic compounds with oxygen hetero-atom(s) only:
	Other:
2932.99	Other:
	Aromatic:
	Other:
2932.99.61	Products described in additional U.S. note 3 to section VI.
* * * * *	
3824	Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:
	Other:
3824.90	Other:
	Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances:
3824.90.28	Other

Additional U.S. Note 3 to Section VI, HTSUS, provides:

The term “products described in additional U.S. note 3 to section VI” refers to “any product not listed in the Chemical Appendix to the Tariff Schedule and—”

- (a) For which the importer furnishes the Chemical Abstracts Service (C.A.S.) registry number and certifies that such registry number is not listed in the Chemical Appendix to the Tariff Schedule; or
- (b) Which the importer certifies not to have a C.A.S. registry number and not to be listed in the Chemical Appendix to the Tariff Schedule, either under the name used to make Customs entry or under any other name by which it may be known.

Chapter Note 1 to Chapter 29 states, in pertinent part, the following:

Except where the context otherwise requires, the headings of this chapter apply only to:

- (a) Separate chemically defined organic compounds, whether or not containing impurities;
- (b) Mixtures of two or more isomers of the same organic compound (whether or not containing impurities), except mixtures of acyclic hydrocarbon isomers (other than stereoisomers), whether or not saturated (chapter 27);

In HQ 964338, we stated the following: “Although considered, classification of the product in Chapter 29, HTSUS, is excluded because there is no evidence that the merchandise, as imported, consists only of isomers of silymarin.” We now consider this statement to be incorrect.

Chapter 29, note 1(b) allows for mixtures of isomers containing impurities. Here, the mixture of isomers makes up 80% of the product. The other 20% is remainder from the starting material and a small amount of solvent. We believe this remainder can be considered “impurities” within the terms of the chapter note.

Within Chapter 29, silymarin is undisputedly a heterocyclic compound of heading 2932, HTSUS, as it includes six-membered rings containing oxygen atoms in the ring. Hence, heading 3824, a basket provision, can no longer describe this merchandise, which is more specifically provided for elsewhere. Using GRI 6, subheading 2932.99.61, HTSUS, describes this product as an other aromatic heterocyclic compound for which the CAS registry number is not in listed in the Chemical Appendix under the terms of U.S. note 3 to section VI.

HOLDING:

Silymarin is classified in subheading 2932.99.6100, HTSUSA (annotated), the provision for “Heterocyclic compounds with oxygen hetero-atom(s) only: Other: Other: Aromatic: Other: Products described in additional U.S. note 3 to section VI.” The general, column 1 rate of duty is 6.5% *ad valorem*, with reference to headings in Chapter 99.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at <http://www.usitc.gov/tata/hts/>.

EFFECT ON OTHER RULINGS:

HQ 964338, March 28, 2001, is revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[Attachment D]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967629
CLA-2 RR:CR:GC 967629 AM
CATEGORY: CLASSIFICATION
TARIFF NO.: 3824.90.2800, 2932.99.61

BRIAN S. GOLDSTEIN, ESQ.
TOMPKINS & DAVIDSON
One Astor Plaza
1515 Broadway, 43rd Fl.
New York, NY 10036-8901

RE: Modification of NY 814027; the tariff classification of Silymarin (milk thistle) and Leucoanthocyanin

DEAR MR. GOLDSTEIN:

This is in regard to New York Ruling Letter (NY) 814027, dated February 2, 1996, regarding the classification of silymarin (milk thistle) and leucoanthocyanin, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). That ruling held that four products, including silymarin and leucoanthocyanin, were classified in subheading 1302.19.4040, HTSUS, the provision for "Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products: Vegetable saps and extracts: Other: Ginseng; substances having anesthetic, prophylactic or therapeutic properties: Other: Other."

We believe this to be incorrect for the reasons stated below and propose to modify NY 814027. The other two substances discussed in that ruling remain classified as stated therein.

FACTS:

The silymarin here in issue is a yellow powder that contains 80% mixture of isomers of silymarin (silybin, silicristin and silidianin). Silymarin 80% is produced from milk thistle seeds. The seeds are milled into a cake, subjected to percolation in a solvent, filtered, and concentrated by distillation under vacuum to remove as much solvent as possible. This concentrate is then washed, defatted, and dried.

The leucoanthocyanin here in issue is a brownish powder consisting of 90-95% oligomeric proanthocyanidin (OPC). OPC is a mixture of proantho-

cyanidin compounds in different degrees of polymerization. Some of the OPCs are catechins with a chemical formula of $C_{15}H_{14}O_6$ (The Merck Index, 11th ed.), dimers (two degrees), trimers (three degrees), etc. Due to these varying states of polymerization, the OPCs are not comprised of a single chemical compound, although the main chemical structures are identical. Leucoanthocyanin can be produced from either pine bark or grape seed.

According to flow charts submitted by the importer, all of the products are obtained through extraction and refining processes that target a particular family of chemicals in the plant such as isomers of silymarin or OPCs.

ISSUE:

What is the proper classification of the silymarin and leucoanthocyanin extracts under the HTSUS?

LAW AND ANALYSIS:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any related section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

Furthermore, "it is a well-established principle that classification of an imported article must rest upon its condition as imported." E. T. Horn Company v. United States, Slip Op. 2003-20, (CIT, 2003), (citing Carrington Co. v. United States, 61 CCPA 77, 497 F.2d 902, 905 (CCPA 1974), United States v. Baker Perkins, Inc., 46 CCPA 128, (1959)).

The HTSUS provisions under consideration are as follows:

1302: Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products:

Vegetable saps and extracts:

1302.19 Other:

Ginseng; substances having anesthetic, prophylactic or therapeutic properties:

1302.19.40 Other

* * * * *

2932 Heterocyclic compounds with oxygen hetero-atom(s) only:

Other:

2932.99 Other

Aromatic:

Other:

2932.99.61 Products described in additional U.S. note 3 to section VI.

* * * * *

3824 Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:

3824.90 Other:

Other:

Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances:

3824.90.28 Other

Chapter Note 1 to Chapter 29 states, in pertinent part, the following:

Except where the context otherwise requires, the headings of this chapter apply only to:

- (a) Separate chemically defined organic compounds, whether or not containing impurities;
- (b) Mixtures of two or more isomers of the same organic compound (whether or not containing impurities), except mixtures of acyclic hydrocarbon isomers (other than stereoisomers), whether or not saturated (chapter 27);

* * * * *

EN 13.02 states, in pertinent part, the following:

(A) Vegetable saps and extracts.

The heading covers saps and extracts (vegetable products usually obtained by natural exudation or by incision, or extracted by solvents), **provided** that they are not specified or included in more specific headings of the Nomenclature (see list of exclusions at the end of Part (A) of this Explanatory Note).

These saps and extracts differ from the essential oils, resinoids and extracted oleoresins of heading 33.01, in that, apart from volatile odoriferous constituents, they contain a far higher proportion of other plant substances (e.g., chlorophyll, tannins, bitter principles, carbohydrates and other extractive matter).

The saps and extracts classified here include:

- (1) Opium, the dried sap of the unripe capsules of the poppy (*Papaver somniferum*) obtained by incision of, or by extraction from, the stems or seed pods. It is generally in the form of balls or cakes of varying size and shape. However, concentrates of poppy straw containing not less than 50 % by weight of alkaloids are excluded from this heading (see Note 1 (f) to this Chapter).

* * * * *

- (4) Pyrethrum extract, obtained mainly from the flowers of various pyrethrum varieties (e.g., *Chrysanthemum cinerariaefolium*) by extraction with an organic solvent such as normal hexane or "petroleum ether".

* * * * *

- (11) Quassia amara extract, obtained from the wood of the shrub of the same name (*Simaroubaceae* family), which grows in South America. Quassin, the principal bitter extract of the wood of the *Quassia amara*, is a heterocyclic compound of heading 29.32.

* * * * *

- (18) Papaw juice, whether or not dried, but not purified as papain enzyme. (The agglomerated latex globules can still be observed on microscopic examination.) Papain is excluded (heading 35.07).

* * * * *

- (20) Cashew nutshell extract. The polymers of cashew nutshell liquid extract are, however, excluded (generally heading 39.11).

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Examples of excluded preparations are: . . .

- (iv) Intermediate products for the manufacture of insecticides, consisting of pyrethrum extracts diluted by addition of mineral oil in such quantities that the pyrethrins content is less than 2 %, or with other substances such as synergists (e.g., piperonyl butoxide) added (heading 38.08).

All four of the substances in NY 814027 are obtained by sophisticated means such as solvent-solvent extraction, distillation, dialysis, chromatographic procedures, electrophoresis, etc. These processes result in a substance containing a targeted chemical compound or compounds along with ubiquitous plant material that need not be further removed for the manufacturers' purpose.

Heading 1302, HTSUS, describes vegetable extracts. The ENs provide that vegetable products are usually obtained by natural exudation or by incision, or extracted by solvents. Furthermore, the EN distinguishes products of heading 1302, HTSUS, from products of heading 3301, HTSUS, by the amount of plant material they contain. Research into the extracts described by the ENs, however, reveals a variety of extraction and refining techniques. For instance, in HQ 963848, dated April 20, 2002, CBP took note of the EN that allows pyrethrum products containing over 2% pyrethrum to remain classified in heading 1302, HTSUS, in classifying a 50% pyrethrum product in heading 1302, HTSUS. We did so even though the original extracted

oleoresin had been further purified removing much of the variety of material in the pyrethrum plant and thereby concentrating the pyrethrum content.

However, there appears to be a limit on the amount of purification that can occur before the product is classified in a later chapter. For instance, EN 13.02, explicitly excludes certain refined extracts of opium, quassia amara, papaw juice, and cashew nut shell liquid, once the refining process concentrates a certain group of chemical compounds to a particular point. Hence, poppy straw concentrates containing more than 50% alkaloids are excluded from heading 1302. Likewise, quassin, a chemical compound extracted and refined from the quassia amara shrub is classified in Chapter 29. Papain enzyme, once purified from the extraction process of papaw juice, is classified as an enzyme of Chapter 37. And polymers extracted and refined from cashew nut shell liquid are classified in Chapter 39 as polymers.

Following the reasoning in our prior rulings, and the tenet that we must classify goods as imported, we note that the leucoanthocyanin consists of over 90% mixtures of oligomeric proanthocyanidins (OPCs) and the silymarin consists of at least 80% of isomers of silymarin. Therefore, silymarin and leucoanthocyanin are relatively pure chemical products and cannot be classified simply as extracts.

In HQ 964338 and in HQ 966566, silymarin and leucocyanin were each respectively classified in subheading 3824.90.28, HTSUS, the provision for "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included: Other: Other: Mixtures containing 5% or more by weight of one or more aromatic or modified aromatic substances: Other." We consider this the correct result for leucoanthocyanin, because it is purified from the plant matter well beyond that of an extract, yet it does not contain a separate chemically defined compound, or isomers of such a compound, as necessary for classification in Chapter 29, HTSUS.

However, in HQ 964338, we excluded classification of silymarin 80% in Chapter 29, HTSUS, because the product consists of more than isomers of a separate chemically defined compound under Chapter 29, note 1(b). The other 20% is remainder from the starting material and a small amount of solvent. As such, we now believe that this remainder can be considered "impurities" within the terms of the chapter note.

Within Chapter 29, silymarin is undisputedly a heterocyclic compound of heading 2932, HTSUS, as it includes six-membered rings containing oxygen atoms in the ring. Hence, heading 3824, a basket provision, can no longer describe this merchandise, which is more specifically provided for elsewhere. Using GRI 6, subheading 2932.99.61, HTSUS, describes this product as an other aromatic heterocyclic compound for which the CAS registry number is not in listed in the Chemical Appendix under the terms of U.S. note 3 to section VI. Therefore, heading 3824, a basket provision, cannot describe this merchandise, more specifically provided for elsewhere.

HOLDING:

NY 814027 is modified in accordance with this ruling. Silymarin is classified in subheading 2932.99.6100, HTSUSA (annotated), the provision for "Heterocyclic compounds with oxygen hetero-atom(s) only: Other: Other:

Aromatic: Other: Products described in additional U.S. note 3 to section VI.” The column 1, general rate of duty is 6.5% *ad valorem*, with reference to headings in Chapter 99.

Leucoanthocyanin is classified in subheading 3824.90.2800, HTSUSA, the provision for “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Mixtures containing 5% or more by weight of one or more aromatic or modified aromatic substances: Other.” The column 1, general rate of duty is 6.5% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY 814027 is modified as outlined above.

MYLES B. HARMON,
Director,
Commercial Rulings Division.