

Bureau of Customs and Border Protection

General Notices

19 CFR Part 148

[CBP Dec. 03-21]

Changes To Customs and Border Protection List of Designated Public International Organizations

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

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by updating the list of designated public international organizations entitled to certain free entry privileges provided for under provisions of the International Organizations Immunities Act. The last time the list was updated was in 1996 and since then the President has issued several Executive Orders, which have designated certain organizations as entitled to certain free entry privileges. Accordingly, Customs and Border Protection deems it appropriate to update the list at this time.

EFFECTIVE DATE: August 22, 2003.

FOR FURTHER INFORMATION CONTACT: Dennis Sequeira, Director, International Organizations & Agreements Division, Office of International Affairs, (202) 927-1480.

SUPPLEMENTAL INFORMATION:

Background

The International Organizations Immunities Act (the Act)(22 U.S.C. 288 *et seq.*) generally provides that certain international organizations, agencies, and committees, in which the United States participates or otherwise has an interest and which have been designated by the President through appropriate Executive Order as public international organizations, are entitled to enjoy certain privileges, exemptions, and immunities conferred by the Act. The

Department of State lists the public international organizations, designated by the President as entitled to enjoy any measure of the privileges, exemptions, and immunities conferred by the Act, in the notes following the provisions of Section 288.

One of the privileges provided for under the Act at 22 U.S.C. 288a is that the baggage and effects of alien officers, employees, and representatives—and their families, and servants—to the designated organization, are admitted free of duty and without entry. Those designated organizations entitled to this duty-free entry privilege are delineated at § 148.87(b), Customs Regulations (19 CFR 148.87(b)). Thus, the list of public international organizations maintained by Customs and Border Protection (CBP) is for the limited purpose of identifying those organizations entitled to the duty-free entry privilege; it does not necessarily include all of the organizations that are on the list maintained by the Department of State, which delineates all of the international organizations designated by the President regardless of the extent of the privileges conferred.

The last revision of the list of public international organizations at § 148.87(b) was in 1996 (T.D. 96-23), when the total number of designated international organizations became 69. Since 1996, eight Executive Orders have been issued each designating a new public international organization, as follows:

1. Executive Order 12956 of March 13, 1995, 60 FR 14199, 3 CFR 1996 Comp., p. 332, 31 Weekly Comp.Pres.Doc. 408, designated the Israel-United States Binational Industrial Research and Development Foundation;
2. Executive Order 12986 of January 18, 1996, 61 FR 1693, 3 CFR 1997 Comp., p. 156, 32 Weekly Comp.Pres.Doc. 77, designated the International Union for Conservation of Nature and Natural Resources with limited privileges; certain privileges, regarding immunity from suit and judicial process and search and seizure, were not extended;
3. Executive Order 12997 of April 1, 1996, 61 FR 14949, 3 CFR 1997 Comp., p. 179, 32 Weekly Comp.Pres.Doc. 596, designated the Korean Peninsula Energy Development Organization;
4. Executive Order 13042 of April 9, 1997, 62 FR 18017, 3 CFR 1998 Comp., p. 194, 33 Weekly Comp.Pres.Doc. 492, designated the World Trade Organization;
5. Executive Order 13049 of June 11, 1997, 62 FR 32472, 3 CFR 1998 Comp., p. 206, 33 Weekly Comp.Pres.Doc. 857, designated the Organization for the Prohibition of Chemical Weapons;
6. Executive Order 13052 of June 30, 1997, 62 FR 35659, 3 CFR 1998 Comp., p. 210, 33 Weekly Comp.Pres.Doc. 998, designated the Hong Kong Economic and Trade Offices;

7. Executive Order 13097 of August 7, 1998, 63 FR 43065, 3 CFR 1999 Comp., p. 205, 34 Weekly Comp.Pres.Doc. 1588, designated the Interparliamentary Union; and

8. Executive Order 13240 of December 18, 2001, 66 FR 66257, 3 CFR 2002 Comp., p. 824, 37 Weekly Comp.Pres.Doc. 1813, designated the Council of Europe in Respect of the Group of States Against Corruption (GRECO).

This brings the total number of designated international organizations listed at § 148.87(b) to 77. Accordingly, CBP is amending its list of designated public international organizations at § 148.87(b) to account for these eight additions.

This document also corrects an editorial error, *i.e.*, an international organization designated by T.D. 96-13 is incorrectly referenced; thus, the reference to the Border Environmental Cooperation Commission should read the Border Environment Cooperation Commission.

Inapplicability of Public Notice and Comment Requirements, Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Because this amendment merely corrects the listing of designated organizations entitled by law to free entry privileges as public international organizations, pursuant to 5 U.S.C. 553(b)(B), good cause exists for dispensing with notice and public procedure thereon as unnecessary. For the same reason, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d) (1) and (3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This document does not meet the criteria for a “significant regulatory action” as specified in E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch, Office of Regulations and Rulings.

List of Subjects in 19 CFR Part 148

Customs duties and inspection, Executive orders, Foreign officials, Government employees, International organizations, Privileges and immunities, Taxes.

Amendment to the Regulations

■ For the reasons stated above, part 148, Customs Regulations (19 CFR part 148), is amended as set forth below:

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

■ 1. The general authority citation for part 148 and the specific authority citation for § 148.87 continue to read as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 23, Harmonized Tariff Schedule of the United States);

* * * * *

Section 148.87 also issued under 22 U.S.C. 288.

■ 2. Section 148.87(b) is amended by removing in the “Organization” column the name “Border Environmental Cooperation Commission” and replacing it with “Border Environment Cooperation Commission” and by adding the following, in appropriate alphabetical order, to the table, to read as follows:

§ 148.87 Officers and employees of, and representatives to, public international organizations.

* * * * *

(b) * * *

Organization	Executive Order	Date
* * *	*	*
Council of Europe in Respect of the Group of States Against Corruption (GRECO).....	13240	Dec. 18, 2001.
* * *	*	*
Hong Kong Economic and Trade Offices	13052	June 30, 1997.
* * *	*	*
International Union for Conservation of Nature and Natural Resources—Limited privileges	12986	Jan. 18, 1996.
* * *	*	*
Interparliamentary Union	13097	Aug. 7, 1998.
Israel-United States Binational Industrial Research and Development Foundation.....	12956	Mar. 13, 1995.
Korean Peninsula Energy Development Organization	12997	Apr. 1, 1996.
* * *	*	*

Organization	Executive Order	Date
Organization for the Prohibition of Chemical Weapons	13049	June 11, 1997.
* * *	*	*
World Trade Organization	13042	Apr. 9, 1997.

Date: August 18, 2003

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, August 22, 2003 (68 FR 50698)]

19 CFR Part 122

[CBP Dec. 03-22]

User Fee Airports

AGENCY: Customs and Border Protection, Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect the designation of Williams Gateway Airport in Mesa, Arizona and Roswell Industrial Air Center in Roswell, New Mexico as user fee airports and to correct an error regarding the city in Texas in which the McKinney Airport user fee airport is located. A user fee airport is one which while not qualifying for designation as an international or landing rights airport, has been approved by the Commissioner of the Bureau of Customs and Border Protection (CBP) to receive, for a fee, the services of a CBP officer for the processing of aircraft entering the United States and their passengers and cargo.

EFFECTIVE DATE: August 22, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Balaban, Office of Field Operations, 202-927-0031.

SUPPLEMENTARY INFORMATION:

Background

Generally, a civil aircraft arriving from a place outside of the United States is required to land at an airport designated as an in-

ternational airport. Alternatively, the pilot of a civil aircraft may request permission to land at a specific airport and if landing rights are granted, the civil aircraft may land at that landing rights airport.

Section 236 of Pub. L. 94-573 (the Trade and Tariff Act of 1984), codified at 19 U.S.C. 58b, created an option for civil aircraft desiring to land at an airport other than an international or landing rights airport. A civil aircraft arriving from a place outside of the United States may ask for permission to land at an airport designated by the Secretary of the Treasury as a user fee airport.

Pursuant to 19 U.S.C. 58b, an airport may be designated as a user fee airport if the Secretary of the Treasury determines that the volume of business at the airport is insufficient to justify the availability of customs services at the airport and the governor of the state in which the airport is located approves the designation. Generally, the type of aircraft that would seek designation as a user fee airport would be one at which a company, such as an air courier service, has a specialized interest in regularly landing.

As the volume of business anticipated at this type of airport is insufficient to justify its designation as an international or landing rights airport, the availability of customs services is not paid for out of appropriations from the general treasury of the United States. Instead, the customs services are provided on a fully reimbursable basis to be paid for by the user fee airport on behalf of the recipients of the services.

The fees which are to be charged at user fee airports, according to the statute, shall be paid by each person using the customs services at the airport and shall be in the amount equal to the expenses incurred by the Secretary of the Treasury in providing customs services which are rendered to such person at such airport, including the salary and expenses of those employed by the Secretary of the Treasury to provide the customs services. To implement this provision, generally, the airport seeking the designation as a user fee airport or that airport's authority agrees to pay a flat fee annually and the users of the airport are to reimburse that airport/airport authority. The airport/airport authority agrees to set and periodically to review the charges to ensure that they are in accord with the airport's expenses.

Sections 403(1) and 411 of the Homeland Security Act of 2002 ("the Act," Pub. L. 107-296) transferred the United States Customs Service and its functions from the Department of the Treasury to the Department of Homeland Security; pursuant to section 1502 of the Act, the President renamed the "Customs Service" as the "Bureau of Customs and Border Protection," also referred to as the "CBP."

The Commissioner of CBP, pursuant to § 122.15, Customs Regulations (19 CFR 122.15) designates airports as user fee airports pursu-

ant to 19 U.S.C. 58b. Section 122.15 sets forth the list of designated user fee airports.

Thirty seven airports are currently listed in § 122.15. This document revises the list of user fee airports. It adds Williams Gateway Airport in Mesa, Arizona, and Roswell Industrial Air Center in Roswell, New Mexico, to this listing of designated user fee airports. It also corrects the location of McKinney Municipal Airport from Dallas, Texas, to McKinney, Texas.

Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Agency organization matters such as this amendment are exempt from consideration under Executive Order 12866.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely updates and corrects the list of user fee airports designated by the Commissioner of CBP in accordance with 19 U.S.C. 58b and neither imposes any additional burdens on, nor takes away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3) a delayed effective date is not required.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch, Office of Regulations and Rulings, CBP. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 122

Air carriers, Aircraft, Airports, Customs Duties and Inspection, Freight.

Amendments to the Regulations

■ Part 122, Customs Regulations (19 CFR Part 122) is amended as set forth below.

PART 122—AIR COMMERCE REGULATIONS

■ 1. The authority citation for Part 122, Customs Regulations, continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66,1431,1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

* * * * *

- 2. The listing of user fee airports in section 122.15(b) is amended:
 - a. By adding, in alphabetical order, in the “Location” column, “Mesa, Arizona” and by adding on the same line, in the “Name” column, “Williams Gateway Airport;”
 - b. By adding, in alphabetical order, in the “Location” column, “Roswell, New Mexico” and by adding on the same line, in the “Name” column, “Roswell Air Industrial Center;” and
 - c. On the same line as the “McKinney Airport” in the “Name” column, by removing in the “Location” column “Dallas, Texas” and by adding in its place “McKinney, Texas.”

Dated: August 19, 2003

Robert C. Bonner,

Commissioner, Bureau of Customs and Border Protection.

[Published in the Federal Register, August 22, 2003 (68 FR 50697)]

19 CFR Part 191

[CBP Dec. 03-23]

RIN 1515-AD02

Manufacturing Substitution Drawback: Duty Apportionment

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

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with changes, the interim rule amending the Customs Regulations that was published in the **Federal Register** on July 24, 2002, as T.D. 02-38. The interim rule amended the regulations to provide the method for calculating manufacturing substitution drawback where imported merchandise, which is dutiable on its value, contains a chemical element and amounts of that chemical element are used in the manufacture or production of articles which are either exported or destroyed under Customs supervision. Recent court decisions have held that a chemical element that is contained in an imported material that is subject to an *ad valorem* rate of duty may be designated as same kind and quality merchandise for drawback purposes. The amendment provides the method by which the duty attributable to the chemical element can be apportioned and requires a drawback claimant, where applicable, to make this apportionment calculation.

EFFECTIVE DATE: August 22, 2003.

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

SUPPLEMENTARY INFORMATION:

Background

Drawback—19 U.S.C. 1313

Section 313 of the Tariff Act of 1930, as amended, (19 U.S.C. 1313), concerns drawback and refunds. Drawback is a refund of certain duties, taxes and fees paid by the importer of record and granted to a drawback claimant upon the exportation, or destruction under Customs supervision, of eligible articles. The purpose of drawback is to place U.S. exporters on equal footing with foreign competitors by refunding most of the duties paid on imports used in domestic manufactures intended for export.

Substitution for drawback purposes—19 U.S.C. 1313(b)

There are several types of drawback. Under section 1313(b), a manufacturer can recoup duties paid for imported merchandise if it uses merchandise of the same kind and quality to produce exported articles pursuant to the terms of the statute. Section 1313(b) reads, in pertinent part:

(b) *Substitution for drawback purposes*

If imported duty-paid merchandise and any other merchandise (whether imported or domestic) of the same kind and quality are used in the manufacture or production of articles within a period not to exceed three years from the receipt of such imported merchandise by the manufacturer or producer of such articles, there shall be allowed upon the exportation, or destruction under customs supervision, of any such articles, notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported or destroyed articles, an amount of drawback equal to that which would have been allowable had the merchandise used therein been imported * * *.

Manufacturing substitution drawback is intended to alleviate some of the difficulties in accounting for whether imported merchandise has, in fact, been used in a domestic manufacture. Section 1313(b) permits domestic or other imported merchandise to be used to make the export article, instead of the actual imported merchandise, so long as the domestic or other imported merchandise is of the “same kind and quality” as the actual imported merchandise.

Several recent court cases have examined the scope of the term “same kind and quality” as used in 19 U.S.C. 1313(b). *See E.I. DuPont De Nemours and Co. v. United States*, 116 F. Supp. 2d 1343 (Ct. Int’l Trade 2000). *See also International Light Metals v. United*

States, 194 F.3d 1355 (Fed. Cir. 1999). In these cases, the courts held that a chemical element that is contained in an imported material that is dutiable on its value may be designated as same kind and quality merchandise for purposes of manufacturing substitution drawback pursuant to 19 U.S.C. 1313(b). The holding in *DuPont* necessitates apportionment as a necessary method of claiming a drawback entitlement under these circumstances. *DuPont*, 116 F. Supp. 2d at 1348–49.

Amendment to § 191.26(b) of the Customs Regulations

On July 24, 2002, Customs and Border Protection (CBP), as its predecessor agency, the Customs Service, promulgated interim amendments to the Customs Regulations, published in the **Federal Register** (67 FR 48368) as T.D. 02–38, to implement the courts' holdings in *DuPont* and *ILM*. The interim amendments to the Customs Regulations were made to § 191.26 (19 CFR 191.26), which sets forth the recordkeeping requirements for manufacturing drawback. Paragraph (b) of this section describes the recordkeeping requirements for substitution drawback.

To implement the courts' interpretation of 19 U.S.C. 1313(b), T.D. 02–38 amended § 191.26(b) by adding language that explains how to apportion the duty attributable to same kind and quality chemical elements contained in *ad valorem* duty-paid imported materials for purposes of manufacturing substitution drawback. T.D. 02–38 also amended § 191.26(b) to provide an example of apportionment calculations.

Duty apportionment calculation

In order for a drawback claimant to be able to ascertain what portion of the *ad valorem* duty paid on imported merchandise is attributable to a chemical element contained in the merchandise, an apportionment calculation is necessary. First, if the imported duty-paid material is a compound with other constituents, including impurities, and the purity of the compound in the imported material is shown by satisfactory analysis, that purity, converted to a decimal equivalent of the percentage, is multiplied against the entered amount of the material to establish the amount of pure compound. The amount of the element in the pure compound is to be determined by use of the atomic weights of the constituent elements, converting to the decimal equivalent of their respective percentages, and multiplying that decimal equivalent against the above-determined amount of pure compound. Second, the amount claimed as drawback based on a contained element must be taken into account and deducted from the duty paid on the imported material that may be claimed on any other drawback claim.

Discussion of Comments

Five commenters responded to the solicitation of public comment published in T.D. 02–38. A description of the comments received, together with CBP’s analyses, is set forth below.

Comment: Several commenters disagreed with CBP’s interpretation that the court decisions in *DuPont* and *ILM* require an apportionment calculation to determine the proper drawback entitlement.

CBP’s response: CBP maintains its view that the holdings in *DuPont* and *ILM* necessitate apportionment of the duty attributable to a chemical element contained in an *ad valorem* duty-paid imported material if this chemical element is the designated good in a drawback claim under 19 U.S.C. 1313(b). As noted above, the CAFC in *ILM* and the CIT in *DuPont* examined the scope of the term “same kind and quality” as used in 19 U.S.C. 1313(b) and determined that a chemical element contained in an imported material that is dutiable on its value may be designated as same kind and quality merchandise for purposes of manufacturing substitution drawback. In *ILM*, the CAFC stated that as there was “*** no dispute as to the amount of titanium that was used in the scrap *** the amount of drawback to which *ILM* would be entitled based upon the titanium in that scrap and the titanium in the imported sponge could be precisely determined.” Similarly, in *DuPont*, the CIT noted that because the amount of titanium in the feedstocks can be accurately determined, substitution of another feedstock for synthetic rutile is permitted. If either the CAFC or the CIT intended drawback to be permitted on all the titanium-containing raw materials, the courts would not have emphasized that calculation of the amount of titanium contained in the raw materials entitled the claimant to a specific amount of drawback. The courts clearly recognized that apportionment by relative weight was necessary to prevent the overpayment of drawback.

Comment: Several commenters noted that if apportionment is required, apportionment by relative value is a more appropriate calculation method than apportionment by relative weight. In a related comment, one commenter suggested that a drawback claimant should have the option to apportion duty using either relative value or relative weight.

CBP’s response: CBP disagrees. As discussed above, the courts in both *ILM* and *DuPont* require apportionment by relative weight. Both of these courts held that the quantity, and not the value, of the sought material (the titanium) could be determined and consequently the amount of drawback could be determined. Moreover, there is no authority to apportion duty by relative value for a drawback claim per 19 U.S.C. 1313(b) when only one good results from the processing of the imported merchandise. If the sought material, *i.e.*, the titanium, was divided to make two articles, then relative value apportionment would be required.

Comment: One commenter submitted that apportionment by relative weight contradicts the drawback statute (19 U.S.C. 1313) because this section, at paragraph (a), provides drawback upon the “exportation or destruction under custom supervision of articles manufactured or produced in the United States with the use of imported merchandise, * * *.” The commenter noted that the sought element in *DuPont* (the titanium) is neither “used” nor “imported” because it is the feedstock containing the titanium that is “imported” and “used” within the meaning of section 1313(b). Another commenter stated that section 1313(b) provides no legal basis for apportionment under these circumstances.

CBP’s response: CBP disagrees. The plain language of 19 U.S.C. 1313(b) permits drawback to be paid only on the sought element, and the sought element in both *ILM* and *DuPont* was the titanium. Section 1313(b) provides that an amount of drawback equal to that which would have been allowable had the *merchandise* used therein been imported is payable if imported duty-paid *merchandise* and any other *merchandise* (whether imported or domestic) of the *same kind or quality* are used in the manufacture or production of articles subsequently exported or destroyed. Clearly, per 19 U.S.C. 1313(b), the merchandise upon which drawback may be paid is the merchandise characterized as “same kind and quality.” It cannot be said that the various feedstocks used to provide the sought element in those cases are of the “same kind and quality,” but only that the titanium, as a discrete element contained in the feedstocks, was of the “same kind and quality” as required by section 1313(b). In *ILM*, the CAFC makes clear that the merchandise of the “same kind and quality” required by 19 U.S.C. 1313(b) was the sought element, titanium, and not the various feedstocks. *ILM*, 194 F.3d 1355 at 1367. Additionally, in applying the three factors promulgated by the CAFC in *ILM*, the CIT in *DuPont* stated:

* * * the [ILM] court reasoned that the phrase “same kind and quality” should be applied only to the sought element contained in a source material, and not to the source material as a whole or the impurities contained therein * * *. Thus, although different ores may be made up of a number of elements, the “same kind and quality” standard applies only to the element used in manufacturing the exported article.”

DuPont, at 1348. Therefore, the court held that the titanium is the designated merchandise. Since titanium is an element, and an element is measured by its weight, apportionment by relative weight is required. Consequently, the apportionment of the duty attributable to a chemical element contained in *ad valorem* duty-paid imported merchandise must be calculated by the relative weights of the sought element and the feedstock used.

Comment: One commenter stated that since T.D. 82-36 (16 Cust. B. & Dec. 97, February 26, 1982) is specific as to “how to determine the quantity of imported merchandise to be designated, and therefore, the basis for the allowance of drawback,” apportionment by weight is not mandated by the court decisions.

CBP's response: CBP disagrees. The CAFC in *ILM* stated:

*** we find little assistance in the facts of T.D. 82-36. That ruling dealt with a substitution of copper ores, in which each ore contained impurities and a single sought element, copper *** In this case, the scrap contains several sought elements, and no impurities have been identified as such.

ILM at 1363.

It is additionally noted that the *ILM* and the *DuPont* Courts found that the designated material was titanium, an element. The amount of an element is calculated by its weight.

Comment: One commenter suggested that since the drawback claimant does not separate the sought element from the feedstock, then it is the feedstock and not the sought element that must be the imported merchandise designated for drawback.

CBP response: CBP disagrees. The courts in *ILM* and *DuPont* held that the element was the material that met the same kind and quality requirement and therefore the element was the designated merchandise. The CAFC in *ILM* noted that it was not necessary to extract the sought element from the feedstock, and stated “*** we see no reason why *ILM* should be required to undertake such an additional step [of extracting the titanium from the scrap] ***” Both the *ILM* and *DuPont* Courts determined that since the amount of the sought element (the titanium) could be precisely determined, it was unnecessary to require that it be extracted as a discrete element before drawback was payable.

Comment: One commenter stated that CBP was incorrectly using the “same kind and quality” test to apportion the duties because this standard is only used for determining whether imported goods may be substituted for other goods.

CBP response: CBP disagrees. As discussed above, the only merchandise upon which drawback may be paid as per 19 U.S.C. 1313(b) is the imported duty-paid and designated merchandise characterized as “same kind and quality.” In *ILM*, the CAFC unequivocally stated that the merchandise of the “same kind and quality” required by section 1313(b) is the sought element—not the various feedstocks. *ILM* at 1367. Therefore, the CAFC found that the sought element, the titanium, was of the same kind and quality and thus only the titanium could be the designated merchandise.

Comment: One commenter stated that CBP's example of the apportionment calculation set forth in § 191.26(b)(4) is incorrect, and noted that CBP applies the \$0.011 factor to each pound of titanium.

The commenter submits that, in fact, each pound of material in the imported synthetic rutile, be it titanium, oxygen, or impurities, bears the same \$0.02 duty.

CBP response: CBP agrees. The example in the interim amendments to § 191.26(b)(4), set forth in T.D. 02-38, is inconsistent with the liquidation instructions on which it was to have been based. Since the total duty on the imported synthetic rutile includes duty on its titanium content, the calculation should be \$600 duty paid divided by 30,000 pounds synthetic rutile ($\$600 \div 30,000 = .02$) duty per pound of imported rutile. Therefore, the example set forth in § 191.26(b)(4) is amended accordingly and set forth below in the regulatory text section of this document.

Comment: One commenter suggested that apportioning duty based on weight “encourages uneconomical activities, such as the export of waste and impurities in order to obtain drawback that would be due under value based methodologies.” The same commenter noted that this exportation of waste would result in an overpayment of duty and a doubling of drawback claims because each drawback claimant would file an additional claim for waste.

CBP response: CBP disagrees. No waste is generated from the designated merchandise, *i.e.*, the titanium. Additionally, even if waste were generated, it has been CBP’s position based on long-standing court decisions that drawback is not allowable on the exportation of waste. In *United States v. Dean Linseed-Oil Co.*, 87 Fed. 453, 456 (2nd Cir. 1898), *cert. den.*, 172 U.S. 647 (1898), the court implicitly accepted the government’s position that drawback was unavailable on the exportation of waste. CBP has continuously followed this position. See *Precision Specialty Metals, Inc. v. United States*, 116 F.Supp. 2d 1350 (Ct. Int’l Trade (2001)).

Comment: One commenter stated that apportioning the duty by weight will be administratively difficult and burdensome. Another commenter stated that all the information necessary to perform the duty calculation required by § 191.26(b), as amended by T.D. 02-38, is not on the manufacturing certificate.

CBP response: The court instructed CBP to make the calculation to properly administer the statute. Therefore, CBP must follow the court’s decision regardless of whether the requisite calculation is burdensome.

Conclusion

After analysis of the comments and further review of the matter, CBP has determined to adopt as a final rule, with the changes mentioned in the comment discussion and with additional non-substantive editorial changes, the interim rule published in the **Federal Register** (67 FR 48368) on July 24, 2002, as T.D. 02-38.

Inapplicability of Delayed Effective Date

These regulations serve to add apportionment language to the Customs Regulations necessitated by recent decisions of the Court of International Trade and the Court of Appeals for the Federal Circuit, and to finalize an interim rule that is already in effect. In addition, the regulatory changes serve to benefit the public by providing specific information as to how a drawback claimant is to correctly make the requisite duty apportionment calculations when claiming manufacturing substitution drawback for a chemical element contained in *ad valorem* duty-paid imported merchandise. For these reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), CBP finds that there is good cause for dispensing with a delayed effective date.

The Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Further, these amendments do not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866.

Drafting Information

The principal author of this document was Ms. Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection. However, personnel from other offices participated in its development.

List of Subjects 19 CFR Part 191

Claims, Commerce, Customs duties and inspection, Drawback, Reporting and recordkeeping requirements.

Amendment to the Regulations

■ For the reasons stated above, the interim rule amending part 191 of the Customs Regulations (19 CFR part 191), which was published at 67 FR 48368–48370 on July 24, 2002, is adopted as a final rule with the change set forth below.

PART 191—DRAWBACK

■ 1. The general authority citation for part 191 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1313, 1624.

* * * * *

■ 2. In § 191.26, the example to paragraph (b)(4) is amended to read as follows:

§ 191.26 Recordkeeping for manufacturing drawback.

* * * * *

(b) *Substitution manufacturing.* * * *

(4) * * *

Example to paragraph (b)(4).

Synthetic rutile that is shown by appropriate analysis in the entry papers to be 91.7% pure titanium dioxide is imported and dutiable at a 5% *ad valorem* duty rate. The amount of imported synthetic rutile is 30,000 pounds with an entered value of \$12,000. The total duty paid is \$600. Titanium in the synthetic rutile is designated as the basis for a drawback claim under 19 U.S.C. 1313(b). The amount of titanium dioxide in the synthetic rutile is determined by converting the purity percentage (91.7%) to its decimal equivalent (.917) and multiplying the entered amount of synthetic rutile (30,000 pounds) by that decimal equivalent ($.917 \times 30,000 = 27,510$ pounds of titanium dioxide contained in the 30,000 pounds of imported synthetic rutile). The titanium, based on atomic weight, represents 59.93% of the constituents in titanium dioxide. Multiplying that percentage, converted to its decimal equivalent, by the amount of titanium dioxide determines the titanium content of the imported synthetic rutile ($.5993 \times 27,510$ pounds of titanium dioxide = 16,486.7 pounds of titanium contained in the imported synthetic rutile). Therefore, up to 16,486.7 pounds of titanium is available to be designated as the basis for drawback. As the per-unit duty paid on the synthetic rutile is calculated by dividing the duty paid (\$600) by the amount of imported synthetic rutile (30,000 pounds), the per-unit duty is two cents of duty per pound of the imported synthetic rutile ($\$600 \div 30,000 = \0.02). The duty on the titanium is calculated by multiplying the amount of titanium contained in the imported synthetic rutile by two cents of duty per pound ($16,486.7 \times \$0.02 = \329.73 duty apportioned to the titanium). The product is then multiplied by 99% to determine the maximum amount of drawback available ($\$329.73 \times .99 = \326.44). If an exported titanium alloy ingot weighs 17,000 pounds, in which 16,000 pounds of titanium was used to make the ingot, drawback is determined by multiplying the duty per pound (\$0.02) by the weight of the titanium contained in the ingot (16,000 pounds) to calculate the duty available for drawback ($\$0.02 \times 16,000 = \320.00). Because only 99% of the duty can be claimed, drawback is determined by multiplying this available duty amount by 99% ($.99 \times \$320.00 = \316.80). As the oxygen content of the titanium dioxide is 45% of the synthetic rutile, if oxygen is the designated merchandise on another drawback claim, 45% of the duty

claimed on the synthetic rutile would be available for drawback based on the substitution of oxygen.

Robert C. Bonner,

Commissioner, Customs and Border Protection,

Approved: August 19, 2003

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, August 22, 2003 (68 FR 507030)]

DEPARTMENT OF THE TREASURY

19 CFR Chapters I and IV

[CBP Dec. 03-24]

RIN 1515-AD 39

Delegations of Authority: Signature of Customs and Border Protection Regulations Published in the Federal Register

AGENCY: Bureau of Customs and Border Protection; Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document revises the title and structure of Title 19 of the Code of Federal Regulations (CFR) to reflect changes caused by the creation of the Department of Homeland Security and the consequent governmental reorganization. The document also specifies the signatures that indicate the exercise of authority for documents that appear in 19 CFR Chapter I. In addition, this document adds and reserves for future use a Chapter under which the bureau of Immigration and Customs Enforcement (ICE) may issue regulations.

EFFECTIVE DATE: August 28, 2003.

FOR FURTHER INFORMATION CONTACT: Harold Singer, Chief, Regulations Branch, Customs and Border Protection (202) 572-8767.

SUPPLEMENTARY INFORMATION:

Background

Prior to March 1, 2003, the United States Customs Service was a component of the Department of the Treasury (Treasury). In accor-

dance with Treasury Department Order No. 165, Revised (Treasury Decision 53654), issued on November 2, 1954, the Commissioner of Customs prescribed the regulations contained in Title 19 of the Code of Federal Regulations, Chapter I (19 CFR Chapter I) (the Customs Regulations), and with certain limited exceptions, the Customs Regulations required the approval of the Secretary of the Treasury (or his or her delegate). On November 25, 2002, the President signed the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*, Pub. L. 107–296, (the Act), establishing the Department of Homeland Security (DHS). Under section 403(1) of the Act (6 U.S.C. 203(1)), the United States Customs Service, including functions of the Secretary of the Treasury relating thereto, transferred to the Secretary of Homeland Security.

Notwithstanding the transfer of the Customs Service to DHS, section 412 of the Act (6 U.S.C. 212) provides that the legal authority vested in the Secretary of the Treasury over customs revenue functions is to be retained by the Secretary of the Treasury. Section 412 of the Act also authorizes the Secretary of the Treasury to delegate any of the retained legal authority over the customs revenue functions to the Secretary of Homeland Security.

By Treasury Department Order No. 100–16, dated May 15, 2003 and published in the **Federal Register** on May 23, 2003 (68 FR 28322), the Secretary of the Treasury delegated to the Secretary of Homeland Security authority to prescribe regulations pertaining to the customs revenue functions. This Order further provided that the Secretary of the Treasury retained the sole authority to approve any Customs Regulations concerning import quotas or trade bans, user fees, marking, labeling, copyright and trademark enforcement, and the completion of entry or substance of entry summary including duty assessment and collection, classification, valuation, application of the U.S. Harmonized Schedules, eligibility or requirements for preferential trade programs, and the establishment of recordkeeping requirements relating thereto.

The Code of Federal Regulations (CFR) is divided into 50 titles based on subject matter. Within each CFR title, departments and agencies are assigned individual chapters.

Because Title 19 Chapter I of the Code of Federal Regulations is currently named for the “United States Customs Service, Department of the Treasury,” and that agency is now known as the bureau of “Customs and Border Protection” (CBP) and is a component of DHS, the title of 19 CFR Chapter I is revised in this document to reflect the new name of the agency and to add DHS. The Department of the Treasury remains in the title of Chapter I because of the retained authority of the Secretary of the Treasury with respect to regulations concerning the customs revenue functions.

This document also amends the Customs Regulations by adding a new Part 0 that prescribes the signatures that indicate the exercise of authority to amend, revise, or revoke regulations in 19 CFR Chapter 1. The document specifies that signatures of the Secretary of the Treasury and of the Secretary of Homeland Security include the signatures of his or her Treasury or DHS delegate (respectively). Thus, the signature of the Commissioner of Customs and Border Protection indicates exercise of the Secretary of Homeland Security's authority as his or her DHS delegate.

Lastly, section 442 of the Homeland Security Act of 2002 (6 U.S.C. 252) established the Bureau of Border Security. Pursuant to section 1502 of the Act, the President transmitted to the House of Representatives the "Reorganization Plan Modification for the Department of Homeland Security" which, effective March 1, 2003, renamed the Bureau of Border Security as the bureau of "Immigration and Customs Enforcement" (ICE). ICE brings together the investigation arms of the former Customs Service, the investigative functions of the former Immigration and Naturalization Service, and the former Federal Protective Service. Under the savings provisions of the Homeland Security Act and general principles of federal law, the "Customs Regulations" in Title 19 CFR Chapter I apply as relevant to both components of the legacy "United States Customs Service"—*i.e.* to ICE and CBP. Nonetheless, in the future it is anticipated that ICE may issue regulations unique to ICE. Thus, this document creates a new Chapter IV in 19 CFR for any regulations that ICE may promulgate in the future. However, absent such express regulatory action, the creation of this new Chapter does not in itself supersede any Customs Regulations that currently apply for ICE in Chapter I.

Inapplicability of Prior Public Notice and Delayed Effective Date Requirements

This regulation involves matters relating to agency management. It involves the relationship between cabinet Departments on issues of authority over Customs Regulations. For this reason, pursuant to 5 U.S.C. 553 (a)(2), prior notice and public procedure and a delayed effective date are not required.

The Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Further, this amendment does not meet the criteria for a "significant regulatory action" for purposes of Executive Order 12866.

List of Subjects in 19 CFR Part 0

Customs duties and inspection, Delegations of authority.

Amendments to the Regulations

For the reasons set forth in the preamble and under the Homeland Security Act of 2002, Pub. L. 107–296, Title 19 Chapter I is amended and Chapter IV is added as set for below:

CHAPTER I—BUREAU OF CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF THE TREASURY

- 1. Revise the Chapter I heading to read as set forth above.
- 2. Add part 0 to Chapter I to read as follows:

PART 0—TRANSFERRED OR DELEGATED AUTHORITY

Sec.

- 0.1 Customs revenue function regulations issued under the authority of the Departments of the Treasury and Homeland Security.
- 0.2 All other Customs Regulations issued under the authority of the Department of Homeland Security.

Appendix to 19 CFR Part 0—Treasury Department Order No. 100–16

Authority: 5 U.S.C. 301, 6 U.S.C. 101 *et seq.*, 19 U.S.C. 66, 19 U.S.C. 1624, 31 U.S.C. 321.

§ 0.1 Customs revenue function regulations issued under the authority of the Departments of the Treasury and Homeland Security.

(a) *Regulations requiring signatures of Treasury and Homeland Security.* (1) By Treasury Department Order No. 100–16, set forth in the Appendix to this part, the Secretary of the Treasury has delegated to the Secretary of Homeland Security the authority to prescribe all Customs Regulations relating to customs revenue functions, except that the Secretary of the Treasury retains the sole authority to approve such Customs Regulations concerning subject matters listed in paragraph 1(a)(i) of the Order. Regulations for which the Secretary of the Treasury retains the sole authority to approve will be signed by the Secretary of Homeland Security (or his or her DHS delegate), and by the Secretary of the Treasury (or his or her Treasury delegate) to indicate approval.

(2) When a regulation described in paragraph (a)(1) of this section is published in the **Federal Register**, the preamble of the document accompanying the regulation will clearly indicate that it is being issued in accordance with paragraph (a)(1) of this section.

(b) *Regulations with respect to which the Department of Homeland Security is authorized to sign for the Department of the Treasury.* (1) By Treasury Department Order No. 100–16, set forth in the Appen-

dix to this part, the Secretary of the Treasury delegated to the Secretary of Homeland Security the authority to prescribe and approve regulations relating to customs revenue functions on behalf of the Secretary of the Treasury when the subject matter of the regulations is not listed in paragraph 1(a)(i) of the Order. Such regulations are the official regulations of both Departments notwithstanding that they are not signed by an official of the Department of the Treasury. These regulations will be signed by the Secretary of Homeland Security (or his or her DHS delegate).

(2) When a regulation described in paragraph (b)(1) of this section is published in the **Federal Register**, the preamble of the document accompanying the regulation will clearly indicate that it is being issued in accordance with paragraph (b)(1) of this section.

(c) *Sole signature by Secretary of the Treasury.* (1) Pursuant to Treasury Department Order No. 100–16, set forth in the Appendix to this part, the Secretary of the Treasury reserves the right to promulgate regulations related to the customs revenue functions. Such regulations are signed by the Secretary of the Treasury (or his or her delegate) after consultation with the Secretary of Homeland Security (or his or her delegate), and are the official regulations of both Departments.

(2) When a regulation described in paragraph (c)(1) of this section is published in the **Federal Register**, the preamble of the document accompanying the regulation will clearly indicate that the regulation is being issued in accordance with paragraph (c)(1) of this section.

§ 0.2 Other Customs Regulations issued under the authority of the Department of Homeland Security.

(a) The authority of the Secretary of the Treasury with respect to Customs Regulations that are not related to customs revenue functions was transferred to the Secretary of Homeland Security pursuant to section 403(1) of the Homeland Security Act of 2002. Such regulations are signed by the Secretary of Homeland Security (or his or her delegate) and are the official regulations of the Department of Homeland Security.

(b) When a regulation described in paragraph (a) of this section is published in the **Federal Register**, the preamble accompanying the regulation shall clearly indicate that it is being issued in accordance with paragraph (a) of this section.

Appendix to 19 CFR Part 0—Treasury Department Order No. 100–16

Delegation from the Secretary of the Treasury to the Secretary of Homeland Security of general authority over Customs revenue functions vested in the Secretary of the Treasury as set forth in the Homeland Security Act of 2002.

Treasury Department, Washington, DC, May 15, 2003.

By virtue of the authority vested in me as the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b) and section 412 of the Homeland Security Act of 2002 (Pub. L. 107-296) (Act), it is hereby ordered:

1. Consistent with the transfer of the functions, personnel, assets, and liabilities of the United States Customs Service to the Department of Homeland Security as set forth in section 403(1) of the Act, there is hereby delegated to the Secretary of Homeland Security the authority related to the Customs revenue functions vested in the Secretary of the Treasury as set forth in sections 412 and 415 of the Act, subject to the following exceptions and to paragraph 6 of this Delegation of Authority:

(a)(i) The Secretary of the Treasury retains the sole authority to approve any regulations concerning import quotas or trade bans, user fees, marking, labeling, copyright and trademark enforcement, and the completion of entry or substance of entry summary including duty assessment and collection, classification, valuation, application of the U.S. Harmonized Tariff Schedules, eligibility or requirements for preferential trade programs, and the establishment of recordkeeping requirements relating thereto. The Secretary of Homeland Security shall provide a copy of all regulations so approved to the Chairman and Ranking Member of the Committee on Ways and Means and the Chairman and Ranking Member of the Committee on Finance every six months.

(ii) The Secretary of the Treasury shall retain the authority to review, modify, or revoke any determination or ruling that falls within the criteria set forth in paragraph 1(a)(i), and that is under consideration pursuant to the procedures set forth in sections 516 and 625(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1516 and 1625(c)). The Secretary of Homeland Security periodically shall identify and describe for the Secretary of the Treasury such determinations and rulings that are under consideration under sections 516 and 625(c) of the Tariff Act of 1930, as amended, in an appropriate and timely manner, with consultation as necessary, prior to the Secretary of Homeland Security's exercise of such authority. The Secretary of Homeland Security shall provide a copy of these identifications and descriptions so made to the Chairman and Ranking Member of the Committee on Ways and Means and the Chairman and Ranking Member of the Committee on Finance every six months. The Secretary of the Treasury shall list any case where Treasury modified or revoked such a determination or ruling.

(b) Paragraph 1(a) notwithstanding, if the Secretary of Homeland Security finds an overriding, immediate, and extraordinary security threat to public health and safety, the Secretary of Homeland Security may take action described in paragraph 1(a) without the prior

approval of the Secretary of the Treasury. However, immediately after taking any such action, the Secretary of Homeland Security shall certify in writing to the Secretary of the Treasury and to the Chairman and Ranking Member of the Committee on Ways and Means and the Chairman and Ranking Member of the Committee on Finance the specific reasons therefor. The action shall terminate within 14 days or as long as the overriding, immediate, and extraordinary security threat exists, whichever is shorter, unless the Secretary of the Treasury approves the continued action and provides notice of such approval to the Secretary of Homeland Security.

(c) The Advisory Committee on Commercial Operations of the Customs Service (COAC) shall be jointly appointed by the Secretary of the Treasury and the Secretary of Homeland Security. Meetings of COAC shall be presided over jointly by the Secretary of the Treasury and the Secretary of Homeland Security. The COAC shall advise the Secretary of the Treasury and the Secretary of Homeland Security jointly.

2. Any references in this Delegation of Authority to the Secretary of the Treasury or the Secretary of Homeland Security are deemed to include their respective delegees, if any.

3. This Delegation of Authority is not intended to create or confer any right, privilege, or benefit on any private person, including any person in litigation with the United States.

4. Treasury Order No. 165-09, "Maintenance of delegation in respect to general authority over Customs Revenue functions vested in the Secretary of the Treasury, as set forth and defined in the Homeland Security Act of 2002," dated February 28, 2003, is rescinded. To the extent this Delegation of Authority requires any revocation of any other prior Order or Directive of the Secretary of the Treasury, such prior Order or Directive is hereby revoked.

5. This Delegation of Authority is effective May 15, 2003. This Delegation is subject to review on May 14, 2004. By March 15, 2004, the Secretary of the Treasury and the Secretary of Homeland Security shall consult with the Chairman and Ranking Member of the Committee on Ways and Means and the Chairman and Ranking Member of the Committee on Finance to discuss the upcoming review of this Delegation.

6. The Secretary of the Treasury reserves the right to rescind or modify this Delegation of Authority, promulgate regulations, or exercise authority at any time based upon the statutory authority reserved to the Secretary by the Act.

John W. Snow, *Secretary of the Treasury*.

* * * * *

- 3. Add Chapter IV to Title 19 to read as follows:

**CHAPTER IV—BUREAU OF IMMIGRATION AND CUSTOMS
ENFORCEMENT; DEPARTMENT OF HOMELAND
SECURITY**

PARTS 400 to 599—[RESERVED]

Dated: August 5, 2003.

Asa Hutchinson,

*Under Secretary for Border and Transportation Security,
Department of Homeland Security.*

Dated: August 6, 2003.

Timothy E. Skud,

Deputy Assistant Secretary, Department of the Treasury.

[Published in the Federal Register, August 28, 2003 (68 FR 51868)]

19 CFR Part 141

RIN 1515-AC15

**Anticounterfeiting Consumer Protection Act: Entry
Documentation**

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

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: This document informs the public that the Bureau of Customs and Border Protection (CBP) has decided to withdraw the proposal to require importers to provide on the invoice a listing of all trademarks appearing on imported merchandise and its packaging. The proposal was intended to provide a means to determine whether imported merchandise bears an infringing trademark in violation of law. The authority for the proposal was section 12 of the Anti-counterfeiting Consumer Protection Act. Based on the comments received in response to the proposal and further evaluation of the proposal, CBP has determined that the proposed rule would not be an efficient and effective way to combat counterfeiting and is withdrawing the proposal.

DATES: As of August 22, 2003, the proposed rule published on September 13, 1999 (64 FR 49423) is withdrawn.

FOR FURTHER INFORMATION CONTACT: George F. McCray, Esq., Chief, Intellectual Property Branch, Office of Regulations and Rulings, Customs and Border Protection, (202) 572-8710.

SUPPLEMENTARY INFORMATION:

Background

On September 13, 1999, Customs (then exclusively under the Department of the Treasury; as of March 1, 2003, the U.S. Customs Service was transferred to the Department of Homeland Security, and became redesignated as the Bureau of Customs and Border Protection (CBP)) published a document in the **Federal Register** (64 FR 49423) proposing to amend the Customs Regulations to require all importers to provide on each invoice of imported merchandise a listing of any trademark information appearing on the imported merchandise, including packaging. The proposal was intended to provide a means to determine whether imported merchandise bears an infringing trademark in violation of law. The authority for the proposal was section 12 of the Anticounterfeiting Consumer Protection Act of 1996 (ACPA)(19 U.S.C. 1484(d)).

Comments on the proposed amendment were solicited for 60 days.

The comment period closed November 13, 1999. Fifty-seven comments were received. Most were against the proposal. Among the reasons cited were that this requirement would present an overwhelming burden to importers, trademark owners, manufacturers and suppliers, and establish unrealistic recordkeeping requirements. Further, the requirement would likely not be complied with by counterfeiters. Additionally, it was stated that the proposal would not provide Customs with any new enforcement tools to combat the importation of infringing goods into the United States.

The following summarized comments supporting the withdrawal of the proposal are noted.

Costs of Compliance Would be Enormous

The administrative costs associated with complying with this requirement would be enormous. The proposed amendment would cause severe and unreasonable burdens to trade and provide only minimal, if any, benefit to Customs enforcement.

The statement in the notice that the proposal would require importers to “identify information of a sort that is already maintained by the importer” is incorrect. The proposal would require importers to expend extraordinary efforts canvassing their suppliers—and their suppliers’ third-party suppliers—in order to develop required trademark lists. Additionally, even more effort would be required to ensure that the lists are up to date and accurately reflect the components contained in the merchandise covered by each specific invoice.

Creating and maintaining this database would force importers to create new administrative procedures devoted solely to tracking

trademarks on components contained within final products. It would also force importers to devote resources to policing suppliers of such components.

Unrealistic Recordkeeping Requirements

The proposed requirement would also place difficult recordkeeping obligations on foreign suppliers and importers who do not have direct knowledge of product components or parts. It would be extremely difficult to effectively monitor invoicing practices of thousands of different foreign vendors to ensure that trademark information is accurately listed on invoices. Additionally, many imported products incorporate parts and components which are themselves trademarked merchandise. Obtaining information as to the trademark status of parts and components would require considerable effort from both vendors and importers, and in certain instances would be unavailable in any event.

Most businesses (particularly those in the areas of high technology and communications) have very rapidly changing product specifications, often changing in-box components bearing trademarks during a production run. The logistics of managing exactly which trademarks are included in which box on which shipment would add enormous complexity and cost to the supply chain.

No New Enforcement Tools

Furthermore, it was stated that the proposed regulation would do nothing to enhance Customs ability to enforce ACPA. Requiring trademark information to be printed on each invoice would not address the principal problem, which is mis-declaration by counterfeiters. Listing trademarks on an invoice does not help a Customs inspector determine whether or not the merchandise bears an infringing trademark. Generally, the only method of determining this is through actual inspection of the merchandise; in fact, without such inspections, substantiating the veracity of the information contained in these commercial invoices is extremely difficult.

Trademarked Merchandise will be identified for Criminals and Counterfeiters who will not comply with new requirements

The fact that a shipment consists of branded apparel is not necessarily apparent from commercial and transportation documents and the identity of the trademarks is not always apparent from the name of the seller or consignee. This present circumstance makes it difficult for criminals to identify shipments of interest. The proposed entry documentation requirements would eliminate this margin of safety and make it easier for this class of individual to target shipments.

Increased Penalties

The proposal creates the likelihood that importers of legitimate product could be penalized for inadvertent omissions of some protected trademarks from the invoice. The regulatory proposal would create an affirmative obligation on the part of exporters and importers to list all trademarks appearing on the merchandise to be imported into the United States, and the omission of information on any trademarked goods would impose liability, under 19 U.S.C. 1592(a) for any “material omission”.

Conclusion

CBP has determined that the proposed rulemaking should be withdrawn. After consideration of the comments and further review, CBP agrees with the majority of commenters that the proposed approach would not be an effective or efficient way to combat counterfeiting. Since section 12 of the ACPA does not mandate revision of the Customs Regulations, but rather provides authority for CBP to require such additional information as the agency determines “may be necessary” to determine whether imported merchandise bears infringing trademarks, CBP does not believe amendment of the Customs Regulations is required; Customs already has access to information from other sources which effectively serves to identify imported merchandise bearing violative trademarks. Accordingly, CBP is withdrawing the proposal published in the **Federal Register** (64 FR 49423) on September 13, 1999. If, in the future, a more effective and efficient method of data collection is developed to aid in determining whether imported merchandise bears an infringing trademark, CBP will consider implementation of such measures at that time.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Approved: August 18, 2003

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, August 22, 2003 (68 FR 50733)]

Notice of Cancellation of Customs Broker License

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

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license and any and all associated local and national permits are canceled without prejudice:

Name	License #	Issuing Port
Ronald Milton Clarke	03549	Los Angeles
Edward K. Devlin	04174	Los Angeles
Jesse Peralez	04783	Los Angeles
Elio Vivante	07102	Los Angeles
Robert K. Copeland	07382	Los Angeles
Emerald Customs Brokers, Inc.	13115	Los Angeles
Lisa Kearney	15340	Champlain
James A. Daily	04341	Champlain
Midas Express, Inc.	12860	San Francisco

Dated: August 20, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[Published in the Federal Register, August 28, 2003 (68 FR 51791)]

Notice of Cancellation of Customs Broker License

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

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license are canceled without prejudice.

Name	License #	Issuing Port
Michael Dugan	04718	Champlain
Douglas McKenny	09061	Champlain

These brokers hold multiple Customs broker licenses. They continue to hold other valid Customs broker licenses.

Dated: August 20, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[Published in the Federal Register, August 28, 2003 (68 FR 51792)]

Notice of Revocation of Customs Broker License

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 USC 1641) and the Customs Regulations [19 CFR 111.53] the following Customs broker license is revoked with prejudice.

Name	License	Port
Byung Wu Lee	10535	Los Angeles, California

Dated: August 20, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[Published in the Federal Register, August 28, 2003 (68 FR 51792)]

Notice of Cancellation of Customs Broker Permit

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker local permits are canceled without prejudice.

Name	Permit #	Issuing port
Masterpiece International, Ltd.	21-02-002	Port Arthur
R.W. Smith and Co., Inc.	95-2101-1	Port Arthur
CK Logistics, Inc.	53-02-KT5	Houston
Holland Custom Brokers, Inc.	01-17-007	Atlanta
International Cargo Exchange Logistics Inc.	17-02	Atlanta
USF Worldwide, Inc.	85011	Houston
USF Worldwide, Inc.	99038	Los Angeles
Clasquin Laperriere CHB, Inc.	00-17-001	Atlanta
DHL Airways, Inc.	9174	San Francisco
DHL Airways, Inc.	30-87-F11	Seattle
Rajendra Lal	28-02-NZ2	San Francisco
Hankyu International Transport (USA), Inc.	5200610	Miami
The following local permits were incor- rectly cancelled for the Port of Houston:		
Rulewave, Inc.	96-2101-1	Port Arthur
Jeanette Larbardini CHB	98-007	Port Arthur
W.R. Zanes & Co., of LA, Inc.	96-2101-2	Port Arthur
XL Brokers International, Inc.	97-003	Port Arthur

Dated: August 20, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[Published in the Federal Register, August 28, 2003 (68 FR 51793)]

Retraction of Revocation Notice

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General Notice.

SUMMARY: The following Customs broker license was erroneously included in a list of revoked Customs broker licenses.

Name	License	Port Name
Linda K. Pettingill	17122	San Diego

Customs broker license No. 17122 remains valid.

Dated: August 20, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[Published in the Federal Register, August 28, 2003 (68 FR 51793)]

Cancellation of Customs Broker License Due to Death of the License Holder

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

ACTION: General Notice

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.51(a), the following individual Customs broker license and any and all associated permits have been cancelled due to the death of the broker:

Name	License #	Port Name
Jose A. Roman	04860	San Juan
David Michael Cline	17369	Los Angeles
Roger Mann	14963	Los Angeles
Oscar Zaldivar	15660	Los Angeles
Harvey Yaffe	02484	New Orleans

Dated: August 20, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[Published in the Federal Register, August 28, 2003 (68 FR 51795)]

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

Washington, DC, August 27, 2003,

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.*

PROPOSED REVOCATION OF RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF PAPER TRIMMERS

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

ACTION: Notice of proposed revocation of tariff classification ruling letters and revocation of any treatment relating to the classification of paper trimmers.

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 (Customs) intends to revoke four ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain paper trimmers. Similarly, Customs 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 October 10, 2003.

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., 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: David S. Salkeld,
General Classification Branch, at (202) 572-8781.

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 Customs 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 Customs 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 Customs 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 Customs intends to revoke four ruling letters relating to the tariff classification of certain paper trimmers. Although in this notice Customs is specifically referring to the revocation of Headquarters Ruling Letter (HQ) 964727, dated February 21, 2001, and HQ 964947, dated June 6, 2001, and to New York Ruling Letter (NY) G83507, dated November 6, 2000 and NY G84202, dated November 30, 2000 (Attachments A-D, respectively), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs 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 Customs 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, Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. This treatment may, among

other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved with substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs 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 HQ 964727, HQ 964947, NY G83507, and NY G84202, Customs classified certain paper trimmers. Customs classified the paper trimmers in subheading 8214.90.90, HTSUS, which provides for "Other articles of cutlery (for example, hair clippers, butchers' knives or kitchen cleavers, chopping or mincing knives, paper knives); manicure or pedicure sets and instruments (including nail files); base metal parts thereof: Other: Other (including parts)."

Based on our analysis of the scope of the terms of headings 8214 and 8441, HTSUS, the Legal Notes, and the Explanatory Notes and new information, we now believe the paper trimmers subject to this notice are classified in subheading 8441.10.00, HTSUS, which provides for "Other machinery for making up paper pulp, paper or paperboard, including cutting machines of all kinds, and parts thereof: Cutting machines."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke HQ 964727, HQ 964947, NY G83507, and NY G84202 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 HQs 966582, 966583, 966604, and 966605 (Attachments E–H, respectively). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs 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: August 19, 2003

Gerard J. O'Brien, Jr. for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT A]

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

HQ 964727

February 21, 2001

CLA-2 RR:CR:GC 964727 GOB

CATEGORY: Classification

TARIFF NO.: 8214.90.90

PORT DIRECTOR
U.S. CUSTOMS SERVICE
Los Angeles - Long Beach Seaport Area
300 S. Ferry Street
Terminal Island, CA 90731

RE: Protest 2704-00-100731; Paper trimmers

DEAR PORT DIRECTOR:

This is our decision regarding Protest 2704-00-100731, filed on behalf of Quartet Manufacturing, a division of General Binding Corporation ("protestant"), concerning the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of certain paper trimmers.

FACTS:

The file reflects the following. The entries at issue were filed between February 8, 1999 and April 29, 1999. The entries were liquidated between December 27, 1999 and March 10, 2000. The protest was filed on March 16, 2000.

Your memorandum states that the merchandise at issue, GT II paper trimmers, was entered and liquidated under subheading 8472.90.95, HTSUS, as: "Other office machines . . . : . . . Other: . . . Other." The protestant now claims classification under subheading 8441.10.00, HTSUS, as: "Other machinery for making up paper pulp, paper or paperboard, including cutting machines of all kinds . . . : Cutting machines."

The Quartet GT II Series Trimmer, 15" is described as follows on the Internet: ". . . the stainless steel self-sharpening blades and the aluminum die-cast metal handle assure a clean cut every time. Solidly constructed of a 12 by 15 inch wood composite base with a neutral vinyl laminated surface. Features include convenient metric and imperial measurements, safety rail and handle lock. Cuts up to 15 sheets."

ISSUE:

What is the tariff classification of the paper trimmers?

LAW AND ANALYSIS:

We note initially that the protest was timely filed under the statutory and regulatory provisions for protests, 19 U.S.C. 1514(c)(3)(A) and 19 CFR 174.12(e)(1).

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). 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's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

The HTSUS provisions under consideration are as follows:

7326	Other articles or iron or steel:
7326.90	Other:
7326.90.85	Other.
* * *	* * *
8214	Other articles of cutlery (for example, hair clippers, butchers' or kitchen cleavers, chopping or mincing knives, paper knives) . . . :
8214.90	Other:
8214.90.90	Other (including parts).
* * *	* * *
8441	Other machinery for making up paper pulp, paper or paperboard, including cutting machines of all kinds . . . :
8441.10.00	Cutting machines.
* * *	* * *
8472	Other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil sharpening machines, perforating or stapling machines):
8472.90	Other:
8472.90.95	Other.

Legal Note 1(k) to Section XVI, HTSUS, provides: "This section [Section XVI, which includes Chapters 84 and 85, HTSUS] does not cover: . . . Articles of chapter 82 or 83." Thus, if a good is described in Chapter 82 or 83, HTSUS, it is not classified in Chapter 84 or 85, HTSUS. Accordingly, if the paper trimmer is described in heading 8214, HTSUS, as other articles of cutlery, classification in headings 8441 and 8472 is precluded.

EN 73.26 provides: "This heading covers all iron or steel articles . . . **other than** articles . . . included in **Chapter 82 or 83** or more specifically covered elsewhere in the Nomenclature." [Emphasis in original.]

Heading 8214, HTSUS, covers other articles of cutlery. "Cutlery" is defined in the Random House Unabridged Dictionary (1993) as: "cutting instruments collectively, esp. knives for cutting food . . ." It is defined in Webster's Third New International Dictionary (1986) as: "edged or cutting tools (as shears, knives, surgical instruments) . . ." The heading text of 8214

specifically references hair clippers, butchers' or kitchen cleavers, chopping or mincing knives, paper knives. The paper trimmer consists of a paper knife with a handle and block.

In NY G84202 dated November 30, 2000, Customs classified two paper trimmers in subheading 8214.90.90, HTSUS. One of the trimmers is described as 12-inch/30 cm rotary paper trimmer; the second is stated to be similar to the first, but smaller and designed to be carried in a standard ring binder.

In NY G83507 dated November 6, 2000, Customs again classified a paper trimmer in subheading 8214.90.90, HTSUS. That good was described as made of lightweight plastic, approximately 14 inches long and three and one-half inches wide.

After a careful consideration of this matter, we conclude that the paper trimmer is an article of cutlery and is described in heading 8214, HTSUS.

Accordingly, pursuant to Note 1(k) to Chapter XVI, excerpted above, classification in headings 8441 and 8472 is precluded.

Also, pursuant to EN 73.26, classification in heading 7326, HTSUS, is precluded as the EN provides that heading 7326, HTSUS, covers all iron and steel articles other than articles included in Chapter 82 or 83. See the excerpt from EN 73.26, above.

We note additionally that the paper trimmer is not a "machine," as that term is used in headings 8441 and 8472, HTSUS. There is nothing in the material submitted by the protestant that indicates that the paper trimmer is commonly or commercially known as a machine, nor is there any information indicating that the paper trimmer is advertised or sold as a machine. We have reviewed Internet sites that depict and offer for sale this and similar hand operated paper trimmers, and we have found no reference to them as machines.

The rulings cited by the protestant are not persuasive as to its claim because the goods in those rulings are clearly distinguishable from the subject paper trimmers. For example, NY 851188 involved a Dahle plot cutter used to trim and cut drawings; the operation of the plot cutter is controlled from an electronic control panel. In NY 803750, the goods were a slitting machine which cut "e continuous paper web into a maximum of twelve ribbons."

The paper trimmer is classified in subheading 8214.90.90, HTSUS, as: "Other articles of cutlery Other: . . . Other."

HOLDING:

As detailed above, the paper trimmer is classified in subheading 8214.90.90, HTSUS, as: "Other articles of cutlery Other: . . . Other."

Since the rate of duty under the classification indicated above is more than the liquidated rate, you are instructed to DENY the protest in full.

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 in accordance with the decision must be accomplished prior to mailing of 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.treas.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,

HQ 964947
June 6, 2001
CLA-2 RR:CR:GC 964947 GOB
CATEGORY: Classification
TARIFF NO.: 8214.90.90

PORT DIRECTOR
U.S. CUSTOMS SERVICE
1000 Second Avenue
Seattle, WA 98104-1049

RE: Protest 3001-97-100286; Paper trimmers

DEAR SIR:

This is our decision regarding Protest 3001-97-100286, filed by Dick Applebaum Co. ("protestant") concerning the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of certain plastic paper trimmers.

FACTS:

The file reflects the following. The eight entries at issue were filed between October 24, 1996 and January 2, 1997. The eight entries were liquidated between February 7, 1997 and April 18, 1997. The protest was timely filed on May 5, 1997.

Your office advises that certain of the paper trimmers were entered and liquidated under subheading 8205.59.55, HTSUS, while most of the paper trimmers were entered and liquidated under subheading 8214.90.90, HTSUS. The protestant now claims classification under subheading 8472.90.90, HTSUS.

The paper trimmers consist of a flat plastic cutting surface and an arm attached at one end to the cutting surface. The arm contains a metal cutting blade. Affixed to the side of the cutting surface closest to the blade are flat metal and plastic bars which serve to hold down the sheet of paper being trimmed. The cutting surface, which is approximately five inches wide and seven inches long, is marked with a grid for measurement. After the sheet of paper has been positioned, the user manually pulls down the cutting arm to trim the paper.

ISSUE:

What is the tariff classification of the paper trimmers?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). 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's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

The HTSUS provisions under consideration are as follows:

8205	Handtools . . . not elsewhere specified or included . . . :
	Other handtools . . . :
8205.59	Other:
	Other:
	Other:
8205.59.55	Other
*	* * * * * *
8214	Other articles of cutlery (for example, hair clippers, butchers' or kitchen cleavers, chopping or mincing knives, paper knives) . . . :
8214.90	Other:
8214.90.90	Other (including parts).
*	* * * * * *
8441	Other machinery for making up paper pulp, paper or paperboard, including cutting machines of all kinds . . . :
8441.10.00	Cutting machines.
*	* * * * * *
8472	Other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil sharpening machines, perforating or stapling machines):
8472.90	Other:
8472.90.95	Other.

Legal Note 1(k) to Section XVI, HTSUS, provides: "This section [Section XVI, which includes Chapters 84 and 85, HTSUS] does not cover: . . . Articles of chapter 82 or 83." Thus, if a good is described in Chapter 82 or 83, HTSUS, it is not classified in Chapter 84 or 85, HTSUS. Accordingly, if the paper trimmer is described in heading 8214, HTSUS, as other articles of cutlery, classification in headings 8441 and 8472 is precluded.

Heading 8214, HTSUS, covers other articles of cutlery. "Cutlery" is defined in the Random House Unabridged Dictionary (1993) as: "cutting instruments collectively, esp. knives for cutting food . . ." It is defined in Webster's Third New International Dictionary (1986) as: "edged or cutting tools (as shears, knives, surgical instruments) . . ." The heading text of 8214 specifically references paper knives. The paper trimmer consists of a paper knife with a handle and block.

After a careful consideration of this matter, we conclude that the paper trimmer is an article of cutlery and is described in heading 8214, HTSUS.

Accordingly, pursuant to Note 1(k) to Chapter XVI, excerpted above, classification in headings 8441 and 8472 is precluded. We note additionally that the paper trimmer is not a "machine," as that term is used in headings 8441 and 8472, HTSUS. There is nothing in the material submitted by the protestant that indicates that the paper trimmer is commonly or commercially known as a machine, nor is there any information indicating that the paper trimmer is advertised or sold as a machine. We have reviewed Internet sites that depict and offer for sale hand operated paper trimmers, and we have found no reference to them as machines.

Because the paper trimmer is described in heading 8214, HTSUS, it is not described in heading 8205, HTSUS, which covers: "Handtools . . . not elsewhere specified or included . . ." The paper trimmers are specified and included in heading 8214, HTSUS.

We find that the plastic paper trimmers are classified in subheading 8214.90.90, HTSUS, as: "Other articles of cutlery (for example, . . . paper knives) . . . : . . . Other: . . . Other . . ."

This finding is consistent with the following rulings: HQ 964727 dated February 21, 2001, NY G84202 dated November 30, 2000, and NY G83507 dated November 6, 2000. In each of these rulings, paper trimmers were classified in subheading 8214.90.90, HTSUS.

HOLDING:

As detailed above, the plastic paper trimmers are classified in subheading 8214.90.90, HTSUS, as: "Other articles of cutlery (for example, . . . paper knives) . . . : . . . Other: . . . Other . . ."

Since the total duties due under the classification indicated above (subheading 8214.90.90, HTSUS) is greater than the duties paid at liquidation (some articles classified in subheading 8214.90.90, HTSUS, and some classified in subheading 8205.59.55, HTSUS), you are instructed to reclassify the merchandise as indicated and DENY the protest in full.

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 in accordance with the decision must be accomplished prior to mailing of 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.treas.gov, by means of the Freedom of Information Act, and other methods of public distribution.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY G83507
November 6, 2000
CLA-2-82:RR:NC:N1:113 G83507
CATEGORY: Classification
TARIFF NO.: 8214.90.9000

MR. JAMES P. SULLIVAN
SULLIVAN & LYNCH, P.C.
156 State Street
Boston, MA 02109-2508

RE: The tariff classification of a paper trimmer from China

DEAR MR. SULLIVAN

In your letter dated October 17, 2000, on behalf of Hunt Corporation, you requested a tariff classification ruling.

The sample you submitted is the Personal Paper Trimmer (item number 26403). It is made primarily of lightweight plastic, rests upon a tabletop, and measures approximately 14 inches long by 3.5 inches wide. The trimmer operates manually by sliding a 1/4-inch metal blade across its length to cut up to three sheets of paper at a time. It also has a pull-out ruler for precise measurements.

The applicable subheading for the paper trimmer will be 8214.90.9000, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of cutlery, other, other. The rate of duty will be 1.4 cents each plus 3.2 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 James Smyth at 212-637-7008.

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

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY G84202
November 30, 2000
CLA-2-82:RR:NC:N1:113 G84202
CATEGORY: Classification
TARIFF NO.: 8214.90.9000

MS. SUZANNE LORBIECKI
FISKARS, INC.
7811 W. Stewart Avenue
P.O. Box 8027
Wausau, WI 54402

RE: The tariff classification of paper trimmers from Mexico

DEAR MS. LORBIECKI:

In your letter dated November 3, 2000, you requested a tariff classification ruling.

The samples you provided are two Fiskars paper trimmers, which will be packaged together for retail sale. Item 95808994 is the Fiskars 12-inch/30 cm Rotary Paper Trimmer. It consists of a non-skid plastic base holding a guide rail. A plastic blade holder containing a rotating metal blade is attached to the rail. By placing cutting material on the base under the rail, a user can trim the material by pushing the blade across it.

Item 95909494 is the Fiskars Personal Paper Trimmer. It is similar to the other trimmer, but is smaller and designed to be carried in a standard ring binder. Both of these items are intended to be used on a desktop or similar work surface, and not in the hand. Both bases are printed with a measuring grid as a guide, but the principal function of the items is to cut paper.

The applicable subheading for the trimmers will be 8214.90.9000, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of cutlery, other, other. The general rate of duty will be 1.4 cents each [piece] plus 3.2 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 James Smyth at 212-637-7008.

ROBERT B. SWIERUPSKI
Director;
National Commodity Specialist Division.

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966582
CLA-2 RR:CR:GC 966582 DSS
CATEGORY: Classification
TARIFF NO.: 8441.10.00

MR. THOMAS J. O'DONNELL
RODRIGUEZ O'DONNELL ROSS FUERST GONZALEZ & WILLIAMS
20 North Wacker Drive
Suite 1416
Chicago, IL 60606

RE: Revocation of HQ 964727; Paper Trimmers

DEAR MR. O'DONNELL:

This letter is pursuant to U.S. Customs and Border Protection (Customs) reconsideration of Headquarters Ruling letter (HQ) 964727, February 21, 2001, which was issued with respect to Protest 2704-00-100731. We have reviewed the classification in HQ 964727 and have determined that it is incorrect. This ruling sets forth the correct classification. This ruling has no effect on the entries which were the subject of Protest 2704-00-100731.

FACTS:

In HQ 964727, Customs classified a certain paper trimmer, imported by Quartet Manufacturing, a division of General Binding Corporation (GBC). The paper trimmer at issue, the Quartet GT II Series Trimmer (15"), was described in HQ 964727 as follows:

. . . the stainless steel self-sharpening blades and the aluminum die-cast metal handle assure a clean cut every time. Solidly constructed of a 12 by 15 inch wood composite base with a neutral vinyl laminated surface. Features include convenient metric and imperial measurements, safety rail and handle lock. Cuts up to 15 sheets.

This paper trimmer is a so-called arc-type paper trimmer because the cutting blade is attached to a handle that moves up and down in an arc. In HQ 964727, Customs classified the subject paper trimmer under subheading 8214.90.90, HTSUS, which provides for "Other articles of cutlery (for example, hair clippers, butchers' knives or kitchen cleavers, chopping or mincing knives, paper knives); manicure or pedicure sets and instruments (including nail files); base metal parts thereof: Other: Other (including parts)."

ISSUE:

Whether the instant paper trimmers are classified under heading 8214, HTSUS, as other articles of cutlery, or under heading 8441, HTSUS, as other machinery for making up paper, cutting machines.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). 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 GRIs may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

- 8214 Other articles of cutlery (for example, hair clippers, butchers' knives or kitchen cleavers, chopping or mincing knives, paper knives); manicure or pedicure sets and instruments (including nail files); base metal parts thereof:
- 8214.90 Other:
- 8214.90.90 Other (including parts)
- * * * * *
- 8441 Other machinery for making up paper pulp, paper or paperboard, including cutting machines of all kinds, and parts thereof:
- 8441.10.00 Cutting machines

Note 1(k) to Section XVI, HTSUS, provides: "This section [Section XVI, which includes Chapter 84, HTSUS] does not cover: . . . Articles of chapter 82 or 83." Thus, if a good is described in Chapter 82 or 83, HTSUS, it is not classified in Chapter 84, HTSUS. Accordingly, if the paper trimmer is described in heading 8214, HTSUS, as other articles of cutlery, classification in heading 8441 is precluded. On the other hand, Note 1(f) to Section XV, HTSUS, excludes articles of Section XVI (including Chapter 84), from classification in Section XV (including Chapter 82), so if the paper trimmer falls under classification in heading 8441, as a cutting machine for making up paper, then classification under heading 8214 is precluded.

As indicated in HQ 964727, heading 8214, HTSUS, covers other articles of cutlery. "Cutlery" is defined in the *Random House Unabridged Dictionary* (1993) as: "cutting instruments collectively, esp. knives for cutting food . . ." It is defined in *Webster's Third New International Dictionary* (1986) as: "edged or cutting tools (as shears, knives, surgical instruments) . . ." In HQ 964727, we concluded that the paper trimmer was a paper knife attached to a block.

As was noted in HQ 964727, there was no evidence presented that the articles were commonly or commercially known or advertised as machines. New information has been presented to Customs, however, that has caused us to view the classification in HQ 964727 as incorrect. You have presented evidence that arc-motion cutters and trimmers, such as the one at issue, are commercially known as "guillotine" type cutters and trimmers. Customs has confirmed this through a search of Internet sources. The EN for heading 8441, identifies "guillotines" as an exemplar of the types of machinery included in that heading. Customs has previously interpreted "guillotine" type cutters to be limited to the type of devices which cut or trim by means of a

blade descending vertically to perform the cutting operation. *See* New York Ruling Letter H84946, dated August 30, 2001. Customs has confirmed that dictionary definitions of the term “guillotine” indicate that it is a machine. *See, e.g., Oxford English Dictionary and Webster’s Third International Dictionary.*

Insofar as the arc-motion trimmer at issue is commercially identified and known as a “guillotine” type, that “guillotines” are commonly known as machines, and the ENs identify “guillotines” as falling under heading 8441, Customs is now of the view that the instant paper trimmer is classified under subheading 8441.10.00, HTSUS.

Accordingly, pursuant to Note 1(f) to Chapter XV, excerpted above, classification in heading 8214 is precluded.

As indicated above, this ruling has no effect on the entries which were the subject of Protest 2701–00–100731, as Customs no longer has jurisdiction over those entries. *See San Francisco Newspaper Printing Co. v. United States*, 620 F. Supp. 738 (CIT 1985).

HOLDING:

In accordance with the above discussion, the correct classification for the instant arc-motion paper trimmer is subheading 8441.10.00, HTSUS, which provides for “Other machinery for making up paper pulp, paper or paperboard, including cutting machines of all kinds, and parts thereof: Cutting machines.”

EFFECT ON OTHER RULINGS:

HQ 964727 is REVOKED.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

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

HQ 966583
CLA-2 RR:CR:GC 966583 DSS
CATEGORY: Classification
TARIFF NO.: 8441.10.00

DICK APPLEBAUM CO.
331 N. Maitland Avenue /#D7
Maitland, FL 32751

RE: Revocation of HQ 964947; Paper Trimmers

TO WHOM IT MAY CONCERN:

This letter is pursuant to U.S. Customs and Border Protection (Customs) reconsideration of Headquarters Ruling letter (HQ) 964947, dated June 6, 2001, which was issued with respect to Protest 3001–97–100286. We have reviewed the classification in HQ 964947 and have determined that it is incorrect. This ruling sets forth the correct classification. This ruling has no effect on the entries which were the subject of Protest 3001–97–100286.

FACTS:

In HQ 964947, Customs classified a certain paper trimmer, imported by Dick Applebaum Co. The paper trimmer at issue was described in HQ 964947 as follows:

The paper trimmers consist of a flat plastic cutting surface and an arm attached at one end to the cutting surface. The arm contains a metal cutting blade. Affixed to the side of the cutting surface closest to the blade are flat metal and plastic bars which serve to hold down the sheet of paper being trimmed. The cutting surface, which is approximately five inches wide and seven inches long, is marked with a grid for measurement. After the sheet of paper has been positioned, the user manually pulls down the cutting arm to trim the paper.

This paper trimmer is a so-called arc-type paper trimmer because the cutting blade is attached to a handle that moves up and down in an arc. In HQ 964947, Customs classified the subject paper trimmer under subheading 8214.90.90, HTSUS, which provides for "Other articles of cutlery (for example, hair clippers, butchers' knives or kitchen cleavers, chopping or mincing knives, paper knives); manicure or pedicure sets and instruments (including nail files); base metal parts thereof: Other: Other (including parts)."

ISSUE:

Whether the instant paper trimmers are classified under heading 8214, HTSUS, as other articles of cutlery, or under heading 8441, HTSUS, as other machinery for making up paper, cutting machines.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). 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 GRIs may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

- 8214 Other articles of cutlery (for example, hair clippers, butchers' knives or kitchen cleavers, chopping or mincing knives, paper knives); manicure or pedicure sets and instruments (including nail files); base metal parts thereof:
- 8214.90 Other:
- 8214.90.90 Other (including parts)

* * * * * *

8441 Other machinery for making up paper pulp, paper or paperboard, including cutting machines of all kinds, and parts thereof:

8441.10.00 Cutting machines

Note 1(k) to Section XVI, HTSUS, provides: "This section [Section XVI, which includes Chapter 84, HTSUS] does not cover: . . . Articles of chapter 82 or 83." Thus, if a good is described in Chapter 82 or 83, HTSUS, it is not classified in Chapter 84, HTSUS. Accordingly, if the paper trimmer is described in heading 8214, HTSUS, as other articles of cutlery, classification in heading 8441 is precluded. On the other hand, Note 1(f) to Section XV, HTSUS, excludes articles of Section XVI (including Chapter 84), from classification in Section XV (including Chapter 82), so if the paper trimmer falls under classification in heading 8441, as a cutting machine for making up paper, then classification under heading 8214 is precluded.

As indicated in HQ 964947, heading 8214, HTSUS, covers other articles of cutlery. "Cutlery" is defined in the *Random House Unabridged Dictionary* (1993) as: "cutting instruments collectively, esp. knives for cutting food . . ." It is defined in *Webster's Third New International Dictionary* (1986) as: "edged or cutting tools (as shears, knives, surgical instruments) . . ." In HQ 964947, we concluded that the paper trimmer was a paper knife attached to a block.

New information has been presented to Customs, however, that has caused us to view the classification in HQ 964947 as incorrect. New information indicates that arc-motion cutters and trimmers, such as the one at issue, are commercially known as "guillotine" type cutters and trimmers. Customs has confirmed this through a search of Internet sources. The EN for heading 8441, identifies "guillotines" as an exemplar of the types of machinery included in that heading. Customs has previously interpreted "guillotine" type cutters to be limited to the type of devices which cut or trim by means of a blade descending vertically to perform the cutting operation. See New York Ruling Letter H84946, dated August 30, 2001. Customs has confirmed that dictionary definitions of the term "guillotine" indicate that it is a machine. See, e.g., *Oxford English Dictionary and Webster's Third International Dictionary*.

Insofar, as the arc-motion trimmers at issue are commercially identified and known as a "guillotine" type, that "guillotines" are commonly known as machines, and the ENs identify "guillotines" as falling under heading 8441, Customs is now of the view that the instant paper trimmer is classifiable under subheading 8441.10.00, HTSUS.

Accordingly, pursuant to Note 1(f) to Chapter XV, excerpted above, classification in heading 8214 is precluded.

As indicated above, this ruling has no effect on the entries which were the subject of Protest 3001-97-100286, as Customs no longer has jurisdiction over those entries. See *San Francisco Newspaper Printing Co. v. United States*, 620 F. Supp. 738 (CIT 1985).

HOLDING:

In accordance with the above discussion, the correct classification for the instant arc-motion paper trimmers is subheading 8441.10.00, HTSUS, which provides for "Other machinery for making up paper pulp, paper or pa-

perboard, including cutting machines of all kinds, and parts thereof: Cutting machines.”

EFFECT ON OTHER RULINGS:

HQ 964947 is REVOKED.

MYLES B. HARMON,
Director;
Commercial Rulings Division.

[ATTACHMENT G]

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

HQ 966604
CLA-2 RR:CR:GC 966604 DSS
CATEGORY: Classification
TARIFF NO.: 8441.10.00

MR. JAMES P. SULLIVAN
SULLIVAN & LYNCH, P.C.
156 State Street
Boston, MA 02109-2508

RE: Revocation of NY G83507; Paper Trimmers

DEAR MR. SULLIVAN:

This letter is pursuant to U.S. Customs and Border Protection (Customs) reconsideration of New York Ruling letter (NY) G83507, dated November 6, 2000. We have reviewed the classification in NY G83507 and have determined that it is incorrect. This ruling sets forth the correct classification.

FACTS:

In NY G83507, Customs classified a certain paper trimmer from China. The paper trimmer at issue was described in NY G83507 as follows:

The sample you submitted is the Personal Paper Trimmer (item number 26403). It is made primarily of lightweight plastic, rests upon a tabletop, and measures approximately 14 inches long by 3.5 inches wide. The trimmer operates manually by sliding a 1/4-inch metal blade across its length to cut up to three sheets of paper at a time. It also has a pull-out ruler for precise measurements.

This paper trimmer is a so-called rotary paper trimmer because the cutting blade rotates around an axis as it slides across the paper. In NY G83507, Customs classified the subject paper trimmer under subheading 8214.90.90, HTSUS, which provides for “Other articles of cutlery (for example, hair clippers, butchers’ knives or kitchen cleavers, chopping or mincing knives, paper knives); manicure or pedicure sets and instruments (including nail files); base metal parts thereof: Other: Other (including parts).”

ISSUE:

Whether the instant paper trimmer is classified under heading 8214, HTSUS, as other articles of cutlery, or under heading 8441, HTSUS, as other machinery for making up paper, cutting machines.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). 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 GRIs may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

8214 Other articles of cutlery (for example, hair clippers, butchers' knives or kitchen cleavers, chopping or mincing knives, paper knives); manicure or pedicure sets and instruments (including nail files); base metal parts thereof:

8214.90 Other:

8214.90.90 Other (including parts)

* * * * *

8441 Other machinery for making up paper pulp, paper or paperboard, including cutting machines of all kinds, and parts thereof:

8441.10.00 Cutting machines

Note 1(k) to Section XVI, HTSUS, provides: "This section [Section XVI, which includes Chapter 84, HTSUS] does not cover: . . . Articles of chapter 82 or 83." Thus, if a good is described in Chapter 82 or 83, HTSUS, it is not classified in Chapter 84, HTSUS. Accordingly, if the paper trimmer is described in heading 8214, HTSUS, as other articles of cutlery, classification in heading 8441 is precluded. On the other hand, Note 1(f) to Section XV, HTSUS, excludes articles of Section XVI (including Chapter 84), from classification in Section XV (including Chapter 82), so if the paper trimmer falls under classification in heading 8441, as a cutting machine for making up paper, then classification under heading 8214 is precluded.

Heading 8214, HTSUS, covers other articles of cutlery. "Cutlery" is defined in the *Random House Unabridged Dictionary* (1993) as: "cutting instruments collectively, esp. knives for cutting food . . ." It is defined in *Webster's Third New International Dictionary* (1986) as: "edged or cutting tools (as shears, knives, surgical instruments) . . ." In NY G83507, we concluded that the paper trimmer was an article of cutlery.

New information has been presented to Customs, however, that has caused us to view the classification in NY G83507 as incorrect. New information indicates that arc-motion cutters and trimmers, which are similar in many design elements and principal use to rotary cutters, are commercially known as "guillotine" type cutters and trimmers. Customs had confirmed

this through a search of Internet sources. The EN for heading 8441, identifies “guillotines” as an exemplar of the types of machinery included in that heading. Customs has previously interpreted “guillotine” type cutters to be limited to the type of devices which cut or trim by means of a blade descending vertically to perform the cutting operation. See NY H84946, dated August 30, 2001. Customs has confirmed that dictionary definitions of the term “guillotine” indicate that it is a machine. See, e.g., *Oxford English Dictionary and Webster’s Third International Dictionary*.

Furthermore, it appears that the instant paper trimmer has sufficient mechanical capability to be considered a machine for tariff purposes. Thus, the instant rotary paper trimmer belongs to the class or kind of machinery for making up paper (*i.e.*, is a machine for cutting paper). Customs is now of the view that the instant paper trimmer is classified under subheading 8441.10.00, HTSUS.

Accordingly, pursuant to Note 1(f) to Chapter XV, excerpted above, classification in heading 8214 is precluded.

HOLDING:

In accordance with the above discussion, the correct classification for the instant rotary paper trimmer is subheading 8441.10.00, HTSUS, which provides for “Other machinery for making up paper pulp, paper or paperboard, including cutting machines of all kinds, and parts thereof: Cutting machines.”

EFFECT ON OTHER RULINGS:

NY G83507 is REVOKED.

MYLES B. HARMON,
Director,
Commercial Rulings Division.



[ATTACHMENT H]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966605
CLA-2 RR:CR:GC 966605 DSS
CATEGORY: Classification
TARIFF NO.: 8441.10.00

MS. SUZANNE LORBIECKI
FISKARS, INC.
7811 W. Stewart Avenue
P.O. Box 8027
Wausau, WI 54402

RE: Revocation of NY G84202; Paper Trimmers

DEAR MS. LORBIECKI:

This letter is pursuant to U.S. Customs and Border Protection (Customs) reconsideration of New York Ruling letter (NY) G84202, dated November 30,

2000. We have reviewed the classification in NY G84202 and have determined that it is incorrect. This ruling sets forth the correct classification.

FACTS:

In NY G84202, Customs classified certain paper trimmers from Mexico. The paper trimmer at issue was described in NY G84202 as follows:

The samples you provided are two Fiskars paper trimmers, which will be packaged together for retail sale. Item 95808994 is the Fiskars 12-inch/30 cm Rotary Paper Trimmer. It consists of a non-skid plastic base holding a guide rail. A plastic blade holder containing a rotating metal blade is attached to the rail. By placing cutting material on the base under the rail, a user can trim the material by pushing the blade across it.

Item 95909494 is the Fiskars Personal Paper Trimmer. It is similar to the other trimmer, but is smaller and designed to be carried in a standard ring binder. Both of these items are intended to be used on a desk-top or similar work surface, and not in the hand. Both bases are printed with a measuring grid as a guide, but the principal function of the items is to cut paper.

These paper trimmers are so-called rotary paper trimmers because the cutting blade rotates around an axis as it slides across the paper. In NY G84202, Customs classified the subject paper trimmers under subheading 8214.90.90, HTSUS, which provides for "Other articles of cutlery (for example, hair clippers, butchers' knives or kitchen cleavers, chopping or mincing knives, paper knives); manicure or pedicure sets and instruments (including nail files); base metal parts thereof: Other: Other (including parts)."

ISSUE:

Whether the instant paper trimmers are classified under heading 8214, HTSUS, as other articles of cutlery, or under heading 8441, HTSUS, as other machinery for making up paper, cutting machines.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). 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 GRIs may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

8214 Other articles of cutlery (for example, hair clippers, butchers' knives or kitchen cleavers, chopping or mincing knives, paper knives); manicure or pedicure sets and instruments (including nail files); base metal parts thereof:

8214.90	Other:
8214.90.90	Other (including parts)
*	* * * * *
8441	Other machinery for making up paper pulp, paper or paperboard, including cutting machines of all kinds, and parts thereof:

8441.10.00 Cutting machines

Note 1(k) to Section XVI, HTSUS, provides: "This section [Section XVI, which includes Chapter 84, HTSUS] does not cover: . . . Articles of chapter 82 or 83." Thus, if a good is described in Chapter 82 or 83, HTSUS, it is not classified in Chapter 84, HTSUS. Accordingly, if the paper trimmers are described in heading 8214, HTSUS, as other articles of cutlery, classification in heading 8441 is precluded. On the other hand, Note 1(f) to Section XV, HTSUS, excludes articles of Section XVI (including Chapter 84), from classification in Section XV (including Chapter 82), so if the paper trimmers fall under classification in heading 8441, as a cutting machine for making up paper, then classification under heading 8214 is precluded.

Heading 8214, HTSUS, covers other articles of cutlery. "Cutlery" is defined in the *Random House Unabridged Dictionary* (1993) as: "cutting instruments collectively, esp. knives for cutting food . . ." It is defined in *Webster's Third New International Dictionary* (1986) as: "edged or cutting tools (as shears, knives, surgical instruments) . . ." In NY G84202, we concluded that the paper trimmers were articles of cutlery.

New information has been presented to Customs, however, that has caused us to view the classification in NY G84202 as incorrect. New information indicates that arc-motion cutters and trimmers, which are similar in many design elements and principal use to rotary cutters, are commercially known as "guillotine" type cutters and trimmers. Customs had confirmed this through a search of Internet sources. The EN for heading 8441, identifies "guillotines" as an exemplar of the types of machinery included in that heading. Customs has previously interpreted "guillotine" type cutters to be limited to the type of devices which cut or trim by means of a blade descending vertically to perform the cutting operation. See NY H84946, dated August 30, 2001. Customs has confirmed that dictionary definitions of the term "guillotine" indicate that it is a machine. See, e.g., *Oxford English Dictionary and Webster's Third International Dictionary*.

Furthermore, it appears that the instant paper trimmers have sufficient mechanical capability to be considered machines for tariff purposes. Thus, the instant rotary paper trimmers belong to the class or kind of machinery for making up paper (*i.e.*, is a machine for cutting paper). Customs is now of the view that the instant paper trimmers are classified under subheading 8441.10.00, HTSUS.

Accordingly, pursuant to Note 1(f) to Chapter XV, excerpted above, classification in heading 8214 is precluded.

HOLDING:

In accordance with the above discussion, the correct classification for the instant rotary paper trimmers are subheading 8441.10.00, HTSUS, which

provides for “Other machinery for making up paper pulp, paper or paper-board, including cutting machines of all kinds, and parts thereof: Cutting machines.”

EFFECT ON OTHER RULINGS:

NY G84202 is REVOKED.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

