

Bureau of Customs and Border Protection

CBP Decisions

19 CFR Part 12

(CBP Dec. 03-25)

RIN 1515-AD38

Extension of Emergency Import Restrictions Imposed on Ethnological Material from Cyprus

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

ACTION: Final rule.

SUMMARY: In T.D. 99-35, the Customs Regulations were amended to reflect the imposition of emergency import restrictions on certain ethnological material from Cyprus. These restrictions were imposed pursuant to a determination by the United States Information Agency issued under the terms of the Convention on Cultural Property Implementation Act in accordance with the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Recently, the United States Department of State determined that conditions continue to warrant the imposition of these emergency import restrictions for a period not to exceed three years. Thus, this document amends the Customs Regulations to reflect that the emergency import restrictions currently in place continue, without interruption, for three years from September 4, 2003. T.D. 99-35 contains the Designated List describing the Byzantine ecclesiastical and ritual ethnological material from Cyprus to which the restrictions apply.

EFFECTIVE DATE: This regulation and the extension of emergency import restrictions reflected in this regulation become effective on September 4, 2003.

FOR FURTHER INFORMATION CONTACT: (Regulatory Aspects) Joseph Howard, Intellectual Property Rights Branch (202)

572-8701; (Operational Aspects) Michael Craig, Office of Field Operations (202) 927-0370.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the provisions of the 1970 UNESCO Convention, codified into U. S. law as the Convention on Cultural Property Implementation Act (Pub. L. 97-446, 19 U.S.C. 2601, *et seq.*) (the Act), the United States, after a request was made by the Government of Cyprus on September 4, 1998, imposed emergency import restrictions on Byzantine ecclesiastical and ritual ethnological material from Cyprus for a period of five years from the date of the request. These restrictions and the list of materials covered by them were published in the **Federal Register** (64 FR 17529, April 12, 1999) by the U.S. Customs Service in Treasury Decision (T.D.) 99-35. The T.D. amended § 12.104g(b) of the Customs Regulations which lists emergency import restrictions on cultural property imposed under the Act. The restrictions became effective on April 12, 1999.

Under 19 U.S.C. 2603(c)(3), emergency restrictions may be extended for a period of three years upon a determination by the United States that the emergency condition continues to apply with respect to the articles covered by the restrictions. On August 25, 2003, the Acting Assistant Secretary for Educational and Cultural Affairs, Department of State, issued the determination that the emergency condition continues to apply to the articles covered in T.D. 99-35. Accordingly, Customs and Border Protection is amending § 12.104g(b) to reflect the extension of the emergency import restrictions for a three year period; this extension of restrictions commences on September 4, 2003. The list of ethnological materials contained in T.D. 99-35 and an accompanying image database may also be found at the following Internet website address: <http://exchanges.state.gov/culprop>.

Based on the foregoing, importation of these materials continues to be restricted unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met. For example, these materials may be permitted entry if accompanied by appropriate export certification issued by the Government of Cyprus or by documentation showing that exportation from Cyprus occurred before April 12, 1999.

The document also amends 19 CFR 12.104g(a) and 104g(b), in the third column heading of the lists set forth in those sections, by removing the words "T.D. No." and replacing them with the words "Decision No." This change is made in recognition of the fact that import restrictions are now published by CBP Decisions as opposed to Treasury Decisions. A conforming change is also made to the text of 19 CFR 12.104g(b).

This amendment to the regulations is being issued in accordance with § 0.2(a) of the Customs Regulations (19 CFR 0.2(a)) pertaining

to the authority of the Secretary of Homeland Security (or his/her delegate) to prescribe regulations not involving customs revenue functions in accordance with the delegation of such authority by the Secretary of the Treasury.

Inapplicability of Notice and Delayed Effective Date

Because the amendment to the Customs Regulations contained in this document extends emergency import restrictions already imposed on the referenced cultural property of Cyprus under the terms of the Convention on Cultural Property Implementation Act (Pub. L. 97-446, 19 U.S.C. 2601 *et seq.*), in accordance with the 1970 UNESCO Convention and in furtherance of a foreign affairs function of the United States, pursuant to the Administrative Procedure Act (5 U.S.C. 553(a)(1)), no notice of proposed rulemaking or public procedure is necessary and a delayed effective date is not required.

Regulatory Flexibility Act

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. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This amendment does not meet the criteria of a “significant regulatory action” as described in E.O. 12866.

Drafting Information

The principal author of this document was Bill Conrad, Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection.

List of Subjects in 19 CFR Part 12

Customs duties and inspections, Imports, Cultural property.

Amendment to the Regulations

Accordingly, Part 12 of the Customs Regulations (19 CFR Part 12) is amended, as set forth below:

PART 12—[AMENDED]

■ 1. The general authority and specific authority citations for Part 12, in part, continue 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 (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

§ 12.104g [Amended]

■ 2. Section 12.104g is amended as follows:

■ a. in paragraph (a), in the heading of column three of the chart, removing the words “T.D. No.” and replacing them with the words “Decision No.”;

■ b. in paragraph (b), in the second sentence, removing the words “Treasury Decision” and replacing them with the word “decision”;

■ c. in paragraph (b), in the heading of column three of the chart, removing the words “T.D. No.” and adding in their place the words “Decision No.”; and

■ d. in paragraph (b), in the third column of the chart relative to the entry for Cyprus, removing the citation “99–35” and adding in its place “T.D. 99–35 extended by CBP Dec. 03–25”.

Dated: August 26, 2003

Robert C. Bonner

Commissioner, Customs and Border Protection.

[Published in the Federal Register, August 29, 2003 (68 FR 51903)]

General Notices

Agency Information Collection Activities: Application for Allowance in Duties

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Application for Allowance in Duties. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 20397) on April 25, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 3, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Application for Allowance in Duties

OMB Number: 1651-0007

Form Number: Form CBP-4315

Abstract: This collection is required by the CBP in instances of claims of damaged or defective merchandise on which an allowance in duty is made in the liquidation of the entry. The information is used to substantiate importer's claims for such duty allowances

Current Actions: This submission is to extend the expiration date without a change to the burden hours.

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 12,000

Estimated Time Per Respondent: 8 minutes

Estimated Total Annual Burden Hours: 1,600

Estimated Total Annualized Cost on the Public: \$29,000

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-927-1429.

Dated: August 25, 2003

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[Published in the Federal Register, September 3, 2003 (68 FR 52414)]

Agency Information Collection Activities: Centralized Examination Station

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Centralized Examination Station. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 19559) on April 21, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 3, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursu-

ant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Application to Establish Centralized Examination Station

OMB Number: 1651-0061

Form Number: N/A

Abstract: If a port director decides their port needs one or more Centralized Examination Stations (CES), they solicit applications to operate a CES. The information contained in the application will be used to determine the suitability of the applicant's facility, fairness of fee structure, knowledge of cargo handling operations and of CBP procedures.

Current Actions: This submission is to extend the expiration date without a change to the burden hours.

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 50

Estimated Time Per Respondent: 2 hours (120 minutes)

Estimated Total Annual Burden Hours: 100

Estimated Total Annualized Cost on the Public: \$1,450

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-927-1429.

Dated: August 20, 2003

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[Published in the Federal Register, September 3, 2003 (68 FR 52414)]

Proposed Collection; Comment Request; Customs Declaration (Form 6059B)

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 3, 2003, to be assured of consideration.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Rm 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 927-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Customs Declaration

OMB Number: 1651-0009

Form Number: CBP Form 6059B

Abstract: The Customs Declaration, CBP Form 6059B, requires basic information to facilitate the clearance of persons and goods arriving in the United States and helps CBP officers determine if any

duties of taxes are due. The form is also used for the enforcement of CBP and other agencies laws and regulations. CBP is proposing to revise this form by expanding question number 11 (which asks about agricultural items entering the U.S.) to include “vegetables” and “seeds”.

Current Actions: This information collection includes some increases due to new information that will be collected. This submission is being submitted as a revision to a current collection.

Type of Review: Revision to an existing collection

Affected Public: Traveling public

Estimated Number of Respondents: 60,000,000

Estimated Time Per Respondent: 4 minutes and 5 seconds

Estimated Total Annual Burden Hours: 4,038,000

Estimated Total Annualized Cost on the Public: N/A

Dated: September 5, 2003

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[Published in the Federal Register, September 3, 2003 (68 FR 52413)]

Agency Information Collection Activities: Declaration for Free Entry of Unaccompanied Articles

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Declaration for Free Entry of Unaccompanied Articles. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 20397) on April 25, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 3, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Declaration for Free Entry of Unaccompanied Articles

OMB Number: 1651-0014

Form Number: CBP Form-3299

Abstract: The Declaration for Free Entry of Unaccompanied Articles, Form 3299, is prepared by the individual or the broker acting as agent for the individual, or in some cases, the CBP officer. It serves as a declaration for duty-free entry of merchandise under one of the applicable provisions of the tariff schedule.

Current Actions: This submission is being submitted to extend the expiration date with no change to the burden hours.

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 150,000

Estimated Time Per Respondent: 10 minutes

Estimated Total Annual Burden Hours: 25,000

Estimated Total Annualized Cost on the Public: \$660,000

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-927-1429.

Dated: August 20, 2003

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[Published in the Federal Register, September 3, 2003 (68 FR 52413)]

Agency Information Collection Activities: Delivery Ticket

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Delivery Ticket. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 19560) on April 21, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 3, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/ component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Delivery Ticket (Form 6043)

OMB Number: 1651-0081

Form Number: Form-6043

Abstract: This information is used by CBP to ensure compliance with regulations pertaining to the movement of merchandise into general order facilities. importer, exporter, shipper, or cruise line.

Current Actions: This submission is being submitted to extend the expiration date with a change to the burden hours.

Type of Review: Extension (with change)

Estimated Number of Respondents: 200,000

Estimated Time Per Respondent: 20 minutes

Estimated Total Annual Burden Hours: 66,000

Estimated Total Annualized Cost on the Public: \$825,000

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-927-1429.

Dated: August 20, 2003

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[Published in the Federal Register, September 3, 2003 (68 FR 53415)]

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

Washington, DC, September 3, 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.*

REVOCATION AND MODIFICATION OF RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF SCRUB SHIRTS WITH POCKETS BELOW THE WAIST

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

ACTION: Notice of revocation and modification of tariff classification ruling letters and revocation of treatment relating to the classification of scrub shirts with pockets below the waist.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), this notice advises interested parties that Customs and Border Protection (CBP) is revoking one ruling letter and modifying one ruling letter, each relating to the tariff classification of scrub shirts with pockets below the waist under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP also is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed actions was published on July 16, 2003, Vol. 37, No. 29, of the CUSTOMS BULLETIN. No comments were received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 16, 2003.

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Textiles Branch: (202) 572-8713.

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 CBP laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the CBP and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, a notice proposing to revoke New York Ruling Letter (NY) F89127, dated July 27, 2000, and to modify NY D80623, dated August 2, 1998, which classified scrub shirts with pockets below the waist in subheading 6206.30.3040 and subheading 6206.40.3030, HTSUSA, respectively, was published in the July 16, 2003 CUSTOMS BULLETIN, Volume 37, No. 29. No comments were received in response to the notice.

As stated in the proposed notice, the revocation and modification will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the 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 is revoking any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved in substantially identical transactions should have advised CBP during

the notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY F89127, CBP ruled that a scrub shirt was classified in subheading 6206.30.3040, HTSUSA, which provides for "Women's or girls' blouses, shirts and shirt-blouses: Of cotton: Other: Other, Other: Women's." Since the issuance of that ruling, CBP has determined that the article is properly classified in subheading 6211.42.0056, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton, Blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments, excluded from heading 6206: Other."

In NY D80623, scrub pants and four scrub shirts were classified. CBP ruled that item number 7973 was classified in subheading 6206.30.3040, HTSUSA, which provides for "Women's or girls' blouses, shirts and shirt-blouses: Of cotton: Other: Other, Other: Women's;" and that item numbers 7331 and 7356 were classified in subheading 6206.40.3030, HTSUSA, which provides for "Women's or girls' blouses, shirts and shirt blouses: Of man-made fibers: Other: Other, Other: Women's." CBP has determined that the ruling is in error with respect to three of the four scrub shirts. Item number 7973 is properly classified in subheading 6211.42.0056, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton, Blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments, excluded from heading 6206: Other." Item numbers 7331 and 7356 are classified in subheading 6211.43.0060, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of man-made fibers, Blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments, excluded from heading 6206."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY F89127, modifying NY D80623 and revoking or modifying any other ruling not specifically identified, to reflect the proper classification of scrub shirts with pockets below the waist according to the analysis contained in Headquarters Ruling Letters (HQ) 966393 and HQ 966546, set forth as Attachments A and B, respectively, to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical merchandise.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

DATED: August 26, 2003

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

Attachments

[ATTACHMENT A]

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

HQ 966393

August 26, 2003
CLA-2 RR:CR:TE 966393 KSH
TARIFF NO.: 6211.42.0056

MR. JOHN EDMONDSON
MEDSYSTEMS INTERNATIONAL
2362 James Drive
Pittsburgh, PA 15237

RE: Revocation of New York Ruling Letter (NY) F89127, dated July 27, 2000; Classification of scrub type shirt; Heading 6211; Not Heading 6206

DEAR MR. EDMONDSON:

New York Ruling Letter (NY) F89127 was issued to you on July 27, 2000, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUSA), of a scrub shirt. The article was classified in subheading 6206.30.3040, which provides for "Women's or girls' blouses, shirts and shirt-blouses: Of cotton: Other: Other, Other: Women's." We have reviewed that ruling and have determined that the classification provided is incorrect. Therefore, this ruling revokes NY F89127.

Pursuant to section 625(c), Tariff Act of 1930, as amended by section 623 of Title VI (Customs Modernization) of the North America Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993) notice of the proposed modification of NY F89127 was published on July 16, 2003, Vol. 37, No. 29, of the Customs Bulletin. No comments were received in response to the notice.

FACTS:

The garment at issue is a scrub shirt described as a nurse's tunic composed of woven 55 percent cotton/ 45 percent polyester fabric. The unisex item has short sleeves, a V neckline, two patch pockets below the waist and a slit on each side at the bottom.

ISSUE:

Whether the scrub shirt at issue is classifiable under Heading 6211, HTSUSA, or Heading 6206, HTSUSA.

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings.

Heading 6206, HTSUSA, provides for women's or girls' blouses, shirts and shirt blouses. The EN to heading 6206, HTSUSA, state in pertinent part:

This heading covers the group of women's or girls' clothing, not knitted or crocheted, which comprises blouses, shirts and shirt-blouses.

This heading **does not cover** garments with pockets below the waist or with a ribbed waistband or other means of tightening at the bottom of the garment.

The garment at issue is a shirt. However, the garment has two patch pockets below the waist that preclude classification in heading 6206, HTSUSA. Consequently, the garment is properly classifiable in heading 6211, HTSUSA, as a shirt excluded from heading 6206.

Customs has consistently classified similar merchandise in this manner. See e.g., NY I85818, dated September 20, 2002; NY G82878, dated November 15, 2000; NY G83396, dated November 7, 2000; and NY G83397, dated November 13, 2000.

HOLDING:

NY F89127, dated July 27, 2000, is hereby revoked. The scrub shirt is properly classifiable in subheading 6211.42.0056, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton, Blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments, excluded from heading 6206: Other." The general column one duty rate is 8.2 percent, ad valorem. The textile category designation is 341.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bi-lateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available we suggest you check, close to the time of shipment, the Textile Status Report for Absolute Quotas, available on the CBP website at www.cbp.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact the local CBP office prior to im-

portation of this merchandise to determine the current status of any import restraints or requirements.

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

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

[ATTACHMENT B]

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

HQ 966546

August 26, 2003
CLA-2 RR:CR:TE 966546 KSH
TARIFF NO.: 6211.42.0056; 6211.43.0060

MR. REX TSU
GOWN INDUSTRIES, INC.
20212 Rodrigues Avenue
Cupertino, CA 95014

RE: Modification of New York Ruling Letter (NY) D80623, dated August 2, 1998; Classification of scrub shirts; Heading 6211; Not Heading 6206

DEAR MR. TSU:

New York Ruling Letter (NY) D80623 was issued to you on August 2, 1998, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUSA), of unisex scrub shirts and pants¹. Item number 7973 was classified in subheading 6206.30.3040, which provides for "Women's or girls' blouses, shirts and shirt-blouses: Of cotton: Other: Other: Other: Women's;" and item numbers 7331 and 7356 were classified in subheading 6206.40.3030, HTSUSA, which provides for "Women's or girls' blouses, shirts and shirt-blouses: Of man-made fibers: Other: Other: Other: Women's." We have reviewed this ruling and have determined that the classification of those three garments is incorrect. Therefore, this ruling modifies NY D80623.

Pursuant to section 625(c), Tariff Act of 1930, as amended by section 623 of Title VI (Customs Modernization) of the North America Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993) notice of the proposed modification of NY D80623 was published on July 16, 2003, Vol. 37, No. 29, of the Customs Bulletin. No comments were received in response to the notice.

¹Item number 78735 which was described as a scrub shirt with one breast pocket and item number 78834 which were described as scrub pants were properly classified and are not the subject of this ruling.

FACTS:

In NY D80623, the garments at issue are described as unisex scrub shirts (item numbers 7331, 7356 and 7973). Item number 7331 is a scrub shirt consisting of woven 65% polyester/ 35% cotton fabric with a key neck, side vents and two pockets at the bottom. Item number 7356 is a scrub shirt consisting of woven 65% polyester/ 35% cotton fabric with a button front, slanted lower pockets and a scissors holder in the right pocket. Item number 7973 is a criss-cross reversible scrub shirt consisting of woven 55% cotton/ 45% polyester fabric with one breast and lower pocket on each side and a scissors holder in the lower pocket.

ISSUE:

Whether the scrub shirts at issue are classifiable under Heading 6211, HTSUSA, or Heading 6206, HTSUSA.

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings.

Heading 6206, HTSUSA, provides for women's or girls' blouses, shirts and shirt blouses. The EN to heading 6206, HTSUSA, state in pertinent part:

This heading covers the group of women's or girls' clothing, not knitted or crocheted, which comprises blouses, shirts and shirt-blouses.

This heading **does not cover** garments with pockets below the waist or with a ribbed waistband or other means of tightening at the bottom of the garment.

The garments at issue are shirts. However, each garment has two patch pockets below the waist that preclude classification in heading 6206, HTSUSA. Consequently, the garments are properly classified in heading 6211, HTSUSA, as shirts excluded from heading 6206.

Customs has consistently classified similar merchandise in this manner. See e.g., NY I85818, dated September 20, 2002; NY G82878, dated November 15, 2000; NY G83396, dated November 7, 2000; and NY G83397, dated November 13, 2000.

HOLDING:

NY D80623, dated August 2, 1998, is hereby modified. The scrub shirt identified by item number 7973 is properly classified in subheading 6211.42.0056, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton, Blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments, excluded from heading 6206: Other." Item numbers 7331 and 7356 are classified in subheading 6211.43.0060, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other gar-

ments, women's or girls': Of man-made fibers, Blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments, excluded from heading 6206." The general column one duty rates are 8.2 percent and 16.1 percent, ad valorem, respectively. The textile category designations are 341 and 641, respectively.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available we suggest you check, close to the time of shipment, the Textile Status Report for Absolute Quotas, available on the CBP website at www.cbp.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact the local CBP office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

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

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

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**MODIFICATION OF RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
CERTAIN GLASS ARTICLES WITH WIRE BAIL AND TRIGGER,
RUBBER RING CLOSURE SYSTEMS**

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

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to the tariff classification of certain glass articles with wire bail and trigger, rubber ring closure systems under the Harmonized Tariff Schedule of the United States ("HTSUS").

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 Customs is modifying a ruling letter concerning the tariff classification of certain glass articles with wire bail and trigger, rubber ring closure systems under the HTSUS. Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed modification was published on June 25, 2003, in Vol. 37, No. 26 of the *Customs Bulletin*. One comment was received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 16, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch: (202) 572-8776.

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 Customs obligations, notice proposing to modify HQ 965200 only as it pertains to the classification of certain glass articles with wire bail and trigger, rubber ring closure systems, was published on June 25, 2003, in Vol. 37, No. 26 of the *Customs Bulletin*. One comment was received in response to this notice.

The commenter neither supported nor opposed the proposed modification; rather, the commenter pointed out a ruling that classified glass articles with bail and trigger closure systems. New York Ruling Letter ("NY") E88632, dated October 27, 1999, classified glass articles with bail and trigger closure systems with 500 and 750 milliliter ("ml") capacity under heading 7010, HTSUS. Given that 500 ml is equal to approximately 16 ounces (1 pint), we believe that such articles would commonly be recognized as preserving jars. Thus, the holding in NY E88632 remains unaffected by the modification of HQ 965200.

As stated in the proposed notice, the modification action will cover any rulings on this merchandise that may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings other than those herein 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 have advised Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, 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 in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to the effective date of this final decision.

In HQ 965200, Customs concluded that the glass articles with wire bail and trigger, rubber ring closure systems were, pursuant to *Myers v. United States*, 969 F. Supp. 66, 71-73 (CIT 1997), classifiable under heading 7010, HTSUS, which provides for, among other things, preserving jars of glass (which *Myers* determined is, as it pertains to preserving jars, an *eo nomine* provision). Based upon the appearance, size and capacity of the articles at issue, Customs has reconsidered its conclusions regarding these articles, and classifies the articles under heading 7013, HTSUS, as set forth in the Attachment to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying HQ 965200, only as it pertains to the classification of certain glass articles with wire bail and trigger, rubber ring closure systems, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 966256, which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective sixty (60) days after its publication in the *Customs Bulletin*.

Dated: August 19, 2003

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

Attachment

DEPARTMENT OF HOMELAND SECURITY,
 BUREAU OF CUSTOMS AND BORDER PROTECTION,
 HQ 966256
 August 19, 2003
 CLA-2 RR:CR:GC 966256 AML
CATEGORY: Classification
TARIFF NO.: 7013.39

MR. PETER A. QUINTER
 BECKER & POLIAKOFF, P.A.
 P.O. Box 9057
 Ft. Lauderdale, FL 33310

RE: Modification of HQ 965200, classification of glass jar with wire bail and trigger, rubber ring closure system

DEAR MR. QUINTER:

This is in regard to Headquarters Ruling Letter ("HQ") 965200, a decision on the Application for Further Review of Protest # 5201-00-100573 (initiated by you on behalf of GlasPak Industries, Inc.), issued on July 10, 2002. HQ 965200 concerned, in pertinent part, the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain empty glass jars with wire bail and trigger, rubber ring closure systems. We have reconsidered the classification of such articles. This letter sets forth the correct classification.

Pursuant to section 625(c)(1), 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), notice of the proposed modification of HQ 965200 was published on June 25, 2003, in Vol. 37, No. 26 of the *Customs Bulletin*. One comment was received in response to this notice.

FACTS:

In HQ 965200, we described the articles at issue as follows:

VE 02003716	100450	Vaso Le Carre, 200 ml capacity 3.48" opening with bail and trigger closure W 3.48" H 2.48"
VE 02002797	100460	Vaso Le Carre, 350 ml capacity 3.48" opening with bail and trigger closure W 3.48" H 3.76"

VE 98000101 100470 Vaso Le Carre, 500 ml capacity
3.28" opening with bail and trigger closure
W 3.48" H 4.92"

We framed and discussed the classification of these articles as follows:

The provision for preserving jars of glass in heading 7010 is an *eo nomine* provision (*Myers v. United States*, 969 F. Supp. 66, 71–73 (CIT 1997)). The provision in heading 7010 for containers “of a kind used” for the conveyance or packing of goods and the provision in heading 7013 for glassware “of a kind used” for table or kitchen purposes are “principal use” provisions (*Group Italglass U.S.C., Inc. v. United States*, 17 CIT 226 (1993)). As an *eo nomine* provision is more specific than a use provision, we will consider the former first. Next, we will consider merchandise which is properly classifiable under heading 7010 as “of a kind used” as it cannot be classified under heading 7013, because of the specific parenthetical provision to that effect in heading 7013 (*Myers*, 969 F. Supp. at 75).

The provision for preserving jars of glass in heading 7010 was considered in *Myers, supra*. That case concerned jars with wire bail and rubber ring closure systems. The Court found the jars to be classifiable under the provision for “preserving jars of glass” in heading 7010. The Court concluded that:

The three fundamental feature[s] which distinguish ‘preserving’ jars from ‘packing and conveyance’ jars and ‘storage’ jars are: (1) the thickness of the glass in the walls of the jars; (2) the jar’s ability to form and maintain a hermetic seal; and (3) the jar’s potential for reuse as a canning or preserving jar. [969 F. Supp. at 74]

In this case, item #s 100450, 100460, 100470, each with a wire bail and trigger, rubber ring closure system, are classifiable in accordance with *Myers, supra*. That is, the articles meet the 3-part test of *Myers* in that the glass walls of the jars are relatively thick, the closure system provides the ability to form and maintain a hermetic seal, and the jars have potential for reuse as canning or preserving jars. Based on *Myers* and the criteria therein, we conclude that these articles are described in the *eo nomine* provision “preserving jars of glass” in heading 7010, HTSUS. Item #s 100450, 100460, 100470, each with a wire bail and trigger, rubber ring closure system, are classified in subheading 7010.90.50, HTSUS.

As stated above, we have reconsidered this analysis and the conclusions therefrom derived. The proper analysis and conclusion follows.

ISSUE:

Whether the empty glass jars with wire bail and trigger, rubber ring closure systems are classifiable *eo nomine* as preserving jars of glass under heading 7010, HTSUS, or glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes under heading 7013, HTSUS?

LAW and ANALYSIS:

Classification of merchandise under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs), taken in order. GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The HTSUS headings and subheadings under consideration are as follows:

7010	Carboys, bottles, flasks, jars, pots, vials, ampoules and other containers, of glass, of a kind used for the conveyance or packing of goods; preserving jars of glass; stoppers, lids and other closures, of glass:
7010.90	Other:
7010.90.50	Other containers (with or without their closures).
	* * *
7013	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):
	Glassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass-ceramics:
7013.39	Other:
	Other:
7013.39.20	Valued not over \$3 each.

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

An article is to be classified according to its condition as imported. See *XTC Products, Inc. v. United States*, 771 F.Supp. 401, 405 (1991). See also, *United States v. Citroen*, 223 U.S. 407 (1911). The article at issue is an empty jar of relatively small size and capacity. While the use of the article is considered in the analysis (see below), the size, characteristics and appearance of the article are also considered in determining its classification.

The provision for preserving jars of glass in heading 7010 is an *eo nomine* provision (*Myers v. United States*, 969 F. Supp. 66, 71-73 (CIT 1997)). The provision in heading 7010 for containers "of a kind used" for the conveyance or packing of goods and the provision in heading 7013 for glassware "of a kind used" for table or kitchen purposes are "principal use" provisions (*Group Italglass U.S.C., Inc. v. United States*, 17 CIT 226 (1993)). As the CIT determined that the *eo nomine* provision includes canning and preserving jars, *i.e.*, those designed to produce a hermetic seal, we consider that alternative first. If the merchandise is classifiable under heading 7010, it cannot be classified under heading 7013, because of the specific parenthetical provision to that effect in heading 7013 (*Myers*, 969 F. Supp. at 75).

The provision for preserving jars of glass in heading 7010 was considered in *Myers, supra*. That case concerned jars with wire bail and rubber ring closure systems. The Court found the jars to be classified under the provision for "preserving jars of glass" in heading 7010. The Court concluded that:

The three fundamental feature[s] which distinguish 'preserving' jars from 'packing and conveyance' jars and 'storage' jars are: (1) the thickness of the glass in the walls of the jars; (2) the jar's ability to form and maintain a hermetic seal; and (3) the jar's potential for reuse as a canning or preserving jar. [969 F. Supp. at 74]

In reaching its conclusion, the Court observed that "storage jars are not designed in such a manner that a hermetic seal, which prevents air from entering the head space of the jar, can be formed between the jar and the lid." *Id.* at 71.

In Headquarters Ruling Letter ("HQ") 961205, dated March 12, 1999, we recited the following rules vis-à-vis *eo nomine* provisions:

"An *eo nomine* designation is one which describes a commodity by a specific name, usually one well known to commerce." 2 R. Sturm, Customs Law and Administration § 53.2 (3rd Edition 1990).

The common meaning of an *eo nomine* designation is determined by the meaning it had at the time of enactment of the tariff act. *United States v. Brager-Larsen*, 36 C.C.P.A. 1, 3-4, C.A.D. 388 (1948); *Davies Turner & Co. v. United States*, 45 C.C.P.A. 39, C.A.D. 669 (1957). In their determination of what this "common meaning" encompasses, Customs and the courts may examine the use to which the imported goods are put. *United States v. Quon Quon Co.*, 46 C.C.P.A. 70, 73, C.A.D. 699 (1959).

Thus, it is proper to take use into account when classifying an article under an *eo nomine* provision where the common and commercial meaning of the article at the time the tariff schedule was drafted included references to use. Headquarters Ruling Letter (HQ) 950783, dated September 10, 1992, citing *Admiral Div. of Magic Chef, Inc. v. United States*, 754 F. Supp. 881, (Ct. Int'l Trade 1990) (it is necessary to examine legislative history and other extrinsic sources to determine the common meaning of merchandise); *Hummel Chemical Co. v. United States*, 29 C.C.P.A. 178, 183, C.A.D. 189 (1941) (tariff terms generally "are not drafted in terms of science, but in the language of commerce, which is presumptively that in common use.").

The articles at issue are significantly smaller in size and capacity than those at issue in *Myers*. We are cognizant of the fact that strict application of the criteria established by *Myers* (comparative thickness of the glass, the ability to form and maintain a hermetic seal and the jar's potential for reuse as a canning or preserving jar) would appear to require that the articles in question be classified under heading 7010, HTSUS. However, we conclude that, based on the size, capacity and appearance of the articles in question, as well as the meaning of *eo nomine* designations as discussed above, the articles in question would neither commonly nor commercially be referred to as canning or preserving jars; thus falling without the purview of those identifying criteria adopted concerning similar articles considered in *Myers*, *supra*. We believe this to be especially telling given that the articles at issue in *Myers* were capable of holding one and one and a half liters, respectively, of liquid or preserves. It is therefore reasonable to conclude that the articles at issue, capable of holding a mere fraction of the articles in *Myers*, are not classifiable as preserving jars under heading 7010, HTSUS. Accordingly, the articles are classified under heading 7013, HTSUS.

This determination is consistent with Headquarters Ruling ("HQ") 960513 dated August 11, 1997, and HQ 959637 dated December 4, 1997. In HQ 960513, a two liter capacity jar with a bail and trigger closure system was classified under heading 7010, HTSUS. Similarly, in HQ 959637, a 750 ml capacity jar with a bail and trigger closure system was classified under heading 7010, HTSUS, and a small decorative bottle with a 50 ml capacity and wire bail and trigger, rubber ring closure system was classified under heading 7013, HTSUS.

HOLDING:

The glass articles at issue, model numbers VE 02003716/100450 (Vaso Le Carre, 200 ml capacity); VE 02002797/100460 (Vaso Le Carre, 350 ml capacity); and VE 8000101/ 100470 (Vaso Le Carre, 500 ml capacity) are classified as glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): glassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass-ceramics: other: under subheading 7013.39, HTSUS, with the eight digit designation to be determined by the value of the articles.

Although there is no consequence of this action with regards to protest 5201-00-100573, future imports occurring on or after this ruling's effective date should be classified consistently with this ruling.

EFFECT ON OTHER RULINGS:

HQ 965200 is modified as it pertains to glass articles with wire bail and trigger, rubber ring closure systems. In accordance with 19 U.S.C. § 1625 (c), this ruling will become effective sixty (60) days after its publication in the *Customs Bulletin*.

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

19 CFR PART 177

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN SCANNING ELECTRON MICROSCOPES FITTED WITH EQUIPMENT SPECIFICALLY DESIGNED FOR THE HANDLING AND TRANSPORT OF SEMICONDUCTOR WAFERS

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

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of certain scanning electron microscopes fitted with equipment specifically designed for the handling and transport of semiconductor wafers.

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

ment Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling pertaining to the tariff classification of certain scanning electron microscopes fitted with equipment specifically designed for the handling and transport of semiconductor wafers under the Harmonized Tariff Schedule of the United States (“HTSUS”). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocation was published on July 2, 2003, in the CUSTOMS BULLETIN. Five comments supporting the proposed action were received in response to this notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 16, 2003.

FOR FURTHER INFORMATION CONTACT: Deborah Stern, General Classification Branch (202) 572–8785.

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, as amended (19 U.S.C. 1625(c)(1)), notice was published on July 2, 2003 in the CUSTOMS BULLETIN, Volume 37, Number 27, proposing to revoke HQ 962435, dated December 15, 1999, which classified the MI–3080 Critical Dimension Measuring and Checking Scanning Electron Microscope (MI–3080 CD–SEM), consisting, in relevant part, of a scan-

ning electron microscope and auto-loading equipment for the handling and transport of semiconductor wafers used to control the process of the wafer production, in subheading 9012.10.00, HTSUS, which provides, in relevant part, for “. . .Microscopes other than optical microscopes; diffraction apparatus.” Five comments were received in support of the proposed action.

As stated in the proposed notice, this revocation will cover 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. 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 have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or to the importer's or Customs' previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling concerning merchandise covered by this notice which was not identified, 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 this final decision.

In HQ 962435, dated December 15, 1999, Customs classified the MI-3080 Critical Dimension Measuring and Checking Scanning Electron Microscope (MI-3080 CD-SEM). The MI-3080 CD-SEM consists of, in relevant part, a scanning electron microscope and auto-loading equipment for the handling and transport of semiconductor wafers and is used to control the process of the wafer production. Customs concluded the CD-SEM was a microscope of heading 9012, HTSUS, specifically classified in subheading 9012.10.00, HTSUS, which provides for “Microscopes other than optical microscopes; diffraction apparatus; parts and accessories thereof: Microscopes other than optical microscopes; diffraction apparatus.” Accordingly, it was excluded from the claimed classification under heading 9031, HTSUS.

It is now Customs position that the merchandise should have been analyzed pursuant to Note 4 to Section XVI, by virtue of Note 3 to Chapter 90, HTSUS, as a “functional unit.” The auto-loader component and the microscope component are designed to work together measuring and checking the wafers during the semiconductor wafer

production process. They are “essential to the performance of the function specific to the functional unit as a whole,” as described in pertinent part in the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) to Section XVI, Note 4, HTSUS.

As a functional unit, a CD–SEM fitted with the equipment specifically designed for the handling and transport of semiconductor wafers in its condition as imported exceeds the scope of a microscope of heading 9012, HTSUS. Thus, it is not subject to the exclusion of microscopes from heading 9031, HTSUS. Accordingly, the instant CD–SEM is classified in subheading 9031.80.40, HTSUS, which provides for “Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof: Other instruments, appliances and machines: Electron beam microscopes fitted with the equipment specifically designed for the handling and transport of semiconductor wafers or reticles.”

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking HQ 962435 and any other ruling not specifically identified to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analysis set forth in HQ 966482, which is attached to this notice. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: August 19, 2003

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

[Attachment]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,**HQ 966482**

August 19, 2003

CLA-2 RR:CR:GC 966482 DBS**CATEGORY:** Classification**TARIFF NO.:** 9031.80.40

NNR AIRCARGO SERVICES (USA) INC.
Hook Creek Blvd & 145th, Unit C-1A
Valley Stream, NY 11581

RE: CD Measurement and Inspection Scanning Electron Microscope fitted with equipment specifically designed for the handling and transport of semiconductor wafers; Revocation of HQ 962435

DEAR SIR OR MADAM:

On December 15, 1999, this office issued HQ 962435, our decision on the Application for Further Review of Protest # 1001-98-102442, which classified a critical dimension measuring and inspection scanning electron microscope in subheading 9012.10.00, Harmonized Tariff Schedule of the United States (HTSUS). The merchandise was imported by Topcon Technologies, whom you represented at that time. We have reconsidered HQ 962435 and determined the classification to be incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of the above identified ruling was published on July 2, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 27. Five comments in support of the proposed action were received in response to the notice.

FACTS:

The merchandise at issue, the Topcon Technologies MI-3080 Critical Dimension Measuring and Inspection Scanning Electron Microscope (CD-SEM), is comprised of a scanning electron microscope and a cassette-to-cassette-type auto loader with a transport arm that loads and unloads multiple semiconductor wafers automatically from the cassette to the specimen chamber of the microscope for inspection in a control cabinet. The CD-SEM is used to control the process of the wafer production. It measures the critical dimensions of line, space and pitch on the surface of semiconductor wafers and matches the patterns on the wafers. The acceleration voltage is limited along with a fixed working distance and the stage (of the microscope) can only move in the X and Y directions.

ISSUE:

Whether the scope of subheading 9012.10.00, HTSUS, includes the instant CD-SEM, and thus excludes it from measuring and checking equipment not specified or included elsewhere in subheading 9031.80.40, HTSUS, which provides specifically for electron beam microscopes fitted with handling and transport equipment for semiconductor wafers and reticles.

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.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

9012	Microscopes other than optical microscopes; diffraction apparatus; parts and accessories thereof:
9012.10.00	Microscopes other than optical microscopes; diffraction apparatus
	* * *
9031	Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof:
9031.80	Other instruments, appliances and machines:
9031.80.40	Electron beam microscopes fitted with the equipment specifically designed for the handling and transport of semiconductor wafers or reticles
	* * *

While the instant merchandise appears to be clearly provided for in sub-heading 9031.80.40, HTSUS, according to GRI 1 we must first determine classification at the 4-digit heading level. The ENs to heading 9031, HTSUS, exclude from classification in that heading microscopes of headings 9011 or 9012, HTSUS. Microscopes of heading 9012, HTSUS, include "electron microscopes [which] differ from optical microscopes in that they use a beam of electrons instead of light rays." EN 90.12(A). EN 90.12(A) states that the heading includes "scanning electron microscopes in which a very fine beam of electrons is directed repeatedly onto different points of the sample. Information is obtained by measuring, for example, the electrons transmitted, the secondary electrons emitted, or the optical rays. The result may then be displayed on a monitor screen which can be incorporated in the microscope." The ENs also provide in part that the "electron microscope has many uses both in the field of pure science (biological or medical research, composition of matter, etc.), and in industrial technique (examination of fumes, dust, textile fibres, colloids, etc.; examination of the structure of metals, paper, etc.)."

Id.

The MI-3080 CD-SEM is, at least in part, a scanning electron microscope, as evidenced by its name as well as its use of electron beams on various axes. While many standard scanning electron microscopes may utilize three axes for imaging, the instant microscope only rotates on two. However, scan-

ning electron microscopes are now frequently used in the microelectronics industry for SEM-based metrology. *See, e.g.,* András Vladár, et al, “Is Your Scanning Electron Microscope Hi-Fi?” *Scanning: The Journal of Scanning Microscopies*, Vol 17, 287–295 (1995) (abstracted version). The SEMs used in the microelectronics industry function with varying numbers of axes, up to six or more.

The legal text of the heading “microscopes other than optical microscopes” is broad, explicitly excluding only one class of microscope (optical). The ENs buttress the breadth of the legal text by stating that electron microscopes for several uses in various fields of study are included in the heading. Moreover, there is no indication in the ENs that a specific number of axes are required of a SEM of heading 9012, HTSUS. The ENs regarding SEMs simply state the beams are “directed repeatedly onto different points of the sample.” Accordingly, the scope of the heading encompasses many SEMs, including those designed for use in the semiconductor wafer industry. However, the instant merchandise is not just a SEM. It is a SEM fitted with equipment specifically designed for handling and transporting semiconductor wafers.

Note 3 to Chapter 90, HTSUS states that the provisions of Note 4 to Section XVI apply to Chapter 90. Section XVI, Note 4, HTSUS, provides, in relevant part that where a machine or combination of machines consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function then the whole falls to be classified in the heading appropriate to that function. Included in this note are “functional units,” which are described in Part (VII) of the General ENs to Section XVI, which accordingly applies to Chapter 90. *See* Part (IV), General ENs, Chapter 90. In addition to reiterating the language in the legal note, the ENs on functional units per Section XVI, Note 4 state, in part, the following:

For the purposes of this Note, the expression “intended to contribute together to a clearly defined function” covers only machines and combinations of machines essential to the performance of the function specific to the functional unit as a whole, and thus excludes machines or appliances fulfilling auxiliary functions and which do not contribute to the function of the whole.

The MI-3080 CD-SEM consists of a SEM and handling and transport equipment which work together and are designed specifically to measure and evaluate the line, space, pitch and patterns of semiconductor wafers, a clearly defined function. Therefore, the MI-3080 CD-SEM constitutes a functional unit, which is classified according to its clearly defined function. As such, the exclusion of microscopes in EN 90.31 would not apply to this merchandise.

Heading 9031, HTSUS, provides for measuring and checking instruments, appliances and machines, not specified or included elsewhere in Chapter 90, HTSUS. By the terms of the heading, goods found to be described by any other heading in the chapter are not classifiable in heading 9031, HTSUS. The terms “measuring” and “checking” are not defined in the HTSUS or in the ENs. In *United States v. Corning Glass Works*, 66 CCPA 25, 27, 586 F.2d 822, 825 (1978), the court quoted definitions from *Webster’s Third New Inter-*

national Dictionary, 381 (1971) (in determining the scope of the provision for measuring and checking Instruments not specially provided for in the predecessor tariff schedule to the HTSUS). “ ‘Check’ is defined as “to inspect and ascertain the condition of, especially in order to determine that the condition is satisfactory; . . . investigate and insure accuracy, authenticity, reliability, safety, or satisfactory performance of . . . ; to investigate and make sure about conditions or circumstances. . . .” The term “measure” is defined as follows: “[t]o ascertain the quantity, mass, extent, or degree of in terms of a standard unit or fixed amount . . . ; measure the dimensions of; take the measurements of . . . ; to compute the size of . . . from dimensional measurements.” *Webster’s Third New International Dictionary*, 1400 (1971). See HQ 965639, dated September 12, 2002; HQ 954682, July 14, 1994; HQ 950196, dated January 8, 1992.

The critical dimension measurements and evaluation of the lines, spaces and patterns of wafers performed by the MI-3080 CD-SEM clearly fall within the common meaning of measuring and checking. The measuring and checking functions are not simply a function of the microscope portion of the functional unit, but are the functions accomplished through the use of the different components together, fitted to accommodate one another. That is, each is essential to the performance of the function specific to the functional unit as a whole. That function is not covered elsewhere in Chapter 90, HTSUS.

When the U.S. entered into the Information Technology Agreement (ITA), which went into effect on July 1, 1997, Presidential Proclamation No. 7011; 62 FR 35909 (July 2, 1997), the U.S. notified the other signatories that it would classify “electron beam microscopes fitted with the equipment specifically designed for the handling and transport of semiconductor wafers or reticles” under subheading 9031.80.40, HTSUS. Under the ITA, the U.S. added other provisions which included microscopes fitted with “equipment specifically designed for the handling and transport of semiconductor wafers or reticles” under various provisions of heading 9031, HTSUS, such as optical stereoscopic microscopes and photomicrographic microscopes “fitted with equipment specifically designed for the handling and transport of semiconductor wafers or reticles” under subheading 9031.41.00, HTSUS. This latter provision was discussed in HQ 959109, dated October 5, 1998.

In HQ 959109, we classified two binocular microscopes designed for examining photomasks and semiconductor wafers in heading 9011, HTSUS. Though the merchandise at issue was entered prior to the ITA, Customs discussed the relevance of the ITA with respect to the merchandise at issue. The microscopes, in their condition as imported, could not perform any measuring or checking function as they did not measure a quantity or check against a standard. Further, the stands and specimen stages with which they were fitted were not deemed “specifically designed for the handling and transport . . .” because the stage equipment was no more than that which might ordinarily be part of those types of microscopes in heading 9011, HTSUS. That is, they simply held a wafer in place. See *Carl Zeiss, Inc. v. United States*, 16 F. Supp. 2d 1097 (CIT 1998), *aff’d* 195 F. 3d 1375, (Fed. Cir. 1999).

As discussed above, the instant merchandise performs measuring and checking functions upon importation and is comprised of a complete func-

tional unit. Unlike the microscopes at issue in HQ 959109, the cassette-to-cassette auto loading equipment is fitted equipment specifically designed for the handling and transport of semiconductor wafers and reticles. Thus, the merchandise exceeds the scope of heading 9012, HTSUS. MI-3080 CD-SEM is within the scope of measuring and checking instruments, appliances and machines of heading 9031, HTSUS. As such, the MI-3080 CD-SEM is classified in subheading 9031.80.40, HTSUS.

In HQ 962435 we classified the instant product in subheading 9012.10.00, HTSUS. We stated the following:

[T]he MI-3080 is an electron beam microscope fitted with equipment specifically designed for handling and transport of semiconductor wafers. The protestant provided descriptive literature for model MI-4080, another system which it described as the current instrument with some minor improvements. This literature states that “all chips on a 200 mm wafer can be fully automatically measured up to magnifications of 100,000X and 200,000X. . . .” The multiple measurement function allows the high-speed and many points automated measurements within one SEM image. There is no clear indication of what the handling and transport equipment consists of or its function. Nevertheless, it is hard to see how the addition of elements that do no measuring or checking, just precision handling, can convert a microscope.

It was not clear to us at that time that the functions of the combination of equipment together exceeded the scope of a microscope of heading 9012, HTSUS, by the application of Note 4 to Section XVI, HTSUS. As such, a CD-SEM fitted with the equipment specifically designed for the handling and transport of semiconductor wafers in its condition as imported is not subject to the exclusion of microscopes from heading 9031, HTSUS. At present, Customs is reviewing a product which we have determined is substantially similar to the MI-3080 CD-SEM. In reviewing that product, we now believe our statement, excerpted above, that there was “no clear indication of what the handling and transport equipment consists of or its function” is incorrect and does not represent the proper avenue of analysis of goods of this kind. Accordingly, HQ 962435 is revoked.

Under *San Francisco Newspaper Printing Co. v. United States*, 9 CIT 517, 620 F. Supp. 738 (1985), the liquidation of the entries covering the merchandise which was the subject of Protest 1001-98-102442 was final on both the protestant and U.S. Customs and Border Protection. Therefore, this decision has no effect on those entries.

HOLDING:

The model MI-3080 Measurement and Inspection Scanning Electron Microscope is classified in subheading 9031.80.40, HTSUS, which provides for “Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof: Other instruments, appliances and machines: Electron beam microscopes fitted with the equipment specifically designed for the handling and transport of semiconductor wafers or reticles.”

EFFECT ON OTHER RULINGS:

HQ 962435, dated December 15, 1999, is hereby REVOKED. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

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