

U.S. Customs and Border Protection

CBP Decisions

(CBP Dec. 07-80)

BONDS

APPROVAL TO USE AUTHORIZED FACIMILE SIGNATURE AND SEAL

The use of facsimile signatures and seals on U. S. Customs and Border Protection bonds by the following corporate surety has been approved effective this date.

Navigators Insurance Company

Authorized facsimile signature on file for:

Michelle E. Lucaccioni, Attorney-in-fact

The corporate surety has provided U. S. Customs and Border Protection with a copy of the signature to be used, a copy of the corporate seal, and a certified copy of the corporate resolution agreeing to be bound by the facsimile signature and seal. This approval is without prejudice to the surety's right to affix signatures and seals manually.

Date: October 2, 2007

WILLIAM G. ROSOFF,
Chief,
Entry Process and duty Refunds Branch.

General Notice

QUARTERLY IRS INTEREST RATES USED IN CALCULATING INTEREST ON OVERDUE ACCOUNTS AND REFUNDS ON CUSTOMS DUTIES

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

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning October 1, 2007, the interest rates for overpayments will remain at 7 percent for corporations and 8 percent for non-corporations, and the interest rate for underpayments will remain at 8 percent. This notice is published for the convenience of the importing public and U.S. Customs and Border Protection personnel.

EFFECTIVE DATE: October 1, 2007.

FOR FURTHER INFORMATION CONTACT: Ron Wyman, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614-4516.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. Law 105-206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2007-56, the IRS determined the rates of interest for the calendar quarter beginning October 1, 2007, and ending December 31, 2007. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (5%) plus three per-

centage points (3%) for a total of eight percent (8%). For corporate overpayments, the rate is the Federal short-term rate (5%) plus two percentage points (2%) for a total of seven percent (7%). For overpayments made by non-corporations, the rate is the Federal short-term rate (5%) plus three percentage points (3%) for a total of eight percent (8%). These interest rates are subject to change for the calendar quarter beginning January 1, 2008, and ending March 31, 2008.

For the convenience of the importing public and U.S. Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

<u>Beginning Date</u>	<u>Ending Date</u>	<u>Under- payments (percent)</u>	<u>Over- payments (percent)</u>	<u>Corporate Overpay- ments (Eff. 1-1-99) (percent)</u>
070174	063075	6%	6%	
070175	013176	9 %	9 %	
020176	013178	7 %	7 %	
020178	013180	6 %	6 %	
020180	013182	12 %	12 %	
020182	123182	20 %	20 %	
010183	063083	16 %	16 %	
070183	123184	11 %	11 %	
010185	063085	13 %	13 %	
070185	123185	11 %	11 %	
010186	063086	10 %	10 %	
070186	123186	9 %	9 %	
010187	093087	9 %	8 %	
100187	123187	10 %	9 %	
010188	033188	11 %	10 %	
040188	093088	10 %	9 %	
100188	033189	11 %	10 %	
040189	093089	12 %	11 %	
100189	033191	11 %	10 %	
040191	123191	10 %	9 %	
010192	033192	9 %	8 %	
040192	093092	8 %	7 %	
100192	063094	7 %	6 %	
070194	093094	8 %	7 %	
100194	033195	9 %	8 %	
040195	063095	10 %	9 %	
070195	033196	9 %	8 %	
040196	063096	8 %	7 %	
070196	033198	9 %	8 %	
040198	123198	8%	7%	

<u>Beginning Date</u>	<u>Ending Date</u>	<u>Under- payments (percent)</u>	<u>Over- payments (percent)</u>	<u>Corporate Overpay- ments (Eff. 1-1-99) (percent)</u>
010199	033199	7%	7%	6%
040199	033100	8%	8%	7%
040100	033101	9%	9%	8%
040101	063001	8%	8%	7%
070101	123101	7%	7%	6%
010102	123102	6%	6%	5%
010103	093003	5%	5%	4%
100103	033104	4%	4%	3%
040104	063004	5%	5%	4%
070104	093004	4%	4%	3%
100104	033105	5%	5%	4%
040105	093005	6%	6%	5%
100105	063006	7%	7%	6%
070106	123107	8%	8%	7%

Dated: October 1, 2007

W. RALPH BASHAM,
Commissioner,
U.S. Customs and Border Protection.

[Published in the Federal Register, October 4, 2007 (72 FR 56782)]

U.S. Customs and Border Protection Trade Symposium 2007:

“Partnerships – Meeting the Challenges of Securing and Facilitating Trade”

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

ACTION: Notice of Trade Symposium.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) will convene its annual trade symposium, featuring panel discussions involving department personnel, members of the trade community and other government agencies, on the agency’s role in international trade initiatives and programs. Members of the international trade and transportation communities and other interested parties are encouraged to attend.

DATES: Wednesday, November 14, 2007 (opening remarks and panel discussions (1:00 pm to 5:30 pm) and open forum with senior

management (6:00 pm – 8:00 pm)). Thursday, November 15, 2007 (panel discussions - 8:15 am – 5:00 pm).

ADDRESSES: The Trade Symposium will be held at the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, N.W., Washington, DC. Upon entry into the building, photo identification must be presented to the security guards.

FOR FURTHER INFORMATION CONTACT: The Office of International Affairs and Trade Relations at (202) 344-1440, or at traderelations@dhs.gov. To obtain the latest information on the Symposium and to register on-line, visit the CBP web site at <http://www.cbp.gov>. Requests for special needs should be sent to the Office of International Affairs and Trade Relations at traderelations@dhs.gov.

SUPPLEMENTARY INFORMATION: The keynote speaker will be announced at a later date. The cost is \$250.00 per person, and includes all Symposium activities. Interested parties are requested to register early, as space is limited. Registration will open to the public on or about October 1, 2007. All registrations must be made on-line at the CBP web site (<http://www.cbp.gov>) and will be confirmed with payment by credit card only.

Due to the overwhelming interest to attend the Symposium, each company is requested to limit their company's registrations to three participants, in order to afford equal representation from all members of the international trade community. If a company exceeds the limitation, subsequent registrations will automatically be placed on the waiting list. Consideration will be given, in a first come, first served order, based on space availability.

Hotel accommodations have been reserved at two hotels in downtown Washington, DC. **The JW Marriott Hotel**, 1331 Pennsylvania Avenue, N.W., Washington DC, has reserved a block of rooms for Wednesday through Thursday, November 14 – 15, 2007, at the rate of U.S. \$279.00 per night. Reservations must be made directly with the hotel by October 15th at 1-800-228-9290 or 202-393-2000, referencing "CBP Trade Symposium," or on-line at www.jwmarriottdc.com.

The Hotel Washington, 515 15th Street, NW, Washington, DC has a block of rooms for Wednesday through Thursday, November 14 – 15, 2007, at the rate of U.S. \$229.00 per night. Reservations must be made directly with the hotel by October 15th, at 1-800-424-9540 or

202-638-5900, referencing “CBP Trade Symposium,” or on-line at www.hotelwashington.com, referencing group booking ID 40312.

Date: September 26, 2007

MICHAEL C. MULLEN
*Assistant Commissioner,
Office of International Affairs and Trade Relations.*

[Published in the Federal Register, October 1, 2007 (72 FR 55799)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, October 3, 2007

The following documents of U.S. 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.

SANDRA L. BELL,
*Executive Director,
Regulations and Rulings Office of Trade.*

**REVOCATION OF TWO RULING LETTERS AND
MODIFICATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF CERTAIN ARTICLES OF
SEMI-PRECIOUS STONES**

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

ACTION: Notice of revocation of two ruling letters and modification of treatment relating to the classification of a certain articles of semi-precious stones

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking two ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of certain articles of semi-precious stones. Similarly, CBP is modifying any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was

published in the *Customs Bulletin*, Vol. 41, No. 31, on July 25, 2007. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 16, 2007.

FOR FURTHER INFORMATION CONTACT: Sasha Kalb, Tariff Classification and Marking Branch, at (202) 572-8791.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 41, No. 31, on July 25, 2007, proposing to revoke two ruling letters relating to the tariff classification of certain articles of semi-precious stones. No comments were received in response to the notice. As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. 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 CBP during this notice period.

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

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

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking New York Ruling Letters (NY) NY N003697, dated December 4, 2006, and NY N003975, dated December 18, 2006 to reflect the proper tariff classification of the merchandise under heading 7116, HTSUS, specifically in subheading 7116.20.0500, HTSUSA, which provides for, *inter alia*: "Articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or (reconstructed): Articles of jewelry: Valued not over \$40 per piece", pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) H007655 (Attachment). Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by it to substantially identical transactions.

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

DATED: September 28, 2007

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H007655
September 28, 2007
CLA-2 OT: RR: CTF: TCM H007655 ADK
CATEGORY: Classification
TARIFF NO.: 7116.20.0500

ALTHEA NICHOLAS-WOOD
LIZ CLAIBORNE INC.
1 Claiborne Ave.
North Bergen, NJ 07047

RE: Classification of jewelry; Reconsideration of New York Ruling Letters (NY) N003697 and NY N003975

DEAR MS. NICHOLAS-WOOD:

This letter is in response to your request of January 31, 2007, for reconsideration of NY N003697, dated December 4, 2006, and NY N003975, dated December 18, 2006. In those rulings, United States Customs and Border Protection (CBP) determined that the subject articles were classifiable under subheading 7117.19.9000, Harmonized Tariff Schedule United States Annotated (HTSUSA). We have reviewed NY N003697 and NY N003975 and found them to be in error.

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 was published on July 25, 2007, in the *Customs Bulletin*, Volume 41, No. 31. No comments were received in response to this notice.

FACTS:

In N003697, three necklaces were under consideration. The first, Style ULRU0090 was made of a leaf-shaped pendant of base metal and chain with one tiger's eye stone¹. The second, Style UKRU0091 was made of a base metal circular pendant with wood, plastic and intermittent gold tone plastic beads with one tiger's eye stone, strung on textile thread. The third, Style UKRU0129 was made of a base metal circular pendant and beads strung on a leather cord with one tiger's eye bead. According to the importer, Liz Claiborne, Inc. (Liz Claiborne), the subject necklaces were all valued at less than \$40 each.

In NY N003975, two items were under consideration. The first, style A9-1109-CD-8, was a bracelet with a base metal chain, large glass stones, mini gold tone plastic beads and one cubic zirconium² stone on the tail chain. The second, style A9-1109-CD-5, was a necklace with a base metal chain and pendant, one glass pendant and one cubic zirconium stone on the tail chain. According to Liz Claiborne, the subject necklace and bracelet were valued at less than \$40 each.

¹Tiger's Eye is a variety of semiprecious quartz. See Encyclopedia Britannica online at www.britannica.com

²A semi-precious "synthetic gemstone of zirconia resembling a diamond." See Merriam Webster Dictionary, www.m-w.com. See Explanatory Notes to heading 7104, HTSUS.

In both rulings, the imports were classified under subheading 7117.19.9000, HTSUSA, which provides for “[I]mitation Jewelry: Of base metal, whether or not plated with precious metal: Other: Other: Other.” Liz Claiborne asserts that the jewelry is properly classifiable under subheading 7116.20.1500, HTSUSA, which provides for: “articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Articles of jewelry: Other.”

ISSUE:

What is the proper classification, under the HTSUS, for the jewelry containing semi-precious stones?

LAW AND ANALYSIS:

Classification under the HTSUSA 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 2 through 6 may then be applied in order.

There is no dispute that the subject imports are classifiable in chapter 71. At issue is whether the various items are classifiable as imitation jewelry or as articles of semi-precious stones. The HTSUS provisions under consideration are as follows:

- 7116 Articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed):
 - 7116.20 Of precious or semiprecious stones (natural, synthetic or reconstructed):
 - Articles of jewelry:
 - 7116.20.0500 Valued not over \$40 per piece
 - * * *
 - 7116.20.1500 Other
 - * * *
 - 7117 Imitation jewelry:
 - Of base metal, whether or not plated with previous metal:
 - 7117.19 Other:
 - Other:
 - 7117.19.9000 Other. . . .
 - * * *

In addition to the terms of the headings, classification of goods under the HTSUS is governed by any applicable section or chapter notes. Chapter 71, Note 9 provides, in pertinent part:

For the purposes of heading 7113, the expression “articles of jewelry” means:

(a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia):

* * *

Chapter 71, Note 11 provides, in pertinent part:

For the purposes of heading 7117, the expression “imitation jewelry” means articles of jewelry within the meaning of paragraph (a) of note 9 above . . . not incorporating natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed). . . .

* * *

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 nor dispositive, the ENs 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 ENs under consideration are as follows:

The EN to heading 7116, HTSUS (EN 7116), provides, in pertinent part:

The heading covers all articles . . . wholly of natural or cultured pearls, precious or semi-precious stones, or consisting partly of natural or cultured pearls or precious or semi-precious stones, but **not** containing precious metals or metals clad with precious metal . . .

It thus includes:

(A) **Articles of personal adornment and other decorated articles** . . . containing natural or cultured pearls, precious or semi-precious stones, set or mounted on base metal (whether or not plated with precious metal), ivory, wood, plastics etc.

(Emphasis in original)

* * *

The EN to heading 7117, HTSUS (EN 7117), provides, in pertinent part:

For the purposes of this heading, the expression **imitation jewelry** . . . [does] not incorporate precious metal or metal clad with precious metal . . . nor natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed).

(Emphasis in original)

* * *

In both In NY N003697 and NY N003975, the items under consideration were composite goods, consisting of at least two different materials. According to GRI 3 (b), most composite goods are to be classified “as if they consisted of the material or component which gives them their essential character. . . .” The term ‘essential character,’ refers to “the attribute which strongly marks or serves to distinguish what an article is; that which is indispensable to the structure, core or condition of the article.” HQ 956538, Dated November 29, 1994; See also *Better Home Plastics Corp. v. United States*, 20 CIT. 221; 916 F. Supp. 1265 (1996). “When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.” GRI 3(c).

In NY N003697, CBP determined that the essential character of the three necklaces was the base metal. Pursuant to GRI 3(b), the necklaces were

classified under heading 7117, HTSUS as “articles of imitation jewelry: of base metal.” In NY N003975, CBP determined that none of the component parts for either article imparted the essential character. Pursuant to GRI 3(c), the pieces were classified under heading 7117, HTSUS which was the heading which occurred last in numerical order.

We now find that the application of GRI 3 in both cases was in error. While the vast majority of composite goods are classified according to GRI 3, its application here is unnecessary. The relevant heading terms and corresponding ENs are broad enough to encompass this merchandise by application of GRI 1.

The subject articles were originally classified in heading 7117, HTSUS, as “imitation jewelry.” According to chapter 71 legal note 11, articles containing precious or semi-precious stones are not considered “imitation jewelry.” See also EN 71.17. All of the items under consideration contain semi-precious stones. The three necklaces of NY N003697, all feature tiger’s eyes, and the necklace and bracelet of NY N003975, each feature a cubic zirconia. By application of legal note 11 to chapter 71, the subject imports are excluded from heading 7117, HTSUS.

We next consider heading 7116, HTSUS. According to the EN, heading 7116, HTSUS, covers articles of personal adornment articles containing semi-precious stones, set or mounted on base metal. The subject imports satisfy this definition. Each is an article of personal adornment that contains a semi-precious stone. Furthermore, these stones are mounted on base metal chains. Accordingly, the articles are classifiable under heading 7116, HTSUS. Specifically, they are classifiable under subheading 7116.20 as “Articles of . . . semi-precious stones . . . :Of precious or semiprecious stones . . .”

The importer, Liz Claiborne, asserts that the items are classifiable as “articles of jewelry” under subheading 7116.20.15, HTSUS. The legal notes to chapter 71 offer guidance as to the definition of the term “jewelry.” According to note 9(a)³, articles of jewelry include “any small objects of personal adornment (for example . . . bracelets, necklaces. . .” Under consideration are four necklaces of semi-precious stones and one bracelet of semi-precious stones. The subject articles therefore satisfy this definition *eo nomine*. While we concur with Liz Claiborne’s determination at the 6-digit level, we disagree at the 8-digit level. Because each of the items is valued at less than \$40, the more specific subheading is 7116.20.0500, HTSUSA, which provides for “. . . Articles of jewelry: Valued not over \$40 per piece.” They are not classifiable under subheading 7116.20.1500, HTSUSA, which provides more generally for “. . . Articles of jewelry: Other.”

HOLDING:

By application of GRI 1, the subject articles of jewelry are classifiable under heading 7116, HTSUS. Specifically, they are classifiable under subheading 7116.20.0500, HTSUSA, which provides for: “Articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural,

³Although this note refers specifically to headings 7113 and 7117, HTSUS, it provides guidance in the present matter because it offers an official HTSUS interpretation of the term “articles of jewelry.” See HQ 958831, dated April 1, 1997.

synthetic or (reconstructed): Articles of jewelry: Valued not over \$40 per piece.” The 2007 column one rate, general rate of duty is 3.3 percent *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N003697, dated December 4, 2006, and NY N003975, dated December 18, 2006 are hereby revoked. In accordance with 19 USC §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

GENERAL NOTICE

**MODIFICATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE CLASSIFICATION OF
CERTAIN STEMMED TOBACCO**

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

ACTION: Notice of the modification of a tariff classification ruling letter and revocation of any treatment relating to the classification of certain stemmed tobacco.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter, Headquarters Ruling Letter (HQ) 083490, dated May 25, 1989, relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of certain stemmed tobacco. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice proposing these actions and inviting comments on their correctness was published in the *Customs Bulletin*, Volume 41, Number 36, on August 29, 2007. Two comments were received in support of the proposed action.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 16, 2007.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Tariff Classification and Marking Branch, (202) 572–8812.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify HQ 083490, dated May 25, 1989, relating to the tariff classification of certain stemmed tobacco was published in the *Customs Bulletin*, Volume 41, Number 36, on August 29, 2007. Two comments were received in support of the proposed action. As stated in the proposed notice, this modification will cover any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should 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, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. 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.

As a consequence of a ruling request on the classification of machine-threshed and hand-threshed tobacco, CBP reviewed its rulings on tobacco and determined that the classification in HQ 083490 of hand torn, broken or mangled stemmed cigar filler tobacco as partly or wholly stemmed/stripped tobacco, not threshed or similarly processed, in subheading 2401.20.40, Harmonized Tariff Schedule of the United States (HTSUS) is incorrect. The decision appears to have been based upon a belief that “threshed” refers only to mechanical threshing. As the cigar filler tobacco at issue had been torn, broken or mangled by hand, CBP determined that it had not been threshed. However, the ruling did not examine the question of whether the tobacco had been “similarly processed.” After a reconsideration of the matter, CBP believes that the tobacco at issue in HQ 083490 was “threshed” or “similarly processed.” The classification in HQ 083490 of the cigar wrapper tobacco which was cut to shape by die cutting and classified as partly or wholly stemmed/stripped tobacco, not threshed or similarly processed, containing over 35 percent wrapper tobacco (not consisting of leaf tobacco of two or more countries or dependencies mixed or packed together) in subheading 2401.20.20, HTSUS, (currently 2401.20.14, HTSUS) is not affected by this action.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying HQ 083490, and modifying or revoking 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 HQ H014019 (Attachment). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. In accordance with 19 U.S.C. § 1625(c), this action will become effective 60 days after publication in the *Customs Bulletin*.

DATED: October 1, 2007

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H014019
October 1, 2007
CLA-2 OT:RR:CTF:TCM H014019 CMR
CATEGORY: Classification
TARIFF NO.: 2401.20.60

MR. NORMAL SHARP
PRESIDENT
CIGAR ASSOCIATION OF AMERICA
1707 H Street, N.W.
Suite 800
Washington, D.C. 20006

RE: Modification of Headquarters Ruling Letter (HQ) 083490 of May 25, 1989; Classification of hand torn, broken or mangled cigar filler half leaves

DEAR MR. SHARP:

On May 25, 1989, the U.S. Customs Service, now known as U.S. Customs and Border Protection (CBP), issued Headquarters Ruling Letter (HQ) 083490 to McKenna, Conner & Cuneo, on your behalf, classifying cigar filler half leaves that had been hand torn, broken or mangled in subheading 2401.20.40 of the Harmonized Tariff Schedule of the United States (HTSUS). In 1989, subheading 2401.20.40, HTSUS, provided for “[u]nmanufactured tobacco . . . : [t]obacco, partly or wholly stemmed/ stripped: [n]ot threshed or similarly processed: [o]ther: [n]ot containing wrapper tobacco, or not containing over 35 percent wrapper tobacco.” The corresponding HTSUS provision in the 2007 tariff is subheading 2401.20.29, HTSUS, which is somewhat more specific in that it provides for “[u]nmanufactured tobacco . . . : [t]obacco, partly or wholly stemmed/ stripped: [n]ot threshed or similarly processed: [o]ther: [n]ot containing wrapper tobacco, or not containing over 35 percent wrapper tobacco: [c]igar binder and filler.”

As a consequence of a ruling request on the classification of machine-threshed and hand-threshed tobacco, CBP reviewed its rulings on tobacco and determined that the classification decision in HQ 083490 with regard to the hand torn, broken or mangled cigar filler half leaves is incorrect. The decision therein appears to have been based upon a belief at the time that “threshed” refers only to mechanical threshing. For the reasons set forth below, CBP believes that hand torn, broken or mangled cigar filler half leaves are classifiable in subheading 2401.20.60, HTSUS, which provides for “[u]nmanufactured tobacco . . . : [t]obacco, partly or wholly stemmed/ stripped: [t]hreshed or similarly processed: [f]rom cigar leaf.”

The classification in HQ 083490 of the cigar wrapper tobacco which was cut to shape by die cutting and classified as partly or wholly stemmed/ stripped tobacco, not threshed or similarly processed, containing over 35 percent wrapper tobacco (not consisting of leaf tobacco of two or more countries or dependencies mixed or packed together) in subheading 2401.20.20, HTSUS, (currently 2401.20.14, HTSUS) is not affected by this ruling.

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 modification of HQ 083490

was published in the *Customs Bulletin*, Volume 41, Number 36, on August 29, 2007. Two comments were received supporting CBP's proposed action during the notice and comment period that closed on September 28, 2007.

FACTS:

The tobacco at issue in HQ 083490 was stemmed cigar filler half leaves (*i.e.*, half leaves from which the midribs have been removed) that had been hand torn, broken or mangled.

ISSUE:

Is partly or wholly stemmed/stripped tobacco which is hand torn, broken or mangled, *i.e.*, hand "threshed", classifiable as "threshed or similarly processed"? In other words, is hand "threshed" tobacco classified the same as or differently than machine threshed tobacco?

LAW AND ANALYSIS:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRIs). GRI 1 provides that "classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to [the remaining GRIs taken in order]."

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

The HTSUS subheadings under consideration are as follows:

- 2401 Unmanufactured tobacco (whether or not threshed or similarly processed); tobacco refuse:
- 2401.20 Tobacco, partly or wholly stemmed/stripped:
Not threshed or similarly processed:
- * * *
- Other:
- * * *
- Not containing wrapper tobacco, or not containing over 35 percent wrapper tobacco:
- * * *
- 2401.20.29 Cigar binder and filler
- Threshed or similarly processed:
- 2401.20.60 From cigar leaf

There is no dispute that the merchandise at issue is classifiable at the six-digit (international) level as "[un]manufactured tobacco (whether or not threshed or similarly processed); . . . : Tobacco, partly or wholly stemmed/stripped." The language at issue does not appear at the international level of the tariff and thus, the ENs are of no assistance in this case.

The phrase “threshed or similarly processed” is used but not defined in the tariff. Because neither the tariff nor the ENs define “threshing,” we turn to other sources.¹ According to the Tobacco Dictionary, ed. by Raymond Jahn, (Philosophical Library, NY, 1954), the terms “threshing” or “grinding” are defined as:

The process of mechanically stemming cigar filler leaves, especially grades of seconds of Puerto Rican tobacco. Also called Threshing. The resulting tobacco is used for short filler.

Tobacco: Production, Chemistry and Technology, ed. by D. Layten Davis and Mark T. Nielsen, (Blackwell Science, Oxford, England, 1999) provides the following information on the processing of tobacco:

The first process step performed on tobacco after being purchased to prepare for cigarette manufacturing is that of removing the stem. . . . Once these stems are removed from the leaf, the resulting leaf product is called strip. . . . In the 1910’s and 1920’s, the stem was removed from the lamina by hand. . . . R.W. Coffee invented the first stemming machine in operation which replaced hand stripping of tobacco in the 1930s and was the first step in the mechanization of the stemmery. In order to properly clean the stems and the scrap from the stemming machines, the introduction of additional machinery was required such as threshers, air legs, pneumatic separators and dust collectors. This auxiliary equipment must be recognized as the forerunner of our current threshing equipment. In the early 1940s, experiments were conducted using this equipment to thresh whole leaf. The results of these trials were so successful, green leaf threshing lines were installed in drying plants throughout the leaf growing areas in the United States.

The language used in these reference works suggest that “stemming” and “stripping” and “threshing” are interchangeable words when used in reference to the processing of tobacco leaves. However, in the Tobacco Encyclopedia, Verlagsgruppe Rhein Main GmbH & Co. KG (Malnz, Germany, 2000), we find the following definitions:

Stemming: The removal of the midribs from tobacco leaves, leaving the halves of the leaf more or less intact. Cigar wrappers are stemmed individually, often by hand, though machines may be used for the cheaper types. **Filler tobaccos and tobaccos** intended for cigarettes **may be either mechanically stemmed or threshed**. Leaves are often stemmed green (*i.e.* unfermented), as their higher moisture content reduces the amount of dust produced; alternatively, they may be moistened before processing.

Threshing: The removal of the midrib and side veins of tobacco leaves by mechanical means.

Thresher: Machine which removes the midrib of the tobacco leaf, leaving relatively small pieces of lamina and veins. It is used

¹See *Lyntec, Inc. v. United States*, 976 F.2d 693, 697 (1992) for the proposition that tariff terms are to be construed in accordance with their common meaning in the absence of contrary legislative intent and that it is proper to consult lexicographic and scientific authorities, dictionaries and other reliable sources in ascertaining the common meaning of tariff terms.

mainly in the preparation of cigarette tobaccos, as well as for short cigar filler, and consists of a moveable bar grate and adjustable comb rollers. The stems and leaf are then separated pneumatically.

[Bolding added.]

We note the above definitions reveal that stemming and threshing are different processes; the first removing only the midribs of tobacco leaves, the latter removing the midrib and side veins (though note the omission of the removal of side veins in the definition of thresher). Threshing results in relatively small pieces of lamina and veins and, according to this particular definition, is done by mechanical means. However, the excerpt from Tobacco: Production, Chemistry and Technology above clearly indicates that but for the stemming machinery and threshers, tobacco is processed by hand. Thus, provision for hand processed tobacco remains necessary.

Based on the above definitions, it appears that threshing includes stemming. This would comport with the tariff schedule placing stemming as a superior provision under which tobacco may be divided into not threshed and threshed.² While tobacco may be stemmed and not threshed, if it is threshed, it is also stemmed. In HQ 084808, dated September 12, 1989, CBP recognized that stemmed tobacco includes threshed tobacco. In that ruling CBP stated:

In describing the stemming of leaf tobacco, the U.S. Agricultural Marketing Service states that the bulk of stemming is done by “tipping and threshing”. This is a process which involves the leaf tobacco passing through a series of rotary knives and separators which not only remove much of the stem but ultimately reduce the leaf to small pieces. The definition of stemmed cigarette leaf includes the product of the threshing process, and the fact that it has been greatly reduced in size does not change its identity as stemmed leaf.

In this case, the stemming is a separate operation from the tearing, breaking or mangling of the tobacco. The result of tearing, breaking or mangling the tobacco leaf is smaller pieces of lamina and veins, which is the same result one gets with mechanical threshing.

In Treasury Decision (T.D.) 83-148, 48 *Fed. Reg.* 31954 (1983), Customs (now CBP) considered the classification of tobacco that had been machine-threshed, *i.e.* “produced by adding moisture to leaf tobacco, mechanically removing the stems, and breaking the remaining tobacco into pieces ranging from 1/2 inch to 2 inches in size.” In T.D. 83-148, Customs stated, in relevant part:

. . . While the tobacco at issue is smaller than the tobacco leaf that Customs has traditionally classified as stemmed tobacco leaf, the reduction in size is the result of the modern threshing process used to separate the stem from the more desirable portion of the whole leaf. . . . The fact that technological progress is utilized and a machine is employed in the separation process should not require a change in tariff classification merely because the resultant pieces of leaf are smaller in size. The frag-

²See *Deckers Corporation v. United States*, 414 F. Supp. 2d 1252, 1257 (2005) citing to *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339, 99 S. Ct. 2326, 60 L. Ed. 2d 931 (1979) (“In construing a statute we are obliged to give effect, if possible, to every word Congress used”).

mented tobacco produced by the mechanical operation is no different in quality, physical characteristics, or use than the old fashioned stemmed leaf accomplished by hand separation. * * *

See also HQ 073512, dated February 3, 1984.

Thus, stemmed tobacco includes machine-threshed tobacco. Modern threshing machinery normally combines the processes of stemming (removing the midribs from the tobacco leaves) and threshing (breaking the leaf into small pieces of lamina). See *Kuehne & Nagel, Inc. v. United States*, 10 C.I.T. 814 (1986). We need not determine whether commercially the term “threshing” includes both machine and hand threshed. Rather, we need only to construe whether the two processes fall within the phrase “threshed or similarly processed.” Given that the resulting product looks the same and is used for the same purposes, the tariff phrase “threshed or similarly processed” includes both hand- and machine-threshed tobacco.

In a related matter, New York ruling letter (NY) B89949, dated October 2, 1997, dealt with the classification of stemmed wrapper tobacco. The ruling describes the processing of the tobacco leaves, in relevant part, as follows:

The individual leaves are cut into small, uniform pieces, and packaged into sealed, plastic containers. The product will be used for rolling cigars and cigarettes.

“Wrapper tobacco” is defined in Additional U.S. Note 1 of Chapter 24 of the HTSUS, as follows:

The term “wrapper tobacco”, as used in this chapter, means that quality of leaf tobacco which has the requisite color, texture and burn, and is of sufficient size for cigar wrappers, and the term “filler tobacco” means all other leaf tobacco.

This definition is identical to the definition of wrapper tobacco under the prior tariff, *i.e.* the Tariff Schedules of the United States (TSUS). See Headnote 1, Part 13, Schedule 1, TSUS (1989).

Although NY B89949 states the leaves are cut into small, uniform pieces, it does not specify the size of these pieces. However, the ruling does clearly state the purpose of these cut pieces was for rolling cigars and cigarettes. The tobacco pieces were classifiable as wrapper tobacco under subheading 2401.20, which provides for unmanufactured tobacco, partly or wholly stemmed, not threshed or similarly processed. The classification of the tobacco pieces in NY B89949 as wrapper tobacco meant that the cut pieces met the definition of wrapper tobacco in Additional U.S. Note 1, Chapter 24, HTSUS. Cutting tobacco leaf for use as wrapper tobacco is distinguishable from threshing in that wrapper tobacco must be of sufficient size for use as cigar wrappers and threshed tobacco is for use as filler tobacco and, as such, need not be of a uniform size or shape as the tobacco described in NY B89949 apparently was. Threshed tobacco is defined as being cut into relatively small pieces. See prior cited definitions on threshing.

HOLDING:

The torn, broken or mangled stemmed cigar filler half leaves which were the subject of HQ 083490 are properly classified in subheading 2401.20.60, HTSUS, which provides for “Unmanufactured tobacco (whether or not threshed or similarly processed); tobacco refuse: Tobacco, partly or wholly stemmed/stripped: Threshed or similarly processed: From cigar leaf. The col-

umn one, general rate of duty for goods classifiable in subheading 2401.20.60, HTSUS, is Free.

EFFECT ON OTHER RULINGS:

HQ 083490, dated May 25, 1989, is hereby modified to reflect the classification of the stemmed cigar filler half leaves which were torn, broken or mangled in subheading 2401.20.60, HTSUS. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the CBP officer handling the transaction.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

