

U.S. Customs and Border Protection

General Notices

AGENCY INFORMATION COLLECTION ACTIVITIES:

Andean Trade Preferences

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

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0091.

SUMMARY: U.S. 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: Andean Trade Preferences. 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** (73 FR 72500) on November 28, 2008, 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 March 9, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION:

U.S. 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 (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: Andean Trade Preferences

OMB Number: 1651–0091

Form Number: None

Abstract: This collection identifies the country of origin and related rules which apply for purposes of duty-free or reduced-duty treatment and specifies the documentary and other procedural requirements for preferential tariff treatment under the Andean Trade Preferences Act 19 U.S.C. 3201 through 3206.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses

Estimated Number of Respondents: 48,000

Estimated Time Per Respondent: 10 minutes

Estimated Total Annual Burden Hours: 7,968

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202–344–1429.

Dated: January 29, 2009

TRACEY DENNING,
Agency Clearance Officer,
Customs and Border Protection.

AGENCY INFORMATION COLLECTION ACTIVITIES:**Application for Withdrawal of Bonded Stores for Fishing Vessels and Certification of Use**

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

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0092.

SUMMARY: U.S. 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: Application for Withdrawal of Bonded Stores for Fishing Vessels and Certification of Use. 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** (73 FR 72500) on November 28, 2008, 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 March 9, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION:

U.S. 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 (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 Withdrawal of Bonded Stores for Fishing Vessels and Certification of Use

OMB Number: 1651-0092

Form Number: CBP Form 5125

Abstract: CBP Form 5125 is used for the withdrawal and lading of bonded merchandise (especially alcoholic beverages) for use on board fishing vessels. This form is also used to verify that the supplies on the vessel were either consumed or secured onboard for use on the next voyage.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses

Estimated Number of Respondents: 500

Estimated Time Per Respondent: 5 minutes

Estimated Total Annual Burden Hours: 42

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: January 29, 2009

TRACEY DENNING,
*Agency Clearance Officer,
Customs and Border Protection.*

AGENCY INFORMATION COLLECTION ACTIVITIES:**Declaration of a Person Abroad Who Receives and is Returning Merchandise to the U.S.**

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

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0094.

SUMMARY: U.S. 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: Declaration of a Person Abroad Who Receives and is Returning Merchandise to the U.S.. 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** (73 FR 72501) on November 28, 2008, 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 March 9, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION:

U.S. 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 (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 of a Person Abroad Who Receives and is Returning Merchandise to the U.S.

OMB Number: 1651-0094

Form Number: None

Abstract: This declaration is used under conditions where articles are imported, and then exported and re-imported free of duty. The declaration is to insure that CBP can track and control duty-free merchandise.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses

Estimated Number of Respondents: 1500

Estimated Time Per Respondent: 10 minutes

Estimated Total Annual Burden Hours: 250

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: January 29, 2009

TRACEY DENNING,
Agency Clearance Officer,
Customs and Border Protection.

AGENCY INFORMATION COLLECTION ACTIVITIES:**JADE Act**

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

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651–0133.

SUMMARY: U.S. 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: JADE Act. 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** (73 FR 72501) on November 28, 2008, 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 March 9, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION:

U.S. 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 (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: JADE Act

OMB Number: 1651-0133

Form Numbers: None

Abstract: The JADE Act amends previous Burmese sanctions by providing for import restrictions on certain categories of goods. In order to enforce these sanctions, CBP will require a certification from the exporter as part of the entry package certifying that the goods were not mined in, or extracted from Burma. This certification is provided for by the Act.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses

Estimated Number of Respondents: 22,197

Estimated Time Per Response: 10 minutes

Estimated Total Annual Burden Hours: 74,005

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: January 29, 2009

TRACEY DENNING,
Agency Clearance Officer,
Customs and Border Protection.

**ACCREDITATION OF INTERTEK USA, INC., AS A
COMMERCIAL LABORATORY**

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

ACTION: Notice of accreditation of Intertek USA, Inc., as a commercial laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12, Intertek USA, Inc., 15602 Jacintoport Blvd. Stolthaven Terminal, Houston, TX 77015, has been accredited to test petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12. Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquires regarding the specific test this entity is accredited to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The accreditation of Intertek USA, Inc., as commercial laboratory became effective on November 07, 2008. The next triennial inspection date will be scheduled for November 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: January 29, 2009

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, February 6, 2009 (74 FR 6298)]

**ACCREDITATION AND APPROVAL OF INTERTEK USA,
INC., AS A COMMERCIAL GAUGER AND LABORATORY**

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

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 2780 Highway 69 N, Nederland, TX 77627, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on April 29, 2008. The next triennial inspection date will be scheduled for April 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: January 29, 2009

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

APPROVAL OF INTERTEK USA, INC., AS A COMMERCIAL GAUGER

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

ACTION: Notice of approval of Intertek USA, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Intertek USA, Inc., 3741 Red Bluff Road Suite 105, Pasadena, TX 77503, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The approval of Intertek USA, Inc., as commercial gauger became effective on November 07, 2008. The next triennial inspection date will be scheduled for November 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: January 29, 2009

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, February 6, 2009 (74 FR 6300)]

**ACCREDITATION AND APPROVAL OF INTERTEK USA,
INC., AS A COMMERCIAL GAUGER AND LABORATORY**

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

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 149 Pintail St., St. Rose, LA 70087, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on June 24, 2008. The next triennial inspection date will be scheduled for June 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: January 29, 2009

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

ACCREDITATION AND APPROVAL OF INTERTEK USA, INC., AS A COMMERCIAL GAUGER AND LABORATORY

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

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 2717 Maplewood Dr., Sulphur, LA 70663, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on September 23, 2008. The next triennial inspection date will be scheduled for September 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: January 29, 2009

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

**ACCREDITATION AND APPROVAL OF SAYBOLT LP, AS A
COMMERCIAL GAUGER AND LABORATORY**

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

ACTION: Notice of accreditation and approval of Saybolt LP, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt LP, 1809 Magnolia Ave, Port Neches, TX 77651, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The accreditation and approval of Saybolt LP, as commercial gauger and laboratory became effective on April 29, 2008. The next triennial inspection date will be scheduled for April 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: January 29, 2009

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

APPROVAL OF SAYBOLT LP, AS A COMMERCIAL GAUGER

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

ACTION: Notice of approval of Saybolt LP, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Saybolt LP, 4025 Oak Lane, Sulfur, LA 70665, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The approval of Saybolt LP, as commercial gauger became effective on June 11, 2008. The next triennial inspection date will be scheduled for June 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: January 29, 2009

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, February 6, 2009 (74 FR 6301)]

**ACCREDITATION AND APPROVAL OF THIONVILLE
SURVEYING COMPANY, INC., AS A COMMERCIAL GAUGER
AND LABORATORY**

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

ACTION: Notice of accreditation and approval of Thionville Surveying Company, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Thionville Surveying Company, Inc., 5440 Pepsi St, Harahan, LA 70123, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The accreditation and approval of Thionville Surveying Company, Inc., as commercial gauger and laboratory became effective on June 25, 2008. The next triennial inspection date will be scheduled for June 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: January 29, 2009

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

APPROVAL OF VIP CHEMICAL, INC., AS A COMMERCIAL GAUGER

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

ACTION: Notice of approval of VIP Chemical, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, VIP Chemical, Inc., 4026 FM 1694, Robstown, TX 78310, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The approval of VIP Chemical, Inc., as commercial gauger became effective on May 22, 2008. The next triennial inspection date will be scheduled for May 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: January 29, 2009

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, February 6, 2009 (74 FR 6301)]

GENERAL NOTICE

**COPYRIGHT, TRADEMARK, AND TRADE NAME
RECORDATIONS**

(No. 1 2009)

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

SUMMARY: Presented herein are the copyrights, trademarks, and trade names recorded with U.S. Customs and Border Protection during the month of January 2009. The last notice was published in the CUSTOMS BULLETIN on January 16, 2009.

Corrections or updates may be sent to: Department of Homeland Security, U.S. Customs and Border Protection, Office of Regulations and Rulings, IPR Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Delois Johnson, Paralegal, Intellectual Property Rights Branch, (202) 572-8710.

Dated: February 9, 2009

GEORGE MCCRAY, ESQ.,
Chief,
Intellectual Property Rights Branch.

CBP IPR RECORDATION - JANUARY 2009

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tmm	Owner Name	GM Restrictive
TMK 07-00132	1/6/2009	9/12/2016	ENYCE	JESSIE AND D LILA LLC.	No
TMK 09-00001	1/6/2009	9/11/2016	ONE A DAY	BAYER HEALTHCARE LLC	No
TMK 07-01097	1/6/2009	9/1/2018	ACQUA DI GIO	GA MODEFINE S.A.	No
TMK 08-00241	1/6/2009	2/24/2019	"WHEN YOU CARE ENOUGH TO SEND THE VERY BEST"	HALLMARK LICENSING, INC.	No
TMK 08-00391	1/6/2009	10/28/2018	MERIT	PHILIP MORRIS USA INC.	No
TMK 09-00003	1/6/2009	6/30/2018	AMERGE	GLAXO GROUP LIMITED	No
TMK 09-00004	1/6/2009	6/3/2013	ASCENSIA	BAYER CORPORATION	No
TMK 09-00005	1/6/2009	3/7/2012	KETO-DIASTIX	BAYER CORPORATION	No
TMK 09-00006	1/6/2009	11/25/2018	BD LIVE	BLU-RAY DISC ASSOCIATION	No
TMK 09-00007	1/6/2009	9/26/2016	BIG BANG	HUBLOT, S.A.	No
TMK 09-00008	1/6/2009	1/29/2018	BIG BANG	HUBLOT, S.A.	No
TMK 09-00009	1/6/2009	1/6/2029	DOONEY & BOURKE D WITH BEES	DOONEY & BOURKE, INC.	No
TMK 09-00010	1/6/2009	10/28/2018	TITANS	TENNESSEE FOOTBALL, INC.	No
COP 09-00001	1/6/2009	1/6/2029	ZORBETIVE PATIENT INFORMATION AND PACKAGING.	ARES TRADING S.A.	No
TMK 09-00012	1/6/2009	6/17/2013	AUTODISC	BAYER CORPORATION	No
TMK 09-00011	1/6/2009	12/31/2017	KETOSTIX	BAYER HEALTHCARE LLC	No
TMK 09-00013	1/6/2009	5/29/2017	CONTOUR	BAYER HEALTHCARE LLC	No
TMK 09-00010	1/6/2009	12/9/2018	M AND DESIGN	MIAMI DOLPHINS, LTD.	No
TMK 09-00002	1/6/2009	1/31/2016	FELT	FELT GMBH	No
TMK 93-00429	1/6/2009	9/25/2010	BOSS HUGO BOSS	HUGO BOSS TRADE MARKS MANAGEMENT GMBH & CO. KG	No
TMK 98-00569	1/6/2009	1/14/2018	COBRA	COBRA GOLF INCORPORATED	No
TMK 99-00297	1/6/2009	12/12/2018	DESIGN OF AN ALLIGATOR	LACOSTE ALLIGATOR S.A.	No
TMK 03-00390	1/6/2009	5/23/2010	ENYCE & DESIGN	JESSIE AND D LILA LLC.	No

Total Records: 23
Date as of: 2/4/2009

CBP IPR RECORDATION - JANUARY 2009

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restrictive
TMK 07-00132	1/6/2009	9/12/2016	ENYCE	JESSIE AND D LILA LLC.	No
TMK 09-00001	1/6/2009	9/11/2016	ONE A DAY	BAYER HEALTHCARE LLC	No
TMK 07-01097	1/6/2009	9/1/2018	ACQUA DI GIO	GA MODERNE S.A.	No
TMK 08-00241	1/6/2009	2/24/2019	"WHEN YOU CARE ENOUGH TO SEND THE VERY BEST"	HALLMARK LICENSING, INC.	No
TMK 08-00391	1/6/2009	10/28/2018	MERIT	PHILIP MORRIS USA INC.	No
TMK 09-00003	1/6/2009	6/30/2018	AMERGE	GLAXO GROUP LIMITED	No
TMK 09-00004	1/6/2009	6/3/2013	ASCENSIA	BAYER CORPORATION	No
TMK 09-00005	1/6/2009	3/7/2012	KETO-DIASTIX	BAYER CORPORATION	No
TMK 09-00007	1/6/2009	11/25/2018	BD LIVE	BLU-RAY DISC ASSOCIATION	No
TMK 09-00006	1/6/2009	9/26/2016	BIG BANG	HUBLOT, S.A.	No
TMK 09-00008	1/6/2009	1/29/2018	BIG BANG	HUBLOT, S.A.	No
COP 09-00002	1/6/2009	1/6/2029	DOONEY & BOURKE D WITH BEES	DOONEY & BOURKE, INC.	No
TMK 09-00009	1/6/2009	10/28/2018	TITANS	TENNESSEE FOOTBALL, INC.	No
COP 09-00001	1/6/2009	1/6/2029	ZORBTIVE PATIENT INFORMATION AND PACKAGING.	ARES TRADING S.A.	No
TMK 09-00012	1/6/2009	6/17/2013	AUTODISC	BAYER CORPORATION	No
TMK 09-00011	1/6/2009	12/31/2017	KETOSTIX	BAYER HEALTHCARE LLC	No
TMK 09-00013	1/6/2009	5/29/2017	CONTOUR	BAYER HEALTHCARE LLC	No
TMK 09-00010	1/6/2009	12/9/2018	M AND DESIGN	MIAMI DOLPHINS, LTD.	No
TMK 09-00002	1/6/2009	1/31/2016	FELT	FELT GMBH	No
TMK 93-00429	1/6/2009	9/25/2010	BOSS HUGO BOSS	HUGO BOSS TRADE MARKS MANAGEMENT GMBH & CO. KG	No
TMK 98-00569	1/6/2009	1/14/2018	COBRA	COBRA GOLF INCORPORATED	No
TMK 99-00297	1/6/2009	12/12/2018	DESIGN OF AN ALLIGATOR	LACOSTE ALLIGATOR S.A.	No
TMK 03-00390	1/6/2009	5/23/2010	ENYCE & DESIGN	JESSIE AND D LILA LLC.	No

Total Records: 23
Date as of: 2/4/2009

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, February 11, 2009

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.

Myles B. Harmon for SANDRA L. BELL,
*Executive Director,
Regulations and Rulings,
Office of International Trade.*

**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF SUCTION DIFFUSER
BODIES**

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

ACTION: Notice of proposed revocation of a tariff classification ruling letter and proposed revocation of treatment relating to the classification of suction diffuser bodies

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)), this notice advises interested parties that Customs and Border Protection (CBP) is proposing to revoke a ruling letter relating to the tariff classification of suction diffuser bodies, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before March 21, 2009.

ADDRESS: Written comments are to be addressed to Customs and Border Protection, Regulations and Rulings of the Office of International Trade, Attention: Commercial Trade and Regulations Branch, 799 9th Street, N.W., Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., Washington, D.C. 20229, during regular business hours. Arrangements to inspect submitted comments should be made in ad-

vance by calling Mr. Joseph Clark, Trade and Commercial Regulations Branch, at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: John Rhea, Tariff Classification and Marking Branch: (202) 325-0035

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 to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the tariff classification suction diffuser bodies. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter ("NY") E80816, dated April 19, 1999 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice

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

In the above mentioned ruling, CBP determined that the suction diffuser bodies were classifiable under subheading 7326.90.8585, HTSUSA, which provides for, "Other articles of iron or steel: Other: Other." It is now CBP's position that the suction diffuser bodies are properly classified in heading 8421, HTSUS. Specifically, these suction diffuser bodies are classified under subheading 8421.29.00, HTSUS, which provides for: "Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof: Filtering or purifying machinery and apparatus for liquids: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY E80816 and any other ruling not specifically identified, to reflect the proper classification of the suction diffuser bodies according to the analysis contained in proposed Headquarters Ruling Letter ("HQ") W967677, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: February 3, 2009

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
NY E80816
April 19, 1999
CLA-2-73:RR:NC:115 E80816
CATEGORY: Classification
TARIFF NO.: 7326.90.8585

MR. PAUL F. HEISS
IBCC INDUSTRIES, INC.
3200 S. 3rd Street
Milwaukee, WI 53207

RE: The tariff classification of Suction Diffuser Bodies and Covers from China.

DEAR MR. HEISS:

In your letter dated April 9, 1999 you requested a tariff classification ruling. The suction diffuser bodies and covers are made from ASTM A48 Class 30 steel. These bodies and covers are assembled with domestic parts and sold as complete units in sizes ranging from 1-1/2" x 2" through 10" x 12". Suction diffusers are used in building fluid services to minimize turbulent flow at the inlet of a pump. In addition, the suction diffuser incorporates a strainer to remove large particulates from the fluid in order to protect the pump from possible damage. A sample was submitted.

The applicable subheading for the suction diffuser body will be 7326.90.8585, Harmonized Tariff Schedule of the United States (HTS), which provides for Other articles of iron or steel: Other..Other.. The rate of duty will be 2.9% ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Melvyn Birnbaum at 212-637-7017.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ W967677
CLA-2 OT:RR:CTF:TCM W967677 JER
CATEGORY: Classification
TARIFF NO.: 8421.29.00

PAUL F. HEISS
IBCC INDUSTRIES, INC.
3200 South 3rd Street
Milwaukee, WI 53207

RE: Revocation of NY E80816; 8421.29.00, HTSUS; suction diffuser bodies

DEAR MR. HEISS:

On April 19, 1999, U.S. Customs and Border Protection (“CBP”) issued New York Ruling Letter (“NY”) E80816 to IBCC Industries, Inc., classifying a suction diffuser body in subheading 7326.90.8585 of the Harmonized Tariff Schedule of the United States (“HTSUS”), as other articles of steel or iron. After reviewing NY E80816, we have found that ruling to be in error.

FACTS:

NY E80816 described the subject merchandise in the following manner:

The suction diffuser bodies and covers are made from ASTM A48 Class 30 steel. These bodies and covers are assembled with domestic parts and sold as complete units in sizes ranging from 1-1/2" x 2" through 10" x 12". Suction diffusers are used in building fluid services to minimize turbulent flow at the inlet of a pump. In addition, the suction diffuser incorporates a strainer to remove large particulates from the fluid in order to protect the pump from possible damage. A sample was submitted.

ISSUE:

Whether the subject merchandise is classifiable under heading 8421, HTSUS as a filtering apparatus or under heading 7326, HTSUS, as an article of iron or steel.

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 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

- 7326 Other articles of iron or steel:
- 7326.90 Other:
- Other:
- Other:
- 7326.90.85 Other.

8421 Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof:

Filtering or purifying machinery and apparatus for liquids:

8421.29.00 Other.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding or 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, 54 Fed. Reg. 35127 (August 23, 1989).

EN 84.21 provides in pertinent part that:

This heading covers:

- (I) Machines which, by the use of centrifugal force, completely or partly separate substances according to their different specific gravities, or which remove the moisture from wet substances.
- (II) Filtering or purifying machinery and apparatus for liquids or gases, other than, e.g., filter funnels, milk strainers, strainers for filtering paints (generally Chapter 73).

* * *

(II) FILTERING OR PURIFYING MACHINERY AND APPARATUS, FOR LIQUIDS OR GASES

Much of the filtration or purification plant of this heading is purely static equipment with no moving parts. The heading covers filters and purifiers of all types (physical or mechanical, chemical, magnetic, electro-magnetic, electrostatic, etc.). The heading covers not only large industrial plant, but also filters for internal combustion engines and small domestic appliances. The heading **does not**, however, include filter funnels, milk strainers, vessels, tanks, etc., simply equipped with metallic gauze or other straining material, nor general purpose vessels, tanks, etc., even if intended for use as filters after insertion of a layer of gravel, sand, charcoal, etc.

In general, filtering machinery and plant of this heading is of two distinct types according to whether it is intended for liquids or gases.

* * *

- (4) **Filters for boiler water.** These usually consist of a large vessel fitted internally with several superimposed layers of filtering materials and, in addition to the inlet and outlet tubes, a system of pipes and valves for cleaning the filtering elements by a cross-current of water.

* * *

(B) Filtering or purifying machinery, etc., for gases

These gas filters and purifiers are used to separate solid or liquid particles from gases, either to recover products of value (e.g., coal dust, metallic particles, etc., recovered from furnace flue gases), or to elimi-

nate harmful materials (e.g., dust extraction, removal of tar, etc., from gases or smoke fumes, removal of oil from steam engine vapours).

NY E80816 classified the merchandise at issue under subheading 7326.90.8585, of the 1999 HTSUSA, which provided for “[o]ther articles of steel or iron: Other: Other.” However, we have found this decision to be inconsistent with other rulings classifying substantially similar merchandise. Specifically, Headquarters Ruling Letter (“HQ”) 964174, dated July 10, 2000, classified “Y” Strainers used to filter or trap contaminants in water or steam lines under heading 8421, HTSUS. This ruling also revoked a previously issued ruling which classified “Y” Strainers in heading 7326, HTSUS.¹ In HQ 964174, CBP found that heading 8421, HTSUS, provided a more specific description of the merchandise than did heading 7326, HTSUS. See also, HQ 963308 dated July 10, 2000 (which revoked a previously issued ruling that classified “Y” Strainers under heading 7325, HTSUS).

Our research indicates that the subject suction diffuser bodies (hereinafter “suction diffusers”) and “Y” Strainers are substantially similar in physical structure, use and function. Generally, suction diffusers function as a strainer, flow straightener, elbow and pipe reducer. Strainer, Suction Diffuser, at <http://www.grainger.com>; see also FSI Suction Diffusers, at <http://www.suctiondiffuser.com>. Also, the filtration capacity of the suction diffuser is designed to increase or ensure pump protection against harmful debris in fluids which flow throughout the pipe system. *Id.* Likewise, “Y” Strainers have a strainer orifice designed to increase filtration capacity in pipe systems. Typically, both the suction diffusers and “Y” strainers have an iron body and stainless steel screens and are used in industrial or commercial systems to strain out debris (and provide pump protection in the case of suction diffusers). Both are used in high pressure water and steam systems and through the use of screens, mesh liners and covers, are able to filter and trap contaminants. *Id.* We find that these filtration functions are covered in heading 8421, HTSUS.

Note 1(f) to Section XV, HTSUS, states in pertinent part that “[t]his section does not cover: Articles of section XVI (machinery, mechanical appliances and electrical goods).” Filtering and purifying apparatus for liquids or gases are articles of Section XVI, HTSUS, and are therefore excluded from classification in heading 7326, HTSUS, which is a heading of Section XV, HTSUS.

Similarly, the ENs to heading 7326, HTSUS, explain that, “[t]his heading covers all iron or steel articles obtained by forging or punching, by cutting or stamping or by other processes such as folding, assembling, welding, turning, milling or perforating **other than** articles included in the preceding headings of this Chapter or covered by Note 1 to Section XV or included in **Chapter 82 or 83** or more specifically covered elsewhere in the Nomenclature.”

By contrast, heading 8421, HTSUS, covers filtering or purifying machinery and apparatus for liquids and for gases. The ENs to heading 8421, HTSUS, explain that the heading covers filters and purifiers of all types, in-

¹ NY B81839, dated February 7, 1997 was revoked by HQ 964174. Likewise, NY B81286, dated January 30, 1997, was revoked by HQ 963308, which classified “Y” Strainers in heading 7325, HTSUS.

cluding filters for boiler water consisting of a system of inlet and outlet tubes, pipes and valves for cleaning the filtering elements by a cross-current water.

Based on all the foregoing, we find that the subject suction diffuser body was incorrectly classified under heading 7326, HTSUS, and is provided for in heading 8421, HTSUS.

HOLDING:

By application of GRI 1 and Note 1 (f) to Section XV, HTSUS, the subject suction diffuser body is classified in heading 8421, HTSUS. Specifically, the merchandise is provided for in subheading 8421.29.00, HTSUS, which provides for: “Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof: Filtering or purifying machinery and apparatus for liquids: Other.” The column one, general rate of duty is Free.

EFFECT ON OTHER RULINGS:

NY E80816, dated April 19, 1999, is hereby revoked.

MYLES B. HARMON,
Director,

Commercial and Trade Facilitation Division.

**MODIFICATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF A HANDBAG AND TOTE WITH
COORDINATING POUCHES**

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

ACTION: Modification of a classification ruling letter and revocation of treatment relating to the classification of a handbag and tote with coordinating pouches.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying a ruling letter relating to the classification of a handbag and tote with coordinating pouches. CBP is also modifying or revoke any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on October 23, 2008, in Volume 42, Number 44, of the Customs Bulletin. CBP received no comments in response to the proposed notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 20, 2009.

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Tariff Classification and Marking Branch: (202) 325-0026.

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 to 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 revoke one ruling letter and modify one ruling letter pertaining to the classification of a handbag and tote with coordinating pouches were published in the October 23, 2008, Customs Bulletin, Volume 42, Number 44. No comments were received in response to the proposed notice.

As stated in the proposed notice, this 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, 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.

In NY N025384, pouches imported with a coordinating tote and purse were separately classified from the coordinating purse and tote. Since the issuance of that ruling, CBP has reviewed the classification of the pouches and has determined that the cited ruling is in error.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N025384 and is revoking or modifying any other ruling not specifically identified, to reflect the classification of the pouches according to the analysis contained in Headquarters Ruling Letter (HQ) H031400, set forth as an attachment 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 transactions. Before taking this action, we will give consideration to any written comments timely received.

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

DATED: February 5, 2009

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 H031400
February 5, 2009
CLA-2: OT:RR:CTF:TCM H031400 KSH
CATEGORY: Classification
TARIFF NO.: 4202.22.8050; 4202.92.3031

BREANDA JACOBS, ESQ.
SIDLEY AUSTINS LLP
1501 K Street N.W.
Washington, DC 20005

RE: Modification of NY N025384 dated April 15, 2008; Classification of handbag with pouch and tote bag with pouch

DEAR MR. JACOBS:

This is in reply to your letter dated June 18, 2008, in which you have requested reconsideration of New York Ruling Letter (NY) N025384, dated April 15, 2008. In NY N025384, a handbag with pouch and tote bag with pouch were individually classified rather than classified as sets.

In your request for reconsideration, you state that the aforementioned ruling is in conflict with NY N027768, dated June 3, 2008, in which a substantially similar handbag and pouch were classified as a set pursuant to GRI 3(b).

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 of the proposed action was published on October 23, 2008, in Volume 42, Number 44 of the Customs Bulletin. CBP received no comments in response to the proposed notice.

FACTS:

The merchandise at issue is a handbag and pouch, identified as Style 7520 and a tote bag and pouch, identified as Style 7547. Both the handbag with pouch and tote bag with pouch are imported and sold together at retail as a single item. As presented at retail, the pouches are attached to the handbag or tote bag by a plastic “secure tak” fastener.

Style 7520 features a man-made fiber textile outer-surface. The handbag measures approximately 11.5” wide by 8” high by 4.5” deep. It has a zipper closure and a single textile lined interior compartment that includes a hanging zippered pocket. The front exterior of the handbag features a single zippered pocket covering the length of the bag. The back exterior of the handbag features a small zippered pocket and open pocket. The handbag has an adjustable webbed shoulder strap and is trimmed with the same webbing fabric.

The pouch measures approximately 7.25” by 5.75”. It features a single zippered closure across the top accented by a grosgrain ribbon imprinted with the trademark “Le Sportsac.” It is designed to carry or store the handbag when not in use and to organize and carry small articles of a kind normally carried in a handbag, such as cosmetics, a small comb or a mirror.

Style 7547 also exhibits a man-made fiber textile outer surface. The tote bag measures approximately 23” by 12.5” by 4.5”. It has a single top zipper closure accented by a grosgrain ribbon imprinted with the repeating trademark “Le Sportsac.” The interior is textile lined with an interior zippered pocket and a smaller open pocket. The tote has an adjustable webbed shoulder strap and is trimmed with the same webbing fabric.

The pouch measures approximately 8.5” by 7” and features a single zipper closure across the top accented by a grosgrain ribbon imprinted with the repeating trademark “Le Sportsac.” It is designed to carry or store the handbag when not in use and to organize and carry small articles of a kind normally carried in a handbag such as cosmetics, a small comb or a mirror.

ISSUE:

Whether the handbag or tote and accompanying pouch are classified as a set pursuant to GRI 3(b).

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation. 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. The 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. CBP believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The applicable HTSUS provisions at issue are as follows:

- 4202 Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:
 - Handbags, whether or not with shoulder strap, including those without handle:
 - 4202.22 With outer surface of sheeting of plastic or of textile materials:
 - * * * *
 - Articles of a kind normally carried in the pocket or in the handbag:
 - 4202.32 With outer surface of sheeting of plastic or of textile materials:
 - * * * *
 - Other
 - 4202.92 With outer surface of sheeting of plastic or of textile materials:

There is no dispute that the subject merchandise is classified in heading 4202, HTSUS. GRI 6 provides that the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, mutatis mutandis, to GRIs 1 through 5, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

The subject merchandise contains two articles packaged together, which cannot be classified pursuant to a GRI 1 analysis because the articles are *prima facie*, classifiable in two different subheadings. If imported separately, the handbag would be classified in subheading 4202.22, HTSUS, which provides, in part, for “Handbags, whether or not with shoulder strap, including those without handle”, the tote would be classified in subheading 4202.92, HTSUS, which provides, in part, for “Other” bags and the handbag or totes pouch would be classified in subheading 4202.32, HTSUS, which provides, in part, for “Articles of a kind normally carried in the pocket or in the handbag.”

When goods are, *prima facie*, classifiable in two or more headings, they must be classified in accordance with GRI 3, which provides, in relevant part, as follows:

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description.

However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

* * * *

GRI 3 establishes a hierarchy of methods for classifying goods that fall under two or more headings. GRI 3(a) states that the heading providing the most specific description is to be preferred to a heading, which provides a more general description. However, GRI 3(a) indicates that when two or more headings each refer to part only of the materials or substances in a composite good or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description than the other. In this case, the subheadings 4202.22, 4202.32 and 4202.92, HTSUS, each refer to only part of the items in the set. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b).

In classifying the articles pursuant to a GRI 3(b) analysis, the goods are classified as if they consisted of the component that gives them their essential character and a determination must be made as to whether or not these are “goods put up in sets for retail sale”. In relevant part, the ENs to GRI 3(b) state:

- (VII) In all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

* * * *

- (X) For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:

- (a) consist of at least two different articles which are, prima facie, classifiable in different headings. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule;
- (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without re-packing (e.g., in boxes or cases or on boards).

In accordance with GRI 3(b), we find that the subject component articles are properly classified as “sets” because they consist of goods put up in a set for retail sale. In this instance, the pouch is designed to coordinate with the handbag or tote bag in that it is constructed of the same fabric and is color

coordinated to match the patterns of the handbag or tote. The pouch is also a typical accessory that one might expect to be sold with a hand bag or tote. The handbag, tote and pouch serve the singular purpose of helping the user to carry various items. Furthermore, the components in this set are, *prima facie*, classifiable in different subheadings and have been put up in retail packaging suitable for sale directly to users without repacking. See also NY G82760, dated October 10, 2000, and NY G87109, dated February 14, 2008.

There have been several court decisions on “essential character” for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. See, Better Home Plastics Corp. v. United States, 916 F. Supp. 1265 (CIT 1996), *affirmed*, 119 F. 3d 969 (Fed. Cir. 1997); Mita Copystar America, Inc. v. United States, 966 F. Supp. 1245 (CIT 1997), *re-hearing denied*, 994 F. Supp. 393 (CIT 1998), and Vista International Packaging Co., v. United States, 19 CIT 868, 890 F. Supp. 1095 (1995). See also, Pillowtex Corp. v. United States, 983 F. Supp. 188 (CIT 1997), *affirmed*, 171 F. 3d 1370 (Fed. Cir. 1999).

The handbag of style 7520 and the tote bag of style 7547 carries and keeps its pouch and enhances the usefulness of the pouch when used in combination with the handbag or tote bag. Moreover, the handbag or tote bag provide the bulk of the set and visual impact. In this instance, it is the handbag or tote bag that imparts the essential character to the set.

HOLDING:

Pursuant to GRI 1, Style 7520 and Style 7547 are classified in heading 4202. By application of GRI 6 and GRI 3(b), Style 7520 is classified in subheading 4202.22.8050, HTSUSA (Annotated), which provides for: “Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Handbags, whether or not with shoulder strap, including those without handle: With outer surface of sheeting of plastic or of textile materials: With outer surface of textile materials: Other: Other: Other: Other, Of man-made fibers.” The column one, general rate of duty is 17.6% *ad valorem*. The textile category code is 670.

By application of GRI 6 and 3(b), Style 7547 is classified in subheading 4202.92.3031, HTSUSA, which provides for “Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: With outer surface of textile

materials: Other, Other: Other.” The column one, general rate of duty is 17.6% *ad valorem*. The textile category code is 670.

With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the “Textile Status Report for Absolute Quotas” which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer to the web site of the Office of Textiles and Apparel of the Department of Commerce at www.otexa.ita.doc.gov.

EFFECT ON OTHER RULINGS:

NY N025384, dated April 15, 2008 is hereby modified.

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 and Trade Facilitation Division.

19 CFR PART 177

**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE CLASSIFICATION OF
HYPERFORM® HPN-68L**

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

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to the classification of Hyperform® HPN-68L.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CPB is revoking a ruling concerning the classification of Hyperform® HPN-68L, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB is revoking any treatment previously accorded by CPB to substantially identical transactions. Notice of the proposed revocation was published on October 23, 2008, in Volume 42, Number 44, of the CUSTOMS BULLETIN. No comments were received in response to the notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 20, 2009.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, Tariff Classification and Marking Branch (202) 325-0029.

SUPPLEMENTARY INFORMATION:

Background

In December 8, 1993, Title VI (CBP 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), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published in the CUSTOMS BULLETIN, Volume 42, No. 44, on October 23, 2008, proposing to revoke Headquarter's Ruling Letter (HQ) 968189, dated June 6, 2006, and proposing to revoke any treatment accorded to substantially identical transactions. No Comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party, who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should 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 advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of the final decision of this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ 968189, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter HQ W968389, set forth as an attachment to this notice. 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 ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: February 5, 2009

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 W968389
February 5, 2009
CLA-2 OT:RR:CTF:TCM W968389 ARM
CATEGORY: Classification
TARIFF NO.: 2917.20.00

BARRY E. COHEN, ESQ.
CROWELL MORING
1001 Pennsylvania Avenue, NW
Washington, D. C. 20004-2595

Re: Classification of Hyperform® HPN-68L; CAS Number 351870-33-2

DEAR MR. COHEN:

This is in reply to your letter, dated August 25, 2006, on behalf of your client, Milliken & Company, requesting reconsideration of Headquarters Ruling Letter (HQ) 968189, dated June 6, 2006, classifying Hyperform® HPN-68L in heading 3824, of the Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for: "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: . . ." You request classification in heading 2917, HTSUS, which provides for: "Polycarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: . . ."

In reaching our determination, we have also considered your supplemental submission of May 27, 2008, comments made in a telephone conference with Michael Mannion, Chemical Engineer of Milliken & Company, on August 11, 2008, and supplemental information from Mr. Mannion, received by electronic mail on August 12, 2008. We have decided HQ 968189 is in error.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the CUSTOMS BULLETIN, Volume 42, No. 44, on October 23, 2008, proposing to revoke HQ 968189. No Comments were received in response to the notice.

FACTS:

Hyperform HPN-68L is a nucleating additive for polyolefin polymers.² It is composed of 80 percent Bicyclo[2.2.1]heptane-2,3-dicarboxylic acid, disodium salt, (1R, 2R, 3S, 4S)-rel- and 20 percent anti-caking agent known as Sylobloc® 250, a blend of amorphous silicon dioxide and (Z)-13-docosenamide. CBP Laboratory Report # 20061574 indicates that the amount of Sylobloc® 250 is too low to act as a slip and antiblock agent. The laboratory report also highlights the following language from U.S. Patent #6,946,507, filed October 3, 2003 on behalf of Milliken, which discusses the effect of Sylobloc® 250 on the merchandise as follows:

Another alternative method of utilizing such a combination of components involves the initial addition of from 0.1 to 5 percent by weight of the anticaking agent to the bicyclic nucleator formulation. It has been found that for storage purposes, this low amount of anticaking additive provides the desired effect of preventing agglomeration and ultimate cementation. Subsequently, then, a larger amount of anticaking agent in the range of from 10–20 percent by weight, for instance, may be added to a bicyclic nucleator formulation during introduction within a target molten thermoplastic. As noted above, the high amount of anticaking agent appears to contribute to the ability of the bicyclic nucleator to impart higher crystallization temperatures and simultaneous lower haze measurements to such target thermoplastics. Thus, instead of relying upon inclusion of large amounts of anticaking agents during initial bicyclic nucleator storage, it is thus possible to delay addition of such large amounts, thereby permitting an optimization of greater amounts of the nucleator compound to be stored at the highest available level of anticaking (anti-agglomeration, anticementation, etc.), without needing to include larger amounts of such agents that would not contribute any further reductions in cementation propensities during storage. . . .

The CBP Laboratory Report concluded, “Based on the cited patent reference it appears Sylobloc® 250 was added at the 20% level to contribute to the ability of the nucleator to impart higher crystallization temps and lower haze.”

²A nucleating agent increases the crystallization rate and the overall percent crystallinity of a polymer. The faster crystallization rate allows for higher productivity in molding and extrusion processes (CBP Laboratory Report # 20061574, dated November 6, 2006).

ISSUE:

Whether HPN-68L, containing 20 percent Sylobloc® 250, is a separate chemically identifiable compound under Note 1 to chapter 29.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

2917 Polycarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives.”

2917.20.00 Cyclanic, cyclenic or cycloterpenic polycarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives

* * * * *

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

3824.90 Other:

Other:

Other:

3824.90.91 Other.

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

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

(a) Separate chemically defined organic compounds, whether or not containing impurities; . . .

* * * * *

(f) The products mentioned in (a), (b), (c), (d) or (e) above with an added stabilizer (including an anticaking agent) necessary for their preservation or transport; . . .

* * * * *

In HQ 968189, we stated that “[t]he threshold question in this matter is whether Hyperform® HPN-68L is a separate chemically defined compound containing only substances allowed under Note 1 to Chapter 29, HTSUSA. . . . If the SYLOBLOC® 250 can be regarded merely as an anticaking agent (permitted under Note 1(f) to Chapter 29, HTSUSA), the headings of Chapter 29 may be considered for classification of Hyperform® HPN-68L. If this blend cannot, the headings of Chapter 29 will not be applicable to Hyperform® HPN-68L.” We maintain that this is the essential issue in this classification determination. However, we believe our specific finding

is in error. In HQ 968189, we specifically stated that “[b]ased on product information, your letters, and our lab testing of the additive (footnote omitted), we find that Sylobloc® 250 is purposely added to Hyperform® HPN-68L not only to absorb excess moisture and prevent agglomeration, but also to act as an antiblocking/anti-slip agent in the formation of polyolefins.” This finding is contradicted by the statement in CBP Laboratory Report # 20061574 that “. . . the amount of Sylobloc 250 is too low to act as a slip and antiblock agent” It is CBP’s practice not to disregard the reports of CBP laboratories. See Customs Directive 099-3820-002, issued May 4, 1992; see also Consolidated Cork Corp. v. United States, 54 Cust. Ct. 83, C.D. 2512 (1965). Therefore, we are convinced that the Sylobloc® 250 does not perform as an antiblocking or anti-slip agent in the instant product.

However, the question remains whether the 20 percent Sylobloc® 250 content in the instant product is solely an anti-caking agent. In your submission dated May 27, 2008, you provided evidence reprinted from patent # 6,946,507, that the crystallization temperature and haze measurements are essentially the same for the jet milled product without Sylobloc® 250 and the product with the Sylobloc® 250 without milling. The patent language notwithstanding, the higher percentages of anticaking agent maintain the as-manufactured characteristics of the HPN-68L as a free-flowing, fine powder, which itself imparts higher crystallization temperatures and lower haze measurements during the processing of the final products it is used in.

We find that Sylobloc® 250 in HPN-68L is an anti-caking agent. It is therefore a permissible addition to a separate chemically defined organic compounds under note 1(f) to chapter 29. Our laboratory report concurs that the HPN-68L contains Bicyclo[2.2.1]heptane-2,3-dicarboxylic acid, disodium salt, (1R, 2R, 3S, 4S)-rel-, a cyclanic dicarboxylic acid derivative containing carboxylic acid and salt functional groups, and is classified in heading 2917, HTSUS, under GRI 1. Specifically, HPN-68L is classified in subheading 2917.20.00, HTSUS, which provides for: “Polycarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Cyclanic, cyclenic or cycloterpenic polycarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives.”

HOLDING:

Pursuant to GRI 1, Hyperform® HPN-68L is classified in heading 2917, HTSUS. It is provided for in subheading 2917.20.00, HTSUS, which provides for: “Polycarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Cyclanic, cyclenic or cycloterpenic polycarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives.” The applicable column one, general rate of duty under the 2009 HTSUS is 4.2 percent *ad valorem*.

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

This merchandise may be subject to the requirements of the Toxic Substances Control Act (“TSCA”) administered by the U.S. Environmental Protection Agency. You may contact them by mail at U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460-0001, or by telephone at (202) 564-2220.

EFFECT ON OTHER RULINGS:

HQ 968189, dated June 6, 2006, is revoked.

In accordance with 19 U.S.C. 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.

19 CFR PART 177**MODIFICATION OF A RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
CLASSIFICATION OF CERTAIN FLEXIBLE PACKAGING
MATERIAL**

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 classification of certain flexible packaging material composed of poly ethylene terephthalate (PET) film, aluminum foil and peelable high density poly ethylene (HDPE) film adhered together in layers.

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 a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain flexible packaging material composed of PET film, aluminum foil and peelable HDPE film adhered together in layers. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 43, No. 2, on January 2, 2009. 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 April 20, 2009.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Tariff Classification and Marking Branch at: (202) 325–0034.

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 to 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. 43, No. 2, on January 2, 2009, proposing to modify New York Ruling Letter (NY) J84648 concerning the tariff classification of certain flexible packaging material composed of PET film, aluminum foil and peelable HDPE film adhered together in layers. No comments were received in response to this notice.

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 rulings 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 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 with 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.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY J84648 and any other ruling not specifically identified to reflect the proper

tariff classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) H045859 (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: February 5, 2009

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 H045859
February 5, 2009
CLA-2 OT:RR:CTF:TCM H045859 HkP
CATEGORY: Classification
TARIFF NO.: 3921.90.40

MS. VENETIA HUFFMAN
C.V. INTERNATIONAL, INC.
#13 Interstate Corporate Center
Suite 141
Norfolk, VA 23502

RE: Modification of NY J84648; Capsteril® PAF212 flexible packaging material

DEAR MS. HUFFMAN:

This is in reference to New York Ruling Letter (NY) J84648, issued to you on July 3, 2003, regarding the classification of five kinds of flexible packaging material under the Harmonized Tariff Schedule of the United States ("HTSUS"). In that ruling, in relevant part, U.S. Customs and Border Protection ("CBP") classified Capsteril® PAF212, a material made up of PET, aluminum foil and peelable HDPE adhered together in layers, under heading 7607, HTSUS, as "backed" aluminum foil. After reviewing this decision we have come to the conclusion that this classification is incorrect and that the correct classification for this product is under heading 3921, HTSUS. For this reason, we hereby modify NY J84648.

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 was published on January 2, 2009, in the Customs Bulletin, Volume 43, No. 2. No comments were received in response to this notice.

FACTS:

In NY J84648, the merchandise at issue was described, in pertinent part, as follows:

Capsteril® PAF212 is a tri-laminate of PET, aluminum foil and peelable HDPE.³ This foil gives a peelable sealing to PE containers. The aluminum foil and peelable HDPE are of the same thickness. The PET layer makes the foil extra tear resistant. It is to be used as a lidding for blow-molded or injection molded containers, providing a sterile closure in an aseptic filling process. The total thickness is .1182mm. The mass (g/m²) of the foil exceeds that of the plastic.

According to a diagram included on the Technical Data Sheet for the Capsteril® PAF212 packaging material, submitted as a part of the ruling request that resulted in the issuance of NY J84648, the PET film is adhered to one side of the aluminum foil and the peelable HDPE film is adhered to the other.

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 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

- 3921** Other plates, sheets, film, foil and strip, of plastics:
- 7607** Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm:

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. 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 at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The General EN to Chapter 39 provides, in relevant part:

This Chapter also covers the following products, whether they have been obtained by a single operation or by a number of successive operations **provided** that they retain the essential character of articles of plastics:

...

(b) Plates, sheets, etc., of plastics, separated by a layer of another material such as metal foil, paper, paperboard.

³ The acronym “HDPE” refers to high density poly ethylene, and the acronym “PET” refers to poly ethylene terephthalate. HDPE and PET are types of plastic.

EN 39.21 provides, in relevant part:

This heading covers plates, sheets, film, foil and strip, of plastics, **other than** those of **heading 39.18, 39.19 or 39.20** or of **Chapter 54**. It therefore covers only cellular products or those which have been reinforced, laminated, supported or similarly combined with other materials. (For the classification of plates, etc. combined with other materials, see the General Explanatory Note.)

As previously indicated, the instant merchandise was classified under heading 7607, HTSUS, as “backed” aluminum foil. The tariff does not define the term “backed”. When a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). “To ascertain the common meaning of a term, a court may consult ‘dictionaries, scientific authorities, and other reliable information sources’ and ‘lexicographic and other materials.’” *Id.* (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271, 69 C.C.P.A. 128 (C.C.P.A. 1982); *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989)). The *Random House Dictionary of the English Language* defines “backing” as “that which forms the back or is placed at or attached to the back of anything to support, strengthen, or protect it. The aluminum industry defines the term “backed foil” as “a lamination composed of foil and a coherent substrate. The substrates or backing may be either self-adherent or bonded to the foil by means of an interposed adhesive. Paper, woven fabrics, cellophane, polyethylene film and the like are typical examples of such backings or substrates.” (Cited in HQ 965210, March 20, 2002, and HQ 966769, January 5, 2004.) Based on these sources, CBP has previously found that the word “backed” is defined, in pertinent part, as “having a back, setting or support”. *Id.* We now note that the *Oxford English Dictionary* (Oxford University Press, 2008) defines the noun “back” as: “**3. a.** gen. That side or surface of any part . . . of any object, which answers in position to the back; that opposite to the face or front, or side approached, contemplated or exposed to view; e.g. the back of the head, of the leg; the back of a house, door, picture, bill, tablet, etc.” Also, “**5. a.** The side of any object away from the spectator, or spectators generally, the other or far side. **at the back of:** behind, on the farther side of[.]” Furthermore, EN 74.10 (which applies, *mutatis mutandis*, to heading 76.07 (see EN 76.07)) explains that “backing” may be added to a good to facilitate handling or transport or in order to facilitate subsequent treatment. Based on the common and commercial meaning of the word “backed” and the explanation provided in the ENs, we find that foil to one side of which a coherent substrate has been added (the “back”) in order to strengthen, support, or protect the foil or to facilitate handling, transport or subsequent treatment may be classified in heading 7607 as “backed” foil on the basis of GRI 1.

Capsteril® PAF212 packaging material is not described by the term “backed”. Although the plastic layers are added to the foil for strength and to support, protect, and facilitate handling, transport and subsequent treatment of the foil, the plastics are added to both sides of the foil and, therefore, cannot properly be considered “backing.” Consequently, the Capsteril® PAF212 packaging material cannot be classified in heading 7607, HTSUS, using a GRI 1 analysis. In this regard, we note that CBP has previously classified foil product comprised of a layer of plastic sandwiched between

two layers of aluminum foil as “backed” aluminum foil under heading 7607, on the basis of GRI 1. See HQ 960276, dated August 1, 1997. However, the foil product classified in that ruling was an aluminum foil/plastic/aluminum foil composition while the product currently under consideration is a plastic/aluminum foil/plastic composition. The product classified in HQ 960276 was properly found to be “backed” because one side of each layer of the foil was adhered to a common inner plastic substrate, that is, the foil was placed “back-to-back” on the substrate, in order to strengthen the foil. In the current situation, both the front and the back of the internal foil layer are adhered to the back of each external plastic layer. Consequently, we find that the merchandise at issue is not similar to the merchandise classified in HQ 960276 and cannot be classified in the same provision.

Furthermore, we find that Capsteril® PAF212 flexible packaging material cannot be classified under heading 7607, HTSUS, as “not backed” aluminum foil on the basis of a GRI 1 analysis because it is combined with another material but is not backed or coated. Note 1(d) to Chapter 76 allows for foil which has been coated (the other specified treatments do not concern the combination of foil with other materials) to be classified in heading 7607, HTSUS, using GRI 1, provided that the foil has not assumed the character of an article or product of another heading. This is also explained in the General ENs to Chapter 72, which applies, in part, to products of Chapter 76 (see General EN to Chapter 76). CBP has previously found that a “coating” is “a layer of any substance spread over a surface.” See HQ 966769, dated January 5, 2004, in which CBP determined that lacquer applied in liquid form and which hardened subsequent to its application was a coating and not a backing. We note that “lamination” is not mentioned in Note 1(d) to Chapter 76. Consequently, Capsteril® PAF212 flexible packaging material is not classifiable in heading 7607, HTSUS.

Capsteril® PAF212 flexible packaging material is a composite good consisting of foil and plastics. Under GRI 1, the expression “other” in the legal text of heading 3921, HTSUS, is to be construed “according to the terms of the headings and any relative section or chapter notes . . . provided such headings or notes do not otherwise require . . .” Accordingly, heading 3921, HTSUS, has to be read in the context of the other headings in which plastic plates, sheets, film, foil and strip can be classified, *i.e.*, (in Chapter 39) heading 3918, HTSUS, (Floor coverings of plastics; wall and ceiling coverings of plastics), 3919, HTSUS, (Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics) and 3920, HTSUS, (Other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials). Based on the text of these headings, we find that heading 3921, HTSUS, provides for, among other things, plastic film (other than those of heading 3918, 3919, or 3920, HTSUS) combined with other materials. We find, therefore, that composite goods consisting in part of plastic sheets or other forms named in the heading may be classified in heading 3921, HTSUS, on the basis of GRI 1, provided they retain the essential character of articles of plastics. This interpretation of the heading text is supported by the Explanatory Notes to heading 3921, HTSUS. See EN 39.21 and the General EN to Chapter 39, which explain that sheets of plastics separated by a layer of foil are provided for in Chapter 39, HTSUS.

The Capsteril® PAF212 packaging material retains the essential character of an article of plastic because its plastic layers encase the foil layer and

confer on to it the characteristics of plastic. Based on the foregoing, we find that the Capsteril® PAF212 packaging material is classified under heading 3921, HTSUS, pursuant to GRI 1.

HOLDING:

By application of GRI 1, Capsteril® PAF212 flexible packaging material is classified under heading 3921, HTSUS. It is specifically provided for in sub-heading 3921.90.40, HTSUS, which provides for: “Other plates, sheets, film, foil and strip, of plastics: Other: Other: Flexible.” The column one, general rate of duty is 4.2% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY J84648, dated July 3, 2003, is hereby modified with respect to the classification of Capsteril® PAF212 flexible packaging material. The classification of the other items described therein is unchanged.

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 and Trade Facilitation Division.

**PROPOSED MODIFICATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
ELIGIBILITY OF CERTAIN MEAL REPLACEMENT SOUPS
FOR PREFERENTIAL TREATMENT UNDER THE
U.S.-AUSTRALIA FREE TRADE AGREEMENT**

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

ACTION: Notice of proposed modification of a ruling letter and revocation of treatment relating to the eligibility of certain meal replacement soups for preferential treatment under the U.S.-Australia Free Trade Agreement.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) intends to modify a ruling letter pertaining to the eligibility of certain meal replacement soups for preferential treatment under the U.S.-Australia Free Trade Agreement. CBP also intends to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before March 21, 2009.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Office of Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Elif Eroglu, Valuation and Special Programs Branch: (202) 325-0277.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(1)), this notice advises interested parties that CBP intends to modify a ruling letter related to the eligibility of certain meal replacement soups for preferential tariff treatment under the U.S.-Australia Free Trade Agreement. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter ("NY") N016004, dated September 7, 2007 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No additional rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, in-

ternal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. § 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N016004, dated September 7, 2007, CBP found that certain meal replacement soups do not qualify for preferential treatment under the UAFITA. This ruling also addressed the country of origin marking requirements for the subject products. Upon further review of the matter, CBP determined that although the country of origin marking requirements in NY N016004 are correct, the conclusion that the Chicken Flavored Meal Replacement Soup and the Tomato Flavored Meal Replacement Soup are ineligible for preferential treatment under the UAFITA is incorrect.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP intends to modify NY N016004, and any other ruling not specifically identified, to reflect the proper preferential treatment eligibility of the meal replacement soups pursuant to the analysis set forth in proposed Headquarters Ruling Letter H044090 (Attachment B). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: February 6, 2009

MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
N016004
September 7, 2007
CLA-2-21:RR:NC:2:228
CATEGORY: Classification
TARIFF NO.: 2104.10.0020

MS. MARIANA PASCARU
OBM INTERNATIONAL TRADE SERVICES PTY LTD
*Level 2, 1 Breakfast Creek Road
Newstead Brisbane
Qld 4006 Australia*

RE: The tariff classification, country of origin marking, and status under the United States-Australia Free Trade Agreement (UAFTA), of dried soup preparations from Australia.

DEAR MS. PASCARU:

In your letters dated July 16, 2007 and July 30, 2007, on behalf of Jalco Food & Beverage, Australia, you requested a tariff classification ruling under the UAFTA.

Lists of ingredients accompanied your first letter. Country of origin information and samples were submitted with your second letter. The samples were examined and disposed of. The products are described as meal replacement soups put up for retail sale in single serving packets. The powdered chicken flavored and tomato flavored soups each contain milk solids, maltodextrin, thickeners, glucose syrup solids, flavor enhancers, salt, milk minerals, emulsifiers, vitamins, and silicon dioxide. The chicken flavor also contains vegetable fat, chicken flavor, food acid, vegetable powder, dehydrated chicken, animal fat, spice extract, potassium chloride, and color. The tomato flavor also contains tomato powder, palm oil, onion powder, yeast extract, artificial tomato flavor, ground coriander, parmesan cheese powder, garlic powder, dill, basil, and parsley. The dried mixes are combined with boiling water to make the soups.

All but thirteen ingredients used to make the soups originate in either the United States or Australia. The non-originating ingredients are products of Spain, China, Malaysia, Thailand, Indonesia, Austria, Singapore, Germany, China, Israel, Turkey, Egypt, Hungary, China, Indonesia, India, United Kingdom, Poland, South Korea, and France. In Australia, the ingredients of the chicken flavored and tomato flavored soups are blended, weighed, and packed for retail sale in 54 gram sachets.

The applicable tariff provision for the dried Chicken Flavored Meal Replacement Soup and Tomato Flavored Meal Replacement Soup will be 2104.10.0020, Harmonized Tariff Schedule of the United States (HTSUS), which provides for soups and broths and preparations therefor, . . . dried. The general rate of duty will be 3.2 percent ad valorem.

General Note 28(b), HTSUS, sets forth the criteria for determining whether a good is originating under the UAFTA. General Note 28(b), HTSUS, (19 U.S.C. § 1202) states, in pertinent part, that

For the purposes of this note, subject to the provisions of subdivisions (c), (d), (m) and (n) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good of a UAFTA country under the terms of this note only if –

(i) the good is a good wholly obtained or produced entirely in the territory of Australia or of the United States, or both;

(ii) the good was produced entirely in the territory of Australia or of the United States, or both, and—

(A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (n) of this note;

and is imported directly into the customs territory of the United States from the territory of Australia.

Based on the facts provided, the Chicken Flavored Meal Replacement Soup and the Tomato Flavored Meal Replacement Soup do not qualify for preferential treatment under the UAFTA because the beverage whitener ingredient contained in both products, and the yeast extract ingredient contained in the Tomato Flavored Meal Replacement Soup do not satisfy the requirements of HTSUS General Note 28(b)(ii)(A) or 28(n)/21.8(F), noting GN 28(e)(ii)(H).

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

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

As provided in section 134.41(b), Customs Regulations (19 CFR 134.41(b)), the country of origin marking is considered conspicuous if the ultimate purchaser in the U.S. is able to find the marking easily and read it without strain.

With regard to the permanency of a marking, section 134.41(a), Customs Regulations (19 CFR 134.41(a)), provides that as a general rule marking requirements are best met by marking worked into the article at the time of manufacture. For example, it is suggested that the country of origin on metal articles be die sunk, molded in, or etched. However, section 134.44, Customs Regulations (19 CFR 134.44), generally provides that any marking that is sufficiently permanent so that it will remain on the article until it reaches the ultimate purchaser unless deliberately removed is acceptable.

Applying the Marking Rules set forth in section 304 of the regulations we find that the Chicken Flavored Meal Replacement Soup and the Tomato Flavored Meal Replacement Soup are goods of Australia for marking purposes.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stanley Hopard at 646-733-3029.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H044090
CLA-2 OT:RR:CTF:VS H044090 EE
CATEGORY: Classification

MARIANA PASCARU
OBM INTERNATIONAL TRADE SERVICES PTY LTD
Level 2, 1 Breakfast Creek Road
Newstead Brisbane
Qld 4006 Australia

RE: Proposed modification of NY N016004, dated September 7, 2007; U.S.-Australia Free Trade Agreement; Meal replacement soups from Australia

DEAR MS. PASCARU:

This is in reference to New York Ruling Letter (“NY”) N016004, dated September 7, 2007, issued on behalf of your client Jalco Food & Beverage (“Jalco”). That ruling concerned the tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”), country of origin marking requirements, and eligibility for preferential tariff treatment under the U.S.-Australia Free Trade Agreement (“UAFTA”), of certain meal replacement soups from Australia. We have reviewed NY N016004 and determined that while the country of origin marking requirements in that ruling are correct, the conclusion that the Chicken Flavored Meal Replacement Soup and the Tomato Flavored Meal Replacement Soup do not qualify for preferential treatment under the UAFTA is incorrect. Our reconsideration of NY N016004 follows.

FACTS:

NY N016004, dated September 7, 2007, provided, in pertinent part, the following facts:

The products are described as meal replacement soups put up for retail sale in single serving packets. The powdered chicken flavored and tomato flavored soups each contain milk solids, maltodextrin, thickeners, glucose syrup solids, flavor enhancers, salt, milk minerals, emulsifiers, vitamins, and silicon dioxide. The chicken flavor also contains vegetable fat, chicken flavor, food acid, vegetable powder, dehydrated chicken, animal fat, spice extract, potassium chloride, and color. The tomato flavor also contains tomato powder, palm oil, onion powder, yeast extract, artificial tomato flavor, ground coriander, parmesan cheese powder, garlic powder, dill, basil, and parsley. The purchaser of the dried mixes adds boiling water to make the soups.

All but thirteen ingredients used to make the soups originate in either the United States or Australia. In Australia, the ingredients of the chicken flavored and tomato flavored soups are blended, weighed, and packed for retail sale in 54 gram sachets.

In NY N016004, U.S. Customs and Border Protection (“CBP”) determined that the dried Chicken Flavored Meal Replacement Soup and Tomato Flavored Meal Replacement Soup are classified in subheading 2104.10.00, HTSUS. In that ruling, CBP held that the Chicken Flavored Meal Replacement Soup and Tomato Flavored Meal Replacement Soup do not qualify for preferential treatment under the UAFTA. In support of this conclusion, CBP stated that the beverage whitener ingredient contained in both products, and the yeast extract ingredient contained in the Tomato Flavored Meal Replacement Soup do not satisfy the requirements of HTSUS General Note (“GN”) 28(b)(ii)(A) or 28(n)/21.8(F), noting GN 28(e)(ii)(H). The National Import Specialist has classified the beverage whitener and the yeast extract ingredients in subheading 2106.90, HTSUS. The value of the beverage whitener and the yeast extract ingredients were provided by Jalco.

ISSUE:

Whether the Chicken Flavored Meal Replacement Soup and Tomato Flavored Meal Replacement Soup are eligible for preferential tariff treatment under the UAFTA.

LAW AND ANALYSIS:

The UAFTA was signed on May 18, 2004, and entered into force on January 1, 2005, as approved and implemented by the UAFTA Implementation Act, Pub. L. 108–286, 118 Stat. 919 (August 3, 2004), and set forth in GN 28, HTSUS.

GN 28(b), HTSUS, provides, in pertinent part:

For the purposes of this note, subject to the provisions of subdivisions (c), (d), (m), and (n) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good of a UAFTA country under the terms of this note only if –

- (i) the good is a good wholly obtained or produced entirely in the territory of Australia or of the United States, or both;
- (ii) the good was produced entirely in the territory of Australia or of the United States, or both, and –
 - (A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (n) of this note . . .

In the instant case, since thirteen ingredients used to make the Chicken Flavored Meal Replacement Soup and the Tomato Flavored Meal Replacement Soup originate in countries other than Australia or the United States, the soups at issue would not be considered “wholly obtained or produced” as set forth in GN 28(b)(i), HTSUS. Therefore, we must determine whether the soups at issue would satisfy the applicable change in tariff classification. The Chicken Flavored Meal Replacement Soup and the Tomato Flavored Meal Replacement Soup are classified in subheading 2104.10.00, HTSUS. The applicable rule set forth in GN 28(n)/21.6, HTSUS, provides as follows:
A change to heading 2104 from any other chapter.

In this case, of the thirteen nonoriginating ingredients, eleven non-originating ingredients are classified in chapters other than Chapter 21, HTSUS. However, the beverage whitener contained in both products and the yeast extract contained in the Tomato Flavored Meal Replacement Soup are classified in Chapter 21, HTSUS. Since these two ingredients are classified in the same chapter as the meal replacement products at issue, the tariff shift rule set forth in GN 28(n)/21.6, HTSUS, is not met.

Failure to satisfy the required tariff change is not necessarily fatal to a product's UAFTA eligibility. GN 28(e)(i), HTSUS, in relevant part, provides as follows:

Except as provided in subdivision (e)(ii) below, a good (other than a textile or apparel good described in subdivision (d) above) that does not undergo a change in tariff classification pursuant to subdivision (n) of this note shall nonetheless be considered an originating good if –

- (A) the value of all nonoriginating materials that are used in the production of the good, and do not undergo the applicable change in tariff classification, does not exceed 10 percent of the adjusted value of the good;
- (B) the value of such nonoriginating materials is included in calculating the value of nonoriginating materials for any applicable regional value content requirement for the good; and
- (C) the good meets all other applicable requirements of this note.

There are limitations to the *de minimis* principle. Relevant here is GN 28(e)(ii)(H), HTSUS, which provides that the *de minimis* principle does not apply to:

A nonoriginating material used in the production of a good provided for in chapters 1 through 21, inclusive, unless the nonoriginating material is provided for in a different subheading than the good for which origin is being determined under this note.

In your submission dated July 30, 2007, you stated that the two nonoriginating ingredients that do not undergo the applicable change in tariff classification, the beverage whitener and yeast extract ingredients, make up less than 10 percent of the meal replacement products' value. The beverage whitener and yeast extract ingredients are goods classified in subheading 2106.90, HTSUS. Since both ingredients are classified in a different subheading than the meal replacement soups (subheading 2104.10, HTSUS), GN 28(e)(i) and GN 28(e)(ii)(H), HTSUS, are satisfied.

In accordance with the above discussion, the soup mixes described in NY N016004 meet the requirements of GN 28(b)(ii)(A) and 28(n)/21.6, noting GN 28(e)(i) and 28(e)(ii)(H), HTSUS. Accordingly, the Chicken Flavored Meal Replacement Soup and the Tomato Flavored Meal Replacement Soup are eligible for preferential treatment under the UAFTA.

HOLDING:

Based upon the information before us, we find that the Chicken Flavored Meal Replacement Soup and the Tomato Flavored Meal Replacement Soup are eligible for preferential treatment under the UAFTA.

EFFECT ON OTHER RULINGS:

NY N016004, dated September 7, 2007, is hereby modified consistent with the foregoing.

MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

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**PROPOSED REVOCATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
APPLICABILITY OF SUBHEADING 9802.00.50, HTSUS, TO
CERTAIN IMPORTED PUTTER HEADS**

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

ACTION: Notice of proposed revocation of a ruling letter and revocation of treatment relating to the applicability of subheading 9802.00.50, Harmonized Tariff Schedule of the United States (“HTSUS”), to certain imported putter heads.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) intends to revoke a ruling letter related to the applicability of subheading 9802.00.50, HTSUS, to certain imported putter heads. Based on new information submitted on behalf of the importer, CBP has determined that the ruling is in error. CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before March 21, 2009.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Office of Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Elif Eroglu, Valuation and Special Programs Branch: (202) 325-0277.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(1)), this notice advises interested parties that CBP intends to revoke a ruling letter related to the applicability of subheading 9802.00.50, HTSUS, to certain imported putter heads. Although in this notice, CBP is specifically referring to the revocation of Headquarters Ruling Letter (“HQ”) H020437, dated December 10, 2007 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No additional rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

In HQ H020437, dated December 10, 2007, CBP held that imported putter heads, processed in China, were not eligible for a partial duty exemption under subheading 9802.00.50, HTSUS. CBP found that the putter heads were not finished for their intended use prior to being exported from the United States. Subsequent to the issuance of HQ H020437, CBP received submissions on behalf of the importer, dated April 17, 2008 and December 2, 2008, providing additional information regarding the nature of the imported merchandise, the processes performed on the imported merchandise, and the nature of the resulting product.

Based on the new facts submitted, it is now CBP's view that the processing in China does not change the quality of the putter heads, such that they are finished for their intended use at the time they are exported to China. Accordingly, imported putter heads are eligible for a partial duty exemption under subheading 9802.00.50, HTSUS.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP intends to revoke HQ H020437 and any other ruling not specifically identified, to reflect the applicability of subheading 9802.00.50, HTSUS, to imported putter heads pursuant to the analysis set forth in proposed HQ H026901 (Attachment B). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: February 10, 2009

Monika R. Brenner for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H020437
December 10, 2007
CLA-2 OT:RR:CTF:VS H020437 KSG
CATEGORY: Marking

STANLEY J. MARCUS, ESQ.
BRYAN CAVE LLP
700 Thirteenth Street NW
Washington, D.C. 20005

RE: Subheading 9802.00.50; golf putter heads

DEAR MR. MARCUS:

This is in response to your letter of August 24, 2007, on behalf of Ping, Inc., requesting a binding ruling regarding the applicability of subheading 9802.00.50, of the Harmonized Tariff Schedule of the United States ("HTSUS"), to imported putter heads.

FACTS:

Ping Inc. produces various models of redwood putter heads that undergo manufacturing or other processing in Taiwan, the United States, and China. The putter heads are forged in Taiwan and then imported into the U.S.

In the U.S., the putter heads are milled, rough edges are smoothed, a hosel hole is drilled and the Ping logo is engraved into the piece. You state

that this results in a usable Ping putter head. These putter heads are then shipped to China for processing.

In China, the putter heads are coated in black nickel, painted with decorative lines and affixed with the Ping badge/logo. They are then re-imported into the U.S. to be assembled with other component parts into finished golf clubs.

The Taiwan processing costs roughly half for each putter head models of the U.S. processing costs. The Chinese processing costs are roughly 6% of the U.S. processing costs for each putter head.

You state that the quality of the putter head is enhanced somewhat because the Chinese plating aids in the resistance of corrosion and may improve the putter head's appearance but the plating is not required under any industry standard or athletic association standard.

You state that the putter heads are classified in subheading 9506.39.0060, HTSUS.

You ask if these re-imported putter heads are eligible for a partial duty exemption under subheading 9802.00.50, HTSUS.

ISSUE:

Whether the imported putter heads are eligible for the partial duty exemption under subheading 9802.00.50, HTSUS.

LAW AND ANALYSIS:

Subheading 9802.00.50, HTSUS, provides a partial duty exemption for articles that are returned after having been exported to be advanced in value or improved in condition by means of repairs or alterations, provided that the documentary requirements of 19 CFR 10.8 are met. For qualifying articles, duty is assessed only on the cost or value of the foreign processing.

However, in circumstances where the operations abroad destroy the identity of the exported article or create a new or commercially different article, entitlement to subheading 9802.00.50, HTSUS, is precluded. See *A.F. Burstrom v. United States*, 44 CCPA 27, C.A.D. 631 (1956), *aff'd* C.D. 1752, 36 Cust. Ct. 46 (1956); *Guardian Industries Corporation v. United States*, 3 CIT 9 (1982). Additionally, entitlement to this tariff treatment is not available where the exported articles are incomplete for their intended purposes prior to their foreign processing and the foreign processing is a necessary step in the preparation or manufacture of the finished articles. *Dolliff & Company, Inc. v. United States*, 455 F. Supp. 618 (CIT 1978), *aff'd*, 599 F.2d 1015 (Fed. Cir. 1979).

At issue in *Guardian Industries* was the question of whether U.S.-produced annealed glass subjected to a tempering process in Canada to create sliding glass patio doors qualified as an "alteration" under item 806.20, TSUS (the precursor to subheading 9802.00.50). The court noted that glass must be tempered (i.e. strengthened) for practical safety use reasons and to conform to U.S. federal regulations before it could be marketed for use in sliding glass patio doors. The court concluded that the tempering process was not an alteration because the exported raw annealed glass was not a completed article and "completely unsuitable for their intended use."

In *Dolliff & Company, Inc. v. United States*, 81 Cust. Ct. 1, 455 F. Supp. 618 (1978), *aff'd* 66 CCPA 77, 599 F.2d 1015 (1979), the issue presented was whether certain U.S.-origin Dacron polyester fabrics which were exported to Canada as griegie goods for heat setting, chemical scouring, dyeing and treating with chemicals, were eligible for the partial duty exemption under

item 806.20, TSUS, when returned to the U.S. The court found that the processing steps performed on the exported griegge goods were undertaken to produce finished fabric and could not be considered as alterations. The court stated that:

... repairs or alterations are made to completed articles and do not include intermediate processing operations, which are performed as a matter of course in the preparation or manufacture of finished articles.

In *Amity Fabrics, Inc. v. United States*, 43 Cust. Ct. 64, “pumpkin” colored fabrics were exported to Italy to be redyed black since the pumpkin color had gone out of fashion and black was a consistently good seller. The court held that the identity of the goods was not lost or destroyed by the dyeing process, and that no new article was created since there was no change in the character, quality, texture, or use of the merchandise; it was merely changed in color. The court held that such change constituted an alteration.

In *Royal Bead Novelty Co. v. United States*, 342 F. Supp. 1394(1972), uncoated glass beads were exported so that they could be half-coated with an Aurora Borealis finish which imparted a rainbow-like luster to the half-coated beads. The court found that the identity of the beads was not lost or destroyed in the coating process and no new article was created. Moreover, there was no change in the beads’ size, shape, or manner of use in making articles of jewelry (evidence was presented which indicated that both uncoated and half-coated beads were used interchangeably). Accordingly, the court held that the application of the finish constituted an alteration.

In this case, the foreign processing involves coating the putter heads in black nickel, painting with decorative lines and affixing the Ping badge/logo. While the painting and affixing of the logo are merely decorative, coating the putter heads in black nickel changes the quality and adds a significant characteristic to the putter head. Counsel acknowledges that this processing affects the products’ resistance to corrosion and we note that Ping markets these putters as having a black nickel chrome finish. Accordingly, we find that the putter heads in question are not finished for their intended use prior to being exported from the U.S. and are not eligible for a partial duty exemption under subheading 9802.00.50, HTSUS.

HOLDING:

The imported putter heads, processed as described above in China, are not eligible for a partial duty exemption under subheading 9802.00.50, HTSUS.

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 Customs official handling the transaction.

MONIKA R. BRENNER,
Chief,
Valuation & Special Programs Branch.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H026901
CLA-2 OT:RR:CTF:VS H026901 EE
CATEGORY: Marking

PATRICIA HANSON
BRYAN CAVE LLP
161 North Clark Street Suite 4300
Chicago, IL 60601-3315

RE: Proposed revocation of HQ H020437, dated December 10, 2007; subheading 9802.00.50, HTSUS; golf putter heads

DEAR MS. HANSON:

This concerns Headquarters Ruling Letter (“HQ”) H020437, dated December 10, 2007, which was issued on behalf of Ping, Inc., concerning the applicability of subheading 9802.00.50, of the Harmonized Tariff Schedule of the United States (“HTSUS”), to putter heads which are processed in China and returned to the U.S. Upon further review of this matter, and in light of additional information that has come to our attention, we have determined that the imported putter heads are eligible for a partial duty exemption under subheading 9802.00.50, HTSUS. Our reconsideration of HQ H020437 follows.

FACTS:

Your request to our office for a binding ruling, dated June 27, 2007, provided the following facts:

Ping, Inc. produces various models of Redwood putter heads that undergo manufacturing or other processing in Taiwan, the U.S., and, in certain instances, China. The putter heads are forged in Taiwan and then imported into the U.S.

In the U.S., the putter heads are milled, rough edges are smoothed, a hosel hole is drilled, and the Ping logo is engraved into the piece. You state that this results in a finished Ping putter head. After the U.S. processing, some of the finished putter heads are sold in the U.S. The remainder is exported to China for additional processing.

In China, the putter heads are coated in black nickel, painted with decorative lines, and affixed with the Ping logo. They are then re-imported into the U.S. to be assembled with other component parts into finished golf clubs.

On the basis of your submission, dated June 27, 2007, Customs held in HQ H020437 that the imported putter heads, processed in China, are not eligible for a partial duty exemption under subheading 9802.00.50, HTSUS. In support of this conclusion, Customs stated that coating the putter heads in black nickel changes the quality and adds a significant characteristic to the putter head. Thus, Customs found that the putter heads are not finished for their intended use prior to being exported from the U.S. In light of our ruling, you seek reconsideration of the application of subheading 9802.00.50, HTSUS, to the subject merchandise.

In your letters of April 17, 2008 and December 2, 2008, you claim that there was a factual error in the submission of June 27, 2007 and that application of the black nickel coating is only an aesthetic alteration and does not change the quality of the putter head and make it more anti-corrosive. To

support this statement, you submit third-party laboratory tests which state that the black nickel coating does not make the putter heads any more anti-corrosive than when they are uncoated.

Additionally, you state that Ping markets both black nickel coated putter heads and “starshot media”⁴ coated putter heads. You state that the unfinished putter heads are more typically used by golfers on the professional tournament circuit; whereas the Redwood putters are offered at retail with either a black nickel or starshot media coating. To establish the fact that some of the putter heads are sold with just the starshot media treatment, you submit two customer order forms for orders of Redwood putters with just the starshot finish. You also provide a company report showing order quantities of putters sold with only the starshot finish during the first eight months of 2008.

ISSUE:

Whether the imported putter heads are eligible for the partial duty exemption under subheading 9802.00.50, HTSUS.

LAW AND ANALYSIS:

Subheading 9802.00.50, HTSUS, provides a partial duty exemption for articles that are returned to the U.S. after having been exported to be advanced in value or improved in condition by means of repairs or alterations, provided that the documentary requirements of 19 CFR § 10.8 are met. For qualifying articles, duty is assessed only on the cost or value of the foreign processing.

However, in circumstances where the operations abroad destroy the identity of the exported article or create a new or commercially different article, entitlement to subheading 9802.00.50, HTSUS, is precluded. See A.F. Burstrom v. United States, 44 CCPA 27, C.A.D. 631 (1956), aff'd C.D. 1752, 36 Cust. Ct. 46 (1956); Guardian Industries Corporation v. United States; 3 CIT 9 (1982). Additionally, entitlement to this tariff treatment is not available where the exported articles are incomplete for their intended purposes prior to their foreign processing and the foreign processing is a necessary step in the preparation or manufacture of the finished articles. Dolliff & Company, Inc. v. United States, 455 F. Supp. 618 (CIT 1978), aff'd, 599 F.2d 1015 (Fed. Cir. 1979).

At issue in Guardian Industries was the question of whether U.S.-produced annealed glass subjected to a tempering process in Canada to create sliding glass patio doors qualified as an “alteration” under item 806.20, TSUS (the precursor to subheading 9802.00.50). The court noted that glass must be tempered (i.e. strengthened) for practical safety use reasons and to conform to U.S. federal regulations before it could be marketed for use in sliding glass patio doors. The court concluded that the tempering process was not an alteration because the exported raw annealed glass was not a completed article and “completely unsuitable for their intended use.”

In Dolliff & Company, Inc. v. United States, 81 Cust. Ct. 1, 455 F. Supp. 618 (1978), aff'd 66 CCPA 77, 599 F.2d 1015 (1979), the issue presented was whether certain U.S.-origin Dacron polyester fabrics which were exported to

⁴You state that starshot media coating consists of loose mineral abrasive grains used for surface preparation for coating on steel. All the putter heads at issue here undergo the starshot media treatment in the U.S., whether they are exported to China or not.

Canada as grieger goods for heat setting, chemical scouring, dyeing and treating with chemicals, were eligible for the partial duty exemption under item 806.20, TSUS, when returned to the U.S. The court found that the processing steps performed on the exported grieger goods were undertaken to produce finished fabric and could not be considered as alterations. The court stated that:

. . . repairs or alterations are made to completed articles and do not include intermediate processing operations, which are performed as a matter of course in the preparation or manufacture of finished articles.

In *Amity Fabrics, Inc. v. United States*, 43 Cust. Ct. 64, “pumpkin” colored fabrics were exported to Italy to be redyed black since the pumpkin color had gone out of fashion and black was a consistently good seller. The court held that the identity of the goods was not lost or destroyed by the dyeing process, and that no new article was created since there was no change in the character, quality, texture, or use of the merchandise; it was merely changed in color. The court held that such change constituted an alteration.

In *Royal Bead Novelty Co. v. United States*, 342 F. Supp. 1394(1972), uncoated glass beads were exported so that they could be half-coated with an Aurora Borealis finish which imparted a rainbow-like luster to the half-coated beads. The court found that the identity of the beads was not lost or destroyed in the coating process and no new article was created. Moreover, there was no change in the beads’ size, shape, or manner of use in making articles of jewelry (evidence was presented which indicated that both uncoated and half-coated beads were used interchangeably). Accordingly, the court held that the application of the finish constituted an alteration.

With regard to the imported putter heads, the foreign processing involves coating the putter heads in black nickel, painting with decorative lines and affixing the Ping logo. Customs found in HQ H020437 that while the painting and affixing of the logo were merely decorative, coating the putter heads in black nickel changed the quality and added a significant characteristic to the putter head. This processing affected the products’ resistance to corrosion and Ping marketed these putters as having a black nickel chrome finish. Accordingly, Customs found that the putter heads were not finished for their intended use prior to being exported from the U.S. and were not eligible for a partial duty exemption under subheading 9802.00.50, HTSUS.

Based on the new information submitted, it appears that the coating of the putter heads in black nickel in China does not change the quality of the putter heads and does not add a significant characteristic to the putter heads as noted by the third-party empirical tests. In light of this new information, we find that the putter heads are finished for their intended use at the time they are exported to China and are eligible for a partial duty exemption under subheading 9802.00.50, HTSUS.

HOLDING:

On the basis of the additional facts submitted, we find that the imported putter heads, processed as described above in China, are eligible for a partial duty exemption under subheading 9802.00.50, HTSUS, provided that the documentation requirements of 19 CFR § 10.8 are met.

EFFECT ON OTHER RULINGS:

HQ H020437, dated December 10, 2007, is hereby revoked.

Monika R. Brenner for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

