

*What Every Member of the
Trade Community Should Know About:*

Coffee



AN INFORMED COMPLIANCE PUBLICATION
AUGUST 2006

U.S. CUSTOMS and BORDER PROTECTION

NOTICE:

This publication is intended to provide guidance and information to the trade community. It reflects the position on or interpretation of the applicable laws or regulations by U.S. Customs and Border Protection (CBP) as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “***informed compliance***” and “***shared responsibility***,” which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s rights and responsibilities under customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record’s failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings (ORR) has been given a major role in meeting the informed compliance responsibilities of U.S. Customs and Border Protection. In order to provide information to the public, CBP has issued a series of informed compliance publications on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the National Commodity Specialist Division, ORR, provides guidance regarding the classification, origin marking and other requirements for imported coffee. We sincerely hope that this material, together with seminars and increased access to rulings of U.S. Customs and Border Protection, will help the trade community to improve voluntary compliance with customs laws and to understand the relevant administrative processes.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Regulations of U.S. Customs and Border Protection, 19 C.F.R. Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant.

Comments and suggestions are welcomed and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, (Mint Annex) NW, Washington, D.C. 20229.

Sandra L. Bell,
Acting Assistant Commissioner
Office of Regulations and Rulings

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INTRODUCTION

Coffee. Its mystique is strong, the legends attributed to it, extraordinary. Since the fifteenth century coffee has been a staple of life. It has engendered religious and civil disagreements and yet has also sponsored meeting places and whole genres of entertainment and coffee houses. The drinking of coffee has been viewed as an evil addiction or as an energy-supplying necessity.

There are many species within the genus *Coffea*, but the two that make up the bulk of the coffee drunk worldwide, and the two that are mentioned specifically in the US tariff, are called arabica and robusta. Arabica (*Coffea arabica*) is the original coffee that started the coffee mania in the Middle Ages, and is native to the mountains of Ethiopia. Robusta, or *Coffea canephora* var. robusta is much more recently developed and is native to the lowland forests of West Africa. Of course, being native to areas of Africa had not limited the planting and commercial cultivation of coffee. Coffee grows on evergreen bushes or trees, and flourishes in tropical and subtropical areas throughout the world.

The largest coffee producers are Brazil, Colombia, Indonesia, Mexico, Ethiopia, Guatemala, India, Côte d'Ivoire, Uganda, Vietnam, Costa Rica, El Salvador, Ecuador, the Philippines, Honduras, Peru, Kenya, Congo, Madagascar, and Thailand. The trees produce flowers and fruit known as cherries. Each cherry usually holds two coffee beans surrounded by pulp and parchment. The coffee cherries are harvested either by strip harvesting, in which all the beans are harvested from a bush by hand or machine, or by picking only ripe berries.

The purposes of this document, however, deal not so much with the history and biology of coffee as to the details of importing it into the United States. This publication covers the quota, classification and entry requirements of coffee and coffee products. Coffee, instant coffee, and coffee preparations are products that may be classified in either chapter 9 or chapter 21 of the Harmonized Tariff Schedule of the United States (HTSUS).

CLASSIFICATION OF COFFEE BEANS, GROUND COFFEE, AND COFFEE SUBSTITUTES

The HTSUS progresses from the least processed product to the most processed item. For example, the first provision for coffee is subheading 0901.11.00, which provides for "Coffee, whether or not roasted or decaffeinated: coffee husks and skins; coffee substitutes containing coffee in any proportion: Coffee, not roasted." Coffee beans that fall into this provision have not been roasted or otherwise cooked. The Explanatory Notes allow for the following to be embraced within the scope of heading 0901: raw coffee in all its forms, roasted coffee, whether or not decaffeinated or ground, husks and skins of coffee, and coffee substitutes, such as chicory, as long as they contain some coffee in any proportion. Currently, the coffee products classified in Chapter 9 of the Harmonized Tariff are not subject to quotas.

Classification of coffee requires reference to various General Rules of Interpretation, Explanatory Notes, Section Notes and Chapter Notes, and the application of these may be complicated at times. Here is a breakout of the pertinent tariff subheadings dealing with coffee.

| Heading/ Subheading | Stat Suffix | Article Description | Rates of Duty General Special | |
|------------------------|----------------|---|------------------------------------|---|
| 0901 | | Coffee, whether or not roasted or decaffeinated; coffee husks and skins; coffee substitutes containing coffee in any proportion | | |
| 0901.11.00 | 10 90 | Coffee, not roasted: Not decaffeinated Arabica Other | Free | |
| 0901.12.00 | 00 | Decaffeinated | Free | |
| 0901.21.00 | 30 60 | Coffee, Roasted: Not decaffeinated In retail containers weighing 2 kg or less Other | Free | |
| 0901.22.00 | 30 60 | Decaffeinated In retail containers weighing 2 kg or less Other | Free | |
| 0901.90 0901.90.10 | 00 | Other Coffee husks or skins | Free | |
| 0901.90.20 | 00 | Coffee substitutes containing coffee | 1.5 cnts/kg | Free (A+, AU,CA, CL,D,E,IL, J,JO, MA,MX, SG) |

CLASSIFICATION OF INSTANT COFFEE AND COFFEE EXTRACTS

Instant coffee, such as the ground or freeze dried products available in supermarkets, and other extracts, essences, and concentrates of coffee, some of which are used in commercial coffee vending machines, do not come under Chapter 9. Rather, they are classified in Chapter 21. Here is a breakout of relevant tariff subheadings.

| Heading/ Subheading | Stat Suffix | Article Description | Rates of Duty General Special | |
|------------------------|----------------|---------------------|------------------------------------|--|
|------------------------|----------------|---------------------|------------------------------------|--|

| | | | | |
|-----------------------|----------------------|--|------|--|
| 2101 | | Extracts, essences and concentrates of coffee, tea or maté and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof: Extracts, essences and concentrates of coffee, and preparations with a basis of these extracts, essences or concentrates or with a basis of coffee: | | |
| 2101.11 2101.11.21 | 26 29 31 39 | Extracts, essences and concentrates: Instant coffee, not flavored... Not decaffeinated Packaged for retail sale Other Decaffeinated Packaged for retail sale Other | Free | |
| 2101.11.29 | 41 49 | Other Packaged for retail sale Other | Free | |

CLASSIFICATION OF COFFEE PREPARATIONS

The addition of other ingredients such as sweetening material to the products of 2101.11 can change them into products covered in 2101.12 as coffee preparations. Now, instead of being imported at a free rate of duty, they are subject to the quotas applicable for sugar-containing products. These sugar-containing product quotas are described in the Additional US Notes to Chapter 17.

The quota period begins on October 1 and extends to September 30 of the next year. Entries of sugar-containing coffee products classified under both the low and high tariff rates must be reported to the Quota Enforcement and Administration Branch of the Office of Field Operations in CBP Headquarters. Many coffee preparations imported under subheading 2101.12 fall into such quota limitations. Products that meet the proper quota criteria, as explained below, are classifiable in the subheadings for the low quota rates. As the quota is tariff rate and not absolute, even if the quota is closed the product can be entered, albeit at a high duty rate.

Additional US Notes 2, 3, and 4 to Chapter 17 define what is meant by the different quota terminology. Additional US Note 2 defines "articles containing over 65 percent by dry weight of sugar described in additional US note 2 to chapter 17" as meaning products "containing over 65 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, capable of being further

processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported.” So items imported for retail sale are exempt from this quota, even if containing the prescribed percentage of sugar.

Additional US Note 3 is one of the most frequently applied notes. It details exceptions to the quota, and reads: “For the purposes of this schedule, the term ‘articles containing over 10 percent by dry weight of sugar described in additional US note 3 to chapter 17’ means articles containing over 10 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, except (a) articles not principally of crystalline structure or not in dry amorphous form, the foregoing that are prepared for marketing to the ultimate consumer in the identical form and package in which imported; (b) blended syrups containing sugars derived from sugar cane or sugar beets, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported; (c) articles containing over 65 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported; or (d) cake decorations and similar products to be used in the same condition as imported without any further processing other than the direct application to individual pastries or confections, finely ground or masticated coconut meat or juice thereof mixed with those sugars, and sauces and preparations therefor.”

Additional US Note 4 defines “blended syrups described in additional US note 4 to chapter 17” as blended syrups containing sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported. Therefore blended syrups intended for retail sale are exempt.

Additional US Notes 7 and 8 to Chapter 17 list the actual amount of quota merchandise that is allowable under the pertinent subheadings. Additional US note 7 says that the aggregate quantity of articles containing over 65 percent by dry weight of sugar and entered under subheadings 2101.12.44 is none, and no articles shall be classified within. In other words, this particular quota is closed. Additional US note 8 is somewhat different. First of all, it pertains to articles containing over 10 percent by dry weight of sugar, as opposed to those containing over 65 percent. This note gives the figure, in metric tons, of articles permitted entry during the quota period for subheading 2101.12.54, among others.

The relevant subheadings are listed below:

| | | | | |
|---------|--|--|------|--|
| 2101.12 | | Preparations with a basis of extracts, essences or concentrates or with a basis of coffee: | Free | |
|---------|--|--|------|--|

| | | | | |
|------------|----|---|--------------------|---|
| 2101.12.32 | 00 | Described in general note 15 of the tariff schedule and entered pursuant to its provisions Other Blended syrups described in additional US note 4 to chapter 17: | 10% | Free(A, AU, CA, CL, E, IL, J, JO, MA, MX, SG) |
| 2101.12.34 | 00 | Described in additional US note 9 to chapter 17 and entered pursuant to its provisions... | 10% | |
| 2101.12.38 | 00 | Other 1/ | 30.5 cts/kg + 8.5% | Free (MX) See 9909.17.05, 9909.17.45 (JO) See 9910.17.05, 9910.17.50 (SG) See 9911.17.05, 9911.17.50 (CL) See 9912.17.05, 9912.17.50 (MA) |
| 2101.12.44 | 00 | Articles containing over 65 percent by dry weight of sugar described in additional US note 2 to chapter 17 Described in additional US note 7 to chapter 17 and entered pursuant to its provisions... | 10% | |
| 2101.12.48 | 00 | Other 2/ | 30.5 cts/kg + 8.5% | Free (MX) See 9909.17.05, 9909.17.45 (JO) See 9910.17.05, |

| | | | | |
|------------|----|---|--------------------------|---|
| | | | | 9910.17.50 (SG) See 9911.17.05, 9911.17.50 (CL) See 9912.17.05, 9912.17.50 (MA) |
| 2101.12.54 | 00 | Articles containing over 10 percent by dry weight of sugar described in additional US note 3 to chapter 17 Described in additional US note 8 to chapter 17 and entered pursuant to its provisions... | 10% | Free(A, CA,CL,E,IL,J ,JO,MA,SG) |
| 2101.12.58 | 00 | Other 3/ | 30.5 cts/kg + 8.5% | Free (MX) See 9909.17.05, 9909.17.45 (JO) See 9910.17.05, 9910.17.50 (SG) See 9911.17.05, 9911.17.50 (CL) See 9912.17.05, 9912.17.50 (MA) |
| 2101.12.90 | 00 | Other | 8.5% | Free (A,CA, CL,E,IL,J ,JO, MA,MX) 2.1% (SG) 6.8% (AU) |

Coffee drinks and sodas are not really classified as coffee products of Chapter 9 and Chapter 21 of the Harmonized Tariff. For example, coffee sodas are carbonated

beverages that are imported for retail sale in bottles or cans. These usually consist of carbonated water, plus coffee and sweetening, and are classified in Chapter 22, generally in subheading 2202.10.00. Adding milk or other ingredients throws the product out of subheading 2202.10 and into subheading 2202.90.9090.

COUNTRY OF ORIGIN MARKING

The marking statute, section 304, Tariff Act of 1930, as amended (19 USC 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.

Pursuant to rules promulgated in the marking statute, section 304, Tariff Act of 1930, as amended (19 USC 1304), and Part 134 of the Customs Regulations (19 CFR Part 134), 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. In the case of coffee, the marking was considered suitable if the outer bags were marked.

On October 11, 1996, however, the President signed the Miscellaneous Trade and Technical Corrections Act of 1996, Pub. L. 104-295, 110 Stat. 3514. Section 14 of the Act amended the country of origin marking statute (19 USC 1304) to exempt imports of roasted and instant coffee and coffee preparations from the marking requirements of 19 USC 1304 (a) and (b). As a result, neither the imported products nor their containers are required to be marked with the foreign country of origin. This statutory exemption is effective for goods entered, or withdrawn from warehouse, for consumption on or after October 11, 1996.

Notwithstanding the marking or lack of it on coffee products, it is still necessary to determine the correct country of origin. If a product undergoes a substantial

transformation in a country other than the originating country, the country of origin may be considered as changed. Roasting coffee is considered a substantial transformation while decaffeinating it is not.

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ADDITIONAL INFORMATION

The Internet

The home page of U.S. Customs and Border Protection on the Internet's World Wide Web, provides the trade community with current, relevant information regarding CBP operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site also links to the home pages of many other agencies whose importing or exporting regulations that U.S. Customs and Border Protection helps to enforce. The web site also contains a wealth of information of interest to a broader public than the trade community. For instance, on June 20, 2001, CBP launched the "Know Before You Go" publication and traveler awareness campaign designed to help educate international travelers.

The web address of U.S. Customs and Border Protection is <http://www.cbp.gov>

Customs Regulations

The current edition of *Customs Regulations of the United States* is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 512-1800. A bound, 2003 edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the Regulations as of April 1, 2003, is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register*, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

Customs Bulletin

The *Customs Bulletin and Decisions* ("Customs Bulletin") is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the *Customs Bulletin*. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

Importing Into the United States

This publication provides an overview of the importing process and contains general information about import requirements. The February 2002 edition of *Importing Into the United States* contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and U.S. Customs and Border Protection by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The February 2002 edition contains a section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between U.S. Customs and Border Protection and the import community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided accurate and timely data pertaining to his or her importation.

Single copies may be obtained from local offices of U.S. Customs and Border Protection, or from the Office of Public Affairs, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the CBP web site. *Importing Into the United States* is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054.

Informed Compliance Publications

U.S. Customs and Border Protection has prepared a number of Informed Compliance publications in the "*What Every Member of the Trade Community Should Know About:...*" series. Check the Internet web site <http://www.cbp.gov> for current publications.

Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from U.S. Customs and Border Protection, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, (Mint Annex) NW, Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, CBP Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054. This publication is also available on the Internet web site of U.S. Customs and Border Protection.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under CBP Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from U.S. Customs and Border Protection ports of entry. Please consult your telephone directory for an office near you. The listing will be found under U.S. Government, Department of Homeland Security.

“Your Comments are Important”

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs and Border Protection, call 1-888-REG-FAIR (1-888-734-3247).

REPORT SMUGGLING 1-800-BE-ALERT OR 1-800-NO-DROGA



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