U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, January 8, 2003.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

MICHAEL T. SCHMITZ,
Assistant Commissioner,
Office of Regulations and Rulings.

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CARRYING CASES FOR NOTEBOOK COMPUTERS

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to tariff classification of carrying cases for notebook computers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the tariff classification of certain carrying cases for notebook computers under the Harmonized Tariff Schedule of the United States (HTSUS). Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before February 21, 2003.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings,

Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the U.S. Customs Service, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 572–8780.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the classification of certain carrying cases for notebook computers. Although in this notice Customs is specifically referring to one ruling, NY 872117, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or simi-

lar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY 872117 dated March 13, 1991, set forth as Attachment A to this document, Customs classified certain carrying cases for notebook computers in subheading 8471.30.00, HTSUS, as: "Automatic data processing machines and units thereof * * *: Digital automatic data processing machines * * *."

It is now Customs position that the carrying cases are classified in subheading 4202.12.80, HTSUS, as: "Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers * * *: Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers: With outer surface of plastics or textile materials: With outer surface of textile materials: Other." Proposed HQ 966107 revoking NY 872117 is set forth as Attachment B.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY 872117 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 966107. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: January 3, 2003.

JOHN G. BLACK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, March 13, 1991.

CLA–2–84:S:N:N1:110 872117
Category: Classification
Tariff No. 8471.20.0090 and 8524.90.4080

MR. DENNIS HECK
CASTELAZO & ASSOCIATES
5420 West 104th Street
Los Angeles, CA 90045

Re: The tariff classification of a notebook computer and software from Singapore.

DEAR MR. HECK:

In your letter dated March 4, 1992, on behalf of Epson America Inc., you requested a tariff classification ruling.

The merchandise under consideration involves three models of notebook computers that incorporate a 80386 microprocessor, 2MB of RAM, an internal 3.5 inch 1.44MB floppy disk drive, an integrated keyboard, and a LCD flat panel display. The computer is imported and marketed with a nylon carrying case, and also includes a detachable power cord, two Ni-Cad batteries, one AC/DC adapter, and one software diskette. Epson notebook computer model EO400 is the NB-SL/20 monochrome LCD 20 MHZ version. Model EO401 is the NB-SL/25 monochrome LCD 25 MHZ version. Model EO402 is the NB-SL/25C active matrix color LCD 25 MHZ version. The unit, with one hard disk drive and one battery weighs 6.5 pounds. The keyboard, flat panel display and processor portion are in one common housing.

The nylon carrying case is padded on the inside with two MM polyethylene foam, and includes inside pockets of PVC for holding several software diskettes and thin manuals. The case also has a sturdy carrying handle and a zippered closure on three sides. This case is specially fitted to contain the notebook computer, and is suitable for long-term use. It thus appears to meet the GRI–5 (a) provision and would thus be classified at the same rate as the computer.

The applicable subheading for the three models of notebook computers will be 8471.20.0090, Harmonized Tariff Schedule of the United States (HTS), which provides for digital automatic data processing machines, containing in the same housing at least a central processing unit and an input and output unit, whether or not combined. The duty rate will be 3.9 percent ad valorem.

Noting Legal Note 6 to Chapter 85 of HTS, the software disk included in the computer case is classified separately.

The applicable subheading for the user disk software package will be 8524.90.4080, HTS, which provides for other recorded media. The rate of duty will be 9.7 cents per square meter of recording surface.

Your inquiry does not provide enough information for us to give a classification ruling on the color active matrix LCD display unit that is separately imported. Your request for a classification ruling should include descriptive literature on this flat panel display unit, and specifics as to whether this display unit is capable of use with other computers or merely designed for use with the three models of Epson computers. Please clarify also the country of origin for these display units, and whether or not these display panels were assembled in Singapore of Japanese components.

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

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

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 966107 GOB
Category: Classification
Tariff No. 4202.12.80

DENNIS HECK
CASTELAZO & ASSOCIATES
5420 West 104th Street
Los Angeles, CA 90045

Re: Modification of NY 872117; Carrying Case for Notebook Computer.

DEAR MR. HECK:

This letter is with respect to NY 872117 dated March 13, 1991, issued to you on behalf of Epson America Inc. We have reviewed that ruling and have determined that one of the classifications therein is incorrect. This ruling sets forth the correct classification.

Facts:

In NY 872117 the subject goods were described as follows:

> The merchandise under consideration involves three models of notebook computers that incorporate a 80386 microprocessor, 2MB of RAM, an internal 3.5 inch 1.44MB floppy disk drive, an integrated keyboard, and a LCD flat panel display. The computer is imported and marketed with a nylon carrying case, and also includes a detachable power cord, two Ni-Cad batteries, one AC/DC adapter, and one software diskette. Epson notebook computer model EO400 is the NB–SL/20 monochrome LCD 20 MHZ version. Model EO401 is the NB–SL/25 monochrome LCD 25 MHZ version. Model EO402 is the NB–SL/25C active matrix color LCD 25 MHZ version. The unit, with one hard disk drive and one battery weighs 6.5 pounds. The keyboard, flat panel display and processor portion are in one common housing.
>
> The nylon carrying case is padded on the inside with two MM polyethylene foam [sic], and includes inside pockets of PVC for holding several software diskettes and thin manuals. The case has a sturdy carrying handle and a zippered closure on three sides.

With respect to the carrying case, Customs stated:

> The case is specially fitted to contain the notebook computer, and is suitable for long-term use. It thus appears to meet the GRI–5(a) provision and would thus be classified at the same rate as the computer.

Based upon GRI 5(a), Customs classified the carrying cases with the notebook computers in subheading 8471.20.00, HTSUS (1991 HTSUS), as: "Automatic data processing machines and units thereof * * *: Digital automatic data processing machines * * *"

We now believe that the classification of the carrying cases in subheading 8471.20.00, HTSUS, was incorrect. This ruling sets forth the correct classification.

Issue:

What is the classification under the HTSUS of the nylon carrying case?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied.

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

GRI 5(a) provides as follows:

> (a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific

article or set of articles, suitable for long-term use and entered with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

The Explanatory Note for Rule 5(a) provides as follows:

(I) This Rule shall be taken to cover only those containers which:

(1) are specially shaped or fitted to contain a specific article or set of articles, i.e., they are designed specifically to accommodate the article for which they are intended. Some containers are shaped in the form of the article they contain;

(2) are suitable for long-term use, i.e., they are designed to have a durability comparable to that of the articles for which they are intended. These containers also serve to protect the article when not in use (during transport or storage, for example). These criteria enable them to be distinguished from simple packings;

(3) are presented with the articles for which they are intended, whether or not the articles are packed separately for convenience of transport. Presented separately the containers are classified in their appropriate headings;

(4) are of a kind normally sold with such articles; and

(5) do not give the whole its essential character.

The HTSUS provisions (2002 HTSUS) under consideration are as follows:

4202	Trunks, suitcases, vanity cases, attache 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:
	Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers
4202.11.00	With outer surface of leather, of composition leather, or of patent leather
4202.12	With outer surface of plastics or of textile materials:
	With outer surface of textile materials:
4202.12.80	Other
* * * * * * *	
8471	Automatic data processing machines and units thereof * * *:
8471.30.00	Portable digital automatic data processing machines, weighing not more than 10 kg, consisting of at least a central processing unit, a keyboard and a display

Upon reflection, we believe GRI 5(a) requires a clear finding that the container at issue meets the EN criteria set forth above. We have no evidence that the carrying case at issue is of a class or kind of goods normally sold with laptop or notebook computers (adp units). EN I (4) to GRI 5(a). Accordingly, we no longer believe that this case is a GRI 5(a) container classified with the good with which it is entered.

We find that the subject nylon carrying cases are described in heading 4202, HTSUS, as briefcases and/or attache cases or similar containers. They are classified in subheading 4202.12.80, HTSUS, as: "Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers * * *: Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers: With outer surface of plastics or textile materials: With outer surface of textile materials: Other."

Holding:

The nylon carrying cases are classified in subheading 4202.12.80, HTSUS, as: "Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers * * *: Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar

containers: With outer surface of plastics or textile materials: With outer surface of textile materials: Other."

Effect on Other Rulings:
NY 872117 is modified.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO CLASSIFICATION OF FRUIT FILLINGS FOR BAKED GOODS

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the classification of fruit fillings for baked goods.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of fruit fillings for baked goods and any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before February 21, 2003.

ADDRESS: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 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 202–572–8768.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, General Classification Branch, 202–572–8778.

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 **"in-**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of fruit fillings for baked goods. Although in this notice Customs is specifically referring to one ruling, New York Ruling Letter (NY) I83832, dated July 1, 2002, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise which 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 advise the Customs Service during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise the Customs Service 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 their agents for importations of merchandise subsequent to this notice.

In NY I83832, dated July 1, 2002, the classification of a product commonly referred to as fruit fillings for baked goods was determined to be in heading 2106.90.9500 or 2106.90.9700, HTSUS, the in- and over-quota subheadings for other food preparations containing over 10 percent,

by dry weight, of cane or beet sugar. This ruling letter is set forth in "Attachment A" to this document. Since the issuance of that ruling, Customs has had a chance to review the classification of this merchandise and has determined that the classification is in error. Because of the use to which the fruit fillings for baked goods will be put, they fall within one of the classes of goods which are exempt from the quota described in chapter 17 additional U.S. note 3. As a result, they are properly classified in the non-quota subheading 2106.90.9997, HTSUS, which provides for other food preparations containing sugar derived from sugar cane and/or sugar beets.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY I83832, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 965859 (*see* "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: January 7, 2003.

JOHN G. BLACK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, July 1, 2002.

CLA–2–21:RR:NC:2:228 I83832
Category: Classification
Tariff No. 2106.90.9500 and 2106.90.9700

MS. DIANA L. KEPLER
PANALPINA, INC.
2461 Directors Row
Indianapolis, IN 46241

Re: The tariff classification of fruit fillings from Canada.

DEAR MS. KEPLER:

In your letter dated June 25, 2002, on behalf of Sensient Flavors, Inc., Indianapolis, IN, you requested a tariff classification ruling.

Ingredients breakdowns accompanied your letter. The products are described as fruit fillings, imported in 2000 to 2400-pound plastic totes, and used as the filling for baked products. Six filling varieties are identified in your letter—apple, strawberry, raspberry, strawberry-kiwi, peach-apricot, and apple-cinnamon. Ingredients common to all are sugar (over 10 percent, by dry weight), glucose, dextrose, water, modified starch (corn or tapioca), pectin, dehydrated apples and/or apple powder, and citric acid. Other ingredients,

depending on variety, are strawberries, raspberries, kiwi, peaches, apricots, fruit juice concentrate, spice, natural or artificial flavor, color, salt, malic acid, lecithin, canola oil, potassium sorbate, and sodium benzoate.

The applicable subheading for the fruit fillings, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 2106.90.9500 Harmonized Tariff Schedules of the United States (HTS), which provides for food preparations not elsewhere specified or included * * * other * * * other * * * articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17 * * * described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The rate of duty will be 10 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading 2106.90.9700, HTS, and dutiable at the rate of 28.8 cents per kilogram plus 8.5 percent ad valorem.

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

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

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

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 965859ptl
Category: Classification
Tariff No. 2106.90.9997

MS. DIANA L. KEPLER
PANALPINA, INC.
2461 Directors Row
Indianapolis, IN 46241

Re: Revocation of NY I83832; Fruit Fillings for Baked Goods.

DEAR MS. KEPLER:

In New York Ruling Letter (NY) I83832, dated July 1, 2002, which was issued to you on behalf of Sensient Flavors, Inc., products described as fruit fillings for baked goods were classified in Harmonized Tariff Schedule of the United States (HTSUS) subheadings 2106.90.9500 or 2106.90.9700. These subheadings are quota provisions. The first provides for food preparations not elsewhere specified or included * * * other * * * other * * * articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17 * * * described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The second subheading is an over-quota subheading and is to be used when the quantitative limits of additional U.S. note 8 to chapter 17 have been reached. We have reviewed the classification of the fruit fillings for baked goods contained in NY I83832, and have determined that they are incorrect. For the reasons provided below, Customs now believes the correct classification of the fruit fillings for baked goods is subheading 2106.90.9997, HTSUS, a non-quota provision which provides for other food preparations not elsewhere specified or included * * * other * * * other, containing sugar derived from sugar cane and/or sugar beets.

Facts:

The subject goods are described as fruit fillings that will be imported in 2000 to 2400-pound plastic totes and used as the filling for baked products. There are six varieties

of the product: apple, strawberry, raspberry, strawberry-kiwi, peach-apricot, and apple-cinnamon. Common ingredients to all varieties are: sugar (over 10 percent, by dry weight), glucose, dextrose, water, modified starch corn or tapioca), pectin, dehydrated apples and/or apple powder, and citric acid. Other ingredients, depending on the variety, are strawberries, raspberries, kiwi, peaches, apricots, fruit juice concentrate, spice, natural or artificial flavor, color, salt, malic acid, lecithin, canola oil, potassium sorbate, and sodium benzoate.

Issue:

What is the classification of fruit fillings for baked goods?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, 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 order.

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

The HTSUS headings under consideration are as follows:

2106	Food preparations not elsewhere specified or included
2106.90	Other:
	Other:
	Other:
	Other:
	Other:
	Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17:
2106.90.9500	Described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions
2106.90.9700	Other[3]
2106.90.99	Other
2106.90.9997	Containing sugar derived from sugar cane and/or sugar beets

[3] See subheadings 9904.17.49–9904.17.65.

Because the goods in question contain over 10 percent, by weight, sugar derived from sugar cane or sugar beets, they are potentially subject to the tariff rate quota described in chapter 17, additional U.S. note 3.

Additional U.S. note 3 to chapter 17 reads as follows:

> "3. For the purposes of this schedule, the term "articles containing over 10 percent by dry weight of sugar described in additional U.S. 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." (Emphasis added)

As highlighted above, exception (d) to goods included in the quota provides for "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." This phrase has been the subject of earlier Customs rulings. In HQ 956100, dated February 7, 1995 and HQ 956246, dated July 25, 1994, Customs stated:

> * * * the phrase 'cake decorations and similar products to be used in the same condition as imported without further processing other than the direct application to individual pastries and confections' means 1) products used in their imported condition to coat or fill pastries or confections, or 2) products used to coat or fill pastries or confections after a change in form (e.g., melting or heating, reduction in size), insofar as the product itself need not undergo a necessary, additional preparation, treatment, or manufacture nor a blending or combining with any ingredients, in order to become a finished product.

You have stated that the goods under consideration are to be used as fruit fillings in bakery applications. As such, the goods fall within exception (d) to the quota. They are used in their imported condition, without further processing or mixing with other ingredients, and are used as filling for a pastry product, a cookie. As such, the product should be classified in the non-quota subheading 2106.90.9997, HTSUS. This classification is consistent with NY B86009, dated June 18, 1997, which classified a similar cookie filling in that subheading.

Holding:

Fruit fillings containing over 10 percent sugar from sugar cane or sugar beets which are imported in bulk containers and which are used without further processing as fillings for baked cookies are classified in subheading 2106.90.9997, HTSUS, which provides for food preparations not elsewhere specified or included, fruit fillings, other, other, other, other, other, other, containing sugar derived from sugar cane and/or sugar beets.

Effect on Other Rulings:

NY I83832, dated July 1, 2002, is hereby revoked.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF A ROASTER OVEN

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

ACTION: Notice of modification of ruling letter and revocation of treatment relating to tariff classification of a roaster oven.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of the Rival 18-Quart Roaster Oven and revoking any treatment previously accorded by the Customs Service to substantially identical transactions. No comments were received in response to this notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 24, 2003.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, Commercial Rulings Division, (202) 572–8782.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on December 4, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 49, proposing to modify NY I80666 dated April 22, 2002, pertaining to the tariff classification of the Rival 18-Quart Roaster Oven. 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. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States

(HTSUS). Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's failure to have advised the Customs Service 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 their agents for importations of merchandise subsequent to the effective date of this final notice.

In NY I80666, dated April 23, 2002, Customs found, among other things, that the Rival 18-Quart Roaster Oven was classified in subheading 8516.60.60, HTSUS, as other ovens; cooking stoves, ranges, cooking plates, boiling rings, grillers and roasters, other.

Customs has reviewed the matter and determined that the correct classification of the Rival 18-Quart Roaster Oven is in subheading 8516.60.40, HTSUS, which provides for cooking stoves, ranges, and ovens.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying NY I80666, 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) 965861, as set forth in the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service 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: January 7, 2003.

JOHN G. BLACK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, January 7, 2003.

CLA–2 RR:CR:GC 965861 KBR
Category: Classification
Tariff No. 8516.60.40

MARK G. SUN
KMART CORPORATION
RESOURCE CENTER
3100 West Big Beaver Road
Troy, MI 48084–3163

Re: Modification of NY I80666; Roaster Oven.

DEAR MR. SUN:

This is in reference to your letter of September 5, 2002, requesting that we reconsider New York Ruling Letter (NY) I80666, issued to you, by the Customs National Commodity Specialist Division, New York, on April 23, 2002. This ruling concerned the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a roaster oven. We have reviewed NY I80666 and determined that the classification provided is incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published on December 4, 2002, in Vol. 36, No. 49 of the CUSTOMS BULLETIN, proposing to revoke NY I80666. No comments were received in response to this notice. This ruling revokes NY I80666 by providing the correct classification for the roaster oven.

Facts:

NY I80666 concerns the Rival 18-Quart Roaster Oven (R0180KW). The roaster oven has an enamel-on-steel roasting pan and a removable steel roasting rack. The roaster oven is a 1450 watt, table top appliance with two carry handles. It has a dial temperature control ranging from 150 to 450 degrees to allow roasting, baking and cooking. NY I80666 also concerned a Rival Buffet Server and an electric knife. Only the roaster oven is at issue in this ruling.

In NY I80666, it was determined that the roaster oven was classifiable in subheading 8516.60.60, HTSUS, as other ovens; cooking stoves, ranges, cooking plates, boiling rings, grillers and roasters, other. We have reviewed that ruling and determined that the classification of the roaster oven is incorrect. This ruling sets forth the correct classification.

Issue:

What is the proper classification under the HTSUS of the subject roaster oven?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). Under GRI 1, merchandise is classifiable 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 on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The HTSUS provisions under consideration are as follows:

8516	Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof:
8516.60	Other ovens; cooking stoves, ranges, cooking plates, boiling rings, grillers and roasters:
8516.60.40	Cooking stoves, ranges and ovens
8516.60.60	Other

Within Chapter 85, HTSUS, heading 8516, in pertinent part, provides for other electrothermic appliances of a kind used for domestic purposes. Review of both the HTSUS legal notes and the ENs indicates that neither defines the phrase "domestic purposes." A tariff term that is not defined in the HTSUS or in the ENs is construed in accordance with its common and commercial meanings, which are presumed to be the same. *Nippon Kogasku (USA) Inc. v. United States*, 69 CCPA 89, 673 F. 2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F. 2d 1268 (1982). The term "domestic" is described as "of or relating to the household or the family." *Merriam-Webster's Collegiate Dictionary*, 10th, p.344, (1999).

After careful consideration of the information, dimensions, capacity, power and other features of the roaster oven, we conclude that the roaster oven is an electrothermic appliance belonging to a class or kind principally used for domestic purposes under heading 8516, HTSUS. *See* HQ 954781 (September 22, 1993).

Next, we must determine under which of the following subheadings the article is classifiable. EN 85.16, states that other electro-thermic appliances used for domestic purposes include "other ovens and cookers, cooking plates, boiling rings, grillers and roasters * * *" EN 85.16 does not provide direction as to what characterizes "other ovens" and "roasters." As noted above, classification is in accordance with the GRI and the terms of the headings, with the guidance of the ENs, to understand the scope of the headings and GRI. Since the article cannot be classified pursuant to GRI 1 alone, *i.e.*, according to the terms of the heading, and since there is no disagreement that the roaster oven is classifiable under heading 8516, HTSUS, we look to GRI 6, which states:

> "For legal purposes, 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 the above rules, 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."

Subheading 8516.60.40, provides only for cooking stoves, ranges and ovens * * *." Subheading 8516.60.60 provides for all remaining articles in subheading 8516.60, cooking plates, boiling rings, grillers and roasters.

The provision in heading 8516, electrothermic appliances of a kind used for domestic purposes, is governed by "use." *Group Italglass U.S.A., Inc. v. United States*, Slip Op. 93–46 (1993). Classification based upon use is governed by the language of Additional U.S. Rule of Interpretation 1(a) which requires that:

"In the absence of special language or context which otherwise requires—

> A tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use."

To conclude that the roaster oven is classifiable in subheading 8516.60.40, HTSUS, the article must belong to a class or kind of goods for which the principal use is as an oven, *i.e.,* the oven's principal use must be for cooking food like an oven. The term "oven" is not defined in the HTSUS or the ENs. In examining the common meaning of the term, we find that "oven" is broadly defined in the *Merriam-Webster's Collegiate Dictionary*, 10th Edition, p. 827 (1999), as: "a chamber used for baking, heating, or drying." In HQ 956227, dated September 19, 1994, Customs relied upon a similar definition provided for in *Webster's II New Riverside University Dictionary*, p. 837 (1984), that an oven is "[a]n enclosed compartment supplied with heat and used for cooking food and for heating or drying objects placed within." *See also* HQ 953619 (June 23, 1993).

In NY F80111, dated December 1, 1999, Customs determined that the 18-quart portable "NESCO Roaster Oven" with cookwell, lid and "circle of heat" heating element within an enclosed compartment, an electrothermic domestic appliance nearly identical to the Rival roaster oven at issue here, was classifiable as an "oven", under subheading 8516.60.40, HTSUS. In HQ 963678 (September 11, 2000), Customs cited with approval the decision in NY F80111, and stated that "even though that appliance was commercially known as a "roaster," it also met the common meaning of the term "oven" as an enclosed compartment capable of cooking food." *See also* HQ 954781 (September 22, 1993) (finding a countertop baking unit is an "oven" under subheading 8516.60.40, HTSUS). Therefore, since

the instant roaster oven is nearly identical to the one in NY F80111, we find that the roaster oven at issue is classifiable as an "oven" under subheading 8516.60.40, HTSUS.

Holding:

The Rival 18-Quart Roaster Oven is classifiable under subheading 8516.60.40, HTSUS, as other electrothermic appliances of a kind used for domestic purposes; parts thereof: Other ovens; cooking stoves, ranges, cooking plates, boiling rings, grillers and roasters: cooking stoves, ranges and ovens, other.

Effect on Other Rulings:

NY I80666 dated April 23, 2002, is MODIFIED as to the roaster oven. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

JOHN G. BLACK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)