Bureau of Customs and Border Protection

CBP Decisions

(CBP Dec. 06–20)

BONDS

APPROVAL TO USE AUTHORIZED FACSIMILE SIGNATURES AND SEALS

The use of facsimile signatures and seals on Customs bonds by the following corporate surety has been approved effective this date:

Washington International Insurance Company

Authorized facsimile signature on file for:

Steve Calamia, Attorney-in-fact

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

DATE: July 25, 2006

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

July 25, 2006

BON–1:RR:IT:EC 231498 GC

Mr. James A. Carpenter
Vice President and Assistant Secretary
Washington International Insurance Company
1200 Arlington Heights Road Suite 400
Itasca, Illinois 60143–2625

Dear Mr. Carpenter:

This is in response to your letter dated August 18, 2005 concerning the use of facsimile signatures and corporate seals by the following individual on Customs bonds executed by Washington International Insurance Company.

Steve Calamia, Attorney-in-fact

A certified copy of the corporate resolution agreeing to be bound by the facsimile signatures and seals, and a copy of the signature and corporate seal have been submitted to this office.

Accordingly, approval of the use of facsimile signatures and seals by the above-named individual is hereby granted effective this date.

The use of facsimile signatures and seals is without prejudice to the surety's right to affix signatures and seals manually. This approval will be published as a U.S. Customs and Border Protection Decision (copy enclosed) in the Customs Bulletin.

Sincerely,

William G. Rosoff
Chief,
Entry Process and Duty Refunds Branch

Enclosure

Automated Commercial Environment (ACE): National Customs Automation Program Test Of Automated Truck Manifest for Truck Carrier Accounts; Deployment Schedule

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

ACTION: General notice.

SUMMARY: The Bureau of Customs and Border Protection, in conjunction with the Department of Transportation, Federal Motor Car-

rier Safety Administration, is currently conducting a National Customs Automation Program (NCAP) test concerning the transmission of automated truck manifest data. This document announces the next groups, or clusters, of ports to be deployed for this test.

DATES: The ports identified in this notice, in the state of New York, are expected to deploy no earlier than the dates provided in this notice, all of which are between the months of July and August, 2006. Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period.

FOR FURTHER INFORMATION CONTACT: Mr. James Swanson via e-mail at *james.d.swanson@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

The National Customs Automation Program (NCAP) test concerning the transmission of automated truck manifest data for truck carrier accounts was announced in a General Notice published in the **Federal Register** (69 FR 55167) on September 13, 2004. That notice stated that the test of the Automated Truck Manifest would be conducted in a phased approach, with primary deployment scheduled for no earlier than November 29, 2004.

A series of **Federal Register** notices have announced the implementation of the test, beginning with a notice published on May 31, 2005 (70 FR 30964). As described in that document, the deployment sites have been phased in as clusters. The ports identified belonging to the first cluster were announced in the May 31, 2005, notice. Additional clusters were announced in subsequent notices published in the **Federal Register** including: 70 FR 43892, published on July 29, 2005; 70 FR 60096, published on October 14, 2005; 71 FR 3875, published on January 24, 2006; and 71 FR 23941, published on April 25, 2006.

New Clusters

Through this notice, CBP announces that the next clusters of ports to be brought up for purposes of deployment of the test will be in the state of New York. The test will be deployed no earlier than June 22, 2006, in the Champlain Service Port at the port of entry of Champlain and the following crossings: Cannon's Corner, Mooers, Overton's Corner, and Rouses Point. The test will be deployed no earlier than July 10, 2006, at the following ports of entry: Alexandria Bay, Ogdensburg, Massena, and Trout River; and the following crossings: Chateaugay, Churubusco, Fort Covington, and Jamieson's Line. Also no earlier than July 10, 2006, the test will be deployed at the Peace Bridge in the Service Port of Buffalo. No earlier than August 12, 2006, the test will be deployed at the Lewiston Bridge in the Service Port of Buffalo.

Previous NCAP Notices Not Concerning Deployment Schedules

On Monday, March 21, 2005, a General Notice was published in the **Federal Register** (70 FR 13514) announcing a modification to the NCAP test to clarify that all relevant data elements are required to be submitted in the automated truck manifest submission. That notice did not announce any change to the deployment schedule and is not affected by publication of this notice. All requirements and aspects of the test, as set forth in the September 13, 2004 notice, as modified by the March 21, 2005 notice, continue to be applicable.

Dated: July 18, 2006

JAYSON P. AHERN,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, July 25, 2006 (71 FR 42103)]

General Notices

Notice of Cancellation of Customs Broker License

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

ACTION: Customs broker license revocations for the failure to file the triennial status report and applicable fee.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and Title 19 of the Code of Federal Regulations at section 111.30(d), the following Customs broker licenses are canceled without prejudice.

License Port	Licensee Name	License No.
Anchorage	Margaret Green	09804
Atlanta	Jennifer Cheatham Kelly	13902
Atlanta	Edward R. Stephens	12675
Atlanta	Alice Larona White	16880
Atlanta	Sherry Elaine Simpson	13412
Atlanta	Timothy R. Harmon	15070
Atlanta	Marsha D. Thomas	15561
Atlanta	William R. Druce	15555
Atlanta	Brenda K. Peek	13392
Atlanta	Joyce Logan Welch	11048
Atlanta	Laurel S. Stephens	09290
Atlanta	Jonathan D. Nordhausen	13377
Atlanta	Beverly J. Sheffield	16856

License Port	Licensee Name	License No.
Atlanta	Nancy A. Beech	12046
Boston	Paul J. Callery	07515
Boston	AIS International, Inc.	13622
Boston	Xiao-Xia Erica Zhen	17502
Boston	Rebecca M. Stracuzzi	15692
Boston	Shayona CB Group, Inc.	17350
Boston	Sean Delaney	20002
Boston	Dana R. Falzarano	15383
Boston	Christopher R. Martin	15226
Boston	John M. Borgia	12651
Boston	Patrick M. Butler	11547
Boston	Mark Alan Mullen	10759
Boston	Lorne Jones	10512
Boston	Dian Christine Pedersen	09975
Boston	David John Cawley	03835
Boston	Donna Lee McCarthy	09976
Buffalo	Gordon L. MacMartin	12408
Buffalo	Patricia M. Carberry	20916
Buffalo	Andrew W. Smith	15583
Buffalo	Michael J. Cherenzia	13925
Buffalo	David A. Fubelli	14233
Buffalo	Burtram W. Anderson	04590
Buffalo	Daniel C. Muscato	10882
Buffalo	Edith M. Sanfilippo	10881
Buffalo	Steve A. Forey	09323
Buffalo	Robert E. Hadden	16033
Buffalo	Laura Jap Harper	09040
Buffalo	Matthew P. Byrnes	21262
Buffalo	Spencer Stewart	20212
Champlain	Robert L. Bronson	04600
Champlain	Michael S. Burwell	10906
Champlain	Rene A. Barriere	10905
Charleston	Sue S. Shipman	16265
Charleston	Pamela Mason Lane	10245
Charleston	Dora Lee Boyles	05868
Charleston	McFarland Heard Mikell, Jr.	03625
Charlotte	Valerie Jean McGuire	13440
Charlotte	Debra Clark Hall	15498
Charlotte	Danielle Renee Muller	20846
Charlotte	John Robert Davis	20445
Charlotte	Elna L. Howard	15985
Chicago	Steven J. Van Rees	14573
Chicago	Tracy M. Vroman	15320
Chicago	Margaret L. Benning	15488
Chicago	Alfred W Abbonato	14911

License Port	Licensee Name	License No.
Chicago	Brian James Poshard	07626
Chicago	Lisa A. Campobasso	13532
Chicago	Richard R. Weeks	12417
Chicago	Lynn W. Redenbaugh	16430
Chicago	Robert A. Taussig	20823
Chicago	Jean Adele Reid	12216
Chicago	Vern J. Weberski	05823
Chicago	Patrick Rene Jean	12177
Chicago	Jemima Sager-Gillen	20221
Chicago	Eugene Besler	03083
Cleveland	Michael McCord	17108
Cleveland	Kathleen Gallardo-Shrank	11506
Cleveland	Lois J. Hull	09340
Cleveland	Kathleen Blaser	11539
Cleveland	Kandel Coolman Baxter	21023
Cleveland	Seid-Reza Teimouri	04643
Cleveland	Julie L. Holycross	20493
Cleveland	James B. Wiser	09368
Cleveland	Sandra Walker	14490
Cleveland	Kristine M. Roth	16451
Cleveland	William W. Shea	11616
Cleveland	John C. Blaser	11651
Cleveland	Alfred E. Andrews, Jr.	14419
Denver	Douglas H. Oliver	22231
Denver	Amy D. Fisher	17318
Detroit	Jesse Murray	22217
Detroit	Fern Yvette Watkins	15834
Detroit	Gerald Anthony Mastaw	04127
Detroit	Louise Busch	04092
Detroit	Robert James Semany	03995
Detroit	Joanne B. Markstrom	07254
Detroit	Richard Paul Juneau	03764
Detroit	Lynne A. Palmitier	13772
Detroit	Robert V. Schikora	22531
El Paso	Bruce Wendell Brown	02807
El Paso	Gerald Lewis Gumbert	04699
El Paso	Rodolfo Ayon	17008
El Paso	Alfredo Munoz Candelaria	16099
El Paso	Bertha G Rizzuti	15087
El Paso	Elaine M. Little-Esqueda	15816
El Paso	Bruce Patrick McIntosh	12229
El Paso	Beatrice Kay Gumbert	05924
El Paso	Sam Esqueda	15574
El Paso	Ronald Vertrees	06989
El Paso	Manuel Romero, Jr.	17112

License Port	Licensee Name	License No.
El Paso	Robert R. Martinez	14797
Great Falls	Robert Dean Rogers	11558
Great Falls	Debra International CHB, Inc.	21839
Great Falls	Debra K. Wanner	12584
Great Falls	Shane Courtney	21556
Honolulu	S DeFreest & Company, Inc.	07924
Honolulu	Bruce M. Mitchell	07478
Houston	Michael Earl Wilson	08065
Houston	Wendy S. Cleveland	16867
Houston	Robert A. Spain, III	15354
Houston	Karen Sims	10971
Houston	Wanda M. Jeffcoat	10307
Houston	Edward L. Bartimmo	16241
Houston	Billy R. Potts	03993
Houston	Michael W. Bruzga	06942
Houston	Galen Sell	05704
Laredo	Mario Negrete Rangel	05703
Los Angeles	Richard Lee Wilroy	07534
Los Angeles	Thomas Leroy Haugen	16424
Los Angeles	OCS Customs Brokerage, Inc.	16642
Los Angeles	Elizabeth Diane Llata-Brecht	16776
Los Angeles	Donna-Lee Vickie Burke	11263
Los Angeles	Teresa Wolven	11173
Los Angeles	John Constant Menudier	10054
Los Angeles	WC Keating, Inc.	14371
Los Angeles	Josef Schmid	06672
Los Angeles	Harold Robert Pintar	10010
Los Angeles	Leslie P. Skelton	07379
Los Angeles	Steven L. Burdolf	07546
Los Angeles	Cynthia Marie Appel	10658
Los Angeles	James E. Powell	10471
Los Angeles	Joshua Eckhaus	10699
Los Angeles	Lynn Marie Bagley	13546
Los Angeles	Matthew Lawrence Parks	13427
Los Angeles	Zil Brill	07157
Los Angeles	Yen Tan Pham	14290
Los Angeles	Arthur C. Schick, III	09498
Los Angeles	Dan W. White	04267
Los Angeles	Ramon J. Pacheco	04231
Los Angeles	Stephen J. Schneider	05992
Los Angeles	Sharon Czull Johnson	04529
Los Angeles	Janet Louise Elliot	06322
Los Angeles	S Johnson & Associates, Inc.	05437
Los Angeles	Jeffrey P. Schramer	14964
Los Angeles	Robert Allen McLaughlin	16986

License Port	Licensee Name	License No.
Los Angeles	Ralph Weymouth Parkhurst, III	16025
Los Angeles	Perry Lind McCoy, Jr.	17181
Los Angeles	Gary Akito Mizumoto	10487
Los Angeles	Jeff M. Nelson	09137
Los Angeles	Robert David Bloom	13688
Los Angeles	Theodore A. O'Donnell	14651
Los Angeles	Abiodun Omolara Okunubi	17144
Los Angeles	Philip George Provenzale	09334
Los Angeles	Alonzo James Arcos	09857
Los Angeles	Pacheco International Corporation	04330
Los Angeles	Melissa L. Van Corbach	15137
Los Angeles	Angelo Pomyong Cho	21801
Los Angeles	US Express CHB, Inc.	09134
Los Angeles	Ronald F. McDonald	06645
Los Angeles	Christine Wang	12708
Los Angeles	Jeffrey Kent Elledge	20854
Los Angeles	Margaret Edsall Huson	20546
Los Angeles	Stefanie Salazar	21084
Los Angeles	Sylvia Joan Pearson	10602
Los Angeles	Elayne C. Brenner Haddad	11744
Los Angeles	Jinny Jung	13185
Los Angeles	Judy Carey Cozad	12721
Los Angeles	Tory Stanford Erickson	12605
Los Angeles	Deborah Russell	13197
Los Angeles	Rebecca Bernard	13189
Los Angeles	Julio A. Hinojosa	15501
Miami	Robert M. Kossick, Jr.	20308
Miami	Global Freight Services, Inc.	12401
Miami	Customs Services International, Inc.	13029
Miami	Ramon E. Perez	22785
Miami	Pedro Tronge	16002
Miami	Dulce M. Gomez	14957
Miami	James Creighton	06638
Miami	Mauree T. Talman	15522
Miami	Alan Albelo	13801
Miami	Troy D. Crago	20177
Miami	Raul Lahera	10344
Miami	Joyce C. Rodriguez	21130
Miami	Ricardo E. Rubio	06397
Miami	Thomas Kruszewski	21534
Miami	Gilbert A. Espinet	16810
Miami	Pascale Martelly	21393
Miami	Elia R. (Rodriquez) Cabrera	14302
Miami	Washington World Trading Corporation	17006

License Port	Licensee Name	License No.
Miami	Carlos E. Serrano	21584
Miami	Grace Ann Martin	14286
Miami	RP Broker, Inc.	09603
Miami	Lucia Novoa	16091
Miami	Arturo Marrero	13619
Miami	Jeffrey D. Bleyer	15806
Miami	Herbert Patterer	21079
Miami	Russell C. Vick, Jr.	20382
Milwaukee	Eugene E. Van Garsse	04690
Milwaukee	Advantage Customs Brokers, LLC	20067
Milwaukee	Global Logistics Services, Inc.	17029
Milwaukee	Robert P. Voisin	17566
Milwaukee	Richard W. Gardenier	02995
Milwaukee	Allen G. Lemke	04615
Milwaukee	Jeffrey L. Keim	13696
Minneapolis	Amy M. Storms	17489
Minneapolis	Kirsten H. Dicks	21606
Minneapolis	Jacqueline J. Otto	14521
Minneapolis	Charlene K. Leach	16876
Minneapolis	Dayton D. Gilbert	17523
Minneapolis	John Michael Gleason	03867
Mobile	Raymond B. Green, Jr.	10837
New Orleans	Nathan W. Rye	17305
New Orleans	Robert Gowan	16545
New Orleans	Rosa D. Simoneaux	05030
New Orleans	Janice J. Gilbert	17434
New Orleans	George Villanueva	05261
New Orleans	Alfred P. Mangan	05397
New Orleans	Jean W. Phebus	20028
New Orleans	Garrett Meynard	15662
New Orleans	Forward Air, Inc.	20204
New Orleans	American Logistics International, Inc.	16539
New Orleans	Jack E. Smith	12232
New Orleans	Martin M. Whitfield	10154
New York	A Burghart Shipping Company, Inc.	05222
New York	Cargo Network International, Inc.	15404
New York	Cynthia Lee Gilbert	10273
New York	Gerard William Harder	02996
New York	Sol Schoenberg	03585
New York	Vincent P. Ventura, Jr.	14807
New York	Altair Freighting International, Inc.	14663
New York	Douglas Paik	20083
New York	Guido Derlly	17562
New York	Robert P. Weinrib	06455

License Port	Licensee Name	License No.
New York	Joseph N. Santarelli	06021
New York	Ernesto B. Pullenza	06398
New York	Robert J. Gannon	06179
New York	Robert E. Lee	12032
New York	Fischer-McCloskey, Inc.	04608
New York	Marcelo Klapp	10177
New York	Andrea Clair Brooks	13258
New York	Christopher J. Dickerson	17225
New York	John J. Carr	20482
New York	Edward F. Woehr	18020
New York	Laina Jones	21156
New York	Eugene Song	21230
New York	Daniel Dong	21761
New York	Leo Liang Li	21763
New York	Richard Schweitzer	06196
New York	Joseph Mauri	02737
New York	Richard Lawson	12823
New York	Arthur S. Spiegel	04762
New York	Arthur F. Kingren	10703
New York	Complete Customs Clearance, Inc.	10065
New York	Irwin Carmel	03838
New York	Seymour Haber	03841
New York	Carmine Dominick Tolli	03542
New York	Stephen J. Rozsas	04906
New York	John F. Wedded	05103
New York	James A. Hoban	05739
New York	Charles D. Johnson	05953
New York	J.J. Rousseau	06816
New York	Kim D. Bateman	07221
New York	Charles A. McCloskey	04106
New York	Nicholas J. DeFonte	03245
New York	Richard DeFuccio	03615
New York	KDB International Ltd.	09179
New York	Keith Campbell	11489
New York	Ellen Michel	16308
New York	Debra Jean Levine	12667
New York	Steven Poulin	22381
New York	A & J Import Export Services, Inc.	14662
New York	Delphine R. Mui	17207
New York	Bernard Louis Epstein	01870
New York	Nicholas DePasquale	02394
New York	Elza Mitelman	17241
New York	Capital Customs Brokers, Inc.	11526
New York	Peter R. Kurth	02859
New York	Irma Ruiz	16461

License Port	Licensee Name	License No.
New York	Patrick Lam	16106
New York	Daniel Zupko	16285
Nogales	Edward Mario Bayze	12078
Nogales	Sandra Chambers Losskarn	12684
Nogales	Barry L. Lay, Jr.	17196
Nogales	CB Lay Customs Brokers, Inc.	11337
Nogales	Jose G. Varela	15617
Otay Mesa	Mary Beth Viruete	13576
Otay Mesa	Suzanne Rios	22859
Otay Mesa	Evan W. Bladh	12839
Otay Mesa	Frank R. Britton	02870
Otay Mesa	Elaine Dolores Morton	13280
Otay Mesa	Marrianne Handrus Kaarsberg	04619
Otay Mesa	Bennie H. Ketchum	04125
Philadelphia	Brian C. Johnson	21929
Philadelphia	Lynn M. Jones	21385
Philadelphia	Charles William Person	04156
Philadelphia	Richard C. Powley	11761
Philadelphia	Hanifa Shabazz	07676
Philadelphia	Maryanne Sweeney	16445
Philadelphia	Jeannie McClaning	17574
Philadelphia	Paul L. Greenlee	09903
Philadelphia	Dennis Rowles	07051
Philadelphia	Volker Simon	05123
Philadelphia	Vincent McHale	12880
Port Arthur	Gerard Arthur Becnel	03858
Portland, ME	Stewart J. Harmon	15242
Portland, OR	William J. Boyd	16900
Portland, OR	Edward M. Jones & Company	11882
Portland, OR	Peter Ryan Klason	14112
Portland, OR	Sarah Clarke Gibson	15252
Portland, OR	Jodi Watson	16100
Providence	Lisa Ann Fitch	12488
Providence	Cheryl A. Simino-Dewolf	14545
San Diego	David Wells	16253
San Diego	Taeheum Yun	14985
San Diego	Susan Wittering	14311
San Diego	Leia Darett	17584
San Diego	Patti Hodson	15017
San Diego	Esteban Zavala	20439
San Diego	George LeBaron, III	20913
San Diego	Dinorah Plascencia	20882
San Francisco	James Carl Sanetra	15852
San Francisco	Gwendolyn Hasse	15843
San Francisco	E.R. Gallagher	07022

License Port	Licensee Name	License No.
San Francisco	Miguel Roman Padilla	06496
San Francisco	James I. McLeaish	12080
San Francisco	Carole Wilkinson	07635
San Francisco	James A. Moore	22675
San Francisco	Lisa Duggins-Rogers	21567
San Francisco	Inexco, Inc.	07699
San Francisco	Carolyn Louise Kubli	04399
San Francisco	Anthony W. Staton	13540
San Francisco	Lawrence George Johnson	09413
San Francisco	Vincent Lacson Baldemor	17403
San Francisco	Arnis Kapostins	04000
San Francisco	Larry Clark Clopp	05559
San Francisco	Lisa Mae Quock	20378
San Francisco	Clifford Richard Colvin	07734
San Francisco	Theresa A. Dutton	10251
San Francisco	Ewa Genowfa Sederstrom	13800
San Francisco	Mooyung Choi	10249
St. Albans	Michael Fortuna	17316
St. Albans	N. Roger Poulin	04284
Tampa	Sandra K. Chestnut	16412
Tampa	H&H International, Inc.	22098
Tampa	Joyce F. Mones	11211
Tampa	Kerry S. Holstein	16006
Tampa	Susan L. (Dudley) McLane	13649
Tampa	Nancy L. Orihuela	10739
Washington, DC	Josette Gwilliam	05781
Washington, DC	Brian Carl Sullivan	21599
Washington, DC	Donna L. Twyford	16764
Washington, DC	Patricia M. Rinker	11578
Washington, DC	Andrew T. Rosulek	22502

DATED: July 18, 2006

JAYSON P. AHERN,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, July 25, 2006 (71 FR 42105)]

Notice of Cancellation of Customs Broker License Due to Death of the License Holder

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

ACTION: General Notice

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the Code of Federal Regulations § 111.51(a), the following individual Customs broker licenses and any and all permits have been cancelled due to the death of the broker:

Name	License #	Port Name
Richard R. Wohlrab	05512	New York
Kenneth Mahand	6999	Houston

DATED: July 18, 2006

JAYSON P. AHERN,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, July 25, 2006 (71 FR 42104)]

Notice of Revocation of Customs Broker License

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

ACTION: General Notice

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license is canceled with prejudice.

Name	License #	Issuing Port
A.S.A. Management Corp.	22391	New York

DATED: July 18, 2006

JAYSON P. AHERN,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, July 25, 2006 (71 FR 42104)]

Notice of Cancellation of Customs Broker License

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

ACTION: General Notice

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR

111.51), the following Customs broker licenses are cancelled without prejudice.

Name	License #	Issuing Port
S.J. Lam, Inc.	14551	Honolulu
Ontra, Inc.	12859	San Francisco
Bill Potts and Company	12144	Houston
Volvo Logistics North America, Inc.	22591	Charlotte
L.M. Lewis Company	10652	Norfolk

DATED: July 18, 2006

JAYSON P. AHERN,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, July 25, 2006 (71 FR 42104)]

DEPARTMENT OF THE TREASURY

USCBP–2006–0015

19 CFR PARTS 24, 113, AND 128

RIN 1505–AB39

FEES FOR CUSTOMS PROCESSING AT EXPRESS CONSIGNMENT CARRIER FACILITIES

AGENCY: Customs and Border Protection, Homeland Security; Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to title 19 of the Code of Federal Regulations (19 CFR) to reflect changes to the customs user fee statute made by section 337 of the Trade Act of 2002 and section 2004(f) of the Miscellaneous Trade and Technical Corrections Act of 2004. The statutory amendments made by section 337 concern the fees payable for customs services provided in connection with the informal entry or release of shipments at express consignment carrier facilities and centralized hub facilities, and primarily serve to replace the annual lump sum payment procedure with a quarterly payment procedure based on a specific fee for each individual air waybill or bill of lading. Section 2004(f) amended the user fee statute to authorize, for merchandise that is formally entered at these sites, the assessment of merchandise processing fees provided for in 19 U.S.C. 58c(a)(9), in addition to the fees that are currently assessed on individual air waybills or bills of lading. Lastly, pursu-

ant to the authority established in 19 U.S.C. 58c(b)(9)(B)(i), this document proposes to raise the existing $0.66 fee assessed on individual air waybills or bills of lading to $1.00 to more equitably align it with the actual costs incurred by CBP in processing these items.

DATE: Comments must be received on or before August 28, 2006.

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments via docket number USCBP–2006–0015.
- Mail: Trade and Commercial Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to http://www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the electronic docket to read background documents or comments received, go to http://www.regulations.gov. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Michael L. Jackson, Office of Field Operations, Trade Enforcement and Facilitation, Tel.: (202) 344–1196.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. The Bureau of Customs and Border Protection (CBP) also invites comments that relate to the economic effects that might result from this proposed rule. If appropriate to a specific comment, the commenter should reference the specific portion of the proposed

rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

I. Statutory Changes Made by Section 337(a) of the Trade Act of 2002

On August 6, 2002, the President signed into law the Trade Act of 2002, Public Law 107–210, 116 Stat. 933. Section 337(a) of the Trade Act of 2002 amended section 13031(b)(9) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(9)) by adding new requirements for the payment of user fees for customs services provided by CBP to express consignment carrier facilities and centralized hub facilities in connection with imported letters, documents, shipments or other merchandise to which informal entry procedures apply. The principal changes involve the following:

1. In the introductory text of section 58c(b)(9)(A), which refers to reimbursements and payments required from a centralized hub facility, an express consignment carrier facility, or a small airport or other facility, the words "the processing of merchandise that is informally entered or released" were replaced by the words "the processing of letters, documents, records, shipments, merchandise, or any other item that is valued at an amount that is less than $2,000 (or such higher amount as the Secretary of the Treasury may set by regulation pursuant to section 498 of the Tariff Act of 1930), except such items entered for transportation and exportation or immediate exportation." [It is noted that the statutory monetary amount was subsequently amended to "$2,000 or less . . ." as discussed later in this document.]

2. Section 58c(b)(9)(A)(ii) was replaced by new text identifying, in the case of an express consignment carrier facility or a centralized hub facility, a fee of $0.66 per individual air waybill or bill of lading. Prior to this amendment, clause (ii) required an express consignment carrier facility or a centralized hub facility to make the following reimbursements and payments:

(a) A reimbursement to Customs (hereinafter referred to as "CBP" to reflect the transfer of the U.S. Customs Service to the Department of Homeland Security and the agency's subsequent renaming as Bureau of Customs and Border Protection) of an amount equal to the cost of the services provided by CBP for the facility during the fiscal year; and

(b) An annual payment by the facility to the Secretary of the Treasury in an amount equal to the annual reimbursement made under 19 U.S.C. 58c(b)(9)(A)(ii)(I).

3. Subparagraph (B) was redesignated as subparagraph (C) and a new subparagraph (B) was added. New subparagraph (B) consists of clauses (i) through (iii) which provide as follows:

(a) Clause (i) authorizes the Secretary of the Treasury to adjust the $0.66 fee prescribed in subparagraph (A)(i) to an amount that is not less than $0.35 and not more than $1.00 per individual air waybill or bill of lading. Clause (i) further provides that the adjustment may not be made before fiscal year 2004 and not more than once per fiscal year and must involve publication of notice of the proposed adjustment in the **Federal Register** with opportunity for public comment;

(b) Clause (ii) provides that the payment required by subparagraph (A)(ii) is the only payment required for reimbursement of CBP in connection with the processing of an individual air waybill or bill of lading in accordance with that subparagraph and for providing services at express consignment carrier facilities or centralized hub facilities, except that CBP may require those facilities to cover CBP expenses for adequate office space, equipment, furnishings, supplies, and security.

(c) Clause (iii)(I) provides that the payment required under subparagraphs (A)(ii) and (B)(ii) is to be paid to CBP on a quarterly basis by the carrier using the facility in accordance with regulations prescribed by the Secretary of the Treasury. Clause (iii)(II) states that 50 percent of the amount of payments received under subparagraphs (A)(ii) and (B)(ii) will, in accordance with 19 U.S.C. 1524, be deposited in the Customs (CBP) User Fee Account and used to directly reimburse each appropriation for the amount paid out of that appropriation for costs incurred in providing services to express consignment carrier facilities or centralized hub facilities. Such amounts are to remain available until expended for the provision of customs services to these entities. Clause (iii)(III) directs the remaining 50 percent of the amount of payments received under subparagraphs (A)(ii) and (B)(ii) to be paid to the Secretary of the Treasury. See 19 U.S.C. 58c(b)(9)(B)(iii)(I) - (III).

Section 337(b) of the Trade Act of 2002 provides that the amendments made by section 337(a) take effect on October 1, 2002.

The following points are noted regarding the effect of the statutory changes made by section 337(a) of the Trade Act of 2002:

1. The overall effect of section 337(a) is to replace two equal annual lump sum payments (one representing a reimbursement of the cost of services provided and the other representing a payment in lieu of the payment of fees for the informal entry or release of merchandise) with a quarterly payment procedure based on a specific fee for each individual air waybill or bill of lading.

2. The $2,000 limit referred to in the amended statute reflects the amount that CBP, pursuant to section 498 of the Tariff Act of 1930, as amended (19 U.S.C. 1498), has adopted in § 143.21 of title 19 of

the Code of Federal Regulations (19 CFR 143.21) as the limit for shipments of merchandise that may be entered under informal entry.

3. The replacement of the word "merchandise" by a reference to "letters, documents, records, shipments, merchandise, or any other item" in the amended statute ensures that other imported articles or items that are eligible for informal entry under § 143.21 will be subject to the new fee. The one exception concerns those articles (for example, articles of plastics or rubber, textiles and textile articles, leather articles, and footwear) for which the informal entry limit is set at $250 in § 143.21; for those articles having a value greater than $250 but less than $2,000, the new fee standard will apply even though those articles are not subject to informal entry procedures under § 143.21.

4. Each shipment transported by affected carriers is issued an individual air waybill that is used, among other things, for tracking purposes. Because the law applies the fee to each individual air waybill, the use of master bills or other practices of consolidation or convenience by these entities, the billing system used by these entities for their customers, and the number of entries filed, are irrelevant to the application of the fee. In effect, the individual air waybill subject to the fee is the bill at the lowest level, i.e., not a master bill. An example of an individual airway bill or bill of lading is a bill representing an individual shipment that has its own unique bill number and tracking number, where shipment is assigned to a single ultimate consignee, and no lower (more disaggregated) bill unit exists.

5. Under the amended statute, responsibility for payment rests with the carrier rather than with the facility. This does not represent a substantive change in the case of centralized hub facilities because the hub facility owner and the carrier using the facility are always the same. However, it does represent a shift in responsibility for payment, from the facility to the carrier, in the case of express consignment carrier facilities that are not owned and operated by the different carriers that use them.

6. The affected carriers became responsible for payment of the new fee for each individual covered transaction as of October 1, 2002, effective date of the amendments made by section 337(a) of the Trade Act of 2002. Therefore, even though the first payment to CBP under the new payment procedure would not have taken place until after the close of the last quarter of the year 2002, the statute obligated the affected carriers to maintain adequate records to determine the proper amount to be paid starting on the effective date of the statutory amendments.

II. Statutory Changes Made by Section 2004(f) of the Miscellaneous Trade and Technical Corrections Act of 2004

The Miscellaneous Trade and Technical Corrections Act of 2004 ("Trade Act of 2004") was signed into law by the President on Decem-

ber 3, 2004 (Public Law 108–429, 18 Stat. 2593). Section 2004(f) of the Trade Act of 2004 made further amendments to section 13031(b)(9) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(9)). The principal changes made by section 2004(f) are set forth below:

1. In the introductory text of section 58c(b)(9)(A), which refers to reimbursements and payments to CBP required from a centralized hub facility, an express consignment carrier facility, or a small airport or other facility, the words "less than $2,000" were replaced by the words "$2,000 or less".

2. Section 58c(b)(9)(A)(ii), which requires an express consignment carrier facility or a centralized hub facility to reimburse CBP in an amount of $0.66 per individual air waybill or bill of lading, was amended by: (a) adding the language, "[N]otwithstanding subsection (e)(6)" at the beginning of the section; and (b) restructuring this provision by creating two new sub-clauses. The first new sub-clause, identified as (A)(ii)(I), sets forth the existing reimbursement fee of $0.66 per individual air waybill or bill of lading. The second new sub-clause, identified as (A)(ii)(II), pertains to situations where merchandise is formally entered and mandates, in addition to the fee specified in sub-clause (A)(ii)(I), reimbursement to CBP of the fee provided for in subsection (a)(9) (the merchandise processing fee), if applicable. See 19 U.S.C. 58c(a)(9).

3. To accommodate the amendments to subparagraph (A)(ii), discussed above, conforming changes were made to section 58c(b)(9)(B)(ii) whereby the statutory reference to "(A)(ii)" was replaced with a reference to "(A)(ii) (I) or (II)".

III. Proposal to Increase Certain Reimbursement Fees Payable by Express Consignment Carrier Facilities and Centralized Hub Facilities

As noted above, 19 U.S.C. 58c(b)(9)(B)(i), as amended by section 337(a) of the Trade Act of 2002, authorizes the Secretary of the Treasury to adjust the $0.66 fee prescribed in 19 U.S.C. 58c(b)(9)(A)(ii) to an amount that is not less than $0.35 and not more than $1.00 per individual air waybill or bill of lading. This section further provides that notice of any proposed adjustment and the reasons therefore must be published in the **Federal Register** with opportunity for public comment.

Pursuant to this authority, this document proposes to increase the existing $0.66 reimbursement fee payable to CBP by express consignment carrier facilities and centralized carrier facilities to $1.00. The proposed fee increase is necessary to more adequately reimburse CBP for the actual costs incurred by the agency in processing individual air waybills and bills of lading at these sites. It is also noted that in addition to the regular costs associated with processing individual air waybills and bills of lading, CBP must also incur the ex-

penses associated with relocating CBP personnel when a carrier opts to close a carrier-owned express consignment facility and open a new facility at a different location. The current fee schedule does not sufficiently cover CBP's regular expenses at these sites.

As discussed previously, the amendments to section 58c(b)(9)(B) made by section 337(a) of the Trade Act of 2002 direct that the money collected by CBP from this one payment be sent to two different accounts. Section 58c(b)(9)(B)(iii)(II) requires fifty percent of the payment to be deposited in the CBP User Fee Account and used to directly reimburse each appropriation for the amount paid out of that appropriation for the costs incurred in providing services to express consignment carrier facilities and centralized hub facilities. Such amounts are available until expended for the provision of custom services for these facilities. Section 58c(b)(9)(B)(iii)(III) requires the remaining fifty percent to be paid to the Secretary of the Treasury in lieu of an informal entry Merchandise Processing Fee (MPF). Prior to the 2002 amendment, the law provided for two payments: one payment was made to CBP as the fee to cover agency expenses incurred by providing customs services relating to staffing for the onsite processing and release of cargo at express consignment carrier facilities, and the second payment was made to the Treasury in lieu of the informal entry Merchandise Processing Fee (MPF). Thus, the current payment structure provides for a single payment collected by CBP and deposited in two separate sub-accounts, whereas previously two separate fees were paid to CBP and Treasury. In neither case did fees exceed direct costs. In fact, collected fees were well below direct costs. Under this proposal, fees will approach costs up to the new statutory cap.

CBP has conducted a financial analysis of the costs incurred by CBP in providing services to express consignment facilities and centralized hub facilities in Fiscal Years (FY) 2004 and 2005. The collection/cost data reveals that at the close of FY 2004, the half of the 58c(b)(9)(A)(ii) payment intended to defray the cost of services to express consignment and centralized hub facilities left the agency with a deficit with the agency collecting only 78% of the monies expended to provide those services. In FY 2005, CBP collected only 70% of these costs. Projections for FY 2006 indicate that the deficit will increase again due to the fact that certain CBP expenses, such as reimbursable wages for CBP employees at these sites, will increase.

The following table sets forth the collection/cost data associated with CBP's processing of individual air waybills and bills of lading at express consignment facilities and centralized hub facilities for FY 2004 and 2005, as well as a projected financial analysis for FY 2006:

Fiscal Year	Estimated Package Volume	Total Collections (Based on $.66 Cents Per Bill)	CBP's Retained Portion of Collected Amount (Based on $.33 Cents Per Bill)	CBP Costs	CBP Cost Per Bill	CBP Deficit
2004*	47,243,205	$31,180,516	$15,590,258	$19,945,704	0.42	($4,355,446)
2005*	45,364,139	$29,940,332	$14,970,166	$21,393,520	0.47	($6,423,354)
2006**	43,549,574	$28,742,718	$14,371,359 ($21,774,787 based on $.50 cents collected per bill if the payment is raised to $1.00)	$22,545,880	0.52	($8,174,521) (($771,093) based on $.50 cents collected per bill if the payment is raised to $1.00)

* FY 2004 and 2005 costs information from the CBP Cost Management Information System.

** FY 2006 costs equal FY 2005 costs plus 27 new CBP Officer positions Grade 11 Step 1 with a prorated onboard date of April 2006. New position cost information derived from the FY 2006 CBP position model and does not include any equipment, training, travel costs, etc.

The financial projections for FY 2006 indicate that CBP will incur a per bill cost of $0.52. If the payment is raised to $1.00, as proposed, CBP will collect $0.50 per bill (the other $0.50 to be deposited with the Secretary of the Treasury in lieu of the informal entry Merchandise Processing Fee).

Based on these figures, and subject to the monetary limits set by law, CBP proposes raising the $0.66 payment to $1.00 so that the half of the payment associated with providing services to express consignment and centralized hub facilities is aligned with the actual costs incurred by CBP. The other half of the payment, collected in lieu of the MPF, is set by statute at equal to the payment for providing services to express consignment and centralized hub facilities.

Affected Regulatory Provisions

Regulations implementing those provisions of 19 U.S.C. 58c(b)(9) that were amended by section 337(a) of the Trade Act of 2002 and section 2004(f) of the Trade Act of 2004 are contained in parts 24 and 128 of title 19 of the CFR (19 CFR Parts 24 and 128).

Part 24 sets forth rules pertaining to CBP's financial and accounting procedures. The provision within part 24 most directly affected by the statutory changes discussed above is § 24.23, which concerns fees for processing merchandise and which, in paragraph (b)(2)(ii), reflects the terms of subparagraph (A) of the statute prior to its amendment by sections 337(a) and 2004(f). Also affected is § 24.17,

which provides for reimbursable services of CBP employees. Specifically, paragraph (a)(12) of that section refers to reimbursement of the compensation and expenses of a CBP employee assigned to a centralized hub facility for the purpose of processing express consignment shipments under part 128 of the regulations, and paragraph (a)(13) contains a similar reimbursement reference regarding a CBP employee assigned to an express consignment carrier facility, with the facility being responsible for the reimbursement in each case.

Part 128 sets forth regulations that apply specifically to express consignment carrier and hub facilities and their operators and users. The only provision within part 128 that is directly affected by the statutory changes discussed above is § 128.11, which concerns the express consignment carrier and hub facility application process. Paragraphs (b)(7)(iv) and (v) of that section require the express consignment entity to agree to timely pay all reimbursable costs and to pay to CBP all relocation, training and other costs and expenses incurred by CBP in relocating necessary staff to or from the facility.

This document proposes amendments to title 19 of the CFR to address the statutory changes made by section 337(a) of the Trade Act of 2002 and 2004(f) of the Trade Act of 2004. In addition to the proposed changes to parts 24 and 128 mentioned above, this document also contains a proposed amendment to the CBP bond provisions of part 113 of title 19 of the CFR (19 CFR Part 113). The proposed changes to the regulations contained in this document are discussed below.

DISCUSSION OF PROPOSED AMENDMENTS

Section 24.17

In this section, which includes in paragraph (a) a list of various contexts in which parties-in-interest are required to reimburse CBP for services rendered, it is proposed to remove paragraph (a)(12) (which refers to services rendered at a centralized hub facility) and paragraph (a)(13) (which refers to services rendered at an express consignment carrier facility) and redesignate paragraph (a)(14) as paragraph (a)(12).

The proposed removals are necessary because those two provisions: (1) correspond to clause (ii) of subparagraph (A) of the statute as it existed prior to the amendments made by sections 337(a) and 2004(f); and (2) are inconsistent with the "only payment required" language in clause (ii) of new subparagraph (B) of the statute.

Section 24.23

In this section, it is proposed to modify paragraph (b) to incorporate the terms of the proposed $1.00 fee (increased from the existing

$0.66 fee) and paragraph (c) to include conforming cross-reference changes. The following points are noted regarding the proposed paragraph (b) changes:

1. In paragraph (b)(1)(i)(A), which concerns the 0.21 percent ad valorem fee (merchandise processing fee) applicable to merchandise that is formally entered or released, a new sentence is added with a cross-reference to new paragraph (b)(4) to reflect the terms of section 2004(f) whereby, in the case of an express consignment carrier facility or centralized hub facility, merchandise that is formally entered is subject to a $1.00 per individual air waybill or bill of lading fee and, if applicable, to a merchandise processing fee.

2. Paragraph (b)(2), which concerns fees for informal entry or release, is revised to refer to only the $2, $6, and $9 specific fees which, under the statute and the regulations, have never applied to express consignment carrier facilities, centralized hub facilities, and small airports and other facilities. The revised paragraph (b)(2) text includes new exception language regarding merchandise covered by paragraph (b)(3) or paragraph (b)(4).

3. A new paragraph (b)(3) concerning small airports and other facilities is added. It is based on the relevant portion of current paragraph (b)(2)(ii)(A) of § 24.23 that is proposed to be removed in the revision of paragraph (b)(2). The fee for small airports and other facilities is authorized by 19 U.S.C. 58c(b)(9)(A)(i). The fee is determined by application of 31 U.S.C. 9701. New paragraph (b)(3) follows that statutory structure.

4. Paragraph (b)(4) is entirely new. Pursuant to 19 U.S.C. 58c(b)(9)(A)(ii)(I) and (II), as amended by sections 337(a) and 2004(f), paragraph (b)(4) requires each carrier using an express consignment carrier facility or a centralized hub facility to pay to CBP a fee (set forth in 19 U.S.C. 58c(b)(9)(A)(ii)(I) at $0.66 and now proposed to be increased to $1.00, as discussed above) assessed on each individual air waybill or individual bill of lading and, if merchandise is formally entered, the 0.21 ad valorem fee, if applicable.

The assessment of this fee on each individual air waybill or bill of lading means that each shipment transported by a carrier and processed by CBP will be assessed the fee. Each shipment transported by a carrier and processed by CBP is represented by an individual air waybill and subject to the fee. Therefore, these proposed regulations apply the fee to each shipment covered by an individual air waybill. For purposes of these proposed regulations, an individual airway bill is the bill at the lowest level, and would not include a master bill. An example of an individual air waybill or bill of lading is a bill representing an individual shipment that has its own unique bill number and tracking number, where the shipment is assigned to a single ultimate consignee, and no lower bill unit exists. The use of master bills of lading, or other practices of consolidation by or for the convenience of the carrier, or its customers or for any other reason is

irrelevant to the application of this user fee intended to cover CBP's costs associated with processing each individual shipment as represented by each individual air waybill or bill of lading. Moreover, the number and kind of entries filed, and the carrier's billing system for charging its customers, are irrelevant factors and are not considered in determining the fee's application.

Paragraph (b)(4) also includes the quarterly payment requirement specified in clause (iii) of new subparagraph (B) of the amended statute. As in the case of paragraph (b)(3), discussed above, the text of paragraph (b)(4) includes the "processing of letters, documents . . ." and the "$2,000 or less (or such higher amount . . .)" language of the introductory text of subparagraph (A) of the amended statute, and also contains the exception reference regarding items entered for transportation and exportation or immediate exportation that clearly is relevant to the transaction-by-transaction assessment of the $1.00 fee.

The text of paragraph (b)(4) also proposes some additional requirements and conditions regarding the payment of this fee, of which the following points are noted:

1. In addition to identifying the due date for each timely quarterly payment as well as the CBP address to which the payments must be sent, the text sets forth specific information that must accompany the payment. The specified information is necessary to enable CBP to verify whether the proper amount of fees required under the statute has been paid.

2. The text allows carriers to make adjustments of overpayments and underpayments in the next quarterly payment, similar to what is allowed in the case of railroad car and passenger arrival fees under § 24.22(d) and (g) of the CBP regulations (19 CFR 24.22(d) and (g)). However, if an adjustment is not made in the next quarterly payment, a request for a refund of an overpayment must be made within one year, similar to the practice in the case of harbor maintenance fees under § 24.24(e)(4)(ii) of the CBP regulations (19 CFR 24.24(e)(4)(ii)), and interest will accrue in the case of an underpayment from the date payment was initially due.

3. Paragraph (b)(4)(iv) provides that the underpayment or failure of a carrier using an express consignment carrier facility or a centralized hub facility to pay all applicable fees owed pursuant to paragraph (b) may result in the assessment of penalties under 19 U.S.C. 1592 and any other action authorized by law.

Section 113.64

In this section, which specifies the international carrier bond conditions, it is proposed to add a new sentence at the end of paragraph (a) to refer to the obligation of the carrier and its surety under the bond in the event that the carrier fails to pay the fees required under

§ 24.23(b)(4). This provision is modeled on the approach taken in the case of quarterly payments of passenger processing fees.

Section 128.11

In this section, which concerns the express consignment facility application process, the following changes are proposed:

1. Paragraph (b)(2) is revised to require inclusion of a list of users of the facility with the application if the applicant is an express consignment carrier facility (a list of users is not necessary in the case of a hub facility because the operator of the facility and the user of the facility are one and the same). This information is necessary to assist CBP in verifying proper payment of the statutory fees.

2. Paragraphs (b)(7)(iv) and (b)(7)(v), which refer to elements of the superseded statutory reimbursement concept, have been replaced with new provisions. New paragraph (b)(7)(iv) provides for an agreement on the part of an express consignment carrier facility to provide quarterly, and update, a list of all carriers using the facility and is intended to assist CBP in verifying the proper payment of fees by those carriers. Paragraph (b)(7)(v) refers to an agreement on the part of a hub facility or an express consignment carrier to timely pay all applicable processing fees prescribed in § 24.23.

COMMENTS

Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 103.11(b) of title 19 of the CFR (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, 799 9th St., N.W., Washington, D.C. Arrangements to inspect submitted documents should be made in advance by calling Joseph Clark at (202) 572–8768.

EXECUTIVE ORDER 12866

This rule is not considered a "significant regulatory action" as defined in E.O. 12866. Accordingly, a regulatory assessment is not required.

INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS

CBP has examined the impacts of the proposed rule on small entities as required by the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, codified at 5 U.S.C. chapter 6) and has prepared an Initial Regulatory Flexibility Act Analysis (IRFA). A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organiza-

tion; or a small governmental jurisdiction (locality with fewer than 50,000 people).

In this proposed rulemaking, small businesses are those that employ fewer than 1,500 employees or have annual revenues under $6.5 million. Based on annual data collected by CBP, there are 22 businesses that will be affected by the proposed rule. Of these, 10 are large businesses, 11 are small businesses, and 1 is a small, foreign-owned business. Sixteen of these companies (both large and small) are members of an association that owns and operates a consignment facility. That association acts as a single respondent for its members.

Reason for Agency Action; Objectives of and Legal Basis for the Proposed Rule

Pursuant to the authority established in 19 U.S.C. 58c(a)(9)(b)(ii), it is proposed to raise the existing $0.66 fee assessed on individual air waybills or bills of lading to $1.00 to more equitably align it with the actual costs incurred by CBP in processing these items.

Number and Types of Small Entities to which the Proposed Rule Will Apply

As previously noted, there are 12 small businesses that will be affected by the proposed rule. These companies are either courier services (NAICS code 492110) or arrange freight transportation (NAICS code 488510).

An estimated 91 percent of the bills of lading submitted for fee assessment were from the three largest affected companies (approximately 41 million waybills in FY 2005). The waybills from the remaining large companies accounted for 2 percent (approximately 865,000 in FY 2005). The remaining 1.5 million bills of lading were submitted by the 12 small businesses.

Based on data from FY 2003 to FY 2005, half of the large companies have experienced annual increases in bills of lading; the remainder have experienced annual decreases. Data for the 12 small businesses also show increases and decreases in waybills. If current trends continue, a net increase in waybills of approximately 20 percent annually is projected for these small companies over the next several years.

In FY 2005, the 12 small businesses submitted 1.5 million bills of lading at a cost of $1.0 million ($0.66 per bill of lading). If, in FY 2006, 1.9 million bills of lading were submitted, this would result in a cost of $1.3 million under the current fee structure. Under the proposed fee of $1.00 per bill, we would expect costs to reach $1.9 million, a difference of $0.6 million. The $0.6 million represents only 4 percent of the total increase in fees CBP expects to be incurred as a result of growth in bills of lading and the fee increase proposed in this rule.

CBP collected annual revenue data for the 12 small businesses affected. To determine the impact of the proposed rule on annual revenues, CBP calculated the projected difference in costs between the old and proposed fee and compared that (as a percentage) to average annual revenues. Based on these calculations, CBP estimates that the proposed rule will have a 5-percent impact or less on annual revenues for 5 of the small businesses. The rule will have a 5 to10-percent impact on one of the companies and a greater than 10-percent impact on four companies. CBP could not find data for one small business, and one was foreign-owned.

In the course of CBP's examination of the impacts on annual revenues for these small businesses, CBP has determined that these entities will likely pass the cost of the increased fee on to their customers to the extent that they are able.

On the basis of the foregoing analysis, CBP concludes that this proposed rule could have a significant impact on a substantial number of small entities. CBP is seeking comments on any of the regulatory requirements that could minimize the cost to small businesses. Comments may be submitted to the regulatory docket using any of the methods listed under COMMENTS or ADDRESSES above. All input received during the public comment period will be considered.

Reporting and Recordkeeping

This proposed rule will change current paperwork requirements. No new professional skills will be necessary for the preparations of the reports and records. For more detail, see PAPERWORK REDUCTION ACT below.

Other Federal Rules

This proposed rule does not duplicate, overlap, or conflict with other federal regulations.

Regulatory Alternatives

CBP did not consider any alternatives to the proposed rule.

PAPERWORK REDUCTION ACT

The collections of information in this document are contained in §§ 24.23 and 128.11 (19 CFR 24.23 and 128.11). This information is used by CBP to determine whether user fees required by statute have been properly paid. The likely respondents are business organizations including importers and air carriers.

The collections of information for paying fees for customs services provided in connection with the informal entry or release of shipments at express consignment carrier facilities and centralized hub facilities was previously approved by the Office of Management and Budget under control number 1651–0052. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), CBP has submitted

to OMB for review the following adjustments to the information provided to OMB for the previously approved OMB control number to account for the changes proposed in this rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Report for quarterly payment under § 24.23(b)(4)(ii):

Estimated annual reporting and/or recordkeeping burden: 176 hours.

Estimated average annual burden per respondent/recordkeeper: 8 hours.

Estimated number of respondents and/or recordkeepers: 22.

Estimated annual frequency of responses: 4.

Report for refund of overpayment under § 24.23(b)(4)(iii):

Estimated annual reporting and/or recordkeeping burden: 5 hours.

Estimated average annual burden per respondent/recordkeeper: 1 hour.

Estimated number of respondents and/or recordkeepers: 5.

Estimated annual frequency of responses: 2.

Report by operators including the list of carriers under § 128.11(b):

Estimated annual reporting and/or recordkeeping burden: 6 hours.

Estimated average annual burden per respondent/recordkeeper: 2 hours.

Estimated number of respondents and/or recordkeepers: 3.

Estimated annual frequency of responses: 4.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, 1300 Pennsylvania Avenue, N.W. (Mint Annex), Washington, D.C. 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

SIGNING AUTHORITY

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain CBP revenue functions.

LIST OF SUBJECTS

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Exports, Imports, Interest, Reporting and recordkeeping requirements, Taxes, User fees, Wages.

19 CFR Part 113

Air carriers, Bonds, Customs duties and inspection, Exports, Freight, Imports, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 128

Administrative practice and procedure, Carriers, Couriers, Customs duties and inspection, Entry, Express consignments, Freight, Imports, Informal entry procedures, Reporting and recordkeeping requirements.

AMENDMENTS TO THE REGULATIONS

For the reasons set forth in the preamble, parts 24, 113, and 128 of title 19 of the CFR (19 CFR Parts 24, 113, and 128), are proposed to be amended as set forth below.

PART 24 - CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for part 24 continues to read in part as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 et. seq.).

* * * * *

Section 24.17 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1456, 1524, 1557, 1562; 46 U.S.C. 2110, 2111, 2112;

Section 24.23 also issued under 19 U.S.C. 3332;

* * * * *

2. In § 24.17:

a. The section heading is revised to read as follows, "Reimbursable services of CBP employees.";

b. Paragraphs (a) through (d) are amended by removing the words "Customs employee" where they appear and adding in each place the term "CBP employee; and

c. Paragraphs (a)(12) and (a)(13) are removed and paragraph (a)(14) is redesignated as paragraph (a)(12).

3. In § 24.23:

a. Paragraph (a) is amended by removing the word "Customs" each place that it appears and adding the term "CBP";

b. Paragraphs (b)(1)(i)(A) and paragraph (b)(2) are revised;

c. New paragraphs (b)(3) and (b)(4) are added;

d. The introductory text of paragraph (c)(1) is amended by removing the reference "(b)(2)(i)" and adding, in its place, the reference "(b)(2)";

e. Paragraph (c)(2)(i) is amended by removing the reference "(b)(2)(i)" and adding, in its place, the reference "(b)(2)";

f. The first sentence of paragraph (c)(3) is amended by removing the reference "(b)(2)(i)" and adding, in its place, the reference "(b)(2)"; and

g. Paragraph (c)(5) is amended by removing the reference "(b)(2)(i)" and adding, in its place, the reference "(b)(2)".

The revisions and additions read as follows:

§ 24.23 Fees for processing merchandise.

* * * * *

(b) Fees (1) Formal entry or release (i) Ad valorem fee (A) General. Except as provided in paragraph (c) of this section, merchandise that is formally entered or released is subject to the payment to CBP of an ad valorem fee of 0.21 percent. The 0.21 ad valorem fee is due and payable to CBP by the importer of record of the merchandise at the time of presentation of the entry summary and is based on the value of the merchandise as determined under 19 U.S.C. 1401a. In the case of an express consignment carrier facility or centralized hub facility, merchandise that is formally entered is subject to a $1.00 per individual air waybill or bill of lading fee and, if applicable, to the 0.21 percent ad valorem fee which must be paid by the carrier as provided in paragraph (b)(4) of this section.

* * *

* * * * *

(2) Informal entry or release. Except in the case of merchandise covered by paragraph (b)(3) or paragraph (b)(4) of this section, and except as otherwise provided in paragraph (c) of this section, merchandise that is informally entered or released is subject to the payment to CBP of a fee of:

(i) $2 if the entry or release is automated and not prepared by CBP personnel;

(ii) $6 if the entry or release is manual and not prepared by CBP personnel; or

(iii) $9 if the entry or release, whether automated or manual, is prepared by CBP personnel.

(3) Small airport or other facility. With respect to the processing of letters, documents, records, shipments, merchandise, or any other item that is valued at $2,000 or less, or any higher amount prescribed for purposes of informal entry in § 143.21 of this chapter, a small airport or other facility must pay to CBP an amount equal to the reimbursement (including overtime) which the facility is required to make during the fiscal year under § 24.17.

(4) Express consignment carrier and centralized hub facilities. Each carrier using an express consignment carrier facility or a centralized hub facility must pay to CBP a fee in the amount of $1.00 per individual air waybill or individual bill of lading and, if merchandise is formally entered, the ad valorem fee specified in paragraph (b)(1) of this section, if applicable. An individual air waybill or individual bill of lading is the individual document issued by the carrier for transporting and/or tracking an individual item, letter, package, envelope, record, document, or shipment. An individual air waybill is the bill at the lowest level, and is not a master bill or other consolidated document. An individual air waybill or bill of lading is a bill representing an individual shipment that has its own unique bill number and tracking number, where the shipment is assigned to a single ultimate consignee, and no lower bill unit exists. Payment must be made to CBP on a quarterly basis and must cover the individual fees for all subject transactions that occurred during a calendar quarter. The following additional requirements and conditions apply to each quarterly payment made under this section:

(i) The quarterly payment must conform to the requirements of § 24.1, must be mailed to Customs and Border Protection, Revenue Division/Attention: Reimbursables, 6650 Telecom Drive, Suite 100, Indianapolis, Indiana 46278, and must be received by CBP no later than the last day of the month that follows the close of the calendar quarter to which the payment relates.

(ii) The following information must be included with the quarterly payment:

(A) The identity of the calendar quarter to which the payment relates;

(B) The identity of the facility for which the payment is made and the port code that applies to that location and, if the payment covers multiple facilities, the identity of each facility and its port code and the portion of the payment that pertains to each port code; and

(C) The total number of individual air waybills and individual bills of lading covered by the payment, and a breakdown of that total for each facility covered by the payment according to the number covered by formal entry procedures, the number covered by informal entry procedures specified in §§ 128.24(e) and 143.23(j) of this chapter, and the number covered by other informal entry procedures.

(iii) Overpayments or underpayments may be accounted for by an explanation in, and adjustment of, the next due quarterly payment to CBP. In the case of an overpayment or underpayment that is not accounted for by an adjustment of the next due quarterly payment to CBP:

(A) In the case of an overpayment, the carrier may request a refund by writing to Customs and Border Protection, Revenue Division/Attention: Reimbursables, 6650 Telecom Drive, Suite 100, Indianapolis, Indiana 46278. The refund request must specify the grounds for the refund and must be received by CBP within one year of the date the fee for which the refund is sought was paid to CBP; and

(B) In the case of an underpayment, interest will accrue on the amount not paid from the date payment was initially due to the date that payment to CBP is made.

(iv) The underpayment or failure of a carrier using an express consignment carrier facility or a centralized hub facility to pay all applicable fees owed to CBP pursuant to paragraph (b)(4) of this section may result in the assessment of penalties under 19 U.S.C. 1592 and any other action authorized by law.

* * * * *

PART 113 - CUSTOMS BONDS

4. The authority citation for part 113 continues to read in part as follows:

AUTHORITY: 19 U.S.C. 66, 1623, 1624.

* * * * *

5. In § 113.64, paragraph (a) is amended by adding a new sentence at the end to read as follows:

§ 113.64 International carrier bond conditions.

* * * * *

(a) * * * If the principal (carrier) fails to pay the fees for processing letters, documents, records, shipments, merchandise, or other items on or before the last day of the month that follows the close of the calendar quarter to which the processing fees relate pursuant to § 24.23(b)(4) of this chapter, the obligors (principal and

surety, jointly and severally) agree to pay liquidated damages equal to two times the processing fees not timely paid to CBP as prescribed by regulation.

* * * * *

PART 128 - EXPRESS CONSIGNMENTS

6. The authority citation for part 128 is revised to read as follows:

AUTHORITY: 19 U.S.C. 58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

7. In § 128.11, paragraphs (b)(2), (b)(7)(iv) and (b)(7)(v) are revised to read as follows:

§ 128.11 Express consignment carrier application process.

* * * * *

(b) * * *

(2) A statement of the general character of the express consignment operations that includes, in the case of an express consignment carrier facility, a list of carriers that intend to use the facility.

* * * * *

(7) * * *

(iv) If the entity is an express consignment carrier facility, provide to Customs and Border Protection, Revenue Division/ Attention: Reimbursables, 6650 Telecom Drive, Suite 100, Indianapolis, Indiana 46278, at the beginning of each calendar quarter, a list of all carriers currently using the facility and notify that office whenever a new carrier begins to use the facility or whenever a carrier ceases to use the facility.

(v) If the entity is a hub facility or an express consignment carrier, timely pay all applicable processing fees prescribed in § 24.23 of this chapter.

* * * * *

DEBORAH J. SPERO,
Acting Commissioner,
Bureau of Customs and Border Protection.

Approved: July 24, 2006

Timothy E. Skud
Deputy Assistant Secretary of the Treasury

[Published in the Federal Register, July 28, 2006 (71 FR 42778)]

USCBP–2006–0021

STANDARDS FOR TARIFF CLASSIFICATION OF UNISEX FOOTWEAR

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

ACTION: Proposed interpretation; solicitation of comments.

SUMMARY: This document proposes new criteria to be used by the Bureau of Customs and Border Protection ("CBP") to determine whether footwear should be considered to be "commonly worn by both sexes" (unisex) for tariff classification purposes under the Harmonized Tariff Schedule of the United States. The rates of duty applicable to footwear "For other persons" (i.e. "unisex") are about 1.5 percent higher than the rates of duty applicable to footwear "For men, youths and boys". CBP is seeking comments from the public on its proposed criteria prior to adoption of a final interpretation.

DATE: Comments must be received on or before September 22, 2006.

FOR FURTHER INFORMATION CONTACT: Brian Barulich, Tariff Classification and Marking Branch, Office of Regulations and Rulings, (202) 572-8883.

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments via docket number USCBP-2006-0021.
- Mail: Trade and Commercial Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and docket number for this document. All comments received will be posted without change to http://www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments and additional information, see the "Public Participation" heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received go to http://www.regulations.gov. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street,

NW, 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

SUPPLEMENTARY INFORMATION:

PUBLIC PARTICIPATION

Interested persons are invited to submit written data, views, or arguments on all aspects of the proposed interpretation. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed interpretation. Comments that will provide the most assistance to CBP in developing these procedures will reference a specific portion of the proposed interpretation, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

BACKGROUND

This document sets forth CBP's proposed standards for classification of certain footwear as "unisex". On April 15, 2002, CBP's predecessor, the U.S. Customs Service (hereinafter "CBP", for clarity and consistency), published in the Federal Register (67 FR 18303) a general notice to solicit comments concerning alternatives to CBP's treatment of footwear deemed to be "unisex." Four comments were received in response to that notice. In this document, CBP addresses the concerns and suggestions raised in those comments and proposes standards for determining whether footwear should be classified as unisex footwear. This document solicits further comment on the proposed interpretation before a final interpretation is published.

CURRENT LAW AND POLICY

Chapter 64 of the Harmonized Tariff Schedule of the United States (HTSUS) covers footwear, gaiters and the like, and parts of such articles. Disparities in the duty rates applicable to some provisions under heading 6403 in Chapter 64 are based on the gender of the user. Additional U.S. Note 1(b) and Statistical Note 1(b) to Chapter 64, HTSUS, provide that footwear "for men, youths and boys" covers footwear of certain men's and youths' sizes, but does not cover footwear commonly worn by both sexes (i.e., unisex footwear). Statistical Note 1(c) to Chapter 64, HTSUS, provides that footwear "for women" covers footwear of certain women's sizes, whether for females or of types commonly worn by both sexes (i.e, unisex). Elsewhere in the HTSUS (in subheadings 6403.99.75 and 6403.99.90, for example), footwear is classified as "for other persons," a definition that also includes unisex footwear. The determination of whether footwear is classifiable as "for men, youths and boys" rather than

"for women" or "for other persons," therefore, often rests on whether the footwear is truly for men, youths and boys or is, in fact, unisex. The rates of duty applicable to footwear "For other persons" (i.e. "unisex") are about 1.5 percent higher than the rates applicable to footwear "For men, youths and boys". It is noted that quota/visa requirements remain inapplicable to footwear.

Many types of footwear may be, and in fact are, worn by both sexes. Moreover, many types of shoes in male sizes feature no physical characteristics that distinguish the footwear as being exclusively for males. Current CBP standards for making the determination of whether or not footwear is unisex have been developed and applied by CBP on an ad hoc, case-by-case basis. This approach to the "unisex" footwear issue, while effective in individual cases, has provided only limited guidance to the importing community and to CBP officers with respect to other prospective or current import transactions that present different factual patterns involving that issue.

CBP's current approach to unisex determinations is as follows: CBP considers certain types or categories of footwear to at least be susceptible to unisex treatment (that is, to be classifiable as footwear "for other persons" despite claims that the footwear is designed and intended solely "for men, youths and boys"). These types of footwear include hikers, sandals, work boots, cowboy boots, combat boots, motorcycle boots, "athleizure" shoes, boat shoes, and various types within the class described as athletic footwear (e.g., tennis shoes and training shoes). CBP generally considers that a type of footwear is "commonly worn by both sexes" if the number of styles claimed to be for males in an importer's line, when compared to the number of styles in the line for females, renders it likely that females will purchase and wear at least 5 percent of the styles claimed to be for males. Once it is determined that an imported line of footwear potentially susceptible to unisex treatment is in fact "commonly worn by both sexes," CBP applies unisex treatment to that footwear line only in sizes up to and including American men's size 8.

However, if a shoe in an imported line claimed to be for males is of a type of footwear commonly worn by both sexes, CBP does not accord unisex treatment to the imported line if a "comparable line" of styles is available to females. To be considered a "comparable line," CBP requires an equal number of styles of a particular type of footwear (i.e., a one-to-one ratio, female-to-male is required). In addition, to be considered a "comparable line," female styles must be substantially similar to the styles for males in general appearance, value, marketing, activity for which designed, and component material (including percentage) breakdowns.

For purposes of establishing the existence of a "comparable line" for females, CBP confines its determination to the imported footwear at issue. CBP may take notice of additional styles made available by

the importer that are not included in a particular entry. CBP does not, however, consider the availability of comparable styles for females in the U.S. market as a whole. Finally, CBP does not consider the fact that a certain shoe is not marketed to women to be evidence that the shoe is not "commonly worn by both sexes."

REQUEST FROM PUBLIC TO PROVIDE ENHANCED GUIDANCE

In a letter dated September 17, 1999, the importing public, represented by the Footwear Distributors and Retailers of America ("FDRA"), requested that CBP take steps to provide enhanced guidance in determinations concerning "unisex" issues. The FDRA requested that CBP (1) set forth criteria for determining whether footwear claimed to be "for men, youths and boys" is "commonly worn by both sexes" and therefore should be classified as footwear "for other persons" and (2) ensure the uniform interpretation and application of those criteria by Customs field offices.

PRELIMINARY NOTICE

After receiving the FDRA letter, CBP published a document in the Federal Register (67 FR 18303) on April 15, 2002. In that document, CBP set forth a more in depth analysis of its current procedures, and also set forth FDRA's proposed criteria. CBP solicited comments on the appropriateness of the specific standards suggested by FDRA and on the extent to which any standards followed by CBP in the past should be retained. Suggestions for alternative appropriate standards were also invited.

SUMMARY OF COMMENTS

All four of the commenters who responded to the general notice provided a range of specific comments on various aspects of the "unisex" footwear issue. These comments are discussed below.

COMMENT: All of the commenters take issue with the fact that CBP confines its "unisex" footwear determinations in every case to the footwear of a particular importer's line. They argue that CBP should consider the availability of comparable styles for females in the U.S. retail market to constitute, or substitute for, any part of the importer's "comparable line" for females. The commenters note that this narrow focus leads to inaccurate findings that an importer's footwear for males is "commonly worn by both sexes" (i.e., unisex). The commenters point out that the precise question raised by Additional U.S. Note 1(b) to chapter 64, is whether footwear is "commonly worn by both sexes." They maintain that CBP improperly applies this statutory standard of "use" through presumptions, essentially basing factual determinations on: 1) the size and type of

shoe; and 2) the number of various styles (male and/or female) included in an importer's line of merchandise.

Two of the commenters concede that in most cases, confining the inquiry to the importer's line of footwear provides a reliable estimate as to whether footwear for males is commonly worn by both sexes. This is particularly true when the importer is a "branded distributor" of the footwear it imports, as opposed to a "non-branded importer," who provides footwear to a retailer under the retailer's brand or a generic brand. However, the commenters assert that, in the case of the non-branded importer, confining the "unisex" determination to the importer's line of footwear not only provides an unreliable estimate as to whether footwear for males is commonly worn by both sexes, but also results in the misclassification of footwear.

CBP RESPONSE: CBP agrees and, in an effort to bring more consistency to this area, is proposing to consider evidence from an importer of men's footwear demonstrating that it imports the same shoe for women and girls or that the same shoe for women and girls is imported by a separate importer and is available in the U.S. marketplace.

COMMENT: All of the commenters stress that, in certain cases, importers must be allowed the opportunity to present evidence to establish that their footwear for males is not commonly worn by both sexes. One commenter cites to Treasury Decision (T.D.) 93–88, dated October 25, 1993, as an example of CBP's use of presumption in applying the above statutory standard. In T.D. 93-88, certain footwear definitions were provided for use as guidelines by the importing community. Under the term "unisex," it stated, in part, that "[u]nless there is evidence to the contrary, assume all athletic shoes for youths (approximately sizes 11.5 to 2) and men, sizes 8 and smaller, are unisex except shoes for football, boxing or wrestling." In addition, T.D. 93-88 indicates that CBP will not assume that certain shoes are unisex if there is "evidence to the contrary." The commenter complains that CBP provides very little guidance to the importing community as to the type or amount of evidence needed to refute unreasonable presumptions.

CBP RESPONSE: CBP agrees and is proposing to consider evidence of marketing provided by importers and others, and the marking of gender and size. By considering this evidence, CBP hopes to limit determinations that are based solely on presumption as to how footwear will be used.

COMMENT: One commenter notes that CBP has previously ascertained the availability of women's styles and sizes in the retail market, to determine whether shoes claimed to be "for men, youths and boys" were classifiable as footwear "for other persons." The commenter asserts that in Headquarters Ruling Letter (HQ) 955960, issued August 19, 1994, CBP determined that certain basketball shoes

were classified as unisex because "retailers, as well as administrative staff members of a major college women's basketball team, stated that women will buy men's basketball shoes when a suitable selection is not available in the women's department." The commenter opines that such an approach, based on available evidence, is sensible and correct. The commenter further notes that in HQ 952097 (issued September 15, 1992), CBP concluded that certain soccer shoes were classified as unisex based on informal interviews with retailers.

CBP RESPONSE: As indicated above, CBP agrees with the commenter and is proposing to consider evidence of marketing provided by importers and others, as well as the marking of gender and size.

COMMENT: Another commenter suggests that, regardless of the type of evidence CBP decides to require or accept, the agency should not have to perform its own market research, as it apparently did before issuing HQ 962742, dated February 28, 2001. This ruling concerned the extent of use by men of certain types of western/cowboy hats. To determine such use, CBP viewed numerous magazines, contacted several equine sports associations that regulate equine sports events for western style riding, and visited eight western stores. The commenter asserts that the judicial decisions and statutory standards pertinent to unisex footwear do not require the amount of extraneous evidence and number of subjective determinations inherent in standards utilized by CBP and in those initially proposed by the FDRA. The commenter maintains that reliance on the general appearance of footwear is extremely subjective, that shoes of identical construction often are not sold at similar prices and that susceptibility to use, likelihood of use, and availability of "comparable" styles in a retail market of ever-changing styles, tastes, etc., rarely shed light on the question of what is "commonly worn by both sexes." However, the commenter also notes that in Mast Industries, Inc. v. United States, 9 C.I.T. 549 (1985), aff'd 786 F.2d 1144 (Fed. Cir. 1986), the court emphasized the primary importance of the characteristics of the imported merchandise, observing that "[t]he former Court of Customs and Patent Appeals held that the merchandise itself may be strong evidence of use."

CBP RESPONSE: CBP agrees with the court in Mast. Again, as indicated above, CBP is proposing to consider evidence of marketing provided by importers and others, and marking of gender and size in order to limit determinations that are based solely on presumption. CBP proposes to initially rely on evidence provided by the importer and others. However, CBP does not propose to limit its ability to perform market research in those cases where it finds such research necessary.

COMMENT: One commenter, noting the judicial guidance of Mast discussed above, proposes that CBP base its unisex determinations on examination of: 1) the imported merchandise itself; and 2) the documents presented at the time the entry summary, or its equivalent, is filed. The commenter asserts that men's/boys' shoes are usually made on men's/boys' lasts (i.e., a block or form shaped like a human foot and used in making shoes) and are usually described as men's/boys' shoes on purchase orders, invoices and footwear detail sheets. The commenter suggests that, in order to eliminate any gender ambiguity, shoes for males could be labeled or marked to identify the gender for which the shoes have been designed, and to whom they will be marketed. CBP could require that such labeling or marking be visible in or on the shoe, the shoebox, or both. As an example, the commenter proposes requiring that a sewn-in label or hang tag state "boys size 6" instead of only "size 6," in order to clarify that the shoe is a boy's shoe and that the importer intends that it be sold for use by boys.

The commenter stresses that footwear described as men's/boys' shoes on the import documentation and marked as such, should be presumed to be marketed for sale to men and boys and should not be considered unisex. The commenter also states that shoes designed for males are usually merchandised separately from shoes for females, and even if sold in the same department of the same retail store, the shoes for each gender are usually segregated in separate areas, shelves or racks. The commenter contends that this aspect of marketing is a reflection of shoe design, because shoes for males are intended to be sold to males.

The same commenter recommends the following "bright-line test" to establish what is commonly worn by both sexes. The following criteria should be met in order for CBP to presume that imported footwear is unisex. The footwear should be: a) American men's sizes 8 or under; b) a type that is susceptible to use by both sexes; c) not described in import documents as footwear for men, youths or boys; and d) not made on lasts designed for American males; or not marked, labeled, or sold as footwear for men, youths or boys by sizing or otherwise. The commenter also maintains, however, that an importer should be allowed to rebut CBP's presumption that the footwear is unisex, by establishing the existence of at least one comparable female shoe style, in either the importer's line or in the U.S. market, for every five male shoe styles, with comparability based solely on design and construction of the footwear. A failure to rebut the unisex presumption would call into effect the criterion identified by the commenter as: "e) limited availability of comparable female styles."

CBP RESPONSE: CBP agrees in part and is proposing to base "unisex" determinations on examination of the imported merchan-

dise and to accept evidence in the form of marketing material, retail advertisements, or other convincing documentation showing that the same shoe is available for "other persons" in the U.S. marketplace. CBP is proposing to generally accept presentation of such evidence as satisfactorily demonstrating that the instant footwear is exclusively for "men, youths and boys."

CBP is proposing to generally consider the marking of gender and size, to indicate men's size, youths' size, or boys' size, as acceptable evidence that a shoe is not "unisex."

CBP does not agree that import documents describing footwear as being for men, youths or boys should constitute sufficient evidence that the footwear is not commonly worn by both sexes.

Lastly, the commenter offered no evidence to support the position that footwear made on male lasts is not commonly worn by both sexes. In the absence of such evidence, CBP declines to adopt that position.

COMMENT: With respect to factors used to determine that a female style is comparable to a male style, one commenter (as noted immediately above) asserts that comparability should be based only on a shoe's design and construction. Two commenters maintain that comparability should be based primarily on a shoe's retail price, but also on the features and the materials that comprise its upper and outer sole. One of these two commenters also considers the type of shoe to be a factor of comparability.

CBP RESPONSE: CBP agrees and is proposing to limit the "unisex" determination to the characteristics of the shoe under consideration, in most cases making comparisons and presumptions unnecessary.

COMMENT: Concerning the ratio of female-to-male styles that could establish the existence of a "comparable line" for females, three commenters maintain that the existence of at least one comparable female style (in either the importer's line, or in the U.S. market) for every five male styles (a one-to-five ratio) should be deemed sufficient. These same commenters also state that a one-to-three ratio (female-to-male styles), as an alternative standard, could be considered sufficient.

CBP RESPONSE: CBP disagrees that either a one-to-five or one-to-three ratio, female-to-male, is sufficient in the absence of the means and opportunity to examine and compare all styles of an importer's line. CBP is proposing, in the absence of marking as to gender, to require evidence that the same style of shoe for females is available in either the importer's line or the U.S. marketplace. CBP is not proposing to accept comparable styles as alternatives for the same style.

COMMENT: With regard to any set percentage of use by (or sale to) females, of footwear claimed to be for males, indicative of footwear that is commonly worn by both sexes, one commenter suggests that 25 percent is an appropriate standard. The commenter contends that the 5 percent (one sale in twenty) standard utilized by CBP (subsequent to the court's finding in De Vahni International, Inc. v. United States, 66 Cust. Ct. 239, C.D. 4196 (1971), that "[s]uch infrequent usage [characterized by one sale in a hundred] could hardly be considered common") is appropriate only as an indicator of de minimis usage.

CBP RESPONSE: CBP agrees that the 5 percent standard does not provide an accurate indication that footwear is commonly worn by both sexes and is proposing to adopt a 25 percent standard.

COMMENT: Concerning whether CBP should attempt to clarify, refine, and/or redefine terms such as "category," "type," "style," "line," etc., as they relate to footwear, one commenter recommends that all such terms be left alone. The commenter notes that these terms have been expressed by CBP in appropriately broad terms, that fashion drives most aspects of the footwear industry, and that the market concepts are so fluid that any narrow definitions would soon be obsolete.

CBP RESPONSE: CBP agrees and is not proposing, at this time, to attempt to clarify, refine, or redefine footwear-related terms such as those stated above.

COMMENT: With regard to whether unisex standards should be limited only to provisions under heading 6403, HTSUS, one commenter opines that the standards should indeed be limited to that heading. The commenter notes that in the other headings covering footwear, gender is addressed only at the statistical level (i.e., the ten digit level), and stated as "For men," "For women," or "Other," in contrast to eight digit subheadings under heading 6403, which reference footwear "For men, youths or boys" and "For other persons." The commenter also notes that in January 2000, many references to gender at the statistical level in heading 6403 (e.g., "misses," "children," and "infants") were eliminated.

CBP RESPONSE: CBP agrees and is proposing that unisex standards should be limited only to classifications within heading 6403, HTSUS.

CBP's PROPOSED CRITERIA

Based upon the comments received and for the reasons set forth above, CBP is proposing the following criteria for its determination of whether footwear should be deemed to be "unisex" under heading 6403, HTSUS:

1) Footwear in sizes for men, youths or boys will not be considered to be "commonly worn by both sexes" (i.e., "unisex") if marked "MEN'S SIZE ___ ", "YOUTHS' SIZE ___ ", or "BOYS' SIZE ___ ".

2) Even if not marked as described in criterion 1, footwear in sizes for men, youths or boys will not be considered to be "commonly worn by both sexes" (i.e., "unisex") if:

a. The importer imports the same shoe for women and girls, or;

b. Evidence is provided in the form of marketing material, retail advertisements, or other convincing documentation demonstrating that the same shoe for women and girls is available in the U.S. marketplace.

3) A style of footwear in sizes for males will not be presumed to be "commonly worn by both sexes" (i.e., "unisex") unless evidence of marketing establishes that at least one pair in four (25 percent) of that style is sold to and/or worn by females.

4) A determination that footwear is "commonly worn by both sexes" will trigger "unisex" classification treatment that is applicable to all sizes.

Dated: June 23, 2006

DEBORAH J. SPERO,
Acting Commissioner,
Customs and Border Protection.

[Published in the Federal Register, (71 FR 41822), July 24, 2006]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, July 26, 2006,

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,
Acting Assistant Commissioner,
Office of Regulations and Rulings.

19 CFR PART 177

PROPOSED MODIFICATION AND REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF ALLOY STEEL POWDER

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

ACTION: Notice of proposed modification and revocation of ruling letters and revocation of treatment relating to tariff classification of alloy steel powder.

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 CBP intends to modify one ruling and revoke another ruling relating to the classification of alloy steel powder under the Harmonized Tariff Schedule of the United States (HTSUS), and to revoke any treatment CBP has previously accorded to substantially identical transactions. The products are mixtures of metal alloy powders and inorganic compounds used to make magnetic coatings for data storage tapes and in the powder injection molding of various parts and components. CBP invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before September 8, 2006.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue 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) 572–8768.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Tariff Classification and Marking Branch (202) 572–8779.

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), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are **informed compliance** and **shared responsibility**. These concepts are based on the premise 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 rights and responsibilities 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, 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 declare value on imported merchandise, and to provide other necessary information to enable CBP to properly assess duties, collect accurate statistics and determine whether any other 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 modify one ruling and revoke another ruling relating to the tariff classification of certain mixtures of metal alloy powders and inorganic compounds. Although in this notice CBP is specifically referring to two rulings, HQ 965437 and HQ 961028, this notice covers any rulings on this merchandise that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones listed. No further rulings have been identified. Any party who has received an interpretative 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.

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 it previously accorded 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 on this notice.

In HQ 961028, dated November 13, 1998, a mixture of metal alloy powder and aromatic resin, designated "Wellmax N–3," was found to be classifiable as an alloy steel powder in subheading 7205.21.00, HTSUS. Subheading 3824.90.90, HTSUS, chemical products or preparations of the chemical or allied industries was rejected as a possible classification because Wellmax N–3 was found to be otherwise specified or included in subheading 7205.21.00, HTSUS. HQ 961028 is set forth as "Attachment A" to this document.

In HQ 965437, dated July 30, 2002, an alloy iron powder in pellet form coated with iron oxide, designated "B–3," was held to be classifiable as other chemical products and preparations of the chemical or allied industries, not elsewhere specified or included, in subheading 3824.90.90, HTSUS. This ruling was based on CBP's belief that because B–3 did not meet the terms of subheading 7205.10.00, HTSUS, as granules of iron or steel, it therefore defaulted to heading 3824 because that provision describes chemical products and preparations that are not otherwise specified or included elsewhere. HQ 965437 is set forth as "Attachment B" to this document.

It is now CBP's position that the described products meet the terms of subheading 7205.21.00, HTSUS, as alloy steel powders and are classifiable therein. Pursuant to 19 U.S.C. 1625(c)(1)), CBP intends to modify HQ 961028 and to revoke HQ 965437, any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis in HQ 968287 and HQ 968288, which are set forth as "Attachment C" and "Attachment D" to this document, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

DATED: July 21, 2006

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

Attachments

[ATTACHMENT A]

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

HQ 961028
November 13, 1998
CLA–2 RR:CR:GC 961028 MGM
CATEGORY: Classification
TARIFF NO.: 7205.21 .OO

MR. ROBERT O. KECHIAN
NNR AIRCARGO SERVICE (USA) INC.
Hook Creek Blvd. & 145th Ave.
Unit C-IA
Valley Stream, NY 11581

RE: Wellmax NS–3;Revocation of NY A88776

DEAR SIR:

This is in response to your letter of February 10, 1997, on behalf of Nissho Iwai American Corporation, requesting reconsideration of New York Ruling Letter (NY) A88776, issued to you on November 18, 1996, concerning the classification of Wellmax NS–3 powder under the Harmonized Tariff Schedule of the United States (HTSUS). We have determined that the ruling is in error. Therefore, this ruling revokes NY A88776 and sets forth the correct classification of Wellmax NS–3 powder. In preparing this decision, consideration was given to correspondence submitted on August 17, 1998, and September 9, 1998.

Pursuant to section 625 (c)(l), Tariff Act of 1930 (19 U.S.C.1625 (c)(l)), as mended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057,2186 (1993), notice of the proposed revocation of NY A88776 was published on October 7, 1998,in the CUSTOMS BULLETIN, Volume 32, Number 40. No comments were received in response to that notice.

FACTS:

The product in question is Wellmax NS–3 powder, which is a combination of magnaquench crushed ribbon (isotropic powder) (MQ), composed of neodymium, iron, boron, and other minor constituents, and polyphenylene sulfide. The starting materials to make the MQ powder are neodymium oxide and fluoride which are processed to yield a neodymium-iron eutectic material. This material is then combined with ferroboron, cobalt, and other elements in an inert atmosphere-controlled alloy furnace The alloy is melted and ejected onto a chilled rotating wheel in a jet cast process causing a rapid solidification process which produces flakes of neodymium-iron-boron (NdFeB). These flakes are crushed to form MQ powder. This MQ powder is then combined with polyphenylene sulfide at a ratio of 85%: 15% to make Wellmax NS–3. This product consists of 22–28% neodymium, 0.8% boron, >35% iron, <18% cobalt, .09% carbon, and 10–15% polyphenylene sulfide. It is used to form bonded magnets with an injection molding machine.

Customs Laboratory Report 2–97–21735–001, dated July 2, 1997, states that Wellmax NS–3 powder is "a mixture of metal alloy powder and over 5% aromatic resin."

In NY A88776, Customs ruled that Wellmax NS–3 was classified in subheading 3824.90.9050, HTSUS, the residual provision 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; residual products of the chemical or allied industries, not elsewhere specified or included."

ISSUE:

Whether Wellmax NS–3 is classified in subheading, 3824.90.9050, HTSUS.

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In understanding the language of the HTSUS, the Explanatory Notes (ENS) of the Harmonized Commodity Description and Coding System may be utilized. The ENS, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See*, T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

In NY A88776, "Wellmax NS–3"was classified in subheading 3824.90.90, HTSUS, as a chemical product or preparation of the chemical or allied industries, not elsewhere specified or included. This classification is appropriate only where the merchandise does not fall under any other tariff heading. As this product is included within subheading 7205.21.00, HTSUS, it is excluded from subheading 3824.90.90, HTSUS

Note 5 to Section XV, HTSUS, governs the classification of alloys, however, ferroalloys are excepted from Note 5. Ferroalloys are "commonly used as an additive in the manufacture of other alloys or as deoxidants, desulphurising agents or for similar uses in ferrous metallurgy." Note 1(c), Chapter 72, HTSUS. Customs Laboratory Report 2–97–21735–001, dated July 2, 1997, states that "the importer claims the product is to be used 'as is' with no further additives to manufacture to magnets by injection molding." In addition, an advertising brochure describes Wellmax NS–3 as a product that enables flexibly designed magnetic circuits and is utilized in a wide range of applications such as small size motors for various purposes. Since this mixture of metal alloy powder and over 5% aromatic resin is not com-

monly used as an additive in the manufacture of other alloys or as otherwise set forth in Note l(c), Chapter 72, HTSUS, it is not a ferroalloy for tariff classification purposes. This is consistent with HQ 557528, dated December 17, 1993. It remains, however, an "alloy" for purposes of tariff classification as set forth in Note 5, Section XV, HTSUS.

Note 5(b) to Section XV states that "An alloy composed of base metals of this section and of elements not falling within this section is to be treated as an alloy of base metals of this section if the total weight of such metals equals or exceeds the tota1:weight of the other elements present." The term "base metals" includes steel, iron, and cobalt. Note 3, Section XV. Here, the combined weight of iron and cobalt constitutes greater than 50 percent of the alloy and necessarily exceeds that of component compounds other than base metals. Therefore, Wellmax NS–3 is an alloy of base metals of Section XV of the HTSUS.

An alloy of base metals Section XV is to be classified as an alloy of the metal which predominates by weight over each of the other metals. Note 5(a), Section XV. Steels are defined as ferrous materials which "are usefully malleable and which contain by weight 2 percent or less of carbon." Note l(d), Chapter 72. Steel predominates by weight over the other base metals, thus this product is a steel alloy. "Other alloy steel" is a steel which is not stainless steel (1.2 percent or less of carbon and 10.5 percent or more of chromium) and which contains a specific quantum of any of several other elements. Note 1(f), Chapter 72. This merchandise is not stainless steel as the chromium content is less than 10.5 percent, however it does contain sufficient boron and cobalt to be considered an "other alloy steel."

Any reference to a base metal includes a reference to alloys which, by virtue of Note 5, Section XV, are to be classified as alloys of that metal. Note 6, Section XV. Thus, the term "steel," in the HTSUS, includes Wellmax NS–3.

Heading 7205, HTSUS, provides as follows:

7205.00	Granules and powders, of pig iron, spiegeleisen, iron or steel:
7205.29.0	Granules
	Powders:
7205.29.0	Of alloy steel
7205.29.0	Other.

A powder is a product of which 90 % or more by weight passes through a sieve having a mesh aperture of 1 mm (.001 meters). Note 8, Section XV. The advertising brochure for this product states that the mean particle size is 15–30 µm (.000015–.000030 meters). Since the aperture through which a particle must pass to be considered a powder is much larger than this product, it can be assumed that it would pass through unhindered and is therefore considered a powder rather than a granule.

HOLDING:

Wellmax NS–3 powder is classified in subheading 7205.21.0000, HTSUS.

NY A88776 is revoked. In accordance with 19U.S.C. §1625(c)(l), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1)

does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Marvin Amernick for JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 965437
July 30, 2002
CLA–2 RR:CR:GC 965437 RFA
CATEGORY: Classification
TARIFF NO.: 3824.90.90

PORT DIRECTOR OF CUSTOMS
301 East Ocean Blvd.
Long Beach, California 90802

RE: Protest 2704–01–102128; Synthetic Iron Oxide Powder B–3; Metal Particles B–3 (Iron Pellets); Granules and Powders of Iron; Other Chemical Products, Not Elsewhere Specified or Included

DEAR PORT DIRECTOR:

The following is our decision regarding Protest 2704–01–102128, filed by Imation Enterprises Corp., which concerns the classification of synthetic iron oxide powder referred to as Toda B–3 under the Harmonized Tariff Schedule of the United States (HTSUS). In reaching our decision, we also considered the information submitted by the protestant in its submission dated February 25, 2002.

FACTS:

The merchandise consists of synthetic iron oxide powder "B–3", also known as metal particles "B–3" (iron pellets) [hereinafter referred to as "B–3"], which is used in the manufacture of data storage tapes. According to the protestant, the B–3 is a metallic core with a protective shell and that the metallic core is what is required to manufacture advanced data storage tapes. The protestant states that the shell contributes nothing to the magnetic properties, but is necessary to prevent oxidation of the metallic core. Each B–3 particle is on the order of 0.15 microns in length and about 0.02 microns in diameter. For convenience in shipping and handling, these extremely fine particles are compacted into granules. The shell is approximately 0.003 microns in thickness.

The merchandise was entered on June 11, 2000, under subheading 7205.10.00, HTSUS, as granules of iron. The entry was liquidated on May 4, 2001, under subheading 3824.90.90, HTSUS, as other chemical products and preparations of the chemical or allied industries, not elsewhere specified or included. The protest was timely filed on July 30, 2001.

The HTSUS provisions under consideration are as follows:

3824.90.90: . . . ; Chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; . . . : [o]ther: [o]ther: [o]ther: [o]ther: [o]ther. . . .

Goods classifiable under this provision have a column one, general rate of duty of 5.0 percent ad valorem.

7205.10.00 Granules and powders, of pig iron, spiegeleisen, iron or steel: [g]ranules . . . . .

Goods classifiable under this provision have a column one, general rate of duty of free.

ISSUE:

Is the subject merchandise classifiable as other chemical products and preparations of the chemical or allied industries, not elsewhere specified or included, or as iron granules under the HTSUS?

LAW AND ANALYSIS:

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

Protestant claims that the B–3 is properly classifiable in heading 7205, HTSUS, as granules and powders of iron. Because of these claims, a sample of the B–3 was sent to the Customs Laboratory for analysis. In Customs Laboratory Report No. LA20010992A, dated December 4, 2001, Customs found that the sample of black pelletized powder contained only 76% iron, plus several other compounds. Customs Laboratory further reported that the sample was a mixture of iron or its alloy and one or more inorganic compounds. To be classified within heading 7205, HTSUS, a powder must be made of either pig iron, spiegeleisen, iron or steel. As the powder contains only 76% iron plus several different compounds, we find that the B–3 Powder does not meet the terms of the heading for heading 7205, HTSUS.

As classification under heading 7205 is precluded and no other heading properly describes the B–3 Powder, we find that it is classified under heading 3824, HTSUS, as other chemical products and preparations of the chemical or allied industries, not elsewhere specified or included. As the powder consists of an element and inorganic compounds, it is specifically provided for under subheading 3824.90.90, HTSUS.

HOLDING:

The subject merchandise is classifiable under subheading 3824.90.90, HTSUS, which provides for: ". . . ; [c]hemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; . . . : [o]ther: [o]ther: [o]ther: [o]ther: [o]ther. . . ." Goods classifiable under this provision have a column one, general rate of duty of 5.0 percent ad valorem.

The protest should be **DENIED**. In accordance with Section 3A(11)(b) of Customs Directive 099 3550–065, dated August 4, 1993, Subject: Revised Protest Directive, you are to mail this decision, together with the Customs Form 19, to the protestant no later than 60 days from the date of this letter.

Any reliquidation of the entry or entries in accordance with the decision must be accomplished prior to mailing the decision.

Sixty days from the date of the decision, the Office of Regulations and Rulings will make the decision available to Customs personnel, and to the public on the Customs Home Page on the World Wide Web at www.customs.ustreas.gov, by means of the Freedom of Information Act, and other methods of public distribution.

Marvin Amernick for MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968287
CLA–2 RR:CTF:TCM 968287 JAS
CATEGORY: Classification
TARIFF NO.: 7205.21.0000

MR. ROBERT O. KECHIAN
NNR AIRCARGO SERVICE (USA) INC.
Hook Creek Blvd. & 145th Ave., Unit C-1A
Valley Stream, NY 11581

RE: HQ 961028 Modified; Wellmax NS–3 Powder

DEAR MR. KECHIAN:

In HQ 961028, which the U.S. Customs Service (now U.S. Customs and Border Protection (CBP)) Headquarters, issued to you on November 13, 1998, on behalf of Nissho Iwai American Corporation, Wellmax NS–3 powder was found to be classifiable as powders of alloy steel, in subheading 7205.21.00, Harmonized Tariff Schedule of the United States (HTSUS). While CBP continues to believe this classification is correct, HQ 961028 is being modified to reflect the correct legal analysis.

FACTS:

HQ 961028 described Wellmax NS–3 as being used in an injection molding machine to form bonded magnets. NS–3 is a combination of magnaquench crushed ribbon (isotropic powder) (MQ), composed of neodymium, iron, boron, and other minor constituents, plus polyphenylene sulfide. MQ is made by processing neodymium oxide and fluoride to yield neodymium-iron eutectic material. This is then combined with ferroboron, cobalt, and other elements in an inert atmosphere-controlled alloy furnace. The alloy is melted then ejected onto a chilled rotating wheel in a jet cast process causing a rapid solidification process which produces flakes of neodymium-iron-boron (NdFeB). These flakes are then crushed to form MQ powder which is combined with polyphenylene sulfide at a ratio of 85%:15% to make Wellmax NS–3. The product is said to consist of 22–28% neodymium, 0.8% boron, >35% iron, <18% cobalt, 0.9% carbon, and 10–15% polyphenylene sulfide. CBP Laboratory Report 2–97–21735–001, dated July 2, 1997, states

that Wellmax NS–3 powder is a "mixture of metal alloy powder and over 5% aromatic resin." The product will be used in the production of magnets by injection molding.

The HTSUS provisions under consideration are as follows:

7205	Granules and powders, of pig iron, spiegeleisen, iron or steel:
7205.10.00	Granules
	Powders:
7205.21.00	Of alloy steel
7205.29.00	Other

ISSUE:

Whether Wellmax NS–3 is an alloy steel powder.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding and, therefore not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the Harmonized System. CBP believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

In confirming classification of Wellmax NS–3 in subheading 7205.21.00, HTSUS, HQ 961028 revoked NY A88776, dated November 18, 1996, which classified the product as other chemical products and preparations of the chemical or allied industries, in subheading 3824.90.90, HTSUS. However, HQ 961028 relied, in large part, on Note 5(b) to Section XV, HTSUS, which governs the classification of alloys of base metal of Section XV and elements not falling within Section XV. The ruling stated that "the combined weight of iron, and cobalt constitutes greater than 50 percent of the alloy and necessarily exceeds that of component *compounds* other than the base metals." (Italics added). Since the term "elements" in Section XV, Note 5(b) refers to elements of the periodic table, and Wellmax NS–3 is composed of a steel powder and aromatic resin, a compound, Note 5(b) is not believed applicable in classifying this product.

The July 2, 1997, CBP Laboratory Report describes a mixture of metal alloy powder and over 5% aromatic resin. Section XV, Note 7, states, in relevant part, that articles of mixed materials treated as articles of base metal under the General Rules of Interpretation containing two or more base metals are to be treated as articles of the base metal that predominates by weight over each of the other metals. HQ 961028 concluded that "steel predominates by weight over the other base metals, thus this product is a steel alloy . . . [h]owever, it does contain sufficient boron and cobalt to be considered an 'other alloy steel'." Lastly, for the reasons stated in HQ 961028, Wellmax NS–3 is a "powder" under Section XV, Note 8(b).

HOLDING:

Under the authority of GRI 1 and Section XV, Note 7, HTSUSA, the Wellmax NS–3 powder is provided for in heading 7205 as powders of iron or steel. It is classifiable in subheading 7205.21.0000, HTSUSA, as powders of alloy steel.

EFFECT ON OTHER RULINGS:

HQ 961028 is modified to reflect the correct legal analysis.

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

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968288
CLA–2 RR:CTF:TCM 968288 JAS
CATEGORY: Classification
TARIFF NO.: 7205.21.0000

MR. WARREN WEBER
MANAGER, INTERNATIONAL TRADE SERVICES
IMATION ENTERPRISES CORP.
1 Imation Place
Endeavor Building 301–2E–25
Oakdale, MN 55128

RE: Synthetic Iron Oxide Powder B–3; HQ 965437 Revoked

DEAR MR. WEBER:

HQ 965437, which this office issued to the Port Director, U.S. Customs and Border Protection (CBP) Long Beach, CA., on July 30, 2002, represents a decision on Protest 2704–01–102128, you filed on behalf of Imation in which synthetic iron oxide powder, referred to as Toda B–3, was found to be classified as other chemical products and preparations of the chemical or allied industries, not elsewhere specified or included, in subheading 3824.90.90, Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered this classification and now believe that it is incorrect.

However, because HQ 965437 represents a decision on a protest filed with CBP, Long Beach, the revocation of HQ 965437 will affect the legal principles in that decision but the liquidation or reliquidation of the underlying entries remains undisturbed. *San Francisco Newspaper Printing Co. v. United States*, 620 F. Supp. 738, 9 CIT 517 (1985).

FACTS:

The merchandise is described in HQ 965437 as synthetic iron oxide powder "B–3", also known as metal particles "B–3" (iron pellets) [hereinafter B–3], which is used in the manufacture of data storage tapes. Each of the B–3 particles contains thousands of similar particles and each particle consists of an inner metallic iron alloy core with an outer protective oxide shell. The metallic core is required to manufacture advanced data storage tapes. It

is stated that the shell contributes nothing to the magnetic properties, but is necessary to prevent oxidation of the metallic core. Each B–3 particle is on the order of 0.15 microns in length and about 0.02 microns in diameter. For reasons of precaution, given the presence of significant amounts of elemental, finely-divided iron, these extremely fine particles are imported in five-gallon steel pails.

The HTSUS provisions under consideration are as follows:

3824	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:
	Other:
3824.90.90 (now .91)	Other
	* * * *
7205	Granules and powders, of pig iron, spiegeleisen, iron or steel:
7205.10.00	Granules
	Powders:
7205.21.00	Of alloy steel
7205.29.00	Other

ISSUE:

Whether B–3 is an iron or steel powder of heading 7205.

LAW AND ANALYSIS:

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

On protest, Toda B–3 was claimed to be classifiable in heading 7205, HTSUS, as granules of iron. CBP Laboratory Report LA20010992A (amended), dated December 4, 2001, found that a submitted sample of B–3 was a black pelletized powder containing only 76% iron, plus several other compounds. The laboratory further reported that the sample was a mixture of iron or its alloy and one or more inorganic compounds. HQ 965437 noted that to be classified in heading 7205, HTSUS, a powder must be made of either pig iron, spiegeleisen, iron or steel. Because the B–3 powder contained only 76% iron plus several different compounds, it was concluded that the product did not meet the terms of heading 7205, HTSUS. Classification thus defaulted to heading 3824, HTSUS, because the B–3 powder was found to be "not elsewhere specified or included." Upon reconsideration, it appears that heading 7205, HTSUS, warrants further scrutiny.

The CBP Laboratory Report identified a "black palletized powder . . . a mixture of iron or its alloy and one or more inorganic compounds." Section XV, Note 7, states, in relevant part, that articles of mixed materials treated

as articles of base metal under the General Rules of Interpretation containing two or more base metals are to be treated as articles of the base metal that predominates by weight over each of the other metals. Under GRI 3(b), HTSUS, mixtures consisting of different materials or made up of different components shall be classified as if consisting only of the material or component which gives the good its essential character, insofar as this criterion is applicable. Imation has attested that it buys B–3 for the superior magnetic quality of its metallic content which is necessary for making coatings for its data storage tapes. We conclude, therefore, that the iron alloy in the B–3 imparts the essential character to the product.

Because the B–3 powder has 0.01% carbon, by weight, it qualifies as Steel under Chapter 72, Note 1(d), HTSUS, and has the necessary alloying elements (i.e., aluminum, cobalt and manganese) to qualify as Other alloy steel under Chapter 72, Note 1(f), HTSUS.

HOLDING:

Under the authority of GRI 1 and Section XV, Note 7, HTSUS, the Toda 3–B powder is provided for in heading 7205. It is classifiable in subheading 7205.21.0000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as powders of alloy steel.

EFFECT ON OTHER RULINGS:

HQ 965437, dated July 30, 2002, is revoked.

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

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF MOTORIZED UTILITY VEHICLES

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

ACTION: Notice of proposed revocation of ruling letters and treatment relating to tariff classification of motorized utility vehicles.

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 CBP intends to revoke three rulings relating to the classification of motorized utility vehicles under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), and to revoke any treatment CBP has previously accorded to substantially identical transactions. These vehicles are small pickup-type trucks used off-road to transport materials and tools. CBP invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before September 8, 2006.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue 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) 572–8768.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Tariff Classification and Marking Branch (202) 572–8779.

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), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are **informed compliance** and **shared responsibility**. These concepts are based on the premise 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 rights and responsibilities 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, 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 declare value on imported merchandise, and to provide other necessary information to enable CBP to properly assess duties, collect accurate statistics and determine whether any other 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 three rulings relating to the tariff classification of small pickup-type trucks. Although in this notice CBP is specifically referring to three rulings, HQ 964598, HQ 965246 and NY H87834, this notice covers any rulings on this merchandise that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones listed. No further rulings have been identified. Any party who has received an interpretative 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.

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 it previously accorded 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 on this notice.

In HQ 965246, dated November 6, 2001, the Micro Truk was found to be classifiable in subheading 8709.19.00, HTSUS, as a self-propelled works truck of the type used in factories, warehouses, dock areas or airports for short distance transport of goods. In HQ 964598, dated November 13, 2001, a protest review decision from the CBP port of Jacksonville, FL, the Micro Truk was held to be similarly classifiable. Finally, NY H87834, dated January 28, 2002, classified the Multicab Original Pick-Up Lift Up 4WD in the same provision. These rulings were based on the belief that the vehicles met the terms of heading 8709. HQ 965246, HQ 964598 and NY H87834 are set forth as "Attachment A," "Attachment B" and "Attachment C" to this document, respectively.

It is now CBP's position that these vehicles are classifiable in subheading 8704.31.00, HTSUS, as motor vehicles for the transport of goods, with spark-ignition internal combustion piston engine, of a G.V.W. not exceeding 5 metric tons. Pursuant to 19 U.S.C. 1625(c)(1)), CBP intends to revoke HQ 965246, HQ 964598 and NY H87834, and any other ruling not specifically identified, to reflect the proper classification of the vehicles pursuant to the analysis in HQ 968312 and HQ 968313, which are set forth as "Attachment D" and "Attachment E" to this document, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

DATED: July 25, 2006

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

Attachments

[ATTACHMENT A]

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

HQ 965246
NOVEMBER 6, 2001
CLA–2 RR:CR:GC 965246 JAS
CATEGORY: Classification
TARIFF NO.: 8709.19.00

MR. HARVEY B. FOX
ADDUCI, MASTRIANI & SCHAUMBERG, L.L.P.
1200 Seventeenth Street, N.W.
Washington, D.C. 20036

RE: Micro Truk; NY F82672 Revoked

DEAR MR. FOX:

This is in response to your letter of October 16, 2000, on behalf of Metro Motors Corporation, requesting reconsideration of NY F82672, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of the Micro Truk. In this ruling, which the Director of Customs National Commodity Specialist Division, New York, issued to Metro Motors on February 11, 2000, the Micro Truk was held to be classifiable as a motor vehicle for the transport of goods, in subheading 8704.31.00, HTSUS.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY F82672 was published on September 26, 2001, in the Customs Bulletin, Volume 35, Number 39. No comments were received in response to that notice.

FACTS:

The Micro Truck was described in the cited ruling as having a cab for two people and a rear cargo bed with fold down sides and tailgate. It is available as a 130-inch Standard Bed, model 1010, or a 145-inch Long Bed, model 1020. The vehicle is powered by a 38 hp, gasoline powered spark ignition internal combustion engine, and has a 3-speed manual transmission and 4-wheel hydraulic brakes. Design features include front bumper, headlights, taillights, brake lights and turn signals, and four-way flashers. The Micro Truk is equipped with two-speed intermittent wipers with washer, heater/defroster, inside/outside rearview mirrors, seat belts and dome light.

The Micro Truk is capable of a 25 mph maximum speed and is not advertised for use on the public roads. The vehicle is advertised for use in landscaping, facility maintenance, security, i.e., police fire protection, food service delivery, and in athletic applications such as removing injured players from the field and moving around equipment and personnel.

The HTSUS provisions under consideration are as follows:

8704	Motor vehicles for the transport of goods:
	Other, with spark-ignition internal combustion piston engine:
8704.31.00	G.V.W. not exceeding 5 metric tons

* * * * *

8709	Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; . . . ; parts of the foregoing vehicles . . . :
	Vehicles:
8709.11.00	Electrical
8709.19.00	Other

ISSUE:

Whether the Micro Truk, as described, is a works truck of heading 8709.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. Customs believes the ENs should always be consulted. *See* T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The Micro Truk is at least *prima facie* described by the terms of heading 8704, HTSUS, as a motor vehicle for the transport of goods. However, we do not believe that a specificity analysis is warranted here. This is because the ENs on p. 1554 list certain design features of the works trucks of heading 8709, HTSUS, which distinguish them from the vehicles of heading 8704. Among these are their construction and special design features which make them unsuitable for the transport of goods by road or other public ways; their top speed when laden is generally not more than 30 to 35 km/h; their turning radius is approximately equal to the length of the vehicle itself; vehicles of heading 8709 do not usually have a closed driving cab, the accommodation for the driver often being no more than a platform on which to stand. Certain types may be equipped with a protective frame or metal screen; such works trucks are normally fitted with a platform or container on which the goods are loaded.

Vehicles similar to the Micro Truk are marketed to a wide range of potential users with the vehicles' intended purpose in mind, i.e., work. They are sold for use in golf course maintenance, to haul fertilizer, sand, etc., even personnel. These uses have expanded to include hunters and other recreational users and their gear. Among the users are universities with closed campuses and businesses with large areas to cover but limited road access, in transporting materials, security personnel, etc. Some vehicles even have specially constructed beds for stretchers for use by medical-rescue teams in rough terrain.

However, heading 8709 covers vehicles of a kind used in the environments specified in the text. This is a provision governed by "use." See Group Italglass v. United States, 17 CIT 226 (1993). As such, it is the principal use

of the class or kind of vehicles to which the Micro Truk belongs that governs classification here.

Because of the wide range of potential uses, both on and off-road, we will focus our attention on the 8709 ENs. As described, the Micro Truk is equipped with numerous design features common to small pickup trucks. Also included are comfort and convenience items like interior mirrors, shoulder and lap restraints, and safety glass. The latter suggest significant on-road uses. However, in a letter to Metro Motors, dated January 25, 1999, the National Highway Traffic Safety Administration, U.S. Department of Transportation, examined numerous factors related to the Micro Truk, and concluded that it was not a "motor vehicle" for purpose of regulations administered by that agency. The Micro Truk's advertised speed of 25 mph is apparently an unladen speed. Additional information now available indicates that the Micro Truk's top speed with a standard payload is 20 mph or 33 km/h. This is within the parameters stated in the ENs. The overall length of the Micro Truk, either 130 inches (Standard Bed) and 145 inches (Long Bed), is "approximately" equal to the vehicle's minimum radius, which is listed in submitted specifications as 149 inches. Finally, whether the Micro Truk's enclosed cargo bed with drop-down sides and tailgate qualifies as a platform or container on which the goods are loaded is uncertain. However, the vehicle does have a closed driving cab, which is not characteristic of vehicles of heading 8709.

We conclude that, on balance, the Micro Truk, as described, has a majority of the design features listed in the 8709 ENs as common to vehicles of that heading. For this reason, the Micro Truk belongs to the class or kind of vehicles principally used as a works truck of heading 8709. This conclusion is consistent with the classification of utility vehicles deemed substantially similar in terms of design and intended service applications to the Micro Truk. See, for example, the Mule utility vehicle (HQ 954173, dated September 22, 1993), the Gator utility vehicle (NY C83109, dated January 29, 1998), and the Carryall utility vehicle (HQ 960303, dated May 13, 1997).

HOLDING:

Under the authority of GRI 1, the Micro Truk is provided for in heading 8709. It is classifiable in subheading 8709.19.00, HTSUS.

EFFECT ON OTHER RULINGS:

NY F82672, dated February 11, 2000, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 964598
NOVEMBER 13, 2001
CLA–2 RR:CR:GC 964598 JAS
CATEGORY: Classification
TARIFF NO.: 8709.19.00

PORT DIRECTOR OF CUSTOMS
2831 Talleyrand Ave.
Jacksonville, FL 32206

RE: Protest 1803–01–100014; Micro Truk

DEAR PORT DIRECTOR:

This is our decision on protest 1803–01–100014, filed against your classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of the Micro Truk. The entries under protest were liquidated on October 20 and November 3, 2000, and this protest timely filed on January 17, 2001.

FACTS:

The vehicle at issue is one of the Metro Motors Micro series of vehicles, the Micro Truk, models 1010 and 1020. It has a cab for two people and a rear cargo bed with fold down sides and tailgate. The model 1010 is available as a 130-inch Standard Bed, while the model 1020 is the 145-inch Long Bed. The vehicle is powered by a 38 hp, gasoline powered spark ignition internal combustion engine, and has a 3-speed manual transmission and 4-wheel hydraulic brakes. Design features include 12-inch tires, front bumper but no rear bumper, headlights, taillights, brake lights and turn signals, and four-way flashers. The Micro Truk is equipped with two-speed intermittent wipers with washer, heater/defroster, inside/outside rearview mirrors, seat belts and dome light.

The Micro Truk is capable of a 25 mph maximum speed and is not advertised for use on the public roads. Marketing literature depicts the use of this vehicle in landscaping, facility maintenance, security, i.e., police fire protection, food service delivery, and in athletic applications such as removing injured players from the field and moving around equipment and personnel.

The vehicles were entered under a provision of heading 8709, HTSUS, for self-propelled works trucks. Based on a ruling to the importer/protestant on identical vehicles, the entries were liquidated under a provision of heading 8704, HTSUS, as motor vehicles for the transport of goods. In addition to the Micro Truk, this protest also covers another in the Metro Motors Micro series, the Micro Van, model 1030, which was also classified at liquidation in heading 8704. However, in a letter, dated November 13, 2001, counsel for the protestant abandons his claim under heading 8709 with respect to this vehicle.

Counsel makes the following arguments in support of classifying the Micro Truk in heading 8709: (1) the vehicle may be *prima facie* classifiable both under heading 8704 and under 8709 but, under General Rule of Interpretation (GRI) 3(a), HTSUS, heading 8709 provides the most specific description; (2) the vehicle is principally used in the environs specified in the 8709 heading text; (3) the vehicle is within the relevant EN description for vehicles of

heading 8709; and, (4) the vehicle is substantially identical to other vehicles held to be classifiable in heading 8709.

The HTSUS provisions under consideration are as follows:

8704	Motor vehicles for the transport of goods:
	Other, with spark-ignition internal combustion piston engine:
8704.31.00	G.V.W. not exceeding 5 metric tons
* * * * *	
8709	Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; . . . ; parts of the foregoing vehicles . . . :
	Vehicles:
8709.11.00	Electrical
8709.19.00	Other

ISSUE:

Whether the MicroTruk, as described, is a works truck of heading 8709.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. Customs believes the ENs should always be consulted. *See* T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

We agree with counsel that under GRI 2(a), the Micro Truk is at least *prima facie* described by the terms of heading 8704, HTSUS, as a motor vehicle for the transport of goods. However, we do not believe that a specificity analysis is warranted here. This is because the ENs on p. 1554 list certain design features of the works trucks of heading 8709, HTSUS, which serve to distinguish them from the vehicles of heading 8704. Among these are their construction and special design features which make them unsuitable for the transport of goods by road or other public ways; their top speed when laden is generally not more than 30 to 35 km/h; their turning radius is approximately equal to the length of the vehicle itself; vehicles of heading 8709 do not usually have a closed driving cab, the accommodation for the driver often being no more than a platform on which to stand. Certain types may be equipped with a protective frame or metal screen; such works trucks are normally fitted with a platform or container on which the goods are loaded.

Vehicles similar to the Micro Truk are marketed to a wide range of potential users with the vehicles' intended purpose in mind, i.e., work. They are sold for use in golf course maintenance, to haul fertilizer, sand, etc., even personnel. These uses have expanded to include hunters and other recre-

ational users and their gear. Among the users are universities with closed campuses and businesses with large areas to cover but limited road access, in transporting materials, security personnel, etc. Some vehicles even have specially constructed beds for stretchers for use by medical-rescue teams in rough terrain.

However, heading 8709 covers vehicles of a kind used in the environments specified in the text. This is a provision governed by "use." See Group Italglass v. United States, 17 CIT 226 (1993). As such, it is the principal use of the class or kind of vehicles to which the Micro Truk belongs that governs classification here.

Because of the wide range of potential uses, both on and off-road, we will focus our attention on the 8709 ENs. As described, the Micro Truk is equipped with numerous design features common to small pickup trucks. Also included are comfort and convenience items like interior mirrors, shoulder and lap restraints, and safety glass. The latter suggest significant on-road uses. A letter to Metro Motors from the National Highway Traffic Safety Administration, U.S. Department of Transportation, dated January 25, 1999, examined these and other factors related to the Micro Truk, and concluded that it was not a "motor vehicle" for purpose of regulations administered by that agency. While not relevant in a tariff context under the HTSUS, this letter is an indication that design features are relevant in establishing the vehicle's identity. The Micro Truk's advertised speed of 25 mph is apparently an unladen speed. Additional information now available indicates that the Micro Truk's top speed with a standard payload is 20 mph or 33 km/h. This is within the parameters stated in the ENs. The overall length of the Micro Truk, either 130 inches (Standard Bed) and 145 inches (Long Bed), is "approximately" equal to the vehicle's minimum radius, which is listed in submitted specifications as 149 inches. Finally, whether the Micro Truk's enclosed cargo bed with drop-down sides and tailgate qualifies as a platform or container on which the goods are loaded is uncertain. However, the vehicle does have a closed driving cab, which is not characteristic of vehicles of heading 8709.

We conclude that, on balance, the Micro Truk, as described, has a majority of the design features listed in the 8709 ENs as common to vehicles of that heading. For this reason, we conclude that this vehicle belongs to the class or kind of vehicles principally used as a works truck of heading 8709. Customs has recently completed a reexamination of its previous classification of the Micro Truk, and determined that it is classifiable as a works truck in heading 8709. See HQ 965246, dated November 6, 2001. This ruling is consistent with the classification of utility vehicles deemed substantially similar in terms of design and intended service applications to the Micro Truk. See, for example, the Mule utility vehicle (HQ 954173, dated September 22, 1993), the Gator utility vehicle (NY C83109, dated January 29, 1998), and the Carryall utility vehicle (HQ 960303, dated May 13, 1997).

HOLDING:

Under the authority of GRI 1, the Metro Motors Micro Truk is provided for in heading 8709. It is classifiable in subheading 8709.19.00, HTSUS. The Metro Motors Micro Van is provided for in heading 8704. It is classifiable in subheading 8704.31.00, HTSUS, as liquidated.

The Metro Motors Micro Truk should be reclassified under subheading 8709.19.00, HTSUS, and the protest ALLOWED as to this vehicle. The Metro Motors Micro Van remains classified under subheading 8704.31.00,

HTSUS, and the protest should be DENIED as to this vehicle. In accordance with Section 3A(11)(b) of Customs Directive 099 3550–065, dated August 4, 1993, Subject: Revised Protest Directive, you are to mail this decision, together with the Customs Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry or entries in accordance with the decision must be accomplished prior to mailing the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will make the decision available to Customs personnel, and to the public on the Customs Home Page on the World Wide Web at www.customs.gov, by means of the Freedom of Information Act, and other methods of public distribution.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY H87834
January 28, 2002
CLA–2–87:RR:NC:MM:101 H87834
CATEGORY: Classification
TARIFF NO.: 8709.19.0030

MR. ROBERT RAYFORD
R & D MOTORSPORTS
T4525 Town Hall Road
Wausau, Wisconsin 54403

RE: The tariff classification of a Pickup Truck from Japan

DEAR MR. RAYFORD:

In your letter dated January 18, 2002 you requested a tariff classification ruling.

You submitted a picture with specifications of a small pickup truck, called the "Multicab Original Pick-Up Lift Up 4WD." You state that the vehicle is a small pickup truck that is a little bigger than an ATV. It is made in Japan and suitable for highway use for five to seven years, then sold to a company in the Philippines where it is totally rebuilt. You state that for shipping into the United States the roof and various other parts would be removed so that it could be shipped in one container. You further state that it your intention to sell these vehicles as off-road farm vehicles. You are also checking with the EPA and DOT to see if the truck would be legal for highway use. Some of the features of this vehicle are:

- 3-cylinder gasoline engine, 500 cc displacement,
- 5 speed manual transmission,
- seating capacity for 2 passengers,
- center console box, sun visor, interior lamp, signal lights, front plain matting, upholstered ceiling, two-tone acrylic paint.

The applicable subheading for the "Multicab Original Pick-Up Lift Up 4WD"Pickup Truck will be 8709.19.0030, Harmonized Tariff Schedule of the United States (HTS), which provides for Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles: Vehicles: Other . . . Operator riding. The rate of duty will be Free.

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 Robert DeSoucey at 646–733–3008.

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

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968312
CLA–2 RR:CTF:TCM 968312 JAS
CATEGORY: Classification
TARIFF NO.: 8704.31.0020

HARVEY B. FOX, ESQ.
ADDUCI, MASTRIANI & SCHAUMBERG, L.L.P.
1200 Seventeenth Street, N.W., Fifth Floor
Washington, D.C. 20036

RE: Micro Truk; HQ 965246 and HQ 964598 Revoked

DEAR MR. FOX:

In HQ 965246, which Headquarters, U.S. Customs and Border Protection (CBP) issued to you on November 6, 2001, on behalf of Metro Motors Corporation, the Micro Truk was found to be classifiable as a self-propelled works truck, in subheading 8709.19.00, Harmonized Tariff Schedule of the United States (HTSUS). Likewise, in HQ 964598, dated November 13, 2001, the Micro Truk models 1010 and 1020 were found to be similarly classifiable. We have reconsidered these classifications and now believe that they are incorrect.

However, HQ 964598 represents a decision on Protest 1803–01–100014, filed at the CBP Port of Jacksonville, FL, on behalf of Metro Motors Corporation. Therefore, the proposed revocation of HQ 964598 will affect the legal principles in that decision but the liquidation or reliquidation of the underlying entries remains undisturbed. *San Francisco Newspaper Printing Co. v. United States*, 620 F. Supp. 738, 9 CIT 517 (1985).

FACTS:

The Micro Truk has cab-over design, seating capacity for two people and a rear cargo bed with fold-down sides and tailgate. It is available as a 130-

inch Standard Bed, model 1010, or a 145-inch Long Bed, model 1020. The vehicle is powered by a 38 hp, gasoline powered spark ignition internal combustion engine, and has a 3-speed manual transmission and 4-wheel hydraulic brakes. Design features include front bumper, headlights, taillights, brake lights and turn signals, and four-way flashers. The Micro Truk is equipped with two-speed intermittent wipers with washer, heater, defroster, rearview and side mirrors, seat belts and dome light. It is capable of a 25 mph maximum speed and is not advertised for use in the U.S. on the public roads. The vehicle is marketed for use in landscaping, facility maintenance, security, i.e., police and fire protection, food service delivery, and in athletic applications such as removing injured players from the field and moving around equipment and personnel. The record indicates these vehicles are used on-road in Japan for a number of years for transport purposes, then sold to small companies in the United States who resell them for use in service applications hereafter described.

The HTSUS provisions under consideration are as follows:

8704	Motor vehicles for the transport of goods:
	Other, with spark-ignition internal combustion piston engine:
8704.31.00	G.V.W. not exceeding 5 metric tons
* * * * *	
8709	Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; . . . ; parts of the foregoing vehicles . . . :
	Vehicles:
8709.11.00	Electrical
8709.19.00	Other

ISSUE:

Whether the Micro Truk, as described, is a works truck of heading 8709 or a motor vehicle for the transport of goods, of heading 8704.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. CBP believes the ENs should always be consulted. *See* T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The Micro Truk and similar vehicles are marketed to a wide range of potential users for transport purposes. They are sold for use in golf course maintenance, to haul fertilizer, sand, etc., even personnel. These uses have expanded to include transporting hunters and other recreational users and

their gear in wooded areas. Among the users are universities with closed campuses and businesses with large areas to cover but limited road access, in transporting materials, security personnel, etc.

However, heading 8709 covers vehicles of a kind used in the environments specified in the text. This is a provision governed by "use." *Group Italglass v. United States*, 17 CIT 226 (1993). As such, it is the principal use of the class or kind of vehicles to which the Micro Truk belongs that governs classification here Because of the Micro Truk's wide range of potential uses, both on and off-road, HQ 965246 and HQ 964598 stated CBP's intent to rely on the 8709 ENs which list design features which distinguish works trucks of that heading from vehicles of heading 8704. It is our interpretation of these ENs, as they relate to the Micro Truk, that is now at issue here.

Among the design features the 8709 ENs list are the vehicle's construction and special design features which make them unsuitable for the transport of goods by road or other public ways; a top speed when laden generally being not more than 30 to 35 km/h; a turning radius that is approximately equal to the length of the vehicle itself; vehicles of heading 8709 do not usually have a closed driving cab, the accommodation for the driver often being no more than a platform on which to stand. Certain types may be equipped with a protective frame or metal screen; such works trucks are normally fitted with a platform or container on which the goods are loaded.

In a letter to Metro Motors, dated January 25, 1999, the National Highway Traffic Safety Administration, U.S. Department of Transportation, examined numerous factors related to the Micro Truk, and concluded that it was not a "motor vehicle" for purpose of regulations administered by that agency. We note, however, that regulations of other agencies dealing with non-tariff matters have no bearing on the classification of goods under the HTSUS. *Bestfoods v. United States*, 342 F. Supp. 2d 1312 (Ct. Int'l. Trade, decided 2004). Nevertheless, the Micro Truk is equipped with numerous design features common to small pickup trucks. Included are comfort and convenience items like interior mirrors, shoulder and lap restraints, and safety glass. The latter suggest significant on-road uses, at least in Japan. The record indicates that in this country some states license the Micro Truk for on-highway use while others do not. On balance, this suggests at least "suitability" for the transport of goods by road or public way. The Micro Truk's advertised top speed with a standard payload is 20 mph or 33 km/h. This is within the parameters stated in the 8709 ENs. The overall length of the Micro Truk Long Bed model is 145 inches and is "approximately" equal to the Micro Truk's minimum turning radius, which is listed in submitted specifications as 149 inches; however, the Micro Truk Standard Bed model is listed as 130 inches long, which makes the turning radius of this model much greater. This criterion, therefore, is inconclusive. The Micro Truk has cab-over design (an enclosed driving cab), a feature not characteristic of vehicles of heading 8709. The references in the EN to a platform on which [the driver] stands and a protective frame or metal screen over the driver's seat do not apply to this type vehicle. Finally, the Micro Truk has an enclosed cargo bed with drop-down sides and tailgate capable of handling loads up to 1,500 lbs. This is a feature of a standard pickup truck and does not qualify as a platform or container on which the goods are loaded.

On balance, the Micro Truk, as described, lacks most of the design features listed in the 8709 ENs as common to vehicles of that heading. For this reason, we conclude that the Micro Truk does not belong to the class or kind

of vehicles principally used as works trucks of heading 8709. As stated previously, this vehicle has an enclosed cargo bed with drop-down sides and tailgate capable of handling loads up to 1,500 lbs. For this reason, we conclude it is a motor vehicle for the transport of goods, of the type provided for in heading 8704. For purposes of distinction, we cite decisions on utility vehicles of heading 8709 whose design features are not similar to those of the Micro Truk. See, for example, the Mule utility vehicle (HQ 954173, dated September 22, 1993), the Gator utility vehicle (NY C83109, dated January 29, 1998), and the Carryall utility vehicle (HQ 960303, dated May 13, 1997).

HOLDING:

Under the authority of GRI 1, the Micro Truk is provided for in heading 8704. It is classifiable as a motor vehicle for the transport of goods with G.V.W. not exceeding 5 metric tons, in subheading 8704.31.0020, HTSUSA.

EFFECT ON OTHER RULINGS:

HQ 965246, dated November 6, 2001, and HQ 964598, dated November 13, 2001, are revoked.

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

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968313
CLA–2 RR:CTF:TCM 968313 JAS
CATEGORY: Classification
TARIFF NO.: 8704.31.00

MR. ROBERT RAYFORD
R & D MOTORSPORTS
T4525 Town Hall Road
Wausau, Wisconsin 54403

RE: Multicab Original Pick-Up Lift Up 4WD; NY H87834 Revoked.

DEAR MR. RAYFORD:

In NY H87834, which the Director, National Commodity Specialist Division, U.S. Customs and Border Protection (CBP), New York, issued to you on January 28, 2002, the Multicab Original Pick-Up Lift Up 4WD vehicle was found to be classifiable as a self-propelled works truck, in subheading 8709.19.0030, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reconsidered this classification and now believe that it is incorrect.

FACTS:

With your January 18, 2002, ruing request you submitted a picture with specifications of a small pickup truck, called the "Multicab Original Pick-Up Lift Up 4WD." ['the Original']. You indicated the vehicle was a small pickup truck a little bigger than an ATV. It is made in Japan and suitable for highway use for five to seven years, then sold to a company in the Philippines

where it is totally rebuilt. You state that for shipping into the United States the roof and various other parts would be removed so that it could be shipped in one container. You further state that it your intention to sell the Original as an off-road farm vehicle. You were unsure whether the Original meets Environmental Protection Agency (EPA) and Department of Transportation (DOT) requirements for highway use in the U.S.

Some of the features of this vehicle are 3-cylinder gasoline engine, 500 cc displacement, 5 speed manual transmission, seating capacity for 2 passengers, center console box, sun visor, interior lamp, signal lights, front plain matting, upholstered ceiling, two-tone acrylic paint.

You expressed the opinion that subheading 8703.31.00, HTSUS, motor vehicles principally designed for the transport of persons, with compression-ignition internal combustion piston engine, of a cylinder capacity not exceeding 1500 cc, might apply. For the reasons that follow, CBP believes that this provision does not represent the correct classification.

The HTSUS provisions under consideration are as follows:

8704	Motor vehicles for the transport of goods:
	Other, with spark-ignition internal combustion piston engine:
8704.31.00	G.V.W. not exceeding 5 metric tons
* * * * *	
8709	Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; . . . ; parts of the foregoing vehicles . . . :
	Vehicles:
8709.11.00	Electrical
8709.19.00	Other

ISSUE:

Whether the Original is classifiable as a works truck of heading 8709 or as a motor vehicle for the transport of goods of heading 8704.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. CBP believes the ENs should always be consulted. *See* T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The Original is marketed to a wide range of potential users for transport purposes. They are sold for use in golf course maintenance, to haul fertilizer, sand, etc., even personnel. These uses have expanded to include transporting hunters and other recreational users and their gear in wooded areas.

Among the users are universities with closed campuses and businesses with large areas to cover but limited road access, in transporting materials, security personnel, etc.

However, heading 8709 covers vehicles of a kind used in the environments specified in the text. This is a provision governed by "use." *Group Italglass v. United States*, 17 CIT 226 (1993). As such, it is the principal use of the class or kind of vehicles to which the Original belongs that governs classification here. Because of the Original's wide range of potential uses, both on and off-road, CBP has stated its intent to rely on the 8709 ENs which list design features that distinguish works trucks of that heading from vehicles of heading 8704. See HQ 954173, dated September 22, 1993, and related cases.

Among the design features the 8709 ENs list are the vehicle's construction and special design features which make them unsuitable for the transport of goods by road or other public ways; a top speed when laden generally being not more than 30 to 35 km/h; a turning radius that is approximately equal to the length of the vehicle itself; vehicles of heading 8709 do not usually have a closed driving cab, the accommodation for the driver often being no more than a platform on which to stand. Certain types may be equipped with a protective frame or metal screen; such works trucks are normally fitted with a platform or container on which the goods are loaded.

The Original's top laden speed and turning radius are not listed in the submitted specifications. However, the Original is equipped with numerous design features common to small pickup trucks. Included are comfort and convenience items like sun visor, interior lamp, signal lights, front plain matting, upholstered ceiling, two-tone acrylic paint, as described above. The latter suggest significant on-road uses, at least in Japan. The record indicates that in this country some states license vehicles of this type for on-highway use while others do not. Whether or not the Original meets EPA or DOT regulations relating to highway use is not relevant here inasmuch as regulations of other agencies dealing with non-tariff matters have no bearing on the classification of goods under the HTSUS. *Bestfoods v. United States*, 342 F. Supp. 2d 1312 (Ct. Int'l. Trade, decided 2004). On balance, the available information suggests at least "suitability" for the transport of goods by road or public way. The Original has cab-over design (an enclosed driving cab) which is not characteristic of vehicles of heading 8709. The references in the EN to a platform on which [the driver] stands and a protective frame or metal screen over the driver's seat do not apply to this type vehicle. Finally, the Original has an enclosed cargo bed with drop-down tailgate. This is a feature of standard pickup trucks and does not qualify as a platform or container on which the goods are loaded. The Original has a maximum payload capability of 650 kg, about half the vehicle's gross vehicle weight of 1260 kg. This is indicative of the vehicle's cargo-carrying capability.

We conclude that, on balance, the Original lacks most of the design features listed in the 8709 ENs as common to vehicles of that heading. On the facts presented, we conclude that the Original does not belong to the class or kind of vehicles principally used as works trucks of heading 8709. As stated previously, the Original has an enclosed cargo bed with drop-down tailgate and a maximum payload capability of 650 kg. This is indicative of the vehicle's cargo-carrying capability. We note the term *Pick-Up* in the Original's title. For these reasons, we conclude that the Original is a motor vehicle for the transport of goods, of the type provided for in heading 8704. As such, it

cannot be classified in subheading 8703.31.00, HTSUS, as you originally proposed. For purposes of distinction, we cite decisions on utility vehicles of heading 8709 whose design features are not similar to those of the Original. See, for example, the Mule utility vehicle (HQ 954173, dated September 22, 1993), the Gator utility vehicle (NY C83109, dated January 29, 1998), and the Carryall utility vehicle (HQ 960303, dated May 13, 1997).

HOLDING:

Under the authority of GRI 1, the Multicab Original Pick-Up Lift Up 4WD is provided for in heading 8704. It is classifiable in subheading 8704.31.00, HTSUS.

EFFECT ON OTHER RULINGS:

NY H87834, dated January 28, 2002, is revoked.

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