U.S. Customs and Border Protection

GRANT OF "LEVER-RULE" PROTECTION

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

ACTION: Notice of grant of "Lever-rule" protection.

SUMMARY: Pursuant to 19 CFR §133.2(f), this notice advises interested parties that Customs & Border Protection (CBP) has granted "Lever-rule" protection to Eveready Battery Company, Inc. Notice of the receipt of an application for "Lever-rule" protection was published in the November 24, 2010, issue of the *Customs Bulletin.*

FOR FURTHER INFORMATION CONTACT: Alaina van Horn, Intellectual Property Rights & Restricted Merchandise Branch, Regulations & Rulings, Office of International Trade (202) 325–0083.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 CFR §133.2(f), this notice advises interested parties that CBP has granted "Lever-rule" protection for Eveready Battery Company, Inc. battery products bearing the following trademarks: "ENERGIZER," U.S. Patent and Trademark Office Registration No. 1,502,902, CBP Recordation No. TMK 01–00374; "ENERGIZER BUNNY DESIGN," U.S. Patent and Trademark Office Registration No. 2,028,373, CBP Recordation No. TMK 01–00618; "ENERGIZER AND DESIGN," U.S. Patent and Trademark Office Registration No. 3,015,604, CBP Recordation No. TMK 10–00550; "ENERGIZER AND DESIGN," U.S. Patent and Trademark Office Registration No. 2,957,362, CBP Recordation No. TMK 10–00542; "ENERGIZER," U.S. Patent and Trademark Office Registration No. 3,084,603, CBP Recordation No. TMK 10–00557; "DOUBLE BAND BATTERY DESIGN," U.S. Patent and Trademark Office Registration No. 3,251,144, CBP Recordation No. TMK 10–00541; "KEEP GOING," U.S. Patent and Trademark Office Registration No. 2,950,233, CBP Recordation No. TMK 10–00534; "GALAXY LOGO," U.S. Patent and Trademark Office Registration No. 3,065,384, CBP Recordation No. TMK 10–00543; "GALAXY DESIGN CARD," U.S. Patent and Trade-

mark Office Registration No. 3,323,840, CBP Recordation No. TMK 10–00536; "DESIGN (GALAXY BATTERY)," U.S. Patent and Trademark Office Registration No. 3,065,385, CBP Recordation No. TMK 10–00535; "ENERGIZER & GALAXY DESIGN CARD," U.S. Patent and Trademark Office Registration No. 3,017,894, CBP Recordation No. TMK 10–00548 and "ENERGIZER MAX," U.S. Patent and Trademark Office Registration No. 2,568,457, CBP Recordation No. TMK 10–00552.

In accordance with *Lever Bros. Co. v. United States,* 981 F.2d 1330 (D.C. Cir. 1993), CBP has determined that the above-referenced gray market Eveready Battery Company, Inc. battery products differ physically and materially from the Eveready Battery Company, Inc. battery products authorized for sale in the United States in one or more of the following respects: packaging lacks significant warnings recommended by the American National Standards Institute guidelines; packaging bears different artwork and contains foreign languages; packaging bears a guarantee clause not valid in the United States; packaging lacks a copyright registration notice; packaging bears expiration dates; packaging bears different barcodes; packaging does not list the name of product distributor; packaging bears additional foreign certification designations.

ENFORCEMENT

Importation of the above-referenced subject gray market Eveready Battery Company, Inc. battery products is restricted, unless the labeling requirements of 19 CFR § 133.23(b) have been satisfied.

Dated: February 29, 2012

CHARLES R. STEUART
Chief, Intellectual Property Rights Branch
Regulations & Rulings
Office of International Trade

WITHDRAWAL OF REVOCATION OF RULING LETTERS AND WITHDRAWAL OF REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF TUMBLED SEMI-PRECIOUS GEMSTONES

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

ACTION: Notice of withdrawal of proposed revocation of one ruling letter and withdrawal of proposed revocation of treatment relating to tariff classification of tumbled semi-precious gemstones.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection ("CBP") is withdrawing its proposal to revoke one ruling letter concerning the tariff classification of tumbled semi-precious gemstones under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is withdrawing its intent to revoke any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed revocation was published on May 22, 2009, in Volume 43, Number 21, of the Customs Bulletin. One comment was received in response to this notice, opposing the proposed revocation.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch, (202) 325–0036.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, CBP published a notice in the May 22, 2009, Customs Bulletin, Volume 43, Number 21, proposing to revoke Headquarters Ruling Letter (HQ) 951866, dated August 21, 1992, pertaining to the tariff classification of tumbled

semi-precious gemstones, and to revoke any treatment accorded to substantially identical merchandise. One comment was received in response to this notice.

In HQ 951866, CBP classified the subject tumbled semi-precious gemstones in subheading 7103.99.10, HTSUS, which provides for "Precious stones (other than diamonds) and semiprecious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semiprecious stones, temporarily strung for convenience of transport: Otherwise worked: Other: Cut but not set, and suitable for use in the manufacture of jewelry."

In the proposed revocation, CBP relied on the definition of the term "cut but not set" as set forth in HQ H012548, dated February 12, 2008. In HQ H012548, CBP concluded that the process of "cutting" gemstones creates new facets and angled surfaces on gemstones, whereas the process of "polishing" simply smoothed and brightened the surface of the stones. As a result, in HQ H012548, we stated that "cutting" and "polishing" were two different processes in gem manufacturing. Thus, in proposing to revoke HQ 951866, we reasoned that "tumbling" was not "cutting," and that the subject tumbled stones could therefore not be classified in a subheading for cut stones suitable for use in manufacturing jewelry.

In the time since the publication of the proposed revocation of HQ 951866, CBP has reconsidered the definition of the term "cut" as espoused in HQ H012548. In HQ H140915, dated August 8, 2011, which modified HQ H012548, CBP found the definition of the term "cut" as espoused by HQ H012548 to be too narrow. As a result, in HQ H140915, CBP expanded the definition of "cut" to involve one or more of the following processes: carving, cleaving, sawing, girdling, bruting, grinding, faceting, polishing, cabbing, and tumbling. *See* HQ H140915. Thus, it is clear that the tumbled semi-precious stones classified in HQ 951866 are covered by the terms of subheading 7103.99.10, HTSUS, and should remain classified there.

For the reasons stated above, CBP is hereby withdrawing its intent to revoke HQ 951866 and any other ruling not specifically identified. Additionally, CBP is withdrawing its intent to revoke any treatment previously accorded by CBP to substantially identical transactions.

Dated: February 6, 2012

IEVA K. O'ROURKE
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF PORCELAIN TRAVEL COFFEE CUPS

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

ACTION: Notice of revocation of two ruling letters and revocation of treatment relating to the tariff classification of "Eco Cup™" porcelain travel coffee cups.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking two ruling letters relating to the tariff classification of "Eco Cup™" porcelain travel coffee cups under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 49, on November 30, 2011. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 14, 2012.

FOR FURTHER INFORMATION CONTACT: Beth Green, Tariff Classification and Marking Branch: (202) 325–0347.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under customs and related laws. In addition, both the trade community and CBP share responsibility in carrying out import requirements. For example, under section 484 of

the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this notice advises interested parties that CBP is revoking two ruling letters pertaining to the tariff classification of the "Eco Cup™" porcelain travel coffee cups. Although in this notice, CBP is specifically referring to the revocations of New York Ruling Letters (NY) N078995, dated October 14, 2009, and NY N087912, dated January 5, 2010, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found.

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

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N078995 and NY N087912, in order to reflect the proper classification of the "Eco Cup™" porcelain travel coffee cups according to the analysis contained in Headquarters Ruling Letter (HQ) H111922, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: February 3, 2012

IEVA K. O'ROURKE
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H111922
February 3, 2012
CLA-2 OT:RR:CTF:TCM H111922 EG
CATEGORY: Classification
TARIFF NO.: 6911.10.41

RE: Revocation of NY N078995 and NY N087912; Classification of Porcelain Travel Coffee Cup

MS. AMY MORGAN
COSTCO WHOLESALE CORPORATION
999 LAKE DRIVE
ISSAQUAH, WA 98027

DEAR MS. MORGAN:

This is in reference to New York Ruling Letter (NY) N078995, dated October 14, 2009, issued to you concerning the tariff classification of the Eco Cup™ porcelain travel coffee cup under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (CBP) classified the subject article in subheading 6911.10.80, HTSUS, which provides for other tableware and kitchenware. We have reviewed NY N078995 and find it to be in error. For the reasons set forth below, we hereby revoke NY N078995 and one other ruling with substantially similar merchandise: NY N087912, dated January 5, 2010, which was issued to Smart Innovations, Inc.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed revocation was published on November 30, 2011, in the *Customs Bulletin*, Volume 45, No. 49. CBP received no comments in response to this notice.

FACTS:

The "Eco Cup™" was described in NY N078995 and NY N087912 as designed to resemble a traditional paper coffee cup. The cup is made of porcelain with a double wall construction to keep drinks warm. It holds approximately 12 ounces of beverage and comes with a silicone lid and sleeve. Including the lid and sleeve, the cup measures roughly 5.75″ in height x 3.50″ in diameter. The base of the cup is narrower than the top of the cup. The cup does not have a handle. It is dishwasher and microwave safe.

ISSUE:

Whether the subject merchandise is classified in subheading 6911.10.80, HTSUS, which provides for, in pertinent part, "[t]ableware and kitchenware, other household articles and toilet articles, of porcelain or china: tableware kitchenware: other: other . . .", or in subheading 6911.10.41, HTSUS, which provides for "[t]ableware and kitchenware, other household articles and toilet articles, of porcelain or china: tableware and kitchenware: other: . . . tumblers . . ."?

LAW AND ANALYSIS:

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

goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration in this case are as follows:

6911	Tableware, kitchenware, other household articles and toilet articles, of porcelain or china:		
6911.10		Tableware and kitchenware:	
		Other…	
6911.10.41			Steins with permanently attached pewter lids, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, bonbon dishes, egg cups, spoons and spoon rests, oil and vinegar sets, tumblers and salt and pepper shaker sets
			* * *
6911.10.80			Other . . .
			* * *

The Oxford English Dictionary defines a "tumbler" as "a drinking cup, originally having a rounded or pointed bottom, so that it could not be set down until emptied; often of silver or gold; now, a tapering cylindrical, or barrel-shaped, glass cup without a handle or foot, having a heavy flat bottom." (See *www.oed.com*). Under GRI 1, the porcelain travel coffee cup is a tumbler because the cup has a tapering cylindrical shape. Therefore, the porcelain travel coffee cup is properly classified under subheading 6911.10.41, HTSUS which provides for porcelain tumblers.

The cup's silicone lid and sleeve are also properly classified under subheading 6911.10.41, HTSUS. Additional U.S. Note (7) to Chapter 69, HTSUS states that "For the purposes of headings 6911, 6912 and 6913, those provisions which classify merchandise according to the value of each "article," an article is a single tariff entity which may consist of more than one piece. For example, a vegetable dish and its cover, or a beverage pot and its lid, imported in the same shipment, constitute an article." Thus, the silicone lid and sleeve form part of the article classified under subheading 6911.10.41, HTSUS.

HOLDING:

By application of GRI 1, the subject "Eco Cup™" porcelain travel coffee cup is classified in heading 6911, HTSUS, and is specifically provided for in subheading 6911.10.41, HTSUS, which provides for, in pertinent part: "[t]ableware and kitchenware, other household articles and toilet articles, of porcelain or china: tableware and kitchenware: other . . . tumblers . . .". The general, column one 2012 rate of duty is 6.3 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N078995, dated October 14, 2009, and NY N087912, dated January 5, 2010, are hereby revoked.

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

Sincerely,

IEVA K. O'ROURKE
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

GENERAL NOTICE

19 CFR PART 177

Revocation of Ruling Letters and Revocation of Treatment Relating to Classification of Hulled Pumpkin Seeds

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

ACTION: Notice of revocation of eight ruling letters and revocation of treatment relating to the classification of hulled pumpkin seeds.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CPB is revoking eight ruling letters concerning the classification of hulled pumpkin seeds under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB is revoking any treatment previously accorded by CPB to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 35, on August 24, 2011. A revised notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 40, on September 28, 2011 to correct typographical errors in the original notice. No comments were received in response to either notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 14, 2012.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is revoking eight ruling letters regarding the classification of hulled pumpkin seeds. Although in this notice CBP is specifically referring to Headquarters Ruling Letter (HQ) 954648, dated August 5, 1993, NY 885798, dated May 25, 1993, NY C81606, dated November 14, 1997, NY C80043, dated October 2, 1997, NY 856226, dated September 19, 1990, HQ 958495, dated November 21, 1995, HQ 955091, dated February 9, 1994, and HQ 954317, dated August 5, 1993, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to those identified; no further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the admissibility of merchandise subject to this notice should have advised CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially iden-

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ 954648, NY 885798, NY C81606, NY C80043, NY 856226, HQ 958495, HQ 955091, and HQ 954317, according to the analysis contained in Headquarters Ruling Letter (HQ) H108019, which is attached to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: February 14, 2012

IEVA K. O'ROURKE
for
MYLES HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H108019
February 14, 2012
CLA-2 OT:RR:CTF:TCM H108019 TNA
CATEGORY: Classification
TARIFF NO.: 1212.99.91

MS. SANDRA L. PETERSEN
CONAGRA DRIED FRUIT & NUT COMPANY
1050 SANSOME STREET, SUITE 400
SAN FRANCISCO, CALIFORNIA 94111–1334

RE: Revocation of HQ 954648, NY 885798, NY C81606, NY C80043, NY 856226, HQ 958495, HQ 955091, and HQ 954317; Classification of hulled pumpkin seeds

DEAR MS. PETERSEN:

This letter is in reference to Headquarters Ruling Letter ("HQ") 954648, issued to ConAgra Dried Fruit and Nut Company on August 5, 1993, concerning the tariff classification of Chinese pumpkin seed kernels from China, as well as New York Ruling Letter ("NY") 885798, dated May 25, 1993; NY C81606, dated November 14, 1997; NY C80043, dated October 2, 1997; NY 856226, dated September 19, 1990; HQ 958495, dated November 21, 1995; HQ 955091, dated February 9, 1994; and HQ 954317, dated August 5, 1993, all concerning the tariff classification of hulled pumpkin seeds. In these rulings, U.S. Customs and Border Protection ("CBP") classified the merchandise under subheading 1209.91.80, Harmonized Tariff Schedule of the United States ("HTSUS"), as "Seeds, fruits and spores of a kind used for sowing: Other: Vegetable seeds: Other." We have reviewed HQ 954648, NY 885798, NY C81606, NY C80043, NY 856226, HQ 958495, HQ 955091, and HQ 954317 and found them to be in error. For the reasons set forth below, we hereby revoke HQ 954648, NY 885798, NY C81606, NY C80043, NY 856226, HQ 958495, HQ 955091, and HQ 954317.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke HQ 954648, NY 885798, NY C81606, NY C80043, NY 856226, HQ 958495, HQ 955091, and HQ 954317 was published in the *Customs Bulletin*, Vol. 45, No. 35, on August 24, 2011. A revised notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 40, on September 28, 2011 to correct typographical errors in the original notice. No comments were received in response to either notice.

FACTS:

The merchandise at issue in HQ 954648 consisted of pumpkin seed kernels. The seeds are described as raw, shelled (hulled), pumpkin seed kernels that are not roasted, prepared or preserved. They are packed and sold at retail in bulk for human consumption and industrial processing. They are sold in differently sized containers, such as 10 kilogram, 25 kilogram, 40 kilogram, 50 kilogram, or other sized paper or plastic bags. They are sold in bulk at food stores and are also marketed to the bakery and milling industries, the vegetable oil industry, the nutritional supplements industry, and the pharmaceutical industry.

The merchandise at issue in NY 885798, NY C81606, NY C80043, NY 856226, HQ 958495, HQ 955091, and HQ 954317 was described similarly.

NY 885798 classified Chinese pumpkin seed kernels described as raw, shelled pumpkin seed kernels that were not roasted, prepared or preserved. NY C81606 and NY C80043 classified pumpkin seeds that were described in the same terms as HQ 954648. NY 856226 classified seed kernels shelled or unshelled that are de-husked and imported ready for human consumption in raw, uncooked form with no salt, seasoning, flavoring, or additives. They are not roasted, prepared or preserved. HQ 958495 classified Chinese snow white pumpkin seeds in the shell. Both HQ 955091 and HQ 954317 classified hulled pumpkin seeds.

The "hull" of a seed is defined as "the shell, pod, or husk of peas and beans; the outer covering or rind of any fruit or seed," and is used synonymously with the term "husk." *See* www.oed.com (defining "husk" as "the dry outer integument of certain fruits and seeds; esp. the hard fibrous sheath of grain, nuts, etc.; a glume or rind.") Thus, the term "hulled" means "stripped of the hull or husk." *See* www.oed.com. Similarly, the term "shelled" means "deprived of the shell; from which the shell has been removed or shed." *See* www.oed.com.

In HQ 954648, NY 885798, NY C81606, NY C80043, NY 856226, HQ 958495, HQ 955091, and HQ 954317, CBP classified the pumpkin seeds under subheading 1209.91.80, HTSUS, as: "Seeds, fruits and spores of a kind used for sowing: Other: Vegetable seeds: Other."

ISSUE:

Whether pumpkin seed kernels should be classified in subheading 1209.91.80, HTSUS, as seeds, fruits and spores of a kind used for sowing: other vegetable seeds; or in subheading 1212.99.91, HTSUS, as other of a kind used primarily for human consumption, not elsewhere specified or included?

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

1209	Seeds, fruits and spores of a kind used for sowing:	
		Other:
1209.91		Vegetable seeds:
1209.91.80		Other

* * * * * * * * * * * *

1212	Locust beans, seaweeds and other algae, sugar beet and sugar cane, fresh, chilled, frozen or dried, whether or not ground; fruit stones and kernels and other vegetable products (including unroasted chicory roots of the variety Cichorium intybus sativum) of a kind used primarily for human consumption, not elsewhere specified or included:
	Other:

1212.99	Other:
1212.99.91	Other

Legal Note 3 to Chapter 12 provides that:

> For the purposes of heading 1209, beet seeds, grass and other herbage seeds, seeds of ornamental flowers, vegetable seeds, seeds of forest trees, seeds of fruit trees, seeds of vetches (other than those of the species Vicia faba) or of lupines are to be regarded as "seeds of a kind used for sowing".

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The EN to heading 1209, HTSUS, provides, in pertinent part:

> This heading covers all seeds, fruit and spores of a kind used for sowing. It includes such products even if they are no longer capable of germination. However, it **does not include** products such as those mentioned at the end of this Explanatory Note, which, although intended for sowing, are classified elsewhere in the Nomenclature because they are normally used other than for sowing.
>
> The heading **excludes**:
>
> (a) Mushroom spawn (**heading 06.02**).
>
> (b) Leguminous vegetables and sweet corn (**Chapter 7**).
>
> (c) Fruit of **Chapter 8**.
>
> (d) Spices and other products of **Chapter 9**.
>
> (e) Cereal grains (**Chapter 10**).
>
> (f) Oil seeds and oleaginous fruits of **headings 12.01 to 12.07**.
>
> (g) Seeds and fruit which **are themselves** of a kind used primarily in perfumery, in pharmacy, or for insecticidal, fungicidal or similar purposes (**heading 12.11**).
>
> (h) Locust beans (heading **12.12**).

The EN to heading 1212, HTSUS, provides, in pertinent part:

> (D) **Fruit stones and kernels and other vegetable products (including unroasted chicory roots of the variety** *Cichorium intybus sativum***) of a kind used primarily for human consumption, not elsewhere specified or included.**
>
> This group includes fruit stones and kernels and other vegetable products of a kind mainly used, directly or indirectly, for human consumption, but not elsewhere specified or included in the Nomenclature.
>
> It therefore includes kernels of peaches (including nectarines), apricots and plums (used mainly as substitutes for almonds). These products remain in the heading even though they may also be used for the extraction of oil.

Additional U.S. Rule of Interpretation 1(a) states that "a tariff classification controlled by use is determined in accordance with the principal use of the class or kind of goods to which the imported goods belong." Courts have provided several factors to apply when determining whether merchandise falls within a particular class or kind of good. They include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g. the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *See United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976) ("*Carborundum*").

By their terms, headings 1209 and 1212, HTSUS, are use provisions. Classification therein is therefore subject to an analysis of the *Carborundum* factors. First, we examine the packaging and marketing of the subject merchandise, which is packed and sold at retail in bulk at food stores. It is also marketed to the bakery and milling industries, the vegetable oil industry, the nutritional supplements industry, and the pharmaceutical industry. These are all industries and stores that cater to human consumption. The subject merchandise is also packaged in 10 kilogram, 25 kilogram, 40 kilogram, 50 kilogram, or other size paper or plastic bags. This, too, indicates the expectations of the ultimate consumer in that the merchandise is bought in relatively smaller packages by stores or individuals, rather than by farmers to sow a field.

In addition, the rulings under review contained a statement by the importer that the subject merchandise was incapable of germination, as it was fit for human consumption, was being imported for this purpose alone. This also speaks to these seeds' use for human consumption rather than for sowing, as seeds for sowing, as a class or kind, generally are subject to different standards, and are sold in different channels of trade, than seeds for human consumption.

Furthermore, in terms of the merchandises' general physical characteristics, these seeds are not only incapable of germination, they are unsuitable for sowing. They have been modified from their natural form to remove the hull so as to become edible. A hulled seed no longer has its protective shell, one of the characteristics of a seed used for sowing. Once a seed has been hulled, it is fit only to be eaten and would not be planted with the expectation of growing a crop. We therefore find that the subject merchandise is of the class or kind of goods principally used for human consumption rather than for sowing. As such, it is classified under heading 1212, HTSUS, and specifically under subheading 1212.99.91, HTSUS, which provides for: "Locust beans, seaweeds and other algae, sugar beet and sugar cane, fresh, chilled, frozen or dried, whether or not ground; fruit stones and kernels and other vegetable products (including unroasted chicory roots of the variety Cichorium intybus sativum) of a kind used primarily for human consumption, not elsewhere specified or included: other: other: other."

We note that Legal Note 3 to Chapter 12 defines vegetable and fruit seeds as being of the kind used for sowing. Furthermore, EN 12.09 states that the heading covers all seeds of a kind used for sowing, including such products even if they are no longer capable of germination. We interpret this language to encompass the type of seeds normally of the kind used for sowing, even if

the individual seeds that fall into this category cannot actually germinate. Seeds destined for sowing would not only be in the shell, but are typically produced in a way that ensures a certain race line with the required genetic code and may also be chemically treated to promote germination. The subject seeds, by contrast, are not treated this way; on the contrary, they are imported for use in human consumption and are classified in heading 1212, HTSUS.

Our determination is also consistent with a recent decision by the World Customs Organization ("WCO") on pumpkin seeds fit for human consumption published in the Compendium of Classification Opinions on the Harmonized Commodity Description and Coding System where the classification of pumpkin seeds fit for human consumption. *See* Opinion No. 1212.99/1 of the WCO's Compendium of Classification Opinions (March 2008). As we stated in T.D. 89–80, decisions in the Compendium of Classification Opinions should be treated in the same manner as the EN's, i.e., while neither legally binding nor dispositive, they provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. T.D. 89–80 further states that EN's and decisions in the Compendium of Classification Opinions "should receive considerable weight. *See* T.D. 89–80.

HOLDING:

Under the authority of GRI 1, the subject pumpkin seeds are classified in subheading 1212.99.91, HTSUS, which provides for "Locust beans, seaweeds and other algae, sugar beet and sugar cane, fresh, chilled, frozen or dried, whether or not ground; fruit stones and kernels and other vegetable products (including unroasted chicory roots of the variety Cichorium intybus sativum) of a kind used primarily for human consumption, not elsewhere specified or included: Other: Other: Other." The column one general rate of duty is duty free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at *www.usitc.gov/tata/hts/*.

EFFECT ON OTHER RULINGS:

HQ 954648, dated August 5, 1993; NY 885798, dated May 25, 1993; NY C81606, dated November 14; NY C80043, dated October 2, 1997; NY 856226, dated September 19, 1990; HQ 958495, dated November 21, 1995; HQ 955091, dated February 9, 1994; and HQ 954317, dated August 5, 1993, are REVOKED.

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

Sincerely,

IEVA K. O'ROURKE
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division