

Bureau of Customs and Border Protection

General Notices

[CBP Decision 03–01]

CUSTOMS ACCREDITATION OF BSI INSPECTORATE AMERICA CORPORATION AS A COMMERCIAL LABORATORY

AGENCY: Customs and Border Protection, Department of Homeland Security

ACTION: Notice of Accreditation of BSI Inspectorate America Corporation of Garden City, Georgia, as a Commercial Laboratory.

SUMMARY: BSI Inspectorate America Corporation of Garden City, Georgia has applied to Customs and Border Protection under Part 151.12 of the Customs Regulations for an extension of accreditation as a commercial laboratory to analyze petroleum products under Chapter 27 and Chapter 29 of the Harmonized Tariff Schedule of the United States (HTSUS). Customs has determined that this company meets all of the requirements for accreditation as a commercial laboratory. Specifically, BSI Inspectorate America Corporation has been granted accreditation to perform the following test methods at their Garden City, Georgia site: (1) Distillation of Petroleum Products, ASTM D86; (2) Water in Petroleum Products and Bituminous Materials by Distillation, ASTM D95; (3) API Gravity by Hydrometer, ASTM D287; (4) Kinematic Viscosity of Transparent and Opaque Liquids, ASTM D445; (5) Sediment in Crude Oils and Fuel Oils by Extraction, ASTM D473; (6) Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method, ASTM D1298; (7) Water and Sediment in Fuel Oils by the Centrifuge Method, ASTM D1796; (8) Water and Sediment in Middle Distillate Fuels by Centrifuge, ASTM D2709; (9) Water in Crude Oil by Distillation, ASTM D4006; (10) Percent by Weight of Sulfur by Energy-Dispersive X-Ray Fluorescence, ASTM D4294; (11) Water in Crude Oils by Coulometric Karl Fischer Titration, ASTM D4928; and (12) Vapor Pressure of Petroleum Products, ASTM D5191. Therefore, in accordance with Part 151.12 of the Customs Regulations, BSI Inspectorate America Corporation of Garden City, Georgia is hereby accredited to analyze the products named above.

LOCATION: BSI Inspectorate America Corporation accredited site is located at: Miles Street, Georgia Port Authority Gate #2, Garden City, Georgia, 31408.

EFFECTIVE DATE: May 20, 2003

FOR FURTHER INFORMATION CONTACT: Arlene Faustermann, Science Officer, Laboratories and Scientific Services, Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500 North, Washington, D.C. 20229, (202) 927-1060.

Dated: May 20, 2003

DONALD A. COUSINS,
Acting Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, June 10, 2003 (68 FR 34627)]

PROPOSED COLLECTION; COMMENT REQUEST

APPLICATION FOR EXTENSION OF BOND FOR TEMPORARY IMPORTATION

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Application for Extension of Bond for Temporary Importation. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the Federal Register (68 FR 5696) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 11, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public bur-

den and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Application for Extension of Bond for Temporary Importation

OMB Number: 1651-0015

Form Number: Customs Form-3173

Abstract: Imported merchandise which is to remain in the Bureau of Customs and Border Protection territory for 1-year or less without duty payment is entered as a temporary importation. The importer may apply for an extension of this period on Customs Form-3173.

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

Type of Review: Extension (without change)

Estimated Number of Respondents: 1,200

Estimated Time Per Respondent: 14 minutes

Estimated Total Annual Burden Hours: 348

Estimated Total Annualized Cost on the Public: \$5,568

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-927-1429.

Dated: June 3, 2003

TRACEY DENNING,
Agency Clearance Officer;
Information Services Branch.

[Published in the Federal Register, June 11, 2003, (68 FR 34995)]



PROPOSED COLLECTION; COMMENT REQUEST

APPLICATION AND APPROVAL TO MANIPULATE, EXAMINE, SAMPLE OR TRANSFER GOODS

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Application and Approval to Manipulate, Examine, Sample or Transfer Goods. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the Federal Register (68 FR 5697-5698) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 11, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington,

D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Application & Approval to Manipulate, Examine, Sample, or Transfer Goods

OMB Number: 1651-0006

Form Number: Form-3499

Abstract: CBP Form-3499 is prepared by importers or consignees as an application to request examination, sampling, or transfer of merchandise under CBP supervision. This form is also an application for the manipulation of merchandise in a bonded warehouse and abandonment or destruction of merchandise.

Current Actions: This submission is being submitted to extend the expiration date, with a change to the expiration date.

Type of Review: Extension (with change)

Estimated Number of Respondents: 151,140

Estimated Time Per Respondent: 6 minutes

Estimated Total Annual Burden Hours: 15,114

Estimated Total Annualized Cost on the Public: \$302,280

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-927-1429.

Dated: June 3, 2003

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, June 11, 2003, (68 FR 34996)]

PROPOSED COLLECTION; COMMENT REQUEST

DEFERRAL OF DUTY ON LARGE YACHTS IMPORTED FOR SALE

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Deferral of Duty on Large Yachts Imported for Sale. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the Federal Register (68 FR 5695-5696) on February 4, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 11, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written

comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Deferral of Duty on Large Yachts Imported for Sale

OMB Number: 1651-0080

Form Number: N/A

Abstract: Section 2406(a) of the Miscellaneous Trade and Technical Corrections Act of 1999 provides that an otherwise dutiable "large yacht" may be imported without the payment of duty if the yacht is imported with the intention to offer for sale at a boat show in the U.S.

Current Actions: This submission is being submitted to extend the expiration date with a change to the burden hours.

Type of Review: Extension (with change)

Estimated Number of Respondents: 100

Estimated Time Per Respondent: 60 minutes

Estimated Total Annual Burden Hours: 100

Estimated Total Annualized Cost on the Public: \$2,200.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-927-1429.

Dated: June 3, 2003

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, June 11, 2003, (68 FR 34997)]



DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, June 11, 2003,

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.

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

19 CFR PART 177

REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF AN INK JET COLOR PREPARATION

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

ACTION: Notice of revocation of ruling letters and treatment relating to tariff classification of an ink jet color preparation.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking three ruling letters pertaining to the tariff classification of an ink jet color preparation under the Harmonized Tariff Schedule of the United States (“HTSUS”). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical products. Notice of the proposed revocation was published on January 2, 2003, in the CUSTOMS BULLETIN. Several comments were received and are addressed in the attached HQ 966063.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 11, 2003.

FOR FURTHER INFORMATION CONTACT: Deborah Stern, General Classification Branch (202) 572–8785.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), notice was published on January 2, 2003 in the CUSTOMS BULLETIN, Volume 37, Number 1, proposing to revoke HQ 962365 and HQ 962918, dated April 28, 2000, and HQ 964191, dated May 24, 2000, which classified an ink jet color preparation in heading 3215, HTSUS, as printing ink. Several comments were received in response to the notice and are addressed in the attached HQ 966063.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the three identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period.

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

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

In HQ 962365 and HQ 962918, dated April 28, 2000, and HQ 964191, dated May 24, 2000, Customs directed three ports to reclassify "Pro-Jet Fast Yellow 2 RO Feed," a color preparation for ink jet printing as printing ink of heading 3215, HTSUS, based on a determination that ink jet printing ink did not require a traditional ink binder. In the proposed notice and ruling letter, Customs stated that the product in its condition as imported was not classifiable as a printing ink because it requires a degree of post-importation processing which exceeds the simple dilution or dispersion described in the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) to that heading before it is ready for use.

In addition, the instant product required the same post-importation processing before it is passed to consumers as "Pro-Jet Fast Cyan 2 Stage" and "Pro-Jet Cyan 1 Press Paste," substantially similar products Customs classified as color preparations of heading 3204, HTSUS, in HQ 965614 and HQ 965615, dated September 30, 2002, respectively. Customs stated it would be incongruous to maintain the instant product's classification in heading 3215, HTSUS, while substantially similar products requiring the same post-importation processing are classified in heading 3204, HTSUS, as color preparations.

Based on further research in conjunction with the comments received in response to the proposed notice, Customs believes that while still relevant, our focus on post-importation processing was somewhat over-emphasized. Several more factors were considered, such as advertising, product information and information gathered from technical sources, including the leading reference book on printing ink, from which Customs derives the position that the instant merchandise is used in making ink jet ink, but is not a printing ink.

As such, the instant product is classifiable in subheading 3204.14.30, HTSUS, which provides for "Synthetic organic coloring matter, whether or not chemically defined; preparations as specified in note 3 to this chapter based on synthetic organic coloring matter; synthetic organic products of a kind used as fluorescent brightening agents or as luminophores, whether or not chemically defined: synthetic organic coloring matter and preparations based thereon as specified in note 3 to this chapter: direct dyes and preparations based thereon: other."

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking HQ 962365, HQ 962918, HQ 964191 and any other ruling not specifically identified, to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analysis set forth in the attached ruling HQ 966063. This ruling also effectively clarifies the LAW AND ANALYSIS of HQ 965614 and HQ 965615. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical products. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN

Dated: June 4, 2003

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[Attachment]

[Attachment]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
CLA-2: RR:CR:GC 966063 DBS
Category: Classification
Tariff No.: 3204.14.30

ALEXANDER H. SCHAEFER
CROWELL & MORING LLP
1001 Pennsylvania Ave., NW
Washington, DC 20005

Re: Printing ink; Pro-Jet™ Fast Yellow 2 RO Feed color preparation; HQ 962365, HQ 962918 and HQ 964191 revoked.

DEAR MR. SCHAEFER:

On April 28, 2000, this office issued HQ 962365, our decision on the Application for Further Review of Protest # 1101-98-100179, which reclassified a color preparation for ink jet printers as a printing ink under heading 3215, Harmonized Tariff Schedule of the United States (HTSUS). We recently issued HQ 965614 (copy enclosed) and HQ 965615, dated September 30, 2002, to you on behalf of your client, Avecia Inc. ("Avecia"), who filed Protest # 1101-98-100179 on products substantially similar to the product at issue in the protest. Those products were determined to be classifiable not as printing inks, but as color preparations of heading 3204, HTSUS. In light of this outcome, we have reconsidered HQ 962365 and determined the classification to be incorrect.

HQ 962918, dated April 28, 2000, answering the Application for Further Review of Protest # 1401-98-100063, and HQ 964191, dated May 24, 2000, answering the Application for Further Review of Protest # 1001-99-102017, addressed the identical product, imported at different ports. Copies of this letter will be forwarded to all three ports.

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 the above identified ruling was published on January 2, 2003, in the Customs Bulletin, Volume 37, Number 1. Three comments opposing the proposal were received in response to the notice. The essence of the arguments and Customs response are included in the LAW AND ANALYSIS portion of this ruling. The proposed ruling was published as HQ 966036. That ruling number is incorrect. The correct ruling number is HQ 966063, as reflected above.

FACTS:

The imported product, "Pro-Jet™ Fast Yellow 2 RO Feed" ("Fast Yellow 2"), consists of an anionic water-soluble dye and certain additives in an aqueous medium made up of water and organic solvent. It is used in ink jet printing. Ink jet ink is distinguishable from traditional ink by its purity. It cannot contain extraneous material that may clog the fine printhead nozzles of an ink jet printer. The instant mixture contains no binder.

Avecia's website advertises the Pro-Jet™ line of products, including "Fast Yellow 2 liquid" (the imported product in its marketable form), as colorants. The "Manufacturing & Quality" section of the site states that most of Avecia's ink jet colorants "come in ready-to-use, aqueous liquid form, for ink preparation." "Fast Yellow 2 liquid" is advertised as being in "ready-to-use" form.

The "Technologies" section states that Avecia has been developing novel colorants and other ink components for aqueous ink jet inks for applications in commercial print, graphic arts and wide format, packaging and labels. Much of Avecia's technology is proprietary. Not only are their colorants proprietary, including the instant patented product (Patent # 5,374,301, issued December 20, 1994, entitled "Inks Suitable for Use in Ink Jet Printing"), but also additive technology for dye technology, dispersants and dispersion technology for pigments, and resins, polymers and *additives for formulation [of ink]*.

In the proposed version of this ruling, it was stated that this product did not have a binder because "after the dye mixture penetrates ink jet media (plain paper or special media), elements present in the mixture cause it to "lock" into plain paper or bond to special media by interacting with the chemical qualities of that substrate." Additional research, which will be discussed further in the LAW AND ANALYSIS section of this ruling, has shown that while this product may bind to media without "traditional binders," binders serve several important functions in ink jet ink, and are part of the common formulation of ink jet ink.

A sample of "Fast Yellow 2" was provided to the Customs laboratory in conjunction with two forms (liquid and paste) of the product at issue in HQ 965615. Lab analysis showed that the sample of "Fast Yellow 2" was substantially similar to those in the aforementioned prospective rulings issued by this office. However, the other products were imported in a concentrated paste form, while counsel for Avecia stated that "Fast Yellow 2" is in liquid form and is not concentrated. It is unknown if the sample was in its condition as imported, or in its condition as sold to the end user.

ISSUE:

Whether "Fast Yellow 2" is a preparation based on a dye of heading 3204, HTSUS, or a printing ink of heading 3215, HTSUS.

LAW AND ANALYSIS:

In the proposed version of this ruling, the LAW AND ANALYSIS section of HQ 965614 was incorporated by reference. In light of additional research in order to address the comments received in response to the proposed ruling, the LAW AND ANALYSIS of HQ 965614, and thus of the final HQ 966063, must be expanded. However, the analysis leads to the same conclusion reached in HQ 965614 and the proposed HQ 966063. Thus, the HOLDING remains the same.

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that goods cannot be classified solely on the

basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

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

The HTSUS provisions under consideration are as follows:

- 3204** Synthetic organic coloring matter, whether or not chemically defined; preparations as specified in note 3 to this chapter based on synthetic organic coloring matter; synthetic organic products of a kind used as fluorescent brightening agents or as luminophores, whether or not chemically defined:
- Synthetic organic coloring matter and preparations based thereon as specified in note 3 to this chapter:
- 3204.14 Direct dyes and preparations based thereon:
- 3204.14.30 Other
- * * * * *
- 3215** Printing ink, writing or drawing ink and other inks, whether or not concentrated or solid:
- Printing ink:
- 3215.19.00 Other

Note 3 to chapter 32, HTSUS, provides, in pertinent part, that “[h]eadin[g] 32.04 * * * appl[ies] also to preparations based on colouring matter * * * of a kind * * * used as ingredients in the manufacture of colouring preparations. The headings do not apply, however * * * to other preparations of heading 32.07, 32.08, 32.09, 32.10, 32.12, 32.13 or 32.15. The EN for subheadings 3204.11 to 3204.19 states that the synthetic organic coloring matter and preparations based thereon are subdivided on the basis of application or use. The EN describes direct dyes, in pertinent part, as, “water-soluble anionic dyes which, in aqueous solution in the presence of electrolytes, are substantive to cellulosic fibres * * * used for dyeing * * * paper.”

The instant product is described by its importer as a water-soluble anionic dye in an aqueous solution that is substantive to cellulosic fibers used for dyeing paper and other media used in ink jet printing. Avecia calls its line of ink jet products, including “Fast Yellow 2,” colorants or chromophores. A colorant is a recognized, common term used in the ink industry as well as by the courts (see below) as a component of printing ink. *See* The Printing Ink Manual, Fifth Edition, 684 (1993); Hue P. Le, “Progress and Trends in Ink-jet Printing Technology,” *Journal of Imaging Science and Technology*, Vol. 42, No. 1 (Jan/Feb 1998); Martin C. Jürgens, “Preservation of Ink Jet Hardcopies,” Capstone Project, Cross-Disciplinary Studies, Rochester Institute of Technology (August 27, 1999); Peter Gregory, “Ink jet printing: joining the jet set,” *Proceedings RMS*, Vol. 36/3, (September 2001). Colorant is an ingredient used in the manufacture of ink jet ink, a coloring preparation (printing ink). That the product which matches the description in the ENs for direct dyes may contain additives simply means that it is a preparation based on a direct dye. Thus, the product clearly fits the terms of Note 3 to chapter 32, HTSUS. According to GRI 1, it is classifiable as a preparation of heading 3204, HTSUS.

With respect to printing ink of heading 3215, HTSUS, there are no relevant section or chapter notes. However, the Court of International Trade concluded that inks contain colorants, binders and solvents. *See BASF Wyandotte Corp. v. United States*, 11 C.I.T. 652, 674 F. Supp. 1477 (CIT 1987), *aff’d* 855 F.2d 852 (CAFC 1988), *citing Corporation Sublistatica, SA v. United States*, 511 F. Supp. 805, 809 (CIT 1981) (hereinafter *Sublistatica*). Additionally, the ENs describe printing ink as follows:

(A) Printing inks (or colours) are pastes of varying consistency, obtained by mixing a finely divided black or coloured pigment with a vehicle. The pigment is usually carbon black for black inks and may be organic or inorganic for coloured inks. The vehicle consists of either natural resins or synthetic polymers, dispersed in oils or dissolved in solvents, and contains a small quantity of additives to impart desired functional properties.

* * * * *

These products are generally in the form of liquids or pastes, but they are also included in this heading when concentrated or solid (i.e., powders, tablets, sticks, etc.) to be used as inks after simple dilution or dispersion.

It is a maxim of customs law that tariff provisions were written for the future. *See, e.g., Borneo Sumatra Trading Co., Inc. v. United States*, 311 F. Supp. 326, 338–39 (Cust. Ct. 1970). All of the comments received in response to the proposed revocation raised this point, urging that often-advancing ink jet products should be encompassed in heading 3215, HTSUS. Additionally, in the initial Application for Further Review, the importer argued that because of this maxim, the three-component standard of *Sublistatica* should not be strictly applied. We agree with the latter argument but to a different end. Ink jet technology is specific to ink jet printing and did not exist at the time of *Sublistatica*. For a product to be ink jet ink, it requires certain other components.

In HQ 962365, the holding turned on whether, under *Sublistatica*, a product lacking a binder could be classifiable as a printing ink of heading 3215, HTSUS. We held that it was classifiable as ink because the product could bind to the media without binder. However, the highly-regarded *Printing Ink Manual*, which added a chapter to its fifth edition¹ dedicated to ink jet inks, states that while ink jet ink may have many formulations, it may be simply described as consisting of a solvent blend, colorant, binder and additives. *Id.* at 684. Binders not only serve to bind the colorant and provide adhesion to the surface, but binders control viscosity, promote droplet formation, and are responsible for other properties in the application of the ink. *See id.* at 686.

Other sources vary on the inclusion of binder as a component of ink jet ink. In one publication, a table illustrating water-based ink-jet ink composition lists deionized water, water soluble solvent, dye or pigment, surfactant, biocide, buffer and other additives. *See Le, supra*. Another source states that ink jet inks must fulfill a long list of contradictory requirements but can generally be defined as a mixture of a colorant in a vehicle, either water- or solvent-based. *See Jürgens, supra*. However, that source also lists binder as a typical ingredient of ink jet ink. While acknowledging that a polymer binder may form a film which can clog the printheads, Jürgens states that it can be avoided with a careful choice of solvent. *See id.*

Jürgens explains that polymer binders may also serve as mordants. Mordants anchor the colorant to the substrate, making water soluble dyes waterfast. Mordants other than polymer binders include chemical compounds that have an affinity for both the dye and the substrate, or added amine groups to make the dye cationic (i.e., positively charged ions will move towards a negatively charged electrode). *See id; for definition of "cationic," see generally Merriam-Webster's Collegiate Dictionary, Tenth Edition (2001).*

In Avecia's submissions addressing why the product does not need binder, only the matter of dye binding to media was discussed. Avecia's description of how additives in the product serve to bind it to media is the same manner in which Jürgens explains mordants. As described above, binder serves many important functions in ink jet ink, only one of which is binding ink to media. In addition, one of the additives which Avecia states aids in binding (the specific details of which are confidential) is a salt. However, according to *The Printing Ink Manual*, the most important and essential additive to ink jet inks is the salt because it provides the electrical conductivity for

¹The Printing Ink Manual, Fifth Edition, was published in 1993 and reprinted in 1999. The Printing Ink Manual is an international source that has been in print for over thirty years. It is regarded as the authority on printing ink technology, manufacturing, etc.

charging the droplet of ink. While it may aid in binding, as Avecia states, it is not the common purpose of salt in ink jet ink. And, as we have stated, colorant alone can bind to media, but that does not make it an ink.

Finally, Avecia's own Peter Gregory states that a typical ink jet ink is composed of water soluble dye, water, humectant, surfactant and penetrant. *See Gregory, supra*. He explains that the best ink jet colorants are anionic water-soluble dyes because they have good color fastness, reliability, safety and high thermal stability, all terms Avecia uses in its website to describe the instant product. According to Gregory, the first types of ink jet dyes had brilliant color but poor light fastness, a problem Avecia has worked to correct with azo dyes and copper phthalocyanine dyes, which have superior light fastness. *See id.*

Again, the terminology Avecia uses to advertise these products (color fastness, light fastness, etc.) are associated with colorants. Colorants are an ingredient of ink, and while a colorant will bind to media (as all dyes will to some degree or another), colorant is not an ink for purposes of tariff classification. Moreover, "Fast Yellow 2" liquid product is not covered in the description of printing inks in the ENs for heading 3215, HTSUS. Nor is it dedicated to a specific use within the realm of ink jet printing.

In HQ 965916, dated August 24, 1995, we noted that, among other reasons, a product called Irgalite®, which is imported in bulk powder form, was not classifiable as a printing ink of heading 3215, HTSUS, because it was not dedicated to a specific use with a specific substrate, but may require the addition of any number of solvents, additives, or other components. Thus, we stated, it constituted something other than "simple dilution." EN 32.15. While not addressing the EN to heading 3215, HTSUS, directly, we have similarly held other color preparations that were used in various ink applications to be classifiable in heading 3204, HTSUS, and not in heading 3215, HTSUS. *See HQ 953655*, dated March 3, 1995; *HQ 956158*, dated July 27, 1995; *HQ 956976*, dated March 7, 1995. Similarly, in *HQ 965614* and *HQ 965615*, we stated "Pro-Jet™ Fast Cyan 2 Stage" ("Cyan 2") and "Pro-Jet™ Fast Cyan 1 Press Paste," in their respective conditions as imported required more post-importation processing than "simple dilution or dispersion." EN 32.15. We also applied this to "Fast Yellow 2," which raises several points that must be addressed.

One commentator argued that "Fast Yellow 2" need not be dedicated to a particular type of ink jet printing, but simply ink jet printing as a whole. We disagree. There are two categories of ink jet printing, continuous ink jet (CIJ) and drop on demand (DOD). Within each category there are various types of ink jet applications, each requiring different functions. The range of applications for CIJ are complex and diverse, resulting in a vast array of ink formulations. *See The Printing Ink Manual*, 689. The physical and chemical properties required of a CIJ ink are highly demanding. *See id.* at 679. Thus, the additives, which impart specific functional properties, are vital to the ink formulation, though they may only comprise a very small percentage of the ink. *See id.* at 687. By including " * * * and contains a small quantity of additives to impart desired functional properties" in the description, the ENs to heading 3215, HTSUS, support this.

As with CIJ, there are several DOD applications. Each DOD process requires a different formulation of ink jet ink, such as piezo and bubble jet inks, which are generally used in office printing applications, valve jet inks used in industrial applications, and hot melt inks, which are solid at room temperature and generally consist of colorant and a polymer blend vehicle. Whereas in *Tomogawa USA, Inc. v. United States*, 681 F. Supp. 867, 874 (CIT 1988), *aff'd in part and vacated in part*, 861 F.2d 1275 (CAFC 1988), where the court held that although the imported toner was more than a dye or color because it was "of a particular kind and is prepared for the particular process of electrophotography," the instant product is not limited to a particular process of ink jet printing. This product may be specifically designed for use in ink jet applications, but there are several ink jet processes, each having different requirements.

We stated in *HQ 965614* that "[w]ithout specific information on the exact additives and processing done post-importation, we must conclude that "Cyan 2" falls short of being printing ink for tariff purposes." This holds true here. Given the vast array of

ink jet ink formulations, and without knowing the specific applications, we cannot conclude that this product is something other than a preparation of heading 3204, HTSUS. Thus, the argument that the product need only be dedicated to ink jet printing fails. For the above-mentioned reasons, the argument from several commentators that the product falls squarely within heading 3215, HTSUS, an *eo nomine* provision, as it satisfies the requirements for printing ink enumerated in *Corporation Sublistatica, SA v. United States*, 511 F. Supp. 805, 809 (1981) likewise fails.

We agree with the commentators that our focus on post-importation processing was somewhat over-emphasized. Upon further examination of the issue, we now believe the relevance of post-importation processing is properly explained above. In addition, we applied the post-importation processing to language in the proposed ruling that we now believe does not apply to this product, as one commentator argued. Accordingly, this final revocation ruling effectively clarifies the LAW AND ANALYSIS sections of HQ 965614 and HQ 965615.

The commentator also requested that Customs clarify what comprises "simple dilution and dispersion." Responding first to the clarification, this language applies only to ink in concentrated (be it liquid or paste) and solid forms. Dilution and dispersion are both terms of art in the ink and chemical industries. Thus, simple dilution or simple dispersion would presumably be the most basic forms of dilution or dispersion of a concentrated or solid ink preparation.

Second, we initially thought that "Fast Yellow 2" was a concentrated form, just as the two Cyan products are. It was the opinion of the Customs laboratory that analyzed the sample of the Fast Yellow 2 that the liquid, which was a slurry, was concentrated. At the same time, the lab analyzed two samples, one liquid and one paste, of Cyan 1-based products, which are concentrated (though only the paste was the subject of HQ 965615). The Customs scientist concluded that all three samples were concentrated. However, counsel for Avecia confirmed in a telephone call that the instant product was not in concentrated form. Therefore, the commentator is correct that the "simple dilution and dispersion" language is not a factor in the legal analysis of this product.

In addition to the foregoing reasons and Avecia's own advertising, we find that Avecia's patent further supports our conclusion that "Fast Yellow 2" is not a printing ink. Although the title suggests otherwise, the descriptions in the patent refer to formulations to which the product will be added. Accordingly, this product is not classifiable according to GRI 1 as a printing ink of heading 3215, HTSUS.

In light of the foregoing reasons, it is not classifiable according to GRI 2(a), which provides in part for incomplete or unfinished goods to be classified as the good itself if it imparts the essential character of the complete good. The legal note to chapter 32, HTSUS, is specific and inclusive of all preparations, that is, all mixtures, that satisfy the note. This product is a colorant, a preparation based on a direct dye, an ingredient used to make a preparation of 3215, HTSUS. It is fully described in heading 3204, HTSUS, and thus GRI 2(a) is not reached. It would be counterintuitive to classify an ingredient used to make a preparation of 3215, HTSUS (specifically provided for in the legal note), as a preparation of heading 3215, HTSUS. Moreover, without having the specific properties of a particular ink jet process, we cannot determine what the essential character of the complete ink jet product would be. Accordingly, HQ 962365, HQ 962918 and HQ 964191 are incorrect.

Under *San Francisco Newspaper Printing Co. v. United States*, 9 CIT 517, 620 F. Supp. 738 (1985), the liquidation of the entries covering the merchandise which was the subject of Protests 1001-99-102017, 1401-98-100063 and 1101-98-100179 was final on both the protestant and the Customs Service. Accordingly, this decision will not impact the classification of the merchandise which was covered by the entries subject to HQ 962365, HQ 962918 and HQ 964191.

With respect to the issue of post-importation processing, this ruling effectively clarifies HQ 965614 and HQ 965615, *supra* p. 8. We have also issued a ruling letter to correct a typographical error which appeared in the proposed ruling and in HQ 965614 and HQ 965615. See HQ 966277, dated April 15, 2003. The error was brought to our attention during the comment period. Both in the heading of the rulings and in the

HOLDING, we listed the tariff number as 3204.14.00, HTSUS, a nonexistent provision. This has been corrected to read 3204.14.30, HTSUS, which is the provision described in the HOLDING. This final revocation ruling reflects the correct number.

HOLDING:

“Pro-Jet Fast Yellow 2 RO Feed” is classified in subheading 3204.14.30, HTSUS, which provides for, “Synthetic organic coloring matter, whether or not chemically defined; preparations as specified in note 3 to this chapter based on synthetic organic coloring matter; synthetic organic products of a kind used as fluorescent brightening agents or as luminophores, whether or not chemically defined: synthetic organic coloring matter and preparations based thereon as specified in note 3 to this chapter: direct dyes and preparations based thereon: other.”

EFFECT ON OTHER RULINGS:

HQ 962365 and HQ 962918, dated April 28, 2000, and HQ 964191, dated May 24, 2000, 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.

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF HAND PAPER PUNCHES

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

ACTION: Notice of modification of ruling letter and revocation of treatment relating to tariff classification of certain hand paper punches.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling letter pertaining to the tariff classification of certain hand paper punches under the Harmonized Tariff Schedule of the United States (“HTSUS”), and is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published in the Customs Bulletin on April 30, 2003. 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 August 11, 2003.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the *Customs Bulletin* on April 30, 2003, proposing to revoke NY I87964, dated November 5, 2002, which involved the classification of certain hand paper punches. No comments were received in response to the notice.

As stated in the proposed notice, this modification will cover any rulings on the subject merchandise which may exist but which have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of

the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying NY I87964 and any other ruling not specifically identified in order to reflect the proper classification of the hand paper punches pursuant to the analysis set forth in HQ 966189, attached. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

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

DATED: June 6, 2003

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[Attachment]

[Attachment]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
CLA-2 RR:CR:GC 966189 HEF
CATEGORY: Classification
TARIFF NO.: 8203.40.60

June 6, 2003

MS. JESSICA T. DEPINTO
HODES, KEATING & PILON
39 South LaSalle Street, Suite 1020
Chicago, Illinois 60603-1731

Re: Modification of **NY I87964**; hand paper punches

DEAR Ms. DEPINTO:

This is in response to your letter dated January 23, 2003, requesting reconsideration of New York Ruling Letter (NY) I87964, which was issued to your client, Fiskars Consumer Products, Inc., on November 5, 2002, classifying certain hand paper punches in subheading 8203.40.30, Harmonized Tariff Schedule of the United States (HTSUS), as perforating punches and similar handtools with cutting part containing by weight over 0.2 percent of chromium, molbydenum, or tungsten or over 0.1 percent of vanadium. This reconsideration only concerns the hand punches classified in NY I87964 and not the mini palm punches and the photo corner punches also classified therein. In preparing this ruling, consideration was given to an additional submission made on February 20, 2003. We have reconsidered the classification of the merchandise at issue and have determined that NY I87964, in part, is incorrect.

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 I87964, as described below, was published in the *Customs Bulletin* on April 30, 2003. No comments were received in response to the notice.

FACTS:

The subject merchandise are perforating punches to be used primarily in paper and card crafting, but they may also be used in metal and leather crafting. The punches are one-hole devices with cutting parts of high carbon steel. The punches come in numerous die cast shapes including bears, flowers, hearts and moons. The samples submitted are a 1/4 inch flower shape punch and a 1/4 inch heart shaped punch.

Chromium, molybdenum, tungsten and vanadium are used as hardening agents in the steel punches in small quantities. Chemical analyses of five samples of the subject merchandise show that the content by weight of chromium, molybdenum and tungsten is under 0.2 percent. The content by weight of vanadium is under 0.1 percent.

ISSUE:

Whether the subject hand punches are classifiable as perforating punches with cutting parts containing by weight over 0.2 percent of chromium, molybdenum, or tungsten or over 0.1 percent of vanadium under subheading 8203.40.30, HTSUS, or as other perforating punches classified under subheading 8203.40.60, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

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

The HTSUS provisions under consideration are as follows:

8203	Files, rasps, pliers (including cutting pliers), pincers, tweezers, metal cutting shears, pipe cutters, bolt cutters, perforating punches and similar handtools, and base metal parts thereof:
8203.40	Pipe cutters, bolt cutters, perforating punches and similar tools, and parts thereof:
8203.40.30	With cutting part containing by weight over 0.2 percent of chromium, molybdenum, or tungsten or over 0.1 percent of vanadium.
*	* * * * *
8203.40.60	Other (including parts).

Chemical analyses performed on the cutting parts of the subject punches demonstrate that chromium, molybdenum and tungsten are present in very small quantities which do not amount to 0.2 percent by weight. The results also show that the content of vanadium is well under 0.1 percent by weight. Therefore, the original classification of the subject merchandise in subheading 8203.40.30, HTSUS, is incorrect.

Due to the chemical composition of their cutting parts, the subject punches are classified in subheading 8203.40.60, HTSUS, which provides for files, rasps, pliers (including cutting pliers), pincers, tweezers, metal cutting shears, pipe cutters, bolt cutters, perforating punches and similar handtools, and base metal parts thereof: pipe cutters, bolt cutters, perforating punches and similar tools, and parts thereof: other (including parts).

HOLDING:

The subject merchandise is classifiable in subheading 8203.40.60, HTSUS, which provides for files, rasps, pliers (including cutting pliers), pincers, tweezers, metal cutting shears, pipe cutters, bolt cutters, perforating punches and similar handtools, and

base metal parts thereof: pipe cutters, bolt cutters, perforating punches and similar tools, and parts thereof: other (including parts).

EFFECT ON OTHER RULINGS:

NY I87964, dated November 5, 2002, is hereby modified. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN
GLASS ARTICLES WITH WIRE BAIL AND TRIGGER, RUBBER RING
CLOSURE SYSTEMS

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

ACTION: Notice of proposed modification of a ruling letter and revocation of treatment relating to the tariff classification of certain glass articles with wire bail and trigger, rubber ring closure systems under the Harmonized Tariff Schedule of the United States ("HTSUS").

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify one ruling and to revoke any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of certain glass articles with wire bail and trigger, rubber ring closure systems. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before July 11, 2003.

ADDRESS: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, NW, Mint Annex, Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, NW, 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: Andrew M. Langreich, General Classification Branch: (202) 572–8776.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify Headquarters Ruling Letter (HQ) 965200, dated July 10, 2002. HQ 965200 is set forth as "Attachment A" to this document.

Although in this notice Customs is specifically referring to one ruling, HQ 965200, this notice covers any rulings on similar merchandise that may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases; no further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, other than the referenced rulings (see above), should advise Customs during this notice period.

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

importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to modify HQ 965200 only as it pertains to the classification of certain glass articles with wire bail and trigger, rubber ring closure systems, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 966256 (see "Attachment B" to this document). In HQ 965200, Customs concluded that the glass articles with wire bail and trigger, rubber ring closure systems were, pursuant to *Myers v. United States*, 969 F. Supp. 66, 71-73 (CIT 1997), classifiable under heading 7010, HTSUS, which provides for, among other things, preserving jars of glass (which *Myers* determined is, as it pertains to preserving jars, an *eo nomine* provision). Based upon the appearance, size and capacity of the articles at issue, Customs has reconsidered its conclusions regarding these articles, and classifies the articles under heading 7013, HTSUS, as set forth in Attachment B.

Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: June 2, 2003

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
CLA-2 RR:CR:GC 965200 AML
CATEGORY: Classification
TARIFF Nos.: 7010.90.50; 7013.39.50;
7013.39.60; 7013.99.50; 9405.50.40

PORT DIRECTOR
U.S. CUSTOMS SERVICE
1500 Port Blvd.
Miami, FL 33132

RE: Protest 5201-00-100573; glass articles

DEAR PORT DIRECTOR:

This is in response to protest 5201-00-100573 (the apparent "lead" protest), which pertains to the tariff classification of certain articles of glass under the Harmonized Tariff Schedule of the United States (HTSUS); this ruling also addresses protests

5201-00-100574 and 5201-00-100792, which concern entries of similar articles and were suspended pending the determination of protest 5201-00-100573; this ruling also addresses protest 5201-00-100369, filed by a surety for the importer and also suspended pending determination of the lead protest. Pictorial representations and catalogue descriptions of the goods were submitted for our examination. Consideration was given to the presentation of counsel for the protestant in a telephone conference with representatives of this office on May 31, 2002, as well as a supplemental submission received on June 11, 2002.

FACTS:

Five entries, filed June 3, 25 and 29, July 19 and September 15, 1999, are included in the lead protest, which is against the classification of the various styles of glassware entered in the protested entries. The glassware is described in the following table (in order by entry and as the items appear in the invoice for each entry, unless otherwise noted; the following designations/abbreviations apply: La Mediterranea = LM; Vetreria Etrusca = VE; Shandong Gaomi = SG; H = height; W = width):

Factory/#	Protestant's #	Description
LM 5023	605023	Puchades Jar, 1000 ml capacity 3" opening with 1" lip W 5.87" H 5.52" cork closure
LM 5024	605024	Puchades Jar, 500 ml capacity 2.5" opening with 1" lip W 4.61" H 4.53" cork closure
LM 5025	605025	Puchades Jar, 250 ml capacity 2" opening with 1.75" lip W 3.66" H 3.66" cork closure
LM 5028	605028	Mielera Jar, 1000 ml capacity 2" opening with 1.75" lip W 5.12" H 4.93" cork closure
LM 5029	605029	Mielera Jar, 500 ml capacity 2.25" opening with 1" lip W 4.33" H 4.49" cork closure
LM 5030	605030	Mielera Jar, 250 ml capacity 2" opening with 1.75" lip W 3.74" H 3.98" cork closure
LM 5077	605077	Cuadrado Big Square 3.37" opening with .25" lip W 3.37" H 4.73"
LM 5079	605079	Cuadrado Small Square 3.37" opening with .25" lip W 3.37" H 3.15"
LM 9046	609046	Redonodo Small Flower Pot 2.51" opening with .25" lip W 2.51" H 2.56"
LM 9131	609131	Ecologic flower 4.48" opening with .25" lip W 4.48" H 4.48"
LM 9135	609135	Ecologic mini flower 2.31" opening with .25" lip W 2.31" H 3.15"

Factory/#	Protestant's #	Description
LM 9154	609154	Margarita small flower 1.5" opening with 3.5" lip W "taper" H 2.5"
VE 02991177	100610	Vaso Leonardo, 106 ml capacity 1.6" opening with .32" lip W 2.64" H 2.52"
VE 02991178	100611	Vaso Leonardo, 212 ml capacity 2" opening with .32" lip W 3.36" H 3.04"
VE 02991178	100612	Vaso Leonardo, 314 ml capacity 2.2" opening with .32" lip W 3.68" H 3.28"
VE 03001180	100613	Vaso Leonardo, 370 ml capacity 2.48" opening with .32" lip W 3.80" H 3.40"
VE 02001363	100650	Vaso Quadro Firenze, 212 ml capacity 1.8" opening with .32" lip W 2.84" H 3.20"
VE 02001564	100520	Quadrotta, 500 ml capacity .8" opening with .32" lip W 2.92" H 7.12" cork closure
VE 02001660	100532	Giotto, 500 ml capacity .68" opening with .32" lip W 2.88" H 14" cork closure
VE 02001669	100530	Giotto, 100 ml capacity .36" opening with .32" lip W 1.8" H 9" cork closure
VE 02002094	100531	Giotto, 200 ml capacity .44" opening with .32" lip W 2.16" H 10.80" cork closure
VE 02002903	100202	Cuore Collo Stretto, 100 ml capacity .48" opening with .25" lip W 3.04" H 5.04" cork closure
VE 02003795	100550	Rafaello Quadra, 200 ml capacity .44" opening with .32" lip W 2.00" H 10.80" cork closure
VE 02001733	100080	Mezzo Onda Piu, 250 ml capacity .80" opening with .32" lip W 2.72" H 7.76" cork closure
VE 02001126	100090	Mezzo Onda Meno, 250 ml capacity .80" opening with .32" lip W 2.72" H 7.76" cork closure
VE 02001219	100430	Vaso Giotto, 380 ml capacity 2.48" opening with .32" lip W 4.00" H 3.96"

Factory/#	Protestant's #	Description
VE 02001498	100080	Strauss, 200 ml capacity .76" opening with .32" lip W 3.24" H 4.24" cork closure
VE 02003570	100380	Lipari, 100 ml capacity .40" opening with .32" lip W 1.80" H 10.80" cork closure
VE 02002090	100370	Salina, 100 ml capacity .40" opening with .32" lip W 1.92" H 10.80" cork closure
VE 02002045	100170	Luna, 200 ml capacity .68" opening with .32" lip W 2.72" H 7.76" cork closure
VE 02001686	100270	Pesce Squalo, 750 ml capacity .80" opening with .32" lip W 3.80" H 14.32" cork closure
VE 03000739	100040	Goccia, 100 ml capacity .28" opening with .32" lip W 2.32" H 7.08" cork closure
VE 02001481	100340	Beethoven, 500 ml capacity .80" opening with .32" lip W 3.72" H 12.72" cork closure
VE 02001441	100350	Rossini, 500 ml capacity .68" opening with .32" lip W 3.60" H 12.72" cork closure
VE 02003769	100290	Cammello, 200 ml capacity .68" opening with .32" lip W 4.40" H 8.64" cork closure
VE 02000913	100100	Cuadra Onda, 250 ml capacity .68" opening with .32" lip W 2.32" H 6.12" cork closure
VE 02003716	100450	Vaso Le Carre, 200 ml capacity 3.48" opening with bail and trigger closure W 3.48" H 2.48"
VE 02002797	100460	Vaso Le Carre, 350 ml capacity 3.48" opening with bail and trigger closure W 3.48" H 3.76"
VE 02001847	100060	Palline, 100 ml capacity .32" opening with .28" lip W 2.32" H 7.08" cork closure
VE 02001717	100275	Pesce Luna, 750 ml capacity .76" opening with .36" lip W 6.16" H 9.32" cork closure

Factory/#	Protestant's #	Description
VE 02001562	100510	Quadrotta, 100 ml capacity .56" opening with .32" lip W 1.96" H 3.88" cork closure
VE 02001563	100515	Quadrotta, 250 ml capacity .56" opening with .32" lip W 2.48" H 5.36" cork closure
VE 02001978	100525	Michelangelo, 100 ml capacity .48" opening with .2" lip W 2.00" H 9" cork closure
VE 02001978	100526	Michelangelo, 200 ml capacity .48" opening with .28" lip W 2.36" H 10.8" cork closure
VE 02001978	100527	Michelangelo, 500 ml capacity .76" opening with .24" lip W 2.8" H 14" cork closure
VE 02001976	100540	Raffaello, 100 ml capacity .48" opening with .2" lip W 1.6" H 9" cork closure
VE 02002101	100541	Raffaello, 200 ml capacity .48" opening with .28" lip W 2.00" H 10.80" cork closure
VE 02002142	100570	Vienna, 200 ml capacity .48" opening with .32" lip W 2.40" H 8.88" cork closure
VE 02001685	100280	Pesce, 750 ml capacity .76" opening with .36" lip W 4.48" H 13.60" cork closure
VE	100581	Onda Alta, 200 ml capacity .56" opening with .32" lip W 2.00" H 8.28" cork closure
VE	100400	Onda Alta, 100 ml capacity .48" opening with .32" lip W 1.52" H 6.76" cork closure
VE 03001403	100260	Cavallucio Marino, 200 ml capacity .76" opening with .24" lip W 3.72" H 9.40" cork closure
VE 03000628	100430	Vaso Giotto, 380 ml capacity 2.48" opening with .32" lip W 4.00" H 3.96"
VE 98000101	100470	Vaso Le Carre, 500 ml capacity 3.28" opening with bail and trigger closure W 3.48" H 4.92"

Factory/#	Protestant's #	Description
VE 02001232	100600	Toledo, 100 ml capacity .48" opening with .32" opening W 2.56" H 4.52" cork closure

On May 15, 2002, a member of my staff confirmed with counsel for the protestant that the articles listed above comprise the articles contained in three of the five protested entries: WYQ-2002-4740, WYQ-2002-6745 and WYQ-2002-3494. From the entry summaries for the remaining entries, we note the remaining styles that are subject of the protest (duplicated styles are not repeated):

Factory/#	Protestant's #	Description
SG 933		Melon Jar 1.7 liter with cork lid
SG 928		Melon Jar 3.7 liter with cork lid
SG 929		Melon Jar 7 liter with glass lid
SG 930		Melon Jar 16 liter with glass ball top
SG 901		Orcio Hermetic Jar with hinged glass
SG 702LE		12" Square pasta with cork lid
SG 6701		Chairman Jar .85 liter
SG 6702		Chairman Jar .4 liter with cork lid
SG 9801		Fruit Basket Shaped Jar
SG GS-23		Quadra Etung
SG 3501-4		Square Jar .85 liter with cork lid

The protestant states that "most of the samples" are used as glass candle holders. The protestant states that the articles are imported empty and following importation will be filled with candle wax or gel and wick. For these reasons, the protestant asserts that the articles are classifiable under heading 9405, HTSUS, which provides for "non-electric lamps and light fittings." Specifically, the protestant contends that articles numbered 605079, 609154, 609046, 605077, 609135, 605030, 609131, 605028, 605029, 605025, 605023, 605024 should be so classified.

The protestant states that other samples should be classified under heading 7010, HTSUS, which provides for glass containers commonly used commercially for the conveyance and packing of goods. Specifically, the protestant contends that articles numbered 100280, 100470, 100570, 100581, 100260, 100400, 100430, 100541, 100526, 100540, 100527, 100525, 100275, 100515 and 100510 should be so classified.

The entries were made on June 3, 25 and 29, July 19 and September 15, 1999, and the entries were liquidated on September 15, 2000. All of the merchandise was classified under subheadings 7013.39 and 7013.99, HTSUS, as table or kitchen glassware or decorative glassware, respectively, depending at the eight-digit level upon value. On December 13, 2000, counsel for the protestant filed this protest, arguing alternatively as described above and below that the merchandise is of a kind used for the conveyance or packing of goods and should be classified in heading 7010, HTSUS, or as non-electric lamps and light fittings (candleholders) under heading 9405, HTSUS.

ISSUE:

Whether the glassware is classifiable as preserving jars of glass or containers of a kind used for the conveyance or packing of goods under heading 7010, HTSUS, or glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes under heading 7013, HTSUS, or as non-electric lamps and light fittings under heading 9405, HTSUS?

LAW AND ANALYSIS:

Initially, we note that the lead protest (5201-00-100573, so too were protests 5201-00-100574 and 5201-00-100792) was timely filed (*i.e.*, within 90 days after but not

before the notice of liquidation; see 19 U.S.C. § 1514(c)(3)(A)) and the matter protested is protestable (see 19 U.S.C. § 1514(a)(2) and (5)).

With regard to protest 5201-00-100369¹, we note that the affected entries were liquidated on September 15, 2000 and the protest bears a filing date of April 9, 2001—206 days after liquidation. Using the September 15, 2000, date as the date of filing of the protest, the protest was untimely filed (*i.e.*, a protest must be filed within 90 days after but not before the notice of liquidation (19 U.S.C. § 1514(c)(3)(A); 19 C.F.R. § 174.12(e)). The notice of liquidation was dated September 15, 2000, and the protest was filed April 9, 2001, 206 days after the notice of liquidation). For an example of the judicial treatment of a protest filed after the 90-day period for filing a protest, see *Penrod Drilling Co. v. United States*, 13 CIT 1005, 727 F. Supp. 1463, rehearing dismissed, 14 CIT 281, 740 F. Supp. 858 (1990), affirmed, 9 Fed. Cir. (T) 60, 925 F. 2d 406 (1991). Protest 5201-00-100369 must be denied.

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRIs). GRI 1, HTSUS, states, in pertinent part, that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes.

The Harmonized Commodity Description And Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise. Customs believes the ENs should always be consulted. See T.D. 89-80, published in the Federal Register August 23, 1989 (54 FR 35127, 35128).

The HTSUS provisions under consideration are as follows:

7010	Carboys, bottles, flasks, jars, pots, vials, ampoules and other containers, of glass, of a kind used for the conveyance or packing of goods; preserving jars of glass; stoppers, lids and other closures, of glass:
	Other, of a capacity:
7010.90	Exceeding 0.33 liter but not exceeding 1 liter:
7010.90.20	Produced by automatic machine.
7010.90.50	Other containers (with or without their closures).
*	* * * * *
7013	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):
	Glassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass-ceramics:
7013.39	Other:
7013.39.20	Valued not over \$3 each.
7013.39.50	Valued over \$3 but not over \$5 each.
7013.39.60	Valued over \$5 each.
	Other glassware:
7013.99	Other:
	Other:
7013.99.50	Valued over \$0.30 but not over \$3 each.
7013.99.60	Valued over \$3 but not over \$5 each.
*	* * * * *

¹ The Customs Form ("CF") 19 completed by the surety bears a hand-written protest number 5201-00-100573. Via e-mail dated May 24, 2002, Customs Miami confirmed the protest number to be 5201-00-100369.

- 9405 Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
- 9405.50 Non electrical lamps and lighting fittings:
Other:
- 9405.50.40 Other.

An article is to be classified according to its condition as imported. See *XTC Products, Inc. v. United States*, 771 F.Supp. 401, 405 (1991). See also, *United States v. Citroen*, 223 U.S. 407 (1911). The articles at issue are empty glassware of various shapes and sizes. While the use of the articles is considered in the analysis (see below), the sizes, characteristics and appearance of the articles are also considered in determining their classification.

Via facsimile dated June 11, 2002, the protestant presented evidence that all of the articles sourced from Vetreria Etrusca are annealed after shaping during the process of manufacture. We note that "all glass articles must go through an annealing or heat-treatment cycle after forming and cooling as annealing prevents harmful stresses from freezing into the glass." See HQ 960274, dated October 9, 1997. Thus, the annealing process does not influence our classification determinations.

The provision for preserving jars of glass in heading 7010 is an *eo nomine* provision (*Myers v. United States*, 969 F. Supp. 66, 71-73 (CIT 1997)). The provision in heading 7010 for containers "of a kind used" for the conveyance or packing of goods and the provision in heading 7013 for glassware "of a kind used" for table or kitchen purposes are "principal use" provisions (*Group Italglass U.S.C., Inc. v. United States*, 17 CIT 226 (1993)). As an *eo nomine* provision is more specific than a use provision, we will consider the former first. Next, we will consider merchandise which is properly classifiable under heading 7010 as "of a kind used" as it cannot be classified under heading 7013, because of the specific parenthetical provision to that effect in heading 7013 (*Myers*, 969 F. Supp. at 75).

The provision for preserving jars of glass in heading 7010 was considered in *Myers, supra*. That case concerned jars with wire bail and rubber ring closure systems. The Court found the jars to be classifiable under the provision for "preserving jars of glass" in heading 7010. The Court concluded that:

The three fundamental feature[s] which distinguish 'preserving' jars from 'packing and conveyance' jars and 'storage' jars are: (1) the thickness of the glass in the walls of the jars; (2) the jar's ability to form and maintain a hermetic seal; and (3) the jar's potential for reuse as a canning or preserving jar. [969 F. Supp. at 74]

In this case, item #s 100450, 100460, 100470, each with a wire bail and trigger, rubber ring closure system, are classifiable in accordance with *Myers, supra*. That is, the articles meet the 3-part test of *Myers* in that the glass walls of the jars are relatively thick, the closure system provides the ability to form and maintain a hermetic seal, and the jars have potential for reuse as canning or preserving jars. Based on *Myers* and the criteria therein, we conclude that these articles are described in the *eo nomine* provision "preserving jars of glass" in heading 7010, HTSUS. Item #s 100450, 100460, 100470, each with a wire bail and trigger, rubber ring closure system, are classified in subheading 7010.90.50, HTSUS. This is consistent with Headquarters Ruling (HQ) 960513 dated August 11, 1997, and HQ 959637 dated December 4, 1997.

EN 70.10 states, in pertinent part that "[t]his heading covers all glass containers of the kind commonly used commercially for the conveyance or packing of liquids or of solid products (powders, granules, etc.). * * * " The key phrase in the quoted material is "commonly used commercially for the conveyance or packing" of liquids or solid products. The root word of "commercially" is commerce, which is described as the exchange or buying and selling of commodities. The *Random House Dictionary of the English Language* (1973), p. 295, and *Webster's New World Dictionary (3rd Coll. Ed.)* (1988), p. 280. The root word of "conveyance" is convey which is described as to carry,

bring or take from one place to another; transport; bear. *Supra*, at p. 320 and p. 305, respectively.

In applying Additional U.S. Rule of Interpretation 1(a), HTSUS, and the relevant cases below to heading 7010, HTSUS, it is Customs position that, as a general rule, a glass article“(tm)s physical form will indicate its principal use and thus to what class or kind it belongs. However, should an exception arise so that an article“(tm)s physical form does not indicate to what class or kind it belongs or its physical form indicates it belongs to more than one class or kind, Customs considers the other enumerated principal use criteria.

With regard to the “Vaso Leonardo”, “Vaso Quadro Firenze” and “Quadrotta”, (item #s 100610, 100611, 100613, 100650, 100510, 100515 and 100520), the sizes of the openings and necks vary but each article is configured to “hold” a lid or cap with a traditional threaded closure. There is no evidence as to whether the ultimate purchaser’s primary expectation would be to discard or recycle the articles after the goods conveyed or packed in them are destroyed, but the relatively ordinary appearance (*e.g.*, compared to the other articles considered in this protest) and nature of the articles supports such a conclusion. There is no evidence whether the environment of sale of the articles features the goods packed in the articles and not the articles themselves, or whether the articles are recognized in the trade as used primarily to pack and convey goods to a consumer who then discards or recycles the articles after this initial use, but the physical form (see above) indicates that this is so. Item #s 100610, 100611, 100613, 100650, 100510, 100515 and 100520 are properly classified in heading 7010, HTSUS, and therefore may not be classified in heading 7013, HTSUS. They are classifiable as containers of glass of a kind used for the conveyance or packing of goods in subheading 7010.90.50, HTSUS. This is consistent with HQ 959639 dated October 21, 1997.

Within heading 7013, subheading 7013.39.20 provides for “*** [g]lassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass-ceramics: *** [o]ther: *** [o]ther: [v]alued not over \$3 each”; subheading 7013.39.50 provides for “*** [g]lassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass-ceramics: *** [o]ther: *** [o]ther: *** [v]alued over \$3 each: *** [o]ther: *** [v]alued over \$3 but not over \$5 each”; and subheading 7013.99.60 provides for “*** [g]lassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass-ceramics: *** [o]ther: *** [o]ther: *** but not [v]alued over \$3 each: *** [o]ther: *** [v]alued over \$5 each”.

Headings 7013 and 9405, HTSUS, as applicable to the merchandise under consideration, are controlled by use (other than actual use) (see *Group Italglass U.S.A., Inc. v. United States*, 17 CIT 1177, 839 F. Supp. 866 (1993); *E.M. Chemicals v. United States*, 923 F. Supp. 202 (CIT 1996); *Stewart-Warner Corp. v. United States*, 3 Fed. Cir. (T) 20, 25, 748 F.2d 663 (1984)). If an article is classifiable according to the use of the class or kind of goods to which it belongs, as is true of these provisions, Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that:

In the absence of special language or context which otherwise requires—(a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

In other words, the article’s principal use in the United States at the time of importation determines whether it is classifiable within a particular class or kind (principal use is distinguished from actual use; a tariff classification controlled by the latter is satisfied only if such use is intended at the time of importation, the goods are so used and proof thereof is furnished within 3 years after the date the goods are entered (U.S. Additional Note 1(b); 19 C.F.R. § 10.131—10.139); as stated above, the competing provisions are principal use provisions, not actual use provisions).

This office has exhaustively reviewed the principal use of articles such as those under consideration (glassware in various forms contended to be principally used as

candle holders). In the March 25, 1998, edition of the CUSTOMS BULLETIN, Volume 32, Number 12, page 32, Customs issued a notice under 19 U.S.C. § 1625 proposing to modify or revoke two Headquarters and five New York ruling letters, to classify the articles described therein as other glassware of a kind used for indoor decoration or similar purposes in subheading 7013.99, HTSUS, instead of as candle holders in subheading 9405.50.40, HTSUS. The comments submitted in response to this notice provided considerable information regarding the "pertinent factors" (see above) related to the principal use of the class or kind of goods to which the goods considered in the proposed rulings belong. Based on this information, Customs has concluded that the class or kind for goods such as the "Vaso Leonardo" and similar containers is defined by the form or shape of the article (*e.g.*, bell-shape, similar to bell-shape, flower pot shape, tulip or flower petal shape, cube or rectangle shape, and possibly other shapes) and its size. We have found there to be a clear distinction between glassware used as candle holders and that used for general indoor decoration based on the size of the articles, in the absence of other pertinent evidence or information. Glassware of those forms with an opening of 4 inches or less in diameter and a height or depth of 5 inches or less is used substantially more frequently as a candle holder than for any other purpose, according to the information we have obtained, and larger glassware is used substantially more frequently for general indoor decoration.

The Courts have provided factors, which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. (See *Kraft, Inc. v. United States*, 16 CIT 483 (1992), *G. Heileman Brewing Co. v. United States*, 14 CIT 614 (1990), and *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), cert. denied, 429 U.S. 979 (1976).)

Note 1(e) to Chapter 70, HTSUS, provides that the Chapter does not cover "lamps or light fittings * * * * or parts thereof of heading 9405[.]" Thus, if it is determined that the essential character of the articles is that of a candleholder, the articles cannot be classified under heading 7013, HTSUS.

The EN to heading 9405, HTSUS, states that lamps and light fittings of this group can be composed of any material and use any source of light, including candles. In addition, EN 9405 states that this heading covers "in particular: (6) [c]andelabra, candlesticks, and candle brackets[.]"

We have previously considered the definitions of the terms used in the heading and EN. In Headquarters Ruling Letter (HQ) 957412, dated August 1, 1995, we stated that:

[T]hese rulings (HQ 954308 dated June 6, 1994, HQ 955935 dated May 16, 1994, HQ 953016 dated April 27, 1993, HQ 088742 dated April 22, 1991, and HQ 089054 dated August 2, 1991) held that the terms "candlestick", "candlestick holder", and "candle holder" are interchangeable. Candle holder has been defined as a candlestick, *Webster's II New Riverside University Dictionary*, pg. 224 (1st ed. 1984), and as a holder for a candle; candlestick, *The Random House Dictionary of the English Language*, pg. 216 (1st Ed. 1983). Candlestick has been defined as a utensil for supporting a candle, whether elaborately made or in the common form of a saucer with a socket in the center, *Webster's New International Dictionary*, pg. 390 (2d ed. 1939). Reference to lexicographic authorities is proper when determining the meaning of a tariff term. *Hasbro Industries, Inc. v. U.S.*, 703 F. Supp. 941 (CIT 1988), *aff'd*, 879 F.2d 838 (1989); *C.J. Tower & Sons of Buffalo, Inc. v. U.S.*, 69 CCPA 128, 673 F.2d 1268 (1982).

Based on the above authorities, Customs issued Treasury Decision (T.D.) 96-7 which, among other things, adopted certain criteria as indicative, but not conclusive, of whether a particular glass article qualifies as part of the class "containers of glass of a kind used for the conveyance or packing of goods" in heading 7010, HTSUS, or the

class "glassware of a kind used for table or kitchen purposes; glass storage articles" in heading 7013, HTSUS.

The criteria in T.D. 96-7 for containers of glass of a kind used for the conveyance or packing of goods in heading 7010, HTSUS, are:

1. [The container] generally [has] a large opening, a short neck (if any) and as a rule, a lip or flange to hold the lid or cap, [is] made of ordinary glass (colourless or coloured) and [is] manufactured by machines which automatically feed molten glass into moulds where the finished articles are formed by the action of compressed air;
2. [T]he ultimate purchaser's primary expectation is to discard/recycle the container after the conveyed or packed goods are used;
3. [The container is] sold from the importer to a wholesaler/distributor who then packs the container with goods;
4. [The container is] sold in an environment of sale that features the goods packed in the container and not the jar itself;
5. [The container is] used to commercially convey foodstuffs, beverages, oils, meat extracts, etc.;
6. [The container is] capable of being used in the hot packing process; and
7. [The container is] recognized in the trade as used primarily to pack and convey goods to a consumer who then discards the container after this initial use.

Applicability of the foregoing criteria to the merchandise is as follows. Each of the articles appears to have been manufactured by automatic machine from ordinary glass. The articles are imported by the protestant and in turn are sold to wholesalers/distributors who packs them with foodstuffs, beverages, oils, etc., for commercial conveyance and sale. There is no evidence whether the articles are capable of being used in the hot packing process.

Item #s 605077, 605079, 609135, and 609046 meet the criteria delineated above regarding the differentiation of glass articles for conveyance or decoration versus candleholders. They are either in the form of flower pots or squares and are of the dimensions commonly associated with candleholders. Thus item #s 605077, 605079, 609135, and 609046 will be classified under heading 9405, HTSUS.

Application of the criteria in T.D. 96-7, *supra*, to the remaining articles indicates that they are not of the class or kind principally used for the conveyance or packing of goods. The sizes of the openings and necks vary but the articles are not configured to "hold" a lid or cap, other than having a rim with which a cork or similar closure may be used. There is no evidence as to whether the ultimate purchaser's primary expectation would be to discard or recycle the articles after the goods conveyed or packed in them are used or exhausted. However, the attractive, unique and unusual forms of the articles (the "Puchades" and "Mielera" Jars (item #s 605023, 605024, 605025, 605028, 605029 and 605030), Giotto bottles (item #s 100532, 100530, 100531), Cuore Collo Stretto (item # 100202), Rafaello Quadra (item # 100550), Mezza Onda Piu (item # 1000080), Meza Onda Meno5 (item # 100090), Vaso Giotto (item # 100430), Strauss (item # 10561), Lipari (item # 100380), Salina (item # 100370), Luna (item # 100170), Pesce Squalo (item # 100270), Goccia (item # 100040), Beethoven (item # 100340), Rossini (item # 10035), Cammello (item # 100290), Quadra Onda (item # 100100), Paline (item # 100060), Pesce Luna (item # 100275), Michelangelo (item #s 100525, 100526, 100527), Raffaello (item #s 100540 and 100541), Vienna (item # 100570), Pesce (item # 100280), Onda Alta (item #s 100581, 100400), Cavallucio Marino (item # 100260), and Toledo (item # 100600)) supports the conclusion that the articles would be retained for decorative or storage purposes. Their varied sizes and capacities support the same conclusion for each of those articles, as does the fact that the top closures for all of these articles are cork or similar closures allowing for repetitive, extremely easy opening and closing. In the case of the cylindrically shaped articles (Quadrotta, (item # 100520), Quadrotta (item #s 100510 and 100515)), although the articles are somewhat similar to wine bottles (see HQ 961409 dated October 22, 1998), they have unusually long necks and an attractive, unusual form, supporting the same conclusion. Similarly, although there is no evidence whether the environment of sale of the articles features the goods packed in the articles and not the articles themselves, or whether the articles are recognized in the trade as used primarily to pack

and convey goods to a consumer who then discards or recycles the articles after this initial use, the foregoing factors support the conclusion that the articles are emphasized in the environment of sale and that the articles are retained after use for decorative or storage purposes. These articles are classified as other glassware of a kind used for table (other than drinking glasses) or kitchen purposes under subheadings 7013.39.20, 7013.39.50, or 7013.39.60, HTSUS, depending on value. This is consistent with HQ 959637 dated December 4, 1997, and HQ 961353 dated October 20, 1998.

No description or illustration was provided for some of the articles: item #s VE 85000242 (TO 48 Oro Rosso 48mm), 85000156 (TO 53 Oro RTS 53mm), 85000171 (TO 58 Oro RTS 58mm), 85000139 (TO 63 Oro RTS 63mm), 85000121 (TO 70 ABA RTS 70mm), item #s VE 85000125 (TS Granada/et cal), 85000056 (Tappo Sugh A 24 × 14), 85000095 (TS Quadrotta 100/250), 85000055 (Tappo Sug B 26 × 16); SG 933, Melon Jar 1.7 liter with cork lid; SG 928 Melon Jar 3.7 liter with cork lid, SG 929 Melon Jar 7 liter with glass lid; SG 930 Melon Jar 16 liter with glass ball top; SG 901 Orcio Hermetic Jar with hinged glass; SG 702LE 12" Square pasta with cork lid; SG 6701 Chairman Jar .85 liter; SG 6702 Chairman Jar .4 liter with cork lid; SG 9801 Fruit Basket Shaped Jar; SG GS-23 Quadra Etung; SG 3501-4 Square Jar .85 liter with cork lid; SG 933. The law governing protests requires a protest to set forth "distinctly and specifically *** each category of merchandise *** [.] *** the nature of each objection and the reasons therefor *** and *** any other matter required by the [of the Treasury] by regulation" (19 U.S.C. § 1514(c)(1)(B) through (D)). The Customs Regulations issued under this law require "[a] specific description of the merchandise ***" and that "[t]he nature of, and justification for the objection [be] set forth distinctly and specifically with respect to each category, payment, claim, decision, or refusal" (19 C.F.R. § 174.13(a)(5) and (6)). In the absence of a description or illustration of these articles, the protest must be denied in regard to them and they are classified as liquidated, as other glassware of a kind used for table (other than drinking glasses) or kitchen purposes in subheading 7013.39.20, 7013.39.50, or 7013.39.60, HTSUS, or 7013.99.50, HTSUS, as other decorative glass articles, depending on value.

We are not persuaded by the protestant's reliance upon the holding in *Will & Baumer Candle Co., Inc. v. United States*, 21 Cust. Ct. 149 (1st Div. 1948). In that case, the Court considered whether 3 horizontal lines on a religious candle constituted decoration or ornamentation. The articles at issue (including those deemed to be classifiable as candleholders) are readily distinguishable from the articles considered by the Court in *Will & Baumer*, they consist of decorative bottles and kitchen ware, as well as glass for the conveyance of goods.

HOLDINGS:

(1) Item #s 100450, 100460, 100470, each with a wire bail and trigger, rubber ring closure system, are classified as preserving jars of glass, other containers (with or without their closures), under subheading 7010.90.50, HTSUS.

(2) Item #s 100610, 100611, 100613, 100650, 100510, 100515 and 100520 are classified as containers of glass of a kind used for the conveyance or packing of goods, other containers (with or without their closures), under subheading 7010.90.50, HTSUS.

(3) Item #s 605077, 605079, 609135, and 609046 will be classified as candleholders under subheading 9405.50.40, HTSUS, as non-electric lamps and lighting fittings, other, other.

(4) The remaining articles are classified as other glassware of a kind used for table (other than drinking glasses) or kitchen purposes under subheading 7013.39.20, 7013.39.50, 7013.39.60, or 7013.99.50, HTSUS, depending on value.

The protest should be **GRANTED IN PART** (as to Item #s 100450, 100460, 100470, 100610, 100611, 100613, 100650, 100510, 100515 and 100520, 605077, 605079, 609135, and 609046), and **DENIED IN PART** (as to the remaining articles). Protest 5201-00-100369 must be **DENIED** (see above).

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 sixty (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 (60) 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 or, the World Wide Web at www.customs.treas.gov, by means of the Freedom of Information Act, and other methods of public distribution.

John Elkins for MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
 BUREAU OF CUSTOMS AND BORDER PROTECTION,
 CLA-2 RR:CR:GC 966256 AML
 CATEGORY: Classification
 TARIFF NO.: 7010.90.50

MR. PETER A. QUINTER
 BECKER & POLIAKOFF, P.A.
 P. O. Box 9057
 Ft. Lauderdale, FL 33310

Re: Modification of HQ 965200, classification of glass jar with wire bail and trigger, rubber ring closure system

DEAR MR. QUINTER:

This is in regard to HQ 965200, a decision on the Application for Further Review of Protest # 5201-00-100573 (initiated by you on behalf of GlasPak Industries, Inc.), issued on July 10, 2002. HQ 965200 concerned, in pertinent part, the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain empty glass jars with wire bail and trigger, rubber ring closure systems. We have reconsidered the classification of such articles. This letter sets forth the correct classification.

FACTS:

In HQ 965200, we described the articles at issue as follows:

VE 02003716	100450	Vaso Le Carre, 200 ml capacity 3.48" opening with bail and trigger closure W 3.48" H 2.48"
VE 02002797	100460	Vaso Le Carre, 350 ml capacity 3.48" opening with bail and trigger closure W 3.48" H 3.76"
VE 98000101	100470	Vaso Le Carre, 500 ml capacity 3.28" opening with bail and trigger closure W 3.48" H 4.92"

We framed and discussed the classification of these articles as follows:

The provision for preserving jars of glass in heading 7010 is an *eo nomine* provision (*Myers v. United States*, 969 F. Supp. 66, 71-73 (CIT 1997)). The provision in heading 7010 for containers "of a kind used" for the conveyance or packing of goods and the provision in heading 7013 for glassware "of a kind used" for table or kitchen purposes are "principal use" provisions (*Group Italglass U.S.C., Inc. v. United States*, 17 CIT 226 (1993)). As an *eo nomine* provision is more specific than a use provision, we will consider the former first. Next, we will consider merchandise which is properly classifiable under heading 7010 as "of a kind used" as it

cannot be classified under heading 7013, because of the specific parenthetical provision to that effect in heading 7013 (*Myers*, 969 F. Supp. at 75).

The provision for preserving jars of glass in heading 7010 was considered in *Myers, supra*. That case concerned jars with wire bail and rubber ring closure systems. The Court found the jars to be classifiable under the provision for "preserving jars of glass" in heading 7010. The Court concluded that:

The three fundamental feature[s] which distinguish 'preserving' jars from 'packing and conveyance' jars and 'storage' jars are: (1) the thickness of the glass in the walls of the jars; (2) the jar's ability to form and maintain a hermetic seal; and (3) the jar's potential for reuse as a canning or preserving jar. [969 F. Supp. at 74]

In this case, item #s 100450, 100460, 100470, each with a wire bail and trigger, rubber ring closure system, are classifiable in accordance with *Myers, supra*. That is, the articles meet the 3-part test of *Myers* in that the glass walls of the jars are relatively thick, the closure system provides the ability to form and maintain a hermetic seal, and the jars have potential for reuse as canning or preserving jars. Based on *Myers* and the criteria therein, we conclude that these articles are described in the *eo nomine* provision "preserving jars of glass" in heading 7010, HTSUS. Item #s 100450, 100460, 100470, each with a wire bail and trigger, rubber ring closure system, are classified in subheading 7010.90.50, HTSUS.

As stated above, we have reconsidered this analysis and the conclusions therefrom derived. The proper analysis and conclusion follows.

ISSUE:

Whether the empty glass jars with wire bail and trigger, rubber ring closure systems are classifiable *eo nomine* as preserving jars of glass under heading 7010, HTSUS, or glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes under heading 7013, HTSUS?

LAW and ANALYSIS:

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

The HTSUS headings and subheadings under consideration are as follows:

7010	Carboys, bottles, flasks, jars, pots, vials, ampoules and other containers, of glass, of a kind used for the conveyance or packing of goods; preserving jars of glass; stoppers, lids and other closures, of glass: Other, of a capacity:
7010.90	Other:
7010.90.50	Other containers (with or without their closures).
*	* * * * *
7013	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): Glassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass-ceramics:
7013.39	Other:
7013.39.20	Valued not over \$3 each.

The Harmonized Commodity Description And Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise. Customs believes the ENs should always be consulted. See T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

An article is to be classified according to its condition as imported. See *XTC Products, Inc. v. United States*, 771 F.Supp. 401, 405 (1991). See also, *United States v. Citroen*, 223 U.S. 407 (1911). The article at issue is an empty jar of relatively small size and capacity. While the use of the article is considered in the analysis (see below), the size, characteristics and appearance of the article are also considered in determining its classification.

The provision for preserving jars of glass in heading 7010 is an *eo nomine* provision (*Myers v. United States*, 969 F. Supp. 66, 71–73 (CIT 1997)). The provision in heading 7010 for containers “of a kind used” for the conveyance or packing of goods and the provision in heading 7013 for glassware “of a kind used” for table or kitchen purposes are “principal use” provisions (*Group Italglass U.S.C., Inc. v. United States*, 17 CIT 226 (1993)). As the CIT determined that the *eo nomine* provision includes canning and preserving jars, *i.e.*, those designed to produce a hermetic seal, we consider that alternative first. If the merchandise is classifiable under heading 7010, it cannot be classified under heading 7013, because of the specific parenthetical provision to that effect in heading 7013 (*Myers*, 969 F. Supp. at 75).

The provision for preserving jars of glass in heading 7010 was considered in *Myers, supra*. That case concerned jars with wire bail and rubber ring closure systems. The Court found the jars to be classifiable under the provision for “preserving jars of glass” in heading 7010. The Court concluded that:

The three fundamental feature[s] which distinguish ‘preserving’ jars from ‘packing and conveyance’ jars and ‘storage’ jars are: (1) the thickness of the glass in the walls of the jars; (2) the jar’s ability to form and maintain a hermetic seal; and (3) the jar’s potential for reuse as a canning or preserving jar. [969 F. Supp. at 74]

In reaching its conclusion, the Court observed that “storage jars are not designed in such a manner that a hermetic seal, which prevents air from entering the head space of the jar, can be formed between the jar and the lid.” *Id.* at 71.

In Headquarters Ruling Letter (“HQ”) 961205, dated March 12, 1999, we recited the following rules vis-à-vis *eo nomine* provisions:

“An *eo nomine* designation is one which describes a commodity by a specific name, usually one well known to commerce.” 2 R. Sturm, *Customs Law and Administration* § 53.2 (3rd Edition 1990).

The common meaning of an *eo nomine* designation is determined by the meaning it had at the time of enactment of the tariff act. *United States v. Brager-Larsen*, 36 C.C.P.A. 1, 3–4, C.A.D. 388 (1948); *Davies Turner & Co. v. United States*, 45 C.C.P.A. 39, C.A.D. 669 (1957). In their determination of what this “common meaning” encompasses, Customs and the courts may examine the use to which the imported goods are put. *United States v. Quon Quon Co.*, 46 C.C.P.A. 70, 73, C.A.D. 699 (1959).

Thus, it is proper to take use into account when classifying an article under an *eo nomine* provision where the common and commercial meaning of the article at the time the tariff schedule was drafted included references to use. Headquarters Ruling Letter (HQ) 950783, dated September 10, 1992, citing *Admiral Div. of Magic Chef, Inc. v. United States*, 754 F. Supp. 881, (Ct. Int’l Trade 1990) (it is necessary to examine legislative history and other extrinsic sources to determine the common meaning of merchandise); *Hummel Chemical Co. v. United States*, 29 C.C.P.A. 178, 183, C.A.D. 189 (1941) (tariff terms generally “are not drafted in terms of science, but in the language of commerce, which is presumptively that in common use.”).

The articles at issue are significantly smaller in size and capacity than those at issue in *Myers*. We are cognizant of the fact that strict application of the criteria established by *Myers* (comparative thickness of the glass, the ability to form and maintain a hermetic seal and the jar’s potential for reuse as a canning or preserving jar) would appear to require that the articles in question be classified under heading 7010, HTSUS. However, we conclude that, based on the size, capacity and appearance of the articles in question, as well as the meaning of *eo nomine* designations as discussed

above, the articles in question would neither commonly nor commercially be referred to as canning or preserving jars; thus falling without the purview of those identifying criteria adopted concerning similar articles considered in *Myers, supra*. We believe this to be especially telling given that the articles at issue in *Myers* were capable of holding one and one and a half liters, respectively, of liquid or preserves. It is therefore reasonable to conclude that the articles at issue, capable of holding a mere fraction of the articles in *Myers*, are not classifiable as preserving jars under heading 7010, HTSUS. Accordingly, the articles are classified under heading 7013, HTSUS.

This determination is consistent with Headquarters Ruling (HQ) 960513 dated August 11, 1997, and HQ 959637 dated December 4, 1997. In HQ 960513, a two liter capacity jar with a bail and trigger closure system was classified under heading 7010, HTSUS. Similarly, in HQ 959637, a 750 ml capacity jar with a bail and trigger closure system was classified under heading 7010, HTSUS, and a small decorative bottle with a 50 ml capacity and wire bail and trigger, rubber ring closure system was classified under heading 7013, HTSUS.

HOLDING:

The glass articles at issue, model numbers VE 02003716/100450 (Vaso Le Carre, 200 ml capacity); VE 02002797/100460 (Vaso Le Carre, 350 ml capacity); and VE 8000101/ 100470 (Vaso Le Carre, 500 ml capacity) are classifiable as glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): glassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass-ceramics: other: under subheading 7013.90, HTSUS, with the eight digit designation to be determined by the value of the articles.

Although there is no consequence of this action with regards to protest 5201-00-100573, future imports occurring on or after this ruling's effective date should be classified consistently with this ruling.

EFFECT ON OTHER RULINGS:

HQ 965200 is modified as it pertains to glass articles with wire bail and trigger, rubber ring closure systems.

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF BATTERY PACKS FOR MOBILE CELLULAR TELEPHONES

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

ACTION: Notice of revocation of ruling letter and revocation of treatment relating to tariff classification of battery packs for mobile cellular telephones.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the

tariff classification of battery packs for mobile cellular telephones under the Harmonized Tariff Schedule of the United States (“HTSUS”), and is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published in the *Customs Bulletin* on April 16, 2003. Two 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 August 11, 2003.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the *Customs Bulletin* on April 16, 2003, proposing to revoke HQ 965130, which involved the classification of battery packs for mobile cellular telephones. Two comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but which have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise sub-

ject to this notice should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying HQ 965130 and any other ruling not specifically identified in order to reflect the proper classification of the frog tool pursuant to the analysis set forth in HQ 966268, attached. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

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

DATED: May 21, 2003

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[Attachment]

[Attachment]

DEPARTMENT OF HOMELAND SECURITY.
 BUREAU OF CUSTOMS AND BORDER PROTECTION,
 CLA-2 RR:CR:GC 966268 GOB
 CATEGORY: Classification
 TARIFF NO.: 8507.80.80

May 21, 2003

GAIL T. CUMINS, ESQ.
 SHARRETT, PALEY, CARTER & BLAUVELT, P.C.
 67 Broad Street
 New York, NY 10004

Re: Revocation of HQ 965130; Battery Packs for Mobile Cellular Telephones

DEAR Ms. CUMINS:

This letter pertains to HQ 965130 dated March 27, 2002, issued with respect to Protest 2502-02-100012. You filed that protest on behalf of Sanyo Energy (USA) Corporation. We have reviewed the classification in HQ 965130 and have determined that it is incorrect. This ruling sets forth the correct classification. This ruling has no effect on the entries which were the subject of Protest 2502-02-100012.

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 HQ 965130, as described below, was published in the *Customs Bulletin* on April 16, 2003. Two comments were received in response to the notice. They are addressed in the LAW AND ANALYSIS section of this ruling.

FACTS:

In HQ 965130, the battery packs were described as follows:

The articles at issue are battery packs (model #s F41000729 (Nokia), F41000712 (Nokia), and F41000934 (Qualcomm) that are specifically designed for use with mobile cellular telephones

* * * * *

The battery packs, while manufactured to be used solely with specific brands and models of mobile cellular telephone[s], have the following similar components: one or more rechargeable storage batteries, a protective device that can shut off the battery pack when it reaches extreme temperatures (either heat or cold), a printed circuit board assembly ("PCBA") with functions that vary with the requirements needed and the model of phone, and a plastic housing that provides protection and housing for the components previously mentioned as well as serving as a significant portion of the back/body of the phone.

In HQ 965130, we classified the battery packs in subheading 8529.90.99, HTSUS, as: "Parts suitable for use solely or principally with the apparatus of headings 8525 to 8529: Other: Other: Other."

ISSUE:

Are the subject battery packs for mobile cellular telephones provided for in heading 8507, HTSUS, as electric storage batteries, or in heading 8529, HTSUS, as parts suitable for use solely or principally with the apparatus of headings 8525 to 8529?

LAW AND ANALYSIS:

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

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the inter-

national level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

The HTSUS provisions under consideration are as follows:

8507	Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof:
8507.80	Other:
8507.80.80	Other
*	* * * * *
8529	Parts suitable for use solely or principally with the apparatus of headings 8525 to 8529:
8529.90	Other:
	Other:
8529.90.99	Other

Note 2 to Section XVI, HTSUS, provides in pertinent part as follows:

Subject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of headings 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

(a) Parts which are goods included in any of the headings of chapters 84 and 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8485, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

(b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate
* * *

(c) All other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate, or failing that, in heading 8485 or 8548.

Two comments were received in response to the notice. As one of the commenters, your comment included the following points: the rulings cited in the proposal (and in this ruling, below) are clearly distinguishable; the HSC decision described below is in conflict with Note 2(b) to Section XVI, HTSUS, which requires classification in heading 8529, HTSUS; and there is a factual distinction between the battery packs of HQ 965130 and those of the HSC decision. A second commenter claims that the subject battery packs are properly classified in subheading 8529.90.99, HTSUS. The commenter states that it is premature to rely on the HSC action for guidance as to the proper classification.

We are not persuaded by these comments. Please see the analysis below.

In HQ 965130 we referred to a ruling from Revenue Canada (*Nokia Products Ltd. v. Deputy Minister of National Revenue*, Appeal No. AP-99-082 (July 26, 2000)) in which the Canadian International Trade Tribunal classified cellular telephone battery packs in heading 8529 of the Canadian Tariff. This issue, and the Revenue Canada position, were recently considered by the Harmonized System Committee ("HSC"). In HSC 30 in November 2002 (Annex H/26 to Doc. NCO655E2), the Harmonized System Committee, by a vote of 40 to 0 with two abstentions, decided that battery packs for cellular telephones were classified in heading 8507, as opposed to heading 8529, by application of GRI 1. It is our position that decisions of the HSC 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 provides that EN's and decisions in the *Compendium of Classification Opinions* "should receive consider-

able weight.” While this HSC decision may not yet be in the *Compendium of Classification Opinions*, it is a final decision of the HSC.

In HQ 953767 dated April 19, 1993, Customs classified a cellular telephone battery in subheading 8507.30.00, HTSUS.

In NY D83733 dated November 18, 1998, Customs classified a lithium-ion rechargeable battery for a cellular telephone in subheading 8507.80.80, HTSUS.

While we agree with you that these two rulings do not involve the exact same merchandise as that at issue here, we believe that they are very relevant with respect to the scope and applicability of heading 8507, HTSUS.

Subject to certain exceptions that are not relevant here, goods that are identifiable as parts of machines or apparatus of Chapter 84 or Chapter 85 are classifiable in accordance with Note 2 to Section XVI, HTSUS. See *Nidec Corporation v. United States*, 861 F. Supp. 136, *aff’d* 68 F. 3d 1333 (1995). Parts which are goods included in headings of Chapters 84 and 85 are in all cases to be classified in their respective headings. See Note 2(a) to Section XVI, HTSUS. Because we believe that Note 2(a) controls the classification of the subject battery packs, Note 2(b) is not applicable.

With respect to certain of the points raised in your comment, we note the following. Because we are classifying on the basis of Note 2(a) to Section XVI, HTSUS, we do not find that Note 2(b) is in conflict with this ruling, or with the HSC decision described above. Further, we do not believe that there are substantial differences between the goods at issue here and the goods at issue in the HSC decision described above.

We find that the subject goods are essentially electric storage batteries. Therefore, pursuant to Note 2(a) to Section XVI, HTSUS, we determine that the subject battery packs for mobile cellular telephones are provided for in heading 8507, HTSUS, and are classified in subheading 8507.80.80, HTSUS, as: “Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof: Other: Other.”

Our determination is consistent with the Harmonized System Committee decision described above. Our analysis of this matter leads us to conclude that the Harmonized System Committee’s conclusions are correct.

As indicated above, this ruling has no effect on the entries which were the subject of Protest 2502-02-100012, as Customs no longer has jurisdiction over those entries. See *San Francisco Newspaper Printing Co. v. United States*, 620 F. Supp. 738 (CIT 1985).

HOLDING:

The subject battery packs for mobile cellular telephones are provided for in heading 8507, HTSUS, and are classified in subheading 8507.80.80, HTSUS, as: “Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof: Other: Other.”

EFFECT ON OTHER RULINGS:

HQ 965130 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

John Elkins for MYLES B. HARMON,
Director
Commercial Rulings Division.

