

Bureau of Customs and Border Protection

General Notices

GRANT OF “LEVER-RULE” PROTECTION

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

ACTION: Notice of grant of “Lever-rule” protection.

SUMMARY: Pursuant to 19 CFR § 133.2(f), this notice advises interested parties that CBP has granted “Lever-rule” protection to Recot Inc./Frito-Lay, Inc. (hereinafter referred to as “Frito-Lay”). Notice of the receipt of an application for “Lever-rule” protection was published in the May 28, 2003, issue of the Customs Bulletin.

FOR FURTHER INFORMATION CONTACT: Rachel Bae, Esq., Intellectual Property Rights Branch, Office of Regulations & Rulings, (202) 572-8710.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 CFR § 133.2(f), this notice advises interested parties that CBP has granted “Lever-rule” protection for the following snack foods: Cheetos, Sabritones, Doritos, Sabritas, and Churumais.

In accordance with the holding of *Davidoff & CIE v. PLD Int'l Corp.*, 263 F. 3d 1297 (11th Cir. 2001), *Societe Des Produits Nestle, S.A. v. Casa Helvetia, Inc.*, 982 F.2d 633 (1st Cir. 1992) and *Ferrero U.S.A., Inc. v. Ozak Trading, Inc.*, 753 F. Supp. 1240 (D.N.J), aff'd 935 F.2d 1281 (3d Cir. 1991), CBP has determined that the gray market Cheetos, Sabritones, Doritos, Sabritas, and Churumais differ physically and materially from their correlating snack foods authorized for sale in the United States in the following respects: the ingredients used, the absence of allergy warnings (in the case of Cheetos and Churumais), the lack of quality control, the bag size and the measurement system used, the non-compliance with the labeling requirements of the Food and Drug Administration and the use of Spanish rather than English on the packaging.

ENFORCEMENT

Importation of the subject Cheetos, Sabritones, Doritos, Sabritas, and Churrumais is restricted, unless the labeling requirements of 19 CFR § 133.23(b) are satisfied.

Dated: June 14, 2004

GEORGE FREDERICK MCCRAY, ESQ.,
Chief, Intellectual Property Rights Branch,
Office of Regulations & Rulings.

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.

Washington, DC, June 16, 2004,

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

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

PROPOSED REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN GAS BARBECUES

AGENCY: Bureau of Customs & Border Protection; Department of Homeland Security.

ACTION: Notice of proposed revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of certain gas barbecues.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs & Border Protection (CBP) intends to revoke one ruling letter relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of certain gas barbecues. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before July 30, 2004.

ADDRESS: Written comments are to be addressed to Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Brian Barulich, Textiles Branch: (202) 572-8883.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke a ruling letter relating to the tariff classification of certain gas barbecues. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) G85307, dated December 15, 2000 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP 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, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved

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

In NY G85307, the gas barbecues were classified under subheading 7321.11.1060, HTSUSA, which provides for "Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas rings, plate warmers and similar nonelectric domestic appliances, and parts thereof, of iron or steel: Cooking appliances and plate warmers: For gas fuel or for both gas and other fuels: Portable, Other."

Pursuant to 19 U.S.C. 1625 (c)(1), CBP intends to revoke NY G85307 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 967090 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

DATED: June 15, 2004

Greg Deutsch for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY G85307
December 15, 2000
CLA-2-73:RR:NC:N1:113 G85307
CATEGORY: Classification
TARIFF NO.: 7321.11.1060

MR. JOHN D. PADGETT
MCGUIREWOODS LLP
World Trade Center
101 West Main Street, Suite 9000
Norfolk, VA 23510

RE: The tariff classification of gas barbecues from China

DEAR MR. PADGETT:

In your letter dated November 17, 2000, on behalf of Meco Corporation, received in this office on December 6, 2000, you requested a tariff classification ruling.

The merchandise is the Bonza Grill, a heavy-duty propane gas grill. Meco Corporation intends to import three models, the Bonza 2, the Bonza 3 and the Bonza 4. They are similar except for the size of the grills and the number of units contained in each model. The Bonza Grills are imported unassembled in three separate cartons in the same shipment. The body carton contains lava rocks, a metal basket, a grill cover, a wooden handle, a steel body and hood with regulator, a steel drip pan with insert and miscellaneous hardware parts.

The trolley carton contains the wood and associated metal parts of the wheeled trolley. The cast iron carton contains the cast iron burners and two cooking grids. After importation, Meco adds a steel cylinder tank containing LPG prior to sale.

GRI 2.(a) states:

Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), entered unassembled or disassembled.

The applicable subheading for the grills will be 7321.11.1060, Harmonized Tariff Schedule of the United States (HTS), which provides for stoves, ranges, grates, cookers, barbecues, braziers, gas rings, plate warmers and similar nonelectric domestic appliances, and parts thereof, of iron or steel, cooking appliances and plate warmers, for gas fuel or for both gas and other fuels, portable, other. The rate of duty will be 5.7 percent ad valorem. The rate remains unchanged in the year 2001.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist James Smyth at 212-637-7008.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967090
June 15, 2004
CLA-2: RR:CR:TE: 967090 BtB
CATEGORY: Classification
TARIFF NO.: 7321.11.6000

LARS-ERIK A. HJELM, ESQ.
JASON A. PARK, ESQ.
AKIN GUMMP STRAUSS HAUER & FELD LLP
Robert S. Strauss Building
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036-1564

RE: Revocation of NY G85307 regarding the tariff classification of gas barbecues from China

DEAR MSSRS. HJELM AND PARK:

This is in response to your letter dated April 14, 2004, on behalf of Meco Corporation, requesting reconsideration of New York Ruling Letter (NY) G85307, dated December 15, 2000, regarding the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of three models of heavy-duty propane gas grills in the Aussie™ Line, these being the Bonza™ 2 ("Bonza 2"), Bonza™ 3 ("Bonza 3"), and Bonza™ 4 ("Bonza 4"). In this response, the three models will be collectively referred to as the "Bonza Grills."

FACTS:

The Bonza 2 is the smallest of the Bonza Grills, measuring approximately 49 x 25 x 43 inches and weighing 120 pounds. It has two burners that burn at 24,000 BTUs per hour and has 488 square inches of cooking area. The Bonza 3 is the intermediate size of the Bonza Grills, measuring approximately 59 x 26 x 43 inches and weighing 147 pounds. It has three burners that burn at 36,000 BTUs per hour and has 662 square inches of cooking area. The Bonza 4 is the largest of the Bonza Grills, measuring approximately 64 x 26 x 43 inches and weighing 174 pounds. It has four burners that burn at 48,000 BTUs per hour and has 815 square inches of cooking area. The bodies of the Bonza Grills are made of enameled steel, are pre-assembled, and are not designed to be taken apart for transport. The Bonza

Grills also feature a porcelain-coated steel hood and bowl, cast iron grids and burners, a matchless ignition system, a built-in heat indicator, an easy-clean drip pan, and a polyurethane-coated hardwood cart with wheels. They are pre-assembled before importation. The Bonza Grills operate on propane gas and require a propane-cylinder weighing approximately 20 pounds that is sold separately.

In NY G85307, the Bonza Grills were classified under subheading 7321.11.1060, HTSUSA, which provides for “Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas rings, plate warmers and similar nonelectric domestic appliances, and parts thereof, of iron or steel: Cooking appliances and plate warmers: For gas fuel or for both gas and other fuels: Portable, Other.”

ISSUE:

Whether the Bonza Grills are classifiable under subheading 7321.11.1060, HTSUSA, or under subheading 7321.11.6000, HTSUSA, which provides for “Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas rings, plate warmers and similar nonelectric domestic appliances, and parts thereof, of iron or steel: Cooking appliances and plate warmers: For gas fuel or for both gas and other fuels: Other: Other.”

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be “determined according to the terms of the headings and any relative section or chapter notes.” 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 GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

Propane has been held to be a gas fuel for classification purposes (*See* HQ 964976, dated January 8, 2002, HQ 965297, dated January 8, 2002, and HQ 964803, dated January 10, 2002). As the Bonza Grills are barbecue grills that operate on propane, they are classifiable pursuant to GRI 1 under subheading 7321.11, HTSUSA, which provides for “Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas rings, plate warmers and similar nonelectric domestic appliances, and parts thereof, of iron or steel: Cooking appliances and plate warmers: For gas fuel or for both gas and other fuels.” Whether the Bonza Grills are classifiable under subheading 7321.11.1060, HTSUSA, or 7321.11.6000, HTSUSA, depends solely on whether the grills are portable.

In HQ 964803, we discussed the portability of barbecue grills. The eleven grill models at issue in that ruling weighed between 175 and 300 pounds (without propane tanks) and had cooking compartments of steel, and frames constructed of steel, stainless steel, or steel and wood. Each of the grills op-

erated with liquid propane and required that a tank be attached for use. The grills were approximately 4 feet tall, five feet wide and two feet deep. The grills had approximately 735 square inches of cooking space. We found that these grill models were not “easily carried or conveyed by hand” and “not of the class or kind of article normally considered as portable” and ruled that they were classified under subheading 7321.11.60, HTSUSA.

Like the models in HQ 964803, we find that the Bonza Grills are not portable. The Bonza Grills are not considered by the industry to be portable and are designed for relatively fixed patio use. Marketing material explicitly states that a purpose of the Bonza Grills is to “serve as a centerpiece for the backyard patio.” While the grills’ hardwood cart with wheels may enable the grill to be rolled around the patio or yard, the wheels were not designed to and do not make the grills portable. While the Bonza Grills are generally smaller than the models in 964803, we find that the Bonza Grills are also too big and heavy to be carried by hand and are not designed to be transported for away-from-home activities. Just transporting the Bonza 2, the smallest of the Bonza Grills, would be an arduous task considering its dimensions and its weight of 120 pounds. Furthermore, the grills have considerably more features than grills normally considered to be portable, including hardwood carts, ignition systems, built-in heat indicators, etc. We find that the three Bonza models are classified in subheading 7321.11.6000, HTSUSA.

HOLDING:

NY G85307, dated December 15, 2000, is hereby revoked.

The Bonza Grills identified by model numbers 2, 3, and 4 are classified in subheading 7321.11.6000, HTSUSA, which provides for “Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas rings, plate warmers and similar nonelectric domestic appliances, and parts thereof, of iron or steel: Cooking appliances and plate warmers: For gas fuel or for both gas and other fuels: Other: Other.” Under the 2004 HTSUSA, merchandise classified in subheading 7321.11.6000, HTSUSA, has a “free” rate of duty.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

