

# Bureau of Customs and Border Protection

## *CBP Decisions*

(CBP Dec. 04-27)

### BONDS

#### APPROVAL TO USE AUTHORIZED FACSIMILE SIGNATURES AND SEALS

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

Washington International Insurance Company

Authorized facsimile signature on file for:

Danielle Levine, Attorney-in-fact

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

DATE: August 20, 2004

GLEN E. VEREB,  
*Chief,*  
*Entry Procedures and Carriers Branch.*

**19 CFR PARTS 4, 10, 12, 18, 19, 101, 122, 123,  
141, 162, 163, 171 AND 181**

**[CBP Dec. 04-28]**

**TECHNICAL CORRECTIONS TO CUSTOMS AND BORDER  
PROTECTION REGULATIONS**

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

**ACTION:** Final rule.

**SUMMARY:** Customs and Border Protection (CBP) periodically reviews its regulations to ensure that they are current, correct and consistent. Through this review process, CBP noted several discrepancies. This document remedies these discrepancies.

**EFFECTIVE DATE:** August 27, 2004.

**FOR FURTHER INFORMATION CONTACT:** Christopher W. Pappas, Regulations Branch, Office of Regulations and Rulings, 202-572-8769.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

It is the policy of Customs and Border Protection (CBP) to periodically review its regulations to ensure that they are as accurate and up-to-date as possible so that the importing and general public are aware of CBP programs, requirements, and procedures regarding import-related activities. As part of this review policy, CBP has determined that certain changes are necessary affecting parts 4, 10, 12, 18, 19, 101, 102, 122, 123, 141, 162, 163, 171 and 181 of the CBP Regulations (19 CFR parts 4, 10, 12, 18, 19, 101, 102, 122, 123, 141, 162, 163, 171 and 181).

Section 4.13 of the CBP Regulations (19 CFR 4.13) is based on 19 U.S.C. 1707, which was repealed by Pub. L. 104-295 of October 11, 1996. Accordingly, this document removes and reserves § 4.13.

Section 10.33 of the CBP Regulations (19 CFR 10.33) is being amended to correct a reference to the Harmonized Tariff Schedule of the United States (HTSUS) subheading 9813.00.65. This subheading was abolished by Presidential Proclamation 6763, the Uruguay Round of Multilateral Trade Negotiations, and for Other Purposes, of December 23, 1994. The same proclamation added, in Subchapter XVII of Chapter 98, HTSUS, subheading "9817.00.98 Theatrical scenery, properties and apparel brought into the United States by proprietors or managers of theatrical, ballet, opera or similar productions or exhibitions arriving from abroad for temporary use by

them in such productions or exhibitions.” Accordingly, this document amends the HTSUS subheading in § 10.33 to read subheading 9817.00.98.

The authority for § 12.6, CBP Regulations (19 CFR 12.6) is being corrected. The current authority citation for § 12.6 includes a citation to “19 U.S.C. 1303” which has been repealed. Accordingly, this document revises the authority citation for § 12.6 by removing that authority.

Section 12.38, CBP Regulations (19 CFR 12.38) contains an outdated reference to § 171.22(b). Section 171.22(b) was removed by a final rule published in the Federal Register (65 FR 53565) on September 5, 2000. Accordingly, this document amends § 12.38 by removing the outdated reference to § 171.22(b).

References to the “Interstate Commerce Commission” (ICC) in the heading of § 18.9, CBP Regulations (19 CFR 18.9) and in § 18.9(a) are outdated. The ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 803), enacted December 29, 1995, and effective January 1, 1996, eliminated the ICC and transferred the functions referenced in § 18.9 to the Surface Transportation Board. Accordingly, this document corrects these references to read the “Surface Transportation Board.”

There is an incorrect reference in § 19.12 of the CBP Regulations (19 CFR 19.12). Section 19.12(d)(4)(ii) refers to an exception to the requirement that a warehouse proprietor “file [a] permit folder with Customs . . . [in] paragraph (b)(4)(iv) of this section.” This exception is found in § 19.12(d)(4)(iv), “Exemption to submission requirement.” Accordingly, this document amends § 19.12(d)(4)(ii) to reflect the correct reference.

Section 101.3 of the CBP Regulations (19 CFR 101.3) contains a table listing ports of entry by state along with the limits of each port. The limits of several ports were changed in T.D. 35546, T.D. 37386, T.D. 37439, T.D. 22305 and T.D. 39882; however, these changes were not reflected in the CBP Regulations. Accordingly, this document adds references to these Treasury Decisions in the “Limits of port” column in § 101.3. In addition, this document corrects the spelling of the Aguadilla port.

Section 101.4(c) of the CBP Regulations (19 CFR 101.4(c)) contains a table listing customs stations along with the supervisory port of entry for each station. The supervisory port of entry for the customs station of Antelope Wells, New Mexico, is no longer Rio Grande City, Texas. The supervisory port of entry for Antelope Wells is now Columbus, New Mexico. Accordingly, this document amends § 101.4(c) to reflect the correct supervisory port of entry.

Section 122.27(b) of the CBP Regulations (19 CFR 122.27(b)) contains a reference to the regulations of the “Export Administration (15 CFR parts 368 through 399).” These regulations are currently found at 15 CFR parts 730–774 and are referred to as the Ex-

port Administration Regulations. Accordingly, this document amends § 122.27(b) to reflect this name change and new citation.

Similarly, §§ 122.62(b) and (c) contain two references to the “Office of Export Administration” and two references to the “Export Control Regulations (15 CFR part 370).” The Office of Export Administration ceased to exist in 1988 when it was reformed as the Bureau of Export Administration. The Department of Commerce, through an internal organizational order on April 18, 2002, changed the name of the Bureau of Export Administration to the Bureau of Industry and Security (BIS). As discussed above, the Bureau of Industry and Security regulations are currently found at 15 CFR parts 730–774 and are referred to as the Export Administration Regulations. Accordingly, this document amends §§ 122.62(b) and (c) to reflect these name changes and new citation.

Section 123.1 of the CBP Regulations (19 CFR 123.1) contains a citation to 8 CFR 235.13 as the section relating to the PORTPASS program, a section which no longer exists. The PORTPASS regulations are now at 8 CFR 235.7. This document amends § 123.1(a) accordingly.

Sections 141.4(b)(4) and (d) of the CBP Regulations (19 CFR 141.4(b)(4) and (d)) reference Subchapter V, Chapter 99 of the HTSUS, particularly subheadings 9905.86.05 and 9905.86.10, HTSUS. Subchapter V, Chapter 99, HTSUS, was temporary in nature and only covered goods falling within its provisions through the close of December 31, 1998. Accordingly, this document amends § 141.4(b)(4) by removing the reference to “Chapter 99, Subchapter V, U.S. Note 9, HTSUS” and revises § 141.4(d) by removing the references to subheadings 9905.86.05 and 9905.86.10, HTSUS.

The dollar amount in § 162.76(c) of the CBP Regulations (19 CFR 162.76(c)) is changed by this document from \$500 to \$1000. This change conforms to 19 U.S.C. 1584(b)(1) as amended by section 3118(1) of Pub. L. 99–570 of October 27, 1986, “The Anti-Drug Abuse Act of 1986.”

The List of Records Required for an Entry of Merchandise set forth in the Appendix to part 163 of the CBP Regulations (19 CFR part 163) is also corrected by this document. Section IV of the Appendix incorrectly attributes 19 CFR 133.21(b)(6) of the CBP Regulations as the authority for the entry records requirement “Consent from trademark or trade name holder to import otherwise restricted goods.” This document removes the incorrect citation and adds the correct citations: 19 CFR 133.21(e), 133.22(c)(3) and 133.23(c).

Sections 171.51(b)(7) and 171.52(a), CBP Regulations (19 CFR 171.51(b)(7) and 171.52(a)) concern expedited petitioning procedures for administrative forfeiture proceedings for property subject to forfeiture under 19 U.S.C. 1595a, 21 U.S.C. 881, and 49 U.S.C. 80303. Sections 171.51(b)(7) and 172.52(a), and the specific authority citation for subpart F, currently set forth references to 19 U.S.C. 1595a,

21 U.S.C. 881, and 49 U.S.C. 80303. Section 888 of title 21 of the U.S. Code (21 U.S.C. 888), the basis for the expedited procedures for conveyances seized under 21 U.S.C. 881 and 49 U.S.C. 80303, was repealed by section 2(c)(3) of the Civil Asset Forfeiture Reform Act of 2000, Pub. L. 106-185 of April 25, 2000 (CAFRA). Title 19, however, is explicitly exempt from the CAFRA (See section 2(i)(2)(A) of the CAFRA). Accordingly, this document removes the incorrect references.

Finally, the specific authority for subpart D of part 181, CBP Regulations (19 CFR part 181) was inadvertently omitted from part 181. Accordingly, this document adds the specific authority: 19 U.S.C. 1520(d).

#### **ADMINISTRATIVE PROCEDURE ACT, THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866**

Because these amendments merely conform with existing law or regulation, notice and public procedure are unnecessary. For the same reason, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply. Nor do these amendments meet the criteria for a “significant regulatory action” as specified in Executive Order 12866.

#### **DELEGATIONS OF AUTHORITY: SIGNATURE OF CUSTOMS AND BORDER PROTECTION REGULATIONS**

This document is limited to technical corrections of CBP Regulations. Accordingly, it is being signed under the authority of 19 CFR 0.1(b).

#### **DRAFTING INFORMATION**

The principal author of this document was Christopher W. Pappas, Regulations Branch, Office of Regulations and Rulings, CBP. However, personnel from other offices participated in its development.

#### **LIST OF SUBJECTS**

##### **19 CFR PART 4**

Cargo vessels, Customs duties and inspection, Freight, Imports, Inspection, Maritime carriers, Merchandise, Shipping, Vessels.

##### **19 CFR PART 10**

Art, Customs duties and inspection, Entry, Imports, Preference programs, Shipments.

**19 CFR PART 12**

Customs duties and inspection, Entry of merchandise, Imports, Reporting and recordkeeping requirements.

**19 CFR PART 18**

Customs duties and inspection, Imports.

**19 CFR PART 19**

Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Warehouses.

**19 CFR PART 101**

Customs duties and inspection, Customs ports of entry, Imports, Reporting and recordkeeping requirements.

**19 CFR PART 122**

Administrative practice and procedure, Imports, Reporting and recordkeeping requirements.

**19 CFR PART 123**

Canada, Customs duties and inspection, Freight, Imports, International boundaries (Land border), International traffic, Vehicles.

**19 CFR PART 141**

Customs duties and inspection, Entry of merchandise, Release of merchandise.

**19 CFR PART 162**

Drug traffic control, Law enforcement, Prohibited merchandise.

**19 CFR PART 163**

Customs duties and inspection, Reporting and recordkeeping requirements.

**19 CFR PART 171**

Law enforcement, Penalties, Seizures and forfeitures.

**19 CFR PART 181**

Customs duties and inspection, Imports, Reporting and recordkeeping.

**AMENDMENTS TO THE REGULATIONS**

This document amends parts 4, 10, 12, 18, 19, 101, 122, 123, 141, 162, 163, 171 and 181, CBP Regulations (19 CFR 4, 10, 12, 18, 19,

101, 122, 123, 141, 162, 163, 171 and 181), making technical corrections. These corrections are set forth below.

**PART 4-VESSELS IN FOREIGN AND DOMESTIC TRADES**

1. The general authority citation for part 4 continues to read as follows:

**AUTHORITY:** 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

\* \* \* \* \*

2. Section 4.13 of the CBP Regulations is removed and reserved.

**PART 10-ARTICLES CONDITIONALLY FREE,  
SUBJECT TO A REDUCED RATE, ETC.**

3. The general authority citation for part 10 continues to read as follows:

**AUTHORITY:** 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

\* \* \* \* \*

4. In § 10.33, the subheading number “9813.00.65” is removed from the introductory text and in its place the subheading number “9817.00.98” is added.

**PART 12-SPECIAL CLASSES OF MERCHANDISE**

5. The general authority citation for part 12 continues to read and the specific authority citation for § 12.6 is revised as follows:

**AUTHORITY:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

\* \* \* \* \*

Section 12.6 also issued under 7 U.S.C. 1854;

\* \* \* \* \*

6. Section 12.38 is amended by removing the phrase “(see 171.22(b) of this chapter)”.

**PART 18-TRANSPORTATION IN BOND AND  
MERCHANDISE IN TRANSIT**

7. The general authority citation in part 18 continues to read as follows:

**AUTHORITY:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1623, 1624.

\* \* \* \* \*

8. In § 18.9, the section heading and paragraph (a) are revised to read as follows:

**§ 18.9 Examination by inspectors of trunk line associations or agents of the Surface Transportation Board.**

(a) Upon presentation of proper credentials showing the applicant to be a representative of the Trunk Line Association, the Surface Transportation Board, the Joint Rate Inspection Bureau of Chicago or the Southern Weighing and Inspection Bureau of Atlanta, inspectors of CBP in charge will permit such applicant to examine packages containing in-bond merchandise described in the manifest in general terms for the purpose of ascertaining whether the merchandise is properly classified under the interstate commerce laws.

\* \* \* \* \*

**PART 19-CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN**

9. The general authority citation for part 19 continues to read as follows:

**AUTHORITY:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624;

\* \* \* \* \*

10. The citation in § 19.12(d)(4)(ii) to “(b)(4)(iv)” is removed, and the citation “(d)(4)(iv)” is added in its place.

**PART 101-GENERAL PROVISIONS**

11. The general authority citation for part 101 and specific authority citation for §§ 101.3 and 101.4 continue to read as follows:

**AUTHORITY:** 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

\* \* \* \* \*

12. The list of ports in § 101.3(b)(1) is amended by:  
a. under the listing for “California” adjacent to “Port San Luis” in the “Ports of entry” column, adding “T.D. 35546” in the “Limits of port” column;

b. under the listing for “North Dakota”, adjacent to “Northgate” in the “Ports of entry” column, adding “T.D. 37386, T.D. 37439” in the “Limits of port” column;

c. under the listing for “Puerto Rico”, removing the word “Aquadilla” in the “Ports of entry” column, and adding in its place “Aguadilla” and by adding “T.D. 22305” in the “Limits of port” column adjacent to that entry; and

d. adding “T.D. 39882” under “Washington” in the “Limits of port” column adjacent to “Nighthawk”.

13. In the list of customs stations and supervisory ports of entry in § 101.4(c), under the state of New Mexico, the “Supervisory port of entry” column adjacent to “Antelope Wells (Mail: Hachita, NM)” in the “Customs station” column is amended by removing “Rio Grande City, TX” and by adding in its place “Columbus, NM”.

#### **PART 122-AIR COMMERCE REGULATIONS**

14. The general authority citation for part 122 continues to read as follows:

**AUTHORITY:** 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

\* \* \* \* \*

15. In § 122.27(b)(2), the words “Export Administration (15 CFR parts 368 through 399) regulations” are removed and in their place the words “Export Administration Regulations (15 CFR parts 730 through 774)” are added.

16. In § 122.62:

a. In paragraph (b), the heading and first sentence are amended by removing the words “Office of Export Administration” and adding in their place the words “Bureau of Industry and Security”;

b. In paragraph (b), the first sentence is further amended by removing the words “Export Control Regulations (15 CFR part 370)” and adding in their place the words “Export Administration Regulations (15 CFR parts 730 through 774)”;

c. In paragraph (c), the first sentence is amended by removing the words “Export Control Regulations” and adding in their place the words “Export Administration Regulations”.

#### **PART 123-CUSTOMS RELATIONS WITH CANADA AND MEXICO**

17. The general authority citation for part 123 and the specific authority citation for § 123.1 continue to read as follows:

**AUTHORITY:** 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624.

Section 123.1 also issued under 19 U.S.C. 1459;

\* \* \* \* \*

18. The citation in § 123.1(a) to “8 CFR 235.13” is removed, and the citation “8 CFR 235.7” is added in its place.

**PART 141-ENTRY OF MERCHANDISE**

19. The general authority citation for part 141 and the specific authority citation for § 141.4 continue to read as follows:

**AUTHORITY:** 19 U.S.C. 66, 1448, 1484, 1624.

\* \* \* \* \*

Section 141.4 also issued under 19 U.S.C. 1202 (General Note 19; Chapter 86, Additional U.S. Note 1; Chapter 89, Additional U.S. Note 1; Chapter 98, Subchapter III, U.S. Notes 3 and 4; Harmonized Tariff Schedule of the United States), 1498;

\* \* \* \* \*

20. In § 141.4, paragraph (b)(4) is amended by removing the words “Chapter 99, Subchapter V, U.S. Note 9, HTSUS;” and paragraph (d) is revised. The revision reads as follows:

**§ 141.4 Entry required.**

\* \* \* \* \*

(d) Railway locomotives and freight cars. For railway locomotives and freight cars described in Additional U.S. Note 1 of Chapter 86, HTSUS, to be excepted and released in accordance with paragraph (b)(4) of this section, the importer must first file a bond on CBP Form 301, containing the bond conditions set forth in either § 113.62 or 113.64 of this chapter.

\* \* \* \* \*

**PART 162-INSPECTION, SEARCH, AND SEIZURE**

21. The general authority citation for part 162 continues to read as follows:

**AUTHORITY:** 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624.

\* \* \* \* \*

22. In § 162.76(c), the dollar amount “\$500” is removed, and the dollar amount “\$1,000” is added in its place.

**PART 163-RECORDKEEPING**

23. The authority citation for part 163 continues to read as follows:

**AUTHORITY:** 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

24. The Appendix to part 163 is amended by removing from listing IV the citation “§ 133.21(b)(6)” just prior to the words “Consent from trademark or trade name holder to import otherwise restricted goods” and by adding in its place, “§§ 133.21(e), 133.22(c)(3) and 133.23(e)”.

**PART 171-FINES, PENALTIES, AND FORFEITURES**

25. The general authority citation for part 171 continues to read and the specific authority citation for subpart F is revised to read as follows:

**AUTHORITY:** 18 U.S.C. 983; 19 U.S.C. 66, 1592, 1593a, 1618, 1624; 22 U.S.C. 401; 31 U.S.C. 5321; 46 U.S.C. App. 320.

Subpart F also issued under 19 U.S.C. 1595a, 1605, 1614.

26. In § 171.51(b)(7), the citations “21 U.S.C. 881(a)(4), (6), and (7);” and “and 49 U.S.C. 80303” are removed.

27. In § 171.52(a), the citations “21 U.S.C. 881(a)(4), (6) or (7),” and “and/or 49 U.S.C. 80303” are removed.

**PART 181-NORTH AMERICAN FREE TRADE AGREEMENT**

28. The general authority for part 181 continues to read and a new specific authority for subpart D of part 181 is added to read as follows:

**AUTHORITY:** 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 3314.

Subpart D of part 181 also issued under 19 U.S.C. 1520(d).

Dated: August 23, 2004

ROBERT C. BONNER,  
*Commissioner,*  
*Customs and Border Protection.*

[Published in the Federal Register, August 27, 2004 (69 FR 52597)]

**19 CFR PARTS 12 AND 24**

**RIN 1651-AA36**

**[CBP DECISION 04-29]**

**PATENT SURVEYS**

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

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs and Border Protection (CBP) Regulations to eliminate patent surveys. The change is made based on a lack of demand for the program due to diminishing effectiveness within the current statutory scheme and other changed circumstances. CBP will continue to enforce the law and regulations it is responsible for enforcing regarding the importation of patented merchandise registered with CBP, and importers and others may continue to avail themselves of the procedures administered by the International Trade Commission regarding the importation of patent-infringing merchandise.

**DATES:** Effective September 29, 2004.

**FOR FURTHER INFORMATION CONTACT:** George Frederick McCray, Chief, Intellectual Property Rights Branch (202) 572-8710.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

On March 20, 2003, the U.S. Customs Service (Customs) published a notice of proposed rulemaking (NPRM) in the **Federal Register** (68 FR 13636) proposing to amend the Customs Regulations (19 CFR Chapter I) to eliminate patent surveys. The NPRM explained that patent surveys are conducted by CBP to assist registered patent owners in pursuing enforcement actions by the International Trade Commission (ITC) under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337; hereafter, section 1337), pertaining to unfair practices in import trade.

It is noted that Customs was made a component of the Department of Homeland Security and is now known as U.S. Customs and Border Protection (CBP). While this document is being issued by CBP, the agency is sometimes referred to as Customs in this document to reflect historical accuracy.

### The Statute

Under section 1337, it is unlawful to, among other things, import merchandise into the United States that infringes a valid and enforceable United States patent. Under the statute, the ITC, after conducting a proper investigation, is authorized to exclude patent-infringing merchandise from entry into the United States. (19 U.S.C. 1337(a)(1)(B)(i) and 19 U.S.C. 1337(d).) The statute also authorizes the ITC, under certain circumstances, to issue cease and desist orders, impose civil penalties, and order seizure and forfeiture relative to unlawful acts under the statute.

CBP plays a supporting role with respect to patent infringement cases under section 1337. Where the ITC has determined that merchandise infringes a patent and has ordered that the patent-infringing merchandise be excluded from entry, CBP will refuse entry of the merchandise covered by the order after notification by the ITC (see 19 CFR 12.39). In addition to enforcing ITC exclusion orders, CBP enforces ITC seizure/forfeiture orders (19 U.S.C. 1337(i)(2)) and certain court orders.

### Patent Surveys

In 1956, while under no statutory mandate to do so, Customs promulgated a regulation designed to assist patent holders in obtaining information they would need to seek action by the ITC under section 1337. In Treasury Decision (T.D.) 54087, published in the **Federal Register** (21 FR 3267) on May 18, 1956, Customs amended § 24.12(a) of the Customs Regulations by adding paragraph (3), under which Customs would issue the names and addresses of importers of articles appearing to infringe a registered patent. The T.D. explained that the purpose of the new provision was to assist the owner of a registered patent in obtaining data upon which to file a complaint with the ITC under section 1337 charging unfair methods of competition and unfair acts in the importation of merchandise infringing the patent. The provision required an application by the patent owner and set forth appropriate fees.

In T.D. 56137, published in the **Federal Register** (29 FR 4909) on April 8, 1964, Customs amended Part 12 of the regulations to add new § 12.39a to prescribe the procedure and requirements for obtaining the names and addresses of importers of merchandise appearing to infringe a patent (thereby transferring authority for the procedure from § 24.12(a)(3)). The new section referred to the procedure as a patent survey and provided patent survey requestors three survey periods varying in length of time: 2, 4, and 6 months. The fees for patent surveys remained under § 24.12(a)(3).

### Changed Circumstances

In 1956, when the patent survey program was introduced, Customs processed just over a million entries. Since then, the volume of

entries has increased dramatically, and CBP now receives over 23 million entries per year (based on 2001 statistics). At the same time, as a result of changes in applicable law and practice, the old system under which Customs officers were responsible for completing the processing of each entry has been replaced with what, in practice, is a self-assessment system based on electronic reporting without paper invoices. These changed circumstances have severely impacted the ability of CBP to adequately administer the patent survey program, resulting in CBP's reconsideration of the program's viability.

#### Effectiveness of the Patent Survey Program

In addition, the effectiveness of the program has been challenged. The patent survey seeks to identify importers who may be importing merchandise that appears to infringe a patent. After initial approval of a survey request (application), CBP determines which tariff provisions may apply to particular patented merchandise, a task complicated by the fact that patented articles are often new or novel commodities. Often, these identified tariff provisions are broad or basket provisions, with the broad provisions covering several similar articles and the basket provisions covering a wide breadth of articles that do not fit under more specific subheadings. Thus, searching for importers of merchandise appearing to infringe the patent often produces over-broad results which lead to the identification of importers who in fact do not import merchandise appearing to infringe the patent at issue. These searches are of questionable value to the patent owner and do not produce results that justify the use of CBP resources.

#### Value of the program

Further evidence of the limited value of the patent survey program is demonstrated by the fact that CBP processes relatively few patent survey requests per year (research indicates approximately 10 requests processed per year). The few number of survey requests received call into question the value of the program. A greater number of survey requests might suggest a greater need among the importing public and a more legitimate basis for CBP's investment of time and resources. Also, no comments were received in response to the proposed rule requesting retention of the program. The apparent lack of need, and interest, is another reason to discontinue the program.

#### Absence of Statutory Mandate

Finally, CBP notes that section 1337 does not mandate that CBP perform patent surveys. An examination of the general scheme of section 1337 shows that the statute places primary authority in the ITC, rather than CBP, to enforce its provisions. The ITC is charged with the responsibility to conduct investigations and make determi-

nations regarding violations and sanctions under the statute. In the context of section 1337, CBP is not authorized to take any action regarding apparently patent-infringing merchandise without the ITC first taking action or without receiving a notice, request, or instruction from the ITC, a clearly secondary role.

Thus, the promulgation of the patent survey regulation (first in § 24.12(a)(3) and then in § 12.39a), though intended to support section 1337, is not rooted in explicit statutory authority. Rather, the regulatory program was initiated in the exercise of agency discretion under the general authority of 19 U.S.C. 1624. As a discretionary program, CBP is not compelled by law to continue performing patent surveys, especially when their value appears to have diminished, resources are scarce, and the agency is faced with elevated national security priorities.

### **COMMENTS**

The comment period ended on May 21, 2003. No comments were received.

### **CONCLUSION**

In the NPRM, Customs examined the options of discontinuing the program or expending scarce resources to make the program more effective. After careful consideration, CBP has determined that committing additional resources to the program would be difficult, given current enforcement and security priorities, and raising fees to cover the cost of patent surveys would likely reduce participation even more. For these reasons, in addition to the lack of interest in the program, lack of comments (received in response to the proposed rule) requesting continuation of the program, and the above mentioned concerns relating to ambiguous legal authority, CBP is amending the regulations to discontinue the patent survey program. Thus, this document removes § 12.39a from the CBP Regulations and makes conforming changes to § 24.12(a) by removing paragraph (3).

This amendment to the regulations is being issued in accordance with § 0.1(b)(1) of the CBP Regulations (19 CFR 0.1(b)(1)) pertaining to the authority of the Secretary of Homeland Security (or his/her delegate) to prescribe and approve regulations relating to customs revenue functions that are not set forth in paragraph 1(a)(i) of Treasury Department Order No. 100-16 (May 15, 2003) (see CBP Decision 03-24, 68 FR 51868, August 28, 2003).

### **REGULATORY FLEXIBILITY ACT**

Under 19 U.S.C. 1337 (section 1337), the ITC, after conducting a proper investigation, is authorized to exclude patent-infringing merchandise from entry into the United States. (19 U.S.C. 1337(a)(1)(B)(i) and 19 U.S.C. 1337(d).) CBP plays a supporting role

with respect to patent infringement cases under section 1337. Where the ITC has determined that merchandise infringes a patent and has ordered that the patent-infringing merchandise be excluded from entry, CBP will refuse entry of the merchandise covered by the order after notification by the ITC (see 19 CFR 12.39). Neither ITC nor CBP is required to conduct patent surveys under the statute. They are not necessary to ITC investigations or enforcement action or to the fulfillment of CBP's responsibilities under the statute.

As set forth in the preamble, CBP receives very few patent survey requests under the regulations; the figure is approximately 10 per year. No comments were received in response to the proposed rule requesting retention of the program. In addition, most surveys do not produce beneficial results, and the beneficial results that are produced are of limited value. Thus, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is certified that the amendments to the CBP Regulations set forth in this document will not have a significant economic impact on a substantial number of small entities. The regulation would merely discontinue the patent survey procedure for reasons related to changed circumstances, disuse, and ineffectiveness. Accordingly, these amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

#### **EXECUTIVE ORDER 12866**

Since CBP receives so few requests for patent surveys, and elimination of the program will not preclude a patent owner from petitioning the ITC for an investigation and action to enforce its patent, CBP concludes that this rule does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866. The rule will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Because patent surveys are not an essential element of the ITC enforcement process, elimination of the program in this final rule does not create serious inconsistency or otherwise interfere with an action taken or planned by another agency. It is noted that no comments were received, indicating little if any concern by patent owners that access to ITC enforcement will be curtailed or the ITC's procedures will be affected by the final rule. Also, the rule does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, as patent surveys have nothing to do with any of these matters; nor does the rule raise novel legal policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

### DRAFTING INFORMATION

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, Customs and Border Protection. However, personnel from other offices contributed in its development.

### LIST OF SUBJECTS

#### 19 CFR Part 12

Entry of merchandise, Customs duties and inspection, Fees assessment, Imports, Patents, Reporting and recordkeeping requirements.

#### 19 CFR Part 24

Accounting, Customs duties and inspection, Fees, Imports, Reporting and recordkeeping requirements.

### AMENDMENTS TO THE REGULATIONS

For the reasons stated in the preamble, parts 12 and 24 of the Customs Regulations (19 CFR parts 12 and 24) are amended as follows:

#### **PART 12 – SPECIAL CLASSES OF MERCHANDISE**

1. The general authority citation for part 12 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66; 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624.

\* \* \* \* \*

2. Part 12 of the CBP Regulations is amended by removing § 12.39a.

#### **PART 24 – CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE**

3. The general authority citation for part 24 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

\* \* \* \* \*

Section 24.12 also issued under 19 U.S.C. 1524, 46 U.S.C. 31302;

\* \* \* \* \*

4. Section 24.12 of the CBP Regulations is amended by removing paragraph (a)(3).

Dated: August 24, 2004

ROBERT C. BONNER,  
*Commissioner,*  
*Customs and Border Protection.*

[Published in the Federal Register, August 30, 2004 (69 FR 52811)]

**19 CFR Part 111**

**[C.B.P. Dec. No. 04-30]**

**RIN 1651-AA46**

**Customs Broker License Examination Dates**

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

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule the interim rule amending the Customs and Border Protection (CBP) regulations to allow CBP to publish a notice changing the date on which a semi-annual written examination for an individual broker's license will be held when the normal date conflicts with a holiday, religious observance, or other scheduled event.

**EFFECTIVE DATE:** August 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** Alice Buchanan, Office of Field Operations (202-344-2673).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that a person (an individual, corporation, association, or partnership) must hold a valid customs broker's license and permit in order to transact customs business on behalf of others, sets forth standards for the issuance of broker's licenses and permits, and provides for the taking of disciplinary action against brokers that have engaged in specified types of infractions. In the case of an applicant for an individual broker's license, section 641 provides that the Secretary of the Treasury may conduct an examination to determine the applicant's qualifications for a license. Section 641 also authorizes the Secretary of the Treasury to prescribe rules and regulations re-

lating to the customs business of brokers as may be necessary to protect importers and the revenue of the United States and to carry out the provisions of section 641.

Pursuant to the Homeland Security Act of 2002 (Pub. L. 107–296) and Treasury Order No. 100–16, the Secretary of the Department of Homeland Security now has the authority to prescribe the rules and regulations relating to Customs brokers.

The regulations issued under the authority of section 641 are set forth in part 111 of the Customs and Border Protection (CBP) Regulations (19 CFR part 111). Part 111 includes detailed rules regarding the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers, including the qualifications required of applicants and the procedures for applying for licenses and permits. Section 111.11 sets forth the basic requirements for a broker's license and, in paragraph (a)(4), provides that an applicant for an individual broker's license must attain a passing grade on a written examination taken within the 3-year period before submission of the license application prescribed under § 111.12.

Section 111.13 sets forth the requirements and procedures for the written examination for an individual broker's license. Paragraph (b) of § 111.13 concerns the date and place of the examination and, in the first sentence, provides that “[w]ritten examinations will be given on the first Monday in April and October.”

On May 29, 2003, CBP published in the **Federal Register** (68 FR 31976) as T.D. 03–23, an interim rule adding a provision that would allow CBP to publish a notice changing the date on which a semi-annual written examination for an individual broker's license will be held when the normal date conflicts with a holiday, religious observance, or other scheduled event. In the interim rule, CBP noted that the first Monday in October 2003, that is, October 6th, coincided with the observance of Yom Kippur, and CBP noted that the regulatory text quoted above did not provide for the adoption of alternative examination dates. In order to avoid conflicts with national holidays, religious observances, and other foreseeable events that could limit an individual's opportunity to take the broker's examination, T.D. 03–23 amended § 111.13(b) to provide CBP with some flexibility in those circumstances as regards the determination of the specific date on which an examination will be given. The interim rule requested comments, and those that were received are discussed below.

### DISCUSSION OF COMMENTS

Two commenters responded to the solicitation of public comment, and both requested that the regulation include a statement as to when the rescheduled examination will occur. Specifically, one commenter requested that the rescheduled examination date be no more than five business days (or one calendar week) later than the first Monday in April or the first Monday in October. The other com-

menter requested that we standardize the manner in which the rescheduled date will be determined, but did not request any specific time frame for the rescheduled date.

CBP believes that it is not necessary to include in the regulation a statement as to exactly when the rescheduled examination would occur. While CBP does not intend to schedule an examination later than one week after the first Monday in April or October, CBP believes that it would not be wise to standardize the rescheduled date(s) because CBP contracts the administration of the examinations to the Office of Personnel Management (OPM). Standardization as to when an examination would be rescheduled could unduly constrain CBP and OPM to what may become ill-timed or unavailable dates.

### **CONCLUSION**

After analysis of the comments and further review of the matter, CBP has determined to adopt as a final rule, with no changes, the interim rule published in the **Federal Register** (68 FR 31976) on May 29, 2003, as T.D. 03-23.

### **SIGNING AUTHORITY**

This final rule is being issued in accordance with 19 C.F.R. § 0.1(b)(1) of the CBP Regulations .

### **INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS AND THE REGULATORY FLEXIBILITY ACT**

Because this regulation finalizes an interim rule already in effect that provides a benefit to prospective applicants for individual customs broker licenses and imposes no new regulatory burden or obligation on any member of the general public, CBP finds that, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), there is good cause for dispensing with a delayed effective date. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not impose restrictions on the publication of this regulation.

### **EXECUTIVE ORDER 12866**

This document does not meet the criteria for a “significant regulatory action” as specified in E.O. 12866.

### **DRAFTING INFORMATION**

The principal author of this document was Dwayne S. Rawlings, Office of Regulations and Rulings, Bureau of Customs and Border Protection.

**LIST OF SUBJECTS IN 19 CFR PART 111**

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports, Licensing, Reporting and recordkeeping requirements.

**AMENDMENT TO THE REGULATIONS**

For the reasons set forth above, the interim rule amending § 111.13 of Title 19 of the Code of Federal Regulations (19 CFR part 111.13), which was published in the **Federal Register** (68 FR 31976) on May 29, 2003, as T.D. 03-23, is adopted as a final rule without change.

Dated: August 24, 2004

ROBERT C. BONNER,  
*Commissioner,*  
*Customs and Border Protection.*

[Published in the Federal Register, August 30, 2004 (69 FR 52813)]

  
*General Notices***COPYRIGHT, TRADEMARK, AND  
TRADE NAME RECORDATIONS**

**(No. 7 2004)**

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

SUMMARY: Presented herein are the copyrights, trademarks, and trade names recorded with U.S. Customs and Border Protection during the month of June 2004. The last notice was published in the CUSTOMS BULLETIN on August 11, 2004.

Corrections or updates may be sent to: Department of Homeland Security, U.S. Customs and Border Protection, Office of Regulations and Rulings, IPR Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: George Frederick McCray, Esq., Chief, Intellectual Property Rights Branch, (202) 572-8710.

Dated: August 23, 2004

Paul Pizzeck for GEORGE FREDERICK MCCRAY, ESQ.,  
*Chief,*  
*Intellectual Property Rights Branch.*

U.S. CUSTOMS SERVICE  
IPR RECORDATIONS ADDED IN JULY 2004

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TK04000649	20040728	20130520	DIAMONDSHELL	TRUCK-LITE CO., INC.	N
TK04000650	20040729	20140804	EROS INTERNATIONAL	INTERCOAST INVESTMENT HOLDINGS	N
TK04000651	20040729	20130225	BURBERRY CHECK DESIGN MARK	BURBERRY LIMITED	N
TK04000652	20040729	20121008	BURBERRY	BURBERRY LIMITED	N
TK04000653	20040729	20121008	BURBERRY	BURBERRY LIMITED	N
TK04000654	20040729	20130225	BURBERRY CHECK DESIGN MARK	BURBERRY LIMITED	N
TK04000655	20040729	20130225	BURBERRY CHECK DESIGN MARK	BURBERRY LIMITED	N
TK04000656	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000657	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000658	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000659	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000660	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000661	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000662	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000663	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000664	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000665	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000666	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000667	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000668	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000669	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000670	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000671	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000672	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000673	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000674	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000675	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000676	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000677	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000678	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000679	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000680	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000681	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000682	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000683	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000684	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000685	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000686	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000687	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000688	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000689	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000690	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000691	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000692	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000693	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000694	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000695	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000696	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000697	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000698	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000699	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N
TK04000700	20040729	20130225	STYLIZED CONTAINER DESIGN	STANLEY LOGISTICS INC.	N

08/02/2004  
09:03:03

U.S. CUSTOMS SERVICE  
IPR RECORDATIONS ADDED IN JULY 2004

PAGE 4  
DETAIL

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMM OR MSK	OWNER NAME	RES
TMK0400656	20040729	20121124	CONFIGURATION OF A TAPE RULE CASE WITH DESIGN	STANLEY LOGISTICS INC.	N
TMK0400657	20040729	20131118	LIZ CLAIBORNE LOGO WITH NEW TRIANGLE DESIGN	L.C. LICENSING, INC.	N
TMK0400658	20040729	20131216	LIZ CLAIBORNE LOGO WITH NEW TRIANGLE DESIGN	L.C. LICENSING, INC.	N

SUBTOTAL RECORDATION TYPE 133

TOTAL RECORDATIONS ADDED THIS MONTH 147

Notice of Cancellation of Customs Broker Permit

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

ACTION: General Notice

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker local permits are canceled without prejudice.

<u>Name</u>	<u>Permit #</u>	<u>Issuing Port</u>
John A. Steer, Inc.,	804	New York
Quantum Logistics, Inc.,	059	Great Falls
Quantum Logistics, Inc.,	041-03-MQ4	Cleveland
V. Monte Customs Broker, Inc.,	864	New York
Sea Air Cargo Forwarder of NJ, Inc.,	717	New York
Dachser Transport of America, Inc.,	53-03-U52	Houston

DATED: August 19, 2004

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

[Published in the Federal Register, August 27, 2004 (69 FR 52725)]

Notice of Cancellation of Customs Broker License

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

ACTION: General Notice

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses are canceled without prejudice.

<u>Name</u>	<u>License #</u>	<u>Issuing Port</u>
John A. Steer, Inc.,	11397	New York
Quantum Logistics, Inc.,	20326	Great Falls
V. Monte Custom Broker, Inc.,	10032	New York
Sea Air Cargo Forwarder of NJ, Inc.,	14214	New York

<u>Name</u>	<u>License #</u>	<u>Issuing Port</u>
George E. Roberts	01856	New York
World Commerce Services, Inc.,	12649	Los Angeles

DATED: August 19, 2004

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

[Published in the Federal Register, August 27, 2004 (69 FR 52725)]

#### Notice of Cancellation of Customs Broker National Permit

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

ACTION: General Notice

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker national permits are canceled without prejudice.

<u>Name</u>	<u>Permit#</u>	<u>Issuing Port</u>
Quantum Logistics, Inc.,	99-00604	Headquarters
Harry Katsaros	99-00176	Headquarters
Christopher A. LaVenture	99-00516	Headquarters

DATED: August 19, 2004

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

[Published in the Federal Register, August 27, 2004 (69 FR 52725)]

#### Departmental Advisory Committee on Commercial Operations of the Bureau of Customs and Border Protection and Related Functions (COAC)

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

ACTION: Notice of meeting.

SUMMARY: This notice announces the date, time, and location for the final meeting of the eighth term of the Departmental Advisory Committee on Commercial Operations of the Bureau of Customs and

Border Protection and Related Functions (COAC), and the expected agenda for its consideration.

**DATES:** The next meeting of the COAC will be held on Friday, September 10, 2004, 9:00 a.m. to 1 p.m.

**ADDRESSES:** The meeting of the Departmental Advisory Committee on Commercial Operations of the Bureau of Customs and Border Protection and Related Functions (COAC) will be held 9:00 a.m. – 1:00 p.m. in the Adam's Mark Fountain Room, Adam's Mark Hotel, 120 Church Street, Buffalo, NY 14202; hotel ph: (716) 845-5100 / fax: (716) 845-5377.

**FOR FURTHER INFORMATION CONTACT:** Ms. Monica Frazier, Office of the Assistant Secretary for Border and Transportation Security, Department of Homeland Security, Washington, DC 20528, telephone 571-227-3977; facsimile 571-227-1937.

**SUPPLEMENTARY INFORMATION:** This meeting is open to the public; however, participation in COAC deliberations is limited to COAC members, Homeland Security and Treasury Department officials, and persons invited to attend the meeting for special presentations. Since seating is limited, all persons attending this meeting should provide notice to Ms. Monica Frazier, Office of the Assistant Secretary for Border and Transportation Security, Department of Homeland Security, Washington, DC 20528, telephone 571-227-3977; facsimile 571-227-1937, no later than 2 p.m. e.s.t. on Tuesday, September 7, 2004.

**INFORMATION ON SERVICES FOR INDIVIDUALS WITH DISABILITIES:** For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Monica Frazier, Office of the Assistant Secretary for Border and Transportation Security, Department of Homeland Security, Washington, DC 20528, telephone 571-227-3977; facsimile 571-227-1937, as soon as possible.

**DRAFT AGENDA:** The COAC is expected to pursue the following agenda, which may be modified prior to the meeting:

1. MTSA Subcommittee
2. Security Subcommittee
  - a. Advance Cargo Information
  - b. WCO Security
  - c. C-TPAT Process Review
3. Automation Issues
  - a. ACE funding and development schedule
  - b. ACS downtime
4. International Trade Data System (ITDS)
5. Agriculture Subcommittee

6. Creation of Infrastructure Subcommittee
7. Bioterrorism Act
8. Focused Assessment Program

C. STEWART VERDERY, JR.,  
*Assistant Secretary for Border and  
Transportation Security Policy and Planning.*

BILLING CODE 4410-10-P

DATED: August 23, 2004

[Published in the Federal Register, August 26, 2004 (69 FR 52516)]

**PROPOSED INTERPRETIVE RULE CONCERNING  
CLASSIFICATION OF BASEBALL-STYLE CAPS WITH  
ORNAMENTAL BRAID**

**AGENCY:** Customs and Border Protection, Homeland Security.

**ACTION:** Proposed interpretive rule; solicitation of comments.

**SUMMARY:** This document concerns the proper classification under the Harmonized Tariff Schedule of the United States (HTSUS) of baseball-style caps featuring ornamental braid located between peak and crown. The specific issue presented is how wide must ornamental braid be on a baseball-style cap to be classified in the HTSUS as either "wholly or in part of braid" rather than "not in part of braid." In an effort to achieve uniformity in the classification of this commodity, Customs and Border Protection (CBP) is proposing that ornamental braid on a baseball-style cap, located between peak and crown, in a width of 1/8 of an inch or greater will render the cap classifiable as "wholly or in part of braid." Conversely, it is proposed that such braid in a width of less than 1/8 of an inch will result in a cap being classifiable as "not in part of braid." CBP is soliciting public comment as to the appropriateness of the proposed threshold width.

**DATE:** Comments must be received on or before October 26, 2004.

**ADDRESS:** Written comments (preferably in triplicate) may be submitted to U.S. Customs and Border Protection, Office of Regulations & 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:** Teresa Frazier, U.S. Customs and Border Protection, Office of Regulations & Rulings, Textiles Branch, (202) 572-8821.

**SUPPLEMENTARY INFORMATION:**

**Background**

Baseball-style caps are classifiable in heading 6505 of the Harmonized Tariff Schedule of the United States (HTSUS) which provides for, in pertinent part, “hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; . . .” Within heading 6505, HTSUS, two subheadings differentiate between hats and other headgear that are “wholly or in part of braid” and those that are “not in part of braid.” See HTSUS subheadings 6505.90.50 and 6505.90.70 which provide for, in pertinent part, hats and other headgear “wholly or in part of braid”, and HTSUS subheadings 6505.90.60 and 6505.90.80 which provide for hats and other headgear which are “not in part of braid.” In this regard, it is noted that hats and other headgear that are classifiable as “not in part of braid” carry a higher rate of duty than those that are classifiable as “wholly or in part of braid.”

In cases where baseball-style caps feature ornamental braid located between the peak and crown, the determinative issue is whether the braid impacts classification at the subheading level so as to render the cap classifiable as either “in part of braid” or “not in part of braid.” The 2003 HTSUS defines the term “in part of” in General Note 22. General Note 22(e)(ii), HTSUS, provides that “in part of” or “containing” means that the goods contain a significant quantity of the named material and that “with regard to the application of the quantitative concepts specified above, it is intended that the *de minimis* rule apply.”

The *de minimis* rule is applicable in customs practice principally in determining whether the presence of some ingredient in an imported commodity affects its classification. See Ruth F. Sturm, A Manual of Customs Law 182 (1974). The rule stands for the proposition that:

Certain amounts of an ingredient, although substantial, may be ignored for classification purposes, depending upon many different circumstances, including the purpose which Congress sought to bring about by the language used and whether or not the amount used has really changed or affected the nature of the article, and of course, its salability.

Varsity Watch Company v. United States, 43 Cust. Ct. 1, C.D. 2094 (1959), appeal dismissed, 47 CCPA 173 (1959).

In a prior application of the de minimis rule to the term "in part of braid," CBP determined that if the quantity of ornamental braid in an article serves a useful purpose or affects the nature of the article or increases the salability of the article, the baseball style cap would be considered "in part of braid" for classification purposes. See Headquarters Ruling Letter (HQ) 087060, dated August 17, 1990, in which CBP determined that a baseball-style cap with non-contrasting ornamental braid measuring nine inches long and 3/16-inch wide between the peak and the crown was classifiable as "not in part of braid." Upon reconsideration of this ruling, CBP held in HQ 088438, dated January 14, 1991, that the cap was classifiable as "in part of braid" by application of the de minimis rule.

After the issuance of these rulings, CBP published a proposed interpretive rule in the **Federal Register** concerning the classification of baseball-style caps featuring ornamental braid located between peak and crown. See 56 FR 46134, dated September 10, 1991. The proposed interpretive rule solicited comment from the public as to the appropriate width of ornamental braid on a baseball-style cap that would be determinative of classification for purposes of the de minimis rule. Three comments were received; however, none of the submitted comments assisted CBP in formulating a definitive threshold width.

CBP did not publish a final interpretive rule on this issue. Since publication of the proposed interpretive rule in 1991, CBP has issued inconsistent classification rulings on merchandise featuring ornamental braid of various widths. In this regard, it is noted that several of these rulings adopted a 1/8 of an inch standard for purposes of the de minimis rule. In this document, CBP proposes this same standard as a means of ensuring the uniform application of the de minimis rule and providing consistency in the classification of baseball-style caps with braid trim. It is CBP's view that braid trim in widths of less than 1/8 of an inch will not appreciably affect a cap's salability or utility. Accordingly, CBP is proposing that ornamental braid on a baseball-style cap in a width of 1/8 of an inch or greater will render the cap classifiable as "wholly or in part of braid." Conversely, it is proposed that such braid in a width of less than 1/8 of an inch will result in a cap being classifiable as "not in part of braid."

CBP is soliciting public comment as to the appropriateness of the proposed threshold width.

#### COMMENTS

CBP will consider written comments timely submitted in its review of the proposed width (i.e., less than 1/8 of an inch) at which ornamental braid located between peak and crown on a baseball-style cap should be considered de minimis so as to result in the cap's classification in the HTSUS as "not in part of braid." Submitted com-

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

#### **DRAFTING INFORMATION**

The principal author of this document was Ms. Suzanne Kingsbury, Office of Regulations and Rulings, U.S. Customs and Border Protection. However, personnel from other offices participated in its development.

DATED: August 23, 2004

ROBERT C. BONNER,  
*Commissioner;*  
*Customs and Border Protection.*

[Published in the Federal Register, August 27, 2004 (69 FR 52726)]

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

*Washington, DC, August 25, 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 for MICHAEL T. SCHMITZ,  
*Assistant Commissioner,  
Office of Regulations and Rulings.*

**PROPOSED REVOCATION OF RULING LETTER AND  
TREATMENT RELATING TO TARIFF CLASSIFICATION  
OF CERTAIN DVDs**

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

**ACTION:** Notice of proposed revocation of a ruling letter and revocation of treatment relating to the tariff classification of DVDs ("digital versatile discs," formerly referred to as "digital video discs").

**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 and Border Protection (CBP) intends to revoke a ruling letter pertaining to the tariff classification of certain DVDs, and to revoke any treatment previously accorded by CBP to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

**DATE:** Comments must be received on or before October 8, 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 CBP, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by contacting Mr. Joseph Clark at (202) 572-8768.

**FOR FURTHER INFORMATION CONTACT:** Greg Deutsch, Textiles Branch, at (202) 572-8811.

**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, as amended (19 U.S.C. § 1625(c)(1)), this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the tariff classification of certain DVDs. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) K80348, this notice covers any rulings relating to the specific issues of tariff classification set forth in the ruling, 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 additional rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, an internal advice memorandum or decision, or a protest review decision) on the issues subject to this notice, should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), 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 that was issued to a third party to importations involving the same or a similar issue, or the importer's or CBP's previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions, or of a specific ruling not identified

in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of the final decision on this notice.

In NY K80348, dated November 4, 2003, merchandise identified as "Karaoke DVD Country Party Songs and Teen Hits" was classified in subheading 8524.39.4000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which in pertinent part provides for "Records . . . and other recorded media for sound or other similarly recorded phenomena . . . : Discs for laser reading systems: Other: For reproducing representations of instructions, data, sound, and image, recorded in a machine readable binary form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine; proprietary format recorded discs." NY K80348 is set forth as Attachment A to this document.

Upon review of NY K80348, we note that although the Karaoke DVDs consist of recorded media for reproducing representations of sound and text (data), the discs do not contain images. The goods therefore fall to be classified in subheading 8524.39.8000, HTSUSA, the provision for "Records . . . and other recorded media for sound or other similarly recorded phenomena . . . : Discs for laser reading systems: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP intends to revoke NY K80348 and any other rulings not specifically identified, to reflect the proper classification of the DVDs according to the analysis in proposed Headquarters Ruling Letter (HQ) 967184, which is set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment that CBP may have previously accorded to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

**DATED:** August 25, 2004

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
NY K80348  
November 4, 2003  
CLA-2-85:RR:NC:1:108 K80348  
CATEGORY: Classification  
TARIFF NO.: 8524.39.4000

MR. ROBERT A. MONATH  
ATTORNEY AT LAW  
1131/2 West Council Street  
Salisbury, North Carolina 28144

RE: The tariff classification of DVDs from the United Kingdom.

DEAR MR. MONATH:

In your letter dated October 23, 2003, on behalf of your client Slep-Tone Entertainment Corporation d/b/a/ Sound Choice, you requested a tariff classification ruling.

The items in question are DVDs (samples provided and to be returned). These DVDs are recorded media with the characteristics of instructions, data, sound and image. They are recorded in a machine readable binary form and provide interactivity to the user. They are entitled Karaoke DVD Country Party Songs and Teen Hits. These particular DVDs can be used and played on a DVD drive of an ADP machine as well as a Karaoke machine and DVD player. They display performance tracks with both music and on-screen text and also vocal demonstration tracks. The user can interact by choosing any song or display text.

The applicable subheading for the DVDs will be 8524.39.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for Records, tapes and other recorded media for sound or other similarly recorded phenomena, including matrices and masters for the production of records, but excluding products of chapter 37: Discs for laser reading systems: Other: For reproducing representations of instructions, data, sound and image, recorded in a machine readable binary form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine; proprietary format recorded discs. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Michael Contino at 646-733-3014.

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

## [Attachment B]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 967184  
CLA-2 RR:CR:TE 967184 GGD  
CATEGORY: Classification  
TARIFF NO.: 8524.39.8000

ROBERT A. MONATH, ESQUIRE  
*1131/2 West Council Street*  
*Salisbury, North Carolina 28144*

RE: Revocation of NY K80348; "Karaoke DVD Country Party Songs and Teen Hits;" Recorded Media Without Image

DEAR MR. MONATH:

In New York Ruling Letter (NY) K80348, issued to you November 4, 2003, on behalf of your client, Slep-Tone Entertainment Corporation, dba Sound Choice, merchandise identified as "Karaoke DVD Country Party Songs and Teen Hits" was classified in subheading 8524.39.4000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which in pertinent part provides for "Records . . . and other recorded media for sound or other similarly recorded phenomena . . . : Discs for laser reading systems: Other: For reproducing representations of instructions, data, sound, and image, recorded in a machine readable binary form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine; proprietary format recorded discs." We have reviewed NY K80348 and have found it to be in error. Therefore, this ruling revokes NY K80348.

## FACTS:

In NY K80348, dated November 4, 2003, the items at issue, entitled "Karaoke DVD Country Party Songs and Teen Hits," were described as being recorded media with the characteristics of instructions, data, sound and image. The items could be used and played on a DVD (digital versatile disc) drive of an ADP (automatic data processing) machine, as well as on a Karaoke machine or a DVD player. In use, the items allow the display of performance tracks with music, on-screen text and vocal demonstration tracks.

## ISSUE:

Whether the recorded media at issue are classified in subheading 8524.39.4000, HTSUSA, or in subheading 8524.39.8000, HTSUSA.

## LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the

HTSUSA by offering guidance in understanding the scope of the headings and GRI.

In pertinent part, subheading 8524.39.4000, HTSUSA, provides for recorded media for reproducing representations of instructions, data, sound **and image**. We find that, although the “Karaoke DVD Country Party Songs and Teen Hits” display performance tracks with music and text, they are not used for reproducing representations of image. By virtue of GRI 3(a) and 6, they are not accurately described in that subheading. Instead they are completely and specifically described in subheading 8524.39.8000.

**HOLDING:**

NY K80348, dated November 4, 2003, is hereby revoked.

The merchandise identified as “Karaoke DVD Country Party Songs and Teen Hits” is classified in subheading 8524.39.8000, HTSUSA, the provision for “Records . . . and other recorded media for sound or other similarly recorded phenomena . . . : Discs for laser reading systems: Other: Other.” The general column one rate of duty is 2.7 percent ad valorem.

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

**REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN NONWOVEN MAN-MADE MATERIAL**

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

**ACTION:** Notice of revocation of a tariff classification ruling letter and revocation of any treatment relating to the classification of certain nonwoven man-made material.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter, Headquarters Ruling Letter (HQ) 964255, relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of certain nonwoven man-made material. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed actions was published on July 14, 2004, in Vol. 38, No. 29, of the *Customs Bulletin*. 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 November 7, 2004.

**FOR FURTHER INFORMATION CONTACT:** Shirley Greitzer,  
Textiles Branch: (202) 572-8823.

**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 CBP 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 CBP 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, a notice proposing to revoke HQ 964255, dated August 27, 2002, relating to the tariff classification of certain nonwoven man-made material, was published in the July 14, 2004, *Customs Bulletin*, Volume 38, Number 29. No comments were received in response to this notice.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical merchandise. 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 merchandise should have advised CBP dur-

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

In HQ 964255, CBP classified a nonwoven man-made material under subheading 5911.40.0000, HTSUSA, which provides for, among other things, textile articles for technical uses. CBP reviewed the classification of the material and determined that the proper classification of the material, is under the provisions for nonwoven, other, under subheading 5603.92.0090, HTSUSA, or subheading 5603.93.0090, HTSUSA, depending on weight.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ 964255 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 967110 which is set forth as an "Attachment" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical merchandise.

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

**DATED:** August 24, 2004

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

Attachment

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 967110  
August 24, 2004  
CLA-2 RR:CR:TE 967110 SG  
CATEGORY: Classification  
TARIFF NO.: 5603.93.0090; 5603.92.0090

MS. MICHELE E. MCGUIRE  
DELOITTE & TOUCHE LLP  
2 World Financial Center, 9<sup>th</sup> floor  
New York, NY 10281-1414

RE: Request for reconsideration of Headquarters Ruling Letter HQ 964255; Heading 5603; Heading 5911; Technical uses; Straining cloth; Medium for filtration; Essential character; Filmtec Corporation v. United States

DEAR MS. MCGUIRE:

This is in reply to your submission dated April 9, 2003, on behalf of your client Pall Corporation (Pall), requesting reconsideration of Headquarters

Ruling Letter (HQ) 964255, dated August 27, 2002, concerning the classification of certain nonwoven man-made material. You provided a sample of the merchandise to aid us in our reconsideration.

In HQ 964255, issued to the Field Director, Office of Regulatory Audit, New York, on August 27, 2002, as a response to an Internal Advice request on behalf of Pall, we held that a nonwoven man-made material imported for use in blood filtration was classifiable in subheading 5911.40.0000, Harmonized Tariff Schedule of the United States (HTSUS), as a textile article for technical uses. We have reconsidered this classification and now believe that it is incorrect. In our reconsideration of this ruling, consideration was given to Filmtec Corporation v. United States, slip op, 03-153, (Ct. Int'l Trade, decided November 25, 2003).

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), notice of the 2 proposed revocation of HQ 964255 was published on July 14, 2004, in Vol. 38, No. 29, of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

A description of the merchandise set out in HQ 964255 reads:

The imported product is a nonwoven man-made material for use in blood filtration. The spunbound nonwoven material is imported as piece goods and is manufactured of a melt blow polyester which is considered to be a staple fiber.

After importation the subject merchandise undergoes a process, known in the industry as "grafting" during which the fabric is exposed to a solution with monomers and solvents and exposed to gamma radiation with subsequent washing and drying. The product's ultimate use is for leukocyte (white blood cell) reduction in blood filtration systems.

Samples of the material as imported prior to treatment (sample A) and after grafting (sample B) were submitted. Analysis of the samples by the Customs and Border Protection Laboratories and Scientific Services (CBP Lab) determined the following:

Sample 'A' weighs 72 grams per square meter and is composed of a layer of transparent looking nonwoven polyester and a layer of white fine polyester microfibers.

Sample 'B' weighs 55.1 grams per square meter and is composed of a layer of fine polyester microfibers.

\* \* \*

these white layers in both Sample 'A' and Sample 'B' are further composed of very fine layers which can be easily separated . . . the orientation and arrangements of polyester fibers in all layers, in both sample are identical.

In a telephone conversation with a member of my staff, you advised that the filament polyester substrate is removed and discarded prior to use as a blood filter.

In your submission you maintain that the material at issue is substantially similar in all material respects to that classified in HQ 959276, dated January 30, 1998, under subheading 5603, HTSUS. You contend that in the

condition as imported, the material is not a straining cloth as it would disintegrate if used as a filtration device under the pressure of most aqueous solutions. You also contend that the merchandise as imported is not an incomplete or unfinished article under GRI 2(a) because it does not have the essential character of a textile product for technical uses. It is your view that it is properly classifiable in heading 5603, HTSUS, as a nonwoven. You have also indicated that the imported fabric weighs 61.36 g/sm, with up to a 10 g/sm variance.

**ISSUE:**

Is the article under consideration classifiable under heading 5603, HTSUSA, as a nonwoven, or under heading 5911, HTSUSA, as a textile product for technical uses?

**LAW AND ANALYSIS:**

Classification of goods 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 GRIs may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN") represent 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. The EN, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The two headings under consideration herein are heading 5603, HTSUSA, which provides for, nonwovens, whether or not impregnated, coated, covered or laminated; and heading 5911, HTSUSA, which provides for textile products and articles, for technical uses, specified in note 7 to Chapter 59.

**HEADING 5603, HTSUSA**

Legal Note 3 to chapter 56, HTSUSA, states:

Headings 5602 and 5603 cover respectively felt and nonwovens, impregnated, coated, covered or laminated with plastics or rubber whatever the nature of these materials (compact or cellular).

Heading 5603 also includes nonwovens in which plastics or rubber forms the bonding substance.

Headings 5602 and 5603 do not, however, cover:

- (a) Felt impregnated, coated, covered or laminated with plastics or rubber, containing 50 percent or less by weight of textile material or felt completely embedded in plastics or rubber (chapter 39 or 40);
- (b) Nonwovens, either completely embedded in plastics or rubber, or entirely coated or covered on both sides with such materials, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of color (chapter 39 or 40); or

(c) Plates, sheets or strip of cellular plastics or cellular rubber combined with felt or nonwovens, where the textile material is present merely for reinforcing purposes (chapter 39 or 40).

The EN to heading 5603, HTSUSA, state in pertinent part:

**Except** where they are covered more specifically by other headings in the Nomenclature, the heading covers nonwovens in the piece, cut to length or simply cut to rectangular (including square) shape from larger pieces without other working, whether or not presented folded or put up in packings (e.g., for retail sale). These include: facing webs (overlay) for incorporation in laminated plastics; top-sheets for the manufacture of disposable baby napkins (diapers) or sanitary towels; fabrics for the manufacture of protective clothing or garment linings; sheets for filtering liquids or air, for use as stuffing materials, for sound insulation, for filtration or separation in road building or other civil engineering works; substrates for manufacturing bituminous roofing fabrics; primary or secondary backing for tufted carpets, etc.; handkerchiefs, bed linen, table linen, etc.

The EN to heading 5603, HTSUSA, further state that nonwovens can be produced in various ways and production can be conveniently divided into the three stages: web formation, bonding and finishing.

Additionally, the EN for heading 5603 states:

This heading also **excludes**:

(ij) Nonwovens for technical uses, of **heading 5911**.

HEADING 5911, HTSUSA

Heading 5911, HTSUSA, provides for textile products and articles for technical uses so long as they are specified in Legal Note 7 to Chapter 59, HTSUSA. Legal Note 7 to Chapter 59 reads:

Heading 5911 applies to the following goods, which do not fall in any other heading of section XI:

(a) Textile products in the piece, cut to length or simply cut to rectangular (including square) shape (other than those having the character of the products of headings 5908 to 5910), the following only:

(i) Textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams);

(ii) Bolting cloth;

(iii) Straining cloth of a kind used in oil presses or the like, of textile material or of human hair;

(iv) Flat woven textile fabrics with multiple warp or weft, whether or not felted, impregnated or coated, of a kind used in machinery or for other technical purposes;

(v) Textile fabric reinforced with metal, of a kind used for technical purposes;

(vi) Cords, braids and the like, whether or not coated, impregnated or reinforced with metal, of a kind used in industry as packing or lubricating materials;

(b) Textile articles (other than those of headings 5908 to 5910) of a kind used for technical purposes (for example, textile fabrics and felts, endless or fitted with linking devices, of a kind used in papermaking or similar machines (for example, for pulp or asbestos-cement), gaskets, washers, polishing discs and other machinery parts).

Although the term “for technical uses” is not defined in the section or chapter notes, the ENs to heading 5911, HTSUSA, state that “textile products and articles of this heading present particular characteristics which identify them as being for use in various types of machinery, apparatus, equipment or instruments or as tools or parts of tools.”

However, the ENs to heading 5911 do provide descriptions of various types of textile articles and products used for specific technical purposes. The EN to heading 5911, HTSUSA, describe “straining cloths” as:

(e.g., woven filter fabrics and needled filter fabrics), whether or not impregnated, of a kind used in oil presses or for similar filtering purposes (e.g., in sugar refineries or breweries) and for gas cleaning or similar technical applications in industrial dust collecting systems. The heading includes oil filtering cloth, certain thick heavy fabrics of wool or of other animal hair, and certain unbleached fabrics of synthetic fibres (e.g., nylon) thinner than the foregoing but of a close weave and having a characteristic rigidity. It also includes similar straining cloth of human hair.

The language in the tariff schedule qualifies the types of straining cloths classifiable in this subheading as those “of a kind used in oil presses or the like.” However, a careful reading of the language used in subheading 5911.40, HTSUSA, reveals that there is no requirement that the straining cloths in this provision be used in oil presses. The term “or the like” indicates that the drafters of the tariff schedule have included in their definition of “straining cloth” a much broader range of articles than those that are merely used in oil presses. The ENs to heading 5911, HTSUSA, specifically refer to filter fabrics used for filtering purposes including gas cleaning and dust collecting. The subject merchandise is therefore covered by the ENs to heading 5911, HTSUSA. See, *GKD-USA, Inc. v. United States*, 20 C.I.T. 749; 931 F. Supp. 875 (1996, Ct. Int'l. Trade) in which the issue was whether polyester filter belting imported in material lengths was precluded from classification under heading 5911 merely because it was not used in oil presses. The Court determined that “straining cloth” is generally referred to as “filter cloth”, and that the term “straining cloth” was intended to have a broad meaning and could apply to any fabric used as a medium for filtration. The Court held that the imported polyester filter belting was properly classifiable in subheading 5911.40, HTSUSA.

Based on the established precedent provided by the Court of International Trade and prior CBP rulings, as well as the ENs, it appears that nonwoven material used in blood filtration is a straining cloth under the EN to heading 5911.

You contend that the polyester fabric at issue here cannot be classified in heading 5911 because, in its imported condition, it is incapable of technical use and is not one of the materials provided for in Note 7 to Chapter 59. You further assert that in its imported condition, the imported product would

disintegrate under the pressure of most aqueous solutions passing through it and is therefore unsuitable for use as a straining cloth. After importation, the product undergoes a “grafting” process which is claimed to create an entirely new product with a different chemical structure which is suitable for straining. Thus you assert that in the condition as imported the material is not a textile product for technical uses.

We must therefore determine whether the product in question is, in effect, an unfinished filter or straining cloth in its condition as imported and is, therefore, classifiable as such under the tenets of GRI 2(a). That rule reads in part that “any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article.” In this case, samples of the merchandise in its condition as imported prior to treatment (ungrafted) and after importation and treatment (grafting) have been analyzed by the CBP Lab. When tested for water penetration, no water filtered through (drained) the ungrafted sample, while the grafted sample had complete filtration of water. Without the further processing (grafting) done after importation, the material does not have the essential character of the “complete or finished article”—that is, the ability to strain. It therefore does not have the essential character of a straining cloth under Note 7 to Chapter 59. Since the merchandise before us is a not straining cloth, nor unfinished straining cloth, it is not a textile product for technical use within the meaning of heading 5911. Therefore, it is not classifiable in heading 5911, and falls within heading 5603. See, *Filmtec Corporation v. United States*, slip op 03–153 (United States Court of International Trade, decided November 25, 2003) in which a nonwoven textile fabric sheet was imported in rolls. After importation the fabric is coated to produce a membrane which will be used as a filter medium. Both parties agreed that in its imported condition the fabric could not function as a filter medium. The Court held that because the fabric does not have the essential character of the finished article—the ability to strain salt from water, it could not fall within heading 5911, HTSUS.

Accordingly, we agree that the merchandise in its imported condition is classifiable under heading 5603 under a GRI 1 analysis.

As we stated above, the material imported prior to treatment is composed of a layer of transparent looking nonwoven polyester which appears to be of filament fiber and a layer of white fine polyester microfibers which are staple fibers. GRI 2(b) mandates that classification of goods consisting of more than one material shall be determined according to the principles of GRI 3. GRI 3(a) states that the heading which provides the most specific description is to be preferred to a heading which provides a more general description. However, when two headings each refer to only a part of the materials in a composite good, those headings are to be regarded as equally specific. EN V to Rule 3(a).

GRI 3(b) provides that composite goods consisting of different materials are to be classified as if they consisted of the material which gives them their “essential character.” Thus, the question is whether the fine polyester microfibers or the nonwoven filament polyester give the nonwoven its essential character. Essential character may be determined by the nature of the material, its bulk, quantity, weight, value or by the role of a material in relation to the use of the goods. EN VII to Rule 3(b).

The fine polyester microfiber layer is thicker than the filament polyester layer. In addition, the nonwoven filament polyester layer is removed and discarded prior to use. Accordingly, it is the fine polyester microfibrils, which are staple fibers, which gives the nonwoven material its essential character. We find that the sample as imported is classified under either subheading 5603.92, HTSUS, or subheading 5603.93, HTSUS, depending on its weight, as other, nonwovens, whether or not impregnated, coated, covered, or laminated.

HOLDING:

Depending on its weight, the merchandise described above is classifiable under subheading 5603.92.0090, HTSUSA, which provides for "Nonwovens, whether or not Impregnated, coated, covered or laminated: Other: Weighing more than 25 g/m<sup>2</sup> but not more than 70 g/m<sup>2</sup>: Other." If over 70 g/m<sup>2</sup>, but not more than 150g/m<sup>2</sup>, it is classifiable under subheading 5603.93.0090, HTSUSA, which provides for "Nonwovens, whether or not impregnated, coated, covered or laminated: Other: Weighing more than 70 g/m<sup>2</sup> but not more than 150 g/m<sup>2</sup>: Other." The general column one duty rate is free. The applicable textile category is 223 for goods classified in either subheading.

HQ 964255 is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective sixty days after its publication in the *Customs Bulletin*.

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*