

# Bureau of Customs and Border Protection

## *CBP Decisions*

[CBP Dec. 05-11]

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

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

**ACTION:** Final interpretive rule.

**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. In an effort to achieve uniformity in the classification of this commodity, Customs and Border Protection (CBP) has adopted as final a proposed interpretive rule whereby 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 in the HTSUS as “wholly or in part of braid.” Conversely, such braid in a width of less than 1/8 of an inch will result in a cap being classifiable in the HTSUS as “not in part of braid.”

**EFFECTIVE DATE:** May 2, 2005.

**FOR FURTHER INFORMATION CONTACT:** Theresa Frazier, Textiles Branch, Office of Regulations and Rulings, Customs and Border Protection, Tel. (202) 572-8821.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

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 ornamental braid on a baseball-style cap must be in order to render the cap classifiable in the HTSUS as either “wholly or in part of braid” or “not in part of braid.”

Baseball-style caps are classifiable in heading 6505 of the 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.” 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 2004 HTSUS defines the term “in part of” in General Note 3(h)(v)(B), HTSUS, which states 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).

On August 27, 2004, a document was published in the **Federal Register** (69 FR 52726) in which Customs and Border Protection (CBP) solicited public comment as to the appropriateness of a proposed interpretive rule whereby 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, CBP proposed that such braid in a width of less than 1/8 of an inch would result in a cap being classifiable as “not in part of braid.” The proposed standard was based on several

previously issued Headquarters Rulings Letters which had adopted the 1/8 of an inch standard for purposes of applying the de minimis rule to this type of commodity. The proposed interpretive rule set forth in 69 FR 52726 was offered 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.

#### DISCUSSION OF COMMENT

No comments were received in response to the solicitation of public comment in 69 FR 52726.

#### CONCLUSION

Upon due consideration, CBP has decided to adopt as final the proposed interpretive rule published in the **Federal Register** (69 FR 52726) on August 27, 2004.

#### DRAFTING INFORMATION

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

Dated: March 28, 2005

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

[Published in the Federal Register, March 31, 2005 (70 FR 16511)]

### *General Notices*

Notice of Cancellation of Customs Broker Permit

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

ACTION: General Notice

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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>
Godwin Shipping Company, Inc.	19-03-H39	Mobile
Kamino International Transport, Inc.	00-014	Houston

<u>Name</u>	<u>Permit #</u>	<u>Issuing Port</u>
Steven Hsien-Lin Wang dba WHL Customs Broker Services	200108	Los Angeles
Dynamic Ocean Services International, Inc.	94-2101-1	Houston
James P. Cesped	26-02-WSK	Nogales
Marvin Madden	19-03-J20	Mobile
David Meth	DF5	Miami
Robert Conyers	52-03-AUR	Miami

DATED: March 18, 2005

WILLIAM S. HEFFELFINGER III,  
*Acting Assistant Commissioner,  
Office of Field Operations.*

[Published in the Federal Register, March 29, 2005 (70 FR 15869)]

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

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

ACTION: General Notice

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

<u>Name</u>	<u>License #</u>	<u>Port Name</u>
Enoch Van Hoesen	2528	New York
Manuel A. Gonzalez	05742	Miami
Sherry A. Ireland	22657	Detroit
Joan P. Shindlecker	9808	Baltimore
Robert E. Finley, Sr.	3448	Mobile
Gabe S. Fountain	9170	Mobile

DATED: March 18, 2005

WILLIAM S. HEFFELFINGER III,  
*Acting Assistant Commissioner,  
Office of Field Operations.*

[Published in the Federal Register, March 29, 2005 (70 FR 15868)]

**ANNOUNCEMENT OF CHANGE TO MERCHANDISE  
ELIGIBILITY REQUIREMENTS FOR PARTICIPATION IN  
REMOTE LOCATION FILING PROTOTYPE TWO**

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

**ACTION:** General notice.

**SUMMARY:** This notice announces a change to the merchandise eligibility requirements for participation in Remote Location Filing (RLF) Prototype Two. RLF will now be permitted for cargo that will be moved using immediate transportation (IT) and transportation and export (T & E) in-bond procedures. CBP has determined that the security risks previously associated with in-bond transactions have been greatly reduced due to the significant security and cargo-processing gains accomplished by the advance cargo information regulations set forth in CBP Dec. 03-32, published in the **Federal Register** (68 FR 68140) on December 5, 2003. CBP also realizes that as in-bond transactions are a mainstay of international transactions, permitting RLF in an in-bond context will enhance the Prototype's usefulness to the trade while simultaneously furthering CBP's modernization objectives.

**DATE:** The change to Remote Location Filing (RLF) Prototype Two will go into effect March 31, 2005.

**ADDRESSES:** Written comments and applications to participate in the Prototype should be addressed to the Remote Filing Team, Office of Field Operations, Customs and Border Protection, 1300 Pennsylvania Avenue, N.W., Room 5.2-B, Washington, D.C. 20229. Comments may also be submitted to Sherri Braxton via email at [remote.filing@dhs.gov](mailto:remote.filing@dhs.gov).

**FOR FURTHER INFORMATION CONTACT:**

For systems or automation issues: Steve Linnemann (202) 344-1975 or Jennifer Englebach (562) 366-5593. For operational or policy issues: Sherri Braxton via email at [remote.filing@dhs.gov](mailto:remote.filing@dhs.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

RLF Authorized by the National Customs Automation Program (NCAP)

Title VI of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subpart B of Title VI of the Act concerns the National Customs Automation Program (NCAP), an electronic system for the pro-

cessing of commercial imports. Within subpart B, section 631 of the Act added section 414 (19 U.S.C. 1414), which provides for Remote Location Filing (RLF), to the Tariff Act of 1930, as amended. RLF permits an eligible NCAP participant to elect to file electronically a formal or informal consumption entry with Customs and Border Protection (CBP) from a remote location within the customs territory of the United States other than the port of arrival, or from within the port of arrival with a requested designated examination site outside the port of arrival.

#### RLF Prototype Two

In accordance with § 101.9(b) of the CBP Regulations (19 CFR 101.9(b)), CBP has developed and tested two RLF prototypes. A chronological listing of **Federal Register** publications detailing developments in the RLF prototypes follows:

- On April 6, 1995, CBP announced in the **Federal Register** (60 FR 17605) its plan to conduct the first of at least two RLF test prototypes. The first RLF test, designated Prototype One, began on June 19, 1995.
- On February 27, 1996, CBP announced in the **Federal Register** (61 FR 7300) the expansion of Prototype One and its extension until the implementation of RLF Prototype Two.
- RLF Prototype Two commenced on January 1, 1997. See document published in the **Federal Register** (61 FR 60749) on November 29, 1996.
- CBP announced in the **Federal Register** (62 FR 64043), on December 3, 1997, the extension of RLF Prototype Two until December 31, 1998.
- On December 7, 1998, CBP announced in the **Federal Register** (63 FR 67511) that Prototype Two would remain in effect until concluded by notice in the **Federal Register**.
- On July 6, 2001, CBP announced in the **Federal Register** (66 FR 35693) changes to the RLF Prototype Two eligibility requirements.
- On November 16, 2001, CBP announced in the **Federal Register** (66 FR 57774) a deadline extension for customs brokers participating in RLF to submit their national broker permit numbers to CBP.
- On February 25, 2003, CBP announced in the **Federal Register** (68 FR 8812) that line release entries would no longer be permitted for purposes of RLF Prototype Two, and set forth a comprehensive and updated list of current RLF eligibility requirements and a description of a new simplified application process.

### Change to RLF Prototype Two Merchandise Eligibility Criteria

This notice announces a change to the merchandise eligibility requirements for participation in RLF Prototype Two, whereby RLF will now be permitted for cargo that will be moved using immediate transportation (IT) or transportation and export (T & E) in-bond procedures. This was not allowed under the original terms of RLF Prototype Two because CBP was concerned with the general lack of security associated with in-bond transactions.

Upon further review, CBP has determined that permitting RLF for cargo that has already been moved using immediate transportation in-bond procedures, or any other transportation entry in-bond, is acceptable as the risks previously associated with in-bond transactions have been greatly reduced due to the significant security and cargo-processing gains accomplished by the advance cargo information regulations set forth in CBP Dec. 03-32, published in the **Federal Register** (68 FR 68140) on December 5, 2003. CBP also realizes that in-bond transactions are a mainstay of international transactions. For this reason, CBP views permitting RLF in an in-bond context as a means of broadening the scope of RLF and thereby enhancing the program's usefulness to the trade while simultaneously furthering the Bureau's modernization objectives.

It is noted that with the exception of the change to the RLF Prototype Two merchandise eligibility criteria involving in-bond transportation procedures, discussed above, all other Prototype eligibility requirements, procedures, terms and conditions, as set forth in the document published on February 25, 2003, in the **Federal Register** (68 FR 8812), remain in effect.

Dated: March 25, 2005

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

[Published in the Federal Register, March 31, 2005 (70 FR 16510)]



### Tuna — Tariff-Rate Quota

The tariff-rate quota for Calendar Year 2005, on tuna classifiable under subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS).

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

ACTION: Announcement of the quota quantity of tuna in airtight containers for Calendar Year 2005.

**SUMMARY:** Each year the tariff-rate quota for tuna described in subheading 1604.14.22, HTSUS, is based on the apparent United States consumption of tuna in airtight containers during the preceding Calendar Year. This document sets forth the tariff-rate quota for Calendar Year 2005.

**EFFECTIVE DATES:** The 2005 tariff-rate quota is applicable to tuna entered or withdrawn from warehouse for consumption during the period January 1, through December 31, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Connie Chancey, Chief, Quota Branch, Textile Enforcement and Operations Division, Trade Compliance and Facilitation, Office of Field Operations, U.S. Customs and Border Protection, Washington, DC 20229, (202) 344-2650.

**BACKGROUND:**

It has now been determined that 19,034,563 kilograms of tuna in air-tight containers may be entered for consumption or withdrawn from warehouse for consumption during the Calendar Year 2005, at the rate of 6 percent ad valorem under subheading 1604.14.22, HTSUS. Any such tuna which is entered or withdrawn from warehouse for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent ad valorem under subheading 1604.14.30 HTSUS.

Dated: March 25, 2005

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

[Published in the Federal Register, March 31, 2005 (70 FR 16512)]



DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS,  
*Washington, DC, March 29, 2005,*

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.

Myles B. Harmon for MICHAEL T. SCHMITZ,  
*Assistant Commissioner,  
Office of Regulations and Rulings.*

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## 19 CFR PART 177

### **WITHDRAWAL OF MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF SILYMARIN (MILK THISTLE) AND LEUCOANTHOCYANIN**

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

**ACTION:** Notice of withdrawal of modification of a tariff classification ruling letter and revocation of treatment relating to the classification of silymarin (milk thistle) and leucoanthocyanin.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is withdrawing the proposal to modify a ruling concerning the tariff classification of silymarin (milk thistle) and leucoanthocyanin, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is withdrawing its proposal to revoke any treatment previously accorded by CBP to substantially identical transactions.

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 was published in the December 8, 2004, CUSTOMS BULLETIN, Volume 38, Number 50, proposing to modify New York Ruling Letter (NY) 814027, dated February 2, 1996, and to revoke any treatment accorded to substantially identical merchandise. One comment was received in response to this notice. Due to our belief that there is merit to the alternative classification of silymarin proposed in that comment, we are withdrawing our proposal to modify NY 814027 at this

time. Pending further review of the classification of this merchandise, a new proposal may be published.

**FOR FURTHER INFORMATION CONTACT:** Allyson Mattanah,  
Commercial Rulings Division, (202) 572-8784.

Dated: March 24, 2005

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

