Bureau of Customs and Border Protection

General Notices

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(No. 5 2005)


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Dated: June 13, 2005

GEORGE FREDERICK MCCRAY, ESQ.,
Chief,
Intellectual Property Rights Branch.
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| TMK580033 | 20050502 | 20070529 | COLUMBIA       | COLUMBIA SPORTSWEAR NORTH AMERICA | N   |
| TMK580034 | 20050502 | 20040528 | COLUMBIA SPORTSWEAR COMPANY | COLUMBIA SPORTSWEAR NORTH AMERICA | N   |
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| TMK580041 | 20050503 | 20101223 | MARLINS (STYLED) | THE BASEBALL CLUB OF SEATTLE LP | N   |
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| TMK580043 | 20050503 | 20060141 | MARLINS (STYLED) | THE BASEBALL CLUB OF SEATTLE LP | N   |
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| TMK580046 | 20050503 | 20030136 | SUBWAY SERIES  | MARLON JUNIOR BASEBALL PROPERTIES | N   |
| TMK580047 | 20050503 | 20080130 | COOPERSTOWN COLLECTION | MAJOR LEAGUE BASEBALL PROPERTIES | N   |
| TMK580048 | 20050503 | 20130714 | MLB AUTHENTIC COLLECTION | MAJOR LEAGUE BASEBALL PROPERTIES | N   |
| TMK580049 | 20050503 | 20130114 | MLB AUTHENTIC COLLECTION AND DESIGN | MAJOR LEAGUE BASEBALL PROPERTIES | N   |
| TMK580050 | 20050503 | 26091212 | OAKLAND (STYLED) | ATHLETICS INVESTMENT GROUP, LLC | N   |
| TMK580051 | 20050503 | 26051005 | DESIGN ONLY (ELEPHANT HEAD AND BASEBALL BATS) | ATHLETICS INVESTMENT GROUP, LLC | N   |
| TMK580052 | 20050503 | 26090321 | OAKLAND AND ATHLETICS BASEBALL CO. | OAKLAND AND ATHLETICS BASEBALL CO. | N   |
| TMK580053 | 20050503 | 20091124 | DESIGN ONLY (CARDINAL WITH BAT) | ST. LOUIS CARDINALS, LLC | N   |</p>
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**Subtotal recordation type**: 105

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**Subtotal recordation type**: 1

**Total recordations added this month**: 126
AGENCY INFORMATION COLLECTION ACTIVITIES:
Alien Crewman Landing Permit

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Alien Crewman Landing Permit. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the Federal Register (69 FR 51317) on August 18, 2004, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 18, 2005.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-6974.

SUPPLEMENTARY INFORMATION:

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

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

2. Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, in-
including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Title:** Alien Crewman Landing Permit  
**OMB Number:** 1651–0114  
**Form Number:** Form CBP-95A and 95B  
**Abstract:** This collection of information is used by CBP to document conditions and limitations imposed upon an alien crewman applying for benefits under Section 251 of the Immigration and Nationality Act.

**Current Actions:** There are no changes to the information collection. This submission is being submitted to extend the expiration date.

**Type of Review:** Extension (without change)  
**Affected Public:** Individuals  
**Estimated Number of Respondents:** 433,000  
**Estimated Time Per Respondent:** 5 minutes  
**Estimated Total Annual Burden Hours:** 35,939  
**Estimated Total Annualized Cost on the Public:** N/A


Dated: June 14, 2005

Tracey Denning,  
Agency Clearance Officer,  
Information Services Branch.

[Published in the Federal Register, June 17, 2005 (70 FR 35281)]

AGENCY INFORMATION COLLECTION ACTIVITIES:  
Certificate of Origin

**AGENCY:** Bureau of Customs and Border Protection, Department of Homeland Security.  
**ACTION:** Proposed collection; comments requested.  
**SUMMARY:** The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the follow-
ing information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Certificate of Origin. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the Federal Register (70 FR 19496) on April 13, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 18, 2005.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION:

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

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.
Title: Certificate of Origin

OMB Number: 1651–0016

Form Number: Customs Form-3229

Abstract: This certification is required to determine whether an importer is entitled to duty-free for goods which are the growth or product of a U.S. insular possession and which contain foreign materials representing no more than 70 percent of the goods total value.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 10

Estimated Time Per Respondent: 20 minutes

Estimated Total Annual Burden Hours: 113

Estimated Total Annualized Cost on the Public: $1,030


Dated: June 14, 2005

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, June 17, 2005 (70 FR 35284)]

AGENCY INFORMATION COLLECTION ACTIVITIES:
LINE RELEASE REGULATIONS

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Line Release Regulations. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the Federal Register (70 FR 19496–19497) on April 13, 2005, allowing for a 60-day comment period. This notice allows for an additional 30
days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 18, 2005.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION:

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

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Line Release Regulations
OMB Number: 1651–0060
Form Number: N/A
Abstract: Line release was developed to release and track high volume and repetitive shipments using bar code technology and PCS. An application is submitted to CBP by the filer and a common commodity classification code (C4) is assigned to the application.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.
**Type of Review:** Extension (without change)  
**Affected Public:** Business or other for-profit institutions  
**Estimated Number of Respondents:** 25,700  
**Estimated Time Per Respondent:** 15 minutes  
**Estimated Total Annual Burden Hours:** 6,425  
**Estimated Total Annualized Cost on the Public:** N/A


Dated: June 14, 2005

Tracey Denning,  
Agency Clearance Officer,  
Information Services Branch.

[Published in the Federal Register, June 17, 2005 (70 FR 35280)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:**  
**PERMIT TO TRANSFER CONTAINERS TO A CONTAINER STATION**

**AGENCY:** Bureau of Customs and Border Protection, Department of Homeland Security.  
**ACTIONS:** Proposed collection; comments requested.  
**SUMMARY:** The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Permit to Transfer Containers to a Container Station. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the Federal Register (70 FR 19495–19496) on April 13, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before July 18, 2005.

**ADDRESSES:** Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Af-
SUPPLEMENTARY INFORMATION:

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

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

2. Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Permit to Transfer Containers to a Container Station
OMB Number: 1651-0049
Form Number: N/A
Abstract: This information collection is needed in order for a container station operator to receive a permit to transfer a container or containers to a container station, he/she must furnish a list of names, addresses, etc., of the persons employed by them upon demand by CBP officials.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)
Affected Public: Business or other for-profit institutions
Estimated Number of Respondents: 1,200
Estimated Time Per Respondent: 20 minutes
Estimated Total Annual Burden Hours: 400
Estimated Annualized Cost to the Public: $8,700
AGENCY INFORMATION COLLECTION ACTIVITIES:
Report of Diversion

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Report of Diversion. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the Federal Register (70 FR 19497) on April 13, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 18, 2005.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-6974.
SUPPLEMENTARY INFORMATION:

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

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

2. Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Report of Diversion
OMB Number: 1651–0025
Form Number: Form CBP-26
Abstract: CBP uses Form-26 to track vessels traveling coastwise from U.S ports to other U.S. ports when a change occurs in scheduled itineraries. This is required for enforcement of the Jones Act (46 U.S.C. App. 883) and for continuity of vessel manifest information and permits to proceed actions.
Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.
Type of Review: Extension (without change)
Affected Public: Businesses, Individuals, Institutions
Estimated Number of Respondents: 2800
Estimated Time Per Respondent: 5 minutes
Estimated Total Annual Burden Hours: 233
Estimated Total Annualized Cost on the Public: $3383
PROPOSED COLLECTION; COMMENT REQUEST AUTOMOTIVE PRODUCTS TRADE ACT OF 1965

AGENCY: Bureau of Customs and Border Protection (CBP), Department of Homeland Security (DHS)

ACTION: Notice and request for comments.

SUMMARY: The Department of Homeland Security, as part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Automotive Products Trade Act of 1965. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before August 16, 2005, to be assured of consideration.


FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION:

CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of...
information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

**Title:** Automotive Products Trade Act of 1965  
**OMB Number:** 1651–0059  
**Form Number:** N/A  
**Abstract:** Under APTA, Canadian articles may enter the U.S. so long as they are intended for use as original motor vehicle equipment in the U.S. If diverted to other purposes, they are subject to duties. This information collection is issued to track these diverted articles and to collect the proper duties on them.  
**Current Actions:** There are no changes to the information collection. This submission is being submitted to extend the expiration date.  
**Type of Review:** Extension (without change)  
**Affected Public:** Business or other for-profit institutions  
**Estimated Number of Respondents:** 75  
**Estimated Time Per Respondent:** 5.6 hours  
**Estimated Total Annual Burden Hours:** 425  
**Estimated Total Annualized Cost on the Public:** N/A  

Dated: June 10, 2005

Tracey Denning,  
Agency Clearance Officer,  
Information Services Branch.

[Published in the Federal Register, June 17, 2005 (70 FR 35279)]
DATES: Written comments should be received on or before August 16, 2005, to be assured of consideration.


FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION:

CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Crews Effects Declaration
OMB Number: 1651–0020
Form Number: CBP Form-1304
Abstract: CBP Form-1304 contains a list of crew effects that are accompanying them on the trip, which are required to be manifested, and also the statement of the master of the vessel attesting to the truthfulness of the merchandise being carried on board the vessel as crew effects.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)
Affected Public: Business or other for-profit institutions
Estimated Number of Respondents: 206,100
Estimated Time Per Respondent: 5 minutes
Estimated Total Annual Burden Hours: 17,326
Estimated Total Annualized Cost on the Public: N/A

Dated: June 9, 2005

Tracey Denning,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, June 17, 2005 (70 FR 35285)]

PROPOSED COLLECTION; COMMENT REQUEST
ENTRY AND IMMEDIATE DELIVERY APPLICATION

AGENCY: Bureau of Customs and Border Protection (CBP), Department of Homeland Security (DHS)

ACTION: Notice and request for comments.

SUMMARY: The Department Homeland Security, as part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Entry and Immediate Delivery Application. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before August 16, 2005, to be assured of consideration.


FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the in-
formation collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

**Title:** Entry and Immediate Delivery Application  
**OMB Number:** 1651–0024  
**Form Number:** CBP Form-3461 and Form-3461 Alternate  
**Abstract:** CBP Form CBP-3461 and Form-3461 Alternate are used by importers to provide CBP with the necessary information in order to examine and release imported cargo.  
**Current Actions:** There are no changes to the information collection. This submission is being submitted to extend the expiration date.  
**Type of Review:** Extension (without change)  
**Affected Public:** Business or other for-profit institutions  
**Estimated Number of Respondents:** 6,543,405  
**Estimated Time Per Respondent:** 30 minutes  
**Estimated Total Annual Burden Hours:** 838,158  
**Estimated Annualized Cost to the Public:** N/A

Dated: June 9, 2005

TRACEY DENNING,  
Agency Clearance Officer,  
Information Services Branch.

[Published in the Federal Register, June 17, 2005 (70 FR 35282)]

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**PROPOSED COLLECTION; COMMENT REQUEST**  
**ENTRY AND MANIFEST OF MERCHANDISE**  
**FREE OF DUTY**

**AGENCY:** Bureau of Customs and Border Protection (CBP), Department of Homeland Security (DHS)  
**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Homeland Security, as part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Entry and Manifest of Merchandise Free of Duty. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).
DATES: Written comments should be received on or before August 16, 2005, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Entry and Manifest of Merchandise Free of Duty
OMB Number: 1651–0013
Form Number: CBP Form-7523
Abstract: CBP Form-7523 is used by carriers and importers as a manifest for the entry of merchandise free of duty under certain condition and by CBP to authorize the entry of such merchandise. It is also used by carriers to show that the articles being imported are to be released to the importer or consignee.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)
Affected Public: Business or other for-profit institutions
Estimated Number of Respondents: 4,950
Estimated Time Per Respondent: 1 hour and 40 minutes
Estimated Total Annual Burden Hours: 8,247
Estimated Total Annualized Cost on the Public: N/A

Dated: June 9, 2005

Tracey Denning,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, June 17, 2005 (70 FR 35284)]

PROPOSED COLLECTION; COMMENT REQUEST
ENTRY SUMMARY AND CONTINUATION SHEET

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

ACTION: Notice and request for comments.

SUMMARY: The Department of Homeland Security, as part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Entry Summary and Continuation Sheet. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before August 16, 2005, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimates of the burden of the collection of information; ways to enhance the quality, utility, and
clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

**Title:** Entry Summary and Continuation Sheet  
**OMB Number:** 1651–0022  
**Form Number:** Customs Form-7501, 7501A  
**Abstract:** Form CBP-7501 is used by CBP as a record of the impact transaction, to collect proper duty, taxes, exactions, certifications and enforcement endorsements, and to provide copies to Census for statistical purposes.

**Current Actions:** There are no changes to the information collection. This submission is being submitted to extend the expiration date.

**Type of Review:** Extension (without change)  
**Affected Public:** Business or other for-profit institutions  
**Estimated Number of Respondents:** 38,500  
**Estimated Time Per Respondent:** 20 minutes  
**Estimated Total Annual Burden Hours:** 6,627,678  
**Estimated Annualized Cost to the Public:** N/A

Dated: June 10, 2005

Tracey Denning,  
Agency Clearance Officer,  
Information Services Branch.

[Published in the Federal Register, June 17, 2005 (70 FR 35281)]
quirement. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before August 16, 2005, to be assured of consideration.


FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION:

CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Foreign Trade Zone Annual Reconciliation Certification and Record Keeping Requirement

OMB Number: 1651–0051

Form Number: N/A

Abstract: Each Foreign Trade Zone Operator will be responsible for maintaining its inventory control in compliance with statute and regulations. The operator will furnish CBP an annual certification of their compliance.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 260

Estimated Time Per Respondent: 45 minutes
PROPOSED COLLECTION; COMMENT REQUEST
PRIOR DISCLOSURE REGULATIONS

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

ACTION: Notice and request for comments.

SUMMARY: The Department of the Homeland Security, as part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Prior Disclosure Regulations. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before August 16, 2005, to be assured of consideration.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Branch Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION:

CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the in-
The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

**Title:** Prior Disclosure Regulations  
**OMB Number:** 1651–0074  
**Form Number:** N/A  
**Abstract:** This collection of information is required to implement a provision of the Customs Modernization portion of the North American Free Trade Implementation Act (Mod Act) concerning prior disclosure by a person of a violation of law committed by that person involving the entry or introduction or attempted entry or introduction of merchandise into the United States by fraud, gross negligence or negligence, pursuant to 19 U.S.C. 1592(c)(4), as amended.  
**Current Actions:** There are no changes to the information collection. This submission is being submitted to extend the expiration date.  
**Type of Review:** Extension (without change)  
**Affected Public:** Business or other for-profit institutions  
**Estimated Number of Respondents:** 3,500  
**Estimated Time Per Respondent:** 60 minutes  
**Estimated Total Annual Burden Hours:** 3,500  
**Estimated Annualized Cost to the Public:** N/A

Dated: June 9, 2005

Tracey Denning,  
Agency Clearance Officer,  
Information Services Branch.

[Published in the Federal Register, June 17, 2005 (70 FR 35280)]

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**PROPOSED COLLECTION; COMMENT REQUEST VESSEL ENTRANCE OR CLEARANCE STATEMENT FORM**

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Homeland Security, as part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning Vessel Entrance of Clearance Statement. This request for comment is being made pur-
suant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before August 16, 2005, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Vessel Entrance or Clearance Statement Form
OMB Number: 1651–0019
Form Number: CBP Form 1300
Abstract: This form is used by a master of a vessel to attest to the truthfulness of all other forms associated with the manifest.
Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.
Type of Review: Extension (without change)
Affected Public: Businesses, Individuals, Institutions
Estimated Number of Respondents: 12,000
Estimated Time Per Respondent: 5 minutes
Estimated Total Annual Burden Hours: 21,991
Estimated Total Annualized Cost on the Public: N/A
Dated: June 9, 2005

Tracey Denning,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, June 17, 2005 (70 FR 35285)]
DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, June 15, 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.

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

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF STEEL STEP CANS


ACTION: Notice of proposed revocation of ruling letter and treatment relating to tariff classification of steel step cans.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (“CBP”) intends to revoke a ruling letter pertaining to the tariff classification of step cans under the Harmonized Tariff Schedule of the United States (“HTSUS”). CBP also intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before July 29, 2005.

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

FOR FURTHER INFORMATION CONTACT: Ieva O'Rourke, General Classification Branch, (202) 572-8803.

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 classification of steel step cans. Although in this notice CBP is specifically referring to one ruling, PD D81838, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. 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 of merchandise subsequent to the effective date of the final notice of this proposed action.

In PD D81838, dated September 11, 1998, set forth as Attachment A to this document, CBP classified steel step cans in subheading 9403.20.00, HTSUS, as: “Other furniture and parts thereof: Other metal furniture.” It is now CBP’s position that steel step cans are classified under heading 7323, HTSUS, as “[t]able, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel,” with the specific subheading depending upon the exterior surface of the article. Proposed HQ 967680 revoking PD D81838 is set forth as Attachment B. Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke PD D81838 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 967680. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

DATED: June 10, 2005

Robert F. Altneu for MYLES B. HARMON,  
Director,  
Commercial Rulings Division.

Attachments
DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
PD D81838  
September 11, 1998  
CATEGORY: Classification  
TARIFF NO.: 9403.20.0010  

SAMPLER ZEKSER  
PRESIDENT  
SOBEL SHIPPING CO., INC.  
170 Broadway Suite 1501  
New York, NY 10038–4148  
RE: The tariff classification of Pedal Bins from Holland.  
DEAR MR. ZEKSER:  

In your letter dated August 24, 1998, on behalf of IHW, Inc. and Creative Technologies Corporation, 170-53rd Street, Brooklyn, New York, you requested a tariff classification ruling.  

In the descriptive literature submitted with your letter, the furniture items are referred to as Pedal Bins or Step Cans. The item is cylindrical in shape and comes in a variety of sizes. Each bin includes and is designed to hold or conceal a plastic or steel inner bucket. The Pedal Bins are made of either stainless steel, chrome plated steel or enameled steel and feature a foot pedal for opening and closing the lid. These items are floor standing.  

The applicable subheading for the Pedal Bin or Step Can will be 9403.20.0010, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other metal furniture; household. The duty rate will be 0.8 percent ad valorem.  

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.  

JOHN M. REGAN,  
Service Port Director,  
Cleveland, Ohio.
DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967680
CLA–2 RR:CR:GC 967680
CATEGORY: Classification
TARIFF NO.: 7323.93.0080; 7323.94.0080; 7323.99.9060

SAMUEL ZESKER
PRESIDENT
SOBEL SHIPPING CO., INC.
170 Broadway
Suite 1501
New York, NY 10038–4148

RE: Steel step cans; PD D81838 revoked

DEAR MR. ZESKER:

In PD D81838, which the Port Director, Cleveland, Ohio, Customs and Border Protection (CBP), issued to you on September 11, 1998, on behalf of IHW, Inc and Creative Technologies Corporation, steel pedal bins, or step cans, were found to be classifiable as other metal furniture, household, in subheading 9403.20.0010, Harmonized Tariff Schedule of the United States (HTSUS). PD D81838 is incorrect and no longer represents the position of CBP on the classification of this merchandise.

FACTS:
In PD D81838, the facts were stated as follows:

In the descriptive literature submitted with you [sic] letter, the furniture items are referred to as Pedal Bins, or Step Cans. The item is cylindrical in shape and comes in a variety of sizes. Each bin includes and is designed to hold or conceal a plastic or steel inner bucket. The Pedal Bins are made of either stainless steel, chrome plated steel or enameled steel and feature a foot pedal for opening and closing the lid. These items are floor standing.

ISSUE:
What is the classification of the steel step cans under the HTSUS.

LAW AND ANALYSIS:
Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The subheadings under consideration are as follows:

7323 Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel:

Other:

7323.93.00 Of stainless steel
7323.94.00 Of iron (other than cast iron) or steel, enameled.

7323.99 Other:

Not coated or plated with precious metal:

Other:

7323.99.90 Other ....................................

9403 Other furniture and parts thereof:

9403.20.00 Other metal furniture .........................

Section XV, note 1(k), which is applicable to Chapter 73, of the HTSUS, provides that Section XV does not cover articles of Chapter 94. In HQ 964352, dated September 11, 2000, there was set forth an analysis of whether floor standing steel combination ashtray/waste receptacles are articles of Chapter 94. It was concluded that floor standing steel waste receptacles are specifically excluded from heading 9403, HTSUS, and are not otherwise covered in Chapter 94, HTSUS. The analysis in HQ 964352 is incorporated herein.

The steel step cans are described in heading 7323, HTSUS, as household articles of steel. In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to heading 73.23, which covers table, kitchen or household articles and parts thereof, states that it “comprises a wide range of iron or steel articles . . . , used for table, kitchen or other household purposes; it includes the same goods for use in hotels, restaurants, boarding-houses, hospitals, canteens, barracks, etc.” Goods specifically included in this heading are dustbins. According to the Random House Dictionary of the English Language (1973), the term “dustbin” is chiefly a British term for an ash can or garbage can. In HQ 950644, issued December 27, 1991, CBP stated, “[r]ecognizing that the English used in the EN’s is British English, we believe the term dustbin therein is synonymous with the American terms trash can, refuse can, garbage can, and cart, as herein applicable.” Based on the foregoing we conclude that steel waste receptacles are included within the scope of heading 7323, HTSUS. In HQ 964352, supra, and HQ 964053, dated July 27, 2000, it was held that steel combination ashtray/waste receptacles intended to be used to collect trash, litter and waste in public areas of buildings are also classified in heading 7323, HTSUS, as their use as such is an extension of a housekeeping function. Therefore, the step cans at issue are classified in heading 7323, HTSUS, whether used in a household, public or business environment.

The step cans are specifically classified in subheading 7323.93.00, HTSUS, if they are of stainless steel, 7323.94.00, HTSUS, if they are enameled steel, and 7323.99.90, if they are chrome plated steel. The steel and plastic liners, imported with the step cans will be classified with the step cans.
HOLDING:

By application of GRI 1, the steel step cans are classified in heading 7323, HTSUS, as "[t]able, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel," and the subheading depends upon the exterior surface of the article. Specifically, the step cans of stainless steel are classified in subheading 7323.93.0080, HTSUSA, as "[t]able, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel: Other: Of stainless steel ... Other," with a column one, general duty rate of 2% ad valorem. The step cans of enameled steel are classified in subheading 7323.94.0080, HTSUSA, as "[t]able, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel: Other: Of iron (other than cast iron) or steel, enameled ... Other," with a column one, general duty rate of 2.7% ad valorem. The step cans of chrome plated steel are classified in subheading 7323.99.9060, HTSUSA, as "[t]able, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel: Other: Other: Not coated or plated with precious metal: Other: Other ... Other," with a column one, general duty rate of 3.4% ad valorem.

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

EFFECT ON OTHER RULINGS:

PD D81838, dated September 11, 1998, is revoked.

Myles B. Harmon,
Director,
Commercial Rulings Division.

PROPOSAL TO LIMIT THE DECISIONS OF THE COURT OF INTERNATIONAL TRADE AND THE COURT OF APPEALS FOR THE FEDERAL CIRCUIT IN PARK B. SMITH v. UNITED STATES


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

Cir. 2003), reh'g denied (Fed. Cir. March 16, 2004), to the entries before the courts in that litigation.

**SUMMARY:** Pursuant to section 625(d), Tariff Act of 1930, as amended (19 U.S.C. 1625(d)), and § 177.10(d) of the Customs Regulations (19 C.F.R. 177.10(d)), this notice advises interested parties that Customs and Border Protection (CBP) proposes to limit the application of the decisions of the Court of International Trade and the Court of Appeals for the Federal Circuit in Park B. Smith, Ltd. v. United States to the specific entries before the Court in that litigation. Comments are invited on this proposed action.

**DATE:** Comments must be received on or before July 29, 2005.

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

**FOR FURTHER INFORMATION CONTACT:** Cynthia Reese, Textiles Branch, at 202–572–8812.

**SUPPLEMENTARY INFORMATION:**

**Background**

Pursuant to § 625(d), Tariff Act of 1930, as amended (19 U.S.C. 1625(d)), and § 177.10(d), Customs Regulations (19 C.F.R. 177.10(d)), this notice advises interested parties that Customs and Border Protection (CBP) proposes to limit the application of the decisions in Park B. Smith, Ltd. v. United States to the specific entries before the courts in that litigation.

CBP has waited for Park B. Smith, Ltd. v. United States to become final after remand of the case from the Court of Appeals for the Federal Circuit to the Court of International Trade before taking this action. This case has taken nearly four years to reach a conclusion, with issuance of the initial decision by the Court of International Trade on May 29, 2001, issuance of the appellate decision by the Court of Appeals for the Federal Circuit on October 21, 2003, affirming in part and vacating in part the lower court's decision and remanding the case to the lower court, and the Stipulated Judgment Order issued on April 6, 2005, reflecting agreement between the parties as to the classification of the merchandise in the entries at issue in the litigation. Issuance of a notice of intent to limit the application
of the decisions of the courts prior to reaching finality in this case would have been premature and disruptive of the judicial process.

Park B. Smith, Ltd. v. United States involved the classification of certain cotton woven table linens (placemats, napkins and table runners) and cotton woven dhurry rugs. Many of these articles were decorated with festive symbols, including Santa Claus or ghosts; some were decorated with color designs and some were solid colors. The articles were sold during various holiday seasons. The Customs Service (now Customs and Border Protection (CBP)) classified these articles as table linens of heading 6302, Harmonized Tariff Schedule of the United States (HTSUS), and woven textile floor coverings of heading 5702, HTSUS, respectively. The importer, Park B. Smith, challenged Customs classification of the merchandise in the Court of International Trade claiming the articles were classifiable as festive articles of heading 9505, HTSUS. With the exception of four articles\(^1\), the Court ruled that the table linens and rugs were classified as festive articles.

Customs had argued at trial, among other things, that the table linens and rugs "[were] not prima facie classifiable as festive articles because the general scope [of the heading as derived from its terms] and Explanatory Notes of Heading 9505 indicated that 'Congress did not intend to extend the scope of this provision to include all manner of possibly festive articles, i.e., rugs, placemats, napkins, and table runners.'" Park B. Smith, Ltd. v. United States, 25 Ct. Int'l Trade 506 (2001), at 4, citing the Def's Pretrial Mem. of Law. The trial court did not address this argument in its opinion, that is, it did not discuss the effect of the Explanatory Notes on the terms of heading 9505, HTSUS. Instead, the Court looked strictly at the language of heading 9505, HTSUS, citing several cases regarding the interpretation of tariff language and the role of the Court in interpreting tariff terms according to their common meaning.

The court looked to the decision of the Court of Appeals for the Federal Circuit in Midwest of Cannon Falls, Inc. v. United States, 20 Ct. Int'l Trade 123 (1996), aff'd in part, rev'd in part, 122 F.3d 1423 (Fed. Cir. 1997). Citing Midwest (122 F. 3d at 1429), the court stated the requirements enunciated by the Court of Appeals in that case for classification of articles as festive articles was: "(1) such articles must be 'closely associated' with a festive occasion and (2) such articles must be displayed and used by the consumer only during the festive occasion." Again citing to Midwest, the court went on to state:

\(^{1}\)The Court of International Trade found that three styles, Savannah, Serendipity and Squaredance, were not festive articles. The Savannah and Serendipity styles consisted of a solid color design and Squaredance consisted of a green, red and blue plaid. The court held these styles were not closely associated with a holiday. With regard to a fourth style, Harvest Time, as no evidence was presented at trial with regard to this style, the court affirmed Customs' classification.
“If the physical appearance of an article is so intrinsically linked to a festive occasion that its use during other time periods would be aberrant, it is ‘closely associated’ to the festive occasion.” Midwest, 122 F. 3d at 1429.

The Court of International Trade used the Midwest test to determine that the merchandise before it, with the exception of four articles previously noted, was prima facie classifiable as festive articles of heading 9505, HTSUS. Having done so, the court then applied Note 1(t), Section XI, HTSUS, which provides that section XI does not cover “Articles of chapter 95 (for example, toys, games, sports requisites and nets),” and found that the note excluded the articles at issue from classification within section XI as they were prima facie classifiable in heading 9505, HTSUS.

Both parties appealed the decision. The Court of Appeals for the Federal Circuit affirmed the trial court’s ruling on the applicable law and the use of the Midwest test in determining whether articles are classifiable as festive articles. However, the Court of Appeals remanded the case for reapplication of the Midwest test to some of the articles at issue. The lower court had grouped the articles at issue into three groupings: (1) articles bearing “festive symbols,” (2) articles in “festive color schemes” and (3) articles in solid colors and a green, red and blue plaid.

The Court of Appeals held that the lower court had correctly ruled that the articles in the third group were not classifiable as festive articles. However, while the court stated that the lower court correctly ruled on articles with symbolic content associated with a particular recognized holiday, such as Christmas trees or Easter bunnies, the court remanded the case to the lower court for reconsideration of the articles bearing festive symbols (grouping 1) and articles in festive color schemes (grouping 2). The court stated that the lower court “did not divide the goods before it with sufficient precision” and noted in its decision that the “Explanatory Notes to Heading 9505 state that the heading includes decorations that ‘are traditionally associated with a particular festival.’” The case was remanded and the lower court directed to segregate the articles based on whether the articles, by their design and symbols, were directed to a specific festive holiday and whether their use at times other than that holiday would be aberrant. Those articles found to be directed to a specific festive holiday and for which their use at times other than that holiday would be aberrant would be classifiable as festive articles of heading 9505, HTSUS. On April 6, 2005, a Stipulated Judgment Order was signed whereby the parties reached agreement as to the classification of the merchandise in the entries at issue in the litigation.

Although the courts have recognized that the Explanatory Notes are not legally binding on the United States, the courts have acknowledged the importance of the Explanatory Notes in determining

In its determination of the definition of tariff terms, the Court may also utilize the Explanatory Notes. Explanatory Notes, which are published by the World Customs Organization (formerly known as the Customs Co-operation Council), provide guidance in interpreting the language of the HTSUS. See Bausch & Lomb, Inc. v. United States, 21 C.I.T. at 957 F. Supp. 281, 288 (1997). Although not legally binding on the United States, the Explanatory Notes generally indicate the “proper interpretation” of provisions within the HTSUS. Lynteq, 976 F. 2d at 699 (citing H.R. Conf. Rep. No. 100–576, 100th Cong., 2d Sess. 549 (1988), reprinted in 1988 U.S.C.C.A.N. 1547, 1582); see also Marubeni Am. Corp. v. United States, 35 F.3d 530, 535 n.3 (Fed. Cir. 1994) (stating Explanatory Notes, while not dispositive or binding, are instructive). Additionally, in determining whether an item is properly classified under a particular heading in the HTSUS, the Explanatory Notes are persuasive authority for the Court when they specifically include or exclude an item from a tariff heading. See, e.g., Bausch & Lomb, 21 C.I.T. at 957 F. Supp. at 288.

Further, in Bausch & Lomb, 957 F. Supp. at 288, the Court stated:

“"It is well settled that tariff acts must be construed to carry out the intent of the legislature." [citations omitted.] The intent of the legislature is manifested in Congress's endorsement of the Customs Cooperation Council's ("CCC") Explanatory Notes, and the Explanatory Notes under Subheading 8509 included the precise merchandise at issue: "(B)(7) Electric tooth brushes"... The Court finds that the Explanatory Notes are persuasive because they expressly include electric toothbrushes under Heading 8509..."

As noted above, the Court of International Trade did not address the government's argument as to the intent of Congress regarding the scope of heading 9505 as reflected in the Explanatory Notes to that heading. The Court of Appeals did look to the Explanatory Notes in discussing the articles which fell within the scope of heading 9505 when the court noted the Explanatory Notes’ language, “traditionally associated with a particular festival.”

During the course of the litigation in Park B. Smith, the Explanatory Notes for heading 9505 were amended. The amendments became effective August 2003 during the time period the parties to Park B. Smith were awaiting the decision of the Court of Appeals. Although brought to the Court of Appeals attention in a footnote in the Government's response to the plaintiff's request for a rehearing,
the courts have not addressed fully the impact of the amendment to
the Explanatory Notes. Of specific concern with regard to Park B.
Smith is the following language which was added to the Explanatory
Notes for heading 9505:

The heading also excludes articles that contain a festive de-
sign, decoration, emblem or motif and have a utilitarian func-
tion, e.g., tableware, kitchenware, toilet articles, carpets and
other textile floor coverings, apparel, bed linen, table linen, toi-
let linen, kitchen linen.2

The purpose of the amendments to the Explanatory Notes was to
clarify, not change, the scope of heading 9505. Initially, the Harmo-
nized System Committee sought to align the texts of the English and
French versions of the Explanatory Notes to heading 9505. This
work began at the 30th Session of the Harmonized System Commit-
tee in the fall of 2002. The language quoted above was discussed at
the 31st Session of the Harmonized System Committee as part of the
consideration of the text of the Explanatory Notes to heading 9505.
In the working document reflecting the proposed amendment, along
with other amendments to the Explanatory Notes to heading 9505,
the Harmonized System Secretariat commented that:

The Secretariat wishes to draw the Committee's attention to
the fact that, . . ., the amendments under consideration are not
intended to result in a change of scope. An examination of the
comments reproduced above reveals that the purpose of the
proposal is to further clarify the legal text of heading 95.05. Thus,
the proposed texts . . . — to be inserted as exclusions —
serve to supplement the existing Explanatory Notes.

Therefore, the Secretariat considers that these new indica-
tions will make it possible to avoid any risk of misclassification
in this heading of articles (other than toys) which fall to be clas-
cified elsewhere in the Nomenclature.

See 31st Session, Harmonized System Committee, Working
Documents, NC0716E1 (HSC/31/April 2003).

2 CBP notes that the amendment to the Explanatory Notes for heading 9505 comports
with language from the Court of International Trade's decision in Midwest of Cannon Falls
v. United States, 20 Ct. Intl Trade 123, 133 (1996), in addressing the classification of mugs
and pitchers with depictions of jack-o-lanterns: 'The subject imports are functional and, ac-
cording to the Explanatory Notes, heading 6912 applies to tableware that is functional. See
Explanatory Notes, 69.12 . . . Although the motif of the mug and plate (sic) associate them
with Halloween, heading 9505 nevertheless appears ill-suited to these particular items. The
examples of items coming under heading 9505 as described by the Explanatory Notes are
all non-functional items: false ears, cardboard trumpets, artificial snow, etc. Explanatory
Notes, 95.05(A)(1).
The amendment was accepted by consensus and implemented by the over 160 contracting parties to the Harmonized System. See Working Documents, NC0730E2 (HSC/31/May 2003).

As in Bausch & Lomb, the cited language of the amended Explanatory Notes is specific to the inclusion or exclusion of certain articles and therefore is persuasive authority for the courts regarding the intended scope of the tariff heading. Classification within Section XI was precluded in Park B. Smith by a determination that the merchandise at issue was prima facie classifiable in heading 9505, HTSUS. However, the Court of International Trade and the Court of Appeals for the Federal Circuit did not have an opportunity to consider the amended, or clarified, Explanatory Notes for heading 9505 in deciding whether the merchandise at issue in Park B. Smith fell within the intended scope of heading 9505 and therefore was classifiable therein.


The Explanatory Notes were drafted subsequent to the preparation of the Harmonized System nomenclature itself, and will be modified from time to time by the CCC's [Customs Cooperation Council] Harmonized System Committee. Although generally indicative of proper interpretation of the various provisions of the Convention, the Explanatory Notes, like other similar publications of the Council, are not legally binding on the contracting parties to the Convention. Thus, while they should be consulted for guidance, the Explanatory Notes should not be treated as dispositive.

Jewelpak, 20 Ct. Int'l Trade at 1410.

The court specifically noted that “Congress recognized that the Explanatory Notes would be occasionally modified, and could still be 'consulted for guidance.'” Id., at 1411.

Further, as noted by the Court of Appeals for the Federal Circuit in Jewelpak Corporation v. United States, 297 F.3d 1326, 1336 (Fed. Cir. 2002), in addressing consideration of an amended Explanatory Note:

... the law is clear that it was wholly appropriate to reference the Amended Explanatory Note (which, in this case, contained the "long-term use" limitation) to help define the proper scope of the tariff term. See, e.g., Mita Copystar Am. V. United States, 21 F.3d 1079, 1082 (Fed. Cir. 1994) ("[T]he Explanatory Notes
of a tariff subheading ... do not constitute controlling legislative history but nonetheless are intended to clarify the scope of HTSUS subheadings and to offer guidance in interpreting subheadings.” [citations omitted].

In Jewelpak, supra, the court held, inter alia, that an amendment to an Explanatory Note, made subsequent to enactment of tariff terms should be considered in determining the scope of a heading. These are the circumstances we face in interpreting heading 9505.

CBP seeks to limit the decision in Park B. Smith so that the Court will have the opportunity to examine the scope of heading 9505 in concert with the amended Explanatory Note. It is clear that failure to limit the decision in this case and seek relitigation of the scope of heading 9505 will present CBP with extraordinary administrative difficulties and place the United States out of step with our trading partners who utilize the Harmonized System. Importers and CBP will be forced to examine prints, designs or motifs on a multitude of articles which are utilitarian and are not in and of themselves festive (e.g., cups, sweaters, watches) to determine if trees are merely trees or Christmas trees; whether snowmen alone are directed to Christmas or when in combination with items such as holly and bells are sufficient to be indicative of the holiday of Christmas. Importers and CBP will have to decide when bunnies merely represent Spring or when they may be directed to the holiday of Easter. Further, importers and CBP will have to determine whether it would be aberrant to use articles, whose design and symbols are directed to a specific festive holiday, at times other than that holiday.

U.S. industries competing with importers enjoying a “festive” classification denied to U.S. exporters of the same merchandise by our trading partners will find themselves disadvantaged. A review of decisions by members of the European Union, prior to and after the amendment to the Explanatory Notes for heading 9505, illustrates the understanding of our trading partners as to the scope of heading 9505 and the inequity of treatment that U.S. industries will face.3

3 A review of the European Binding Tariff Information database revealed the following decisions, which are merely a sampling of the decisions found:

BTI Reference DEF/3805/04–1 (issued 9/13/04): A decision by Germany to classify a mug with a red exterior with gold stars and representation of Santa Claus and an angel as tableware and kitchenware of ceramic, other than of porcelain or china, in heading 6912, HTS.

BTI Reference DEF/3681/04–1 (issued 9/3/04): A decision by Germany to classify a cup with saucer and a matching plate featuring a Christmas motif on all three and the words “Merry Christmas” on the cup as tableware and kitchenware of porcelain or china in subheading 6911.10, HTS.

BTI Reference IE05NT–14–39 (issued 2/15/05): A decision by Ireland to classify a container for sweets made from felt material and shaped as a Santa hat with a zipper opening in the middle for access as an other made up textile article in subheading 6307.90, HTS.
The authority of Customs (now CBP) to limit the application of court decisions involving the classification of imported merchandise has been recognized by the United States Supreme Court and by the U.S. Congress. In United States v. Stone & Downer, 274 U.S. 225, 71 L. Ed. 1013, 47 S. Ct. 616 (1927), the Supreme Court recognized that the principle of res judicata does not apply to judicial decisions involving customs classification of merchandise. The Court, at 235, stated, in relevant part:

The effect of adjudicated controversies arising over classification of importations may well be distinguished from the irrevocable effect of ordinary tax litigation tried in the regular courts. There of course should be an end of litigation as well in customs matters as in other tax cases; but circumstances justify limiting the finality of the conclusion in customs controversies to the identical importation. . . . The evidence which may be presented in one case may be much varied in the next. The importance of a classification and its far-reaching effect may not have been fully understood or clearly known when the first litigation was carried through.

The Court of Appeals for the Federal Circuit in Schott Optical Glass, Inc. v. United States, 750 F.2d 62, 64 (1984), citing Stone & Downer, acknowledged “that in customs classification cases a determination of fact or law with respect to one importation is not res
judicata as to another importation of the same merchandise by the same parties. The opportunity to relitigate applies to questions of construction of the classifying statute as well as to questions of fact as to the merchandise."

Customs has a long history of limiting the application of certain judicial decisions adverse to the government when it was decided that the same issues should be relitigated. Congress specifically recognized Customs authority by enacting 19 U.S.C. 1625(d), which states:

(d) Publication of customs decisions that limit court decisions

A decision that proposes to limit the application of a court decision shall be published in the Customs Bulletin together with notice of opportunity for public comment thereon prior to a final decision.

In addition, the Customs Regulations provide at 19 C.F.R. 177.10(d):

Limiting rulings. A published ruling may limit the application of a court decision to the specific article under litigation, or to an article of a specific class or kind of such merchandise, or to the particular circumstances or entries which were the subject of the litigation.

For the reasons stated above, Customs and Border Protection proposes to limit the application of the decisions of the Court of International Trade and the Court of Appeals for the Federal Circuit in the case of Park B. Smith, Ltd. v. United States to the entries before the courts in that litigation. Before making this decision final, consideration will be given to any written comments timely received on this matter.

Dated: June 15, 2005

MYLES B. HARMON,
Director,
Commercial Rulings Division.