

Bureau of Customs and Border Protection

CBP Decisions

(CBP Dec. 05-23)

**Guidelines for the Assessment and Mitigation of Penalties
Against Arriving Vessel, Air and Rail Carriers for Failure to
Comply with the Advance Electronic Cargo Information
Requirements; Guidelines for the Assessment and Cancellation
of Claims for Liquidated Damages Against NVOCCs,
Slot Charterers and Other Parties Electing to Transmit the
Advance Electronic Cargo Information for Failure to Comply
with the Advance Electronic Cargo Information Re-
quirements**

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

ACTION: General Notice.

SUMMARY: Pursuant to section 343(a) of the Trade Act of 2002, as amended (set forth at 19 U.S.C. 2071 note), Customs and Border Protection (CBP) published in the Federal Register (68 FR 68140), a Final Rule (CBP Dec. 03-32) on December 5, 2003, requiring that CBP receive, by way of a CBP-approved electronic data interchange system, information pertaining to cargo before the cargo is either brought into or sent from the United States by any mode of commercial transportation (sea, air, rail or truck). Incoming air carriers and, if approved, other parties electing to transmit air cargo information must now electronically provide cargo information to CBP no later than the time of departure (“wheels up”), if the aircraft departs for the United States from nearby foreign areas or no later than 4 hours prior to the arrival of the aircraft in the United States, if the aircraft departs from other foreign areas. Rail carriers must now electronically provide cargo information to CBP no later than 2 hours prior to the cargo reaching the first port of arrival in the United States.

This document publishes guidelines for the assessment and mitigation of penalties, pursuant to Title 19, United States Code (“U.S.C.”), section 1618 (19 U.S.C. 1618), incurred by arriving vessel, air and rail carriers for failing to provide the required advance electronic cargo information to CBP within the time period and manner

prescribed by the regulations or for providing inaccurate or invalid cargo information. It also publishes bond cancellation standards, pursuant to 19 U.S.C. 1623, to be applied to claims for liquidated damages incurred by non-vessel operating common carriers (“NVOCCs”), slot charterers and other authorized parties who elect to transmit advance electronic cargo information to CBP through the CBP-approved electronic data interchange systems, but who fail to comply with the obligation to provide advance electronic cargo information to CBP within the time period and manner prescribed by the regulations or for providing inaccurate or invalid cargo information.

EFFECTIVE DATE: These guidelines will take effect **upon publication.**

FOR FURTHER INFORMATION CONTACT: Herminio M. Castro, Penalties Branch, Office of Regulations and Rulings, Customs and Border Protection (202-572-8700).

SUPPLEMENTARY INFORMATION:

BACKGROUND

I. Vessel Cargo

On October 31, 2002, the U.S. Customs Service (since redesignated as Customs and Border Protection (CBP)) published in the Federal Register (67 FR 66318) a Final Rule (T.D. 02-62) amending the CBP Regulations at section 4.7 (19 CFR 4.7) to require accurate presentation of certain manifest information from vessel carriers, destined to the United States, 24 hours prior to lading of cargo at a foreign port and to allow non-vessel operating common carriers (“NVOCCs”) as defined in section 4.7(b)(3)(ii) to present cargo manifest information to CBP. T.D. 02-62 amended the conditions of the International Carrier Bond (19 CFR 113.64) to recognize the status of a NVOCC as a manifesting party and to obligate any NVOCC having such a bond and electing to provide cargo manifest information to CBP electronically under sections 4.7 and 4.7a to accurately transmit such information to CBP 24 or more hours before the related cargo is laden aboard the vessel at the foreign port. Vessels carrying bulk or approved break bulk cargo were exempted from the requirement to provide advance manifest information 24 hours prior to lading. Any carrier of bulk or approved break bulk cargo exempted from the 24-hour advance filing requirement were allowed to present their cargo declarations to CBP 24 hours prior to arrival in the U.S. if they were participants in the Vessel Automated Manifest System (“AMS”) program, or upon arrival if they were non-automated carriers.

T.D. 02-62 added new sections 4.7(e) and 4.7a(f) to the CBP Regulations (19 CFR 4.7(e) and 19 CFR 4.7a(f)), to provide that any master of a vessel who fails to provide manifest information as required

by this section, or who presents or electronically transmits any document, paper, manifest or data required by CBP Regulations that is forged, altered or false, or who fails to transmit the information required by CBP Regulations in a timely manner, may be liable for civil penalties as provided under 19 U.S.C. 1436, in addition to penalties applicable under other provisions of law. Any NVOCC that elects to transmit cargo manifest information to CBP electronically and fails to do so in the manner and in the time period required in section 4.7(b)(3)(i), or electronically transmits any false, forged or altered document, paper, manifest or data to CBP, may be liable for the payment of liquidated damages as provided in 19 CFR 113.64(c), in addition to any other penalties applicable under other provisions of law.

On December 5, 2003, CBP published CBP Dec. 03-32 (68 FR 68140) amending the CBP Regulations to provide that CBP must receive, by way of a CBP approved electronic data interchange system, information pertaining to cargo before the cargo is either brought into or sent from the United States by any mode of commercial transportation (sea, air, rail or truck). Whereas T.D. 02-62 amended the CBP Regulations to provide the option of filing the vessel carrier's advance cargo information electronically, CBP Dec. 03-32 amended the CBP Regulations to make mandatory the electronic submission of the vessel carrier's advance cargo information. Arriving vessel carriers must now file their advance cargo manifest information with CBP electronically.

CBP Dec. 03-32 also amended the provisions of the International Carrier Bond to recognize slot charterers, in addition to NVOCCs, as manifesting parties and to obligate slot charterers to provide advance cargo information to CBP electronically in the manner and in the time period required by the regulations. Slot charterers must possess an International Carrier Bond under 19 CFR 113.64. As with NVOCCs, breach of manifesting obligations by slot charterers may result in the assessment of liquidated damages against them.

Pursuant to section 4.7 of the CBP Regulations (19 CFR 4.7), CBP must receive from the arriving vessel carrier, for any vessel required to make entry with the exception of bulk or approved break bulk cargo, the CBP-approved electronic equivalent of the vessel's Cargo Declaration (CBP Form 1302), 24 hours before the cargo is laden aboard the vessel at the foreign port. The current approved system for presenting electronic cargo declaration information to CBP is the Vessel Automated Manifest System (AMS). All ocean carriers must be automated and participate in the vessel AMS at all ports of entry in the United States by March 4, 2004. Section 4.7a of the CBP Regulations (19 CFR 4.7a) sets forth the data elements that must be presented to CBP. Generic cargo descriptions such as "FAK" ("freight all kinds"), "general cargo," or "STC" ("said to contain") are no longer acceptable.

Pursuant to sections 4.7(e) and 4.7a(f) of the CBP Regulations (19 CFR 4.7(e) and 4.7a(f)), any master who fails to transmit cargo information as required by the regulations or who transmits electronically any document required that is forged, altered or false may be liable for civil penalties under 19 U.S.C. 1436, in addition to penalties applicable under other provisions of law. If any NVOCC or slot charterer elects to transmit cargo information and fails to do so as required by the regulations or transmits electronically any document required that is forged, altered or false, it may be liable for liquidated damages as provided in section 113.64(c) of the regulations, in addition to penalties applicable under other provisions of law. Also, the failure to transmit cargo information as required by the regulations or the electronic transmission of any document required that is forged, altered or false may result in the delay of the release of the cargo, or the denial of the carrier's preliminary entry-permit/special license to unlade. Also, a term permit or special license already issued may not apply to any inbound vessel carrier for which CBP has not received the advance electronic cargo information in the time period and manner required.

II. Air Cargo

CBP Dec. 03-32 amended the CBP Regulations by adding new section 122.48a (19 CFR 122.48a). Pursuant to section 122.48a of the CBP Regulations (19 CFR 122.48a), for any inbound aircraft required to enter under section 122.41 (19 CFR 122.41) that will have commercial cargo aboard, CBP must electronically receive from the inbound air carrier certain information concerning the incoming cargo, through a CBP-approved electronic data interchange system (currently the Air AMS), no later than the time of departure ("wheels up"), if the aircraft departs for the United States from nearby foreign areas (from any port or place in North America, including locations in Mexico, Central America and South America which are north of the equator, the Caribbean and Bermuda), or no later than 4 hours prior to the arrival of the aircraft in the United States, if the aircraft departs from other foreign areas.

In addition to requiring the incoming air carriers to present cargo information electronically in advance of arrival, CBP Dec. 03-32 amended the CBP Regulations at section 122.48a(c) (19 CFR 122.48a(c)) to allow other parties to voluntarily present to CBP a part of the electronic cargo information and to obligate those parties filing manifest information with CBP to have either an International Carrier Bond or a Basic Importation Bond. These other parties allowed to participate include: ABI (Automated Broker Interface) filers as identified by their ABI filer code, Container Freight Stations/deconsolidators as identified by their FIRMS (Facilities Information and Resources Management System) code, Express Consignment Carrier Facilities also identified by their FIRMS code, and any air

carrier that arranged to have the incoming air carrier transport cargo to the United States as identified by its IATA (International Air Transport Association) code.

Pursuant to section 122.48a(d) of the CBP Regulations (19 CFR 122.48a(d)), for non-consolidated shipments, the incoming air carrier must transmit to CBP all of the information for the air waybill record. For consolidated shipments, the incoming air carrier must present to CBP all the required information that is applicable to the master air waybill; and the air carrier must transmit cargo information for all associated house air waybills unless another authorized party electronically transmits this information directly to CBP. If an authorized party does not participate in transmitting the advance electronic cargo information, the party that arranges for and/or delivers that cargo shipment to the incoming carrier must fully disclose and present to the carrier the required cargo information and the incoming carrier must present this information electronically to CBP. Sections 122.48a(d)(1) and 122.48a(d)(2) of the CBP Regulations (19 CFR 122.48a(d)(1) and 122.48a(d)(2)) provide for the data elements that must be presented to CBP. For consolidated shipments, the word "Consolidation" is a sufficient description for the master air waybill record; for non-consolidated shipments, generic cargo descriptions such as "FAK" ("freight all kinds"), "general cargo," or "STC" ("said to contain") are no longer acceptable.

CBP Dec. 03-32 amended the provisions of the International Carrier Bond and the Basic Importation Bond to recognize the new participants mentioned above and to obligate those parties to provide advance cargo information to CBP electronically in the manner and in the time period required by the regulations. Breaching the bond obligations or transmitting cargo information that is forged, altered or false may result in the assessment of liquidated damages against those parties, in addition to any other applicable statutory penalty. Likewise, any pilot of an incoming carrier may be liable for civil penalties under 19 U.S.C. 1436, in addition to any other applicable statutory penalty, for failing to provide advance cargo information to CBP electronically in the manner and in the time period required by the regulations or for transmitting information that is forged, altered or false. Also, the failure to provide the required information to CBP electronically in the time period and manner prescribed by the regulations may result in the delay of the release of the cargo, the denial of landing rights or in the denial of the permit/special license to unlade. Also, a term permit or special license already issued may not apply to any inbound flight for which CBP has not received the advance electronic cargo information in the time period and manner required.

On March 4, 2004, CBP published in the Federal Register (69 FR 10151) an implementation schedule with three different compliance dates requiring the advance electronic transmission of cargo infor-

mation for cargo brought into the United States by air. Beginning August 13, 2004, October 13, 2004, and December 13, 2004, depending on the location of the airport in the United States where cargo arrives, CBP must receive from air carriers and other participating parties the advance electronic cargo information for any cargo that arrives in the United States by air.

III. Rail Cargo

CBP Dec. 03-32 amended the CBP Regulations by adding new section 123.91 (19 CFR 123.91). Pursuant to section 123.91 of the CBP Regulations (19 CFR 123.91), for any inbound train requiring a train sheet under section 123.6 (19 CFR 123.6), that will have commercial cargo aboard, CBP must electronically receive from the inbound rail carrier certain information concerning the incoming cargo, through a CBP-approved electronic data interchange system (currently the Rail AMS), no later than 2 hours prior to the cargo reaching the first port of arrival in the United States. Section 123.91(d) of the CBP Regulations (19 CFR 123.91(d)) provides for the data elements that must be presented to CBP. Generic cargo descriptions such as "FAK" ("freight all kinds"), "general cargo," or "STC" ("said to contain") are no longer acceptable.

In addition to any other applicable statutory penalty, any person in charge of an incoming train may be liable for civil penalties under 19 U.S.C. 1436 for failing to provide advance cargo information to CBP electronically in the manner and in the time period required by the regulations or for transmitting information that is forged, altered or false. Also, the failure to provide the required information to CBP electronically in the time period and manner prescribed by the regulations may result in the delay of the release of the cargo, the denial of permission to proceed or in the denial of the permit/special license to unlade. Also, a term permit or special license already issued may not apply to any inbound rail carrier for which CBP has not received the advance electronic cargo information in the time period and manner required.

On April 12, 2004, CBP published in the Federal Register (69 FR 19207) an implementation schedule with three different compliance dates requiring the advance electronic transmission of cargo information for cargo brought into the United States by rail. Beginning July 12, 2004, August 10, 2004, and September 9, 2004, depending on the location of the port of entry in the United States where cargo arrives, CBP must receive from rail carriers the advance electronic cargo information for any cargo that arrives in the United States by rail.

IV. Information To Transmitter from Another Party

CBP Dec. 03-32 also amended the CBP Regulations, implementing the statutory requirement of section 343(a)(3)(B) of the Trade Act

of 2002, to provide that where the party electronically presenting to CBP the cargo information required by the regulations receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present such information on the basis of what the party reasonably believes to be true.

This document publishes guidelines for the assessment and mitigation of penalties, pursuant to 19 U.S.C. 1618, incurred by arriving vessel, air and rail carriers for failing to provide the required advance electronic cargo information to CBP within the time period and manner prescribed by the regulations or for providing inaccurate or invalid cargo information. It also publishes bond cancellation standards, pursuant to 19 U.S.C. 1623, to be applied to claims for liquidated damages incurred by NVOCCs, slot charterers and other authorized parties who elect to transmit advance electronic cargo information to CBP through the CBP-approved electronic data interchange systems, but who fail to comply with the obligation to provide advance electronic cargo information to CBP within the time period and manner prescribed by the regulations or for providing inaccurate or invalid cargo information. Guidelines for truck carriers will be separately provided. The Guidelines are set forth as follows:

Date: June 16, 2005

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

Guidelines for the Assessment and Mitigation of Penalties Against Arriving Vessel, Air and Rail Carriers for Failure to Comply with the Advance Electronic Cargo Information Requirements; Guidelines for the Assessment and Cancellation of Claims for liquidated Damages Against NVOCCs, Slot Charterers and Other Parties Electing to Transmit the Advance Electronic Cargo Information for Failure to Comply with the Advance Electronic Cargo Information Requirements

I. *In General*

In addition to the enforcement actions, penalties and liquidated damages that may be assessed as provided for below, the failure of an arriving carrier (vessel, air or rail) to be automated in the Automated Manifest System ("AMS") at all ports of entry in the United States, or the failure of an arriving carrier (vessel, air or rail) or of any authorized electronic transmitter to provide the required ad-

vance electronic cargo information in the time period and manner prescribed by the CBP Regulations may result in the delay or denial of a vessel carrier's preliminary entry-permit/special license to unlade, an air carrier's landing rights, a train carrier's permission to proceed, and/or the assessment of any other applicable statutory penalty. CBP may also withhold the release or transfer of the cargo until CBP receives the cargo declaration information and has had the opportunity to review the documentation and conduct any necessary examination.

Where the party electronically presenting to CBP the cargo information required in sections 4.7a(c), 122.48a(d) and 123.91(d) (19 CFR 4.7a(c), 122.48a(d) and 123.91(d)) receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present such information on the basis of what the party reasonably believes to be true.

II. *Failure to be Automated in the AMS System; Untimely Filing of Electronic Cargo Information; Filing of Inaccurate Electronic Cargo Information*

A. *Denial of Unlading/Landing Rights/Permission to Proceed*

1. Vessel Cargo.

Effective March 4, 2004, all arriving vessel carriers must be automated on the Vessel AMS. Ocean carriers currently operational on the Vessel AMS, although not at each port of entry in the United States on the ocean carrier's itinerary, are now required to become operational at all such ports. The failure of the arriving vessel carrier to be automated in the Vessel AMS will result in the denial of the carrier's preliminary entry permit/special license to unlade, and a term permit or special license already issued will not be applicable to any inbound vessel carrier.

The failure to timely transmit the cargo information or the failure to transmit accurate or valid electronic cargo information by the arriving vessel carrier, slot charterers or NVOCCs may result in the delay or the denial of the permit to unlade. As an example, presenting the cargo information 10 hours before the cargo is laden aboard the vessel at the foreign port, or filing incomplete information, may result in the delay or the denial of the permit to unlade. This is a violation of 19 CFR 4.7(b)(2), which provides that CBP must receive the electronic cargo information 24 hours before the cargo is laden aboard the vessel at the foreign port. In any case, CBP will not issue the permit to unlade before it has received the cargo declaration information pursuant to the regulations. Also, a term permit or special license already issued will not be applicable to any inbound vessel

carrier for which CBP has not received the advance electronic cargo information in the time period and manner required.

2. Air Cargo.

For any cargo that arrives in the United States by air at a port where the advance electronic cargo information is required, CBP must receive the required advance electronic cargo information, as provided for in section 122.48a of the CBP Regulations (19 CFR 122.48a). The failure to timely transmit the cargo information or the failure to transmit accurate or valid electronic cargo information may result in the delay or the denial of the carrier's permit/special license to unlade or in the denial of its landing rights. As an example, presenting the cargo information 2 hours prior to the arrival of the aircraft in the United States, or filing incomplete information, may result in the delay or the denial of the permit to unlade. This is a violation of 19 CFR 122.48a(b), which provides, for aircraft departing from foreign areas other than nearby foreign areas, that CBP must receive the electronic cargo information no later than 4 hours prior to the arrival of the aircraft in the United States. In any case, the failure of the arriving air carrier or another authorized party to electronically transmit the cargo information will result in the denial of the carrier's permit/special license to unlade, and a term permit or special license already issued will not be applicable to any inbound flight. Also, a term permit or special license already issued will not be applicable to any inbound flight for which CBP has not received the advance electronic cargo information in the time period and manner required.

3. Rail Cargo.

For any cargo that arrives in the United States by rail at a port where the advance electronic cargo information is required, CBP must receive the required advance electronic cargo information, as provided for in section 123.91 of the CBP Regulations (19 CFR 123.91). The failure to timely transmit the cargo information or the failure to transmit accurate or valid electronic cargo information may result in the delay or the denial of the carrier's permit/special license to unlade or its permit to proceed. As an example, presenting the cargo information 1 hour prior to the cargo reaching the first port of arrival in the U.S., or filing incomplete information, may result in the delay or the denial of the permit to unlade. This is a violation of 19 CFR 123.91(a), which provides that CBP must receive the electronic cargo information no later than 2 hours prior to the cargo reaching the first port of arrival in the United States. In any case, the failure of the arriving rail carrier to electronically transmit the cargo information will result in the denial of the carrier's permit/special license to unlade and its permit to proceed, and a term permit or special license already issued will not be applicable to any in-

bound rail carrier. Also, a term permit or special license already issued will not be applicable to any inbound rail carrier for which CBP has not received the advance electronic cargo information in the time period and manner required.

B. Penalty Assessment Against Arriving Carriers

When a carrier (vessel, air or rail) arrives at a port of entry where the advance electronic cargo information is required, Port Directors may assess a civil monetary penalty, under 19 U.S.C. 1436, for violation of sections 4.7, 4.7a, 122.48a or 123.91 of the CBP Regulations (19 CFR 4.7, 4.7a, 122.48a or 123.91), against the master, pilot or person in charge of any arriving carrier (vessel, air or rail) which is not automated in the AMS or who fails to electronically transmit the advance cargo information. A penalty of \$5,000 may be assessed against the master of the vessel, pilot of the airplane, or person in charge of the train in care of the carrier. A \$10,000 penalty (also under 19 U.S.C. 1436) may be assessed against the **same** master of the vessel, pilot of the airplane, or person in charge of the train in care of the carrier for any subsequent violation. In addition to a penalty pursuant to 19 U.S.C. 1436, CBP may deny the permit/special license to unlade, deny the term permit or special license to unlade, deny an air carrier's landing rights, deny a vessel's preliminary entry-permit/special license to unlade, deny a train's permission to proceed, and/or assess any other applicable statutory penalty.

Also, when a carrier (vessel, air or rail) arrives at a port of entry where the advance electronic cargo information is required, Port Directors may assess a civil monetary penalty, under 19 U.S.C. 1436, for violation of sections 4.7, 4.7a, 122.48a or 123.91 of the CBP Regulations (19 CFR 4.7, 4.7a, 122.48a or 123.91), against the master, pilot or person in charge of any arriving carrier (vessel, air or rail) who untimely files electronic cargo information or who files inaccurate or invalid electronic cargo information. A penalty of \$5,000 may be assessed against the master of the vessel, pilot of the airplane, or person in charge of the train in care of the carrier. A \$10,000 penalty (also under 19 U.S.C. 1436) may be assessed against the **same** master of the vessel, pilot of the airplane, or person in charge of the train in care of the carrier for any subsequent violation. In addition to a penalty pursuant to 19 U.S.C. 1436, CBP may deny the permit/special license to unlade, deny the term permit or special license to unlade, deny an air carrier's landing rights, deny a vessel's preliminary entry-permit/special license to unlade, deny a train's permission to proceed, and/or assess any other applicable statutory penalty.

C. Assessment of Liquidated Damages Claims Against NVOCCs, Slot Charterers, and Authorized Electronic Transmitters

When a vessel carrier or an air carrier arrives at a port of entry

where the advance electronic cargo information is required, Port Directors may assess, in addition to any other applicable statutory penalty, a claim for liquidated damages in the amount of \$5,000 under 19 CFR 113.64(c) or 19 CFR 113.62(j)(2), for violation of sections 4.7, 4.7a or 122.48a of the CBP Regulations (19 CFR 4.7, 4.7a or 122.48a) against any NVOCC, slot charterer or other authorized electronic transmitter who elects to transmit cargo information but who transmits advance electronic cargo information to the CBP-approved electronic data interchange system untimely or containing inaccurate or invalid electronic cargo information. A claim for liquidated damages in the amount of \$5,000 may be assessed for any subsequent violation.

D. Other Considerations

For each departure to the United States where multiple violations for untimely filing of advance cargo information consistent with the above occur, a single penalty may be assessed against the master, pilot or person in charge of the train under 19 U.S.C. 1436, or a single claim for liquidated damages may be assessed under 19 CFR 113.64(c) or 19 CFR 113.62(j)(2) against **each** NVOCC, slot charterer or authorized electronic transmitter responsible for the violations.

In cases where inaccurate or invalid electronic cargo information is transmitted for multiple shipments on the same arrival, a single penalty may be assessed against the master, pilot or person in charge of the train under 19 U.S.C. 1436, or a single claim for liquidated damages may be assessed under 19 CFR 113.64(c) or 19 CFR 113.62(j)(2) against **each** NVOCC, slot charterer or authorized electronic transmitter responsible for the violations.

E. Mitigation of Penalties/Cancellation of Liquidated Damages Claims

1. First Violation

If an arriving carrier (vessel, air or rail) incurs a penalty for failing to be automated in the AMS or to electronically transmit the required cargo information, or if the arriving carrier (vessel, air or rail) incurs a penalty for untimely filing electronic cargo information or for filing inaccurate or invalid electronic cargo information, the penalty may be mitigated to an amount between \$1,000 and \$3,500, if CBP determines that law enforcement goals were not compromised by the violation. A carrier which is a certified C-TPAT member may receive mitigation of at least 50% of the normal mitigation amount. For example, if a penalty is normally mitigated to \$1,000 (the lowest mitigation amount for first violations by non-C-TPAT members), a penalty assessed against a certified C-TPAT member should be mitigated to an amount of no more than \$500.

If a NVOCC, slot charterer or other authorized electronic transmitter incurs a liquidated damages claim for untimely filing cargo

information or for filing inaccurate or invalid electronic cargo information, the liquidated damages claim may be cancelled upon payment of an amount between \$1,000 and \$3,500, if CBP determines that law enforcement goals were not compromised by the violation. A carrier which is a certified C-TPAT member may receive mitigation of at least 50% of the normal mitigation amount. For example, if a liquidated damages claim is normally mitigated to \$1,000 (the lowest mitigation amount for first violations by non-C-TPAT members), a liquidated damages claim assessed against a certified C-TPAT member should be mitigated to an amount of no more than \$500.

2. Subsequent Violations

If the arriving carrier (vessel, air or rail) incurs a subsequent penalty for untimely filing electronic cargo information or for filing inaccurate or invalid electronic cargo information, the penalty may be mitigated to an amount between \$3,500 and \$5,000, if CBP determines that law enforcement goals were not compromised by the violation.

Any subsequent claim for liquidated damages against a NVOCC or slot charterer or other authorized electronic transmitter for untimely filing electronic cargo information or for filing inaccurate or invalid cargo information may be cancelled upon payment of an amount not less than \$3,500.

If a carrier which is a certified C-TPAT member untimely files electronic cargo information or files inaccurate or invalid cargo information, the certified C-TPAT member may receive mitigation of at least 50% of the normal mitigation amount. For example, if a penalty or liquidated damages claim is normally mitigated to \$1,000 (the lowest mitigation amount for first violations by non-C-TPAT members), a penalty or liquidated damages claim assessed against a certified C-TPAT member should be mitigated to an amount of no more than \$500.

However, CBP will grant no mitigation for subsequent violations for failing to be automated in the AMS or for failing to electronically transmit the required cargo information, whether the violator is a certified C-TPAT member or not.

3. Information to Transmitter from Another Party

Where the party electronically presenting to CBP the cargo information required by CBP Regulations receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present such information on the basis of what the party reasonably believes to be true.

F. *Mitigation and Aggravating Factors*

1. *Mitigating Factors:*

- a. Inexperienced in transmitting advance electronic cargo information.
- b. A general good performance and low error rate in the handling of cargo.
- c. A carrier which is a certified C-TPAT member may receive mitigation of at least 50% of the normal mitigation amount.
- d. Demonstrated remedial action has been taken to prevent future violations.

2. *Aggravating factors:*

- a. Lack of cooperation with CBP or CBP activity is impeded with regard to the case.
- b. Evidence of smuggling or attempt to introduce or introduction of merchandise contrary to law. This may be considered an extraordinary aggravating factor.
- c. There is a rising error rate which is indicative of deteriorating performance in the transmission of cargo information.

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, June 22, 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.

Sandra L. Bell for MICHAEL T. SCHMITZ,
*Assistant Commissioner,
Office of Regulations and Rulings.*

19 CFR PART 177

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF DRAWER PULLS

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

ACTION: Notice of proposed modification of ruling letter and revocation of treatment relating to tariff classification of drawer pulls.

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 intends to modify a ruling relating to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of drawer pulls, and to revoke any treatment CBP has previously accorded to substantially identical transactions. These articles are plastic drawer pulls and metal drawer pulls specifically designed for furniture. CBP invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before August 6, 2005.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted com-

ments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 572-8779.

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), 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 based on the premise 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 rights and responsibilities 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, 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 declare value on imported merchandise, and to provide other necessary information to enable CBP to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify a ruling relating to the tariff classification of drawer pulls. Although in this notice CBP is specifically referring to one ruling, NY F81184, 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 identified. Any party who has received an interpretative 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 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment it previously accorded 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 rea-

sonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY F81184, dated December 28, 1999, plastic drawer pulls and metal drawer pulls specifically designed for furniture were held to be classifiable as other parts of furniture, in subheadings 9403.90.5000 and 9403.90.8040, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), respectively. This classification was based on CBP's belief that the drawer pulls functioned as handles and, therefore, constituted parts of furniture. The classification of wooden drawer pulls in NY F81184 is not affected by this proposed modification. NY F81184 is set forth as "Attachment A" to this document.

It is now CBP's position that the plastic drawer pulls are classifiable in subheading 3926.30.1000, HTSUSA, as other fittings for furniture, coachwork or the like, handles and knobs, of plastics, and the metal drawer pulls in subheading 8302.42.3065, HTSUSA, as other mountings, fittings and similar articles, and parts thereof, suitable for furniture, of iron or steel, of aluminum or of zinc, or in subheading 8302.42.6000, HTSUSA, as other mountings, fittings and similar articles, and parts thereof, suitable for furniture, other, as appropriate. Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY F81184 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis in HQ 967676, which is set forth as "Attachment B" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

DATED: June 20, 2005

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY F81184

December 28, 1999

CLA-2-94:RR:NC:SP:233 F81184

CATEGORY: Classification

TARIFF NO.: 9403.90.7000; 9403.90.5000; 9403.90.8040

MR. STANLEY CHAN
SHIN YEE INDUSTRIAL LIMITED
Room 901A, Kin Tak Fung Building
174 Wai Yip Street
Hong Kong

RE: The tariff classification of furniture parts from China, Taiwan and Hong Kong.

DEAR MR. CHAN:

In your undated letter, received by this office on December 22, 1999, you requested a tariff classification ruling.

The items to be imported are as follows:

1. Wooden drawer pulls
2. Plastic drawer pulls
3. Metal drawer pulls
4. Drawer runners
5. Plastic caster wheels

The drawer pulls are specifically designed for furniture.

The applicable subheading for the wooden drawer pulls will be 9403.90.7000, Harmonized Tariff Schedule of the United States (HTS), which provides for other furniture and parts thereof: parts: other: of wood. The rate of duty will be free.

The applicable subheading for the plastic drawer pulls will be 9403.90.5000, HTS, which provides for other furniture and parts thereof: parts: other: of rubber or plastics: other. The rate of duty will be free.

The applicable subheading for the metal drawer pulls will be 9403.90.8040, HTS, which provides for other furniture and parts thereof: parts: other: other, of metal. The rate of duty will be free.

Your inquiry does not provide enough information for us to give a classification ruling on the remaining two items, the drawer runners and the plastic caster wheels. For each of those items, please provide a breakdown of the component materials by value and weight.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 212-637-7061.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967676

CLA-2 RR:CR:GC 967676 JAS

CATEGORY: Classification

TARIFF NO.: 3926.30.1000, 8302.42.3065, 8302.42.6000

MR. STANLEY CHAN
SHIN YEE INDUSTRIAL LIMITED
Room 901A, Kin Tak Fung Building
174 Wai Yip Street
Hong Kong

RE: Drawer Pulls; NY F81184 Modified

DEAR MR. CHAN:

In NY F81184, which the Director, National Commodity Specialist Division, U.S. Customs and Border Protection (CBP), New York, issued to you on December 28, 1999, certain plastic drawer pulls and metal drawer pulls were found to be classifiable as other parts of furniture, of rubber or plastics, or of metal, in subheadings 9403.90.5000 and 9403.90.8040, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), respectively. We have reconsidered these classifications and determined that they are incorrect. The classification of wooden drawer pulls expressed in NY F81184 remains unchanged.

FACTS:

The merchandise at issue is plastic drawer pulls and metal drawer pulls specifically designed for furniture. These articles function as handles or knobs for opening and closing furniture drawers. There is no further description of these articles. Submitted samples of substantially similar articles are of base metal.

The HTSUS provisions under consideration are as follows:

3926	Other articles of plastics . . . :
3926.30	Fittings for furniture, coachwork of the like:
3926.30.1000	Handles and knobs
	* * * * *
8302	Base metal mountings, fittings and similar articles suitable for furniture . . . ; and base metal parts thereof:
	Other mountings, fittings and similar articles, and parts thereof:
8302.42	Other, suitable for furniture:
8302.42.3065	Of iron or steel, of aluminum or of zinc
8302.42.6000	Other
	* * * * *
9403	Other furniture and parts thereof:

9403.90	Parts:
	Of rubber or plastics:
9403.90.5000	Other
9403.90.8040	Other

ISSUE:

Whether plastic drawer pulls and metal drawer pulls are “parts of general use” of heading 8302 and, thus, precluded from classification in heading 9403.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, HTSUSA, goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. CBP believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Chapter 94, Note 1(d), HTSUSA, states, in relevant part, that the chapter does not cover parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39). Section XV, Note 2(c) includes articles of heading 8302 within the expression “*parts of general use*” as used throughout the tariff schedule. Thus, articles of heading 8302 and similar goods of plastics cannot be classified in heading 9403.

EN 83.02 describes, among other articles, general purpose classes of base metal accessory fittings and mountings, such as are used largely on furniture, etc. Among the articles listed at (E)(5) are mountings, fittings and similar articles suitable for furniture, specifically handles and knobs, including those for locks or latches.

Tariff terms not defined in the legal text of the HTSUSA, or otherwise described in the ENs, are normally construed in accordance with their common or commercial meanings, which are presumed to be the same. Various standard dictionaries indicate the terms “handle” and “knob” are often synonymous and designate parts designed especially to be grasped by the hand as for lifting or steering, or small, usually rounded projections by which something can be grasped or otherwise manipulated or moved. In our opinion, drawer pulls, which function to open or close drawers in furniture, are within the common and commercial meaning of the terms “handle” and “knob” for tariff purposes. Metal drawer pulls qualify as handles or knobs (base metal mountings and fittings) of heading 8302 and, therefore, are precluded by Chapter 94, Note 1(d) from classification in heading 9403. *See* NY 838264 and NY 838268, both dated March 17, 1989. Plastic drawer pulls are similarly precluded from classification in heading 9403. They are provided for in heading 3926 as handles or knobs for furniture, of plastics. *See* NY E83568, dated July 19, 1999.

HOLDING:

Under the authority of GRI 1, the metal drawer pulls are provided for in heading 8302. Those drawer pulls of iron or steel, or of aluminum or zinc are

classifiable in subheading 8302.42.3065, HTSUSA. The rate of duty under this provision is 3.9 percent ad valorem. Metal drawer pulls of other base metals are classifiable in subheading 8302.42.6000, HTSUSA. The rate of duty under this provision is 3.4 percent ad valorem.

Under the authority of GRI 1, the plastic drawer pulls are provided for in heading 3926. They are classifiable in subheading 3926.30.1000, HTSUSA. The rate of duty under this provision is 6.5 percent 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 World Wide Web at www.usitc.gov/tata/hts.

EFFECT ON OTHER RULINGS:

NY F81184, dated December 28, 1999, is modified.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

**REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF OIL PAN
DRAIN PLUGS**

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

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of oil pan drain plugs.

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 revoking a ruling relating to the tariff classification of oil pan drain plugs, and revoking any treatment CBP has previously accorded to substantially identical transactions. Notice of the proposed revocation was published on April 27, 2005, in the *Customs Bulletin*. One comment was received in response to this notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after (60 days after publication in the *Customs Bulletin*).

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 572-8779.

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), 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 based on the premise 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 rights and responsibilities 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, 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 declare value on imported merchandise, and to provide other necessary information to enable CBP to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to CBP's obligations, a notice was published on April 27, 2005, in the *Customs Bulletin*, Volume 39, Number 18, proposing to revoke NY K83555, dated March 11, 2004. This ruling classified oil pan drain plugs in subheading 8708.99.8080, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as other parts and accessories for the motor vehicles of headings 8701 to 8705. One comment was received in response to this notice, opposing the proposed revocation.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should have advised CBP during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment it previously accorded to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY K83555 to reflect the proper classification of oil pan drain plugs in subheading 8409.91.5080, HTSUSA, as other parts suitable for use solely or principally with spark-ignition internal combustion piston engines, in accordance with the analysis in HQ 967560, which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment it previously accorded to substantially identical transactions.

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

DATED: June 21, 2005

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967560
June 21, 2005
CLA-2 RR:CR:GC 967560 JAS
CATEGORY: Classification
TARIFF NO.: 8409.91.5080

JOSEPH R. HOFFACKER
BARTHCO TRADE CONSULTANTS
7575 Holstein Avenue
Philadelphia, PA 19153

RE: Oil Pan Drain Plugs; NY K83555 Revoked

MR. HOFFACKER:

In NY K83555, which the Director, National Commodity Specialist Division, U.S. Customs and Border Protection (CBP), New York, issued to you on March 11, 2004, on behalf of Chicago Rawhide Division of SKF USA, Inc., two models of an oil pan drain plug were found to be classifiable as other motor vehicle parts and accessories, in subheading 8708.99.8080, Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY K83555 was published on April 27, 2005, in the *Customs Bulletin*, Volume 39, Number 18. One comment was received in response to that notice, opposing the proposed revocation. We will discuss that comment in this ruling.

FACTS:

Technical drawings submitted with the ruling request that resulted in NY K83555 depict oil pan drain plugs. They are cylindrically-shaped articles

with a hex head on one end and a screw thread machined beneath the head. One plug, designated part 534291, is of steel construction with a fluoroelastomer (plastic) sealing ring, while a second plug, designated part 536189, is also of steel construction but with a HNBR (rubber) sealing ring. These articles screw into the bottom of an internal combustion engine's oil pan by means of a wrench and permit the engine's oil to be drained and replaced.

The HTSUS provisions under consideration are as follows:

8409	Parts suitable for use solely or principally with the engines of heading 8407 or 8408: Other:
8409.91	Suitable for use solely or principally with spark-ignition internal combustion piston engines (including rotary engines): Other:
8409.91.50	Other * * * * *
8708	Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories:
8708.99	Other: Other:
8708.99.80	Other

ISSUE:

Whether the oil pan drain plugs are goods of heading 8409.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

Section XVI, Note 2(b), HTSUSA, states, in part, that parts suitable for use solely or principally used with a number of machines of the same heading are to be classified with machines of that kind or in heading 8409, as appropriate. Section XVII, Note 2(e), HTSUSA, states, in part, that the expressions "*parts*" and "*parts and accessories*" do not apply to machines or apparatus of headings 8401 to 8479, or parts thereof. Thus, if the oil pan drain plugs at issue constitute parts of internal combustion engines of headings 8407 or 8408, they are to be classified in heading 8409 and not in heading 8708. It appears that in addition to use with internal combustion piston engines, drain plugs can also be used with transmissions, differentials, air compressors and coolant fluid drains, as well as a variety of other machines using an oil sump. However, the available information indicates that these drain plugs are designed for use principally with internal combustion piston engines of the type provided for in heading 8407 and are integral, constituent parts thereof. See NY D83802, dated October 27, 1998, and NY F80265, dated December 17, 1999.

The commenter opposing the proposed revocation of NY K83555 asserts classification in subheading 7318.15.2061 or subheading 7318.15.2065, HTSUSA, which provide for hexagonal head bolts with their washers. He notes that the plastic and rubber rings function as washers which, along with the bolt, help seal the oil pan, and that the function of the article is more to keep oil in the oil pan than to drain oil from the engine. He notes further that using a wrench to screw the article in place defines that article as a bolt, and that a selection of bolts to replace the oil pan drain plug is available at hardware stores. CBP does not agree with this assessment. CBP traditionally classifies threaded fasteners in accordance with their primary design characteristics, a criterion reinforced in American National Standards Institute (ANSI) specification B18.2.1. This specification defines *bolt* as an externally threaded fastener designed for insertion through holes in assembled parts, normally intended to be tightened and released by torquing a nut. Primary criteria 5.1 states that an externally threaded fastener which can be tightened and released only by torquing a nut is a *bolt*. Primary criteria 5.3 states that an externally threaded fastener which must be assembled with a nut to perform its intended service is a *bolt*. Applying these criteria, a spring center bolt, a threaded fastener with unslotted fillister head, inserted through holes to compress the spring assembly and center the spring unit on an axle plate, the assembly completed by tightened a nut, is classifiable in subheading 7318.15.20, HTSUS. See 088763, dated May 29, 1991, and related cases. Because oil pan drain plugs do not function in this manner, they are not bolts for tariff purposes.

HOLDING:

Under the authority of GRI 1, and Section XVI, Note 2(b), HTSUS, oil pan drain plugs represented by model numbers 534291 and 536189 are provided for in heading 8409. They are classifiable in subheading 8409.91.5080, HTSUSA, dutiable in 2005 at the rate of 2.5 percent 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 World Wide Web at www.usitc.gov/tata/hts.

EFFECT ON OTHER RULINGS:

NY K83555, dated March 11, 2004, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

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