

Bureau of Customs and Border Protection

CBP Decisions

**PARTS 7, 10, 11, 12, 18, 19, 24, 54, 101, 102, 111, 114, 123, 128,
132,134, 141, 145, 146, 148, 151, 152, 177, 181, 191**

[CBP Dec. 05 - 31]

TECHNICAL AMENDMENTS TO CHAPTER 1 OF TITLE 19 OF THE CODE OF FEDERAL REGULATIONS

AGENCY: Customs and Border Protection, Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends Title 19 of the Code of Federal Regulations by making technical corrections to certain authority citations to reflect amendments to the Harmonized Tariff Schedule of the United States effected by the President's Proclamation of December 30, 2003, to implement the United States-Singapore Free Trade Agreement.

EFFECTIVE DATE: September 7, 2005.

FOR FURTHER INFORMATION CONTACT: Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, Tel. (202) 572-8763.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Chapter I of Title 19 of the Code of Federal Regulations (19 CFR Chapter I) contains general and specific authority citations, several of which reference certain General Note provisions of the Harmonized Tariff Schedule of the United States (HTSUS). As a result of recent amendments to the HTSUS, several General Note provisions have been renumbered; however, the new designations are not yet reflected in Title 19 of the CFR. This document makes conforming technical corrections to Title 19 CFR to reflect the renumbered General Note provisions of the HTSUS.

The amendments to the HTSUS were effected by the United States-Singapore Free Trade Agreement (“USSFTA”), Public Law 108 – 78, 117 Stat. 948 (19 U.S.C. 3805 note), enacted on September 3, 2003. On December 30, 2003, the President issued Proclamation 7747 (68 FR 75793) to implement certain provisions of the USSFTA. Annex I of Proclamation 7747 modified the HTSUS, in pertinent part, as follows:

- The text of General Note (GN) 19 to the HTSUS is transferred and designated as GN 3(e).
- The text of General Note (GN) 20 to the HTS is transferred and designated as GN 3(f).
- The text of General Notes (GN) 23 and 24 of the HTSUS is transferred and designated as GN 3(i) and (j), respectively.

This document makes technical corrections to those provisions of 19 CFR Chapter 1 that contain references to the out-dated General Note citations.

INAPPLICABILITY OF PUBLIC NOTICE AND COMMENT REQUIREMENT AND DELAYED EFFECTIVE DATE REQUIREMENT

Because these amendments merely update certain authority citations in 19 CFR Chapter 1, pursuant to 5 U.S.C. 553(b)(B), CBP finds that good cause exists for dispensing with notice and public procedure as unnecessary. For these same reasons, pursuant to 5 U.S.C. 553(d)(3), CBP finds that good cause exists for dispensing with the requirement for a delayed effective date.

THE REGULATORY FLEXIBILITY ACT

Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. et seq.).

EXECUTIVE ORDER 12866

These amendments do not meet the criteria for a “significant regulatory action” as specified in E.O. 12866.

SIGNING AUTHORITY

This document is limited to technical corrections and is being issued in accordance with 19 CFR 0.1(b)(1), which provides, pursuant to Treasury Department Order No. 100–16, the Secretary of Homeland Security with the authority to prescribe and approve regulations relating to customs revenue functions on behalf of the Secretary of the Treasury when the subject matter of the regulations is not listed in paragraph 1(a)(i) of the order. Such regulations are the

official regulations of both Departments notwithstanding that they are not signed by an official of the Department of the Treasury. Accordingly, these regulations are signed by the Commissioner of Customs and Border Protection as the delegate of the Secretary of Homeland Security.

DRAFTING INFORMATION

The principal author of this document was Ms. Suzanne Kingsbury, Attorney, Regulations Branch, Office of Regulations and Rulings.

LIST OF SUBJECTS ADDED

List of Subjects in

19 CFR Part 7

American Samoa; Coffee; Customs duties and inspection; Guam; Guantanamo Bay Naval Station, Cuba; Kingman Reef; Liquors; Midway Islands; Puerto Rico; Wake Island; Wine

19 CFR Part 10

Caribbean Basin initiative; Customs duties and inspection; Exports; Reporting and recordkeeping requirements

19 CFR Parts 11 and 134

Customs duties and inspection; Labeling; Packaging and containers

19 CFR Parts 12 and 141

Customs duties and inspection; Reporting and recordkeeping requirements

19 CFR Part 18

Common carriers; Customs duties and inspection; Exports; Freight; Penalties; Reporting and recordkeeping requirements; Surety bonds

19 CFR Part 19

Customs duties and inspection; Exports; Freight; Reporting and recordkeeping requirements; Surety bonds; Warehouses; Wheat

19 CFR Part 24

Accounting; Claims; Customs duties and inspection; Harbors; Reporting and recordkeeping requirements; Taxes

19 CFR Part 54

Customs duties and inspection; Metals; Reporting and recordkeeping requirements

19 CFR Part 101

Customs duties and inspection; Harbors; Organization and functions (Government agencies); Seals and insignia; Vessels

19 CFR Part 102

Canada; Customs duties and inspection; Imports; Mexico; Reporting and recordkeeping requirements; Trade agreements

19 CFR Part 111

Administrative practice and procedure; Brokers; Customs duties and inspection; Penalties; Reporting and recordkeeping requirements

19 CFR Part 114

Customs duties and inspection; Exports; Trade agreements

19 CFR Part 123

Canada; Customs duties and inspection; Freight; International boundaries; Mexico; Motor carriers; Railroads; Reporting and recordkeeping requirements; Vessels

19 CFR Part 128

Administrative practice and procedure; Customs duties and inspection; Freight; Reporting and recordkeeping requirements

19 CFR Part 132

Customs duties and inspection

19 CFR Part 145

Customs duties and inspection; Exports; Lotteries; Reporting and recordkeeping requirements

19 CFR Part 146

Administrative practice and procedure; Customs duties and inspection; Exports; Foreign trade zones; Penalties; Petroleum; Reporting and recordkeeping requirements

19 CFR Part 148

Airmen; Customs duties and inspection; Foreign officials; Government employees; International organizations; Reporting and recordkeeping requirements; Seamen; Taxes

19 CFR Part 151

Cigars and cigarettes; Cotton; Customs duties and inspection; Fruit juices; Laboratories; Metals; Oil imports; Reporting and recordkeeping requirements; Sugar; Wool

19 CFR Part 152

Customs duties and inspection

19 CFR Part 177

Administrative practice and procedure; Customs duties and inspection; Government procurement; Reporting and recordkeeping requirements

19 CFR Part 181

Administrative practice and procedure; Canada; Customs duties and inspection; Exports; Imports; Mexico; Reporting and recordkeeping requirements; Trade agreements

19 CFR Part 191

Alcohol and alcoholic beverages; Claims; Customs duties and inspection; Exports; Foreign trade zones; Guantanamo Bay Naval Station, Cuba; Packaging and containers; Reporting and recordkeeping requirements; Trade agreements

AMENDMENTS TO THE REGULATIONS

Chapter 1 of Title 19 of the Code of Federal Regulations (19 CFR chapter I) is amended as set forth below:

PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

1. The authority citation for part 7 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624; 48 U.S.C. 1406i.

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

2. The general authority citation for part 10 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

PART 11—PACKING AND STAMPING; MARKING

3. The authority citation for part 11 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i) and (j), Harmonized Tariff Schedule of the United States), 1624.

PART 12—SPECIAL CLASSES OF MERCHANDISE

4. The general authority citation for part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

5. The general authority citation for part 18 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1623, 1624;

* * * * *

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

6. The general authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624;

* * * * *

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

7. The general authority citation for part 24 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 et. seq.);

* * * * *

PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

8. The authority citation for part 54 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i); Section XV, Note 5, Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 101—GENERAL PROVISIONS

9. The general authority citation for part 101 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

* * * * *

PART 102—RULES OF ORIGIN

10. The authority citation for part 102 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

PART 111—CUSTOMS BROKERS

11. The general authority citation for part 111 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * * *

PART 114—CARNETS

12. The authority citation for part 114 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

13. The general authority citation for part 123 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624, 2071 note.

* * * * *

PART 128—EXPRESS CONSIGNMENTS

14. The authority citation for part 128 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

PART 132—QUOTAS

15. The general authority citation for part 132 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

* * * * *

PART 134—COUNTRY OF ORIGIN MARKING

16. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1304, 1624.

PART 141—ENTRY OF MERCHANDISE

17. The general authority citation for part 141 continues, and the specific authority for § 141.4 is revised, to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

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

* * * * *

18. Section 141.4 is amended:

(a) In paragraph (b)(1), by removing the reference to number “19” and adding in its place the term “3(e)”; and

(b) In paragraph (c)(2), by removing the word “Customs” and adding in its place the term “CBP”.

PART 145—MAIL IMPORTATIONS

19. The general authority citation for part 145 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624;

* * * * *

PART 146—FOREIGN TRADE ZONES

20. The authority citation for part 146 is revised to read as follows:

Authority: 19 U.S.C. 66, 81a–81u, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

21. The general authority citation for part 148 is revised to read as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States);

* * * * *

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

22. The general authority citation for part 151 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i) and (j), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

PART 152—CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE

23. The general authority citation for part 152 continues, and the specific authority for § 152.13 is revised, to read as follows:

Authority: 19 U.S.C. 66, 1401a, 1500, 1502, 1624;

* * * * *

Section 152.13 also issued under 19 U.S.C. 1202 (General Note 3(f), Harmonized Tariff Schedule of the United States (HTSUS)).

24. In § 152.13:

(a) Paragraph (b)(1) is amended by removing the word “Customs” and adding the term “CBP”, and by removing the reference to number “20” and adding in its place the term “3(f)”;

(b) Paragraphs (b)(2), (c) introductory text and (c)(1) are amended by removing references to number “20” each place they appear and adding in their place the term “3(f)”;

(c) Paragraph (c)(2) is amended by removing the word “Customs” and adding in its place the term “CBP”, and by removing the reference to number “20” and adding in its place the term “3(f)”;

(d) Paragraph (c)(3) is amended by removing the reference to number “20” and adding in its place the term “3(f)”;

(e) Paragraph (d) is amended by removing the references to number “20” each place they appear and adding in their place the term “3(f)”.

PART 177—ADMINISTRATIVE RULINGS

25. The authority citation for part 177 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1502, 1624, 1625;

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

26. The authority citation for part 181 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314;

PART 191—DRAWBACK

27. The general authority citation for part 191 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1313, 1624;

* * * * *

Dated: September 1, 2005

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

[Published in the Federal Register, September 7, 2005 (70 FR 53060)]

General Notices

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

ACTION: Notice of meeting.

SUMMARY: This notice announces the date, time, and location for the third meeting of the ninth term of the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions (COAC), and the expected agenda for its consideration.

DATES: The next meeting of the COAC will be held on Thursday, October 6, 2005, 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Crowne Plaza Redondo Beach & Marina Hotel, 300 North Harbor Drive, Redondo Beach, CA 90277, Phone: 310-318-8888; the meeting is in the "Seascape" room of this hotel.

FOR FURTHER INFORMATION CONTACT: Ms. Monica Frazier, Office of the Assistant Secretary for Border and Transportation Security, Department of Homeland Security, Washington, DC 20528, telephone 202-282-8431; facsimile 202-282-8504.

SUPPLEMENTARY INFORMATION: The third meeting of the ninth term of the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions (COAC) will be held at the date, time and location specified above. This notice announces the expected agenda for that meeting. This meeting is open to the public; however, participation in COAC delib-

erations is limited to COAC members, Homeland Security and Treasury Department officials, and persons invited to attend the meeting for special presentations. Since seating is limited, all persons attending this meeting should provide notice preferably by 2 p.m. e.s.t. on Monday, October 3, 2005, to Ms. Monica Frazier, Office of the Assistant Secretary for Border and Transportation Security, Department of Homeland Security, Washington, DC 20528, telephone 202-282-8431; facsimile 202-282-8504, **Information on Services for Individuals with Disabilities:** For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Monica Frazier, Office of the Assistant Secretary for Border and Transportation Security, Department of Homeland Security, Washington, DC 20528, telephone 202-282-8431; facsimile 202-282-8504, as soon as possible.

Draft Agenda

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

1. Introductory Remarks
2. World Customs Organization (WCO) Security Framework/Implementation
 - A. Adoption of the Framework – June 2005
 - B. Creation of the Private Sector Consultative Group
3. Continuity Planning
 - A. Homeland Security Presidential Directive (HSPD) 13 (White House Release)
 - B. Coordination of Planning Groups (National Maritime Security Advisory Committee (NMSAC), etc)
4. Security Subcommittee – Customs–Trade Partnership Against Terrorism (C–TPAT)
 - A. Carrier Criteria
 - B. Benefits Update
 - C. Automation Update
5. Update on Infrastructure Issues
6. Secure Freight
7. Updates from CBP
 - A. Textiles & Apparel Entry Processing - Import Requirements
 - B. Container Seals Regulatory Status
 - C. International Trade Data Systems
 - D. Update on ACE

- 8. Update from COAC
 - A. Broker Confidentiality
 - B. Other
- 9. New Action Items
 - A. Next Committee Meeting-Washington D.C. (December)
 - B. Other

ELAINE DEZENSKI,
Acting Assistant Secretary,
Border and Transportation Security Policy and Planning.

Dated: September 2, 2005

[Published in the Federal Register, September 12, 2005 (70 FR 53800)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, September 7, 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

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

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

ACTION: Notice of revocation of ruling letter and revocation of 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 U.S. Customs and Border Protection (CBP) is revoking a ruling letter pertaining to the tariff classification of steel step cans under the Harmonized Tariff Schedule of the United States (“HTSUS”). Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed actions was published in the Customs Bulletin on June 29, 2005. Two comments were received in response to the notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 20, 2005.

FOR FURTHER INFORMATION CONTACT: Ieva O’Rourke, Tariff Classification and Marking 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, (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the Customs Bulletin on June 29, 2005, proposing to revoke Port Decision (PD) D81838, dated September 11, 1998, which involved the classification of steel step cans. Two comments were received against the proposed action, which will be addressed in the attached ruling.

As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to that identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), 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 failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking PD D81838 to reflect the proper classification of steel step cans 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,” with the specific subheading depending upon the exterior surface of the article, in accordance with the analysis in HQ 967680, 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: September 6, 2005

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967680
September 6, 2005
CLA-2 RR:CTF:TCM 967680 IOR
CATEGORY: Classification
TARIFF NO.: 7323.93.0080; 7323.94.0080; 7323.99.9060

SAMUEL ZEKSER
PRESIDENT
SOBEL SHIPPING Co., Inc.
170 Broadway
Suite 1501
New York, NY 10038-4148

RE: Steel step cans; PD D81838 revoked

DEAR MR. ZEKSER:

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.

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 PD D81838 was published on June 29, 2005, in the *Customs Bulletin*, Volume 39, Number

27. Two comments were received in response to that notice, opposing the proposed revocation. The comments are discussed in the Law and Analysis section of this ruling.

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.

One commenter asserts that the steel step cans are substantially distinct articles from dustbins, and on that basis asserts that the step cans are described in heading 9403, HTSUS, and not in heading 7323, HTSUS. The commenter asserts that dustbins are not necessarily designed to be placed on the floor, are not typically made of heavy duty construction, do not have integrated lids to contain their contents, and lack an inner basket or bag that is removed to empty the contents, all unlike the steel step cans. The commenter provides no authority for the distinctions listed, and moreover, upon further research of the term dustbin, we conclude that the distinctions listed by the commenter have no merit. See *e.g.* www.answers.com/dustbin#WordNet. We continue to stand by the meaning attributed to the term “dustbin” in the preceding paragraph. The commenter has neither asserted nor established that the steel step can is distinct from a trash can, refuse can, garbage can, or cart.

This commenter further asserts that the step cans are specifically described under heading 9403, HTSUS, and Note 2 to Chapter 94, because the step cans are designed for placing on the floor or ground. The commenter asserts that articles for use in a house or office, and designed for placing on the floor, are *prima facie* classifiable in heading 9403, HTSUS. We disagree. Wastepaper baskets are designed for placing on the floor, and are for use in a home or office, and they are clearly excluded from heading 9403, HTSUS, according to the ENs. As we stated in HQ 964352, *supra*, Chapter 94 does not cover all “movable” articles constructed for placing on the floor. Because we do not agree that the step cans are classifiable in heading 9403, we do not reach GRI 3, as urged by the commenter. GRI 3 provides for the classification of goods that are *prima facie* classifiable under two or more headings.

A second commenter takes the position that a step can composed of the inner liner and the outer can into which the liner is inserted are two separate articles, and that the inner liner is classified under heading 7323, HTSUS, and the outer can is classified under heading 9403, HTSUS, as furniture. The commenter argues that the sole function of the outer can, referring to one in which the bottom is not closed, but contains a crossbar to hold the liner, is to cover, protect, and provide easy accessibility to the trash bucket contained within. We disagree. Although the step can may be composed of two parts, the outer can, whether it holds a liner or simply a trash bag, is a trash can. The lid, and pedal function for the purposes of easy disposal of trash and covering the trash. The can is not simply a device to cover the real trash receptacle, but functions as a trash receptacle itself. The commenter also takes an alternative position, that the step can is a composite article, composed of a trash can under heading 7323, HTSUS, and furniture under heading 9403, HTSUS, and should be classified under GRI 3(c), under the heading occurring last in numerical order. The commenter cites NY F85897, dated April 18, 2000, which classified a laundry hamper composed of a metal frame and a canvas bag. In that case, unlike in the instant case, no one heading described the whole article, therefore it was classified by application of GRI 3.

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.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

PD D81838, dated September 11, 1998, is hereby REVOKED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*. As this time frame is determined by statute, CBP cannot delay the effective date.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

