

Bureau of Customs and Border Protection

General Notices

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

AGENCY: Bureau of Customs and Border Protection, U.S. Depart-
ment of Homeland Security

ACTION: General Notice

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

<u>Name</u>	<u>License #</u>	<u>Port Name</u>
Thomas A. Borgia	10419	Miami
Karl A. Becnel	09684	New Orleans

DATED: September 8, 2005

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

[Published in the Federal Register, September 15, 2005 (70 FR 54566)]

Notice of Cancellation of Customs Broker Permit

AGENCY: Bureau of Customs and Border Protection, U.S. Depart-
ment of Homeland Security

ACTION: General Notice

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

<u>Name</u>	<u>Permit #</u>	<u>Issuing Port</u>
General Brokerage Services, Inc.	H34	Miami

<u>Name</u>	<u>Permit #</u>	<u>Issuing Port</u>
General Brokerage Services, Inc.	99-00537	Washington, D.C.
MarketMakers, Inc.	WW6	Miami
Oscar H. Vildosola	26-02-ALW	Nogales
Menlo Worldwide Trade Services, Inc.	26-02-001	Nogales
Mary Fong	20016	Los Angeles
Hanshin Air Cargo	98013	Los Angeles
Menlo Worldwide Trade Services, Inc.	52-03-225	Miami
Mark Leverett	WYT	Miami

DATED: September 8, 2005

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

[Published in the Federal Register, September 15, 2005 (70 FR 54566)]

Notice of Cancellation of Customs Broker License

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

ACTION: General Notice

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

<u>Name</u>	<u>License #</u>	<u>Issuing Port</u>
MarketMakers, Inc.	14666	Miami
General Brokerage Services, Inc.	07283	Miami

DATED: September 8, 2005

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

[Published in the Federal Register, September 15, 2005 (70 FR 54567)]

9 CFR PART 177, SUBPART B**NOTICE OF ISSUANCE OF FINAL DETERMINATION
CONCERNING DESKTOP SCANNERS**

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that the Bureau of Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of certain desktop scanners to be offered to the United States Government under an undesignated government procurement contract. The final determination found that, based upon the facts presented, the United States is the country of origin of the Kodak i600 line of desktop scanners for purposes of U.S. Government procurement. The Kodak i600 series includes the i620, i640, and i660 models.

DATE: The final determination was issued on September 9, 2005. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of September 15, 2005.

FOR FURTHER INFORMATION CONTACT: Ed Caldwell, Valuation and Special Programs Branch, Office of Regulations and Rulings (202-572-8872).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on September 9, 2005, pursuant to Subpart B of Part 177, Customs Regulations (19 CFR Part 177, subpart B), CBP issued a final determination concerning the country of origin of certain desktop scanners to be offered to the United States Government under an undesignated government procurement contract. The CBP ruling number is HQ 563294. This final determination was issued at the request of Eastman Kodak Company under procedures set forth at 19 CFR Part 177, Subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511-18).

The final determination concluded that, based upon the facts presented, the assembly in the United States of parts of various origins to create the Kodak i600 scanners substantially transformed the imported parts used in production.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the Federal Register within 60 days of the date the final determination is issued. Section 177.30, Customs Regulations (19 CFR 177.30), states that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judi-

cial review of a final determination within 30 days of publication of such determination in the Federal Register.

Dated: September 9, 2005

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

Attachment

HQ 563294

September 9, 2005

MAR-2-05 RR:CR:SM 563294 EAC

CATEGORY: Marking

Mr. Alan W. H. Gourley
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595

RE: U.S. Government Procurement; Final Determination; country of origin of desktop scanners; substantial transformation; 19 CFR Part 177

Dear Mr. Gourley:

This is in response to your letter dated June 3, 2005, requesting a final determination on behalf of Eastman Kodak Company ("Kodak"), pursuant to subpart B of Part 177, Customs Regulations (19 CFR 177.21 et seq.). Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. §2411 et seq.), U.S. Customs and Border Protection ("CBP") issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated foreign country or instrumentality for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of certain desktop scanners that Kodak is considering selling to the U.S. Government. We note that Kodak is a party-at-interest within the meaning of 19 CFR 177.22(d)(2) and is entitled to request this final determination.

FACTS:

I. Background

We are advised that the scanners under consideration consist of the three models within Kodak's i600 line of scanners, the i620, i640, and i660. The Kodak i600 Series Scanners are desktop scanners that have the primary function of creating electronic images from paper documents. Paper documents of various sizes, dimensions, and types may be fed into the scanners, viewed through cameras, and converted into electronic images. The scanners can process these images at a rate of up to 480 per minute. In addition, the scanners have a number of features to enhance their performance and improve the quality of the images they produce, such as skew angle determination, which detects and corrects images fed at an angle, and electronic color dropout, which removes irrelevant background color from images.

The primary difference between these models is the speed at which they are able to process images, with the i660 able to process images most quickly. The mechanical components and manufacturing processes used to build the different models are nearly identical. The differences in processing speed are attributable to differences between the programming solutions that are installed on the scanners. Kodak developed the programming for the i600 line of scanners in the United States.

II. Component Parts and Subassemblies

Kodak has manufactured its i600 series scanners both in its Rochester, New York facility and in a facility located in Shanghai, China. Many, but not all, of the parts used in the manufacture of the scanners are obtained from Chinese sources. The i600 scanners are comprised of 13 major subassemblies. Regardless of whether the scanners are manufactured to completion in the United States or China, the Shanghai facility also assembles three of the thirteen major subassemblies for the scanners from parts of U.S., Chinese, and other origins.

The present ruling request pertains only to Kodak i600 scanners to be manufactured in the United States from parts shipped from China, but sourced from various countries abroad.

Each subassembly performs a specific function and together, with miscellaneous other components and hardware, constitute a finished product capable of electronically scanning a variety of paper images. The finished scanners consist of approximately 600 individual parts. The major subassemblies are identified and described as follows.

Operator Control Panel (“OCP”) Assembly: This assembly provides the interface between the user and scanner, including wiring and the power switch used to turn the machine on and off.

Elevator Assembly: This assembly lifts the paper to the proper height to be fed into the machine for scanning without jamming the feed.

Carriage Assembly: This assembly is located at the front of the machine where paper is fed, and includes a metal tray upon which paper rests as it is fed into the scanner. The carriage assembly also includes the lead edge of the paper transport system which has a separation roller that ensures the top sheet of paper is separated from those below.

Feed Module Assembly: This assembly is set above the carriage assembly where it grabs the top sheet of paper and feeds it into the scanner.

Image Baffle Assembly: Each scanner includes two image baffle assemblies. Each assembly has a glass plate through which a camera module views paper for scanning. There are two such assemblies because separate cameras view the front and back of each document as it moves through the scanner.

Backup Baffle Assembly: Each scanner includes two backup baffle assemblies. Each assembly is adjacent to the paper path where it guides the paper through the scanner and helps assure the paper feeds cleanly through the machine and does not jam. Each assembly also includes a backup strip, which provides a background for documents as they are viewed by a camera. There is one backup baffle assembly for each of the image baffle assemblies.

Camera Modules (Upper and Lower): Each scanner includes two camera modules. The camera modules include mirrors and lenses used to view documents as they are fed through the scanner. Each camera module views and electronically captures a different side of the document. The upper camera module is part of the pod assembly. The lower camera module is located below the paper path. As the camera modules view a document, the light images they detect are converted into raw electronic data using a charge couple device. That raw data is amplified and forwarded to the “E-box”, where the data is converted into an electronic image.

Pod Assembly: The pod assembly is the top portion of the machine, which can be opened to provide access to the paper path. The components in this assembly operate together to feed a document through the machine and to view one side of the document during scanning. This assembly includes numerous parts, as well as the following major subassemblies: (a) the upper camera module; (b) an image baffle assembly; and (c) a backup baffle assembly.

E-Box Assembly: This assembly contains the central “brain” of the machine, and it converts raw electronic data from the camera assembly into high quality electronic images. The E-box Assembly incorporates two circuit boards, the machine control board (“MCB”) and the image processing board (“IPB”).

Shroud Assembly and Cabinetry: These pieces are the cosmetic cabinetry that encompass and form the outside of the machine.

Under the proposed production scenario, Kodak will purchase the two “camera modules” and the “feed module” as assembled units from its Shanghai facility. The Shanghai facility will assemble these modules using various parts, including a charge couple device for each camera module, which is purchased from the United States. The other major subassemblies will be manufactured in Rochester, New York, using component parts purchased from inventory at the Shanghai facility. It is envisioned that the Rochester facility will purchase the necessary number of parts, but that they would not be packaged or inventoried as kits. The parts inventoried at the Shanghai facility are sourced primarily from China, but include components from such designated countries as the United States, Canada, Japan, and Korea.

III. The Assembly Process

We are informed that assembly of the scanners at the Rochester facility requires approximately four to six hours of work encompassing essentially five stages: (a) manufacturing most of the major subassemblies; (b) building the pod assembly; (c) performing the “main build”; (d) performing “end of line” procedures; and (e) packaging. During these stages, the machine is built, the firmware that allows the machine to work as a scanner is loaded, the major subassemblies and the integrated circuit are tested, and the scanner’s parameters are set to enable proper operation.

1. Manufacture of Major Subassemblies

The first step of production involves assemblage of most of the scanner’s major subassemblies. In order to demonstrate the complexity of these operations, a description of the operations undertaken to assemble the E-box assembly has been provided. As noted above, the E-box Assembly contains the

central brain of the machine and is a key component for ensuring the proper function and quality of the scanning operation. It contains approximately 50 individual parts that technicians in the United States must assemble. The building process includes, among other things, mounting a CPU board to a base and adding to that CPU board a programmed chip that enables and controls processing speed. Other operations performed include mounting gaskets and a card cage, installing electromagnetic interference (“EMI”) gaskets, installing the machine control board (“MCB”) and image processing board (“IPB”) circuit boards, attaching a power supply to the CPU board, mounting a fan and installing an air duct, and attaching a cover to the base.

During this stage of production, technicians also build the OCP, elevator, carriage, image baffle, backup baffle, and shroud assemblies. At the end of this production stage, these subassemblies are complete and ready to undergo further processing.

2. Building the Pod Assembly

After completing the major subassemblies set forth above, the technicians begin assembling the pod assembly, which is the top of the scanner. The technicians use the upper camera module, image baffle assembly, backup baffle assembly, and approximately 180 additional parts to build the pod assembly. Additional parts that must be integrated during this manufacturing stage include lamp inverters, air ducts, dust seals, video cables, blowers, air filters, rollers, support baffles, lamps, clutches, gears, and shafts. Special fixtures and tooling are used to build the pod assembly.

3. Main Build

After building the pod assembly, the technicians manufacture the bottom of the scanner, integrate the pod assembly, make fine adjustments to the unit, and perform certain testing operations. This stage of production is referred to as the “main build.”

During the main build, technicians integrate the elevator, carriage, image baffle, backup baffle, E-box, shroud, OCP, and lower camera subassemblies, along with literally hundreds of additional parts. The additional parts include components such as camera mounts, lamp invertors, latch handles, bumpers, stops, slide blocks, bushings, brackets, gaskets, wires, air ducts, UDDS emitter boards (a circuit board for the ultrasonic double document sensor, which is used to detect misfeeds), electronic grounding jacks, elevator position sensors, carriage plates, motors, lamps, shafts, belts, blowers, air filters, foam seals, bearings, cables, switch actuators, and exterior cabinetry. The technicians also attach the pod assembly with a special fixture during this stage.

Technicians perform quality assurance checks throughout the main build and also use special fixtures designed to test electrical grounding.

4. End of Line Procedures

During this phase of production, additional quality control checks are conducted to ensure, for example, that the OCP cover is correctly installed, that all wires are dressed correctly, that the pod latches operate properly, and that glass and roller components are clean and ready for operation. The feeder module is then installed along with a separation roller and a separation pad. It is stated that the core elements of this stage of production, however, are operations such as programming, testing, and calibration of the machine.

The technicians program the equipment by inputting Kodak's proprietary firmware designed for the i600 line of scanners. This firmware was developed by Kodak's Software Engineering Group within the United States and is considered the "intelligence" of the scanner. The firmware provides the programming that will control machine function and the algorithms to process images.

The technicians load the firmware using Kodak's Scanner Validation Tool ("SVT"), which is a software package also developed and provided by Kodak's Software Engineering Group. In order to perform this task, technicians connect the scanner to a computer with the SVT and firmware already loaded. They then use the SVT to transfer the firmware onto the scanner. This process installs the firmware onto the IPB circuit board and CPU circuit board, which the technicians previously installed during manufacture of the E-box subassembly.

Once the firmware is loaded onto the scanner, the technicians use the SVT and the firmware to calibrate and test the responses of the machine for specific inputs. These testing and calibration operations include procedures such as calibration of the UDDS system, calibration of the scanner for brightness, calibration of the scanner's speed, and measurement of image quality.

5. Packaging

Once the end of line procedures are completed, the assembled scanners are visually inspected and packaged for shipment.

ISSUE:

Whether the assembled Kodak i600 line of scanners are considered to be products of the United States for purposes of U.S. Government procurement.

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 CFR 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. §2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. §2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also, 19 CFR 177.22(a).

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States* 573 F. Supp. 1149 (CIT 1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will gener-

ally not result in a substantial transformation. See, C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97. In C.S.D. 85–25, 19 Cust. Bull. 844 (1985), CBP held that for purposes of the Generalized System of Preferences (“GSP”), the assembly of a large number of fabricated components onto a printed circuit board in a process involving a considerable amount of time and skill resulted in a substantial transformation. In that case, in excess of 50 discrete fabricated components (such as resistors, capacitors, diodes, integrated circuits, sockets, and connectors) were assembled.

CBP has held in a number of cases involving similar type equipment that complex and meaningful assembly operations involving a large number of components will generally result in a substantial transformation. For example, in Headquarters Ruling Letter (“HRL”) 562495 dated November 13, 2002, color ink jet printers were assembled in Singapore of components imported from a number of other countries. CBP determined that the imported components were substantially transformed during assembly such that the country of origin of the assembled ink jet printers was Singapore. In support of this position, CBP recognized that the processing operations that occurred within Singapore were complex and extensive, required the integration of 13 major subassemblies to the chassis, and that the resulting product was a new and distinct article of commerce that possessed a new name, character, and use.

In HRL 561734 dated March 22, 2001, published in the Federal Register on March 29, 2001 (66 Fed. Reg. 17222), CBP held that certain multi-functional machines (consisting of printer, copier, and fax machines) assembled in Japan were a product of that country for purposes of U.S. Government procurement. The multi-functional machines were assembled from 227 parts (108 parts obtained from Japan, 92 from Thailand, 3 from China, and 24 from other countries) and eight subassemblies, each of which was assembled in Japan. One of the subassemblies produced in Japan, referred to as the scanner unit, was described as the “heart of the machine.” In finding that the imported parts were substantially transformed in Japan, CBP stated that the individual parts and components lost their separate identities when they became part of the multi-functional machine. See also, HRL 561568 dated March 22, 2001, published in the Federal Register on March 29, 2001 (66 Fed. Reg. 17222).

By contrast, assembly operations that are minimal or simple will generally not result in a substantial transformation. For example, in HRL 734050 dated June 17, 1991, CBP held that Japanese-origin components were not substantially transformed in China when assembled in that country to form finished printers. The printers consisted of five main components identified as the “head”, “mechanism”, “circuit”, “power source”, and “outer case.” The circuit, power source and outer case units were entirely assembled or molded in Japan. The head and mechanical units were made in Japan but exported to China in an unassembled state. All five units were exported to China where the head and mechanical units were assembled with screws and screwdrivers. Thereafter, the head, mechanism, circuit, and power source units were mounted onto the outer case with screws and screwdrivers. In holding that the country of origin of the assembled printers was Japan, CBP recognized that the vast majority of the printer’s parts were of Japanese origin and that the operations performed in China were relatively simple assembly operations.

The programming operations performed in the instant case must also be considered. In Data General Corporation v. United States, 4 CIT 182 (1982), the Court of International Trade held that a PROM (programmable read-only memory) fabricated in a foreign country but programmed in the United States for use in a computer circuit board assembled abroad was substantially transformed. In Data General, the court stated that the electronic pattern introduced into the circuit by programming gave the PROM the function as a read only memory and that the essence of the article, its pattern of interconnection or stored memory, was established by programming.

As applied, we find that the various foreign-origin parts are substantially transformed within the United States when assembled to form the Kodak i600 line of scanners in the manner set forth above. In making this determination we note that the scanners are comprised of approximately 600 parts and thirteen subassemblies. Ten of the subassemblies are assembled to completion within the United States during a complex and meaningful process. Illustrative examples of two major subassemblies built to completion in the United States are the E-Box assembly (comprised of approximately 50 parts) and the pod assembly (comprised of more than 180 parts). During the main build phase of production, the various subassemblies and literally hundreds of additional parts are assembled together to form the scanners. Specialized fixtures, tooling, and other equipment are used throughout assembly to align, test, and calibrate the scanners as they are built. After assembly, the scanners are programmed with firmware developed in the United States, which constitutes the intelligence of the scanners. During such assembly and programming operations, the individual components and subassemblies of foreign-origin are subsumed into a new and distinct article of commerce that has a new name, character, and use. Therefore, we find that the country of origin of the Kodak i600 scanners for purposes of U.S. Government procurement is the United States.

HOLDING:

Based upon the specific facts of this case, we find that the individual components and subassemblies imported into the United States are substantially transformed when assembled in the manner set forth above to form Kodak i600 desktop scanners. Therefore, the country of origin of the Kodak i600 line of desktop scanners for purposes of U.S. Government procurement is the United States.

Notice of this final determination will be given in the Federal Register as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Any party-at-interest may, within 30 days after publication of the Federal Register notice referenced above, seek judicial review of this final determination before the Court of International Trade.

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

[Published in the Federal Register, September 15, 2005 (70 FR 54563)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, September 14, 2005

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

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

**WITHDRAWAL OF PROPOSED MODIFICATION OF RULING
LETTER AND REVOCATION OF TREATMENT RELATING
TO THE TARIFF CLASSIFICATION OF CERTAIN
DISPOSABLE COVERALLS**

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

ACTION: Notice of withdrawal of proposed modification of a ruling letter and revocation of treatment relating to the classification of certain disposable coveralls.

SUMMARY: This notice advises interested parties that the Bureau of Customs and Border Protection (CBP) is withdrawing its proposal to modify a ruling letter pertaining to the tariff classification of certain disposable coveralls and to revoke any treatment previously accorded by CBP to substantially identical transactions.

DATE: Effective September 28, 2005.

FOR FURTHER INFORMATION CONTACT: Brian Barulich,
Tariff Classification and Marking Branch: (202) 572-8883.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice proposing to modify New York Ruling Letter (NY) L80753, dated November 30, 2004, was published on June 22, 2005, in Vol. 39, No. 26, of the Customs Bulletin. In NY L80753, CBP classified three styles of disposable coveralls from China in subheading 6210.10.5000, HTSUSA, which provides for, among other articles, "Garments, made up of fabrics of heading . . . 5603: Of fabrics of heading . . . 5603: Other: Non-

woven disposable apparel designed for use in hospitals, clinics, laboratories or contaminated areas.” CBP proposed to modify NY L80753, and reclassify two of the styles of disposable coveralls, because CBP believed the garments to be general purpose coveralls.

However, after detailed reviews of the physical design features and other properties of the two styles of coveralls, as well as consideration of a comment received on the proposed modification, CBP has determined not to proceed with the modification, finding that the two styles of disposable coveralls are designed for the uses set forth in subheading 6210.10.5000, HTSUSA.

Therefore, this notice advises interested parties that CBP is withdrawing its proposed modification of NY L80753 and revocation of treatment previously accorded by CBP to substantially identical transactions.

NY L80753 remains in full force and effect.

DATED: September 8, 2005

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

19 CFR PART 177

PROPOSED MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CUTLERY SETS

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

ACTION: Notice of proposed modification of ruling letters and revocation of treatment relating to tariff classification of cutlery sets.

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 two ruling letters relating to the classification of cutlery sets under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), and to revoke any treatment CBP has previously accorded to substantially identical transactions. These articles are sets consisting of assorted knives, forks and scissors with either wooden storage block or combination storage case/sharpening cassette. CBP invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before October 28, 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 comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Classification and Marking Branch (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 two rulings relating to the tariff classification of cutlery sets. Although in this notice CBP is specifically referring to HQ 956603, dated July 27, 1994, and HQ 087515, dated December 7, 1990, 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 ones listed. No further rulings have been identified. Any party who has received an interpreta-

tive 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 reasonable 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 HQ 956603, a cutlery set consisting of multiple knives, a scissors and hardwood storage block for these articles was held to be classifiable in subheading 8211.10.0000, HTSUSA, as knives with cutting blades and blades and other base metal parts thereof: sets of assorted articles. This was a classification under General Rule of Interpretation (GRI) 1 based on an interpretation that heading 8211 was broad enough to include articles, i.e., the scissors, not described in the heading text. HQ 956603 is set forth as "Attachment A" to this document. In HQ 087515, sets of assorted knives and/or forks, each with a combination storage block or scabbard/sharpening cassette were held to be classifiable in subheading 8211.92.2000, HTSUSA, as kitchen and butcher knives having fixed blades, and in subheading 8215.20.0000, HTSUSA, as spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware; other sets of assorted articles, as appropriate. The classifications in HQ 087515 resulted in part from a failure to consider a more specific subheading within heading 8211 and from an incorrect application of the GRI. HQ 087515 is set forth as "Attachment B" to this document.

It is now CBP's position that these cutlery sets are classifiable in subheading 8211.10.0000, HTSUSA, and in subheading 8215.20.0000, HTSUSA, as appropriate. Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify HQ 956603 and HQ 087515 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis in HQ 967754 and HQ 967755, which are set forth as "Attachment C" and "Attachment D" to this document, respectively. 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: September 9, 2005

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 956603
July 27, 1994
CLA-2 CO:R:C:M 956603 DWS
CATEGORY: Classification
TARIFF NO.: 8211.10.00; 8213

MR. WILLIAM J. MALONEY
RODE & QUALEY
295 Madison Avenue
New York, NY 10017

RE: Cutlery Set; Scissors; Storage Block; GRIs 1 and 3; Explanatory Note
82.11; NY 890930; Heading 8213

DEAR MR. MALONEY:

This is in response to your letters of May 17 and June 16, 1994, to the Area Director of Customs, New York Seaport, and of July 13, 1994, to this office, on behalf of Venture Stores, concerning the classification of a cutlery set, with or without scissors, under the Harmonized Tariff Schedule of the United States (HTSUS).

FACTS:

The merchandise consists of the following: six 4 1/2 inch steak knives, 3 inch parer knife, 5 1/4 inch utility knife, 6 inch boner knife, 8 inch bread knife, 8 inch chef knife, 7 1/2 inch butcher's knife, scissors, and a hardwood storage block for the knives and the scissors. All of the knives have stainless steel blades and wood handles. The scissors has a plastic handle. In the alternative, the merchandise consists of all of the above items except for the scissors, which will be imported separately.

ISSUE:

Whether the merchandise is classifiable under subheading 8211.10.00, HTSUS, as sets of assorted articles, including knives.

LAW AND ANALYSIS:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

Subheading 8211.10.00, HTSUS, provides for: "[k]nives with cutting blades, serrated or not (including pruning knives), other than knives of

heading 8208, and blades and other base metal parts thereof.” The general, column one duty rate for goods classifiable in this provision is the rate of duty applicable to that article in the set subject to the highest rate of duty.

Heading 8213, HTSUS, provides for: “[s]cissors, tailors’ shears and similar shears, and blades and other base metal parts thereof.” You claim that the cutlery set cannot be classifiable under subheading 8211.10.00, HTSUS, by authority of GRI 1 because of the presence of the scissors, which are classifiable under heading 8213, HTSUS. GRI 3 is cited, which states that:

[w]hen, by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to a part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

It is our position that GRI 3 should not be consulted in this case. In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). In part, Explanatory Note 82.11 (p. 1113) states:

[s]ubheading Explanatory Note.

Subheading 8211.10

The scope of subheading 8211.10 is limited to sets of different knives or sets of assorted articles in which the knives predominate in number over the other articles.

The subject merchandise is a set of assorted articles (knives, scissors, and storage block) in which the knives predominate in number over the other articles.

It is claimed that this interpretation expands the terms of heading 8211, HTSUS. We disagree. Heading 8211, HTSUS, is the provision where knives are classifiable. As long as knives predominate in numbers over the other articles of the set, under GRI 1, the terms of heading 8211, HTSUS, have been met. It is our position that the intent of the drafters of both the HTSUS and the Explanatory Notes was for sets such as the subject cutlery set to be classifiable under heading 8211, HTSUS. See NY 890930, dated October 28, 1993, for a ruling on similar merchandise.

Therefore, by authority of GRI 1, the cutlery set is classifiable under subheading 8211.10.00, HTSUS.

The same reasoning is applicable to the merchandise without the scissors; the cutlery set is still a set. Therefore, by authority of GRI 1, the cutlery set is classifiable under subheading 8211.10.00, HTSUS.

The scissors, imported separately, are classifiable under heading, 8213, HTSUS, the specific subheading classification dependent upon the value of the scissors.

HOLDING:

By authority of GRI 1, the cutlery sets, with or without the scissors, are classifiable under subheading 8211.10.00, HTSUS, as sets of assorted articles, including knives.

The scissors, imported separately, are classifiable under heading, 8213, HTSUS, the specific subheading classification dependent upon the value of the scissors.

JOHN DURANT,
Director.

[ATTACHMENT B]

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

HQ 087515
December 7, 1990
CLA-2 CO:R:C:G 087515 AJS
CATEGORY: Classification
TARIFF NO.: 8211.92.20; 8215.20.00

MR. JACK ALSUP
ALSUP & ALSUP, INC.
P.O. Box 1251
Del Rio, TX 78841

RE: Knives with combination storage scabbard/sharpening cassette or combination wooden storage block/sharpening cassette; Subheading 8211.92.20; Subheading 8215.20.00; Heading 3924; General Rule of Interpretation 3; Goods put up in sets for retail sale; General Rule of Interpretation 3(b) Explanatory Note (X) and (VII); Chapter 82, Note 3; General Rule of Interpretation 5(a); Subheading 8211.10.00.

DEAR MR. ALSUP:

Your letter of January 18, 1990, requesting a tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), has been forwarded to this office for reply.

FACTS:

The articles at issue consist of four samples. Sample one consists of a paring knife with a blade measuring 3 1/8" in length. This sample also includes a plastic storage scabbard which acts as a holder for the knife. Combined with the scabbard is a plastic cassette which contains two angled tungsten carbide sharpening blocks. When the knife is withdrawn from the cassette,

the cutting edge of the blade slides between the two carbide blocks and is sharpened. Screws are provided to mount the scabbard on the wall.

Sample two consists of a carving knife with an 8" blade and utility knife with a 4 3/4" blade. A combination storage scabbard/sharpening cassette is included for each knife.

Sample three consists of a set of five knives. This set includes the paring, carving and utility knives mentioned previously as well as a vegetable knife with a 6 1/4" blade and chef knife with an 8 1/8" blade. A wooden block designed to rest on a counter-top is included with this set. The block possesses an individual slot for each knife and a built in sharpening cassette.

Sample four consists of the above mentioned carving knife and a carving fork. The knife is stored in a combination scabbard/sharpening cassette while the fork is attached to a plastic holder. Both holders are attached to a piece of plastic so that the set may be mounted.

The fork and all of the subject knives are made of stainless steel with polypropylene handles.

ISSUE:

Whether the articles at issue are properly classifiable within heading 8211, HTSUSA, which provides for knives with cutting blades; or within heading 8215, HTSUSA, which provides for forks and similar kitchen or tableware.

LAW AND ANALYSIS:

Classification of merchandise under the HTSUSA is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined first in accordance with the terms of the headings of the tariff and any relative section or chapter notes. If classification cannot be determined by the application of GRI 1 then the subsequent GRI's must be consulted.

Heading 8211, HTSUSA, provides for knives with cutting blades. Sample one consists of a paring knife with a cutting blade, and combination scabbard/sharpening cassette. The paring knife satisfies the terms of this heading. More specifically, it is described within subheading 8211.92.20, HTSUSA, as a kitchen knife. However, the paring knife and combination scabbard/ sharpening cassette do not satisfy the terms of heading 8211, HTSUSA. Accordingly, sample one cannot be classified within this heading by the application of GRI 1.

Heading 3924, HTSUSA, provides for tableware, kitchenware, and other household articles of plastic. The scabbard at issue is composed of plastic. The casing of the sharpening cassette is also composed of plastic. The combination scabbard/sharpening cassette is designed to hold and sharpen the paring knife in the household. The scabbard/sharpening cassette satisfies the terms of heading 3924, HTSUSA. However, sample one does not satisfy the terms of this heading. Therefore, this sample cannot be classified within this heading by the application of GRI 1.

GRI 3 provides for goods which are, prima facie, classifiable within two or more headings. Sample one consists of a paring knife which is, prima facie, classifiable within heading 8211, and combination plastic scabbard/sharpening cassette which is, prima facie, classifiable within heading 3924. GRI 3(a) provides that the heading which provides the most specific description of the merchandise shall be preferred to headings providing a more general description. However, when two or more headings each refer to part

only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods. GRI 3(a).

Both headings 8211 and 3924 refer to part only of the items in sample one. Accordingly, each heading at issue is equally specific in relation to sample one.

Goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the component which gives the set its essential character. GRI 3(b). The term "goods put up in sets for retail sale" ("set") shall be taken to mean goods which consist of at least two different articles which are, prima facie, classifiable in different headings. GRI 3(b) Explanatory Note (EN)(X)(a). As stated previously, sample one satisfies this requirement.

A "set" must also consist of articles put up together to meet a particular need or carry out a specific activity. GRI 3 (b) EN(X)(b). Sample one satisfies this requirement. It consists of a knife and storage scabbard/sharpening cassette put up together to carry out the specific activity of paring. The scabbard/sharpening cassette enable the knife to carry out its function of paring more effectively.

A "set" must additionally be put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards). Sample one satisfies this final requirement for classification as a "set". It is put up for sale directly to users with the knife stored in the storage scabbard/sharpening cassette.

GRI 3(b) requires that a "set" be classified as if it consists of the component which gives the set its essential character. EN (VII). The factor which determines essential character will vary as between different kinds of goods. EN (VII). It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods. EN (VII). In this case, the role of the paring knife in relation to the use of the set determines essential character.

The knife is the essential component of the set. The use of the other components revolve around the use of the knife. The other components would be of no use without the knife while the knife would function normally without either of them. Accordingly, sample one is classifiable as if it consisted solely of the paring knife because this is the component which gives the set its essential character. Therefore, sample one is properly classifiable within 8211.92.20, HTSUSA, as a paring knife set.

Sample two consists of a utility knife and carving knife.

Each knife is enclosed within a combination storage scabbard/ sharpening cassette. Each of these knives satisfy the description of a kitchen knife within subheading 8211.92.20, HTSUSA. This sample is subject to the same type of GRI 3(b) analysis used to classify sample one. Sample two is a "set" classified according to its essential character. The essential character in this case would be determined by the two knives. As stated previously, the two knives are classifiable within subheading 8211.92.20. Accordingly, sample two is a kitchen knife set properly classifiable within subheading 8211.92.20, HTSUSA.

Sample three consists of a set of five knives with a combination wooden storage block/sharpening cassette. Each of the five knives satisfy the description of a knife within subheading 8211.92.20, HTSUSA. This sample is

also subject to the same type of GRI 3(b) analysis used to classify the previous samples. Sample three is a “set” classifiable according to its essential character. In this case, the role of the knives in relation to the use of the set determines essential character.

Accordingly, the set is classifiable as if it consisted solely of the knives. Therefore, the knives and combination storage block/sharpening cassette are a kitchen knife set classifiable within subheading 8211.92.20, HTSUSA.

Sample four consists of a carving knife with a combination storage scabbard/sharpening cassette, and a carving fork with a plastic holder. As stated previously, the carving knife satisfies the terms of subheading 8211.92.20, HTSUSA. The fork satisfies the terms of heading 8215, HTSUSA, which provides for forks. Sets consisting of a knife of heading 8211 and a fork of heading 8215 are to be classified in heading 8215. Chapter 82, Note 3. Sample four satisfies the terms of this legal note and is classifiable within heading 8215, HTSUSA. Resort to GRI 3 is not required in this instance because the classification of this merchandise can be determined according to the terms of a relative chapter note. Subheading 8215.20.00, HTSUSA, provides for sets of assorted articles. This sample is a set consisting of a knife and fork accompanied with holders. Therefore, sample four satisfies the terms of this subheading and is classifiable therein.

GRI 5(a) provides for containers that are “specially shaped or fitted” to contain a specific article or set of articles. It may be argued that the various combinations of storage scabbards/ sharpening cassettes and combination wooden block/sharpening cassette are specially shaped containers. We do not agree with this contention. The combining of the scabbards and wooden block with sharpening cassettes precludes these containers from treatment as “specially shaped or fitted containers”. The addition of the sharpening cassettes to the scabbards and block enables them to carry out a significant function other than the containing of knives. None of the examples given of a “specially shaped or fitted container” perform functions other than containing articles. GRI 5(a) EN(II). Accordingly, the combination storage scabbards/sharpening cassettes and wooden block/sharpening cassette are not properly classifiable according to GRI 5(a).

The broker in this instance argues that samples two and three are properly classifiable within subheading 8211.10.00, HTSUSA, which provides for sets of assorted articles of heading 8211. The scope of this subheading is limited to sets of different knives of this heading. EN 81.11. All of the knives in these samples are kitchen knives classifiable within the same subheading. These samples do not contain sets of different knives. Therefore, samples two and three cannot be classified within subheading 8211.10.00, HTSUSA.

HOLDING:

The paring knife and combination storage scabbard/sharpening cassette is a GRI 3(b) set that is properly classifiable within subheading 8211.92.20, HTSUSA, which provides for kitchen knives, generally dutiable at the rate of 1 cent each plus 5.7 percent ad valorem.

The utility and carving knives with combination storage scabbard/sharpening cassettes are a GRI 3(b) set which is also properly classifiable within subheading 8211.92.20, HTSUSA.

The 5 piece cutlery set with combination wooden storage block/sharpening cassette is a GRI 3(b) set which is properly classifiable within subheading 8211.92.20, HTSUSA.

The carving knife and fork set with holders is properly classifiable within subheading 8215.20.00, HTSUSA, which provides for sets of assorted articles. This merchandise is dutiable at the rate applicable to that article in the set subject to the highest rate of duty. The carving knife is classifiable within subheading 8211.92.20, HTSUSA, which is the applicable subheading with the highest rate of duty in this case. Accordingly, this sample is dutiable at the rate of 1 cent each plus 5.7 percent ad valorem.

JOHN DURANT,
Director;
Commercial Rulings Division.

[ATTACHMENT C]

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

HQ 967754
CLA-2 RR:CTF:TCM 967754 JAS
CATEGORY: Classification
TARIFF NO.: 8211.10.0000, 8213

MR. WILLIAM J. MALONEY
RODE & QUALEY
295 Madison Avenue
New York, NY 10017

RE: Cutlery Set; HQ 956603 Modified

DEAR MR. MALONEY:

In HQ 956603, which the U.S. Customs Service, now U.S. Customs and Border Protection (CBP), issued to you on July 27, 1994, on behalf of Venture Stores, a cutlery set, as hereinafter described, was held to be classifiable in a provision of heading 8211, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as knives with cutting blades, serrated or not, and blades and other base metal parts thereof, sets of assorted articles. The classification for the cutlery set expressed in HQ 956603 is correct but the stated legal authority is incorrect. This ruling is being modified to state the correct legal authority. The classification expressed for the scissors imported separately is unaffected by this modification.

FACTS:

HQ 956603 described the merchandise as consisting of the following: six 4 1/2-inch steak knives, 3-inch parer knife, 5 1/4-inch utility knife, 6-inch boner knife, 8-inch bread knife, 8-inch chef knife, 7-1/2 inch butcher's knife, a scissors, and a hardwood storage block for the knives and the scissors. All of the knives have stainless steel blades and wood handles while the scissors has a plastic handle. In the alternative, the merchandise consists of all of the above items except for the scissors, which will be imported separately.

The HTSUS provisions under consideration are as follows:

8211 Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof:

8211.10.00	Sets of assorted articles
*	* * *
8213.00	Scissors, tailors' shears and similar shears, and blades and other base metal parts thereof:
8213.00.30	Valued not over \$1.75/dozen
	Valued over \$1.75/dozen:
8213.00.60	Pinking shears, valued over \$30/dozen
8213.00.90	Other (including parts)

ISSUE:

Whether the merchandise is classifiable under subheading 8211.10.00, HTSUS, as knives with cutting blades, sets of assorted articles.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), 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).

HQ 956603 rejected the assertion that the cutlery set cannot be classifiable under subheading 8211.10.00, HTSUS, by authority of GRI 1, because of the presence of the scissors which are provided for in heading 8213. The relevant 82.11 subheading EN was cited:

The scope of subheading 8211.10 is limited to sets of different knives or sets of assorted articles in which the knives predominate in number over the other articles.

HQ 956603 then stated that the subject merchandise is a set of assorted articles (knives, scissors, and storage block) in which the knives predominate in number over the other articles, and noted that heading 8211, HTSUS, is the provision where knives are classifiable. The ruling concluded that "as long as knives predominate in numbers over the other articles of the set, under GRI 1, the terms of heading 8211, HTSUS, have been met. It is our position that the intent of the drafters of both the HTSUS and the Explanatory Notes was for sets such as the subject cutlery set to be classifiable under heading 8211, HTSUS." This interpretation is incorrect inasmuch as it represents an expansion of the scope of heading 8211 not authorized under GRI 1.

GRI 3(b), HTSUS, states, in relevant part, that goods put up in sets for retail sale shall be classified as if they consisted of the component which gives them their essential character, insofar as this criterion is applicable. The EN for GRI 3(b) states, in part, that the term "goods put up in sets for retail sale" shall be taken to mean goods which consist of at least two different articles which are, *prima facie*, classifiable in different headings, are put

up together to meet a particular need or carry out a specific activity, and are put up in a manner suitable for sale directly to users without repacking. The cutlery set meets these criteria. Knives are provided for in heading 8211 and scissors in heading 8213 while the hardwood storage block is considered a container, specially shaped or fitted to contain a specific article or set of articles, within the meaning of GRI 5(a), HTSUS, which is to be classified with the goods. The knives and scissors carry out the specific activity of cutting, and appear to be put up in a manner suitable for sale directly to users without repacking. Further, the GRI 3(b) EN notes that the factor which determines essential character will vary with the goods but may, for example, be determined by the nature of a component, its bulk, quantity, weight or value. In this case, the knives predominate by bulk, quantity, weight and, presumably, by value. Moreover, the different knives permit users to undertake various types of cutting operations while the scissors permit only a single cutting operation. We conclude that the knives impart the essential character to the cutlery set.

HOLDING:

Under the authority of GRI 3(b), the cutlery set, with or without the scissors, is provided for in heading 8211. It is classifiable in subheading 8211.10.0000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), at the rate of duty applicable to that article in the set subject to the highest rate of duty. Imported separately, the scissors are provided for in heading 8213, HTSUS, with the specific subheading dependent on the value of the scissors.

EFFECT ON OTHER RULINGS:

HQ 956603, dated July 27, 1994, is modified accordingly.

MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

[ATTACHMENT D]

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

HQ 967755
CLA-2 RR:CTF:TCM 967755 JAS
CATEGORY: Classification
TARIFF NO.: 8211.10.0000, 8215.20.0000

MR. JACK ALSUP
ALSUP & ALSUP
P.O. Box 1251
Del Rio, TX 78841

RE: Cutlery Sets; HQ 087515 Modified

DEAR MR. ALSUP:

In HQ 087515, which the U.S. Customs Service, now U.S. Customs and Border Protection (CBP) issued to you on December 7, 1990, various combinations of knives, forks and storage blocks/sharpening cassettes, repre-

mented by four samples, were held to be classifiable in provisions of heading 8211, Harmonized Tariff Schedule of the United States (HTSUS), as knives with cutting blades, and heading 8215, HTSUS, as forks.

The classification expressed for the goods in sample one is correct and is not affected by this decision. The classification for the goods in samples two, three and four is incorrect and CBP is modifying HQ 087515 to insure the consistent classification of this and substantially similar merchandise.

FACTS:

As stated in HQ 087515, sample two consists of a carving knife with 8-inch blade, a utility knife with 4 3/4-inch blade, and a plastic combination storage scabbard/sharpening cassette for each knife containing two angled tungsten carbide sharpening blocks. The knives are sharpened as they are withdrawn through the carbide blocks. Sample three consists of a carving knife and utility knife, as in sample two, a paring knife with 3 1/8-inch blade, a vegetable knife with 6 1/4-inch blade and a chef's knife with 8 1/8-inch blade, plus a combination sharpening cassette/wooden block with individual slots for each knife. Sample four consists of the carving knife and combination scabbard/sharpening cassette, both described above, plus a carving fork attached to a plastic holder. The fork and all the knives in samples two, three and four are of stainless steel with polypropylene handles.

The HTSUS provisions under consideration are as follows:

- 3924** Tableware, kitchenware, other household articles and toilet articles, of plastics:
* * * *
- 8211** Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof:
8211.10.00 Sets of assorted articles
Other:

- 8211.92** Other knives having fixed blades:
With rubber or plastic handles:
8211.92.20 Kitchen and butcher knives
* * * *
- 8215** Spoons, forks, ladles, skimmers, . . . and similar kitchen or tableware; . . . :
8215.20.00 Other sets of assorted articles
Other:

- 8215.99** Other:
Forks:

8215.99.20

With rubber or plastic handles

ISSUE:

Whether the merchandise is classifiable under subheading 8211.10.00, HTSUS, and under subheading 8215.20.00, HTSUS, as appropriate.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), 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. GRI 6 states, in part, that goods are classified in the subheadings of a heading according to the terms of those subheadings and any related subheading notes and, by appropriate substitution of terms, to Rules 1 through 5, on the understanding that only subheadings at the same level are comparable.

Chapter 82, Note 3, HTSUS, states that sets consisting of one or more knives of heading 8211 and at least an equal number of articles of heading 8215 are to be classified in heading 8215.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the System. CBP believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

HQ 087515, in part, found that samples two and three constituted "goods put up in sets for retail sale" which, under GRI 3(b), HTSUS, are to be classified as if consisting of the component which gives them their essential character. We affirm that finding. Samples two and three each consist of multiple knives and a storage scabbard/ sharpening cassette. HQ 087515 determined that the knives imparted the essential character to the whole and classified these samples in subheading 8211.92.20, HTSUS, as kitchen and butcher knives. However, in comparing the subheadings of heading 8211 at the 1-dash level under GRI 6, we find that subheading 8211.10, sets of assorted articles, provides a more narrow and specific description for the goods than does Other. This is because the relevant subheading 8211.10 subheading EN states that the scope of that subheading is limited to sets of different knives or sets of assorted articles, in which the knives predominate in number over the other articles. We find that goods represented by samples two and three meet this description and are classifiable in subheading 8211.10.00, HTSUS.

HQ 087515 classified sample four at GRI 1 as sets of assorted articles, in subheading 8215.20.00, HTSUS, based on Chapter 82, Note 3. However, in applying this note, no consideration was given to the plastic scabbard which HQ 087515 found was described by heading 3924, HTSUS, as other household articles of plastic. For this reason, sample four cannot be classified at GRI 1. We conclude that sample four meets the sets criteria in GRI 3(b), as outlined above. However, unlike samples two and three, which contained multiple knives, sample four contains one knife and one fork. Admittedly, while it is the knife that does the actual carving or cutting, the fork is utilized both to stabilize what is being carved and also for serving what the knife carves. We also note that both the knife and the fork are modified by

the adjective *carving*. For these reasons, we conclude that neither the knife nor the fork can be said to be more significant to the set than the other component. GRI 3(c), HTSUS, states that when goods cannot be classified by reference to [Rule] 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration. We conclude that goods represented by sample four are provided for in heading 8215. As HQ 087515 concluded, goods represented by sample four, consisting of a single knife, a single fork and a plastic scabbard, meets the terms of subheading 8215.20.00 and is classifiable therein.

HOLDING:

Under the authority of GRI 3(b), cutlery sets represented by samples two and three are provided for in heading 8211. They are classifiable in subheading 8211.10.0000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), at the general, column 1 rate of duty applicable to that article in the set subject to the highest rate of duty.

Under the authority of GRI 3(c), cutlery sets represented by sample four are provided for in heading 8215. They are classifiable in subheading 8215.20.0000, HTSUSA, at the general, column 1 rate of duty applicable to that article in the set subject to the highest rate of duty.

EFFECT ON OTHER RULINGS:

HQ 087515, dated December 7, 1990, is modified accordingly.

MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

19 CFR PART 177

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

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CPB is revoking a ruling concerning the tariff classification of silymarin (milk thistle), and modifying a ruling concerning the tariff classification of silymarin and leucoanthocyanin, under the Harmonized Tariff Schedule of the United States

(HTSUS). Similarly, CPB is revoking any treatment previously accorded by CPB to substantially identical transactions. Notice of the proposed action was published on June 22, 2005, in Volume 39, Number 26, of the CUSTOMS BULLETIN. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 27, 2005.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, Tariff Classification and Marking Branch (202) 572-8784.

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 Title VI, a notice was published in the June 22, 2005, CUSTOMS BULLETIN, Volume 39, Number 26, proposing to revoke Headquarters Ruling Letter (HQ) 964338, dated March 28, 2001, and to modify New York Ruling Letter (NY) 814027, dated February 2, 1996, and to revoke any treatment accorded to substantially identical transactions. No comments were received in response to that notice.

As stated in the notice of proposed modification and revocation, the notice covered any rulings on this merchandise which may exist but have not been specifically identified. Any party, who has received an interpretive ruling or decision (i.e., ruling letter, internal advice

memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during the notice period.

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

The classification of silymarin in NY 814027 contradicts that which was held to apply in HQ 964338, dated March 28, 2001. The classification of leucoanthocyanin in NY 814027 contradicts that which was held to apply in HQ 966566, dated October 21, 2003. In NY 814027, both silymarin and leucoanthocyanin were classified in subheading 1302.19.4040, HTSUS, the provision for "Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products: Vegetable saps and extracts: Other: Ginseng; substances having anesthetic, prophylactic or therapeutic properties: Other, Other."

In HQ 964338 and in HQ 966566, silymarin and leucocyanin were each respectively classified in subheading 3824.90.28, HTSUS, the provision for "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances: Other." We consider this the correct result for leucoanthocyanin, because it is purified from the plant matter well beyond that of an extract, yet it does not contain a separate chemically defined compound, or isomers of such a compound, as necessary for classification in Chapter 29, HTSUS.

However, in HQ 964338, we excluded classification of silymarin in Chapter 29, HTSUS, because the product consists of more than isomers of a separate chemically defined compound under Chapter 29, note 1(b). We now believe that the remaining mixture can be considered impurities within the definition of the chapter note. Hence, the correct classification for silymarin is in subheading 2932.99.61, HTSUS, the provision for "Heterocyclic compounds with oxygen hetero-atom(s) only: Other: Other: Aromatic: Other: Products described in add'l U.S. note 3 to section VI."

CBP, pursuant to 19 U.S.C. 1625(c)(1), is revoking HQ 964338, and modifying NY 814027 and any other ruling not specifically identi-

fied, to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 967575 and HQ 967629, which are set forth as attachments "A" and "B", respectively, to this notice. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP 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 14, 2005

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

Attachments



[ATTACHMENT A]

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

HQ 967575
September 14, 2005
CLA-2 RR:CTF:TCM 967575 AM
CATEGORY: CLASSIFICATION
TARIFF NO.: 2932.99.6100

MR. MICHAEL R. TARTARO
BYRON CHEMICAL COMPANY, INC.
40-11 23rd Street
Long Island City, NY 11101

Re: Revocation of HQ 964338: Silymarin 80% (Milk Thistle Standardized Extract)

DEAR MR. TARTARO:

This is in regard to Headquarters Ruling Letter (HQ) 964338, dated March 28, 2001, concerning the classification of silymarin under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, we issued a decision on Protest 1001-99-103909, in which the silymarin was classified in subheading 3824.90.28, HTSUS, as a preparation of the chemical or allied industries, not elsewhere specified or included. We have reviewed HQ 964338 and have found it to be in error. Therefore, this ruling revokes HQ 964338.

Under *San Francisco Newspaper Printing Co. v. United States*, 9 CIT 517, 620 F. Supp. 738 (1985), the liquidation of the entries covering the merchandise which was the subject of Protest 1001-99-103909 was final on both the protestant and CBP. Therefore, this ruling has no effect on those entries.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by Title VI, a notice was published in the June 22, 2005, CUSTOMS BULLETIN, Volume 39, Number 26, proposing to revoke HQ 964338,

and to revoke any treatment accorded to substantially identical transactions. No comments were received in response to the notice.

FACTS:

According to Customs Lab Report #2-1999-20518, dated January 25, 1999, Silymarin 80% is a yellow powder that contains 80% mixture of isomers of silymarin (silybin, silicristin and silidianin). It is imported in bulk.

Silymarin 80% is produced from milk thistle seeds. The seeds are milled into a cake. The cake is then subjected to 3-4 percolations in acetone for about 24 hours at 45 degrees centigrade. The filtered percolate is then concentrated by distillation under vacuum at 50-60 degrees centigrade to remove as much acetone as possible. This concentrate is then washed two times with 50 kg of cyclohexane to defat the product. The remaining concentrate is then dried under vacuum at 65-70% centigrade.

ISSUE:

What is the proper classification of Silymarin 80% under the HTSUS?

LAW AND ANALYSIS:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any related section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

The HTSUS headings under consideration are as follows:

2932 Heterocyclic compounds with oxygen hetero-atom(s) only:

Other:

2932.99

Other:

Aromatic:

Other:

2932.99.61

Products described in additional U.S. note 3 to section VI.

* * * * *

3824 Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:

Other:

3824.90

Other:

Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances:

3824.90.28

Other

Additional U.S. Note 3 to Section VI, HTSUS, provides:

The term “products described in additional U.S. note 3 to section VI” refers to any product not listed in the Chemical Appendix to the Tariff Schedule and—

- (a) For which the importer furnishes the Chemical Abstracts Service (C.A.S.) registry number and certifies that such registry number is not listed in the Chemical Appendix to the Tariff Schedule; or
- (b) Which the importer certifies not to have a C.A.S. registry number and not to be listed in the Chemical Appendix to the Tariff Schedule, either under the name used to make Customs entry or under any other name by which it may be known.

Chapter Note 1 to Chapter 29 states, in pertinent part, the following: Except where the context otherwise requires, the headings of this chapter apply only to:

- (a) Separate chemically defined organic compounds, whether or not containing impurities;
- (b) Mixtures of two or more isomers of the same organic compound (whether or not containing impurities), except mixtures of acyclic hydrocarbon isomers (other than stereoisomers), whether or not saturated (chapter 27);

In HQ 964338, we stated the following: “Although considered, classification of the product in Chapter 29, HTSUS, is excluded because there is no evidence that the merchandise, as imported, consists only of isomers of silymarin.” We now consider this statement to be incorrect.

Chapter 29, note 1(b) allows for mixtures of isomers containing impurities. Here, the mixture of isomers makes up 80% of the product. The other 20% is remainder from the starting material and a small amount of solvent. We consider this remainder to constitute “impurities” within the terms of the chapter note.

Within Chapter 29, silymarin is undisputedly a heterocyclic compound of heading 2932, HTSUS, as it includes six-membered rings containing oxygen atoms in the ring. Hence, heading 3824, a basket provision, can no longer describe this merchandise, which is more specifically provided for elsewhere. Using GRI 6, subheading 2932.99.61, HTSUS, describes this product as an other aromatic heterocyclic compound for which the CAS registry number is

not listed in the Chemical Appendix under the terms of U.S. note 3 to section VI.

HOLDING:

Silymarin is classified in subheading 2932.99.6100, HTSUSA (annotated), the provision for "Heterocyclic compounds with oxygen hetero-atom(s) only: Other: Other: Aromatic: Other: Products described in additional U.S. note 3 to section VI." The general, column 1 rate of duty is 6.5% *ad valorem*, with reference to headings in Chapter 99.

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.

EFFECT ON OTHER RULINGS:

HQ 964338, dated March 28, 2001, is hereby revoked.

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

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



[ATTACHMENT B]

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

HQ 967629
September 14, 2005
CLA-2 RR:CTF:TCM 967629 AM
CATEGORY: CLASSIFICATION
TARIFF NO.: 3824.90.2800, 2932.99.6100

BRIAN S. GOLDSTEIN, ESQ.
TOMPKINS & DAVIDSON
One Astor Plaza
1515 Broadway, 43rd Fl.
New York, NY 10036-8901

RE: Modification of NY 814027; the tariff classification of Silymarin (milk thistle) and Leucoanthocyanin

DEAR MR. GOLDSTEIN:

This is in regard to New York Ruling Letter (NY) 814027, dated February 2, 1996, regarding the classification of silymarin (milk thistle) and leucoanthocyanin, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). That ruling held that four products, including silymarin and leucoanthocyanin, were classified in subheading 1302.19.4040, HTSUS, the provision for "Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products: Vegetable saps and extracts: Other: Ginseng; substances having anesthetic, prophylactic or therapeutic properties: Other, Other."

We have reviewed NY 814027 and, with respect to two of the four products classified, have found it to be in error. Therefore, this ruling modifies NY 814027.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by Title VI, a notice was published in the June 22, 2005, CUSTOMS BULLETIN, Volume 39, Number 26, proposing to modify NY 814027, and to revoke any treatment accorded to substantially identical transactions. No comments were received in response to the notice.

FACTS:

The silymarin here in issue is a yellow powder that contains 80% mixture of isomers of silymarin (silybin, silicristin and silidianin). Silymarin 80% is produced from milk thistle seeds. The seeds are milled into a cake, subjected to percolation in a solvent, filtered, and concentrated by distillation under vacuum to remove as much solvent as possible. This concentrate is then washed, defatted, and dried.

The leucoanthocyanin here in issue is a brownish powder consisting of 90–95% oligomeric proanthocyanidin (OPC). OPC is a mixture of proanthocyanidin compounds in different degrees of polymerization. Some of the OPCs are catechins with a chemical formula of $C_{15}H_{14}O_6$ (The Merck Index, 11th ed.), dimers (two degrees), trimers (three degrees), etc. Due to these varying states of polymerization, the OPCs are not comprised of a single chemical compound, although the main chemical structures are identical. Leucoanthocyanin can be produced from either pine bark or grape seed.

According to flow charts submitted by the importer, all of the products are obtained through extraction and refining processes that target a particular family of chemicals in the plant such as isomers of silymarin or OPCs.

ISSUE:

What is the proper classification of the silymarin and leucoanthocyanin extracts under the HTSUS?

LAW AND ANALYSIS:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any related section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

Furthermore, “it is a well-established principle that classification of an imported article must rest upon its condition as imported.” E. T. Horn Company v. United States, Slip Op. 2003–20, (CIT, 2003), (citing Carrington Co.

v. United States, 61 CCPA 77, 497 F.2d 902, 905 (CCPA 1974), United States v. Baker Perkins, Inc., 46 CCPA 128, (1959)).

The HTSUS provisions under consideration are as follows:

1302 Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products:

Vegetable saps and extracts:

1302.19 Other:

Ginseng; substances having anesthetic, prophylactic or therapeutic properties:

1302.19.40 Other

* * * * *

2932 Heterocyclic compounds with oxygen hetero-atom(s) only:

Other:

2932.99 Other:

Aromatic:

Other:

2932.99.61 Products described in additional U.S. note 3 to section VI.

* * * * *

3824 Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:

3824.90 Other:

Other:

Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances:

3824.90.28 Other

Chapter Note 1 to Chapter 29 states, in pertinent part, the following: Except where the context otherwise requires, the headings of this chapter apply only to:

- (a) Separate chemically defined organic compounds, whether or not containing impurities;
- (b) Mixtures of two or more isomers of the same organic compound (whether or not containing impurities), except mixtures of acyclic hy-

drocarbon isomers (other than stereoisomers), whether or not saturated (chapter 27);

* * * * *

EN 13.02 states, in pertinent part, the following:

(A) Vegetable saps and extracts.

The heading covers saps and extracts (vegetable products usually obtained by natural exudation or by incision, or extracted by solvents), provided that they are not specified or included in more specific headings of the Nomenclature (see list of exclusions at the end of Part (A) of this Explanatory Note).

These saps and extracts differ from the essential oils, resinoids and extracted oleoresins of heading 33.01, in that, apart from volatile odorous constituents, they contain a far higher proportion of other plant substances (e.g., chlorophyll, tannins, bitter principles, carbohydrates and other extractive matter).

The saps and extracts classified here include:

- (1) **Opium**, the dried sap of the unripe capsules of the poppy (*Papaver somniferum*) obtained by incision of, or by extraction from, the stems or seed pods. It is generally in the form of balls or cakes of varying size and shape. However, concentrates of poppy straw containing not less than 50 % by weight of alkaloids are **excluded** from this heading (see Note 1 (f) to this Chapter).

* * * * *

- (4) **Pyrethrum extract**, obtained mainly from the flowers of various pyrethrum varieties (e.g., *Chrysanthemum cinerariaefolium*) by extraction with an organic solvent such as normal hexane or "petroleum ether".

* * * * *

- (11) **Quassia amara extract**, obtained from the wood of the shrub of the same name (*Simaroubaceae* family), which grows in South America. Quassin, the principal bitter extract of the wood of the *Quassia amara*, is a heterocyclic compound of **heading 29.32**.

* * * * *

- (18) **Papaw juice**, whether or not dried, but not purified as papain enzyme. (The agglomerated latex globules can still be observed on microscopic examination.) Papain is **excluded (heading 35.07)**.

* * * * *

- (20) **Cashew nutshell extract**. The polymers of cashew nutshell liquid extract are, however, **excluded** (generally **heading 39.11**).

* * * * *

Examples of **excluded** preparations are: . . .

- (iv) **intermediate products for the manufacture of insecticides**, consisting of pyrethrum extracts diluted by addition of mineral oil in such

quantities that the pyrethrins content is less than 2 %, or with other substances such as synergists (e.g., piperonyl butoxide) added (**heading 38.08**).

All four of the substances in NY 814027 are obtained by sophisticated means such as solvent-solvent extraction, distillation, dialysis, chromatographic procedures, electrophoresis, etc. These processes result in a substance containing a targeted chemical compound or compounds along with ubiquitous plant material that need not be further removed for the manufacturers' purpose.

Heading 1302, HTSUS, describes vegetable extracts. The ENs provide that vegetable products are usually obtained by natural exudation or by incision, or extracted by solvents. Furthermore, the EN distinguishes products of heading 1302, HTSUS, from products of heading 3301, HTSUS, by the amount of plant material they contain. Research into the extracts described by the ENs, however, reveals a variety of extraction and refining techniques. For instance, in HQ 963848, dated April 20, 2002, CBP took note of the EN that allows pyrethrum products containing over 2% pyrethrum to remain classified in heading 1302, HTSUS, in classifying a 50% pyrethrum product in heading 1302, HTSUS. We did so even though the original extracted oleoresin had been further purified removing much of the variety of material in the pyrethrum plant and thereby concentrating the pyrethrum content.

However, there appears to be a limit on the amount of purification that can occur before the product is classified in a later chapter. For instance, EN 13.02, explicitly excludes certain refined extracts of opium, quassia amara, papaw juice, and cashew nut shell liquid, once the refining process concentrates a certain group of chemical compounds to a particular point. Hence, poppy straw concentrates containing more than 50% alkaloids are excluded from heading 1302. Likewise, quassin, a chemical compound extracted and refined from the quassia amara shrub is classified in Chapter 29. Papain enzyme, once purified from the extraction process of papaw juice, is classified as an enzyme of Chapter 37. And polymers extracted and refined from cashew nut shell liquid are classified in Chapter 39 as polymers.

Following the reasoning in our prior rulings, and the tenet that we must classify goods as imported, we note that the leucoanthocyanin consists of over 90% mixtures of oligomeric proanthocyanidins (OPCs) and the silymarin consists of at least 80% of isomers of silymarin. Therefore, silymarin and leucoanthocyanin are relatively pure chemical products and cannot be classified simply as extracts.

In HQ 964338 and in HQ 966566, silymarin and leucocyanin were each respectively classified in subheading 3824.90.28, HTSUS, the provision for "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances: Other." We consider this the correct result for leucoanthocyanin, because it is purified from the plant matter well beyond that of an extract, yet it does not contain a separate chemically defined compound, or isomers of such a compound, as necessary for classification in Chapter 29, HTSUS.

However, in HQ 964338, we excluded classification of silymarin 80% in Chapter 29, HTSUS, because the product consists of more than isomers of a separate chemically defined compound under Chapter 29, note 1(b). The

other 20% is remainder from the starting material and a small amount of solvent. As such, we now consider this remainder to constitute "impurities" within the terms of the chapter note.

Within Chapter 29, silymarin is undisputedly a heterocyclic compound of heading 2932, HTSUS, as it includes six-membered rings containing oxygen atoms in the ring. Hence, heading 3824, a basket provision, can no longer describe this merchandise, which is more specifically provided for elsewhere. Using GRI 6, subheading 2932.99.61, HTSUS, describes this product as an other aromatic heterocyclic compound for which the CAS registry number is not listed in the Chemical Appendix under the terms of U.S. note 3 to section VI.

HOLDING:

NY 814027, dated February 2, 1996, is modified in accordance with this ruling. Silymarin is classified in subheading 2932.99.6100, HTSUSA (annotated), the provision for "Heterocyclic compounds with oxygen heteroatom(s) only: Other: Other: Aromatic: Other: Products described in additional U.S. note 3 to section VI." The column 1, general rate of duty is 6.5% ad valorem, with reference to headings in Chapter 99.

Leucoanthocyanin is classified in subheading 3824.90.2800, HTSUSA, the provision for "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances: Other." The column 1, general rate of duty is 6.5% *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.

EFFECT ON OTHER RULINGS:

NY 814027 is modified as outlined above.

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

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

