

Bureau of Customs and Border Protection

General Notices

Automated Commercial Environment (ACE): Ability of Truck Carriers to Use Third Parties to Submit Manifest Information in the Test of the ACE Truck Manifest System

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

ACTION: General notice.

SUMMARY: This document announces that the Bureau of Customs and Border Protection (CBP) will permit truck carriers who are not Automated Commercial Environment (ACE) Truck Carrier Accounts to use third parties to transmit truck manifest information on their behalf electronically in the ACE Truck Manifest system, via electronic data interchange (EDI) messaging. Truck carriers electing to use a third party to submit manifest information to CBP must possess a valid Standard Carrier Alpha Code (SCAC) from the National Motor Freight Traffic Association. Truck carriers who elect to use this transmission method will not have access to operational data and will not receive status messages on ACE transactions, nor will they have access to integrated Account data from multiple system sources. These truck carriers will be able to obtain release of their cargo, crew, conveyances, and equipment via EDI messaging back to the transmitter of the information. By making these changes, CBP is opening the test to parties previously ineligible to participate.

EFFECTIVE DATE: Truck carriers will be able to participate in ACE through the use of a third party transmitter starting on March 29, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. James Swanson, via email at james.d.swanson@dhs.gov.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On February 4, 2004 and September 13, 2004, CBP published General Notices in the **Federal Register** (69 FR 55167 and 69 FR

5360) announcing a test, in conjunction with the Federal Motor Carrier Safety Administration (FMCSA), allowing participating truck carriers to transmit electronic manifest data in ACE, including advance cargo information as required by section 343(a) of the Trade Act of 2002, as amended by the Maritime Transportation Security Act of 2002 (see 68 FR 68140). The advance cargo information requirements are detailed in the final rule published in the **Federal Register** at 68 FR 68140 on December 5, 2003. Truck carriers participating in the test opened up Truck Carrier Accounts which provided them with the ability to electronically transmit truck manifest data and obtain release of their cargo, crew, conveyances, and equipment via the ACE Portal or electronic data interchange (EDI) messaging.

In the September 13, 2004 notice, CBP stated that, in order to be eligible for participation in this test, a carrier must have:

1. Submitted an application (i.e., statement of intent to establish an ACE Account and to participate in the testing of electronic truck manifest functionality) as set forth in the February 4, 2004, **Federal Register** notice (69 FR 5360);
2. Provided a Standard Carrier Alpha Code(s) (SCAC);
3. Provided the name, address, and e-mail of a point of contact to receive further information.

In addition, participants intending to use the ACE Secure Data Portal as the means to file the manifest must submit a statement certifying the ability to connect to the Internet. Participants intending to use an EDI interface are required to first test their ability to send and receive electronic messages in either American National Standards Institute (ANSI) X12 or United Nations / Directories for Electronic Data Interchange for Administration, Commerce and Transport (UN/EDIFACT) format with CBP. The September 13, 2004 notice indicated that acceptance into this test does not guarantee eligibility for, or acceptance into, future technical tests.

IMPLEMENTATION

Through this notice, CBP announces a change whereby truck carriers no longer have to open ACE Truck Carrier Accounts to participate in the ACE test. Specifically, truck carriers may elect to use a third party to submit electronic manifest information via EDI to CBP. Truck carriers participating in this fashion will not have access to operational data and will not receive status messages on ACE Accounts, nor will they have access to integrated Account data from multiple system sources. These truck carriers will be able to obtain release of their cargo, crew, conveyances, and equipment via EDI messaging back to the transmitter of the information.

If the third party transmitting the truck manifest information to CBP does not use EDI, but instead wishes to use the ACE portal, the truck carrier who is submitting that information to the third party

(for transmission to CBP) must have an ACE Truck Carrier Account as described in the February 4, 2004, General Notice (69 FR 5360).

A truck carrier using a third party to transmit via EDI cargo, crew, conveyance and equipment information to CBP must have a Standard Carrier Alpha Code (SCAC). Any truck carrier with a SCAC may arrange to have a third party transmit manifest information to CBP via EDI consistent with the requirements of the ACE Truck Manifest Test.

Previous Notices Continue To Be Applicable

All of the other aspects of the ACE Truck Manifest Test as set forth in the September 13, 2004, notice (69 FR 55167), as modified by the General Notice published in the **Federal Register** (70 FR 13514) on March 21, 2005, continue to be applicable. (The March 21, 2005 notice clarified that all relevant data elements are required to be submitted in the automated truck manifest submission.) All of the aspects of the February 4, 2004, notice (69 FR 5360) also continue to be applicable, except as revised in this notice.

DATED: March 22, 2006

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

[Published in the Federal Register, March 29, 2005 (71 FR 15756)]

AGENCY INFORMATION COLLECTION ACTIVITIES: CUSTOMS MODERNIZATION ACT RECORDKEEPING REQUIREMENTS

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

ACTION: Proposed collection; comments requested.

SUMMARY: CBP has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Customs Modernization Recordkeeping Requirements. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (70 FR 58453) on October 6, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days

for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before April 27, 2006.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-7285.

SUPPLEMENTARY INFORMATION:

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

- (1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Customs Modernization Act Recordkeeping Requirements

OMB Number: 1651-0076

Form Number: N/A

Abstract: This information and records keeping requirement is required to allow CBP to verify the accuracy of the claims made on the entry documents regarding the tariff status of imported merchandise, admissibility, classification/nomenclature, value and rate of duty applicable to the entered goods.

Current Actions: This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 4,695

Estimated Time Per Respondent: 1,037 hours

Estimated Total Annual Burden Hours: 4,870,610

Estimated Total Annualized Cost on the Public: N/A

If additional information is required contact: Tracey Denning, Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: March 21, 2006

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, March 28, 2006 (72 FR 15468)]



Tuna — Tariff-Rate Quota

The tariff-rate quota for Calendar Year 2006, on tuna classifiable under subheading 1604.14.22, Harmonized Tariff Schedule of the United States (HTSUS).

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

ACTION: Announcement of the quota quantity of tuna in airtight containers for Calendar Year 2006.

SUMMARY: Each year the tariff-rate quota for tuna described in subheading 1604.14.22, HTSUS, is based on the apparent United States consumption of tuna in airtight containers during the preceding Calendar Year. This document sets forth the tariff-rate quota for Calendar Year 2006.

EFFECTIVE DATES: The 2006 tariff-rate quota is applicable to tuna entered or withdrawn from warehouse for consumption during the period January 1, through December 31, 2006.

FOR FURTHER INFORMATION CONTACT:

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

BACKGROUND:

It has been determined that 19,484,313 kilograms of tuna in airtight containers may be entered and withdrawn from warehouse for consumption during the Calendar Year 2006, at the rate of 6 percent ad valorem under subheading 1604.14.22, HTSUS. Any such tuna

which is entered or withdrawn from warehouse for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent ad valorem under subheading 1604.14.30 HTSUS.

Dated: March 20, 2006

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

[Published in the Federal Register, March 24, 2006 (71 FR 14934)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.

Washington, DC, March 29, 2006

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

SANDRA L. BELL,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*

REVOCATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A RADIOTELEPHONY BASE STATION CABINET AND A NOISE-LIMITING HOOD.

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

ACTION: Revocation of two tariff classification ruling letters and revocation of treatment relating to the classification of a radiotelephony base station cabinet and noise limiting hood.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is revoking one ruling letter relating to the tariff classification of a radiotelephony base station cabinet and revoking one ruling letter relating to the tariff classification of a noise-limiting hood under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published on February 1, 2006, in Volume 40, Number 6, of the CUSTOMS BULLETIN. CBP received no comments in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 12, 2006.

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Tariff Classification and Marking Branch: (202) 572-8713.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke two ruling letters pertaining to the tariff classification of a radiotelephony base station cabinet and a noise-limiting hood was published in the February 1, 2006, CUSTOMS BULLETIN, Volume 40, Number 6. No comments were received.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., a 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 section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP 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 the notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY R00933, CBP ruled that the radiotelephony base station cabinet was classified in subheading 9403.10.0040, HTSUSA, which

provides for "Other furniture and parts thereof: Metal furniture of a kind used in offices, Other." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error, and that the radiotelephony base station cabinet should be classified in subheading 8529.90.8600, HTSUS, which provides for "Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528: Other parts of articles of headings 8525 and 8527, except parts of cellular telephones: Other."

In NY R02586, CBP ruled that the noise-limiting hood was classified in subheading 9403.90.8040, HTSUSA, which provides for "Other furniture and parts thereof: Parts: Other: Other, Of metal." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error, and that the noise-limiting hood should be classified in subheading 8529.90.8600, HTSUS, which provides for "Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528: Other parts of articles of headings 8525 and 8527, except parts of cellular telephones: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY R00933, NY R02586 and any other ruling not specifically identified, to reflect the proper classification of the radiotelephony base station cabinet according to the analysis contained in Headquarters Ruling Letter (HQ) 967961, set forth as Attachment A to this document and the proper classification of the noise-limiting good according to the analysis contained in Headquarters Ruling Letter (HQ) 967960, set forth as Attachment B to this document. 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: March 21, 2006

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 967961
March 21, 2006
CLA-2 RR:CTF:TCM 967961 KSH
TARIFF NO.: 8529.90.8600

MS. MELISSA HOFFMAN
ERICSSON, INC.
6300 Legacy Drive
Plano, TX 75024

RE: Revocation of New York Ruling Letter (NY) R00933, dated October 18, 2004; Classification of a radiotelephony base station cabinet.

DEAR MS. HOFFMAN:

This is in response to your letter of October 3, 2005, in which you request reconsideration of New York Ruling Letter (NY) R00933, issued on October 18, 2004, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a radiotelephony base station cabinet. The radiotelephony base station cabinet was classified in subheading 9403.10.0040, HTSUSA, which provides for: "Other furniture and parts thereof: Metal furniture of a kind used in offices, Other." You assert that the radio-telephony base station cabinet is classified in subheading 8529.90.8600, HTSUSA, which provides for: "Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528: Other: Other parts of articles of headings 8525 and 8527, except parts of cellular telephones: Other." At your request, CBP has reviewed the classification of this item and has determined that the cited ruling is in error.

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, notice of the proposed modification of NY R00933 was published in the February 1, 2006, CUSTOMS BULLETIN, Volume 40, Number 6. No comments were received in response to the notice.

FACTS:

The unequipped metal cabinets, part numbers BFM 901 042/3 and BFM 901 042/4 contain an empty rack and are made up of doors, mounting sets, earthing set, nuts, screws and angle bars. The cabinets are designed for placement outdoors and are designed to meet demands for disturbance immunity, heat dissipation, flexibility of layout and maintainability. The cabinets are used to house all of the necessary radiotelephonic equipment necessary for cellular phones to operate. The cabinet will be located outdoors on the roofs of buildings to provide the necessary signal generation, amplification and networking necessary for radiotelephonic communications.

ISSUE:

Whether the radiotelephonic base station cabinet is classified in heading 9403, HTSUSA, or in heading 8529, HTSUSA.

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be de-

terminated according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. It is Customs and Border Protections' (CBP) practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Note 1(g) to Chapter 94, HTSUS states in pertinent part:

This chapter does not cover: . . .

- (g) Furniture specially designed as part of apparatus . . . of headings 8525 to 8528 (heading 8529).

Therefore, it must be determined if the article in question is a piece of furniture specially designed for apparatus of heading 8525 to 8528, HTSUS.

Heading 8525, HTSUS, covers:

Transmission apparatus for radiotelephony, radiotelegraphy, radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras; still image video cameras or other video camera recorders; digital cameras.

Heading 8529, HTSUS, provides for "[p]arts suitable for use solely or principally with the apparatus of headings 85.25 to 85.28."

The E.N. to heading 8529, HTSUS, provides in relevant part:

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), this heading covers parts of the apparatus of the four preceding headings. The range of parts classified here includes :

- (3) Cases and cabinets specialised to receive the apparatus of headings 85.25 to 85.28.

Based upon the internal design schematics of the cabinet and exterior design of the cabinet which allow it to be located outdoors on the roofs of buildings to provide the necessary signal generation, amplification and networking necessary for radiotelephonic communications, the radiotelephony base station cabinet is clearly intended to house cellular telephone equipment. Radiotelephony equipment is classified in heading 8525, HTSUS. See HQ 962909, dated May 20, 2000. As such it is principally used with the apparatus of heading 8525, HTSUS. Note 1(g) to Chapter 94, HTSUS, excludes furniture specially designed as part of apparatus . . . of headings 8525 to 8528 (heading 8529). Accordingly, pursuant to GRI 1, the radiotelephony base station cabinet is classified in heading 8529, HTSUS. It is specifically provided for in subheading 8529.90.8600, HTSUS.

HOLDING:

The radiotelephony switching base cabinet is classified in heading 8529, HTSUS. It is specifically provided for in subheading 8529.90.8600, HTSUS, which provides for "Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528: Other parts of articles of headings 8525 and 8527, except parts of cellular telephones: Other." The column one, general rate of duty is free.

EFFECT ON OTHER RULINGS:

NY R00933, dated October 18, 2004, is hereby revoked.

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

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

[ATTACHMENT B]

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

HQ 967960
March 21, 2006
CLA-2 RR:CTF:TCM 967960 KSH
TARIFF NO.: 8529.90.8600

MS. MELISSA HOFFMAN
ERICSSON, INC.
6300 Legacy Drive
Plano, TX 75024

RE: Revocation of New York Ruling Letter (NY) R02586, dated September 27, 2005; Classification of a noise-limiting hood.

DEAR MS. HOFFMAN:

This is in response to your letter of October 3, 2005, in which you request reconsideration of New York Ruling Letter (NY) R02586, issued on September 27, 2005, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUS) of a noise-limiting hood. The noise limiting hood was classified in subheading 9403.90.8040, HTSUS, which provides for "Other furniture and parts thereof: Parts: Other: Other, Of metal." You assert that the noise-limiting hood is classified in heading 8529.90.8600, HTSUS, which provides for "Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528: Other: Other parts of articles of headings 8525 and 8527, except parts of cellular telephones: Other." At your request, CBP has reviewed the classification of this item and has determined that the cited ruling is in error.

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, notice of the proposed modification of NY R02586 was published in the February 1, 2006, CUSTOMS BULLETIN, Volume 40, Number 6. No comments were received in response to the notice.

FACTS:

The noise-limiting hood is constructed from aluminum that is coated with a sound absorbent polyurethane plastic. It also includes small stainless steel brackets that are used for installation. The hood functions to reduce the noise level of the operating radio base station by approximately 10 decibels. It is designed exclusively for use within a radiotelephonic base station. A radiotelephonic base station contains all necessary transmission and or reception devices necessary for the proper operation of cellular telephone service.

ISSUE:

Whether the noise-limiting hood is classified in heading 9403, HTSUS, or in heading 8529, HTSUS.

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is Customs and Border Protections' (CBP) practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Note 1(g) to Chapter 94, HTSUS, states in pertinent part:

This chapter does not cover: . . .

- (g) Furniture specially designed as part of apparatus . . . of headings 8525 to 8528 (heading 8529).

Therefore, it must be determined if the article in question is a piece of furniture specially designed for apparatus of heading 8525 to 8528, HTSUS.

Heading 8525, HTSUS, covers:

Transmission apparatus for radiotelephony, radiotelegraphy, radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras; still image video cameras or other video camera recorders; digital cameras.

Heading 8529, HTSUS, provides for “[p]arts suitable for use solely or principally with the apparatus of headings 85.25 to 85.28.”

The noise-limiting hood is used exclusively with radiotelephonic equipment. Radiotelephony equipment is classified in heading 8525, HTSUS. See HQ 962909, dated May 20, 2000. Radio base station cabinets are classified under heading 8529, HTSUS. See the E.N. to heading 8529, HTSUS, which reads in relevant part:

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), this heading covers parts of the apparatus of the four preceding headings. The range of parts classified here includes :

(3) Cases and cabinets specialised to receive the apparatus of headings 85.25 to 85.28.

In accordance with Note 1(g) to Chapter 94, HTSUS, the noise-limiting hood is not a part of furniture since it is used within a radio base station cabinet. Pursuant to GRI 1, the noise-limiting hood is classified in heading 8529, HTSUS. It is specifically provided for in subheading 8529.90.8600, HTSUS.

HOLDING:

The noise-limiting hood is classified in heading 8529, HTSUS. It is specifically provided for in subheading 8529.90.8600, HTSUS, which provides for "Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528: Other parts of articles of headings 8525 and 8527, except parts of cellular telephones: Other." The column one, general rate of duty is free.

EFFECT ON OTHER RULINGS:

NY R02586, dated September 27, 2005, is hereby revoked.

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

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

19 CFR PART 177

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF ANODES AND CATHODES USED IN ELECTROLYSIS

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

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of anodes and cathodes used in electrolysis.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking a ruling relating to the tariff classification of anodes and cathodes used in electrolysis under the Harmonized Tariff Schedule of the United States (HTSUS), and revoking any treatment CBP has previously accorded to substantially identical transactions. Notice of the proposed revocation was pub-

lished on February 8, 2006, in the Customs Bulletin. No comments were received in response to this notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 12, 2006.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Tariff 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 CBP's obligations, a notice was published on February 8, 2006, in the Customs Bulletin, Volume 40, Number 7, proposing to revoke NY R02374, dated August 29, 2005, which classified ruthenium-coated titanium anodes and platinum-coated nickel cathodes - collectively referred to as electroplating anodes - as articles of precious metal or of metal clad with precious metal, in subheading 7115.90.60000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should have advised CBP during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C.

1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment it previously accorded to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY R02374 to reflect the proper classification of the anodes and cathodes, as described, in subheading 8543.90.8880, HTSUSA, as other parts of electrical machines and apparatus, having individual functions, not specified or included elsewhere in chapter 85, in accordance with the analysis in HQ 967941, which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment it previously accorded to substantially identical transactions.

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

DATED: March 28, 2006

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

Attachment

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

HQ 967941
March 28, 2006
CLA-2 RR:CTF:TCM 967941 JAS
CATEGORY: Classification
TARIFF NO.: 8543.90.8880

MR. WILLIAM PAULIN
KUEHNE CHEMICAL COMPANY, INC.
86 North Hackensack Avenue
South Kearny, NJ 07032

RE: Anodes and Cathodes Used In Machines for Electrolysis; NY R02374 Revoked

DEAR MR. PAULIN:

In NY R02374, which the National Commodity Specialist Division, U.S. Customs and Border Protection, New York, issued to you on August 29, 2005, certain anodes and cathodes used in electrolysis were found to be classifiable as other articles of precious metal or of metal clad with precious

metal, in 7115.90.6000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY R02374 was published on February 8, 2006, in the Customs Bulletin, Volume 40, Number 7. No comments were received in response to this notice.

FACTS:

In NY R02374, ruthenium-coated titanium anodes and platinum-coated nickel cathodes for use in an electrolysis plant were held to be classifiable as other articles of precious metal or of metal clad with precious metal, in sub-heading 7115.90.6000, HTSUSA. The ruling described articles that were to be used in the electrodeposition of the precious metal component onto other metal objects with the base metals, titanium and nickel, being used as carrier media for the precious metal. After the precious metal is diminished, the anodes and cathodes are returned to the United Kingdom to be refurbished.

You have explained that the anodes and cathodes are in fact used in an electrolysis plant to electrolyze brine into chlorine and sodium hydroxide. The precious metal coatings, platinum and ruthenium, act as a catalyst to allow the proper chemical reactions to occur. The precious metals are not re-deposited onto other metal objects.

The HTSUS provisions under consideration are as follows:

7115	Other articles of precious metal or of metal clad with precious metal:
7115.90	Other:
	Other:
7115.90.60	Other
*	* * *
8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in [Chapter 85]; parts thereof:
8543.30.00	Machines and apparatus for electroplating, electrolysis or electrophoresis
8543.90	Parts:
	Other:
	Other:
8543.90.88	Other

ISSUE:

Whether the anodes and cathodes, as described, are provided for in heading 8543.

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.

Initially, Chapter 71, Note 3(k), HTSUS, states that machinery, mechanical appliances or electrical goods, or parts thereof, of section XVI, are not covered by chapter 71. Therefore, the issue is whether the anodes and cathodes, as described, are parts for tariff purposes and, if so, whether they are parts of electrical goods of chapter 84 or chapter 85.

As to the parts issue, articles that are integral, constituent components of another article, are necessary to the completion of that article, and which satisfy a specific and integral need in the operation of that article qualify as parts for tariff purposes. See *Mitsubishi Int'l v. United States*, 17 CIT 871, 829 F. Supp. 1387 (1993), and cases cited. The ruthenium-coated titanium anodes and platinum-coated nickel cathodes allow the proper chemical reactions to occur in the electrolytic process by which chlorine and sodium hydroxide are produced. These articles satisfy the above criteria for parts of machines and apparatus for electrolysis.

Subject to certain exceptions that are not relevant here, goods that are identifiable as parts of machines or apparatus of Chapter 84 or Chapter 85 are classifiable in accordance with Section XVI, Note 2, HTSUS. See *Nidec Corporation v. United States*, 861 F. Supp. 136, *aff'd*, 68 F. 3d 1333 (1995). Parts which are goods included in any of the headings of Chapters 84 and 85 are in all cases to be classified in their respective headings. See Note 2(a). Other parts, if suitable for use solely or principally with a particular machine, or with a number of machines of the same heading, are to be classified with the machines of that kind. See Note 2(b). Machines and apparatus for electrolysis are specifically provided for in subheading 8543.30.00, HTSUS. By function and design, the described anodes and cathodes appear to be principally, if not solely, used with such machines and apparatus.

HOLDING:

Under the authority of GRI 1 and Section XVI, Note 2(b), the ruthenium-coated titanium anodes and platinum-coated nickel cathodes are provided for in heading 8543. They are classifiable in subheading 8543.90.88.80, HTSUSA.

EFFECT ON OTHER RULINGS:

NY R02374, dated August 29, 2005, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

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

PROPOSED REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF A CERTAIN BASE METAL MEDALLION

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

ACTION: Notice of proposed revocation of one ruling letter and revocation of treatment relating to the classification of a certain base metal medallion.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a certain base metal medallion. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before May 13, 2006.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, 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 Joseph Clark, Trade and Commercial Regulations Branch, at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Tariff Classification and Marking Branch, at (202) 572–8828.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”) became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade

community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke one ruling letter relating to the tariff classification of a certain base metal medallion. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) 894287, dated January 31, 1994, (Attachment A), 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 databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY 894287, CBP classified a certain base metal medallion in subheading 7806.00.0000, ("HTSUS"), which provides for "Other articles of lead: Other." We have determined that the classification set forth for the medallion in NY 894287 is incorrect. The medallion is worn as personal adornment and does not incorporate precious metal or metal clad with precious metal, natural or cultured pearls, or precious or semi-precious stones. It is now CBP's position that the medallion is properly classified in subheading 7117.19.0000, HTSUS, which provides for "Imitation jewelry: Of base metal, whether or not plated with precious metal: Other: Other: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP intends to revoke NY 894287 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 968149 (Attachment B). Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

DATED: March 28, 2006

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



[ATTACHMENT A]

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

NY 894287 January 31, 1994
CLA-2-78:S:N:N3:115 894287
CATEGORY: Classification
TARIFF NO.: 7806.00.0000

MR. SHELDON BERNSTEIN
THE IRWIN BROWN COMPANY
212 Chartres St., P.O. Box 2426
New Orleans, LA 70176-2426

RE: The tariff classification of award medallions from Taiwan.

DEAR MR. BERNSTEIN:

In your letter dated January 25, 1994, you requested a tariff classification ruling, on behalf of your client, The Trophy House in Baton Rouge, LA. The subject item is an award medallion approximately 2" in diameter with the designation Scholar ARCS Foundation, Inc. on its surface. It is mainly made of lead. This item will be given to award recipients and worn only at ceremonies.

The classification of merchandise under the HTS is governed by the General Rules of Interpretation (GRI'S). GRI 1, HTS, states in part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes. . .". This Rule applies to your product.

The applicable subheading for the award medallion will be 7806.00.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of lead: other. The duty rate will be 3.9% ad valorem.

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

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

JEAN F. MAGUIRE,
*Area Director,
New York Seaport.*

[ATTACHMENT B]

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

HQ 968149
CLA-2 RR:CTF:TCM 968149 HkP
CATEGORY: Classification
TARIFF NO.: 7117.19.9000

MR. SHELDON BERNSTEIN
THE IRWIN BROWN COMPANY
212 Chartres Street
P.O. Box 2426
New Orleans, LA 70176-2426

RE: Award medallion from Taiwan; revocation of NY 894287

DEAR MR. BERNSTEIN:

This is in reference to New York Ruling Letter (NY) 894287, issued to you on January 31, 1994, in which the tariff classification of award medallions was determined under the Harmonized Tariff Schedule of the United States ("HTSUS"). NY 894287 classified the medallion in heading 7806, HTSUS, as "other articles of lead". We have reconsidered NY 894287 and have determined that the tariff classification of the medallion is not correct.

FACTS:

NY 984287 described the medallion as follows:

The subject item is an award medallion approximately 2" in diameter with the designation Scholar ARCS Foundation, Inc. on its surface. It is made mainly of lead. This item will be given to award recipients and worn only at ceremonies.

ISSUE:

Whether the subject medallion is classified in heading 7806, HTSUS, which provides for: "other articles of lead", or in heading 7117, HTSUS, which provides for: "imitation jewelry."

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the

goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

7117	Imitation jewelry:
	Of base metal, whether or not plated with precious metal:
7117.19	Other:
	Other:
7117.19.9000	Other. . . .
7806.00.0000	Other articles of lead. . . .

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs 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.

We first consider heading 7117, HTSUS, which provides for “imitation jewelry”. Legal Note 11 to Chapter 71, HTSUS, provides that:

For the purposes of heading 71.17, the expression “imitation jewellery” means articles of jewellery within the meaning of paragraph (a) of Note 9 . . . not incorporating natural or cultured pearls, precious or semi-precious stones . . . nor (except as plating or as minor constituents) precious metal or metal clad with precious metal.

In turn, Note 9(a) to Chapter 71, HTSUS, provides that “articles of jewelry” means “any small objects of personal adornment . . . (for example, rings, bracelets, necklaces, brooches, . . . , religious or other medals and insignia)”. Finally, EN 71.17 explains that the expression “imitation jewelry”, as defined in Note 11 to Chapter 71, is restricted to small objects of personal adornment. Consequently, we find that the medallion meets the terms of heading 7117, HTSUS, and the conditions of Legal Note 11 to Chapter 71 because it is an article of personal adornment that does not incorporate precious metal or metal clad with precious metal, natural or cultured pearls, or precious or semi-precious stones.

Conversely, heading 7806.00.0000, HTSUS, which is located in Section XV of the HTSUS, provides for “other articles of lead.” Legal Note 1(e) to Section XV, HTSUS, excludes goods of Chapter 71, HTSUS, from Section XV. Further, EN 78.06 explains that heading 7806, HTSUS, “covers all lead articles not included in the preceding headings of this Chapter, or in Chapter 82 or 83, or more specifically covered elsewhere in the Nomenclature.”

Applying Legal Note 1(e) to Section XV, HTSUS, and EN 78.06 to these facts, we find that the award medallion is precluded from classification under heading 7806, HTSUS, as the medallion is specifically described in heading 7117, HTSUS, as imitation jewelry.

HOLDING:

By application of GRI 1, we find that the subject medallion is classified in heading 7117, HTSUS, and is specifically provided for in subheading

7117.19.9000, HTSUS, which provides for: "Imitation jewelry: Of base metal, whether or not plated with precious metal: Other: Other: Other."

The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY 894287 is revoked.

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

**PROPOSED REVOCATION OF ONE RULING LETTER,
MODIFICATION OF THREE RULING LETTERS, AND RE-
VOCATION OF TREATMENT RELATING TO THE CLASSI-
FICATION OF CERTAIN STAINLESS STEEL MEASURING
SPOONS**

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

ACTION: Notice of proposed revocation of one ruling letter, modification of three ruling letters, and revocation of treatment relating to the classification of certain stainless steel measuring spoons.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter and modify three ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain stainless steel measuring spoons. Similarly, CBP proposes to modify any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before May 13, 2006.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, 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 Joseph Clark, Trade and Commercial Regulations Branch, at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock,
Tariff Classification and Marking Branch, at (202) 572-8828.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI") became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke one ruling letter and modify three ruling letters relating to the tariff classification of certain stainless steel measuring spoons. Although in this notice CBP is specifically referring to the modification of New York Ruling Letter (NY) J87441, dated August 6, 2003 (Attachment A), NY J87521, dated August 6, 2003 (Attachment B), NY E82964, dated June 11, 1999 (Attachment C), and the revocation of NY B86306, dated June 18, 1997 (Attachment D), 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 databases for rulings in addition to the rulings identified above. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to modify any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substan-

tially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY J87441, NY J87521, NY E82964, and NY B86306, CBP classified stainless steel measuring spoons in subheading 8215.99.3000, ("HTSUS"), which provides for "Spoons, forks, ladles, skimmers, cake servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware; and base metal parts thereof: Other: Other: Spoons and ladles: With stainless steel handles: spoons valued under 25¢ each." Based on our recent review of NY J87441, NY J87521, NY E82964, and NY B86306, we have determined that the tariff classification set forth for the stainless steel measuring spoons, is incorrect. Based on our review, we now believe that the proper tariff classification is subheading 7323.99.9030, HTSUS, which provides for "Table, kitchen or other household articles and parts thereof, of iron or steel; . . . : Other: Other: Not coated or plated with precious metal: Other: Other: Kitchen or tableware suitable for food or drink contact."

Pursuant to 19 U.S.C. §1625(c)(1), CBP intends to modify NY J87441, NY J87521, and NY E82964, and revoke NY B86306, and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper tariff classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letters (HQ) 968080 (Attachment E), HQ 968081 (Attachment F), and HQ 968163 (Attachment G). Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to modify any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

DATED: March 28, 2006

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

[ATTACHMENT A]

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

NY J87441

August 6, 2003

CLA-2-17:RR:NC:SP:232 J87441

CATEGORY: Classification

TARIFF NO.: 0906.10.0000; 1701.91.5400;

1701.91.5800; 1805.00.0000; 8205.51.3030; 8215.99.3000

MR. SHACHAR GAT
SHONFELD'S USA
16871 Noyes Avenue
Irvine, CA. 92606

RE: The tariff classification of Product CCO-205424 from China

DEAR MR. GAT:

In your letter dated July 14, 2003, you requested a tariff classification ruling.

You submitted descriptive literature, product photographs and specifications, and a sample with your request. The merchandise in question is Product CCO-205424 marketed as "coffee flavoring". As the package submitted appears to be a prototype, the weight, and even the actual contents, of the individual items when imported may not be exactly as shown in the sample.

Product CCO-205424 consists of three small (6 inches tall, 2 inches wide) bottles with curved sides that complement each other when fit together. All have twine tied around the bottle neck. These are packaged together to make one retail item. One bottle is said to hold cocoa powder, and has a small metal whisk suspended from the twine. It is assumed for the purposes of this ruling that the cocoa powder is, as the name implies, 100 percent cocoa powder. The second bottle contains cinnamon sticks, and has a small metal grater dangling from its neck. The third bottle is said to contain vanilla sugar, consisting of sugar and added vanilla for flavor. This bottle has a metal measuring spoon (1 teaspoon) attached to the neck. A phone call on August 4, 2003 ascertained that the spoon is stainless steel and is valued at 15 cents.

The combination of items in Product CCO-205424 is not classifiable as a set and therefore each item is classified individually. The applicable subheading for the cinnamon sticks will be 0906.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for cinnamon and cinnamon-tree flowers: Neither crushed nor ground. The rate of duty will be Free.

It is assumed, for the purposes of this ruling, that the flavored sugar is derived from sugar cane or sugar beet. The applicable subheading for the vanilla sugar, if described in additional U.S. note 3 to chapter 17 and entered pursuant to its provisions, will be 1701.91.5400, Harmonized Tariff Schedule of the United States (HTS), which provides for Cane or beet sugar and chemically pure sucrose, in solid form: Other: Containing added flavoring or coloring matter: Containing added flavoring matter whether or not containing added coloring: Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17: Described in addi-

tional U.S. note 8 to this chapter and entered pursuant to its provisions. The rate of duty will be 6 percent ad valorem. If not described in additional U.S. note 3 to chapter 17 and not entered pursuant to its provisions, the applicable subheading will be 1701.91.5800, HTS. The duty rate will be 33.9 cents per kilogram plus 5.1 percent ad valorem. In addition, products classified under subheading 1701.91.5800, HTS, will be subject to additional duties based on their value as described in subheadings 9904.17.49 to 9904.17.56, HTS.

The applicable subheading for the cocoa powder will be 1805.00.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for cocoa powder, not containing added sugar or other sweetening matter. The rate of duty will be 0.52 cents per kilogram.

The applicable subheading for the grater and the metal whisk, if of iron or steel, will be 8205.51.3030, Harmonized Tariff Schedule of the United States (HTS), which provides for Handtools (including glass cutters) not elsewhere specified or included . . . : Other handtools (including glass cutters) and parts thereof: Household tools, and parts thereof: Of iron or steel: Other (including parts) . . . Kitchen and table implements. The rate of duty will be 3.7 percent ad valorem.

The applicable subheading for the stainless steel measuring spoon will be 8215.99.3000, Harmonized Tariff Schedule of the United States (HTS), which provides for Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware and base metal parts thereof: Other: Other . . . Spoons and ladles: With stainless steel handles: Spoons valued under 25 cents each. The rate of duty will be 14 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist John Maria at (646) 733-3031.

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

[ATTACHMENT B]

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

NY J87521

August 6, 2003

CLA-2-17:RR:NC:SP:232 J87521

CATEGORY: Classification

TARIFF NO.: 0906.10.0000; 1701.91.5400; 1701.91.5800;
1805.00.0000; 8205.51.3030; 8215.99.3000

MR. SHACHAR GAT
SHONFELD'S USA
16871 Noyes Avenue
Irvine, CA. 92606

RE: The tariff classification of Product SA-204129 from China

DEAR MR. GAT:

In your letter dated July 15, 2003, you requested a tariff classification ruling.

You submitted descriptive literature, product photographs and specifications, and a sample with your request. The merchandise in question is Product SA-204129 marketed as "coffee toppings". As the package submitted appears to be a prototype, the weight, and even the actual contents, of the individual items when imported may not be exactly as shown in the sample.

Product SA-204129 consists of three "Acropolis" bottles. These are 9 1/2 inch tall, four sided bottles that taper from a width of 2 inches at the top to 1 inch at the bottom, and that stand on a 2 inch square flanged glass base. All have twine tied around the bottle neck. These are packaged together to make one retail item. One bottle is said to hold cocoa powder, and has a small metal whisk suspended from the twine. It is assumed for the purposes of this ruling that the cocoa powder is, as the name implies, 100 percent cocoa powder. The second bottle contains cinnamon sticks, and has a small metal grater dangling from its neck. The third bottle is described as vanilla sugar, and is said to consist of sugar with added vanilla bean extract and glucose. This bottle has a stainless steel measuring spoon (1 teaspoon) attached to the neck.

The combination of items in Product SA-204129 is not classifiable as a set and therefore each item is classified individually. The applicable subheading for the cinnamon sticks will be 0906.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for cinnamon and cinnamon-tree flowers: Neither crushed nor ground. The rate of duty will be Free.

It is assumed, for the purposes of this ruling, that the flavored sugar is derived from sugar cane or sugar beet. The applicable subheading for the vanilla sugar, if described in additional U.S. note 3 to chapter 17 and entered pursuant to its provisions, will be 1701.91.5400, Harmonized Tariff Schedule of the United States (HTS), which provides for Cane or beet sugar and chemically pure sucrose, in solid form: Other: Containing added flavoring or coloring matter: Containing added flavoring matter whether or not containing added coloring: Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17: Described in additional U.S. note 8 to this chapter and entered pursuant to its provisions. The

rate of duty will be 6 percent ad valorem. If not described in additional U.S. note 3 to chapter 17 and not entered pursuant to its provisions, the applicable subheading will be 1701.91.5800, HTS. The duty rate will be 33.9 cents per kilogram plus 5.1 percent ad valorem. In addition, products classified under subheading 1701.91.5800, HTS, will be subject to additional duties based on their value as described in subheadings 9904.17.49 to 9904.17.56, HTS.

The applicable subheading for the cocoa powder will be 1805.00.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for cocoa powder, not containing added sugar or other sweetening matter. The rate of duty will be 0.52 cents per kilogram.

The applicable subheading for the grater and the metal whisk, if of iron or steel, will be 8205.51.3030, Harmonized Tariff Schedule of the United States (HTS), which provides for Handtools (including glass cutters) not elsewhere specified or included . . . : Other handtools (including glass cutters) and parts thereof: Household tools, and parts thereof: Of iron or steel: Other (including parts) . . . Kitchen and table implements. The rate of duty will be 3.7 percent ad valorem.

The applicable subheading for the stainless steel measuring spoon will be 8215.99.3000, Harmonized Tariff Schedule of the United States (HTS), which provides for Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware and base metal parts thereof: Other: Other . . . Spoons and ladles: With stainless steel handles: Spoons valued under 25 cents each. The rate of duty will be 14 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist John Maria at (646) 733-3031.

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

[ATTACHMENT C]

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

NY E82964 June 11, 1999
CLA-2-73:RR:NC:N1:113 E82964
CATEGORY: Classification
TARIFF NO.: 7323.93.0060; 8215.99.3000

MR. EDWARD N. JORDAN
EXPEDITORS INTERNATIONAL
601 North Nash Street
El Segundo, CA 90245

RE: The tariff classification of a mix and measure set from India

DEAR MR. JORDAN:

In your letter dated June 2, 1999, on behalf of Metro Thebe, Inc., you requested a tariff classification ruling.

The merchandise is a 9-piece stainless steel mix and measure set (item number 0639). The set consists of a 2-quart mixing bowl, 4 measuring cups on a ring, and 4 measuring spoons on a ring. Your letter indicates that the total value of the four spoons is 50 cents. You asked for the classification of this merchandise when imported as a retail packaged set, and also when the individual components are imported separately. It has been determined that the essential character of the set is imparted by the mixing bowl.

The applicable subheading for the mix and measure set imported together, or the mixing bowl or measuring cups imported separately will be 7323.93.0060, Harmonized Tariff Schedule of the United States (HTS), which provides for table, kitchen or other household articles and parts thereof, of iron or steel, other, of stainless steel, cooking and kitchenware, other, kitchenware. The rate of duty will be 2 percent ad valorem. Articles which are classifiable under subheading 7323.93.0060, HTS, which are products of India are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

The applicable subheading for the measuring spoons imported separately will be 8215.99.3000, Harmonized Tariff Schedule of the United States (HTS), which provides for spoons and ladles, with stainless steel handles, spoons valued under 25 cents each. The rate of duty will be 14 percent ad valorem. This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist James Smyth at 212-637-7008.

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

[ATTACHMENT D]

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

NY B86306
June 18, 1997
CLA-2-82:RR:NC:1:119 B86306
CATEGORY: Classification
TARIFF NO.: 8215.99.3000

MS. KIM YOUNG
BDP INTERNATIONAL INC.
2721 Walker NW
Grand Rapids, MI 49504

RE: The tariff classification of a measuring spoon set from Taiwan

DEAR MS. YOUNG:

In your letter dated June 3, 1997 you requested a tariff classification ruling on behalf of Meijer Inc., 2929 Walker Road, Grand Rapids, MI 49504.

The merchandise to be imported is a set of four stainless steel measuring spoons graduated in size from 1/4 teaspoon to 1 tablespoon. Based on the breakdown you furnished, all four spoons are valued under 25 cents each.

The applicable subheading for the measuring spoon set will be 8215.99.3000, Harmonized Tariff Schedule of the United States (HTS), which provides for spoons and ladles: with stainless steel handles: spoons valued under 25 cents each. The rate of duty will be 15.2 percent.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Jacques Preston at 212-466-5488.

The sample is being returned to your office as requested.

ROBERT B. SWIERUPSKI,
Chief, Metals & Machinery Branch,
National Commodity Specialist Division.

[ATTACHMENT E]

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

HQ 968080

CLA-2 RR:CTF:TCM 968080 HkP**CATEGORY:** Classification**TARIFF NO.:** 7323.99.9030

MEIJER, INC.
c/o Ms. Kim Young
BDP INTERNATIONAL, INC.
2721 Walker NW
Grand Rapids, MI 49504

RE: Classification of stainless steel measuring spoon set; revocation of NY B86306

DEAR MS KIM:

This is in reference to New York Ruling Letter ("NY") B86306, dated June 18, 1997, in which the tariff classification of stainless steel measuring spoons was determined under the Harmonized Tariff Schedule of the United States ("HTSUS"). NY B86306 classified the spoons in heading 8215, HTSUS, which provides for: "Spoons, forks, ladles, skimmers, cake-servers, fish knives, butter-knives, sugar tongs and similar kitchen or tableware". We have reconsidered NY B86306 and have determined that the tariff classification of the measuring spoons is not correct.

FACTS:

In NY B86306, the measuring spoons were described as "a set of four stainless steel measuring spoons graduated in size from 1/4 teaspoon to 1 tablespoon. . . . all four spoons are valued under 25 cents each."

ISSUE:

Whether the stainless steel measuring spoons are classified in heading 7323, HTSUS, which provides for: "Table, kitchen or other household articles and parts thereof, of iron or steel", or heading 8215, HTSUS, which provides for: "Spoons, forks, ladles, skimmers, cake-servers, fish knives, butter-knives, sugar tongs and similar kitchen or tableware."

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

7323 Table, kitchen or other household articles and parts thereof,
of iron or steel; . . . :

Other:

7323.99	Other: Not coated with precious metal: Other:
7323.99.90	Other:
7323.99.9030	Kitchen or tableware suitable for food or drink contact
8215	Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware; and base metal parts thereof: Other:
8215.99	Other: Spoons and ladles: With stainless steel handles:
8215.99.3000	Spoons valued under 25¢ each

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs 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.

We first consider classification in heading 7323, HTSUS, which provides for: "Table, kitchen or other household articles and parts thereof, of iron or steel." Iron or steel measuring spoons are kitchen or household articles and are therefore *prima facie* classifiable in heading 7323, HTSUS. In addition, EN 73.23 provides in pertinent part, that:

This group comprises a wide range of iron or steel articles, **not more specifically covered** by other headings of the Nomenclature, used for table, kitchen or other household purposes; . . .

. . .
The group includes:

- (1) Articles for kitchen use such as saucepans, steamers, pressure cookers, preserving pans, stew pans, casseroles, fish kettles; . . . ; kitchen type capacity measures[.]
(Original emphasis.)

However, EN 73.23 indicates that this heading is a "basket" provision, in that, merchandise may only be classified in this heading if not more specifically covered by any other tariff heading.

Next, we consider classification in heading 8215, HTSUS, which provides for: "Spoons, forks, ladles, skimmers, cake-servers, fish knives, butter-knives, sugar tongs and similar kitchen or tableware." Explanatory Note 82.15 provides that:

- This heading includes:
- (1) Spoons of all kinds including salt or mustard spoons.

- (2) Table forks: carving forks, serving forks, cooks' forks; cake forks; oyster forks; snail forks; toasting forks.
- (3) Ladles and skimmers (for vegetables, frying, etc.)
- (4) Slices for serving fish, cake strawberries, asparagus.
- (5) Non-cutting fish knives and butter knives.
- (6) Sugar tongs of all kinds (cutting or not), cake tongs, hors-d'oeuvre tongs, asparagus tongs, small tongs, meat tongs and ice tongs.
- (7) Other tableware, such as poultry or meat grips, and lobster or unit grips.

The term "spoon" is not defined in the HTSUS or the ENs. A tariff term that is not defined in the HTSUS or in the ENs is construed in accordance with its common and commercial meaning. Nippon Kogaku (USA) Inc. v. United States, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. C.J. Tower & Sons v. United States, 69 CCPA 128, 673 F.2d 1268 (1982). The Oxford English dictionary (www.askoxford.com) defines a spoon as "an implement consisting of a small, shallow bowl on a long handle, used for eating, stirring, and serving."

"Spoons" is an *eo nomine* provision. An *eo nomine* provision is one that describes merchandise by a specific name that is well known in the trade, and includes all forms of the article as if each were provided for by name in the tariff provisions. Explanatory Note 82.15 states that heading 8215, HTSUS, covers "spoons of all kinds". The Court of International Trade has stated that "[b]readth undermines specificity. Where an *eo nomine* provision encompasses more and more disparate items, almost without limit, it necessarily begins to lose its specificity." Midwest of Canon Falls, Inc. v. United States, 20 C.I.T. 123, 130 (1996). In that case, the court was of the opinion that because the classification "dolls" covered many disparate items, the court could not "accept a blanket rule that every decorative article with some doll-like feature is simply a doll." (quoting Russ Berrie & Co. v. United States, 76 Cust. Ct. 218, at 224-5, 417 F. Supp. 1035 at 1039). Id. So too, in the instant case, we are of the opinion that "spoons" covers many disparate items and that not every article with spoon-like features can be simply classified as a spoon.

Conversely, "kitchen or other household articles" is best described as a use provision because the defining feature of such articles is implied by their use. Additional U.S. Rule of Interpretation (a) states that, in the absence of special language or context which otherwise requires, a tariff classification controlled by use (other than by actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use. Explanatory Note 73.23 explains that the articles of heading 7323, HTSUS, are used for kitchen, table and household purposes, and include "kitchen type capacity measures". Based on the exemplars of EN 73.23, we are of the opinion that the principal use of the class of goods to which the measuring spoons belong (kitchen articles) is kitchen use, and in particular, capacity measurement. In addition, we note that this approach is consistent with CPB's classification of measuring spoons of plastic. See **NY L85919**, dated August 3, 2005; **NY D87578**, dated March 2, 1999; **NY 808944**, dated May 4, 1995; and, **NY 888561**, dated August 17, 1993.

HOLDING:

By application of GRI 1 and Additional U.S. Rule of Interpretation (a), HTSUS, we find that measuring spoons are classified in heading 7323, HTSUS, as “Table, kitchen or other household articles and parts thereof, of iron or steel”, and are specifically provided for in subheading 7323.99.9030, HTSUS, which provides for: “Table, kitchen or other household articles and parts thereof, of iron or steel; . . . ; . . . : Other: Other: Not coated with precious metal: Other: Other: Kitchen or tableware suitable for food or drink contact.”

The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY B86306, dated June 18, 1997, is hereby revoked.

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

[ATTACHMENT F]

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

HQ 968081
CLA-2 RR:CTF:TCM 968081 HkP
CATEGORY: Classification
TARIFF NO.: 7323.99.9030

MR. SHACHAR GAT
SHONFELD'S USA
3100 South Susan Street
Santa Ana, CA 92704

RE: Classification of stainless steel measuring spoons; modification of NY J87441 and NY J87521

DEAR MR. GAT:

This is in reference to New York Ruling Letters (“NY”) J87441 and NY J87521, both dated August 6, 2003, in which the tariff classification of stainless steel measuring spoons was determined under the Harmonized Tariff Schedule of the United States (“HTSUS”). NY J87441 and NY J87521 classified the spoons in heading 8215, HTSUS, which provides for: “Spoons, forks, ladles, skimmers, cake-servers, fish knives, butter-knives, sugar tongs and similar kitchen or tableware.” We have reconsidered NY J87441 and NY J87521 and have determined that the tariff classification of the measuring spoons is not correct.

FACTS:

In both NY J87441 and NY J87521, the measuring spoons were part of products packaged together to make one retail item, but not classifiable as a set, and marketed as “coffee flavoring” and “coffee toppings”, respectively.

The measuring spoons, made of stainless steel and measuring in one-teaspoon increments, were attached to bottles of vanilla sugar.

ISSUE:

Whether the stainless steel measuring spoons are classified in heading 7323, HTSUS, which provides for: “Table, kitchen or other household articles and parts thereof, of iron or steel”, or in heading 8215, HTSUS, which provides for: “Spoons, forks, ladles, skimmers, cake-servers, fish knives, butter-knives, sugar tongs and similar kitchen or tableware.”

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

7323	Table, kitchen or other household articles and parts thereof, of iron or steel; . . . :
	Other:
7323.99	Other:
	Not coated with precious metal:
	Other:
7323.99.90	Other:
7323.99.9030	Kitchen or tableware suitable for food or drink contact
8215	Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware; and base metal parts thereof:
	Other:
8215.99	Other:
	Spoons and ladles:
	With stainless steel handles:
8215.99.3000	Spoons valued under 25¢ each

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs 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.

We first consider classification in heading 7323, HTSUS, which provides for: “Table, kitchen or other household articles and parts thereof, of iron or steel.” Iron or steel measuring spoons are kitchen or household articles and

are therefore *prima facie* classifiable in heading 7323, HTSUS. Explanatory Note 73.23 provides in pertinent part, that:

This group comprises a wide range of iron or steel articles, **not more specifically covered** by other headings of the Nomenclature, used for table, kitchen or other household purposes; . . .

. . .

The group includes:

- (1) Articles for kitchen use such as saucepans, steamers, pressure cookers, preserving pans, stew pans, casseroles, fish kettles; . . . ; kitchen type capacity measures[.]
(Original emphasis.)

However, EN 73.23 indicates that this heading is a “basket” provision, in that, merchandise may only be classified in this heading if not more specifically covered by any other tariff heading.

Next, we consider classification in heading 8215, HTSUS, which provides for: “Spoons, forks, ladles, skimmers, cake-servers, fish knives, butterknives, sugar tongs and similar kitchen or tableware.” Explanatory Note 82.15 provides that:

This heading includes:

- (1) Spoons of all kinds including salt or mustard spoons.
- (2) Table forks: carving forks, serving forks, cooks’ forks; cake forks; oyster forks; snail forks; toasting forks.
- (3) Ladles and skimmers (for vegetables, frying, etc.)
- (4) Slices for serving fish, cake strawberries, asparagus.
- (5) Non-cutting fish knives and butter knives.
- (6) Sugar tongs of all kinds (cutting or not), cake tongs, hors-d’oeuvre tongs, asparagus tongs, small tongs, meat tongs and ice tongs.
- (7) Other tableware, such as poultry or meat grips, and lobster or unit grips.

The term “spoon” is not defined in the HTSUS or the ENs. A tariff term that is not defined in the HTSUS or in the ENs is construed in accordance with its common and commercial meaning. *Nippon Kogaku (USA) Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982). The Oxford English dictionary (www.askoxford.com) defines a spoon as “an implement consisting of a small, shallow bowl on a long handle, used for eating, stirring, and serving.”

“Spoons” is an *eo nomine* provision. An *eo nomine* provision is one that describes merchandise by a specific name that is well known in the trade, and includes all forms of the article as if each were provided for by name in the tariff provisions. Explanatory Note 82.15 states that heading 8215, HTSUS, covers “spoons of all kinds.” The Court of International Trade has stated that “[b]readth undermines specificity. Where an *eo nomine* provision encompasses more and more disparate items, almost without limit, it necessarily begins to lose its specificity.” *Midwest of Canon Falls, Inc. v. United States*, 20 C.I.T. 123, 130 (1996). In that case, the court was of the opinion that because the classification “dolls” covered many disparate items, the court could not “accept a blanket rule that every decorative article with

some doll-like feature is simply a doll.” (quoting *Russ Berrie & Co. v. United States*, 76 Cust. Ct. 218, at 224–5, 417 F. Supp. 1035 at 1039). *Id.* So too, in the instant case, we are of the opinion that “spoons” covers many disparate items and that not every article with spoon-like features can be simply classified as a spoon.

Conversely, “kitchen or other household articles” is best described as a use provision because the defining feature of such articles is implied by their use. Additional U.S. Rule of Interpretation (a) states that, in the absence of special language or context which otherwise requires, a tariff classification controlled by use (other than by actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use. Explanatory Note 73.23 explains that the articles of heading 7323, HTSUS, are used for kitchen, table and household purposes, and include “kitchen type capacity measures”. Based on the exemplars of EN 73.23, we are of the opinion that the principal use of the class of goods to which the measuring spoons belong (kitchen articles) is kitchen use, and in particular, capacity measurement. In addition, we note that this approach is consistent with CPB’s classification of measuring spoons of plastic. See **NY L85919**, dated August 3, 2005; **NY D87578**, dated March 2, 1999; **NY 808944**, dated May 4, 1995; and, **NY 888561**, dated August 17, 1993.

HOLDING:

By application of GRI 1 and Additional U.S. Rule of Interpretation (a), HTSUS, we find that measuring spoons are classified in heading 7323, HTSUS, as “Table, kitchen or other household articles and parts thereof, of iron or steel”, and are specifically provided for in subheading 7323.99.9030, HTSUS, which provides for: “Table, kitchen or other household articles and parts thereof, of iron or steel; . . . ; . . . : Other: Other: Not coated with precious metal: Other: Other: Kitchen or tableware suitable for food or drink contact.”

The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY J87521 and NY J87441, dated August 6, 2003, are hereby modified with respect to the classification of stainless steel measuring spoons. The classification of the remaining items described in NY J87521 and NY J87441, is unchanged.

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division.

[ATTACHMENT G]

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

HQ 968163
CLA-2 RR:CTF:TCM 968163 HkP
CATEGORY: Classification
TARIFF NO.: 7323.99.9030

MR. EDWARD N. JORDAN
EXPEDITORS INTERNATIONAL
601 North Nash Street
El Segundo, CA 90245

RE: Classification of stainless steel measuring spoons; modification of NY E82964

DEAR MR. JORDAN:

This is in reference to New York Ruling Letter (“NY”) E82964, dated June 11, 1999, in which the tariff classification of stainless steel measuring spoons was determined under the Harmonized Tariff Schedule of the United States (“HTSUS”). NY E82964 classified the spoons in heading 8215, HTSUS, which provides for: “Spoons, forks, ladles, skimmers, cake-servers, fish knives, butter-knives, sugar tongs and similar kitchen or tableware.” We have reconsidered NY E82964 and have determined that the tariff classification of the measuring spoons, imported separately, is not correct.

FACTS:

NY E82964 stated:

The merchandise is a 9-piece stainless steel mix and measure set (item number 0639). The set consists of a 2-quart mixing bowl, 4 measuring cups on a ring, and 4 measuring spoons on a ring. Your letter indicates that the total value of the four spoons is 50 cents. You asked for the classification of this merchandise when imported as a retail packaged set, and also when the individual components are imported separately.

ISSUE:

Whether the stainless steel measuring spoons, when imported separately, are classified in heading 7323, HTSUS, which provides for: “Table, kitchen or other household articles and parts thereof, of iron or steel”, or in heading 8215, HTSUS, which provides for: “Spoons, forks, ladles, skimmers, cake-servers, fish knives, butter-knives, sugar tongs and similar kitchen or tableware.”

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

7323	Table, kitchen or other household articles and parts thereof, of iron or steel; . . . :
	Other:
7323.99	Other:
	Not coated with precious metal:
	Other:
7323.99.90	Other:
7323.99.9030	Kitchen or tableware suitable for food or drink contact
8215	Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware; and base metal parts thereof:
	Other:
8215.99	Other:
	Spoons and ladles:
	With stainless steel handles:
8215.99.3000	Spoons valued under 25¢ each

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs 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.

We first consider classification in heading 7323, HTSUS, which provides for: “Table, kitchen or other household articles and parts thereof, of iron or steel.” Iron or steel measuring spoons are kitchen or household articles and are therefore *prima facie* classifiable in heading 7323, HTSUS. Explanatory Note 73.23 provides, in pertinent part, that:

This group comprises a wide range of iron or steel articles, **not more specifically covered** by other headings of the Nomenclature, used for table, kitchen or other household purposes; . . .

. . .

The group includes:

- (1) Articles for kitchen use such as saucepans, steamers, pressure cookers, preserving pans, stew pans, casseroles, fish kettles; . . . ; kitchen type capacity measures[.]
(Original emphasis.)

However, EN 73.23 indicates that this heading is a “basket” provision, in that, merchandise may only be classified in this heading if not more specifically covered by any other tariff heading.

Next, we consider classification in heading 8215, HTSUS, which provides for: “Spoons, forks, ladles, skimmers, cake-servers, fish knives, butter-

knives, sugar tongs and similar kitchen or tableware.” Explanatory Note 82.15 provides that:

This heading includes:

- (1) Spoons of all kinds including salt or mustard spoons.
- (2) Table forks: carving forks, serving forks, cooks’ forks; cake forks; oyster forks; snail forks; toasting forks.
- (3) Ladles and skimmers (for vegetables, frying, etc.)
- (4) Slices for serving fish, cake strawberries, asparagus.
- (5) Non-cutting fish knives and butter knives.
- (6) Sugar tongs of all kinds (cutting or not), cake tongs, hors-d’oeuvre tongs, asparagus tongs, small tongs, meat tongs and ice tongs.
- (7) Other tableware, such as poultry or meat grips, and lobster or unit grips.

The term “spoon” is not defined in the HTSUS or the ENs. A tariff term that is not defined in the HTSUS or in the ENs is construed in accordance with its common and commercial meaning. Nippon Kogaku (USA) Inc. v. United States, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. C.J. Tower & Sons v. United States, 69 CCPA 128, 673 F.2d 1268 (1982). The Oxford English Dictionary (www.askoxford.com) defines a spoon as “an implement consisting of a small, shallow bowl on a long handle, used for eating, stirring, and serving.”

“Spoons” is an *eo nomine* provision. An *eo nomine* provision is one that describes merchandise by a specific name that is well known in the trade, and includes all forms of the article as if each were provided for by name in the tariff provisions. Explanatory Note 82.15 states that heading 8215, HTSUS, covers “spoons of all kinds.” The Court of International Trade has stated that “[b]readth undermines specificity. Where an *eo nomine* provision encompasses more and more disparate items, almost without limit, it necessarily begins to lose its specificity.” Midwest of Canon Falls, Inc. v. United States, 20 C.I.T. 123, 130 (1996). In that case, the court was of the opinion that because the classification “dolls” covered many disparate items, the court could not “accept a blanket rule that every decorative article with some doll-like feature is simply a doll.” (quoting Russ Berrie & Co. v. United States, 76 Cust. Ct. 218, at 224–5, 417 F. Supp. 1035 at 1039). *Id.* So too, in the instant case, we are of the opinion that “spoons” covers many disparate items and that not every article with spoon-like features can be simply classified as a spoon.

Conversely, “kitchen or other household articles” is best described as a use provision because the defining feature of such articles is implied by their use. Additional U.S. Rule of Interpretation (a) states that, in the absence of special language or context which otherwise requires, a tariff classification controlled by use (other than by actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use. Explanatory Note 73.23 explains that the articles of heading 7323, HTSUS, are used for kitchen, table and household purposes, and include “kitchen type capacity measures”. Based on the exemplars of EN 73.23, we are of the opinion that the principal use of the class of goods to which the measuring spoons belong (kitchen articles) is kitchen use, and in particular, capacity measurement. In addition,

we note that this approach is consistent with CPB's classification of measuring spoons of plastic. See **NY L85919**, dated August 3, 2005; **NY D87578**, dated March 2, 1999; **NY 808944**, dated May 4, 1995; and, **NY 888561**, dated August 17, 1993.

HOLDING:

By application of GRI 1 and Additional U.S. Rule of Interpretation (a), HTSUS, we find that measuring spoons are classified in heading 7323, HTSUS, as "Table, kitchen or other household articles and parts thereof, of iron or steel", and are specifically provided for in subheading 7323.99.9030, HTSUS, which provides for: "Table, kitchen or other household articles and parts thereof, of iron or steel; . . . ; . . . : Other: Other: Not coated with precious metal: Other: Other: Kitchen or tableware suitable for food or drink contact."

The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY E82964 is hereby modified with respect to the classification of stainless steel measuring spoons, imported separately. The classification of the remaining items described in NY E82964 is unchanged.

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

