

# Bureau of Customs and Border Protection

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

*Washington, DC, May 10, 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.*

## *General Notices*

### **19 CFR PART 177**

#### **MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF STEEL TUBES PREPARED FOR USE IN STRUCTURES**

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

**ACTION:** Modification of ruling letter and revocation of treatment relating to tariff classification of steel tubes prepared for use in structures.

**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 modifying a ruling relating to the tariff classification of steel tubes prepared for use as fence posts under the Harmonized Tariff Schedule of the United States (HTSUS), and revoking any treatment CBP has previously accorded to substan-

tially identical transactions. Notice of the proposed modification was published on March 29, 2006, in the *Customs Bulletin*. No comments were received in response to this notice.

**EFFECTIVE DATE:** This modification is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 23, 2006.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 March 29, 2006, in the *Customs Bulletin*, Volume 40, Number 14, proposing to modify NY J81431, dated March 20, 2003, which classified galvanized steel tubes with swaged ends, among other goods, as other articles of iron or steel, in subheading 7326.90.8587, 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 modification 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 modifying NY J81431 to reflect the proper classification of the galvanized steel tubes with swaged ends as plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, in subheading 7308.90.9590, HTSUSA, in accordance with the analysis in HQ 968133, which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment it previously accorded to substantially identical transactions.

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

**DATED:** May 4, 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 968133  
May 4, 2006  
CLA-2 RR:CTF:TCM 968133 JAS  
CATEGORY: Classification  
TARIFF NO.: 7308.90.9590

MR. ANDREW VIEIRA  
A.N.K. ENTERPRISES, INC.  
13370 S.W. 131 Street, Unit 112  
Miami, Florida 33186

RE: Steel Tubes for Fence Posts; NY J81431 Modified

DEAR MR. VIEIRA:

In NY J81431, which the Director, National Commodity Specialist Division, U.S. Customs and Border Protection (CBP), New York, issued to you on March 20, 2003, certain welded galvanized steel tubes with swaged ends, for use as fence posts, were found to be classifiable as other articles of iron or steel, in subheading 7326.90.8587, 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



mentary on the scope of each heading of the HTSUS. Customs and Border Protection (or CBP, as appropriate) believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Initially, NY J81431 provided no explanation for the subheading 7326.90.8587, HTSUSA, classification it expressed for the galvanized steel tubes with swaged ends. However, we note that fence posts are among the exemplars listed in the 7326 EN. Nevertheless, heading 7326 covers all articles of iron or steel that are not covered more specifically in the preceding headings of Chapter 73 or elsewhere in the HTSUS. It is appropriate, therefore, to examine the issue of whether steel tubes with one or both ends swaged are tubes and the like prepared for use in structures, provided for in heading 7308.

The 73.08 EN includes within the heading as structures and parts of structures "assembled railings and fencing." In fact, CBP has classified steel fencing consisting of various sized steel mesh panels and posts in subheading 7308.90.9590, HTSUSA, as structures of iron or steel. *See* NY I87193, dated November 6, 2002. The heading 7308 ENs state "[t]he heading also covers parts such as flat-rolled products, 'wide flats' including so-called universal plates, strip, rods, angles, shapes, sections and tubes, which have been prepared (e.g., drilled, bent or notched) for use in structures." (Under-scoring added). In this context, the term *swage* connotes a "n. 1. A tool for bending or shaping cold metal." Webster's II New Riverside University Dictionary (1984), and *swaging* is "forming a taper or a reduction on metal products such as rod and tubing by forging, squeezing or hammering." Metals Handbook, (8th. ed., Vol. 1). Swaging one or both ends of galvanized steel tubes creates a taper which permits one tube to slide inside and connect to another tube. In our opinion, this "prepares" the tubes for use as fence posts and top rails to support steel fencing. Such tubes are provided for as parts in heading 7308.

This merchandise is to be distinguished from the steel posts used as fence posts which HQ 084528, dated November 8, 1989, and HQ 085908, dated November 9, 1989, found to be classifiable in subheading 7326.90.90, HTSUS. These posts were roll formed from galvanized steel sheet into a triangular configuration. There is no indication that these articles were prepared in any way subsequent to their formation.

**HOLDING:**

Under the authority of GRI 1, the galvanized steel tubes, swaged on one or both ends, as indicated, are provided for in heading 7308. They are classifiable in subheading 7308.90.95.90, HTSUSA.

**EFFECT ON OTHER RULINGS:**

NY J81431, dated, March 20, 2003, is modified as to this merchandise. 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 AND MODIFICATION OF  
RULING LETTERS AND REVOCATION OF TREATMENT  
RELATING TO TARIFF CLASSIFICATION OF SNACK  
MIXES**

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

**ACTION:** Notice of revocation and modification of tariff classification ruling letters and revocation of treatment relating to the classification of snack mixes.

**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 proposing to modify two ruling letters and revoke one ruling letter relating to the tariff classification of snack mixes under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also proposing to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

**DATE:** Comments must be received on or before June 23, 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, this notice advises interested parties that CBP intends to modify two ruling letters and revoke one ruling letter pertaining to the tariff classification of snack mixes. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letters (NY) I82449, dated June 12, 2002, NY F82910, dated February 11, 2000 and the revocation of NY 869842, dated January 8, 1992 (Attachments A through C, respectively), 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., a 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 in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY I82449, CBP ruled, in part, that "Oriental Garden 2 Mix" was classified in heading 2106, HTSUS, which provides for "Food preparations not elsewhere specified or included." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error as it pertains to the classification of the "Oriental Garden 2 Mix", and that the "Oriental Garden 2 Mix" should be classified in heading 2008, HTSUS, which provides for "Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included."

In NY F82910, CBP ruled, in part, that "Mediterranean Mix" was classified in heading 2008, HTSUS, which provides for "Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error as it pertains to the classification of the "Mediterranean Mix."

In NY 869842, CBP ruled, that "Vindaloo Mix" and "Bombay Mix" were classified in heading 2106, HTSUS, which provides for "Food preparations not elsewhere specified or included." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY I82449, NY F82910, revoke NY 869842 and to revoke or modify any other ruling not specifically identified, to reflect the proper classification of the snack mixes according to the analysis contained in proposed Headquarters Ruling Letters (HQ) 966111, HQ 967691 and HQ 967692, set forth as Attachments D through F, respectively, to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

**DATED:** May 5, 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,  
NY I82449  
June 12, 2002  
CLA-2-21:RR:NC:2:228 I82449  
CATEGORY: Classification  
TARIFF NO.: 2106.90.9997, 2106.90.9998

MR. RODNEY RALSTON  
TRANS-BORDER CUSTOMS SERVICES, INC.  
P.O. Box 800  
Champlain, NY 12919

RE: The tariff classification, status under the North American Free Trade Agreement (NAFTA), and country of origin marking of snack mixes from Canada; Article 509

DEAR MR. RALSTON:

In your letter dated May 15, 2002, on behalf of Natursource Inc., you requested a ruling on the status of snack mixes from Canada under the NAFTA. Article 509

Ingredients breakdowns and samples of two snack mixes were submitted with your letter. The samples were examined and disposed of. Oriental Garden 2 is a mixture of flavored pretzels, flavored peanuts, green peas, salted blanched peanuts, fried noodles, pretzels, sesame sticks, and Cajun corn.

Sweet and Salt Mix is a mixture of clusters (almonds, pretzels, and sunflower seeds), flavored pretzels, salted peanuts, and flavored peanuts. The snack foods will be sold in various weight packages through retail stores, cruise lines, airlines, etc.

The almonds, pretzels, sunflower seeds, sesame sticks, and Cajun corn are products of the United States. The salt is from Israel, the Tamari sauce is from the United States or Japan, and the peanuts are from China. The other ingredients are products of Canada. All of the ingredients are processed and packaged in Canada.

The applicable subheading for the Sweet and Salt mix will be 2106.90.9997, Harmonized Tariff Schedule of the United States (HTS), which provides for food preparations not elsewhere specified or included . . . other . . . other . . . other . . . containing sugar derived from sugar cane and/or sugar beets. The rate of duty will be 6.4 percent ad valorem.

The applicable subheading for the Mix Oriental Garden 2 will be 2106.90.9998, HTS, which provides for food preparations not elsewhere specified or included . . . other . . . other. The rate of duty will be 6.4 percent ad valorem.

Each of the non-originating materials used to make the snack mixes have satisfied the changes in tariff classification required under HTSUSA General Note 12(t)/21.14. The articles will be entitled to a free rate of duty under the NAFTA upon compliance with all applicable laws, regulations, and agreements.

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

The country of origin marking requirements for a "good of a NAFTA country" are also determined in accordance with Annex 311 of the North American Free Trade Agreement ("NAFTA"), as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat 2057) (December 8, 1993) and the appropriate Customs Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, Customs Regulations. The marking requirements of these goods are set forth in Part 134, Customs Regulations.

Section 134.1(b) of the regulations, defines "country of origin" as the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin. (Emphasis added).

Section 134.1(j) of the regulations, provides that the "NAFTA Marking Rules" are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) of the regulations, defines a "good of a NAFTA country" as an article for which the country of ori-

gin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules. Section 134.45(a)(2) of the regulations, provides that a "good of a NAFTA country" may be marked with the name of the country of origin in English, French or Spanish.

Part 102 of the regulations, sets forth the "NAFTA Marking Rules" for purposes of determining whether a good is a good of a NAFTA country for marking purposes. Section 102.11 of the regulations, sets forth the required hierarchy for determining country of origin for marking purposes.

Applying the NAFTA Marking Rules set forth in Part 102 of the regulations to the facts of this case, we find that the imported snack mixes are goods of Canada for marking purposes.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 CFR Part 181).

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 Stanley Hopard at 646-733-3029.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
NY F82910  
February 11, 2000  
CLA-2-19:RR:NC:2:231 F82910  
CATEGORY: Classification  
TARIFF NO.: 1905.90.1090; 2008.11.4500; 2008.11.6000;  
2008.19.2500; 2008.19.4000; 2008.92.1040; 2008.92.9094

MR. RONEN MALKEN  
*13757 Carmody Drive*  
*Eden Prairie, MN 55347*

RE: The tariff classification of honey baked pecans, sugared almonds, flavored and thinly coated peanuts, sesame coated peanuts, and a mixture of peanuts, sunflower seeds and raisins, from Israel.

DEAR MR. MALKEN:

In your letter, dated January 26, 2000, you requested a classification ruling.

The submitted samples are described thus:

Item 1 – "Honey Baked Pecans." The ingredients are 73.5 percent pecans, 23 percent sugar, 2 percent honey, and 1.5 percent vegetable oil.

Item 2 – "Sugared Almonds." The ingredients are 76 percent almonds, 23 percent sugar, and 1 percent essences.

Item 3 – "Coated Peanuts." This product, said to contain 35 percent by weight of peanuts, consists of peanuts that are coated with a thin, hard

shell made from flour (35 percent), sugar (18 percent), starch (9 percent), salt (1 percent), flavoring (1 percent), and glucose (1 percent).

Item 4 – “Sesame Coated Peanuts.” The ingredients are 35 percent peanuts and 8 percent sesame seeds. The product consists of peanuts that have been first coated with a starchy, inner coating and then coated again with a hard, outer coating (sesame seeds are embedded in the outer coating). A typical piece has a spheroid shape with a diameter of about 1.5 cm and a longitudinal axis of about 2 cm.

Item 5 – “Mediterranean Mix.” The ingredients are 25 percent peanuts, 16.5 percent sunflower seeds, and 7 percent raisins. The product is a snack mixture containing peanuts, peanuts coated with a hard, thin shell, and sunflower seeds that are coated with a hard, cracker-like shell. The product is also said to contain raisins, although there were none in the sample.

The applicable subheading for “Honey Baked Pecans” (item 1) will be 2008.19.2500, Harmonized Tariff Schedule of the United States (HTS), which provides for fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included, nuts, peanuts (ground-nuts) and other seeds, whether or not mixed together, other, including mixtures, pecans. The general rate of duty will be 9.9 cents per kilogram.

The applicable subheading for “Sugared Almonds” (item 2) will be 2008.19.4000, HTS, which provides for fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included, nuts, peanuts (ground-nuts) and other seeds, whether or not mixed together, other, including mixtures, almonds. The general rate of duty will be 32.6 cents per kilogram.

The applicable subheading for flavored and thinly coated peanuts (item 3), if entered under quota, will be 2008.11.4500, HTS, which provides for fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included, nuts, peanuts (ground-nuts) and other seeds, whether or not mixed together, peanuts (ground-nuts), other, described in additional U.S. note 2 to chapter 12 and entered pursuant to its provisions. The general rate of duty will be 6.6 cents per kilogram.

The applicable subheading for flavored and thinly coated peanuts (item 3), if entered outside the quota, will be 2008.11.6000, HTS, which provides for fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included, nuts, peanuts (ground-nuts) and other seeds, whether or not mixed together, peanuts (ground-nuts), other, other. The general rate of duty will be 131.8 percent ad valorem. In addition, products classified in subheading 2008.11.6000, HTS, that are not products of Israel, will be subject to safeguard duties based on their value, as described in subheadings 9904.12.01 – 9904.12.19, HTS.

The flavored and thinly coated peanuts, being wholly obtained or produced entirely in the territory of Israel, will meet the requirements of HTSUSA General Notes 8(a) and (b), and will therefore be entitled to a free rate of duty under the United States-Israel Free Trade Area Implementation

Act of 1985 upon compliance with all applicable laws, regulations, and agreements. Upon compliance with all applicable laws, regulations, and agreements under the United States-Israel Free Trade Area, articles from Israel classifiable in subheading 2008.11.6000, HTS, are subject to the quota quantity restrictions listed in 9908.12.01, HTS, which limit the amount of peanuts to the quantitative limits specified in U.S. Note 6 to Subchapter VIII of Chapter 99. U.S. Note 6 to Subchapter VIII of Chapter 99 states that the aggregate quantity of peanuts that are eligible products of Israel entered under subheading 9908.12.01 during calendar year 2000 shall not exceed 113,000 kilograms.

The applicable subheading for "Sesame Coated Peanuts" (item 4) will be 1905.90.1090, HTS, which provides for bread, pastry, cakes, biscuits and other bakers' wares . . . other . . . bread, pastry, cakes, biscuits and similar baked products . . . other . . . other. The rate of duty will be free.

The applicable subheading for "Mediterranean Mix" (item 5), if in airtight containers, will be 2008.92.1040, HTS, which provides for fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included, other, including mixtures other than those of subheading 2008.19, mixtures, in airtight containers and not containing apricots, citrus fruits, peaches or pears, other. The general rate of duty will be 5.6 percent ad valorem.

The applicable subheading for "Mediterranean Mix" (item 5), if not in airtight containers, will be 2008.92.9094, HTS, which provides for fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included, other, including mixtures other than those of subheading 2008.19, mixtures, other, other, other. The general rate of duty will be 14.9 percent ad valorem.

Articles classifiable under subheadings 2008.11.4500, HTS, 2008.19.2500, HTS, 2008.19.4000, HTS, 2008.92.1040, HTS, or 2008.92.9094, HTS, which are products of Israel, are entitled to duty free treatment under the United States - Israel Free Trade Area upon compliance with all applicable regulations.

Additional requirements may be imposed on these products by the Food and Drug Administration. You may contact the FDA at:

Food and Drug Administration  
Division of Regulatory Guidance  
200 C Street, S.W.  
Washington, DC 20204

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 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 Thomas Brady at 212-637-7064.

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

## [ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
NY 869842  
January 8, 1992  
CLA-2-21:S:N:N1:228  
CATEGORY: Classification  
TARIFF NO.: 2106.90.6099

MR. ARTHUR CHERRY  
ARTHUR CHERRY ASSOCIATES  
1315 Walnut Street Suite 807  
Philadelphia, PA 19107

RE: The tariff classification of snack mixes from The United Kingdom

DEAR MR. CHERRY:

In your letter dated December 11, 1991, on behalf of Bonanza International, Inc., you requested a tariff classification ruling.

Ingredients breakdowns and samples of two products accompanied your letter. The samples were examined and disposed of. Vindaloo Mix and Bombay Mix are described as snack foods consisting of a variety of ingredients that have been fried separately in vegetable oil, mixed together, and seasoned. Vindaloo Mix contains gram flour noodles, yellow split peas, peanuts, lentils, raisins, sunflower seeds, flavoring, and salt. Bombay Mix is a mixture of gram flour noodles, yellow split peas, sunflower seeds, flavoring, puffed rice, and salt. Both mixes will be imported in bulk containers, and will be sold in the bulk form or repackaged.

The applicable subheading for the Vindaloo Mix and Bombay Mix will be 2106.90.6099, Harmonized Tariff Schedule of the United States (HTS), which provides for food preparations not elsewhere specified or included . . . other . . . other . . . other. The rate of duty will be 10 percent ad valorem.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have 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 D]

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 966111  
CLA-2 RR:CTF:TCM 966111 KSH  
TARIFF NO.: 2008.11.4500 or 2008.11.6000

MR. RODNEY RALSTON  
UPS SUPPLY CHAIN SOLUTIONS  
*One UPS Way*  
*Champlain, NY 12919*

RE: Modification of New York Ruling Letter (NY) I82449, dated June 12, 2002; Classification of Oriental Garden 2 Mix.

DEAR MR. RALSTON:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) I82449, issued to you on June 12, 2002, on behalf of your client, Natursource, Inc., concerning the classification, in part, under the Harmonized Tariff Schedule of the United States (HTSUS) of "Oriental Garden 2 Mix." The snack mix was classified in heading 2106, HTSUS, which provides for "Food preparations not elsewhere specified or included." We have reviewed that ruling and found it to be in error as it pertains to the classification of the Oriental Garden 2 Mix. Therefore, this ruling modifies NY I82449.

## FACTS:

Oriental Garden 2 is a mixture of 16% flavored pretzels, 15% flavored peanuts, 15% prepared green peas, 14% salted blanched peanuts, 15% flavored peanuts, 12% fried noodles, 10% pretzels, 9% sesame sticks, and 9% Cajun corn. The snack food will be sold in various weight packages through retail stores, cruise lines, airlines, etc.

## ISSUE:

Whether the Oriental Garden 2 Mix is classified in heading 2106, HTSUS, as "Food preparations not elsewhere specified or included" or as a mixture in accordance with GRI 3(c) in heading 2008, HTSUS, which provides for "Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included."

## 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 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 HTSUSA and are generally indicative of the proper interpretation of the headings. It is Customs and Border Protection's (CBP) practice to follow, whenever possible, the terms of the ENs when interpret-

ing the HTSUSA. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 2106, HTSUS, provides for "Food preparations not elsewhere specified or included." Heading 2106, HTSUS, is to be considered if the product is not more specifically described in another provision of the HTSUS.

The food preparations of heading 2106, HTSUS, are generally considered to be mixtures of food ingredients to be used in or with other foods. This is illustrated by the EN's to heading 2106, HTSUS. The EN's to heading 2106, HTSUS, lists several examples of goods composed of a mixture of ingredients. Some of the mixtures are listed as follows:

(A) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.) for human consumption.

(B) Preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organic acids, calcium salts, lecithin, etc.) with foodstuffs (flour, sugar, milk powder, etc.), for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.). . . .

While some mixtures have been classified in heading 2106, HTSUS, absent a more specific heading in the HTSUS, not all such mixtures have been classified therein. In HQ 089051, dated July 11, 1991, a mixture of wheat, oats, sunflower kernels, green peas and yellow peas to be used as salad topping was classified in heading 2106, HTSUS. In classifying the salad topping, we noted:

While the EN does not specifically cover mixtures of the type under consideration and some of the mixtures it covers are, what might be termed, intermediate products, products which will be used as an ingredient in making something else, we believe it shows that this heading is meant to cover the subject article. In this regard, we noted that Heading [2106] covers preparations for use for human consumption. We believe that this confirms the intent to include human food preparation composed of several disparate ingredients in Chapter 21, HTSUSA. See also HQ 953651, dated June 16, 1993.

In contrast, in HQ 082230, dated January 12, 1989, a blend of sucrose and dextrose was classified in heading 1701, HTSUS, rather than heading 2106, HTSUS, because, "such a mixture does not ipso facto render the blend a food preparation; the act of mixing does not alter the nature or use of the product such that it would no longer be classifiable in Chapter 17." See also HQ 085105, dated July 31, 1989, NY L83687, dated April 14, 2005, NY F82479 dated February 10, 2000, NY C82718 dated March 6, 1998 and NY 889918 dated October 6, 1993.

The pretzels, peanuts, green peas, fried noodles, sesame sticks and Cajun corn although mixed together in the Oriental Garden 2 Mix, maintain their original identity. Each commodity remains complete and recognizable and is not subordinated into a new product merely by the act of mixing with the other. The final product remains a mixture of pretzels, peanuts, green peas, fried noodles, sesame sticks and Cajun corn and will be marketed as such. As such it cannot be classified in heading 2106, HTSUS.

Because classification in a single heading cannot be determined by applying GRI 1, we must apply the other GRI's. GRI 2(b) states that if a product is a mixture or combination of materials or substances that are, *prima facie*, classifiable in two or more headings, then GRI 3 applies. GRI 3(b) provides that composite goods consisting of different materials or made up of different components, shall be classified as if they consisted of the material or component which gives them their essential character.

The article is a mixture made up of 16% flavored pretzels (1905), 15% flavored peanuts (2008), 15% prepared green peas (2005), 14% salted blanched peanuts (2008), 15% flavored peanuts (2008), 12% fried noodles (1902), 10% pretzels (1905), 9% sesame sticks (1905), and 9% Cajun corn (1904). Therefore, the component that imparts the essential character to this article determines its classification.

EN VIII to GRI 3(b), page 4, states that the factors will vary as between different kinds of goods to determine the essential character of an article. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

It is our determination that none of the articles in the commodity gives the mixture its essential character. We, therefore, turned to GRI 3(c) which provides:

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

The heading that occurs last in numerical order is Heading 2008, HTSUS. Therefore, the submitted merchandise is classified in this heading.

**HOLDING:**

By application of GRI 3(c), the Oriental Garden 2 Mix is classified in heading 2008, HTSUS, as "Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included." The applicable subheading for the "Oriental Garden 2 Mix," if imported in quantities that fall within the limits described in additional U.S. note 2 to chapter 12, will be 2008.11.4500, HTSUS, which provides for "Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Nuts, peanuts (ground-nuts) and other seeds, whether or not mixed together: Peanuts (ground-nuts): Other: Described in additional U.S. note 2 to chapter 12 and entered pursuant to its provisions." The rate of duty will be 6.6 cents per kilogram. If the quantitative limits of additional U.S. note 2 to chapter 12 have been reached, the product will be classified in subheading 2008.11.6000, HTSUS, which provides for "Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Nuts, peanuts (ground-nuts) and other seeds, whether or not mixed together: Peanuts (ground-nuts): Other: Other" and will be dutiable at 131.8 percent *ad valorem*. In addition, products classified in subheading 2008.11.6000, HTSUS, will be subject to additional duties based on their value, as described in subheadings 9904.12.01 – 9904.12.19, HTSUS.

EFFECT ON OTHER RULINGS:  
NY I82449, is hereby modified.

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

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 967691  
CLA-2 RR:CTF:TCM 967691 KSH  
TARIFF NO.: Unknown

MR. RONEN MALKEN  
*13757 Carmody Drive*  
*Eden Prairie, MN 55347*

RE: Modification of New York Ruling Letter (NY) F82910, dated February 11, 2000; Classification of Mediterranean Mix.

DEAR MR. MALKEN:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) F82910, issued to you on February 11, 2000, concerning the classification, in part, under the Harmonized Tariff Schedule of the United States (HTSUS) of "Mediterranean Mix." The snack mix was classified in heading 2008, HTSUS, which provides for "fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included." We have reviewed that ruling and found it to be in error as it pertains to the classification of the Mediterranean Mix. Therefore, this ruling modifies NY F82910.

FACTS:

The ingredients are 25 percent peanuts, 16.5 percent sunflower seeds, and 7 percent raisins. The product is a snack mixture containing peanuts, peanuts coated with a hard, thin shell, and sunflower seeds that are coated with a hard, cracker-like shell. The product is also said to contain raisins. We note that the totals given in NY F82910, do not account for the remaining 48.5% of the mixture.

ISSUE:

Whether the Mediterranean Mix is classified in heading 2008, HTSUS, as "Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included" or as a mixture in accordance with GRI 3(c) in the heading which occurs last in numerical order.

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 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 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).

Heading 2008, HTSUS, provides for "Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included."

The EN's to heading 2008 provide in relevant part, "This heading covers fruit, nuts and other edible parts of plants, whether whole, in pieces or crushed, including mixtures thereof, **prepared or preserved** otherwise than by any of the processes specified in the other Chapters or in the preceding headings of this Chapter." (Emphasis added).

At the subheading level, each of the components must be prepared or preserved in accordance with the terms of the heading to 2008, HTSUS. The Mediterranean Mix consists of a mixture of peanuts, coated peanuts, coated sunflower seeds and raisins. The raisins have not been prepared or preserved. As such, the raisins do not meet the terms of heading 2008, HTSUS.

Furthermore, as noted in HQ 089858, dated October 1, 1991, the commodities, although mixed together in the article under consideration, maintain their original identity. Each commodity remains complete and recognizable and is not subordinated into a new product merely by the act of mixing with the other. As such, the Mediterranean Mix cannot be classified in accordance with GRI 1.

Because classification in a single heading cannot be determined by applying GRI 1, we must apply the other GRI's. GRI 2(b) states that if a product is a mixture or combination of materials or substances that are, prima facie, classifiable in two or more headings, then GRI 3 applies. GRI 3(b) provides that composite goods consisting of different materials or made up of different components, shall be classified as if they consisted of the material or component which gives them their essential character.

The article is a mixture made up of 25 percent peanuts, 16.5 percent sunflower seeds, and 7 percent raisins. As we previously noted, we have no account for the remaining 48.5% of the mixture. The component that imparts the essential character to this article determines its classification.

EN VIII to GRI 3(b), page 4, states that the factors will vary as between different kinds of goods to determine the essential character of an article. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

It is our determination that none of the articles in the commodity gives the mixture its essential character. We, therefore, turned to GRI 3(c) which provides:

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

Due to the lack of information regarding the complete percentage of the mixture and each of the ingredients method of preparation, the precise classification cannot be given. Once the importer submits a new request with the required information, the correct classification can be given.

**HOLDING:**

By application of GRI 3(c), the Mediterranean Mix is classified in the heading which occurs last in numerical order.

**EFFECT ON OTHER RULINGS:**

NY F82910 is hereby modified.

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

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 967692  
CLA-2 RR:CTF:TCM 967692 KSH  
TARIFF NO.: Unknown

MR. ARTHUR CHERRY  
ARTHUR CHERRY ASSOCIATES  
1315 Walnut Street Suite 807  
Philadelphia, PA 19107

RE: Revocation of New York Ruling Letter (NY) 869842, dated January 8, 1992; Classification of Vindaloo Mix and Bombay Mix.

**DEAR MR. CHERRY:**

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) 869842, issued to you on January 8, 1992, on behalf of your client, Bonanza International Inc., concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS) of "Vindaloo Mix" and "Bombay Mix." The snack mixes were classified in heading 2106, HTSUS, which provides for "Food preparations not elsewhere specified or included." We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY 869842.

**FACTS:**

Vindaloo Mix and Bombay Mix are described as snack foods consisting of a variety of ingredients that have been fried separately in vegetable oil, mixed together, and seasoned. Vindaloo Mix contains gram flour noodles, yellow split peas, peanuts, lentils, raisins, sunflower seeds, flavoring, and salt. Bombay Mix is a mixture of gram flour noodles, yellow split peas, sunflower seeds, flavoring, puffed rice, and salt. Both mixes will be imported in bulk containers, and will be sold in the bulk form or repackaged.

**ISSUE:**

Whether the Vindaloo Mix and Bombay Mix are classified in heading 2106, HTSUS, as "Food preparations not elsewhere specified or included" or

in accordance with GRI 3(c) in the heading which occurs last in numerical order.

**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 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 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).

Heading 2106, HTSUS, provides for "Food preparations not elsewhere specified or included." Heading 2106, HTSUS, is to be considered if the product is not more specifically described in another provision of the HTSUS.

The food preparations of heading 2106, HTSUS, are generally considered to be mixtures of food ingredients to be used in or with other foods. This is illustrated by the EN's to heading 2106, HTSUS, which list several examples of goods composed of a mixture of ingredients. Some of the mixtures are listed as follows:

(A) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.) for human consumption.

(B) Preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organic acids, calcium salts, lecithin, etc.) with foodstuffs (flour, sugar, milk powder, etc.), for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.). . . .

While some mixtures have been classified in heading 2106, HTSUS, absent a more specific heading in the HTSUS, not all such mixtures have been classified therein. In HQ 089051, dated July 11, 1991, a mixture of wheat, oats, sunflower kernels, green peas and yellow peas to be used as salad topping was classified in heading 2106, HTSUS. In classifying the salad topping, we noted:

While the EN does not specifically cover mixtures of the type under consideration and some of the mixtures it covers are, what might be termed, intermediate products, products which will be used as an ingredient in making something else, we believe it shows that this heading is meant to cover the subject article. In this regard, we noted that Heading [2106] covers preparations for use for human consumption. We believe that this confirms the intent to include human food preparation composed of several disparate ingredients in Chapter 21, HTSUSA. See also HQ 953651, dated June 16, 1993.

In contrast, in HQ 082230, dated January 12, 1989, a blend of sucrose and dextrose was classified in heading 1701, HTSUS, rather than heading 2106, HTSUS because, "such a mixture does not ipso facto render the blend a food preparation; the act of mixing does not alter the nature or use of the product such that it would no longer be classifiable in Chapter 17." See also HQ 085105, dated July 31, 1989, NY F82479 dated February 10, 2000, NY C82718 dated March 6, 1998 and NY 889918 dated October 6, 1993.

The ingredients although mixed together in the Vindaloo Mix and Bombay Mix, maintain their original identity. Each commodity remains complete and recognizable and is not subordinated into a new product merely by the act of mixing with the other. The final product remains a mixture of gram flour noodles, yellow split peas, peanuts, lentils, raisins, sunflower seeds, flavoring, puffed rice, and salt and will be marketed as such. As such it cannot be classified in heading 2106, HTSUS.

Because classification in a single heading cannot be determined by applying GRI 1, we must apply the other GRI's. GRI 2(b) states that if a product is a mixture or combination of materials or substances that are, prima facie, classifiable in two or more headings, then GRI 3 applies. GRI 3(b) provides that composite goods consisting of different materials or made up of different components, shall be classified as if they consisted of the material or component which gives them their essential character.

The article is a mixture made up of gram flour noodles, yellow split peas, peanuts, lentils, raisins, sunflower seeds, flavoring, puffed rice, and salt.

EN VIII to GRI 3(b), page 4, states that the factors will vary as between different kinds of goods to determine the essential character of an article. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

It is our determination that none of the articles in the commodity gives the mixture its essential character. We, therefore, turned to GRI 3(c) which provides:

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

Due to a lack of information relative to the ingredients breakdown and method of preparation for each component, the precise classification cannot be given. Once the importer submits a new request with this required information the correct classification can be given.

**HOLDING:**

By application of GRI 3(c), the Vindaloo Mix and Bombay Mix are classified in the heading which occurs last in numerical order.

**EFFECT ON OTHER RULINGS:**

NY 869842, is hereby revoked.

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

┌

┐

└

┘