

Bureau of Customs and Border Protection

CBP Decisions

(CBP Dec. 06-16)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR APRIL, 2006

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): none

European Union euro:

April 1, 2006	1.213900
April 2, 2006	1.213900
April 3, 2006	1.212400
April 4, 2006	1.225800
April 5, 2006	1.227200
April 6, 2006	1.221600
April 7, 2006	1.210900
April 8, 2006	1.210900
April 9, 2006	1.210900
April 10, 2006	1.209100
April 11, 2006	1.212500
April 12, 2006	1.210700
April 13, 2006	1.210700
April 14, 2006	1.210600
April 15, 2006	1.210600
April 16, 2006	1.210600
April 17, 2006	1.226700
April 18, 2006	1.227400
April 19, 2006	1.234500
April 20, 2006	1.232600
April 21, 2006	1.234000
April 22, 2006	1.234000
April 23, 2006	1.234000
April 24, 2006	1.237300
April 25, 2006	1.241200
April 26, 2006	1.246400

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly
list for April 2006 (continued):

European Union euro: (continued):

April 27, 2006	1.252500
April 28, 2006	1.262400
April 29, 2006	1.262400
April 30, 2006	1.262400

South Korea won:

April 1, 2006	0.001029
April 2, 2006	0.001029
April 3, 2006	0.001031
April 4, 2006	0.001039
April 5, 2006	0.001045
April 6, 2006	0.001049
April 7, 2006	0.001050
April 8, 2006	0.001050
April 9, 2006	0.001050
April 10, 2006	0.001049
April 11, 2006	0.001048
April 12, 2006	0.001041
April 13, 2006	0.001040
April 14, 2006	0.001044
April 15, 2006	0.001044
April 16, 2006	0.001044
April 17, 2006	0.001047
April 18, 2006	0.001049
April 19, 2006	0.001058
April 20, 2006	0.001055
April 21, 2006	0.001055
April 22, 2006	0.001055
April 23, 2006	0.001055
April 24, 2006	0.001064
April 25, 2006	0.001058
April 26, 2006	0.001057
April 27, 2006	0.001059
April 28, 2006	0.001061
April 29, 2006	0.001061
April 30, 2006	0.001061

Taiwan N.T. dollar:

April 1, 2006	0.030845
April 2, 2006	0.030845
April 3, 2006	0.030731
April 4, 2006	0.030845
April 5, 2006	0.030836
April 6, 2006	0.030979
April 7, 2006	0.030979
April 8, 2006	0.030979
April 9, 2006	0.030979
April 10, 2006	0.030902
April 11, 2006	0.030864
April 12, 2006	0.030750

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly list for April 2006 (continued):

Taiwan N.T. dollar: (continued):

April 13, 2006	0.030817
April 14, 2006	0.030788
April 15, 2006	0.030788
April 16, 2006	0.030788
April 17, 2006	0.030845
April 18, 2006	0.030826
April 19, 2006	0.030902
April 20, 2006	0.030960
April 21, 2006	0.030960
April 22, 2006	0.030960
April 23, 2006	0.030960
April 24, 2006	0.031270
April 25, 2006	0.031309
April 26, 2006	0.031201
April 27, 2006	0.031338
April 28, 2006	0.031348
April 29, 2006	0.031348
April 30, 2006	0.031348

Dated: May 1, 2006

MARGARET T. BLOM,
Acting Chief,
Customs Information Exchange.

(CBP Dec. 06–17)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR APRIL, 2006

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in CBP Decision 06–13 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): none

Australia dollar

April 27, 2006	0.756400
April 28, 2006	0.759300
April 29, 2006	0.759300
April 30, 2006	0.759300

FOREIGN CURRENCIES—Variances from quarterly rates for April 2006 (continued):

Norway krone	
April 28, 2006	0.162219
April 29, 2006	0.162219
April 30, 2006	0.162219
Sweden krona	
April 28, 2006	0.135908
April 29, 2006	0.135908
April 30, 2006	0.135908

Dated: May 1, 2006

MARGARET T. BLOM,
Acting Chief,
Customs Information Exchange.



(CBP Dec. 06-18)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR MAY, 2006

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): May 29, 2006

European Union euro:	
May 1, 2006	1.260700
May 2, 2006	1.264400
May 3, 2006	1.263900
May 4, 2006	1.268400
May 5, 2006	1.273300
May 6, 2006	1.273300
May 7, 2006	1.273300
May 8, 2006	1.272000
May 9, 2006	1.274700
May 10, 2006	1.279900
May 11, 2006	1.285500
May 12, 2006	1.288800
May 13, 2006	1.288800

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly
list for May 2006 (continued):

European Union euro: (continued):

May 14, 2006	1.288800
May 15, 2006	1.282600
May 16, 2006	1.281700
May 17, 2006	1.272200
May 18, 2006	1.279500
May 19, 2006	1.275000
May 20, 2006	1.275000
May 21, 2006	1.275000
May 22, 2006	1.285000
May 23, 2006	1.284400
May 24, 2006	1.274700
May 25, 2006	1.277700
May 26, 2006	1.273900
May 27, 2006	1.273900
May 28, 2006	1.273900
May 29, 2006	1.273900
May 30, 2006	1.286800
May 31, 2006	1.283300

South Korea won:

May 1, 2006	0.001061
May 2, 2006	0.001064
May 3, 2006	0.001071
May 4, 2006	0.001065
May 5, 2006	0.001065
May 6, 2006	0.001065
May 7, 2006	0.001065
May 8, 2006	0.001078
May 9, 2006	0.001073
May 10, 2006	0.001077
May 11, 2006	0.001069
May 12, 2006	0.001072
May 13, 2006	0.001072
May 14, 2006	0.001072
May 15, 2006	0.001060
May 16, 2006	0.001058
May 17, 2006	0.001067
May 18, 2006	0.001057
May 19, 2006	0.001057
May 20, 2006	0.001057
May 21, 2006	0.001057
May 22, 2006	0.001051
May 23, 2006	0.001059
May 24, 2006	0.001054
May 25, 2006	0.001054
May 26, 2006	0.001058
May 27, 2006	0.001058
May 28, 2006	0.001058

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly
list for May 2006 (continued):

South Korea won: (continued):

May 29, 2006	0.001058
May 30, 2006	0.001058
May 31, 2006	0.001058

Taiwan N.T. dollar:

May 1, 2006	0.031348
May 2, 2006	0.031526
May 3, 2006	0.031676
May 4, 2006	0.031616
May 5, 2006	0.031646
May 6, 2006	0.031646
May 7, 2006	0.031646
May 8, 2006	0.031928
May 9, 2006	0.031756
May 10, 2006	0.031969
May 11, 2006	0.031797
May 12, 2006	0.031898
May 13, 2006	0.031898
May 14, 2006	0.031898
May 15, 2006	0.031656
May 16, 2006	0.031496
May 17, 2006	0.031716
May 18, 2006	0.031407
May 19, 2006	0.031358
May 20, 2006	0.031358
May 21, 2006	0.031358
May 22, 2006	0.031124
May 23, 2006	0.031270
May 24, 2006	0.031250
May 25, 2006	0.031162
May 26, 2006	0.031230
May 27, 2006	0.031230
May 28, 2006	0.031230
May 29, 2006	0.031230
May 30, 2006	0.031162
May 31, 2006	0.031260

Dated: June 1, 2006

MARGARET T. BLOM,
Acting Chief,
Customs Information Exchange.

(CBP Dec. 06-19)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR MAY, 2006

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in CBP Decision 06-13 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): May 29, 2006

Australia dollar

May 1, 2006	0.760700
May 2, 2006	0.763100
May 3, 2006	0.771100
May 4, 2006	0.772600
May 5, 2006	0.770700
May 6, 2006	0.770700
May 7, 2006	0.770700
May 8, 2006	0.769700
May 9, 2006	0.772400
May 10, 2006	0.776300
May 11, 2006	0.778100
May 12, 2006	0.772800
May 13, 2006	0.772800
May 14, 2006	0.772800
May 15, 2006	0.762700
May 16, 2006	0.765600
May 17, 2006	0.759400
May 18, 2006	0.765200
May 19, 2006	0.756900
May 20, 2006	0.756900
May 21, 2006	0.756900
May 23, 2006	0.754600
May 25, 2006	0.758500
May 26, 2006	0.757700
May 27, 2006	0.757700
May 28, 2006	0.757700
May 29, 2006	0.757700
May 30, 2006	0.761900

Brazil real

May 22, 2006	0.435294
May 23, 2006	0.443754
May 24, 2006	0.424088
May 25, 2006	0.432807
May 26, 2006	0.442870
May 27, 2006	0.442870
May 28, 2006	0.442870

**FOREIGN CURRENCIES—Variances from quarterly rates for May 2006
(continued):**

Brazil real (continued):

May 29, 2006	0.442870
May 30, 2006	0.431965
May 31, 2006	0.434650

Canada dollar

May 1, 2006	0.898473
May 2, 2006	0.903424
May 3, 2006	0.903179
May 4, 2006	0.903669
May 5, 2006	0.903261
May 6, 2006	0.903261
May 7, 2006	0.903261
May 8, 2006	0.899604
May 9, 2006	0.907276
May 10, 2006	0.908678
May 11, 2006	0.910001
May 12, 2006	0.902120
May 13, 2006	0.902120
May 14, 2006	0.902120
May 16, 2006	0.899928
May 17, 2006	0.899604
May 25, 2006	0.903179
May 26, 2006	0.903179
May 27, 2006	0.903179
May 28, 2006	0.903179
May 29, 2006	0.903179
May 30, 2006	0.909504
May 31, 2006	0.906865

Denmark krone

May 10, 2006	0.171671
May 11, 2006	0.172342
May 12, 2006	0.172888
May 13, 2006	0.172888
May 14, 2006	0.172888
May 15, 2006	0.172064
May 16, 2006	0.171907
May 18, 2006	0.171697
May 22, 2006	0.172334
May 23, 2006	0.172319
May 25, 2006	0.171383
May 30, 2006	0.172554
May 31, 2006	0.172123

Japan yen

May 8, 2006	0.008965
May 9, 2006	0.008984
May 10, 2006	0.009046
May 11, 2006	0.009069
May 12, 2006	0.009051

FOREIGN CURRENCIES—Variances from quarterly rates for May 2006
(continued):

Japan yen (continued):

May 13, 2006	0.009051
May 14, 2006	0.009051
May 15, 2006	0.009074
May 16, 2006	0.009085
May 17, 2006	0.009042
May 18, 2006	0.009018
May 19, 2006	0.008948
May 20, 2006	0.008948
May 21, 2006	0.008948
May 22, 2006	0.008959
May 23, 2006	0.008981
May 25, 2006	0.008935

Norway krone

May 1, 2006	0.162227
May 2, 2006	0.162721
May 3, 2006	0.163225
May 4, 2006	0.163452
May 5, 2006	0.163447
May 6, 2006	0.163447
May 7, 2006	0.163447
May 8, 2006	0.163268
May 9, 2006	0.163588
May 10, 2006	0.164712
May 11, 2006	0.165931
May 12, 2006	0.166273
May 13, 2006	0.166273
May 14, 2006	0.166273
May 15, 2006	0.164821
May 16, 2006	0.163599
May 17, 2006	0.162861
May 18, 2006	0.163843
May 19, 2006	0.163738
May 20, 2006	0.163738
May 21, 2006	0.163738
May 22, 2006	0.164142
May 23, 2006	0.163908
May 24, 2006	0.163121
May 25, 2006	0.163452
May 26, 2006	0.162721
May 27, 2006	0.162721
May 28, 2006	0.162721
May 29, 2006	0.162721
May 30, 2006	0.164517
May 31, 2006	0.164780

South Africa rand

May 18, 2006	0.154560
May 19, 2006	0.153139
May 20, 2006	0.153139
May 21, 2006	0.153139

FOREIGN CURRENCIES—Variances from quarterly rates for May 2006
(continued):

South Africa rand (continued):

May 22, 2006	0.151378
May 23, 2006	0.154000
May 24, 2006	0.150670
May 25, 2006	0.152637
May 26, 2006	0.153022
May 27, 2006	0.153022
May 28, 2006	0.153022
May 29, 2006	0.153022
May 30, 2006	0.152138
May 31, 2006	0.149125

Sweden krona

May 1, 2006	0.135851
May 3, 2006	0.135811
May 4, 2006	0.136177
May 5, 2006	0.136694
May 6, 2006	0.136694
May 7, 2006	0.136694
May 8, 2006	0.136593
May 9, 2006	0.136983
May 10, 2006	0.137236
May 11, 2006	0.137255
May 12, 2006	0.137680
May 13, 2006	0.137680
May 14, 2006	0.137680
May 15, 2006	0.136709
May 16, 2006	0.136411
May 18, 2006	0.136735
May 19, 2006	0.136493
May 20, 2006	0.136493
May 21, 2006	0.136493
May 22, 2006	0.137635
May 23, 2006	0.137817
May 24, 2006	0.136934
May 25, 2006	0.137274
May 26, 2006	0.137082
May 27, 2006	0.137082
May 28, 2006	0.137082
May 29, 2006	0.137082
May 30, 2006	0.138937
May 31, 2006	0.138614

Switzerland franc

May 1, 2006	0.807363
May 2, 2006	0.810045
May 3, 2006	0.809651
May 4, 2006	0.813206
May 5, 2006	0.815860
May 6, 2006	0.815860
May 7, 2006	0.815860
May 8, 2006	0.814598

FOREIGN CURRENCIES—Variances from quarterly rates for May 2006
(continued):

Switzerland franc (continued):

May 9, 2006	0.818130
May 10, 2006	0.820614
May 11, 2006	0.826037
May 12, 2006	0.831947
May 13, 2006	0.831947
May 14, 2006	0.831947
May 15, 2006	0.827335
May 16, 2006	0.825219
May 17, 2006	0.821153
May 18, 2006	0.824878
May 19, 2006	0.820883
May 20, 2006	0.820883
May 21, 2006	0.820883
May 22, 2006	0.829944
May 23, 2006	0.827609
May 24, 2006	0.820479
May 25, 2006	0.820749
May 26, 2006	0.815328
May 27, 2006	0.815328
May 28, 2006	0.815328
May 29, 2006	0.815328
May 30, 2006	0.825764
May 31, 2006	0.822436

United Kingdom pound

May 1, 2006	1.828600
May 2, 2006	1.839700
May 3, 2006	1.844600
May 4, 2006	1.848500
May 5, 2006	1.858800
May 6, 2006	1.858800
May 7, 2006	1.858800
May 8, 2006	1.858400
May 9, 2006	1.863200
May 10, 2006	1.864800
May 11, 2006	1.884200
May 12, 2006	1.891100
May 13, 2006	1.891100
May 14, 2006	1.891100
May 15, 2006	1.883600
May 16, 2006	1.881900
May 17, 2006	1.882000
May 18, 2006	1.887800
May 19, 2006	1.875500
May 20, 2006	1.875500
May 21, 2006	1.875500
May 22, 2006	1.886100
May 23, 2006	1.880900
May 24, 2006	1.867800
May 25, 2006	1.871900
May 26, 2006	1.856600
May 27, 2006	1.856600

FOREIGN CURRENCIES—Variances from quarterly rates for May 2006
(continued):

United Kingdom pound (continued):

May 28, 2006	1.856600
May 29, 2006	1.856600
May 30, 2006	1.882500
May 31, 2006	1.873200

Dated: June 1, 2006

MARGARET T. BLOM,
Acting Chief,
Customs Information Exchange.

General Notices

PROPOSED COLLECTION; COMMENT REQUEST
Application for Identification/Smart Card

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

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Identification/Smart Card. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). CBP is proposing that this information collection be extended with no 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** (71 FR 12385) on March 10, 2006, 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 July 17, 2006, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: 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 Desk Officer at Nathan.Lesser@omb.eop.gov.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection: relevant

Title: Application for Identification/Smart Card

OMB Number: 1651-0008

Form Number: CBP Form-3078

Abstract: CBP Form 3078 is used by licensed Cartmen, Lightermen, Warehousemen, brokerage firms, foreign trade zones, container station operators, their employees, and employees requiring access to CBP secure areas to apply for an identification card so that they may legally handle merchandise which is in CBP custody.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Responses: 46,050

Estimated Time Per Respondent: 13 minutes

Estimated Total Annual Burden Hours: 9,962

Estimated Total Annualized Cost on the Public: N/A

Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300

Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 344-1429.

Dated: June 6, 2006

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

[Published in the Federal Register, June 15, 2006 (71 FR 34635)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:
CREW MEMBER'S DECLARATION**

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security 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: Crew Member's Declaration. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without 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** (71 FR 12386) on March 10, 2006, 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 July 13, 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 Desk Officer at Nathan.Lesser@omb.eop.gov.

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 informa-

tion 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: Crew Members Declaration

OMB Number: 1651-0021

Form Number: Form-5129

Abstract: This document is used to accept and record importations of merchandise by crew members, and to enforce agricultural quarantines, the currency reporting laws, and the revenue collection laws.

Current Actions: This submission is to extend the expiration date without a change to the burden hours.

Type of Review: Extension (without change)

Affected Public: Individuals, Business or other for-profit.

Estimated Number of Respondents: 5,968,351

Estimated Time Per Respondent: 3 minutes

Estimated Total Annual Burden Hours: 298,418

Estimated Total Annualized Cost on the Public: N/A

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

Dated: June 6, 2006

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

[Published in the Federal Register, June 13, 2006 (71 FR 34151)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:
HARBOR MAINTENANCE FEE**

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security 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: Harbor Maintenance Fee. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no 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** (71 FR 19198) on April 13, 2006, 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 July 13, 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 Desk Officer at Nathan.Lesser@omb.eop.gov.

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: Harbor Maintenance Fee

OMB Number: 1651-0055

Form Number: Forms 349 and 350

Abstract: This collection of information will be used to verify that the Harbor Maintenance Fee paid is accurate and current for each individual, importer, exporter, shipper, or cruise line.

Current Actions: This submission is being submitted to extend the expiration date with a change to the burden hours.

Type of Review: Extension (without change)

Estimated Number of Respondents: 5,200

Estimated Time Per Respondent: 40 minutes

Estimated Total Annual Burden Hours: 2,816

Estimated Total Annualized Cost on the Public: N/A

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

Dated: June 6, 2006

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

[Published in the Federal Register, June 13, 2006 (71 FR 34150)]

AGENCY INFORMATION COLLECTION ACTIVITIES: IMPORTER'S INPUT RECORD

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security 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: Importer's Input Record. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be ex-

tended without 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** (71 FR 12384–12385) on March 10, 2006, 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 July 13, 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 Desk Officer at Nathan.Lesser@omb.eop.gov.

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: Importers ID Input Record

OMB Number: 1651–0064

Form Number: Form-5106

Abstract: This document is filed with the first formal entry which is submitted or the first request for services that will result in

the issuance of a bill or a refund check upon adjustment of a cash collection.

Current Actions: This submission is to extend the expiration date without a change to the burden hours.

Type of Review: Extension (without change)

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1000

Estimated Time Per Respondent: 6 minutes

Estimated Total Annual Burden Hours: 100

Estimated Total Annualized Cost on the Public: N/A

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

Dated: June 6, 2006

TRACEY DENNING,
Agency Clearance Officer;
Information Services Branch.

[Published in the Federal Register, June 13,2006 (71 FR 34149)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, June 14, 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 RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
CD SOFTCASE WITH INTEGRATED LOUDSPEAKER**

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

ACTION: Revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of a CD softcase with integrated loudspeaker.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that the Bureau of Customs and Border Protection (CBP) is revoking one ruling letter relating to the tariff classification of a CD softcase with integrated loudspeaker 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 revocation of New York Ruling Letter (NY) J84601 was published in the Customs Bulletin, Volume 40, Number 15, on April 6, 2006. CBP received no comments during the notice and comment period that closed on May 6, 2006.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 27, 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), 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 J84601 was published in the Customs Bulletin, Volume 40, Number 15, on April 6, 2006. CBP received no comments during the notice and comment period that closed on May 6, 2006.

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 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 J84601, CBP ruled that the "I'm A Speaker" CD softcase with integrated loudspeaker was classified in subheading 8518.21.0000, HTSUSA, which provides for "Loudspeakers, whether or not mounted in their enclosures; Single loudspeakers, mounted in their enclosures." 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 CD softcase with integrated loudspeaker should be classified in subheading 4202.92.9050, HTSUS, which provides for "Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other: Other: Cases designed to protect and transport compact disks (CD's), CD ROM disks, CD players, cassette players and/or cassettes."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY J84601 and is revoking or modifying any other ruling not specifically identified, to reflect the proper classification of the CD softcase with integrated loudspeaker according to the analysis contained in Headquarters Ruling Letter (HQ) 967923, set forth as an attachment 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: June 9, 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 968051
June 9, 2006
CLA-2 RR:CTF:TCM 968051 KSH
CATEGORY: Classification
TARIFF NO: 4202.92.9050MR. RAHUL DO
TDK ELECTRONICS CORPORATION
3190 East Miraloma Avenue
Anaheim, CA 92806RE: Revocation of NY J84601; "I'm A Speaker" Softcase with Integrated
Speaker from China

DEAR MR. DO:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) J84601, issued to you on June 10, 2003, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of an "I'm A Speaker" softcase with integrated speaker. The article was classified in subheading 8518.21.0000, HTSUSA, which provides for "Loudspeakers, whether or not mounted in their enclosures; Single loudspeakers, mounted in their enclosures." We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY J84601.

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 J84601 was published in the Customs Bulletin, Volume 40, Number 15, on April 6, 2006. CBP received no comments during the notice and comment period that closed on May 6, 2006.

FACTS:

The article described as the "I'm A Speaker" Softcase with Integrated Loudspeaker is available in both Mono and Stereo Models. The "I'm A Speaker" is a single loudspeaker that is imported within a softcase that has the capacity of storing up to 12 CD's within the softcase.

ISSUE:

Whether the item is properly classified under subheading 4202.92.9050, HTSUSA, as a CD case or under subheading 8518.21.0000, HTSUSA, as a single mounted loudspeaker.

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). 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 GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of

the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. See T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Heading 4202, HTSUSA, provides for:

“Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping-bags, wallets, purses, map cases, cigarette cases, tobacco-pouches, tool bags, sports bags, bottle-cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper.”

Heading 8518, HTSUSA, provides for:

“Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof.”

The “I’m A Speaker” softcase with an integrated speaker is described by both headings 4202 and 8518, HTSUSA, as it is a case, as well as, as a loudspeaker. Because it is *prima facie* classifiable under two or more headings, it cannot be classified according to GRI 1. In pertinent part, GRI 2(b) provides that any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. However, GRI 2(b) adds that the classification of goods consisting of more than one material or substance shall be according to the principles of rule 3. Accordingly, GRI 3 is utilized when, by application of GRI 2(b), a good consists of materials or components which are *prima facie* classifiable under two or more headings.

GRI 3(a) states that when goods are *prima facie* classifiable under two or more headings, classification shall be effected as follows:

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

In this instance, headings 4202 and 8518, HTSUSA, are equally specific in relation to one another. As we cannot classify these goods pursuant to GRI 3(a), we turn to GRI 3(b) which states:

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

To determine whether the merchandise constitutes a composite good, we look to Explanatory Note IX to GRI 3(b), which states in pertinent part:

For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, **provided** these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

The portable speaker and the CD case components are attached to each other to form a practically inseparable whole. We find that the portable speaker/softcase is a composite good. Thus, we must determine which component imparts the essential character to the merchandise.

Explanatory Note (EN) VIII to GRI 3(b) states:

The factor which determines essential character will vary as between different kinds of goods. 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.

In situations in which containers of heading 4202, HTSUSA, incorporate electrical devices in their design, CBP has consistently held that the 4202 component imparts the essential character to the article as a whole. See Headquarters Ruling Letters (HQ) 087057, dated December 21, 1989; HQ 089901, dated April 2, 1992; HQ 955261, dated April 14, 1994; HQ 961240, dated February 12, 1990; New York Ruling Letters (NY) 841628, dated June 6, 1989; NY 853347, dated July 3, 1990; and NY L83346, dated March 17, 2005. In each of these cases, the article involved a fully functional carry case or bag of heading 4202, HTSUSA, and a complete electronic device. More on point, in HQ 967704, dated August 25, 2005, CBP held that pursuant to GRI 3(b), the essential character of a speaker/CD case was imparted by the 4202 component and the composite good was classified under subheading 4202.92.9050, HTSUSA. Similarly, in this instance, we find that it is the softcase which imparts the essential character to the article. A consumer's motivating impetus to purchase this article would primarily be the need or desire for a container which can store, protect and transport a CD player and CDs. The fact that this article can also amplify music directed into the amplifier and speakers from an external output source may make the case distinctive and more attractive to some. However it is unlikely that a consumer would purchase this article primarily for use as an amplifier. The essential character of the subject speaker/softcase is imparted by the 4202 component and the composite good is classified under subheading 4202.92.9050, HTSUSA.

HOLDING:

By application of GRI 3(b), the "I'm A Speaker" is classified in heading 4202, HTSUSA, specifically in subheading 4202.92.9050, HTSUSA, which provides for "Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, to-

bacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other, Other: Cases designed to protect and transport compact disks (CD's), CD ROM disks, CD players, cassette players and/or cassettes." The general column one rate of duty is 17.6% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY J84601, dated June 10, 2003, 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

**PROPOSED MODIFICATION OF A RULING LETTER,
REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE CLASSIFICATION OF
CERTAIN BATTERIES AND BATTERY CHARGERS**

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

ACTION: Notice of proposed modification of one ruling letter, revocation of one ruling letter, and revocation of treatment relating to the classification of certain batteries and battery chargers.

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 modify one ruling letter and revoke one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain batteries and battery chargers. 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 July 28, 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 modify one ruling letter and revoke one ruling letter relating to the tariff classification of certain batteries and battery chargers. Although in this notice CBP is specifically referring to the modification of Headquarters Ruling Letter (HQ) 955105, dated December 10, 1993 (Attachment A) and New

York Ruling Letter (NY) G87863, dated March 26, 2001 (Attachment B), 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 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 HQ 955105, in three scenarios presented for our consideration, CBP classified a rechargeable storage battery and battery charger in subheading 8507.30.00, (now, 8507.30) HTSUS, which provides for: "Electric storage batteries, including separators therefore, whether or not rectangular (including square); parts thereof: Nickel-cadmium storage batteries." In NY G87863, CBP classified a solar powered battery charger with rechargeable battery in subheading 8507.20.8030, ("HTSUS"), which provides for: "Electric storage batteries, including separators therefore, whether or not rectangular (including square); parts thereof: Other lead-acid storage batteries: Other: 6 V batteries." Based on our recent review of HQ 955105 and NY G87863, we have determined that the tariff classification set forth for the batteries and battery chargers is incorrect. It is now CBP's position that the proper tariff classification of the batteries and battery chargers is subheading 8504.40.9550, HTSUS, which provides for: "Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof: Static converters: Other: Rectifiers and rectifying apparatus: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP intends to revoke HQ 955105 and modify NY G87863, 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) 968226 (Attachment C), HQ 968227 (Attachment D). 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: June 6, 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,

HQ 955105
December 10, 1993
CLA-2 CO:R:C:M 955105 DWS
CATEGORY: Classification
TARIFF NO.: 8507.30.00

MR. STEPHEN J. LEAHY
LEAHY & WARD
63 Commercial Wharf
Boston, MA 02110

RE: Rechargeable Storage Battery and Battery Recharger; GRI 3(b); Explanatory Notes 3(b)(VIII), 3(b)(IX), and 3(b)(X); Set; HQs 083672 and 954061; Composite Good; 8504.40.00

DEAR MR. LEAHY:

This is in response to your letter of September 7, 1993, on behalf of Hotronic USA, Inc., to the District Director of Customs, Boston, Massachusetts, concerning the classification of a rechargeable nickel cadmium storage battery and a battery charger under the Harmonized Tariff Schedule of the United States (HTSUS). Your letter has been referred to this office for a response.

FACTS:

The merchandise consists of a nickel cadmium storage battery and a battery charger, both designed to power a footwarmer. A binding ruling has been requested for the following three classification scenarios: (1) The storage battery and the battery charger as a set suitable for sale and distribution to consumers as imported; (2) The storage battery and the battery charger imported suitable for packing with no other components included in a complete footwarmer set; and (3) The storage battery and the battery charger in a footwarmer box with additional components to be added after importation. We consider scenario (3) to be identical to scenario (2). It is our understanding that the storage battery and the battery charger are separate articles and are not attached to one another.

The subheadings under consideration are as follows:

8504.40.00: [s]tatic converters.

The general, column one rate of duty for goods classifiable under this provision is 3 percent duty ad valorem.

8507.30.00: [n]ickel-cadmium storage batteries.

The general, column one rate of duty for goods classifiable under this provision is 5.1 percent ad valorem.

ISSUE:

Whether, under scenario (1), the storage battery and the battery charger constitute a set, and, if so, whether the storage battery or the battery charger imparts the essential character of the set.

Whether, under scenario (2) and (3), the storage battery and the battery charger constitute either a set or a composite good, and, if a composite good, whether the storage battery or the battery charger imparts the essential character of the composite good.

LAW AND ANALYSIS:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's), taken in order.

GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

SCENARIO (1)

To determine whether the storage battery and the battery charger constitute a set, we must consult GRI 3(b). It states that:

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

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes, although not dispositive, are to be used to determine the proper interpretation of the HTSUS. 54 Fed. Reg. 35127, 35128 (August 23, 1989). Explanatory Note 3(b)(X) (p. 4) states that:

[f]or the purpose of this Rule, the term 'goods put up in sets for retail sale' shall be taken to mean goods which:

(a) consist of at least two different articles which are, prima facie, classifiable in different headings . . . ;

(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards)."

It is our position that the storage battery and the battery charger are a set for classification purposes. It fully satisfies all three requirements of Explanatory Note 3(b)(X), in that the set consists of two different articles which are classifiable in different headings, it consists of products put up together to carry out a specific activity (to provide a power source), and it is put up for sale directly to users without repacking. Because the storage battery and the battery charger constitute a set, its essential character must be determined. Explanatory Note 3(b)(VIII) (p. 4) states that:

[t]he factor which determines essential character will vary as between different kinds of goods. 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.

HQ 083672, dated May 16, 1989, is cited in support of the claim that the battery charger imparts the essential character of the subject set. In that ruling, a battery charger and rechargeable batteries were held to constitute a set, and because it was held that the battery recharger imparted the essential character of the set, the set was classified under subheading 8504.40.00, HTSUS.

However, it is our position that the present merchandise is distinguishable from that of HQ 083672. The batteries contained within the set in that case were intended to be replaced, and the purpose of buying the set was so one could, with the use of the appropriate adapter, recharge all of the various sizes of consumer rechargeable nickel cadmium batteries; not necessarily those within the set. Therefore, in HQ 083672, the battery charger imparted the essential character of the set.

With regard to the subject set, its primary purpose is to power a footwarmer through the use of the included battery pack. Without the battery, it is our understanding that the footwarmer cannot operate. The battery charger is included in the footwarmer set to recharge the battery whenever it is low on power. Consequently, it is our position that the storage battery imparts the essential character of the subject set. See HQ 954061, dated May 13, 1993, wherein we held that a rechargeable lead acid battery pack set, which could be used for a variety of applications, was classifiable under subheading 8507.20.00, HTSUS. Therefore, the set containing the storage battery and the battery charger is classifiable under subheading 8507.30.00, HTSUS.

SCENARIO (2) and (3)

For classification purposes, the storage battery and the battery charger, imported together without the necessary additional components, whether or not in a footwarmer box, do not constitute a set. The two articles fail as a set because of Explanatory Note 3(b)(X)(c), in that they are not put up in a manner suitable for sale directly to users without repacking. Even if the storage battery and the battery recharger remain in the footwarmer box after importation, another packing step is needed to add the other footwarmer components to the box before the merchandise is sold to consumers. We find that the addition of the other footwarmer components constitutes repacking.

Because the storage battery and the battery charger do not constitute a set, the issue is whether they constitute a composite good.

In part, Explanatory Note 3(b)(IX) (p. 4) states that:

[f]or the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, provided these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

The storage battery and the battery charger constitute a composite good. Although the two articles are separable components, they are adapted one to

the other, they are mutually complementary, and, as can be seen by the merchandise itself, they form a whole which would not normally be offered for sale in separate parts.

Because the articles constitute a composite good, we must determine which article imparts its essential character. As with the set in scenario (1), and for the same reasons, it is our position that the storage battery imparts the essential character of the composite good. Therefore, the subject composite good is also classifiable under subheading 8507.30.00, HTSUS.

HOLDING:

In scenario (1), the storage battery and the battery charger constitute a set, and the set is classifiable under subheading 8507.30.00, HTSUS, as a nickel cadmium storage battery.

In scenario (2) and (3), the storage battery and the battery charger constitute a composite good, and the composite good is also classifiable under subheading 8507.30.00, HTSUS.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

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

NY G87863
March 26, 2001
CLA-2-85:RR:NC:1:112 G87863
CATEGORY: Classification
TARIFF NO.: 8507.20.8030; 8504.40.9550

MR. BRENT REIDER
INTERNATIONAL TRADE GROUP, INC.
Postal Drawer 21877
Columbus, OH 43221-0877

RE: The tariff classification of batteries and battery chargers from Hong Kong

DEAR MR. REIDER:

In your letter dated February 15, 2001, on behalf of TOMCO Engineering, Ltd., you requested a tariff classification ruling.

As indicated by the submitted descriptive literature, there are three items in question. They are described as a solar powered battery charger with rechargeable battery, a solar powered battery charger, and a rechargeable dry cell battery.

The applicable subheading for the solar powered battery charger with rechargeable battery, and the rechargeable dry cell battery, will be 8507.20.8030, Harmonized Tariff Schedule of the United States (HTS),

which provides for other lead acid storage batteries: Other. The rate of duty will be 3.5 percent ad valorem. The applicable subheading for the solar powered battery charger will be 8504.40.9550, HTS, which provides for static converters: Other. The rate of duty will be 1.5 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 David Curran at 212-637-7049.

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



[ATTACHMENT C]

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

HQ 968226
CLA-2 RR:CTF:TCM 968226 HkP
CATEGORY: Classification
TARIFF NO.: 8504.40.9550

MR. STEPHEN J. LEAHY
LEAHY & WARD
63 Commercial Wharf
Boston, MA 02110

RE: Revocation of HQ 955105; rechargeable storage battery and battery charger

DEAR MR. LEAHY:

This is in reference to Headquarters Ruling Letter ("HQ") 955105, issued to you on December 10, 1993, in which a storage battery and battery charger were classified under the Harmonized Tariff of the United States ("HTSUS") in three different scenarios presented for our consideration. We have reconsidered HQ 955105 and determined that the tariff classification of the storage battery and battery charger is incorrect. This letter sets forth the correct classification.

FACTS:

HQ 955105 described the merchandise as consisting of a nickel cadmium storage battery and a battery charger, both designed to power a footwarmer, and not attached to one another. We were asked to determine the tariff classification of the storage battery and battery charger in the following scenarios: (1) the items are imported as a set and suitable for sale and distribution to consumers as imported, (2) the items are imported suitable for packing with other components in a complete footwarmer set, and (3) the items are imported in a footwarmer box with no other components included

in the box. We considered scenarios 2 and 3 to be identical for classification purposes.

With regard to scenario 1, in HQ 955105, U.S. Customs and Border Protection ("CBP") found the battery and battery charger to be a set for classification purposes. However, the ruling also found that:

With regard to the subject set, its primary purpose is to power a footwarmer through the use of the included battery pack. Without the battery, it is our understanding that the footwarmer cannot operate. The battery charger is included in the footwarmer set to recharge the battery whenever it is low on power. Consequently, it is our position that the storage battery imparts the essential character of the subject set. See HQ 954061, dated May 13, 1993, wherein we held that a rechargeable lead acid battery pack set, which could be used for a variety of applications, was classifiable under subheading 8507.20.00, HTSUS. Therefore, the set containing the storage battery and the battery charger is classifiable under subheading 8507.30.00, HTSUS.

It is now CBP's position that this essential character analysis is incorrect because it is based on HQ 954061, a ruling that classified merchandise not similar to the merchandise under consideration in HQ 955105. The particular scenario in HQ 955105 concerned a battery charger set, whereas HQ 954061 concerned the classification of a rechargeable battery power source.

With regard to scenarios 2 and 3, HQ 955105 found the items to be a composite good, with its essential character being imparted by the storage battery based on the reasoning quoted above. Similarly, we now find this essential character analysis to be incorrect.

ISSUE:

What is the essential character of the storage battery and battery charger when imported as a set or a composite good?

LAW AND ANALYSIS:

Classification of merchandise under the HTSUS is 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:

8504	Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof:
8504.40	Static converters:
8504.40.95	Other:
	Rectifiers and rectifying apparatus:
8504.40.9550	Other
8507	Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof:

8507.80 Other storage batteries:

8507.80.8000 Other

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.

Heading 8504, HTSUS, provides for, *inter alia*, static converters. EN 85.04(II) explains that “[t]he apparatus of this group are used to convert electrical energy in order to adapt it for further use.” Accordingly, we find that the battery chargers are provided for in heading 8504, HTSUS.

Heading 8507, HTSUS, provides for electric storage batteries. EN 85.07 explains that “[e]lectric accumulators (storage batteries or secondary batteries) are characterized by the fact that the electrochemical action is reversible so that the accumulator may be recharged.” As a result, we find that rechargeable batteries are provided for in heading 8507, HTSUS.

Based on the foregoing we find that the battery chargers packaged together with batteries are, *prima facie*, classifiable under headings 8504 and 8507, HTSUS. Therefore they cannot be classified solely on the basis of GRI 1.

GRI 3 provides, in pertinent part, that:

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

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings refer to only part of the materials or substances contained in mixed or composite goods or to part only on the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to the goods, even if one of them gives a more complete or precise description of the good.
- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

Explanatory Note X to GRI 3(b) provides that:

For the purpose of this Rule, the term ‘goods put up in sets for retail sale’ shall be taken to mean goods which:

- (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings . . . ;
- (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without re-packing (e.g., in boxes or cases or on boards).

With regard to scenario 1, we find the subject storage battery and battery charger to be a set for classification purposes. They fully satisfy all three requirements of EN 3(b)(X), in that, the batteries and the chargers are classifiable in different headings, are “put up together” to provide a rechargeable power source, and are offered for sale directly to users without repacking. Consequently, the batteries and chargers may not be classified separately under their respective classifications.

With regard to scenarios 2 and 3, we consider them to be the same. It is a well-established classification principle that goods are classified in their imported condition. XTC Products, Inc. v. United States, 771 F. Supp. 401, 405 (1991). See also United States v. Citroen, 223 U.S. 407 (1911). Accordingly, from this point forward, we will refer to scenarios 2 and 3 as “scenario 2”.

With regard to scenario 2, we note that after the storage battery and battery charger are imported other components must be added to the footwarmer box. We find the addition of these other components to be repacking. Accordingly, we find that the subject storage battery and battery charger are not a set for classification purposes because they do not fulfill the requirements of EN 3(b)(X).

Explanatory Note (IX) to GRI 3(b) provides, in pertinent part:

For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, provided these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

Based on the foregoing, we find that the storage battery and the battery charger in scenario 2, as imported, constitute a composite good. Although the two items are “separable components”, they are adapted one to the other, are mutually complementary, and, as indicated by the merchandise itself, form a whole which would not normally be offered for sale in separate parts.

Explanatory Note VIII to GRI 3(b) explains, “[t]he factor which determines essential character will vary as between different kinds of goods. 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 the constituent material in relation to the use of the goods.” Court decisions on essential character for GRI 3(b) purposes have looked primarily to the role of the constituent material in relation to the use of the good. See Better Home Plastics Corp. v. U.S., 915 F. Supp. 1265 (CIT 1996), aff’d 119 F. 3d 969 (Fed. Cir. 1997) (“Better Home Plastics”); Mita Copystar America, Inc. v. U.S., 966 F. Supp. 1245 (CIT 1997), rehear’g denied, 994 F. Supp. 393 (1998); Vista Int’l Packing Co. v. U.S., 890 F. Supp. 1095 (CIT 1995). See also Pillowtex Corp. v. U.S., 893 F. Supp. 188 (CIT 1997), aff’d 171 F. 3d 1370 (CAFC 1999); Avenues in Leather, Inc. v. U.S., 2004 Ct. Int’l Trade LEXIS 39, aff’d 423 F.3d 1326 (Fed. Cir. 2005).

We note that, prior to initial use, the storage battery must be fully charged in order to be useful. Further, every time the battery need charging, the charger must be used. We find, therefore, that the battery charger is essential to the effectiveness of the storage battery. We also note that the storage battery has a limited shelf life. Once it can no longer hold a charge, it is

discarded, and a new battery must be purchased. In this sense, the battery become “disposable” while the charger remains functional.

CBP has previously held, in relation to similar merchandise, that the battery-charging component imparts the set’s essential character because the purpose of the set is to charge batteries. The main reason for purchasing the set is not to obtain batteries, but rather to obtain a device which decreases the need to periodically purchase new batteries. See **HQ 083672**, dated May 16, 1989, **NY E80178**, dated April 29, 1999. So too, in the instant case, we find that the purpose of the subject battery charger in scenarios 1 and 2 is to charge batteries, and that such sets and composite goods are provided for under subheading 8504.40.9550, HTSUS, as “other” rectifiers and rectifying apparatus.

HOLDING:

By application of GRI 3(b), we find that the subject battery charger set and the composite good made up of the storage battery and battery charger are provided for in heading 8504, specifically in subheading 8504.40.9550, HTSUS, which provides for: “Electrical transformers, static converters (for example, rectifiers) and inductors; . . . : Static converters: Other: Rectifiers and rectifying apparatus: Other.”

EFFECT ON OTHER RULINGS:

HQ 955105, dated December 10, 1993, is hereby revoked.

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

[ATTACHMENT D]

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

HQ 968227
CLA-2 RR:CTF:TCM 968227 HkP
CATEGORY: Classification
TARIFF NO.: 8504.40.9550

MR. BRENT REIDER
INTERNATIONAL TRADE GROUP, INC.
Postal Drawer 21877
Columbus, OH 43221-0877

RE: Modification of NY G87863; solar powered battery charger with rechargeable battery

DEAR MR. REIDER:

This is in reference to New York Ruling Letter (“NY”) G87863, issued to you on March 26, 2001, in which a solar powered battery charger with rechargeable battery was classified under the Harmonized Tariff of the United States (“HTSUS”). We have reconsidered NY G87863 and determined that

the tariff classification of the battery charger set is incorrect. This letter sets forth the correct classification.

FACTS:

NY G87863 described the merchandise as a solar powered battery charger with rechargeable battery. CBP classified the merchandise in subheading 8507.20.8030, HTSUS, which provides for other acid lead storage batteries.

If imported separately, the battery and the battery charger would be classified under headings 8507 and 8504, HTSUS, respectively.

ISSUE:

What is the essential character of the battery charger set?

LAW AND ANALYSIS:

Classification of merchandise under the HTSUS is 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:

8504	Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof:
8504.40	Static converters:
8504.40.95	Other:
	Rectifiers and rectifying apparatus:
8504.40.9550	Other
8507	Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof:
8507.80	Other storage batteries:
8507.8080	Other

Although not explicitly stated in NY G87863, we assume that the battery charger with rechargeable battery was considered to be a set for classification purposes. For purposes of this ruling, we assume the same.

GRI 3 provides, in pertinent part, that:

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

. . .

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

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. Explanatory Note VIII to GRI 3(b) explains, “[t]he factor which determines essential character will vary as between different kinds of goods. 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 the constituent material in relation to the use of the goods.” Court decisions on essential character for GRI 3(b) purposes have looked primarily to the role of the constituent material in relation to the use of the good. See *Better Home Plastics Corp. v. U.S.*, 915 F. Supp. 1265 (CIT 1996), aff’d 119 F. 3d 969 (Fed. Cir. 1997) (“*Better Home Plastics*”); *Mita Copystar America, Inc. v. U.S.*, 966 F. Supp. 1245 (CIT 1997), rehear’g denied, 994 F. Supp. 393 (1998); *Vista Int’l Packing Co. v. U.S.*, 890 F. Supp. 1095 (CIT 1995). See also *Pillowtex Corp. v. U.S.*, 893 F. Supp. 188 (CIT 1997), aff’d 171 F. 3d 1370 (CAFC 1999); *Avenues in Leather, Inc. v. U.S.*, 2004 Ct. Int’l Trade LEXIS 39, aff’d 423 F.3d 1326 (Fed. Cir. 2005).

We note that, prior to initial use, the rechargeable battery must be fully charged in order to be useful. Further, every time the battery need charging, the charger must be used. We find, therefore, that the battery charger is essential to the effectiveness of the rechargeable battery. We also note that the rechargeable battery has a limited shelf life. Once it can no longer hold a charge, it is discarded, and new a rechargeable battery must be purchased. In this sense, the battery becomes “disposable” while the charger remains functional.

CBP has previously held, in relation to similar merchandise, that the battery charging component imparts the set’s essential character because the purpose of the set is to charge batteries. The main reason for purchasing the set is not to obtain batteries, but rather to obtain a device which decreases the need to periodically purchase new batteries. See **HQ 083672**, dated May 16, 1989, **NY E80178**, dated April 29, 1999. So too, in the instant case, we find that the purpose of the subject battery charger set is to charge batteries, and that such sets are provided for under subheading 8504.40.9550, HTSUS, as “other” rectifiers and rectifying apparatus.

HOLDING:

By application of GRI 3(b), we find that the subject battery charger set is provided for in heading 8504, specifically subheading 8504.40.9550, HTSUS, which provides for: “Electrical transformers, static converters (for example, rectifiers) and inductors; . . . : Static converters: Other: Rectifiers and rectifying apparatus: Other.”

EFFECT ON OTHER RULINGS:

NY G87863, dated March 26, 2001, is hereby modified with respect to the classification of the solar powered battery charger with rechargeable battery. The classification of the other items in NY G87863 is unchanged.

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

**REVOCAION OF TWO RULING LETTERS AND
REVOCAION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF BEEF JERKY**

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 beef jerky.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that the Bureau of Customs and Border Protection (CBP) is revoking two ruling letters relating to the tariff classification of beef jerky 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 revocation of NY I84087 was published in the Customs Bulletin, Volume 40, Number 12, on March 15, 2006. CBP received nine comments opposing the proposed revocation during the notice and comment period that closed on April 14, 2006.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 27, 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 in-

formation 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), 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 I84087 was published in the Customs Bulletin, Volume 40, Number 12, on March 15, 2006. CBP received nine comments opposing the proposed revocation during the notice and comment period that closed on April 14, 2006.

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 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 I84087, CBP ruled that "Teriyaki Beef Jerky," item BRZTK100 and "Teriyaki Beef Jerky," item BRZTK101, were classified in subheading 1602.50.2040, HTSUSA, which provides for "Other prepared or preserved meat, meat offal or blood: Of bovine animals: Other: Not containing cereals or vegetables: Other: In airtight containers: Other, Other." In NY I84133, CBP ruled that "Old Fashioned Beef Jerky," item BRZOF120, was classified in subheading 1602.50.2040, HTSUSA, which provides for "Other prepared or preserved meat, meat offal or blood: Of bovine animals: Other: Not containing cereals or vegetables: Other: In airtight containers: Other, Other." Since the issuance of these rulings, CBP has reviewed the classification of these items and has determined that the cited rulings are in error, and that the beef jerky should be classified in subheading 1602.50.0900, HTSUS, which provides for "Other prepared or preserved meat, meat offal or blood: Of bovine animals: Other: Not containing cereals or vegetables: Cured or pickled."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY I84087 and NY I84133 and is revoking or modifying any other ruling not specifically identified, to reflect the proper classification of the beef jerky according to the analysis contained in Headquarters Ruling Letters

(HQ) 968047 and HQ 968048, set forth as Attachments A and B, respectively, 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: June 9, 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 968047
June 9, 2006
CLA-2 RR:CTF:TCM 968047 KSH
TARIFF NO.: 1602.50.0900

MR. CHARLES RILEY
JOHN A. STEER COMPANY
28 South 2nd Street
Philadelphia, PA 19106

RE: Revocation of New York Ruling Letter (NY) I84087, dated July 25, 2002;
Classification of beef jerky from Brazil.

DEAR MR. RILEY:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) I84087, issued on July 25, 2002, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of beef jerky from Brazil. The beef jerky was classified in subheading 1602.50.2040, HTSUS, which provides for "Other prepared or preserved meat, meat offal or blood: Of bovine animals: Other: Not containing cereals or vegetables: Other: In airtight containers: Other, Other." Since the issuance of NY I84087, CBP has reviewed the classification of this item and has determined that the cited ruling is in error.

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 I84087 was published in the Customs Bulletin, Volume 40, Number 12, on March 15, 2006. CBP received nine comments opposing the revocation of NY I84087 during the notice and comment period that closed on April 14, 2006. Only

eight of the nine commenters provided substantive comments. These comments will be addressed in the revised LAW AND ANALYSIS section, *infra*.

FACTS:

The beef jerky is described as:

1. "Teriyaki Beef Jerky," item BRZTK100, is sliced, cooked, and seasoned beef that is packaged in bulk for further processing. The ingredients are sliced beef, water, brown sugar, sugar, soy sauce powder, salt, hydrolyzed corn protein, vinegar, monosodium glutamate, ginger, torula yeast, onion powder, spices (ground celery seed and ground ginger), garlic powder, citric acid, spice extractive (oleoresin ginger), and a curing agent (containing sodium nitrite). The meat contains, by weight, 30 percent protein, 24 percent moisture, 5 percent fat, and 2.5 percent salt.

2. "Teriyaki Beef Jerky," item BRZTK101, is sliced, cooked, and seasoned beef that is packaged in bulk for further processing. The ingredients are sliced beef, water, brown sugar, sugar, salt, hydrolyzed soy protein, spice (powdered ginger), vinegar, monosodium glutamate, powdered onion, powdered garlic, citric acid, and a curing agent (containing sodium nitrite). The meat contains, by weight, 30 percent protein, 24 percent moisture, 5 percent fat, and 2.5 percent salt.

During the manufacturing process, fat is removed from fresh meat and the meat is sliced. After slicing, the meat is taken to a tumbling area where water and seasoning are added. The meat is tumbled for 20 minutes and placed in a cooler for a period of one day. Then meat is placed in an oven for cooking and smoking. The meat is atomized with natural wood smoke flavor for 15 minutes. The product is cooked for six hours until an internal temperature of 155° Fahrenheit is reached. It is then cooked at smokehouse temperature (180° Fahrenheit) until a moisture range of 22–24 percent is achieved. The meat is cooled at room temperature and packed in plastic totes. The totes are taken to the packaging room where the product is placed in plastic bags that are sealed and an oxygen scavenger is added. The products are imported in corrugated cartons (in bulk) for further processing.

ISSUE:

Whether the beef jerky is classified as other prepared or preserved meat of subheading 1602.50.2040, HTSUS or as cured or pickled beef of subheading 1602.50.0900, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). 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 GRI may then be applied.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI. See T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Heading 0210, HTSUS, provides for “Meat and edible offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal. The General ENs to Chapter 2, HTSUS, provide in pertinent part:

Meat and meat offal not falling in any heading of this Chapter are classified in **Chapter 16**, e.g.:

* * * *

(b) Meat and meat offal cooked in any way (boiled, steamed, grilled, fried or roasted), or otherwise prepared or preserved by any process not provided for in this Chapter, including those merely covered with batter or bread crumbs, truffled or seasoned (e.g., with pepper and salt), as well as liver pastes and pates. (**heading 16.02**).

In this instance, the merchandise at issue has been otherwise prepared or preserved by the addition of seasonings, thus the jerky cannot be classified in heading 0210, HTSUS as dried or smoked beef.

Heading 1602, HTSUS, provides for other prepared or preserved meat, meat offal or blood. The Explanatory Notes to heading 1602, HTSUS, provide, in part, the methods by which meat of this heading may be prepared or preserved. It reads in relevant part:

The heading covers :

(3) Meat and meat offal prepared or preserved by other processes not provided for in Chapter 2 or heading 05.04, including those merely covered with batter or bread crumbs, truffled, seasoned (e.g., with both pepper and salt) or finely homogenised (see the General Explanatory Note to this Chapter, Item (4)).

The instant beef jerky is prepared or preserved by the addition of salt, sugar or other sweeteners, a mixture of additional preservative ingredients including sodium nitrite, seasonings and smoking. As such, the beef jerky is other prepared or preserved as provided for in heading 1602, HTSUS.

Heading 1602, HTSUS, is divided into six subheadings. Subheading 1602.50, HTSUS, provides for prepared or preserved beef of bovine animals. Subheading 1602.50, HTSUS, is further subdivided to provide for cured or pickled beef or other prepared beef.

When the issue is based on competing subheadings, for purposes of determining the subheading, GRI 6 is applied. GRI 6 provides that “for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and mutatis mutandis, to [rules 1 through 5], on the understanding that only subheadings at the same level are comparable.”

Seven of the nine comments received argue that classification should be based on the dehydration process rather than whether the product has been cured or pickled as it is the dehydration process which is argued to be essential to the manufacture of beef jerky. The eighth commenter argues that the ingredients are more properly identified as a marinade rather than a cure. That commenter further argues that with respect to this product, placing the jerky in a cooler for one day is insufficient to cure, the amount of salt is insignificant and is only used to equalize the product and the sodium nitrite is only present to fix the color. Finally that commenter argues that the definition of curing was established in Mercantil Distributora, S.A. v. United

States 33 Cust. Ct. 158 (1954), *aff'd* 43 C.C.P.A. 111 (1956) and must be considered herein.

As stated above, the instant beef jerky cannot be classified as smoked or dried beef in heading 0210 as it has been otherwise prepared or preserved by the addition of seasoning. Thus, the question becomes whether the beef jerky is classified in subheading 1602.50.0900 as cured or pickled beef or in subheading 1602.50.2040 as other prepared or preserved meat in airtight containers.

We note that the term "cured or pickled" is not defined in the HTSUS nor is it described in the ENs. Where not defined in a legal note under the HTSUS or clearly described in the ENs, tariff terms are construed in accordance with their common and commercial meanings which are presumed to be the same. *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).

In *Mercantil Distributora, S.A. v. United States* 33 Cust. Ct. 158 (1954), *aff'd* 43 C.C.P.A. 111 (1956), the U.S. Customs Court, examined several definitions of curing as meaning to preserve for purposes of the TSUS provision for "Meats, prepared or preserved, not specially provided for (except beef packed in air-tight containers and pickled or cured beef or veal), 3¢ per lb., but not less than 10% ad val."

Although *Mercantil* is a TSUS case, it has HTSUS implications. The Omnibus Trade Act of 1988 provides that earlier tariff decisions must not be disregarded in applying the HTSUS. Rather, on a "case by case basis, prior decisions should be considered instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS." H. Rep. No. 100-576, 100th Cong., 2d Sess. 548,550 (1988).

The *Mercantil* court determined that the common meaning of the word "cured" as used in referring to meat was "preserved," and concluded that since the involved meat would not keep for more than a few days without refrigeration, it was not "preserved" and therefore not "cured."

In support of that conclusion the *Mercantil* court made reference to many dictionary definitions and judicial interpretations. Some of the dictionary definitions are as follows:

Cure * * * To prepare for keeping, by salting, drying, etc.; to preserve (meat, fish, fruit, tobacco, etc.). *A New English Dictionary on Historical Principles*, 1893.

Cure * * * To salt and dry (meat) for the purpose of saving or preserving it. *A Dictionary of American English on Historical Principles*, 1940.

Cure * * * To put through a preserving process, as by salting, smoking, etc., or by drying; as, to *cure* hams; the grass must be thoroughly *cured*.
* * *

To be preserved, as by drying. *Funk & Wagnalls New Standard Dictionary of the English Language*, 1942.

Cure * * * preserve (meat) by drying and salting. *Thorndike-Barnhart Comprehensive Desk Dictionary*, 1951

Cure * * * to prepare (meat, fish, etc.) for preservation by salting, drying, etc. *New Century Dictionary of the English Language*, 1952

Cure * * * to prepare for keeping; to preserve, as by drying, salting, etc.: as, to cure beef or fish; to cure hay. *Webster's New International Dictionary*, 1932

*Cure** * * To prepare for keeping or use; to preserve, as by drying, salting, etc.; * * * *Webster's New International Dictionary* 2nd Ed. 1934.

The Mercantil court also took note of the *Encyclopedia of Chemical Technology* (1952), which stated the following under the heading "Meat and Meat Products" [Volume 8, page 829]:

CURING OF MEATS

The original purpose of curing meat was to preserve the meat without refrigeration. The primary factor in preservation was the addition of salt. Throughout the succeeding centuries, various modifications and additions were made in the curing ingredients. Today the curing agents, in addition to salt, may include sodium nitrate and/or sodium nitrite (to render the color heat-stable), sugar, and spices. The products may be smoked and/or partially dried. With modern refrigeration there is no longer a need for salt in high concentration as a preserving agent; today salt is used in smaller amounts and chiefly for its flavor effects. The modern milder-cured products are made possible by rigid sanitation and thorough refrigeration during processing. They require refrigeration for preservation.

Curing is generally confined to pork and beef. Cured meats may consist of such cuts as hams, picnics, bellies (bacon), thigh muscles (dried beef), brisket (beef), or ground and comminuted meat. Many cured meats, like ham, bacon, and sausages, are smoked following curing. Cured comminuted meats may be processed into sausage or canned.

The above definitions clearly evidence that curing encompasses smoking, drying, salting and/or the addition of sodium nitrate and/or sodium nitrite (to render the color heat-stable), sugar, and spices. Furthermore, unlike the salted beef at issue in Mercantil Distributora, S.A. v. United States, *supra*, the beef jerky at issue will keep for a long time without refrigeration. We have not been provided with any evidence that the addition of sodium nitrite, salt and sugar is purely for taste and aesthetic appeal. The instant beef jerky has been cured through the addition of salt, sugar, sodium nitrite, refrigeration, smoking and drying. The aforementioned processes cumulatively reduce the moisture content of the beef jerky to a point at which it becomes shelf-stable. Accordingly, the beef jerky at issue is classified in subheading 1602.50.0900, HTSUS, as cured or pickled meat.

HOLDING:

The beef jerky is classified in heading 1602, HTSUS. It is specifically provided for in subheading 1602.50.0900, HTSUS, which provides for "Other prepared or preserved meat, meat offal or blood: Of bovine animals: Other: Not containing cereals or vegetables: Cured or pickled." The general column one rate of duty is 4.5% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY I84087, dated July 25, 2002, 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 968048
June 9, 2006
CLA-2 RR:CTF:TCM 968048 KSH
TARIFF NO.: 1602.50.0900

MR. CHARLES RILEY
JOHN A. STEER COMPANY
28 South 2nd Street
Philadelphia, PA 19106

RE: Revocation of New York Ruling Letter (NY) I84133, dated July 25, 2002;
Classification of beef jerky from Brazil.

DEAR MR. RILEY:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) I84133, issued to you on July 25, 2002, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of beef jerky from Brazil. The beef jerky was classified in subheading 1602.50.2040, HTSUS, which provides for "Other prepared or preserved meat, meat offal or blood: Of bovine animals: Other: Not containing cereals or vegetables: Other: In airtight containers: Other, Other." Since the issuance of NY I84133, CBP has reviewed the classification of this item and has determined that the cited ruling is in error.

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 I84087 was published in the Customs Bulletin, Volume 40, Number 12, on March 15, 2006. CBP received nine comments during the notice and comment period that closed on April 14, 2006. Only eight of the nine commenters provided substantive comments. These comments will be addressed in the revised LAW AND ANALYSIS section, *infra*.

FACTS:

The beef jerky is described as:

“Old Fashioned Beef Jerky,” item BRZOF120, is sliced, cooked, and seasoned beef that is packaged in bulk for further processing. The ingredients are sliced beef, brown sugar, water, salt, vinegar, black pepper, garlic powder, monosodium glutamate, citric acid, and a curing agent (containing sodium nitrite). The meat contains, by weight, 30 percent protein, 24 percent moisture, 5 percent fat, and 2.5 percent salt.

“Peppered Beef Jerky,” item BRZPP140, is sliced, cooked, and seasoned beef that is packaged in bulk for further processing. The ingredients are sliced beef, brown sugar, water, salt, black pepper, vinegar, garlic powder, monosodium glutamate, citric acid, and a curing agent (containing sodium nitrite). The meat contains, by weight, 30 percent protein, 24 percent moisture, 5 percent fat, and 2.5 percent salt.

“Mexican Brand Beef Jerky,” item BRZMX150, is sliced, cooked, and seasoned beef that is packaged in bulk for further processing. The ingredients are sliced beef, brown sugar, water, salt, red pepper, black pepper, garlic powder, monosodium glutamate, oregano, citric acid, and a curing agent (containing sodium nitrite). The meat contains, by weight, 30 percent protein, 24 percent moisture, 5 percent fat, and 2.5 percent salt.

During the manufacturing process, fat is removed from fresh meat and the meat is sliced. After slicing, the meat is taken to a tumbling area where water and seasoning are added. The meat is tumbled for 20 minutes and placed in a cooler for a period of one day (for curing). Then meat is placed in an oven for cooking and smoking. The meat is atomized with natural wood smoke flavor for 15 minutes. The product is cooked for six hours until an internal temperature of 155° Fahrenheit is reached. It is then cooked at smokehouse temperature (180° Fahrenheit) until a moisture range of 22–24 percent is achieved. The meat is cooled at room temperature and packed in plastic totes. The totes are taken to the packaging room where the product is placed in plastic bags that are sealed and an oxygen scavenger is added. The products are imported in corrugated cartons (in bulk) for further processing.

ISSUE:

Whether the beef jerky is classified as other prepared or preserved meat of subheading 1602.50.2040, HTSUS or as cured or pickled beef of subheading 1602.50.0900, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). 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 GRI may then be applied.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI. See T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Heading 0210, HTSUS, provides for “Meat and edible offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal. The General ENs to Chapter 2, HTSUS, provide in pertinent part:

Meat and meat offal not falling in any heading of this Chapter are classified in **Chapter 16**, e.g.:

* * * *

(b) Meat and meat offal cooked in any way (boiled, steamed, grilled, fried or roasted), or otherwise prepared or preserved by any process not provided for in this Chapter, including those merely covered with batter or bread crumbs, truffled or seasoned (e.g., with pepper and salt), as well as liver pastes and pates. (**heading 16.02**).

In this instance, the merchandise at issue has been otherwise prepared or preserved by the addition of seasonings, thus the jerky cannot be classified in heading 0210, HTSUS as dried or smoked beef.

Heading 1602, HTSUS, provides for other prepared or preserved meat, meat offal or blood. The Explanatory Notes to heading 1602, HTSUS, provide, in part, the methods by which meat of this heading may be prepared or preserved. It reads in relevant part:

The heading covers :

(3) Meat and meat offal prepared or preserved by other processes not provided for in Chapter 2 or heading 05.04, including those merely covered with batter or bread crumbs, truffled, seasoned (e.g., with both pepper and salt) or finely homogenised (see the General Explanatory Note to this Chapter, Item (4)).

The instant beef jerky is prepared or preserved by the addition of salt, sugar or other sweeteners, a mixture of additional preservative ingredients including sodium nitrite, seasonings and smoking. As such, the beef jerky is other prepared or preserved as provided for in heading 1602, HTSUS.

Heading 1602, HTSUS, is divided into six subheadings. Subheading 1602.50, HTSUS, provides for prepared or preserved beef of bovine animals. Subheading 1602.50, HTSUS, is further subdivided to provide for cured or pickled beef or other prepared beef.

When the issue is based on competing subheadings, for purposes of determining the subheading, GRI 6 is applied. GRI 6 provides that “for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and mutatis mutandis, to [rules 1 through 5], on the understanding that only subheadings at the same level are comparable.”

Seven of the nine comments received argue that classification should be based on the dehydration process rather than whether the product has been cured or pickled as it is the dehydration process which is argued to be essential to the manufacture of beef jerky. The eighth commenter argues that the ingredients are more properly identified as a marinade rather than a cure. That commenter further argues that with respect to this product, placing the jerky in a cooler for one day is insufficient to cure, the amount of salt is insignificant and is only used to equalize the product and the sodium nitrite is only present to fix the color. Finally that commenter argues that the definition of curing was established in Mercantil Distributora, S.A. v. United

States 33 Cust. Ct. 158 (1954), *aff'd* 43 C.C.P.A. 111 (1956) and must be considered herein.

As stated above, the instant beef jerky cannot be classified as smoked or dried beef in heading 0210 as it has been otherwise prepared or preserved by the addition of seasoning. Thus, the question becomes whether the beef jerky is classified in subheading 1602.50.0900 as cured or pickled beef or in subheading 1602.50.2040 as other prepared or preserved meat in airtight containers.

We note that the term “cured or pickled” is not defined in the HTSUS nor is it described in the ENs. Where not defined in a legal note under the HTSUS or clearly described in the ENs, tariff terms are construed in accordance with their common and commercial meanings which are presumed to be the same. *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).

In *Mercantil Distributora, S.A. v. United States* 33 Cust. Ct. 158 (1954), *aff'd* 43 C.C.P.A. 111 (1956), the U.S. Customs Court, examined several definitions of curing as meaning to preserve for purposes of the TSUS provision for “Meats, prepared or preserved, not specially provided for (except beef packed in air-tight containers and pickled or cured beef or veal), 3¢ per lb., but not less than 10% ad val.”

Although *Mercantil* is a TSUS case, it has HTSUS implications. The Omnibus Trade Act of 1988 provides that earlier tariff decisions must not be disregarded in applying the HTSUS. Rather, on a “case by case basis, prior decisions should be considered instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS.” H. Rep. No. 100–576, 100th Cong., 2d Sess. 548,550 (1988).

The *Mercantil* court determined that the common meaning of the word “cured” as used in referring to meat was “preserved,” and concluded that since the involved meat would not keep for more than a few days without refrigeration, it was not “preserved” and therefore not “cured.”

In support of that conclusion the *Mercantil* court made reference to many dictionary definitions and judicial interpretations. Some of the dictionary definitions are as follows:

Cure * * * To prepare for keeping, by salting, drying, etc.; to preserve (meat, fish, fruit, tobacco, etc.). *A New English Dictionary on Historical Principles*, 1893.

Cure * * * To salt and dry (meat) for the purpose of saving or preserving it. *A Dictionary of American English on Historical Principles*, 1940.

Cure * * * To put through a preserving process, as by salting, smoking, etc., or by drying; as, to *cure* hams; the grass must be thoroughly *cured*.
* * *

To be preserved, as by drying. *Funk & Wagnalls New Standard Dictionary of the English Language*, 1942.

Cure * * * preserve (meat) by drying and salting. *Thorndike-Barnhart Comprehensive Desk Dictionary*, 1951

Cure * * * to prepare (meat, fish, etc.) for preservation by salting, drying, etc. *New Century Dictionary of the English Language*, 1952

Cure * * * to prepare for keeping; to preserve, as by drying, salting, etc.: as, to *cure* beef or fish; to *cure* hay. *Webster's New International Dictionary*, 1932

*Cure** * * To prepare for keeping or use; to preserve, as by drying, salting, etc.; * * * *Webster's New International Dictionary* 2nd Ed. 1934.

The Mercantil court also took note of the *Encyclopedia of Chemical Technology* (1952), which stated the following under the heading "Meat and Meat Products" [Volume 8, page 829]:

CURING OF MEATS

The original purpose of curing meat was to preserve the meat without refrigeration. The primary factor in preservation was the addition of salt. Throughout the succeeding centuries, various modifications and additions were made in the curing ingredients. Today the curing agents, in addition to salt, may include sodium nitrate and/or sodium nitrite (to render the color heat-stable), sugar, and spices. The products may be smoked and/or partially dried. With modern refrigeration there is no longer a need for salt in high concentration as a preserving agent; today salt is used in smaller amounts and chiefly for its flavor effects. The modern milder-cured products are made possible by rigid sanitation and thorough refrigeration during processing. They require refrigeration for preservation.

Curing is generally confined to pork and beef. Cured meats may consist of such cuts as hams, picnics, bellies (bacon), thigh muscles (dried beef), brisket (beef), or ground and comminuted meat. Many cured meats, like ham, bacon, and sausages, are smoked following curing. Cured comminuted meats may be processed into sausage or canned.

The above definitions clearly evidence that curing encompasses smoking, drying, salting and/or the addition of sodium nitrate and/or sodium nitrite (to render the color heat-stable), sugar, and spices. Furthermore, unlike the salted beef at issue in Mercantil Distributora, S.A. v. United States, *supra*, the beef jerky at issue will keep for a long time without refrigeration. We have not been provided with any evidence that the addition of sodium nitrite, salt and sugar is purely for taste and aesthetic appeal. The instant beef jerky has been cured through the addition of salt, sugar, sodium nitrite, refrigeration, smoking and drying. The aforementioned processes cumulatively reduce the moisture content of the beef jerky to a point at which it becomes shelf-stable. Accordingly, the beef jerky at issue is classified in subheading 1602.50.0900, HTSUS, as cured or pickled meat.

HOLDING:

The beef jerky is classified in heading 1602, HTSUS. It is specifically provided for in subheading 1602.50.0900, HTSUS, which provides for "Other prepared or preserved meat, meat offal or blood: Of bovine animals: Other: Not containing cereals or vegetables: Cured or pickled." The general column one rate of duty is 4.5% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY I84133, dated July 25, 2002, 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.

**MODIFICATION OF ONE RULING LETTER, REVOCATION
OF FOUR RULING LETTERS, AND REVOCATION OF
TREATMENT RELATING TO THE CLASSIFICATION OF
CERTAIN BASE METAL MEDALLIONS AND MEDALS**

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

ACTION: Notice of modification of one ruling letter, revocation of four ruling letters, and revocation of treatment relating to the classification of certain base metal medallions and medals.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter and revoking four ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain base metal medallions and medals. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed actions was published in the Customs Bulletin, Volume 40, Number 18, on April 26, 2006. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 27, 2006.

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, a notice was published in the Customs Bulletin, Volume 40, Number 18, on April 26, 2006, proposing to modify one ruling letter and revoke four ruling letters relating to the tariff classification of certain base metal medallions and medals. No comments were received in response to the notice. As stated in the proposed notice, this revocation and modification 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 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 previously accorded by CBP to substantially identical transactions. Any person involved with substantially identical transactions should have advised CBP during the comment 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.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking HQ 951290, NY J86623, NY A81489, and NY E84976 and modifying NY 891591, to reflect the proper classification of the base metal medals and medallions under heading 8306, specifically subheading 8306.29.0000, HTSUS, as other ornaments of base metal pursuant to the analysis

set forth in proposed Headquarters Ruling Letters (HQ) 968022 (Attachment A), HQ 968146 (Attachment B), HQ 968147 (Attachment C), and HQ 968148 (Attachment D). Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice.

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

DATED: June 13, 2006

Cynthia Reese for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

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

HQ 968022

June 13, 2006

CLA-2 RR:CTF:TCM 968022 HkP

CATEGORY: Classification

TARIFF NO.: 8306.29.0000

THE UNICOVER CORPORATION
c/o STEIN SHOSTAK SHOSTAK & O'HARA
3580 Wilshire Blvd., Suite 1240
Los Angeles, CA 90010

RE: Classification of base metal medals; revocation of HQ 951290

DEAR SIRs:

This is in reference to Headquarters Ruling Letter (HQ) 951290, dated May 27, 1992, in which the tariff classification of base metal medals was determined under the Harmonized Tariff Schedule of the United States ("HTSUS"). HQ 951290 classified the medals in heading 7616, HTSUS, as "other articles of aluminum". We have reconsidered HQ 951290 and have determined that the tariff classification of the medals is not correct.

As an initial matter, we note that under San Francisco Newspaper Printing Co. v. United States, 9 CIT 517, 620 F. Supp. 738 (1985), the decision on the merchandise that was the subject of Protest 5201-00-100573 was final on both the protestant and the U.S. Customs Service (now, U.S. Customs and Border Protection ("CBP")). Therefore, while we may review the law and analysis of HQ 951290, any decision taken herein would not impact the entries subject to that ruling.

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 was published on April 26, 2006, in the Customs Bulletin, Volume 40, Number 18. No comments were received in response to this notice.

FACTS:

The medals are labeled as “First Man in Space Medals” from the Soviet Union and are described in the marketing literature as being minted from the metal of a Soviet spaceship actually flown in space. The metal has been identified as aluminum. The medals measure 40mm in diameter, the obverse featuring the profile of Yuri Gagarin (the world’s first man in space), the reverse his Vostok I spaceship orbiting the earth. The literature indicates that the medal may be part of a set also featuring a “3-Ruble First Man in Space Commemorative Coin”. Both the coin and the medal are individually encapsulated and shipped complete with a deluxe presentation box and a Certificate of Authenticity. We note that the medal is similar in appearance to the coin, in that, they are both round, have approximately the same diameter (the coin is 39 mm in diameter, the medal 40mm), and are both struck in Proof finish “with characteristic finely frosted details against a mirror-like background.” However, only the medal is considered in this ruling.

HQ 951290 classified the medal in subheading 7616.90.00, HTSUS, which provides for “Other articles of aluminum: Other.” HQ 951290 declined to classify the medal in heading 9705, HTSUS, as collector’s pieces of historical or numismatic interest, stating that:

Inasmuch the medals were produced in a large amount as a commercial undertaking and were imported in a large consignment, we would not regard them as collectors’ pieces nor forming a collection of numismatic interest.

ISSUE:

Whether the “First Man in Space Medals” are classified in heading 7118, HTSUS, which provides for coins; heading 7617, HTSUS, which provides for other articles of aluminum; or, in heading 8306, HTSUS, which provides for statuettes and other ornaments of base metal.

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:

7118	Coin:
7118.10.0000	Coin (other than gold coin), not being legal tender. . . .
7616	Other articles of aluminum:
	Other:
7616.99	Other:

7616.99.50	Other. . . .
7616.99.5090	Other. . . .
8306	Bells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; . . . :
	Statuettes and other ornaments, and parts thereof:
8306.29.0000	Other. . . .

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.

As an initial matter, we note that HQ 951290 declined to classify the medals in heading 9705, HTSUS, as collector's pieces of historical or numismatic interest, because:

Inasmuch the medals were produced in a large amount as a commercial undertaking and were imported in a large consignment, we would not regard them as collectors' pieces nor forming a collection of numismatic interest.

This reasoning was based on EN 97.05, which provides, in part, that:

Goods produced as a commercial undertaking to commemorate, celebrate, illustrate or depict an event or any other matter, whether or not production is limited in quantity or circulation, do not fall in this heading . . . unless the goods themselves have subsequently attained that interest by reason of their age or rarity.

We agree that the medals should not be classified in heading 9705, HTSUS.

Heading 7118, HTSUS, provides for "Coins". Explanatory Note 71.18 provides that:

This heading applies to coins of any metal . . . of officially prescribed weight and design, issued under government control for use as legal tender. Consignments of individual coins or of sets of coins which are legal tender in the country of issue are classified in this heading even if they are put up for general sale in presentation cases.

Unlike the 3-Ruble First Man in Space 30th Anniversary Commemorative Coin, the subject medals are not legal tender. Furthermore, EN 71.18(a) indicates that heading 7118, HTSUS, does not cover medals, even if struck in the same way as coins. The medals are therefore not classifiable in this heading.

Heading 7616, HTSUS, provides for "Other articles of aluminum". Explanatory Note 76.16 provides, in relevant part, that:

This heading covers all articles of aluminum **other than** those covered by the preceding headings of this Chapter, or by Note 1 to Section XV, or articles specified or included in Chapter 82 or 83, or more specifically covered elsewhere in the Nomenclature. (Original emphasis.)

Based on the foregoing, the medals are *prima facie* classifiable in heading 7616, HTSUS. However, EN 76.16 indicates that this proposed classification

is a “basket” provision, in that, articles may only be classified in this heading if not more specifically covered by any other HTSUS heading.

Heading 8306, HTSUS, provides for “statuettes and other ornaments, of base metal”. Legal Note 3 to Section XV, HTSUS, defines “base metals” to include aluminum. The term “ornament” is not defined in the HTSUS. 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). Merriam-Webster online dictionary defines “ornament” as “something that lends grace or beauty”.

Explanatory Note 83.06(B), HTSUS, clarifies that:

This group comprises a wide range of ornaments of base metal (whether or not incorporating subsidiary non-metallic parts) of a kind designed essentially for decoration, e.g., in homes, offices, assembly rooms, place of religious worship, gardens.

The group covers articles which have no utility value but are wholly ornamental, and articles whose only usefulness is to contain or support other decorative articles or to add to their decorative effect, for example:

- (1) Busts, statuettes and other decorative figures; ornaments . . . for mantelpieces, shelves, etc. (animals, symbolic or allegorical figures, etc.); sporting or art trophies (cups, etc.); wall ornaments incorporating fittings for hanging (plaques, trays, plates, medallions other than those for personal adornment); artificial flowers, rosettes and similar ornamental goods or cast or forged metal . . . knick-knacks for shelves or domestic display cabinets.

The Court of International Trade (CIT) has stated that the canon of construction *ejusdem generis*, which means literally, “of the same class or kind,” teaches that “where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” Nissho-Iwai American Corp. v. United States (Nissho), 10 CIT 154, 156 (1986). “As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Id.* at 157. The essential characteristics or purposes of the above listed exemplars are that they are of base metal and they are decorative. We note that the medals are targeted toward coin collectors, are struck in a proof (uncirculated) finish with “finely frosted details against a mirror-like background”, and despite their “coin-like” appearance, are not legal tender. Accordingly, we are of the opinion that the medals are designed essentially for decoration and are wholly ornamental with no utility value. We find the medals to be *ejusdem generis* with the exemplars of EN 83.06 and therefore *prima facie* classifiable in heading 8306, HTSUS.

Applying EN 76.16 to these facts, we find that the medals are described with more specificity in heading 8306, HTSUS, as ornaments of base metal, than in heading 7616, because the medals are designed essentially for decoration, are wholly ornamental and have no utility value.

HOLDING:

By application of GRI 1, we find that the subject medals are classified in heading 8306, HTSUS, and specifically provided for in subheading 8306.29.0000, HTSUS, which provides for “. . . Statuettes and other ornaments of base metal; . . . : Statuettes and other ornaments, and parts thereof: 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:

HQ 951290 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.

Cynthia Reese for MYLES B. HARMON,
Director,
Commercial & Trade Facilitation Division.

[ATTACHMENT B]

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

HQ 968146
June 13, 2006
CLA-2 RR:CTF:TCM 968146 HkP
CATEGORY: Classification
TARIFF NO.: 8306.29.0000

MS. NICOLE WRIGHT
WEE GATES, INC.
39 Madison Avenue
Toronto, Ontario M5R 2S2
Canada

RE: Pocket medallions; modification of NY 891591; revocation of NY E84976

DEAR MS. WRIGHT:

This is in reference to New York Ruling Letter (NY) 891591, dated October 22, 1993, and NY E84976, dated July 26, 1999, regarding the classification of pocket medallions under the Harmonized Tariff Schedule of the United States (“HTSUS”). We have reconsidered NY 891591 and NY E84976 and have determined that the tariff classification of the pocket medallions is not correct. The classification of the other items in NY 891591 remains unchanged.

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 was published on April 26, 2006, in the *Customs Bulletin*, Volume 40, Number 18. No comments were received in response to this notice.

FACTS:

In NY 891591, the medallions were described as follows:

They will be made of solid brass, solid copper with a bronze finish . . . respectively. Each medallion, approximately 1 3/4 inches in diameter, will have "Inukshuk" stamped in the middle and comes engraved with a message. It will be packaged in a box made of cardboard. In the box is a solid oak base with a felt sticky dot and a piece of cotton batting which will help hold the medallion in place. The medallions will be used as gift items or awards.

In NY E84976, the medallion was described as a "pewter medallion with the logo 'Inukshuk' on the front. Its purpose is to be given as a gift and engraved on the back. It comes packaged in a box with a wooden base."

NY 891591 classified the solid brass and solid copper medallions in sub-heading 7419.99.5050, HTSUS, which provides for: "Other articles of copper: Other: Other." NY E84976 classified the pewter medallion in subheading 8007.00.5000, HTSUS, which provides for: "Other articles of tin: Other."

ISSUE:

Whether the solid brass and solid copper medallions are classified in heading 7419, HTSUS, which provides for "other articles of copper", or in heading 8306, HTSUS, which provides for "statuettes and other ornaments, of base metal."

Whether the pewter medallion is classified in heading 8007, HTSUS, which provides for "Other articles of tin" or in heading 8306, HTSUS, which provides for "statuettes and other ornaments, of base metal."

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 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.

The HTSUS provisions under consideration are as follows:

7419	Other articles of copper:
	Other:
	Other:
	Other:
7419.99.50	Other.
7419.99.5050	Other.

8007	Other articles of tin:
8007.00.5000	Other.
8306	Bells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; . . . :
	Statuettes and other ornaments, and parts thereof:
8306.29.0000	Other.

As stated above, NY 891591 classified the solid brass and solid copper medallions in subheading 7419.99.5050, HTSUS, which provides for: "Other articles of copper: Other: Other." Heading 7419, HTSUS, is found in Section XV of the HTSUS. Legal Note 5 to Section XV provides that "an alloy of base metal is to be classified as an alloy of the metal which predominates by weight over each of the other metals." General Explanatory Note (1) to Chapter 74 explains that under the provisions of Note 5 to Section XV, brass may be classified with copper. Therefore the medallions are, *prima facie*, classifiable in this heading.

However, EN 74.19, HTSUS, provides that:

[T]his heading covers all articles of copper **other than** those covered by preceding headings of this Chapter or by Note 1 to Section XV, or articles specified or included in **Chapter 82** or **83**, or more specifically covered elsewhere in the Nomenclature. (Original emphasis.)

NY E84976 classified the pewter medallion in subheading 8007.00.5000, HTSUS, which provides for: "Other articles of tin: Other." Heading 8007, HTSUS, is also found in Section XV of the HTSUS. The General ENs to Chapter 80 provide that under the provisions of Note 5 to Section XV, pewter may be classified with tin. Therefore the medallion is, *prima facie*, classifiable in heading 8007, HTSUS.

However, EN 80.07, HTSUS, provides, in relevant part, that:

[T]his heading cover all articles of tin **other than** those covered by preceding headings of this Chapter or by Note 1 to Section XV, or articles specified or included in **Chapter 82** or **83**, or more specifically covered elsewhere in the Nomenclature. (Original emphasis.)

Heading 8306, HTSUS, provides for "statuettes and other ornaments, of base metal". Legal Note 3 to Section XV, HTSUS, defines the term "base metals" to include copper and tin. The term "ornament" is not defined in the HTSUS. 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). Merriam-Webster Online dictionary defines "ornament" as "something that lends grace or beauty".

Explanatory Note 83.06(B), HTSUS, clarifies that:

This group comprises a wide range of ornaments of base metal (whether or not incorporating subsidiary non-metallic parts) of a kind designed essentially for decoration, e.g., in homes, offices, assembly rooms, place of religious worship, gardens.

The group covers articles which have no utility value but are wholly ornamental, and articles whose only usefulness is to contain or support other decorative articles or to add to their decorative effect, for example:

- (1) Busts, statuettes and other decorative figures; ornaments . . . for mantelpieces, shelves, etc. (animals, symbolic or allegorical figures, etc.); sporting or art trophies (cups, etc.); wall ornaments incorporating fittings for hanging (plaques, trays, plates, medallions other than those for personal adornment); artificial flowers, rosettes and similar ornamental goods or cast or forged metal . . . knick-knacks for shelves or domestic display cabinets.

The Court of International Trade (CIT) has stated that the canon of construction *ejusdem generis*, which means literally, “of the same class or kind”, teaches that “where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” Nissho-Iwai American Corp. v. United States (Nissho), 10 CIT 154, 156 (1986). “As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Id.* at 157. The essential characteristics of the above listed exemplars are that they are of base metal and they are decorative. We find the subject medallions to be *ejusdem generis* with the exemplars of EN 83.06, HTSUS, and therefore *prima facie* classifiable in heading 8306, HTSUS.

We find that all the subject medallions are described with greater specificity in heading 8306, HTSUS, as ornaments of base metal, than in heading 7419 and 8007, because the medals are designed essentially for decoration, are wholly ornamental and have no utility value. Accordingly, based on the guidance of EN 74.19 and EN 80.07, we find that the solid brass and solid copper medallions as well as the pewter medallion are precluded from classification in headings 7419 and 8007, HTSUS, respectively.

HOLDING:

By application of GRI 1, we find that the brass, copper, and pewter medallions are classified in heading 8306, HTSUS, and are specifically provided for in subheading 8306.29.0000, HTSUS, which provides for “. . . Statuettes and other ornaments of base metal . . . : Statuettes and other ornaments, and parts thereof: 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 E84976 is revoked.

NY 891591 is modified with respect to the classification of the solid brass and solid copper medallions. The tariff classifications of the other items in NY 891591 are unchanged.

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

Cynthia Reese for MYLES B. HARMON,
Director,
Commercial & Trade Facilitation Division.

[ATTACHMENT C]

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

HQ 968147

June 13, 2006

CLA-2 RR:CTF:TCM 968147 HkP**CATEGORY:** Classification**TARIFF NO.:** 8306.29.0000

MS. DOROTHY TROMBLEY
F.W. MEYERS & CO., INC.
193 West Service Road
P.O. Box 188
Champlain, NY 12919

RE: Sports medallions from Italy and Taiwan; revocation of NY A81489

DEAR MS. TROMBLEY:

This is in reference to New York Ruling Letter (NY) A81489, dated March 25, 1996, regarding the classification of commemorative medallions under the Harmonized Tariff Schedule of the United States ("HTSUS"). We have reconsidered NY A81489 and have determined that the tariff classification of the medallions is not correct.

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 was published on April 26, 2006, in the Customs Bulletin, Volume 40, Number 18. No comments were received in response to this notice.

FACTS:

In NY A81489, the medallions were described as follows:

- a) 2 brass medallions – one depicting 2 tennis rackets and a net[,] [t]he other depicting a football and a helmet. Both medallions are made in Italy.
- b) 2 zinc medallions – one depicting a pair of ice skaters[,] [t]he other depicting a scuba diver. One medallion is made in Italy and the other is made in Taiwan.

NY A81489 classified the brass medallions in subheading 7419.99.5050, HTSUS, which provides for "Other articles of copper: Other: Other." The zinc medallions were classified in subheading 7907.90.6000, HTSUS, which provides for "Other articles of zinc: Other."

ISSUE:

Whether the brass medallions are classified in heading 7419, HTSUS, which provides for "other articles of copper", or in heading 8306, HTSUS, which provides for "statuettes and other ornaments, of base metal."

Whether the zinc medallions are classified in heading 7907, HTSUS, which provides for "other articles of zinc", or in heading 8306, HTSUS, which provides for "statuettes and other ornaments, of base metal."

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 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.

The HTSUS provisions under consideration are as follows:

7419	Other articles of copper:
	Other:
	Other:
	Other:
7419.99.50	Other
7419.99.5050	Other
7907.00	Other articles of zinc:
7907.00.6000	Other
8306	Bells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; . . . :
	Statuettes and other ornaments, and parts thereof:
8306.29.0000	Other

As stated above, NY A81489 classified the brass medallions in subheading 7419.99.5050, HTSUS, which provides for "Other articles of copper: Other: Other." Heading 7419 is found in Section XV of the HTSUS. Legal Note 5 to Section XV provides that "an alloy of base metal is to be classified as an alloy of the metal which predominates by weight over each of the other metals." General Explanatory Note (1) to Chapter 74 explains that under the provisions of Note 5 to Section XV, brass may be classified with copper. Therefore the medallions are, *prima facie*, classifiable in this heading.

However, EN 74.19, HTSUS, provides that:

[T]his heading covers all articles of copper other than those covered by preceding headings of this Chapter or by Note 1 to Section XV, or articles specified or included in Chapter 82 or 83, or more specifically covered elsewhere in the Nomenclature. (Original emphasis.)

The zinc medallions were classified in subheading 7907.90.6000, HTSUS, which provides for "Other articles of zinc: Other." EN 79.07 provides that:

[T]his heading covers all articles of zinc **other than** those covered by preceding headings of this Chapter or by Note 1 to Section XV, or ar-

ticles specified or included in **Chapter 82** or **83**, or more specifically covered elsewhere in the Nomenclature. (Original emphasis.)

Heading 8306, HTSUS, provides for “statuettes and other ornaments, of base metal”. Legal Note 3 to Section XV, HTSUS, defines the expression “base metals” to include copper and zinc. The term “ornament” is not defined in the HTSUS. 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). Merriam-Webster Online dictionary defines “ornament” as “something that lends grace or beauty”.

Explanatory Note 83.06(B), HTSUS, clarifies that:

This group comprises a wide range of ornaments of base metal (whether or not incorporating subsidiary non-metallic parts) of a kind designed essentially for decoration, e.g., in homes, offices, assembly rooms, place of religious worship, gardens.

The group covers articles which have no utility value but are wholly ornamental, and articles whose only usefulness is to contain or support other decorative articles or to add to their decorative effect, for example:

- (1) Busts, statuettes and other decorative figures; ornaments . . . for mantelpieces, shelves, etc. (animals, symbolic or allegorical figures, etc.); sporting or art trophies (cups, etc.); wall ornaments incorporating fittings for hanging (plaques, trays, plates, medallions other than those for personal adornment); artificial flowers, rosettes and similar ornamental goods or cast or forged metal . . . knick-knacks for shelves or domestic display cabinets.

The Court of International Trade (CIT) has stated that the canon of construction *ejusdem generis*, which means literally, “of the same class or kind,” teaches that “where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” Nissho-Iwai American Corp. v. United States (Nissho), 10 CIT 154, 156 (1986). “As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Id.* at 157. The essential characteristics or purposes of the above listed exemplars are that they are of base metal and they are decorative. We find the subject medallions to be *ejusdem generis* with the exemplars of EN 83.06, HTSUS, and therefore *prima facie* classifiable in heading 8306, HTSUS.

We find that all the subject medallions are described with greater specificity in heading 8306, HTSUS, as ornaments of base metal, than in headings 7419 and 7907, because the medals are designed essentially for decoration, are wholly ornamental and have no utility value. Accordingly, by application of EN 74.19 and EN 79.07, we find that the brass medallions and the zinc medallions are precluded from classification in heading 7419 and 7907, HTSUS, respectively.

HOLDING:

By application of GRI 1, we find that the brass medallions and the zinc medallions are classified in heading 8306, HTSUS, and are specifically provided for in subheading 8306.29.0000, HTSUS, which provides for: “. . . Statuettes and other ornaments of base metal . . . : Statuettes and other ornaments, and parts thereof: 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 A81489 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.

Cynthia Reese for MYLES B. HARMON,
Director,
Commercial & Trade Facilitation Division.

[ATTACHMENT D]

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

HQ 968148

June 13, 2006

CLA-2 RR:CTF:TCM 968148 HkP

CATEGORY: Classification

TARIFF NO.: 8306.29.0000

MS. FRANCENE C. HINDS
JAV INTERNATIONAL, INC.
500 Ocean Avenue
East Rockaway, NY 11518-1235

RE: Brass medallion from China; revocation of NY J86623

DEAR MS. HINDS:

This is in reference to New York Ruling Letter (NY) J86623, dated July 8, 2003, regarding the classification of a commemorative medallion under the Harmonized Tariff Schedule of the United States (“HTSUS”). We have re-considered NY J86623 and have determined that the tariff classification of the medallion is not correct.

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 was published on April 26, 2006, in the *Customs Bulletin*, Volume 40, Number 18. No comments were received in response to this notice.

FACTS:

In NY J86623, the medallion was described as follows:

The medallion is made of brass and measures approximately 2 inches in diameter. The front of the medallion displays a raised eagle head and words, 'Forever Heroes, Flight 93, Honor and Hope'. The back lists all of the names of the deceased passengers and airline employees.

NY J86623 classified the medallion in subheading 7419.99.5050, HTSUS, which provides for: "Other articles of copper: Other: Other: Other: Other: Other."

ISSUE:

Whether the medallion is classified in heading 7419, HTSUS, which provides for "other articles of copper", or in heading 8306, HTSUS, which provides for "statuettes and other ornaments, of base metal."

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 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.

The HTSUS provisions under consideration are as follows:

7419	Other articles of copper: Other: Other: Other: Other Other
8306	Bells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; . . . : Statuettes and other ornaments, and parts thereof:
8306.29.0000	Other

As stated above, NY J86623 classified the medallion in subheading 7419.99.5050, HTSUS, which provides for: "Other articles of copper: Other: Other: Other: Other: Other." Heading 7419 is found in Section XV of the HTSUS. Legal Note 5 to Section XV, HTSUS, provides that "an alloy of base metal is to be classified as an alloy of the metal which predominates by weight over each of the other metals." General Explanatory Note (1) to

Chapter 74 explains that under the provisions of Note 5 to Section XV, brass may be classified with copper. Therefore the medallions are, *prima facie*, classifiable in this heading.

However, EN 74.19, HTSUS, provides that:

[T]his heading covers all articles of copper **other than** those covered by preceding headings of this Chapter or by Note 1 to Section XV, or articles specified or included in **Chapter 82** or **83**, or more specifically covered elsewhere in the Nomenclature. (Original emphasis.)

Heading 8306, HTSUS, provides for “statuettes and other ornaments, of base metal”. Legal Note 3 to Section XV, HTSUS, defines the expression “base metals” to include copper. The term “ornament” is not defined in the HTSUS. 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). Merriam-Webster Online dictionary defines “ornament” as “something that lends grace or beauty”.

Explanatory Note 83.06(B), HTSUS, clarifies that:

This group comprises a wide range of ornaments of base metal (whether or not incorporating subsidiary non-metallic parts) of a kind designed essentially for decoration, e.g., in homes, offices, assembly rooms, place of religious worship, gardens.

The group covers articles which have no utility value but are wholly ornamental, and articles whose only usefulness is to contain or support other decorative articles or to add to their decorative effect, for example:

- (1) Busts, statuettes and other decorative figures; ornaments . . . for mantelpieces, shelves, etc. (animals, symbolic or allegorical figures, etc.); sporting or art trophies (cups, etc.); wall ornaments incorporating fittings for hanging (plaques, trays, plates, medallions other than those for personal adornment); artificial flowers, rosettes and similar ornamental goods or cast or forged metal . . . knick-knacks for shelves or domestic display cabinets.

The Court of International Trade (CIT) has stated that the canon of construction *ejusdem generis*, which means literally, “of the same class or kind,” teaches that “where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” Nissho-Iwai American Corp. v. United States (Nissho), 10 CIT 154, 156 (1986). “As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Id.* at 157. The essential characteristics or purposes of the above listed exemplars are that they are of base metal and they are decorative. We find the subject medallion to be *ejusdem generis* with the exemplars of EN 83.06, HTSUS, and therefore *prima facie* classifiable in heading 8306, HTSUS.

We find that the subject medallion is described with greater specificity in heading 8306, HTSUS, as an ornament of base metal, than in heading 7419, HTSUS, because the medal is designed essentially for decoration, is wholly

ornamental and has no utility value. Accordingly, by application of EN 74.19 we find that the medallion is precluded from classification in heading 7419, HTSUS.

HOLDING:

By application of GRI 1, we find that the subject medallion is classified in heading 8306, HTSUS, and is specifically provided for in subheading 8306.29.0000, HTSUS, which provides for “. . . Statuettes and other ornaments of base metal . . . : Statuettes and other ornaments, and parts thereof: 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 J86623 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.

Cynthia Reese for MYLES B. HARMON,
Director,
Commercial & Trade Facilitation Division.