

# Bureau of Customs and Border Protection

## *General Notices*

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

*Washington, DC, July 5, 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.*

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### 19 CFR PART 177

#### **WITHDRAWAL OF PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO THE COUNTRY OF ORIGIN MARKING REQUIREMENTS FOR IMPORTED SAFETY EYEGLASS FRAMES COMBINED WITH PRESCRIPTION LENSES**

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

**ACTION:** Notice of withdrawal of proposed revocation of ruling letters and treatment relating to the country of origin marking requirements for imported safety eyeglass frames combined with prescription lenses.

**SUMMARY:** Pursuant to section 625(c)(1), 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 Customs and Border Protection (CBP) is withdrawing its proposal to revoke ruling letters pertaining to the

country of origin marking requirements for imported safety eyeglass frames combined with prescription lenses, and revoke any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed revocation of the ruling letters was published on April 28, 2004, in Volume 38, Number 18, of the CUSTOMS BULLETIN. CBP received five comments in response to this notice.

**EFFECTIVE DATE:** July 19, 2006.

**FOR FURTHER INFORMATION CONTACT:** Edward Caldwell, Valuation and Special Programs Branch, (202) 572-8872.

**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 merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by Title VI, a notice proposing to revoke four ruling letters, each pertaining to the country of origin marking requirements for imported safety eyeglass frames combined with prescription lenses, was published in the April 28, 2004, CUSTOMS BULLETIN, Volume 38, Number 18. The notice specifically referred to Headquarters Ruling Letter ("HQ") 557996, dated October 8, 1997; HQ 734733, dated November 25, 1992; HQ 734258 dated January 7, 1992; and HQ 729649, dated October 27, 1986. Five comments were received in response to the notice.

One comment received pertained to safety eyeglass frames with non-prescription lenses and was not subject to the proposed revocation. Another comment received fully supported the proposed notice.

Two other comments received did not object to the proposed notice but requested that the effective date of the revocation be delayed to allow adequate time for importers to comply with the new requirements. The final comment received alleged that the proposed country of origin marking treatment was not consistent with the NAFTA Marking Rules of 19 C.F.R. §102.20 or the Occupational Safety and Health Administration (OSHA) regulations governing safety eyewear.

After reviewing the comments submitted in connection with the proposed revocation, CBP has decided to take no further action at this time to revoke the four ruling letters set forth above. Accordingly, CBP is withdrawing the proposed revocation, and will consider addressing this issue anew in the future.

This notice advises interested parties that CBP is withdrawing its proposed revocation of the ruling letters set forth above. HQ 557996, HQ 734733, HQ 734258, and HQ 729649 will remain in full force and effect.

**DATED:** July 3, 2006

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



**PROPOSED REVOCATION OF RULING LETTER AND  
TREATMENT RELATING TO TARIFF CLASSIFICATION OF  
PALM FATTY ACID DISTILLATE**

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

**ACTION:** Notice of proposed revocation of ruling letter and treatment relating to tariff classification of palm fatty acid distillate.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP intends to revoke a ruling relating to the classification of palm fatty acid distillate (PFAD) under the Harmonized Tariff Schedule of the United States (HTSUS), and to revoke any treatment CBP has previously accorded to substantially identical transactions. PFAD is produced by subjecting crude palm oil to heat and steam at reduced pressures until it solidifies at room temperature into an amber-color. Once solidified, Fatty free acids compose 85-90 % of PFAD's total substance of weight.

**DATE:** Comments must be received on or before August 18, 2006.

**ADDRESS:** Written comments are to be addressed to the U.S. Customs and Border Protection, Office of Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

**FOR FURTHER INFORMATION CONTACT:** Christopher MacFarlane, Tariff Classification and Marking Branch, (202) 572-8791.

**SUPPLEMENTARY INFORMATION:**

**Background**

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke a ruling relating to the tariff classification of palm fatty acid distillate. Although in this notice CBP is specifically referring to one ruling, HQ 962807, this notice covers any rulings in addition to the one listed. At this time, no further rulings have been identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the mer-

merchandise subject to this notice should advise CBP during this notice period.

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

In HQ 962807, dated April 29, 2002, palm fatty acid distillate was classified in subheading 3824.90.40.90, HTSUS, which provides for: "prepared binders for foundry molds or cores; chemical products and preparations of chemical industries, not elsewhere specified or included: other: other: fatty substances of animal or vegetable origin and mixtures thereof, other." HQ 962807 is set forth as "Attachment A" to this document.

It is now CBP's position that this merchandise is classified in subheading 3823.19.2000, HTSUS, which provides for: "industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohols: industrial monocarboxylic fatty acids; acid oils from refining: other: derived from coconut, palm-kernel or palm oil." Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke HQ 962807 and any other rulings not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis in HQ 967992, which is set forth as "Attachment B" to this document.

Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

**DATED:** June 30, 2006

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

Attachments

## [ATTACHMENT A]

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

HQ 962807  
April 29, 2002  
CLA-2 RR:CR:GC 962807ptl  
CATEGORY: Classification  
TARIFF NO.: 3824.90.4090

PORT DIRECTOR  
U. S. CUSTOMS SERVICE  
423 Canal Street  
New Orleans, LA 70130

RE: Protest 2002-98-100306; Palm Fatty Acid Distillate.

DEAR PORT DIRECTOR:

The following is our decision on Protest 2002-98-100306, filed by counsel on behalf of Church & Dwight, Inc. against your classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a product described as palm fatty acid distillate.

## FACTS:

According to information supplied by protestant, the product at issue, palm fatty acid distillate, referred to as "PFAD" is "produced in Malaysia by subjecting crude palm oil to heat and steam at reduced pressure. The steam carries off the PFAD, which later condenses to a liquid and, finally, becomes an amber-colored solid at room temperature."

The composition of the PFAD is described by protestant as follows: "More specifically, PFAD contains a group of free fatty acids that make up approximately 85-90 percent of the total substance by weight. These free fatty acids include palmitic acid (typically 45-50 percent by weight of the total free fatty acids), oleic acid (35-36 percent by weight), linoleic acid (8-9 percent by weight), and stearic acid (5-6 percent by weight). The 10-15 percent of PFAD that does not consist of a group of free fatty acids includes triglycerides (7-8 percent by weight) that are 'entrained,' i.e., carried off along with the free fatty acids by the steam in the distillation process. The remainder of the product (3-7 percent by weight) consists of waxes, sterols, tocopherols, water, and plant pigments."

The PFAD was entered on May 5, 1997, under subheading 1511.90.0000, HTSUS, which provides for palm oil and its fractions, whether or not refined, but not chemically modified. The entry was liquidated on March 13, 1998, under subheading 3824.90.4090, HTSUS, which provides for fatty substances of animal or vegetable origin and mixtures thereof . . . other. A timely protest was filed on June 9, 1998, arguing that the product should be classified as entered.

In preparing this decision, in addition to the original protest, we have considered supplemental materials filed by protestant on September 20, 2000 and December 17, 2001, as well as arguments and statements made during a conference at Customs Headquarters on October 19, 2001.

## ISSUE:

What is the classification of "Palm Fatty Acid Distillate"?

## LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

1511 Palm oil and its fractions, whether or not refined, but not chemically modified:

\* \* \*

1511.90.0000 Other

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

\* \* \*

3824.90 Other:

3824.90.40 Fatty substances of animal or vegetable origin and mixtures thereof

\* \* \*

\* \* \*

3824.90.4090 Other

Protestant argues that the goods, as entered, consist of a mixture of fatty acids which are fractions of palm oil. Protestant claims that the original substance has not been “chemically modified” because these fatty acids are the result of steam distillation, which protestant calls a “physical refining” process, rather than “alkali refining” process in which there is a chemical reaction when the palm oil is exposed to caustic soda and mineral acids.

Protestant claims that the goods do not fall within the scope of Chapter 38, HTSUS. In support of classification in Chapter 15, HTSUS, protestant asserts that the product should be considered to be a fraction of palm oil.

Protestant contends that the product is classified in subheading 1511.90.0000, HTSUS, which provides for palm oil and its fractions, whether or not refined, but not chemically modified.

To be classified in Chapter 15, the product must be described by the terms of the headings. The ENs to Chapter 15, on page 108, define the term animal or vegetable fats and oils as “esters of glycerol with fatty acids (such as palmitic, stearic and oleic acids).” . . . “Subject to the exclusions in Note 1 to this Chapter, vegetable or animal fats and oils and their fractions are classified in this Chapter whether used as foodstuffs or for technical or industrial purposes (e.g., the manufacture of soap, candles, lubricants, varnishes or paints).”

Fractionated oils are obtained from the whole oil by processes such as chilling, pressing and solvent fractionation. These processes separate the whole oil into two or more fractions. Each fraction is composed of the components of the original oil, but in selected proportions. As noted in the ENs, fractionation does not cause any changes in the chemical structure of the fats or oils.

HQ 088613, dated June 10, 1991, concerned the classification of four products: Palmy, a mixture of shea nut and palm oil stearins; Palkena, a fully refined palm kernel stearin; shea nut stearin, the hard fraction of shea nut oil; and palm oil stearin. The ruling describes the methods of producing these products as: “The refining process, in general, is said to consist of degumming and neutralization of the particular oil, then fractionalization into the hard part (stearin) and the soft part (olein); next bleaching and deodorization take place; finally, additives such as tocopherol, citric acid, lecithin are added in small amounts.” The products were classified in various headings (1511, 1513 and 1517) of Chapter 15 because they actually were fractions of the subject oils. They were described as the hard (stearin) and soft (olein) fractions of the oils which retain the chemical structure of triglycerides. The products of HQ 088613 can be distinguished from the PFAD which is produced by a distillation process resulting in a mixture of predominately free fatty acids, waxes, sterols, tocopherols, water and plant pigments, but does not retain the chemical structure of triglycerides.

The booklet, *Food Fats and Oils*, 6th ed., (The Institute of Shortening and Edible Oils, Inc., Washington, D.C. 1988) describes triglycerides on page 1, as follows: “A triglyceride is composed of glycerol and three fatty acids. All of the fatty acids in a triglyceride are identical, it is termed a ‘simple’ triglyceride. The more common forms, however, are ‘mixed’ triglycerides in which two or three kinds of fatty acid moieties are present in the molecule.” Fats and oils are described on page 3 of the same booklet as: “Fats and oils are predominately triesters of fatty acids and glycerol, commonly called ‘triglycerides.’ . . . Triglycerides normally represent over 95 percent of the weight of most food fats and oils. The minor components include mono- and diglycerides, free fatty acids, phosphatides, sterols, fatty alcohols, fat soluble vitamins and other substances.” (emphasis added) Protestant indicates the PFAD is 85 to 90 percent free fatty acids.

HQ 963214, dated May 25, 1999, concerned the classification of crude oil extracted from fermented fungal biomass by a hexane solvent. The ruling states: “The oil consists of triglycerides of several fatty acids. In a triglyceride, three fatty acids moieties are ester linked to one glycerol.” The product was classified in subheading 1515.90.40, HTSUS, which provides for other fixed vegetable fats and oils.

In HQ 961401, dated July 13, 1998, a dietary supplement, Neuromins, derived from algae, was classified as a vegetable oil of Chapter 15. The ruling stated: “Neuromins is the proprietary name for a dietary supplement made

from triglyceride oil derived from a species of algae. A triglyceride is an ester of glycerol in which all three hydroxyl groups are esterified with a fatty acid.”

Hawley’s Condensed Chemical Dictionary, 12th ed., 1993, on page 507, defines a fatty acid as “A carboxylic acid derived from or contained in an animal or vegetable fat or oil. All fatty acids are composed of a chain of alkyl groups containing from 4 to 22 carbon atoms (usually even numbered) and characterized by a terminal carboxyl group – COOH.”

Protestant’s product consists of free fatty acids which have been separated from their glycerol molecule. The resulting product is no longer a fat or oil, since it no longer has the chemical structure of a triglyceride. The ENs to Chapter 15, in pertinent part, state: “Headings 15.07 to 15.15 of this Chapter cover the single (i.e., not mixed with fats or oils of another nature), fixed vegetable fats and oils mentioned in the headings, together with their fractions, whether or not refined, but not chemically modified.” (emphasis added) Clearly, distilling, or breaking up a palm oil into glycerol and fatty acids, and then separating the fatty acids, has chemically modified the oil.

The ENs also indicate that included in the products classified in Chapter 15 are “fractions” of vegetable fats and oils. “Headings 15.04 and 15.06 to 15.15 also cover fractions of the fats and oils mentioned in those headings, provided they are not more specifically described elsewhere in the Nomenclature (e.g., spermaceti, heading 15.21). The main methods used for fractionation are as follows : (a) dry fractionation which includes pressing, decantation, winterisation and filtration; (b) solvent fractionation; and (c) fractionation with the assistance of a surface-active agent.”

Fractionated oils are obtained from the whole oil by processes such as chilling, pressing and solvent extraction. These processes separate the whole oil into two or more fractions. Each fraction is composed of the components in the original oil, but in selected proportions. As noted in the ENs: “Fractionation does not cause any changes in the chemical structure of the fats or oils.” Products which have undergone fractionation are essentially no more than concentrations of different glycerides that are themselves animal or vegetable fats or oils, as defined in the ENs.

The protestant’s product is not a fraction of an animal or vegetable oil for the same reason it is not an oil. Protestant has misunderstood “not chemically modified.” The term refers to chemical modification of the oil, not how that modification is caused. In the instant situation, protestant’s product is produced from palm oil, but it has been chemically modified and does not have the chemical structure of an oil triglyceride and is not eligible for classification in Chapter 15.

Protestant’s merchandise, palm fatty acid distillate, is properly classified under GRI 1 in subheading 3824.90.4090, HTSUS, which provides for fatty substances of animal or vegetable origin and mixtures thereof . . . other.

**HOLDING:**

Palm Fatty Acid Distillate is classified in subheading 3824.90.4090, HTSUS, which provides for: Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included: other: fatty substances of animal or vegetable origin and mixtures thereof: other.

The protest should be DENIED. In accordance with Section 3A(11)(b) of Customs Directive 099 3550 065, dated August 4, 1993, Subject: Revised Protest Directive, you are to mail this decision, together with the Customs Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry or entries in accordance with the decision must be accomplished prior to mailing the decision.

Sixty days from the date of the decision, the Office of Regulations and Rulings will make the decision available to Customs personnel, and to the public on the Customs Home Page on the World Wide Web at [www.customs.gov](http://www.customs.gov), by means of the Freedom of Information Act, and other methods of public distribution.

JOHN DURANT,  
*Director,*  
*Commercial Rulings Division.*

[ATTACHMENT B]

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

HQ 967992  
**CLA-2 RR:CTF:TCM 967992 CAM**  
**CATEGORY:** Classification  
**TARIFF NO.:** 3823.19.2000

LEWIS E. LEIBOWITZ  
WILLIAM D. NUSSBAUM  
HOGAN & HARTSON L.L.P.  
*Columbia Square*  
*555 13th St. N.W.*  
*Washington, D.C. 20004-1109*

**RE:** Proposed Revocation of HQ 962807; Palm Fatty Acid Distillate

DEAR MR. LEIBOWITZ and MR. NUSSBAUM:

In Headquarters Ruling Letter (HQ) 962807, dated April 29, 2002, palm fatty acid distillate (PFAD), a product produced by your client, Church & Dwight Co., was classified in subheading 3824.90.4090 under the Harmonized Trade Schedule of the United States (HTSUS), which provides for: "prepared binders for foundry molds or cores; chemical products and preparations of chemical industries, not elsewhere specified or included: other: other: fatty substances of animal or vegetable origin and mixtures thereof, other." Customs and Border Protection (CBP) has reviewed HQ 962807, and have found that ruling to be in error.

HQ 962807 is a decision on a specific protest. A protest is designed to handle entries of merchandise, which have entered the United States and been liquidated by CBP. A final determination of a protest, pursuant to Part 174, CBP Regulations (19 CFR 174), cannot be modified or revoked as it is applicable only to the merchandise, which was the subject of the entry protested. Furthermore, CBP lost jurisdiction over the protested entries in HQ

962807 when notice of denial of the protest was received by the protestant. See San Francisco Newspaper Printing Co.v. United States, 9 CIT 517, 620 F. Supp. 738 (1935).

**FACTS:**

HQ 962807 described PFAD as a product that is produced by subjecting crude palm oil to heat and steam at reduced pressures. During this process, steam carries off the PFAD until it condenses into a liquid. After condensation, PFAD solidifies at room temperature into an amber-color. Once solidified, fatty free acids compose 85–90 % of PFAD’s total substance of weight. These fatty free acids include palmitic acid (about 45–50 %), oleic acids (about 35–36 %), linoleic acid (about 8–9 %), and stearic acid (about 5–6 %). The remaining 10–15% of the weight of PFAD does not consist of fatty free acids, and that includes a combination of entrained triglycerides (about 7–8 %), waxes, sterols, tocopherols, water, and plant pigments.

At issue in HQ 962807, was whether PFAD was classified in subheading 1511.90.0000, HSTUS, as “palm oil and its fractions whether or not refined, but not chemically modified: other,” or subheading 3824.90.4090, HTSUS, as “prepared binders for foundry molds or cores; chemical products and preparations of chemical industries, not elsewhere specified or included: other: other: fatty substances of animal or vegetable origin and mixtures thereof, other.” In that protest, classification in heading 3823, HTSUS, as industrial monocarboxylic fatty acids was never considered. Additional information has come before CBP suggesting that the correct classification of PFAD is in heading 3823, HTSUS.

**ISSUE:**

What is the proper classification under the HTSUS of palm fatty acid distillate?

**LAW AND ANALYSIS:**

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings 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 require otherwise, then CBP may apply the remaining GRIs.

In interpreting the headings and subheadings, CBP looks to the Harmonized Commodity Description and Coding System Explanatory Notes (ENs), which constitute the official interpretation of the HTSUS. While not legally binding or dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and, generally, indicate the proper interpretation of headings. See T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

3823	Industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohols:
	Industrial monocarboxylic fatty acids; acid oils from refining:
	* * *
3823.19	Other:
3823.19.20	Derived from coconut, palm-kernel or palm oil

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

3824.90 Other:

Other :

\* \* \*

3824.90.40 Fatty substances of animal or vegetable origin and mixtures thereof

\* \* \*

3824.90.4090 Other

In HQ 962807, PFAD was classified in heading 3824, HTSUS, but additional information has come before CBP, which indicates that is not the correct classification. Heading 3824, HTSUS, is a basket provision where merchandise should only be classified in that heading, if it is not “elsewhere specified or included” in another heading. Before we can classify PFAD in the basket provision heading 3824, HTSUS, classification in heading 3823, HTSUS, as industrial monocarboxylic fatty acids must be considered.

Applying GRI 1, PFAD meets the terms of heading 3823, HTSUS, because it is an industrial monocarboxylic fatty acid. For instance, PFAD is produced through an industrial process that includes fractional distillation. Furthermore, PFAD’s chemical structure comports with that of a monocarboxylic fatty acid. A carboxylic acid is composed of a “broad array of organic acids” that end in a carboxyl group and, typically, a carboxylic acid includes “the large and important class of fatty acids.” Hawley’s Condensed Chemical Dictionary 223 (12th ed. 1993). A monocarboxylic is one carboxylic acid. Id. The chemical composition of the PFAD in question meets the definition of a monocarboxylic acid because it is an organic acid that includes fatty acids. A fatty acid is a “carboxylic acid derived from or contained in an animal or vegetable fat or oil.” Id. at 507. PFAD is composed of approximately 85 % fatty acids that are derived from palm oil. Therefore, PFAD is classifiable in heading 3823, HTSUS.

Moreover, the ENs to heading 3823, HTSUS, support classification of PFAD in that heading. The ENs indicate that heading 3823, HTSUS, includes “[d]istilled fatty acids which are obtained after hydrolytic splitting of various fats and oils (e.g., coconut oil, palm oil, tallow) followed by a purification process (distillation).” (emphasis in original). PFAD meets the description from the ENs. As stated, PFAD is a fatty acid that is produced through hydrolysis whereby steam and heat split palm oils and fats to create the final product. As such, the guidance provided by ENs’ indicates that PFAD meets the terms of heading 3823, HTSUS.

Though the ENs to heading 3823, HTSUS, preclude acids with a fatty acid purity of 90 % or more from falling with the ambit of heading 3823, HTSUS, that exclusion is not dispositive in this case. In HQ 964607, dated July 8, 2002, CBP classified saw palmetto berries with a total acid content of around 87 % in heading 3823, HTSUS. Similar to the saw palmetto berries, PFAD has an acid content between 85 and 90 %. Therefore, like in HQ

964607, the PFAD should not be precluded by the ENs to heading 3823, HTSUS.

Moreover, previous CBP rulings support classification of PFAD in heading 3823, HTSUS. In HQ 964531, dated March 14, 2002, CBP classified a coconut fatty acid produced through hydrolysis in heading 3823, HTSUS. Like the coconut oil in HQ 964531, PFAD is created from a similar hydrolysis process involving heat and steam on palm oil. CBP finds that because PFAD is specified elsewhere under heading 3823, HTSUS, that classification under heading 3824, HTSUS, is precluded by application of GRI 1.

**HOLDING:**

By applying GRI 1, Palm fatty acid distillate is classified under heading 3823, HTSUS, and, specifically, under subheading 3823.19.2000, HTSUS, which provides for: "industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohols; industrial monocarboxylic fatty acids; acid oils from refining; other: derived from coconut, palm-kernel or palm oil." The general, column one rate of duty is 2.3 % percent ad valorem.

**EFFECT ON OTHER RULINGS:**

HQ 962807, dated April 29, 2002, is revoked.

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

**PROPOSED REVOCATION OF TREATMENT AND  
MODIFICATION OR REVOCATION OF RULINGS  
RELATING TO TARIFF CLASSIFICATION OF SINGLE  
MODE OPTICAL FIBERS**

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

**ACTION:** Notice of proposed revocation of treatment and modification or revocation of rulings relating to tariff classification of single mode optical fibers.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke the treatment accorded to transactions of the importer identified in proposed HQ 968251, concerning the classification of single mode (SM) optical fibers under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). SM optical fibers are universally used in long-distance telephony and cable television applications. They consist of a glass core which carries most of the light, surrounded by a glass cladding, the whole covered by both a primary and secondary coating of acrylate or vinyl plastic. CBP also proposes to revoke any other

treatment it has previously accorded to substantially identical transactions of other importers. Similarly, CBP proposes to modify or revoke, as appropriate, any rulings on the subject merchandise that are found to exist. CBP invites comments on the correctness of the proposed action.

**DATE:** Comments must be received on or before August 18, 2006.

**ADDRESS:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

**FOR FURTHER INFORMATION CONTACT:** James A. Seal, Tariff Classification and Marking Branch (202) 572-8779.

**SUPPLEMENTARY INFORMATION:**

**Background**

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

Pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke the treatment relating to the tariff classification of single mode (SM) optical fibers under the HTSUSA which was accorded to transactions of the importer

identified in proposed HQ 968251. In addition, 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 other treatment it previously accorded to substantially identical transactions of other importers. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

Similarly, under section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), this proposal covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings on this merchandise. None have been identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Under the above-referenced treatment, the single mode (SM) optical fibers were classified as optical fiber cables, made up of individually sheathed fibers, under subheading 8544.70.0000, HTSUSA. It is now CBP's position that these SM optical fibers are classifiable in subheading 9001.10.0030, HTSUSA, as optical fibers, optical fiber bundles and cables other than those of heading 8544.

CBP intends to revoke the treatment concerning the classification of single mode (SM) optical fibers, and to modify or revoke, as appropriate, any rulings on the merchandise, to reflect the proper classification of the goods pursuant to the analysis in proposed HQ 968251, which is set forth as the Attachment to this document. In addition, CBP intends to revoke any other treatment it has previously accorded to substantially identical transactions of other importers. Before taking this action, we will give consideration to any written comments timely received.

**DATED:** June 29, 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 968251  
CLA-2 RR:CTF:TCM 968251 JAS  
CATEGORY: Classification  
TARIFF NO.: 9001.10.0030

MR. JASON M. WAITE, ESQ.  
*601 Pennsylvania Avenue, N.W.*  
*North Building, 10th Floor*  
*Washington, D.C. 20004-2601*

RE: Revocation of Treatment; Single Mode (SM) Optical Fibers

DEAR MR. WAITE:

This is in response to your letter of May 4, 2005, on behalf of OFS Fitel LLC, concerning the classification of single mode (SM) optical fibers under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

You contend that this merchandise has been imported by your client exclusively through the port of Atlanta over an extended period of time under the provision for optical fiber cables made up of individually sheathed fibers, in subheading 8544.70.0000, HTSUSA, and the entries were uniformly liquidated under this provision. Thus, in your opinion, a treatment for these goods exists with respect to your client's transactions which cannot be modified or revoked except upon compliance with 19 U.S.C. §1625(c)(2) and section 177.12(c)(2)(i), Customs and Border Protection Regulations (19 CFR §177.12(c)(2)(i)). CBP believes that this treatment with respect to your client's transactions is in error and we intend to revoke it.

FACTS:

The merchandise, individually sheathed single mode (SM) optical fibers, are universally used in long-distance telephony and cable television applications for voice and data transmissions. They consist of a glass core, which carries most of the light, surrounded by a glass cladding, which bends the light and confines it to the core, the whole then covered by both a primary and secondary protective coating of acrylate or vinyl plastic. The acrylate coatings have a combined thickness of approximately 60 microns.

A Notice of Action issued by the Port of Atlanta to OFS Fitel LLC on December 23, 2002, informed the company that the correct classification for its SM optical fibers was "HTSUS 8544.70.0000 @ Free rather than HTSUS 9001.10.0030 @ 6.7%." The notice instructed the company to classify future entries of SM optical fibers accordingly. Subsequently, another Notice of Action was issued to OFS Fitel on March 25, 2005, informing the company that the subheading 8544.70.0000, HTSUSA, classification for their SM optical fibers was incorrect and that the correct classification for optical fibers was under "HTS9001.10.00/6.7%." The Port has identified approximately one hundred ten (110) entries of SM optical fibers made by OFS Fitel between May 4, 2003 and May 4, 2005. All were liquidated under subheading 8544.70.0000, HTSUSA. At least ninety five (95) percent of the entries are estimated to have significant value and quantity. The entries were not on bypass and none were reviewed by an import specialist. CBP, Atlanta, confirms that OFS Fitel has not made entries of SM optical fibers at any other port.

In addition, OFS filed seven (7) protests at the Port of Atlanta from February 12 through and including December 5, 2003, challenging CBP's liquidation of entries of SM optical fibers under subheading 9001.10.0030, HTSUSA, as optical fibers. These protests were allowed in June, 2003, through and including May 21, 2004, under subheading 8544.70.0000, HTSUSA.

The HTSUS provisions under consideration are as follows:

8544	. . . optical fiber cables, made up of individually sheathed fibers, whether or not assembled with electric conductors or fitted with connectors:
8544.70.00	Optical fiber cables
	* * * *
9001	Optical fibers and optical fiber bundles; . . . :
9001.10.00	Optical fibers, optical fiber bundles and cables

#### ISSUE:

Whether SM optical fibers are goods of heading 9001; whether CBP has accorded a treatment to OFS Fitel LLC for the classification of these goods under subheading 8544.70.0000, HTSUSA.

#### LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

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

Initially, Section XVI, Note 1(m), HTSUS, excludes articles of chapter 90 while Chapter 90, Note 1(h), HTSUS, excludes optical fiber cables of heading 8544. The 85.44 ENs describe optical fibre cables, made up of individually sheathed fibres, the sheathes usually of different colors to permit identification of the fibres at both ends of the cable. The 90.01 ENs describe **Optical fibres** as consisting of concentric layers of glass or plastics of different refractive indices. Those drawn from glass have a very thin coating of plastics, invisible to the naked eye, which renders the fibres less prone to fracture. Optical fibres are usually presented on reels and may be several kilometers in length. They are used to make optical fibre bundles and optical fibre cables. The SM optical fibers under consideration, consisting of a glass core plus glass cladding and two coatings of acrylate plastic, conform to the 90.01 EN description for optical fibres, and are classifiable in subheading 9001.10.0030, HTSUSA.

As to OFS Fitel's claim of treatment under subheading 8544.70.0000, HTSUSA, Section 177.12(c)(1), CBP Regulations (19 CFR 177.12(c)(1)), sets forth the rules for determining under that section whether a treatment was

previously accorded by CBP to substantially identical transactions of a person. These rules require, among other things, evidence to establish that there was an actual determination by a CBP officer regarding the facts and issues involved in the claimed treatment, the CBP officer being responsible for the subject matter on which the determination was made, and over a 2-year period immediately preceding the claim of treatment, CBP consistently applied that determination on a national basis as reflected in liquidations of entries or reconciliations or other CBP actions with respect to all or substantially all of that person's CBP transactions involving materially identical facts and issues. The determination of whether the requisite treatment occurred will be made by CBP on a case-by-case basis and will involve an assessment of all relevant factors.

CBP Atlanta's December 23, 2002, Notice of Action is the determination by the responsible CBP officer regarding the facts and issues involved in the claimed treatment. The claim of treatment for OFS Fitel was made in a letter from OFS' counsel, dated May 4, 2005, to CBP, Atlanta, in response to Atlanta's March 25, 2005, Notice of Action proposing to rate advance the entries under subheading 9001.10.0030, HTSUSA. The record confirms that in the 2-year period prior to May 4, 2005, CBP, Atlanta, consistently liquidated one hundred ten (110) entries of OFS Fitel's SM optical fibers under subheading 8544.70.0000, HTSUSA, and allowed seven (7) protests filed by OFS Fitel under that subheading.

Under the facts presented, we conclude under Section 177.12(c), CBP Regulations, that a treatment does, in fact, exist in classifying OFS Fitel's SM optical fibers as optical fiber cables, in subheading 8544.70.0000, HTSUSA.

**HOLDING:**

Under the authority of GRI 1, the single mode (SM) optical fibers are provided for in heading 9001. They are classifiable as optical fibers, optical fiber bundles and cables, in subheading 9001.10.0030, HTSUSA.

Pursuant to 19 U.S.C. 1625(c)(2), the treatment previously accorded OFS Fitel LLC's importations of this merchandise is revoked.

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