

# Bureau of Customs and Border Protection

## *General Notices*

**Docket No. USCBP-2006-0086**

**Notice of Meeting of The Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (COAC)**

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

**ACTION: Notice of meeting.**

**SUMMARY:** The Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection and Related Homeland Security Functions (COAC) (formerly known as the "Commercial Operations Advisory Committee" or "COAC") will meet in open session.

**DATE:** Thursday, August 3, 2006, 9 a.m. to 1 p.m.

**ADDRESSES:** The meeting will be held in the Horizon Ballroom of the Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC. If you desire to submit comments, they must be submitted by July 27, 2006.

Comments must be identified by **USCBP-2006-0086** and may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **E-mail:** [traderelations@dhs.gov](mailto:traderelations@dhs.gov) Include docket number in the subject line of the message.
- **Mail:** Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, Washington, DC 20229.
- **Facsimile:** 202-344-1969.

**Instructions:** All submissions received must include the words "Department of Homeland Security" and the docket number for this ac-

tion. Comments received will be posted without alteration at [www.regulations.gov](http://www.regulations.gov), including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the COAC, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Wanda Tate, Office of Trade Relations, Customs and Border Protection, Department of Homeland Security, Washington, DC 20229, telephone 202-344-1440; facsimile 202-344-1969.

**SUPPLEMENTARY INFORMATION:** The Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection and Related Homeland Security Functions (formerly known as the "Commercial Operations Advisory Committee" or "COAC")<sup>1</sup> is tasked with providing advice to the Secretary of Homeland Security, the Secretary of the Treasury and the Commissioner of Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within DHS or the Department of the Treasury.

The seventh meeting of the ninth term of COAC will be held at the date, time and location specified above. A tentative agenda for the meeting is set forth below.

The meeting is open to the public.<sup>2</sup> However, participation in COAC deliberations is limited to COAC members, Homeland Security and Treasury Department officials, and persons invited to attend the meeting for special presentations. Since seating is limited, all persons attending this meeting should provide notice, preferably by close of business Thursday, July 27, 2006, to Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, Washington, DC 20229, telephone 202-344-1440; facsimile 202-344-1969.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate as soon as possible.

#### **Tentative Agenda**

1. Introductory Remarks
2. Transportation Security Administration – (User's Guide on Security Seals for Domestic Cargo)
3. Advance Data Requirements
4. CBP Strategic Plan

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<sup>1</sup>Please note that CBP will continue to use "COAC" as the acronym for this Advisory Committee.

<sup>2</sup>Upon entry into the Ronald Reagan Building, a photo identification must be presented to the security guards.

5. Update on (HSPD-13/NMSAC) Homeland Security Presidential Directive-13 & National Maritime Security Advisory Committee
6. Trade Enforcement Initiatives
7. WCO (World Customs Organization) Framework
8. C-TPAT (Customs-Trade Partnership Against Terrorism)

Dated: July 11, 2006

W. RALPH BASHAM,  
*Commissioner,*  
*U.S. Customs and Border Protection.*  
*United States Department of Homeland Security.*

[Published in the Federal Register, July 17, 2006 (71 FR 40524)]

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**Request for Applicants for Appointment to the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (COAC)**

**AGENCY:** Customs and Border Protection, Department of Homeland Security (DHS).

**ACTION:** Committee Management; request for applicants for appointment to the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (COAC).

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**SUMMARY:** Customs and Border Protection (CBP) is requesting individuals who are interested in serving on the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (formerly known as the "Commercial Operations Advisory Committee" or "COAC") to apply for appointment. CBP will continue to use "COAC" as the acronym for this Advisory Committee. COAC provides advice and makes recommendations to the Commissioner of CBP, Secretary of Homeland Security, and Secretary of the Treasury on all matters involving the commercial operations of CBP and related DHS functions.

**DATES:** Applications for membership should reach CBP on or before September 15, 2006.

**ADDRESSES:** If you wish to apply for membership, your application should be sent to CBP by one of the following methods:

- E-mail: [Traderelations@dhs.gov](mailto:Traderelations@dhs.gov).
- Facsimile: (202) 344-1969.

- Mail: Ms. Wanda J. Tate, Program Management Specialist, Office of Trade Relations, Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Room 4.2A, Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Ms. Wanda J. Tate, Program Management Specialist, Office of Trade Relations, Customs and Border Protection, (202) 344-1440, FAX (202) 344-1969.

**SUPPLEMENTARY INFORMATION:**

The Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (COAC) is an advisory committee established in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. "COAC" was the acronym for the former "Commercial Operations Advisory Committee" which existed prior to the merger of the former U.S. Customs Service into DHS. CBP will continue to use "COAC" as the acronym for the Departmental Advisory Committee.

Purpose and Objective: The purpose of the Committee is to provide advice to the Commissioner of CBP, the Secretary of Homeland Security, and the Secretary of the Treasury on all matters involving the commercial operations of CBP and related functions within DHS or Treasury. The committee is required to submit an annual report to Congress describing its operations and setting forth any recommendations. The Committee provides a critical and unique forum for distinguished representatives of diverse industry sectors to present their views and advice directly to senior Treasury, DHS, and CBP officials. This is done on a regular basis in an open and candid atmosphere.

Balanced Membership Plans: The members will be selected by the Commissioner of CBP (subject to approval by the Secretary of Homeland Security and the Secretary of the Treasury) from representatives of the trade and transportation community that does business with CBP, or others who are directly affected by CBP commercial operations and related functions. In addition, members will represent major regions of the country, and, by statute, not more than ten of the committee's 20 members may be affiliated with the same political party.

**Background**

In the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), Congress directed the Secretary of the Treasury to create an Advisory Committee on Commercial Operations of the Customs Service (now CBP). The Committee is to consist of 20 members drawn from industry sectors affected by Customs commercial operations with balanced political party affiliations. The Committee's first two-

year charter was filed on October 17, 1988, and the committee has been renewed for subsequent two-year terms eight times since then.

With the creation of DHS, the Secretary of the Treasury delegated a joint chair and Committee management role to the Secretary of Homeland Security (see Treasury Department Order No. 100-16, 19 CFR Part 0 Appx.). In Delegation Number 7010.3 (May, 2006), the Secretary of Homeland Security delegated to the Commissioner of CBP the authority to preside jointly with Treasury over the meetings of the Committee, to make appointments (subject to approval of the Secretary of Homeland Security) to COAC jointly with Treasury, and to receive COAC advice.

It is expected that, during its tenth two-year term, the Committee will consider issues relating to enhanced border and cargo supply chain security. COAC will continue to provide advice and report such matters as on CBP modernization and automation, informed compliance and compliance assessment, account-based processing, commercial enforcement and uniformity, international efforts to harmonize customs practices and procedures, strategic planning, northern border and southern border issues, and relationships with foreign customs authorities.

### **Committee Meetings**

The Committee meets at least once each quarter, although additional meetings may be scheduled. Generally, every other meeting of the Committee may be held outside of Washington, D.C., usually at a CBP port of entry.

### **Committee Membership**

Membership on the Committee is personal to the appointee and is concurrent with the two-year duration of the charter for the tenth term. Under the Charter, a member may not send an alternate to represent him or her at a Committee meeting. However, since Committee meetings are open to the public, another person from a member's organization may attend and observe the proceedings in a non-participating capacity. Regular attendance is essential; the Charter provides that a member who is absent for two consecutive meetings or two meetings in a calendar year shall be recommended for replacement on the Committee.

No person who is required to register under the Foreign Agents Registration Act as an agent or representative of a foreign principal may serve on this advisory committee.

Members who are currently serving on the Committee are eligible to re-apply for membership provided that they are not in their second consecutive term and that they have met attendance requirements. A new application letter (see ADDRESSES above) is required, but it may incorporate by reference materials previously filed (please attach courtesy copies).

Members of COAC will be appointed and serve as Special Government Employees (SGE) as defined in section 202(a) of title 18, United States Code. As a candidate for appointment as a SGE, applicants are required to complete a Confidential Financial Disclosure Report (OGE Form 450). CBP, DHS, and Treasury may not release the report or the information in it to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Members will not be paid compensation by the Federal Government for their services with respect to the COAC.

### **Application for Advisory Committee Appointment**

There is no prescribed format for the application. Applicants may send a letter describing their interest and qualifications and enclose a resume. Applicants may state the basis on which they believe they qualify for membership, such as their status as stakeholders.

Any interested person wishing to serve on the (COAC) must provide the following:

- Statement of interest and reasons for application;
- Complete professional biography or resume;
- Political affiliation, in order to ensure balanced representation. (If no party registration or allegiance exists, indicate "independent" or "unaffiliated").

In addition, all applicants must state in their applications that they agree to submit to pre-appointment background and tax checks. However, a national security clearance is not required for the position.

In support of the policy of the Department of Homeland Security on gender and ethnic diversity, qualified women and members of minority groups are encouraged to apply for membership.

Dated: July 12, 2006

W. RALPH BASHAM,  
*Commissioner,*  
*Customs and Border Protection.*

[Published in the Federal Register, July 17, 2006 (71 FR 40528)]

DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS,  
*Washington, DC, July 19, 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 AND MODIFICATION OF RULING LETTERS  
AND REVOCATION OF TREATMENT RELATING TO  
TARIFF CLASSIFICATION OF SNACK MIXES**

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

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

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is modifying two ruling letters and revoking one ruling letter relating to the tariff classification of snack mixes under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published on May 24, 2006, in Volume 40, Number 22, of the CUSTOMS BULLETIN. CBP received no comments in response to the notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 1, 2006.

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

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice advising interested parties that CBP is modifying two ruling letters and revoking one ruling letter pertaining to the tariff classification of snack mixes was published in the May 24, 2006, CUSTOMS BULLETIN, Volume 40, Number 22. No comments were received in response to the notice.

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 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 in 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.

In NY I82449, CBP ruled, in part, that “Oriental Garden 2 Mix” was classified in heading 2106, HTSUS, which provides for: “Food preparations not elsewhere specified or included.” Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error as it pertains to the classification of the “Oriental Garden 2 Mix”, and that the “Oriental

Garden 2 Mix” should be classified in heading 2008, HTSUS, which provides for: “Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included.”

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

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY I82449 and NY F82910, revoking NY 869842 and revoking or modifying any other ruling not specifically identified, to reflect the proper classification of the snack mixes according to the analysis contained in Headquarters Ruling Letters (HQ) 966111, HQ 967691 and HQ 967692, set forth as Attachments A through C, 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:** July 13, 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 966111  
July 13, 2006  
CLA-2 RR:CTF:TCM 966111 KSH  
CATEGORY: Classification  
TARIFF NO.: 2008.11.4500 or 2008.11.6000

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

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

DEAR MR. RALSTON:

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

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 modification of NY I82449 was published in the Customs Bulletin, Vol. 40, No. 22, on May 24, 2006. No comments were received in response to the notice.

FACTS:

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

ISSUE:

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

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be

classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

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

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

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

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

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

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

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

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

dated February 10, 2000, NY C82718, dated March 6, 1998, and NY 889918, dated October 6, 1993.

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

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

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

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

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

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

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

**HOLDING:**

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

and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Nuts, peanuts (ground-nuts) and other seeds, whether or not mixed together: Peanuts (ground-nuts): Other: Other” and will be dutiable at 131.8 percent *ad valorem*. In addition, products classified in subheading 2008.11.6000, HTSUS, will be subject to additional duties based on their value, as described in subheadings 9904.12.01 - 9904.12.19, HTSUS.

EFFECT ON OTHER RULINGS:

NY I82449 is hereby modified. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

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



[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 967691  
July 13, 2006  
CLA-2 RR:CTF:TCM 967691 KSH  
CATEGORY: Classification  
TARIFF NO.: Unknown

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

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

DEAR MR. MALKEN:

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

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 modification of NY F82910 was published in the Customs Bulletin, Vol. 40, No. 22, on May 24, 2006. No comments were received in response to the notice. However, upon further review of the proposed ruling, CBP has determined that it was premature to

consider a GRI 3(c) analysis due to the lack of information regarding the complete percentage of the mixture and each of the ingredients method of preparation. If this information is known, classification may be appropriate under GRI 3(b).

FACTS:

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

ISSUE:

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

LAW AND ANALYSIS:

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

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

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

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

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

Furthermore, as noted in HQ 089858, dated October 1, 1991, the commodities, although mixed together in the article under consideration, maintain their original identity. Each commodity remains complete and recogniz-

able and is not subordinated into a new product merely by the act of mixing with the other. As such, the Mediterranean Mix cannot be classified in accordance with GRI 1.

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

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

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

**HOLDING:**

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

**EFFECT ON OTHER RULINGS:**

NY F82910 is hereby modified. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 967692  
July 13, 2006  
CLA-2 RR:CTF:TCM 967692 KSH  
CATEGORY: Classification  
TARIFF NO.: Unknown

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

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

DEAR MR. CHERRY:

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

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 869842 was published in the Customs Bulletin, Vol. 40, No. 22, on May 24, 2006. No comments were received in response to the notice. However, upon further review of the proposed ruling, CBP has determined that it was premature to consider a GRI 3(c) analysis due to the lack of information regarding the complete percentage of the mixture and each of the ingredients method of preparation. If this information is known, classification may be appropriate under GRI 3(b).

FACTS:

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

ISSUE:

Whether the Vindaloo Mix and Bombay Mix are classified in heading 2106, HTSUS, as "Food preparations not elsewhere specified or included" or in accordance with GRI 3(b) in the heading of the article which provides the essential character.

**LAW AND ANALYSIS:**

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

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

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

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

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

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

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

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

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

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

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

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

#### HOLDING

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

#### EFFECT ON OTHER RULINGS:

NY 869842, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

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

**PROPOSED REVOCATION AND MODIFICATION OF EIGHT  
RULING LETTERS AND REVOCATION OF TREATMENT  
RELATING TO THE TARIFF CLASSIFICATION OF  
STYROFOAM ARTICLES COVERED WITH NATURAL  
MATERIALS**

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

**ACTION:** Proposed revocation of four tariff classification ruling letters and modification of four tariff classification ruling letters and revocation of treatment relating to the classification of Styrofoam articles covered with paper or natural materials.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is proposing to revoke four ruling letters and modify four ruling letters relating to the tariff classification of Styrofoam articles covered with paper or natural materials under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP is also proposing to revoke any treatment previously accorded by it to substantially identical merchandise.

**DATE:** Comments must be received on or before September 1, 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., Washington, D.C. 20229. Submitted comments may be inspected at the offices of U.S. Customs and Border Protection, 799 9<sup>th</sup> Street, NW, 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:** Kelly Herman, Tariff Classification and Marking Branch: (202) 572-8713.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke four ruling letters and modify four ruling letters pertaining to the tariff classification of Styrofoam articles covered with paper or natural materials. Although in this notice, CBP is specifically referring to the modification of NY G83315, dated October 20, 2000, NY C87269, dated May 18, 1998, NY L81907, dated January 21, 2005 and NY K83112, dated March 2, 2004, and the revocation of NY J89446, dated October 24, 2003, HQ 956065, dated July 25, 1994, NY G88449, dated April 12, 2001 and HQ 958043, dated December 5, 1995 (Attachments A-H, respectively), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during 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 proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY G83315, CBP ruled that, among other merchandise, eight Styrofoam gourds covered with paper were classified in subheading 6702.10.2000, HTSUSA, which provides for "[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, fo-

liage or fruit: [o]f plastics: [a]ssembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods.” Since the issuance of that ruling, CBP has reviewed the classification of these items and has determined that the cited ruling is in error as it pertains to the classification of the paper covered Styrofoam gourds and that they should be classified in subheading 6702.90.6500, HTSUSA, which provides for “[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f other materials: [o]ther: other.”

In NY C87269, CBP ruled that among other merchandise, a Styrofoam garlic bulb covered with maize was classified in subheading 6702.10.2000, HTSUSA, which provides for “[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f plastics: [a]ssembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods.” Since the issuance of that ruling, CBP has reviewed that ruling and found it to be in error as it pertains to the classification of the Styrofoam bulb of garlic covered with maize and that the garlic bulb should be classified in subheading 4602.10.8000, HTSUSA, which provides for “[b]asketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah: [o]f vegetable materials:[o]ther: [o]ther: [o]ther.”

In NY L81907, CBP ruled that among other merchandise, a bromine dyed/painted tapioca seed coated Styrofoam ball was classified in subheading 3926.40.0000, HTSUSA, which provides for “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: [s]tatuettes and other ornamental articles.” Since the issuance of that ruling, CBP has reviewed that ruling and found it to be in error as it pertains to the classification of the tapioca seed coated Styrofoam ball and that the tapioca seed coated Styrofoam ball should be classified in subheading 1404.90.0000, HTSUSA, which provides for “Vegetable products not elsewhere specified or included: Other.”

In NY K83112, CBP ruled that among other merchandise, twelve seed coated Styrofoam balls were classified in subheading 3926.40.0000, HTSUSA, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Statuettes and other ornamental articles.” Since the issuance of that ruling, CBP has reviewed that ruling and found it to be in error as it pertains to the classification of the seed coated Styrofoam balls and that the seed coated Styrofoam balls should be classified in subheading 1404.90.0000, HTSUSA, which provides for “Vegetable products not elsewhere specified or included: Other.”

In NY J89446, CBP ruled that 27 decorative articles described as “bean balls” were classified in subheading 3926.40.0000, HTSUSA, which provides for “Other articles of plastics . . . statuettes and other

ornamental articles.” Since the issuance of that ruling, CBP has reviewed that ruling and found it to be in error and that the bean balls should be classified in subheading 1404.90.0000, HTSUSA, which provides for “Vegetable products not elsewhere specified or included: Other.”

In HQ 956065, CBP ruled that ornamental mushroom articles were classified in subheading 3926.40.0000, HTSUSA, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Statuettes and other ornamental articles”. Since the issuance of that ruling, CBP has reviewed that ruling and found it to be in error and that the ornamental mushroom articles should be classified in subheading 1404.90.0000, HTSUSA, which provides for “Vegetable products not elsewhere specified or included: Other.”

In NY G88449, CBP ruled that a Styrofoam pumpkin covered with foil was classified in subheading 6702.10.2000, HTSUSA, which provides for “[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f plastics: [a]ssembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods.” Since the issuance of that ruling, CBP has reviewed the classification of these items and has determined that the cited ruling is in error.

In HQ 958043, CBP ruled that a Styrofoam pumpkin and gourd covered with paper were classified in subheading 6702.10.2000, HTSUSA, which provides for “[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f plastics: [a]ssembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods.” Since the issuance of that ruling, CBP has reviewed the classification of these items and has determined that the cited ruling is in error and that the paper covered Styrofoam pumpkin and gourds should be classified in subheading 6702.90.6500, HTSUSA, which provides for “[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f other materials: [o]ther: other.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to modify NY G83315, NY C87269, NY L81907 and NY K83112 and revoke NY J89446, HQ 956065, NY G88449 and HQ 958043 and any other ruling not specifically identified, to reflect the proper classification of Styrofoam articles covered with paper or natural materials according to the analysis contained in Headquarters Ruling Letters (HQ) 968060, 968061, 968062, 968063, 968064, 968065, 968066 and 968067, set forth as Attachments I–P to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical

transactions. Before taking this action, we will give consideration to any written comments timely received.

**DATED:** July 18, 2006

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
NY G83315  
October 20, 2000  
CLA-2-46:RR:NC:SP:230 G83315  
CATEGORY: Classification  
TARIFF NO.: 4602.10.0900; 6702.10.2000

MS. LINDA BROADFORD  
BRADLEES STORES, INC.  
*1 Bradlees Circle*  
*Braintree, MA 02184*

RE: The tariff classification of a basket containing artificial gourds, from China.

DEAR MS. BROADFORD:

In your letter dated October 10, 2000, you requested a tariff classification ruling.

A sample identified as item #909847 was submitted and is being returned to you as requested. It consists of an open, 9½" x 9½" x 3"(H) basket, made of flat, interwoven strips of bamboo, containing 8 artificial gourds of various shapes and colors (predominantly green and orange). The gourds are made of Styrofoam covered with what appears to be painted paper. They also have short, glued-on "stems" made of wire and plastic.

You state that the basket of gourds will be principally used as a holiday decoration. We note, however, that the gourds can be removed from the basket, which can then be used independently as a general-purpose container. For tariff purposes, the basket and the gourds will therefore not be regarded as a "set" or "composite good," and will be classified separately.

The applicable subheading for the basket will be 4602.10.0900, Harmonized Tariff Schedule of the United States (HTS), which provides for other (than certain enumerated) baskets and bags, whether or not lined, of vegetable plaiting materials: of bamboo: other than wickerwork. The rate of duty will be 10%.

The applicable subheading for the imitation gourds will be 6702.10.2000, HTS, which provides for artificial flowers, foliage and fruit . . . of plastics: assembled by binding with flexible materials such as wire, paper, textile ma-

terials, or foil, or by gluing or by similar methods. The rate of duty will be 8.4%.

We note that the sample is not marked with its country of origin. When imported into the United States, the goods will be required to be so marked (e.g., "Made in China"), legibly, in a conspicuous place, and in a manner sufficiently permanent to reach the ultimate purchaser.

The holding set forth above applies only to the specific factual situation and merchandise description as identified in the ruling request. This position is clearly set forth in 19 CFR 177.9(b)(1). This section states that a ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated therein, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the assumption that the subject goods, in their condition as imported into the United States, conform to the facts and the description as set forth both in the ruling request and in this ruling. In the event that the facts or merchandise are modified in any way, you should bring this to the attention of Customs and you should resubmit for a new ruling in accordance with 19 CFR 177.2. You should also be aware that the material facts described in the foregoing ruling may be subject to periodic verification by the Customs Service.

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 Paul Garretto at 212-637-7009.

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

## [ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
NY C87269  
May 18, 1998  
CLA-2-46:RR:NC:SP:230 C87269  
CATEGORY: Classification  
TARIFF NO.: 4602.10.1200; 6702.10.2000; 6702.90.3500

MS. VIDYA BHAVNANI  
SUN COAST MERCHANIDISE CORPORATION  
*6315 Bandini Boulevard*  
*Commerce, CA 90040*

RE: The tariff classification of willow baskets, artificial garlic and artificial flowers from China.

DEAR MS. BHAVNANI:

In your letter dated April 24, 1998, you requested a tariff classification ruling. Three samples were submitted and will be retained for reference.

The first item is a shallow, oval-shaped basket measuring approximately 11 1/2" x 18" x 3"(H). It is made of interwoven willow rods, and does not have any handles or a lid.

The applicable subheading for the basket will be 4602.10.1200, Harmonized Tariff Schedule of the United States (HTS), which provides for other (than certain enumerated) baskets and bags of vegetable plaiting materials, whether or not lined:

of willow. The rate of duty will be 5.8%.

The second item is a small decorative article made to resemble a bulb of garlic. It consists of a shaped piece of Styrofoam with an outer covering said to be of "maize" (presumably, dried corn stalk or leaf material).

The applicable subheading for the artificial garlic bulb will be 6702.10.2000, HTS, which provides for artificial flowers, foliage and fruit and parts thereof . . . of plastics: assembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods. The rate of duty will be 8.4%.

The third item is an artificial poinsettia consisting of large red textile-fabric leaves which surround small plastic flowers atop a plastic stem. It is assumed that the fabric is of man-made fibers.

The applicable subheading for the artificial poinsettia will be 6702.90.3500, HTS, which provides for artificial flowers, foliage and fruit and parts thereof . . . of materials other than plastics: of man-made fibers. The rate of duty will be 9%.

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 im-

ported. If you have any questions regarding the ruling, contact National Import Specialist Paul Garretto at 212-466-5779.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
NY L81907  
January 21, 2005  
CLA-2-56:RR:NC:N3:351 L81907  
CATEGORY: Classification  
TARIFF NO.: 3926.40.0000, 5609.00.4000

PEGGY MONTONERA  
CUSTOMS AND COST IMPORT ANALYST  
SEARS, ROEBUCK, AND COMPANY  
3333 Beverly Road D5-257B  
Hoffman Estates, IL 60179

RE: The tariff classification of decorative Styrofoam balls from the Philippines

DEAR MS. MONTONERA:

In your letter dated January 5, 2005, you requested a tariff classification ruling.

The three samples submitted are all Styrofoam balls, approximately 5" in diameter, with various coverings.

The first sample, identified as Stock No. 90404, is described as covered with bromine dyed/painted tapioca beads; we assume these are beans or seeds, not beads. The beans are arranged in a flower pattern.

The second sample, 90405, is covered with bromine dyed/painted tapioca beans and spirals of paper twine. The spirals are arranged in a dot pattern.

The third sample, 90506, is covered with paper twine wrapped around the Styrofoam ball with 1" spiraled twine dots inset randomly.

Classification of merchandise under the Harmonized Tariff Schedule of the United States (HTS) is in accordance with the General Rules of Interpretation (GRIs), taken in order. GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Since no one heading in the tariff schedules covers all of the components of these decorative balls, GRI 1 cannot be used as a basis for classification. GRI 3(a) states in part that where goods are, prima facie, classifiable in two or more headings, the heading that provides the most specific description shall be preferred to headings providing a more general description. GRI 3(b) provides that composite goods such as these, consisting of different materials, shall be classified as if they consisted of the material or component that gives them their essential character. GRI 3(c) states that when goods cannot be classified by reference to GRI 3(a) or 3(b), they shall

be classified under the heading that occurs last in numerical order among those that equally merit consideration.

In the case of these three items, no single component imparts the essential character, and they will be classified in accordance with GRI 3(c). The competing tariff headings are 1404, articles of vegetable matter (the tapioca beans); 3926, articles of plastic (Styrofoam is a plastic); and 5906, articles of yarn or twine (the paper yarn).

The applicable subheading for 90404, (flower pattern, beans over Styrofoam) will be 3926.40.0000, HTS, which provides for other articles of plastics and articles of other materials of headings 3901 to 3914: Statuettes and other ornamental articles. The rate of duty will be 5.3 percent ad valorem.

The applicable subheading for 90405 (dot pattern, paper twine and beans over Styrofoam) and 90406 (paper twine over Styrofoam) will be 5609.00.4000, HTS, which provides for articles of yarn or twine, not elsewhere specified or included; other.

You suggest that 90404 and 90405 are classifiable in subheading 9602.00.5000, HTS, which provides for, inter alia, other molded or carved articles, not elsewhere specified or included. However, since neither is worked, molded, or carved, that would not be correct.

You also suggest that 90406 is classifiable in subheading 4823.90.8600, HTS, which provides for other articles of paper or paperboard. However, since the paper is in the form of yarn or twine, the article is more specifically classifiable as an article of yarn or twine in heading 5609.

The samples will be returned as requested.

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 Mitchel Bayer at 646-733-3102.

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

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
NY K83112  
March 2, 2004 CLA-2-73:RR:NC:N1:113 K3112  
CATEGORY: Classification  
TARIFF NO.: 7323.99.9060; 3926.40.0000

MS. ANNE HUFFMAN  
THT DESIGNS  
10917 Harry Watanabe Parkway  
Omaha, NE 68128-5734

RE: The tariff classification of a tray with balls from China

DEAR MS. HUFFMAN:

In your letter dated February 20, 2004, you requested a tariff classification ruling.

The sample you submitted is a leaf tray with berry balls (item number 101856). The tray is made of stamped sheet iron and shaped like a leaf measuring approximately 23 inches in length, 11 inches in width, and 3.25 inches in depth. Twelve 1.5-inch diameter balls rest loosely upon the tray. The surface of each styrofoam ball is coated with natural seeds using glue. Four balls are covered with mung bean, four with ormosia, and four with soya. The applicable subheading for the leaf tray will be 7323.99.9060, Harmonized Tariff Schedule of the United States (HTS), which provides for table, kitchen or other household articles and parts thereof, of iron or steel, other, other, not coated or plated with precious metal, other, other, other. The rate of duty will be 3.4 percent ad valorem.

The applicable subheading for the seed-coated styrofoam balls will be 3926.40.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for statuettes and other articles, of plastics. The rate of duty will be 5.3 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist James Smyth at 646-733-3018.

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

## [ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
NY J89446  
October 24, 2003  
CLA-2-39:RR:NC:SP:221 J89446  
CATEGORY: Classification  
TARIFF NO.: 3926.40.0000

MR. DENNIS MORSE  
BDP INTERNATIONAL, INC.  
2721 Walker Avenue N.W.  
Grand Rapids, MI 49504

RE: The tariff classification of decorative articles from Thailand.

DEAR MR. MORSE:

In your letter dated September 26, 2003, on behalf of Meijer Distribution, you requested a tariff classification ruling.

Two samples were submitted with your request. Item 91015 (UPC 7-08820-04517) consists of 24 decorative articles described as "mini bean balls" in a clear acetate box. Item 91014 consists of 3 decorative "bean balls" in an acetate box. The mini bean balls measure approximately 1½ inches in diameter while the standard size bean balls measure approximately 2½ inches in diameter. The balls consist of foamed plastic spheres with various kinds of beans and seeds glued to the outer surface. The standard size bean balls include one ball covered with red beans, one covered with yellow corn kernels and one covered with millet seeds. The mini bean balls are covered with red beans, green beans, black beans, tan beans, corn kernels and millet seed. The bean balls are used as decorative articles. The samples are being returned as you requested.

Classification of merchandise under the Harmonized Tariff Schedule of the United States (HTS) is in accordance with the General Rules of Interpretation (GRIs), taken in order. GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Since no one heading in the tariff schedules covers the components of the bean balls in combination, GRI 1 cannot be used as a basis for classification. GRI 3(b) provides that mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale shall be classified as if they consisted of the material or component which gives them their essential character. GRI 3 (c) states that when goods cannot be classified by reference to GRI 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration. In this case, no single component imparts the essential character, and the bean balls will be classified in accordance with GRI 3(c) in the provision for articles of plastics.

The applicable subheading for the decorative bean balls will be 3926.40.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of plastics . . . statuettes and other ornamental articles. The rate of duty will be 5.3 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 Joan Mazzola at (646) 733-3023.

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

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 956065  
July 25, 1994  
CLA-2 CO:R:C:F 956065 K  
CATEGORY: Classification  
TARIFF No.: 3926.40.00

MS. ELIZABETH MINCE  
IMPORT MANAGER  
ATLANTA CUSTOMS BROKERS  
5099 Southridge Parkway, Suite 116  
Atlanta, Georgia 30349

RE: Classification of Mushroom Ornamental Articles

DEAR MS. MINCE:

This is in response to your request of January 5, 1994, for a ruling for ornamental articles, styrofoam-mushroom ornamental articles. A catalogue depicting various types of mushroom ornamental articles, a page taken from a floral retailer's catalogue depicting miniature mushroom birds sitting on tree stems, and a sample mushroom bird were submitted. Our ruling is limited to the articles as represented by the submitted sample of a mushroom bird and the specifications listed in your letter.

FACTS:

The sample bird measures approximately 1-1/2 x 2 inches (plus a 1 inch tail). The body of the bird is made of styrofoam (plastics). White paper made of wood fibre wraps the body. Dried paper thin pieces of mushrooms are glued onto the body in the form of wings and tails. The material for the eyes and mouth was not stated. The bird is painted and decorated with various colors and has a flat bottom. The bird contains no strings or hooks for hanging purposes such as ornaments for Christmas trees.

ISSUE:

What is the tariff classification of the mushroom birds as described above.

LAW AND ANALYSIS:

The classification of imported merchandise under the Harmonized Tariff Schedule of the United States (HTSUS) is governed by the principles set forth in the General Rules of Interpretation (GRI). GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section and chapter notes and, unless other-

wise required, according to the remaining GRI, taken in their appropriate order. Accordingly, we first have to determine whether the articles are classified under GRI 1.

We first consider whether the birds consisting of dried plants (mushrooms) are classifiable under heading 0604, HTSUS, which covers foliage, branches and other parts of plants, without flowers or flower buds, and grasses, mosses and lichens, being goods of a kind suitable for bouquets or for ornamental purposes, fresh, dried, dyed, bleached, impregnated or otherwise prepared. The Explanatory Notes to the Harmonized Commodity Description and Coding System (EN), a guideline for use in determining classification under HTSUS, states that "this heading covers not only foliage, branches, etc., as such, but also bouquets, wreaths, floral baskets and similar articles incorporating foliage or parts of trees, shrubs, bushes or other plants, or incorporating grasses, mosses or lichens. Provided that such bouquets, etc., have the essential character of florists' wares, they remain in the heading even if they contain accessories of other materials (ribbons, wire frames, etc.)."

The mushroom birds do not consist of foliage, branches and other parts of plants suitable for bouquets or ornamental purposes. The mushroom birds are finished articles in which one of the components consists of thin sliced pieces of boiled-dried mushrooms. The finished articles represent considerable artistic work in the assembly of the thin sliced pieces of dried mushrooms to the styrofoam bird bodies and the subsequent decorations. We are satisfied that the merchandise is not covered under heading 0604.

We are also satisfied that since the mushroom birds do not have strings or hooks for tree hanging they are not classified under subheading 9505.10.25, HTSUS, as articles for Christmas festivities, other than of glass or wood.

Since we conclude that the mushroom birds cannot be classified by virtue of GRI 1, then we proceed to the next GRI. GRI 2(b) requires that the "classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." GRI 3(b) is applicable for goods made up of different components and that rule requires that ". . . composite goods 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 mushroom pieces and the styrofoam (plastics) in the form of birds are the competing components that may consist of the material or component which gives the birds their essential character. We conclude that the mushroom pieces and the plastic bird bodies are equally essential in character. Accordingly, the mushroom birds cannot be classified by reference to GRI 3(b).

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

The subheadings which equally merit consideration for the mushroom birds are subheading 1404.90.00, that provides for other vegetable products (mushrooms) not elsewhere specified or included, free of duty, and 3926.40.00, that provides for other articles of plastics (the styrofoam in the form of birds), statuettes and other ornamental articles, with duty at 5.3 percent ad valorem. Accordingly, the mushroom birds are classified by reference to GRI 3(c) under subheading 3926.40.00.

HOLDING:

The mushroom birds as described above are classifiable as statuettes and other ornamental articles of plastics, subheading 3926.40.00, HTSUS, with duty at the general rate of 5.3 percent ad valorem.

Customs Headquarters Ruling Letters 954674 and 954332 dated March 15, 1994, and 955452 dated March 17, 1994, are cited and followed.

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

[ATTACHMENT G]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
NY G88449  
April 12, 2001  
CLA-2-67:RR:NC:SP:222 G88449  
CATEGORY: Classification  
TARIFF NO.: 6702.10.2000

MR. KEN AUGUST  
EASTER UNLIMITED, INC.  
*80 Voice Road*  
*Carle Place, NY 11514*

RE: The tariff classification of a plastic pumpkin from China.

DEAR MR. AUGUST:

In your letter dated March 12, 2001, you requested a tariff classification ruling.

You have submitted a sample that is identified as item number 8451, Golden Pumpkin. It is made of styrofoam and covered with orange colored foil. The stem is made of styrofoam and covered with brown paper. The leaves are made of paper and covered with orange colored foil. Your letter of inquiry states that the pumpkins will be available in two assorted sizes: 4.5 inches and 6.5 inches. You also state that the pumpkins will be packed 12 pieces in a box.

The applicable subheading for the plastic pumpkin will be 6702.10.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: of plastics: assembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods. The rate of duty will be 8.4 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 im-

ported. If you have any questions regarding the ruling, contact National Import Specialist Alice Masterson at 212-637-7090.

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

[ATTACHMENT H]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 958043  
December 5, 1995  
CLA-2 RR:TC:TE 958043 NLP  
CATEGORY: Classification  
TARIFF NO.: 6702.10.2000

PORT DIRECTOR  
U.S. CUSTOMS SERVICE  
P.O. Box 619050  
DWF Airport, TX 75261

RE: Application for further review of Protest no. 5501-95-100186; subheadings 6702.90.3500 and 6702.90.6500; HRLs 086937 and 956050

DEAR SIR:

This a decision on application for further review of protest no. 5501-95-100186, filed on May 3, 1995, by Evans and Wood & Co., Inc., on behalf of Hobby Lobby Stores, Inc., against the [former] District Director's decision concerning the classification of a pumpkin and gourd under the Harmonized Tariff Schedule of the United States (HTSUS). Samples were submitted for our examination.

FACTS:

The samples submitted are a pumpkin and gourd referred to on the commercial invoice as SAF 425, SAF 426 and SAF 338. They are made of styrofoam and are covered with paper which is then painted. A statement on the invoice states that the pumpkin and gourd are comprised of 65% styrofoam, 20% paper and 15% paint.

Upon liquidation, these articles were classified in subheading 6702.90.6500, HTSUS, which provides for "[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f other materials: [o]ther: [o]ther."

It is the importer's position that the essential character of the pumpkin and gourd is imparted by the styrofoam component. Therefore, the importer claimed classification of these articles in subheading 6702.10.2000, HTSUS, which provides for "[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f plastics: [a]ssembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods."

ISSUE:

What is the tariff classification of the subject pumpkin and gourd?

## LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order.

Heading 6702, HTSUS, provides for "[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage and fruit." The articles at issue here are classifiable within this heading. However, as the pumpkin and gourd are comprised of several components (styrofoam, paper and paint), there is no one subheading within heading 6702, HTSUS, that specifically describes this merchandise. As the articles are prima facie classifiable within two or more subheadings within heading 6702, HTSUS, GRI 3 is applicable. See, GRI 6. GRI 3 states, in pertinent part, the following:

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, and goods put up 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 (ENs) may be consulted. The ENs, although not dispositive, are to be used to determine the proper interpretation of the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127, 35128, (August 23, 1989). EN VIII to GRI 3(b), pg. 4, provides an interpretation of the term "essential character" stating that:

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 Headquarters Ruling Letter (HRL) 956050, dated May 26, 1995, Customs dealt with the classification of a scarecrow decorative pick. The pick consisted of two styrofoam balls which comprised the head and body, and it was covered with colored paper, a burlap shirt and hat, and a tie and hair of corn husk material. The figure had black paper facial features, measured approximately six inches in height and sat atop a wooden stick that measured approximately seven inches in length.

Customs determined that the scarecrow pick was classifiable in subheading 3926.40.00, HTSUS, the provision for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Statuettes and other ornamental articles." We determined this classification based on GRI 3(b) and stated the following:

Although covered by paper, burlap, and corn husk materials, the styrofoam comprises the greatest share of the article's bulk, weight, and value, and provides the essential shape upon which the other items are fastened to decorate. Therefore the styrofoam component gives this composite article its essential character.

In the instant case, the styrofoam provides the essential character to the pumpkin and gourd. While the paper does provide aesthetic appeal and mar-

ketability to the pumpkins, it is the styrofoam that comprises the greatest share of the bulk, weight and value and it provides the essential shape upon which the paper and paint are placed. Thus, the subject articles are classifiable in subheading 6702.10.2000, HTSUS.

HOLDING:

The pumpkin and gourd are classified in subheading 6702.10.2000, HTSUS. The protest should be approved and a copy of this ruling should be attached to the Customs Form 19 and provided to the protestant as part of the notice of action.

In accordance with Section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, this decision should be mailed by your office to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry 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 take steps to make the decision available to Customs personnel via the Customs Rulings Module in the ACS and the public via the Diskette Subscription Service, Lexis, Freedom of Information Act and other public access channels.

JOHN DURANT,  
*Director,*  
*Tariff Classification Appeals Division.*

[ATTACHMENT I]

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 968060  
CLA-2 RR:CTF:TCM 968060 KSH  
CATEGORY: Classification  
TARIFF NO.: 6702.90.6500

EVANS AND WOOD & Co., INC.  
*612 E. Dallas Rd.*  
*Suite 200*  
*Grapevine, TX 76051*

RE: Revocation of Headquarters Ruling Letter (HQ) 958043, dated December 5, 1995; Classification of Styrofoam pumpkin and gourd covered with paper.

DEAR SIR OR MADAM:

This is in reference to Headquarters Ruling Letter HQ 958043 issued to the Port Director, Dallas/Fort Worth Airport, Texas, on December 5, 1995, with regard to protest 5501-95-100186, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUSA), of a Styrofoam pumpkin and gourd covered with paper. The articles were classified in subheading 6702.10.2000, HTSUSA, which provides for "[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f plastics: [a]ssembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar

methods." Since the issuance of that ruling, U.S. Customs and Border Protection (CBP) has reviewed the classification of these items and has determined that the cited ruling is in error.

HQ 958043 is a decision on a specific protest. A protest is designed to handle entries of merchandise which have entered the U.S. 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 958043 when notice of denial of the protest was received by the protestant. See, San Francisco Newspaper Printing Co. v. U.S., 9 CIT 517, 620 F.Supp. 738 (1935).

However, CBP can modify or revoke a protest review decision to change the legal principles set forth in the decision. 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 (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), 60 days after the date of issuance, CBP may propose a modification or revocation of a prior interpretive ruling or decision by publication and solicitation of comments in the CUSTOMS BULLETIN.

**FACTS:**

The pumpkin and gourd were referred to on the commercial invoice as SAF 425, SAF 426 and SAF 338. They are made of Styrofoam and are covered with paper which is then painted. The pumpkin and gourd are stated to be comprised of 65% Styrofoam, 20% paper and 15% paint.

**ISSUE:**

Whether the pumpkin and gourd are classified in subheading 6702.10, HTSUSA, as artificial fruit of plastics or subheading 6702.90, HTSUSA, as artificial fruit of other materials.

**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.

Heading 6702, HTSUSA, provides for "artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage and fruit." The subject paper coated Styrofoam pumpkin and gourds are decorative items consisting of foamed plastic shapes that are covered with paper. Thus, for tariff purposes, they constitute goods consisting of two or more substances or materials. As such, the items are arguably classifiable under subheading 6702.10, HTSUSA, as artificial fruit of plastics or subheading 6702.90, HTSUSA, as artificial fruit of other materials. Accordingly, they may not be classified solely on the basis of GRI 1. See, GRI 6 which states, in part, that the classification of goods in the subheadings of a heading is to be according

to the terms of those subheadings and any relative section and chapter notes and, by appropriate substitution of terms, to Rules 1 through 5. Further, GRI 2(a) is inapplicable because it applies to incomplete or unfinished articles, and the paper covered Styrofoam pumpkin and gourds are imported in a finished complete condition. GRI 2(b) states that the classification of goods consisting of more than one material or substance shall be according to the principles of GRI 3.

GRI 3(a) states that when, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, 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. As the subject paper covered Styrofoam pumpkin and gourds are composite goods, we must apply rule 3(b), which provides that composite goods are to be classified according to the component that gives the good its essential character. We must determine whether the foamed plastic pumpkin and gourd or the paper imparts the essential character to the articles.

EN VIII to GRI 3(b) explains 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 the constituent material in relation to the use of the goods.”

The internal foamed plastic pumpkin or gourd may provide the bulk and shape, however the surface paper that covers the Styrofoam pumpkin and gourd provides the texture, markings and color. The paper imparts the visual impact, consumer appeal and nature of the article. The essential character of the paper covered Styrofoam pumpkin and gourd is the paper. The paper covered Styrofoam pumpkin and gourd are accordingly classifiable in subheading 6702.90.6500, HTSUSA.

**HOLDING:**

Pursuant to GRI 3(b), the paper covered Styrofoam pumpkin and gourd are classified in subheading 6702.90.6500, HTSUSA, which provides for “[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f other materials: [o]ther: other.” The general, column one rate of duty is 17% *ad valorem*.

**EFFECT ON OTHER RULINGS:**

HQ 958043, dated December 5, 1995, is hereby revoked. This revocation will not affect the entries which were the subject of Protest 5501-95-100186, but will be applicable to any unliquidated entries, or future importations of similar merchandise 60 days after publication of the final notice of revocation in the CUSTOMS BULLETIN, unless an earlier date is requested pursuant to 19 CFR 177.12(e)(2)(ii).

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

[ATTACHMENT J]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 968061  
CLA-2 RR:CTF:TCM 968061 KSH  
CATEGORY: Classification  
TARIFF NO.: 1404.90.0000

MR. DENNIS MORSE  
BDP INTERNATIONAL, INC.  
2721 Walker Avenue N.W.  
Grand Rapids, MI 49504

RE: Revocation of New York Ruling Letter (NY) J89446, dated October 24, 2003; Classification of "bean balls" from Thailand.

DEAR MR. MORSE:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) J89446, issued to you on October 24, 2003, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of 27 decorative articles described as "bean balls" in acetate boxes. The articles were classified in subheading 3926.40.0000, HTSUSA, which provides for "Other articles of plastics...statuettes and other ornamental articles." We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY J89446.

FACTS:

The first item at issue, identified as Item 91015 (UPC 7-08820-04517), consists of 24 decorative articles described as "mini bean balls" in a clear acetate box. The second item at issue, identified as Item 91014, consists of 3 decorative "bean balls" in an acetate box. The mini bean balls measure approximately 1½ inches in diameter while the standard size bean balls measure approximately 2½ inches in diameter. The balls consist of foamed plastic spheres with various kinds of beans and seeds glued to the outer surface. The standard size bean balls include one ball covered with red beans, one covered with yellow corn kernels and one covered with millet seeds. The mini bean balls are covered with red beans, green beans, black beans, tan beans, corn kernels and millet seed. The bean balls are used as decorative articles.

ISSUE:

Whether the bean balls are classified in heading 3926, HTSUSA, as other articles of plastic or in heading 1404, HTSUSA, as vegetable products not elsewhere specified or included.

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.

The items are not specifically provided for in any one heading. Accordingly, they may not be classified solely on the basis of GRI 1. Further, GRI 2(a) is inapplicable because it applies to incomplete or unfinished articles, and the bean balls are imported in a finished complete condition. GRI 2(b) states that the classification of goods consisting of more than one material or substance shall be according to the principles of GRI 3. The subject bean balls are decorative items consisting of foamed plastic spheres that are covered with beans, kernels or seeds. Thus, for tariff purposes, they constitute goods consisting of two or more substances or materials. As such, the items are arguably classifiable under heading 3926, HTSUSA, as other articles of plastics or heading 1404, HTSUSA, as vegetable products not elsewhere specified or included.

GRI 3(a) states that when, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, 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. As the subject bean balls are composite goods, we must apply rule 3(b), which provides that composite goods are to be classified according to the component that gives the good its essential character. We must determine whether the foamed plastic spheres or the beans, kernels or millet impart the essential character to the articles.

EN VIII to GRI 3(b) explains 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 the constituent material in relation to the use of the goods.”

The internal foamed plastic spheres may provide the bulk and shape, however the surface beans, kernels or millet that cover the bean balls provide the texture, markings and color. The beans, kernels or millet impart the visual impact, consumer appeal and nature of the article. The essential character of the bean balls is imparted by the exterior surface which includes beans, kernels, or millet. The bean balls are accordingly classifiable in heading 1404, HTSUSA. They are specifically provided for in subheading 1404.90.0000, HTSUSA.

**HOLDING:**

The bean balls are classified in heading 1404, HTSUSA. They are specifically provided for in subheading 1404.90.0000, HTSUSA, which provides for “Vegetable products not elsewhere specified or included: Other.” The general, column one rate of duty is Free.

EFFECT ON OTHER RULINGS:

NY J89446, dated October 24, 2003, is hereby revoked.

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

[ATTACHMENT K]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 968062  
CLA-2 RR:CTF:TCM 968062 KSH  
CATEGORY: Classification  
TARIFF NO.: 1404.90.0000

PEGGY MONTONERA  
CUSTOMS AND COST IMPORT ANALYST  
SEARS, ROEBUCK, AND COMPANY  
3333 Beverly Road D5-257B  
Hoffman Estates, IL 60179

RE: Modification of New York Ruling Letter (NY) L81907, dated January 21 2005; Classification of classification of decorative Styrofoam ball from the Philippines.

DEAR MS. MONTONERA:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) L81907, issued to you on January 21, 2005, concerning the classification, in part, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a bromine dyed/painted tapioca seed coated Styrofoam ball. The tapioca seed coated Styrofoam ball was classified in subheading 3926.40.0000, HTSUSA, which provides for "[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: [s]tatuettes and other ornamental articles." We have reviewed that ruling and found it to be in error as it pertains to the classification of the tapioca seed coated Styrofoam ball. Therefore, this ruling modifies NY L81907.

FACTS:

The styrofoam ball, identified as Stock No. 90404, is approximately 5" in diameter and is covered with bromine dyed/painted tapioca seeds. The seeds are arranged in a flower pattern.

ISSUE:

Whether the tapioca seed coated Styrofoam ball is classified in heading 3926, HTSUSA, as an other article of plastics or in heading 1404, HTSUSA, as a vegetable product not elsewhere specified or included.

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.

The item is not specifically provided for in any one heading. Accordingly, it may not be classified solely on the basis of GRI 1. Further, GRI 2(a) is inapplicable because it applies to incomplete or unfinished articles, and the seed ball is imported in a finished complete condition. GRI 2(b) states that the classification of goods consisting of more than one material or substance shall be according to the principles of GRI 3. The subject tapioca seed coated Styrofoam ball is a decorative item consisting of a foamed plastic sphere that is covered with tapioca seeds. Thus, for tariff purposes, it constitutes a good consisting of two or more substances or materials. As such, the item is arguably classifiable under heading 3926, HTSUSA, as an other article of plastics or heading 1404, HTSUSA, as vegetable products not elsewhere specified or included.

GRI 3(a) states that when, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, 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. As the subject tapioca seed coated Styrofoam ball is a composite good, we must apply rule 3(b), which provides that composite goods are to be classified according to the component that gives the good its essential character. We must determine whether the foamed plastic sphere or the tapioca seeds impart the essential character to the article.

EN VIII to GRI 3(b) explains 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 the constituent material in relation to the use of the goods.”

The internal foamed plastic sphere may provide the bulk and shape, however the surface tapioca seeds that cover the ball provide the texture, markings and color. The tapioca seeds impart the visual impact, consumer appeal and nature of the article. The essential character of the tapioca seed coated Styrofoam ball is the tapioca seeds. The tapioca seed coated Styrofoam ball is accordingly classifiable in heading 1404, HTSUSA. It is specifically provided for in subheading 1404.90.0000, HTSUSA.

**HOLDING:**

The tapioca seed coated Styrofoam ball is classified in subheading 1404.90.0000, HTSUSA, which provides for “Vegetable products not elsewhere specified or included: Other.” The general, column one rate of duty is Free.

EFFECT ON OTHER RULINGS:

NY L81907, dated January 21, 2005, is hereby modified.

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

[ATTACHMENT L]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 968063  
CLA-2 RR:CTF:TCM 968063 KSH  
CATEGORY: Classification  
TARIFF NO.: 6702.10.2000 or 6702.90.6500

MR. KEN AUGUST  
EASTER UNLIMITED, INC.  
*80 Voice Road*  
*Carle Place, NY 11514*

RE: Classification of Styrofoam pumpkin covered with foil; NY G88449, dated April 12, 2001.

DEAR MR. AUGUST:

This is in reference to New York Ruling Letter (NY) G88449, issued to you on April 12, 2001, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUSA), of a Styrofoam pumpkin covered with foil. The article was classified in subheading 6702.10.2000, HTSUSA, which provides for “[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f plastics: [a]ssembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods.” Since the issuance of that ruling, U.S. Customs and Border Protection (CBP) has reviewed the classification of these items and has determined that the cited ruling may be in error.

FACTS:

The pumpkin is identified as item number 8451, Golden Pumpkin. It is made of Styrofoam covered with orange colored foil. The stem is made of Styrofoam that has been covered with brown paper. The leaves are made of paper that are covered with orange colored foil. The pumpkins are available in sizes 4.5 inches or 6.5 inches. The pumpkins will be packed 12 pieces to a box.

ISSUE:

Whether the pumpkin is classified in subheading 6702.10, HTSUSA, as artificial fruit of plastics or subheading 6702.90, HTSUSA, as artificial fruit of other materials.

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.

Heading 6702, HTSUSA, provides for “artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage and fruit.” The subject foil covered Styrofoam pumpkin is a decorative item consisting of a foamed plastic shape covered with foil. Thus, for tariff purposes, it constitutes a good consisting of two or more substances or materials. As such, the item is arguably classifiable under subheading 6702.10, HTSUSA, as artificial fruit of plastics or subheading 6702.90, HTSUS, as artificial fruit of other materials, if the foil is not of plastics. Accordingly, it may not be classified solely on the basis of GRI 1. See, GRI 6 which states, in part, that the classification of goods in the subheadings of a heading is to be according to the terms of those subheadings and any relative section and chapter notes and, by appropriate substitution of terms, to Rules 1 through 5. Further, GRI 2(a) is inapplicable because it applies to incomplete or unfinished articles, and the foil covered Styrofoam pumpkin is imported in a finished complete condition. GRI 2(b) states that the classification of goods consisting of more than one material or substance shall be according to the principles of GRI 3.

GRI 3(a) states that when, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, 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. As the subject foil covered Styrofoam pumpkin is a composite good, we must apply rule 3(b), which provides that composite goods are to be classified according to the component that gives the good its essential character. We must determine whether the foamed plastic pumpkin or the foil imparts the essential character to the article.

EN VIII to GRI 3(b) explains 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 the constituent material in relation to the use of the goods.”

The internal foamed plastic pumpkin may provide the bulk and shape, however the surface foil that covers the Styrofoam pumpkin provides the texture, markings and color. The foil imparts the visual impact, consumer appeal and nature of the article. The essential character of the foil covered Styrofoam pumpkin is the foil. The foil covered Styrofoam pumpkin is accordingly classifiable in subheading 6702.10.2000, HTSUSA, if the foil is plastic or subheading 6702.90.6500, HTSUSA, if the foil is metal. We encourage you to seek a new ruling with a complete description of the pumpkin to determine the applicable subheading.

This letter is being issued as an information letter under 177.1(d)(2) of the Customs Regulations (19 CFR 177.1(d)(2)), because the classification decision on the prospective transaction has already been issued and neither you nor CBP proposes any change to it, and knowledge of the matter under consideration here may benefit you. Also this letter provides the information that our ruling NY G88449, dated April 12, 2001, may not be accurate. As an information letter, as defined by our regulations, this letter carries no value as precedent and does not bind CBP in subsequent rulings or decisions in any way.

GAIL A. HAMILL,  
*Chief,*  
*Tariff Classification and Marking Branch.*

[ATTACHMENT M]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 968064  
CLA-2 RR:CTF:TCM 968064 KSH  
CATEGORY: Classification  
TARIFF NO.: 1404.90.0000

MS. ELIZABETH MINCE  
IMPORT MANAGER  
ATLANTA CUSTOMS BROKERS  
*5099 Southridge Parkway, Suite 1161*  
*Atlanta, Georgia 30349*

RE: Revocation of Headquarters Ruling Letter (HQ) 956065, dated July 25, 1994; Classification of ornamental mushroom articles.

DEAR MS. MINCE:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered Headquarters Ruling Letter (HQ) 956065, issued to you on July 25, 1994, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of ornamental mushroom articles. The articles were classified in subheading 3926.40.0000, HTSUSA, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Statuettes and other ornamental articles". We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes HQ 956065.

FACTS:

The article at issue is a bird that measures approximately 1-1/2 x 2 inches (plus a 1 inch tail). The body of the bird is made of Styrofoam (plastics). White paper made of wood fibre wraps the body. Dried paper thin pieces of mushrooms are glued onto the body in the form of wings and tails. The material for the eyes and mouth was not stated. The bird is painted and decorated with various colors and has a flat bottom. The bird contains no strings or hooks for hanging purposes such as ornaments for Christmas trees.

**ISSUE:**

Whether the mushroom bird is classified in heading 1404, HTSUSA, as a vegetable product not elsewhere specified or included or in heading 3926, HTSUSA, as an article of plastics.

**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.

The item is not specifically provided for in any one heading. Accordingly, the article may not be classified solely on the basis of GRI 1. The subject mushroom bird is a decorative item consisting of a Styrofoam shape and dried mushrooms. Thus, for tariff purposes, it constitutes a good consisting of two or more substances or materials. GRI 2(a) is inapplicable because it applies to incomplete or unfinished articles, and the article is imported in a finished complete condition. GRI 2(b) states that the classification of goods consisting of more than one material or substance shall be according to the principles of GRI 3. The bird is arguably classifiable under heading 3926, HTSUSA, as an article of plastics or heading 1404, HTSUSA, as a vegetable product not elsewhere specified or included.

GRI 3(a) states that when, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, 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. As the subject mushroom birds are a composite good, we must apply rule 3(b), which provides that composite goods are to be classified according to the component that gives the good its essential character. We must determine whether the Styrofoam or the dried mushrooms impart the essential character to the article.

EN VIII to GRI 3(b) explains 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 the constituent material in relation to the use of the goods.”

The internal Styrofoam may provide the bulk and shape, however the mushrooms that cover the bird provide the texture, markings and design. The mushrooms impart the visual impact, consumer appeal and nature of the mushroom bird. The essential character of the mushroom bird is the mushrooms. The mushroom bird is accordingly classifiable in heading 1404, HTSUSA. It is specifically provided for in subheading 1404.90.0000, HTSUSA.

HOLDING:

The mushroom bird is classified in heading 1404, HTSUSA. It is specifically provided for in subheading 1404.90.0000, HTSUSA, which provides for "Vegetable products not elsewhere specified or included: Other." The general, column one rate of duty is Free.

EFFECT ON OTHER RULINGS:

HQ 956065, dated July 25, 1994, is hereby revoked.

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

[ATTACHMENT N]

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 968065  
CLA-2 RR:CTF:TCM 968065 KSH  
CATEGORY: Classification  
TARIFF NO.: 4602.10.8000

MS. VIDYA BHAVNANI  
SUN COAST MERCHANDISE  
CORPORATION  
*6315 Bandini Boulevard*  
*Commerce, CA 90040*

RE: Modification of New York Ruling Letter (NY) C87269, dated May 18, 1998; Classification of a Styrofoam garlic bulb covered with corn stalk or leaf material from China.

DEAR MS. BHAVANI:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) C87269, issued to you on May 18, 1998, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of, among other merchandise, a Styrofoam garlic bulb covered with corn stalk or leaf material. The article was classified in subheading 6702.10.2000, HTSUSA, which provides for "[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f plastics: [a]ssembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods." We have reviewed that ruling and found it to be in error as it pertains to the classification of the Styrofoam bulb of garlic covered with corn stalk or leaf material. Therefore, this ruling modifies NY C87269.

FACTS:

The merchandise at issue is a small decorative article made to resemble a bulb of garlic. It consists of a shaped piece of Styrofoam with an outer covering said to be of "maize" (presumably, dried corn stalk or leaf material).

**ISSUE:**

Whether the garlic bulb is classified in heading 3926, HTSUSA, as an other article of plastics or in heading 4602, HTSUSA, as an article made directly to shape from plaiting materials or made up from articles of heading 4601.

**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.

The item is not specifically provided for in any one heading. Accordingly, it may not be classified solely on the basis of GRI 1. Further, GRI 2(a) is inapplicable because it applies to incomplete or unfinished articles, and the garlic bulb is imported in a finished complete condition. GRI 2(b) states that the classification of goods consisting of more than one material or substance shall be according to the principles of GRI 3. The subject garlic bulb is a decorative item consisting of a Styrofoam shape which resembles a bulb of garlic that is covered with dried corn stalk or leaf material. As such, the item is arguably classified in heading 3926, HTSUSA, as an other article of plastics or heading 4602, HTSUSA, as an article made to shape from plaiting materials or made up from articles of heading 4601. Thus, for tariff purposes, they constitute goods consisting of two or more substances or materials.

GRI 3(a) states that when, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, 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. As the subject garlic bulb is a composite good, we must apply rule 3(b), which provides that composite goods are to be classified according to the component that gives the good its essential character. We must determine whether the Styrofoam shape or the corn stalk or leaf material imparts the essential character to the article.

EN VIII to GRI 3(b) explains 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 the constituent material in relation to the use of the goods.”

The internal Styrofoam may provide the bulk and shape, however the surface corn stalk or leaf material that covers the garlic bulb provides the texture, markings and color. The corn stalk or leaf material imparts the visual impact, consumer appeal and nature of the article. The essential character

of the corn stalk or leaf material covered garlic bulb is the corn stalk or leaf material. The garlic bulb is accordingly classifiable in heading 4602, HTSUSA. It is specifically provided for in subheading 4602.10.8000, HTSUSA.

HOLDING:

The garlic bulb is classified in heading 4602, HTSUSA. It is specifically provided for in subheading 4602.10.8000, HTSUSA, which provides for “[b]asketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah: [o]f vegetable materials:[o]ther: [o]ther: [o]ther.” The general, column one rate of duty is 2.3% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY C87269, dated May 18, 1998, is hereby modified.

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

[ATTACHMENT O]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 968066  
CLA-2 RR:CTF:TCM 968066 KSH  
CATEGORY: Classification  
TARIFF NO.: 1404.90.0000

MS. ANNE HUFFMAN  
THT DESIGNS  
*10917 Harry Watanabe Parkway*  
*Omaha, NE 68128-5734*

RE: Modification of New York Ruling Letter (NY) K83112, dated March 2, 2004; Classification of Styrofoam balls coated with seeds.

DEAR MS. HUFFMAN:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) K83112, issued to you on March 2, 2004, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a leaf tray and twelve seed coated Styrofoam balls. The seed coated Styrofoam balls were classified in subheading 3926.40.0000, HTSUSA, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Statuettes and other ornamental articles.” We have reviewed that ruling and found it to be in error as it pertains to the classification of the seed coated Styrofoam balls. Therefore, this ruling modifies NY K83112.

FACTS:

The merchandise at issue consists of twelve 1.5-inch diameter Styrofoam balls. The surface of each Styrofoam ball is coated with natural seeds using glue. Four balls are covered with mung bean, four with ormosia, and four with soya.

**ISSUE:**

Whether the seed coated Styrofoam balls are classified in heading 3926, HTSUSA, as articles of plastics or in heading 1404, HTSUSA, as vegetable products not elsewhere specified or included.

**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.

The items are not specifically provided for in any one heading. Accordingly, they may not be classified solely on the basis of GRI 1. Further, GRI 2(a) is inapplicable because it applies to incomplete or unfinished articles, and the bean balls are imported in a finished complete condition. GRI 2(b) states that the classification of goods consisting of more than one material or substance shall be according to the principles of GRI 3. The subject seed coated Styrofoam balls are decorative items consisting of foamed plastic spheres that are covered with various types of seeds. Thus, for tariff purposes, they constitute goods consisting of two or more substances or materials. As such, the items are arguably classifiable under heading 3926, HTSUSA, as other articles of plastics or heading 1404, HTSUSA, as vegetable products not elsewhere specified or included.

GRI 3(a) states that when, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, 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. As the subject seed coated Styrofoam balls are composite goods, we must apply rule 3(b), which provides that composite goods are to be classified according to the component that gives the good its essential character. We must determine whether the foamed plastic sphere or the seeds impart the essential character to the article.

EN VIII to GRI 3(b) explains 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 the constituent material in relation to the use of the goods.”

The internal foamed plastic spheres may provide the bulk and shape, however the surface seeds that cover the Styrofoam balls provide the texture, markings and color. The seeds impart the visual impact, consumer appeal and nature of the article. The essential character of the seed coated Styrofoam balls is the seeds. The seed coated Styrofoam balls are accord-

ingly classifiable in heading 1404, HTSUSA. They are specifically provided for in subheading 1404.90.0000, HTSUSA.

HOLDING:

The seed coated Styrofoam balls are classified in heading 1404, HTSUSA. They are specifically provided for in subheading 1404.90.0000, HTSUSA, which provides for "Vegetable products not elsewhere specified or included: Other." The general, column one rate of duty is Free.

EFFECT ON OTHER RULINGS:

NY K83112, dated March 2, 2004, is hereby modified.

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

[ATTACHMENT P]

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 968067  
CLA-2 RR:CTF:TCM 968067 KSH  
CATEGORY: Classification  
TARIFF NO.: 6702.90.6500

MS. LINDA BROADFORD  
BRADLEES STORES, INC.  
*1 Bradlees Circle*  
*Braintree, MA 02184*

RE: Modification of New York Ruling Letter (NY) G83315, dated October 20, 2000; Classification of Styrofoam gourds covered with paper.

DEAR MS. BRADFORD:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) G83315, issued to you on October 20, 2000, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of, among other merchandise, eight Styrofoam gourds covered with paper. The articles were classified in subheading 6702.10.2000, HTSUSA, which provides for "[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f plastics: [a]ssembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods." Since the issuance of that ruling, CBP has reviewed the classification of these items and has determined that the cited ruling is in error as it pertains to the classification of the paper covered Styrofoam gourds.

FACTS:

The eight artificial gourds of various shapes and colors (predominantly green and orange) are made of Styrofoam covered with painted paper. They have short, glued-on "stems" made of wire and plastic.

**ISSUE:**

Whether the gourds are classified in subheading 6702.10, HTSUSA, as artificial fruit of plastics or subheading 6702.90, HTSUSA, as artificial fruit of other materials.

**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.

Heading 6702, HTSUSA, provides for “artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage and fruit.” The subject paper coated Styrofoam gourds are decorative items consisting of foamed plastic shapes that are covered with paper. Thus, for tariff purposes, they constitute goods consisting of two or more substances or materials. As such, the items are arguably classifiable under subheading 6702.10, HTSUSA, as artificial fruit of plastics or subheading 6702.90, HTSUSA, as artificial fruit of other materials. Accordingly, they may not be classified solely on the basis of GRI 1. See, GRI 6 which states, in part, that the classification of goods in the subheadings of a heading is to be according to the terms of those subheadings and any relative section and chapter notes and, by appropriate substitution of terms, to Rules 1 through 5. Further, GRI 2(a) is inapplicable because it applies to incomplete or unfinished articles, and the paper covered Styrofoam gourds are imported in a finished complete condition. GRI 2(b) states that the classification of goods consisting of more than one material or substance shall be according to the principles of GRI 3.

GRI 3(a) states that when, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, 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. As the subject paper covered Styrofoam gourds are composite goods, we must apply rule 3(b), which provides that composite goods are to be classified according to the component that gives the good its essential character. We must determine whether the foamed plastic gourd or the paper imparts the essential character to the articles.

EN VIII to GRI 3(b) explains 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 the constituent material in relation to the use of the goods.”

The internal foamed plastic gourds may provide the bulk and shape, however the surface paper that covers the Styrofoam gourds provides the tex-

ture, markings and color. The paper imparts the visual impact, consumer appeal and nature of the articles. The essential character of the paper covered Styrofoam gourds is the paper. The paper covered Styrofoam gourds are accordingly classifiable in subheading 6702.90.6500, HTSUSA.

**HOLDING:**

Pursuant to GRI 3(b), the paper covered Styrofoam gourds are classified in subheading 6702.90.6500, HTSUSA, which provides for “[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f other materials: [o]ther: other.” The general, column one rate of duty is 17% *ad valorem*.

**EFFECT ON OTHER RULINGS:**

NY G83315, dated October 20, 2000, is hereby modified.

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

**PROPOSED MODIFICATION OF A RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
COUNTRY OF ORIGIN OF PRINTED GIFT TISSUE PAPER**

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

**ACTION:** Notice of modification of a ruling letter and revocation of treatment relating to the country of origin of printed gift tissue paper.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is proposing to modify one ruling letter relating to the country of origin of printed gift tissue paper. CBP is also proposing to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

**DATE:** Comments must be received on or before September 1, 2006.

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

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

On December 8, 1993, Title VI, (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter “Title VI”) became effective. Title VI amended many sections of the Tariff Act of 1930, as

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify one ruling letter pertaining to the country of origin of gift tissue paper. Although in this notice, CBP is specifically referring to the modification of Headquarters Ruling Letter (HQ) 563262, dated July 15, 2005 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In HQ 563262, CBP ruled, in part, that master rolls of tissue paper from China are substantially transformed when printed with colors and designs and cut to size to form gift tissue sheets within Country A. Since the issuance of that ruling, CBP has reviewed the country of origin of the printed gift tissue paper and has determined that the cited ruling is in error as it pertains to the country of origin of the printed gift tissue paper.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify HQ 563262 and to revoke or modify any other ruling not specifically identified, to reflect the proper country of origin of the printed gift tissue paper according to the analysis contained in proposed HQ 967997, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

**DATED:** July 12, 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 563262  
July 15, 2005  
MAR-2-05 RR:CR:SM 563262 EAC  
CATEGORY: Marking

MS. MARCELA B. STRAS  
BAKER & HOSTETLER LLP  
*Washington Square, Suite 1100*  
*1050 Connecticut Avenue, N.W.*  
*Washington, D.C. 20036-5304*

RE: Country of origin marking requirements applicable to certain gift tissue products; substantial transformation; 19 U.S.C. §1304

DEAR MS. STRAS:

This is in response to your letter, dated April 13, 2005, requesting a ruling on behalf of Plus Mark, Inc. ("Plus Mark"), pertaining to the country of origin marking requirements applicable to certain gift tissue products. We have also considered the additional information provided by your facsimile of May 23, 2005.

FACTS:

Plus Mark is a manufacturer and distributor of various gift-wrapping products, boxed cards and other related accessories. The items under consideration in this case are identified as "consumer tissue paper" products that you have described by telephone as articles that are used as packaging material for gift-wrapped packages, boxes, or bags. You state that Plus Mark may purchase such consumer gift tissue paper from an overseas producer/supplier located in "Country A." Depending on the type of end-product produced (as discussed, *infra*), the producer in Country A will source master

rolls of bulk, unprinted tissue paper from China, Vietnam or from within Country A. After obtaining the master rolls of tissue paper, the producer will print some of the rolls with colors and designs and then cut the paper to size. The tissue paper that is not printed will also be cut to size but will remain unprinted when packaged. The consumer tissue paper products will not undergo any processing operations within the United States. We are informed that specific tariff classification numbers for the imported gift tissue products have not been provided because such merchandise may be classified under various subheadings of the Harmonized Tariff Schedule of the United States ("HTSUS"), depending upon the circumstances of each case.

A more detailed description of the processing operations performed in Country A to produce the printed and unprinted tissue products, as well as pertinent cost information for each, follows.

**Printed Tissue Paper – Processing Operations and Cost:**

The master rolls of tissue paper are imported into Country A from China. The tissue paper is printed (with either designs or colors) on a six-color gravure printing press with ink that is a product of Country A.

The printed tissue paper is thereafter cut to size on a computer controlled automatic cutter/slitter.

Various printed designs are collated and folded to size by hand.

The folded tissue is either banded or placed into plastic polybags that are packed into master cartons by hand.

**Unprinted/White Tissue Paper – Processing Operations and Cost:**

The master rolls of tissue paper are normally imported into Country A from Vietnam. If such tissue paper from Vietnam is not available, the master rolls of tissue paper will be sourced from within Country A. In either case, the tissue paper in this context lacks the tensile strength to undergo printing operations and therefore remains unprinted.

The unprinted, plain tissue paper is cut to size on a computer controlled automatic cutter/slitter.

Various printed designs may be collated together with the plain paper and then folded to size by hand. If not collated together, the plain tissue paper will merely be folded to size by hand after cutting.

The folded tissue is either banded or placed into plastic polybags that are packed into master cartons by hand.

Based upon the foregoing, you assert that the processing operations performed in Country A substantially transform the imported master rolls of tissue paper into products of Country A. We are additionally advised that, prior to processing, the master rolls of tissue paper could be used to produce products such as crepe paper, crepe paper streamers, toilet seat covers, and other articles.

**ISSUE:**

Whether the processing operations described above substantially transform the master rolls of tissue paper from China or Vietnam into a product of Country A.

## LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930 (19 U.S.C. §1304), provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. §1304 was that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. "The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will." *United States v. Friedlander & Co.*, 27 C.C.P.A. 297 at 302 (1940).

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and the exceptions of 19 U.S.C. §1304. Section 134.1(b), Customs Regulations (19 CFR 134.1(b)), defines "country of origin" as the country of manufacture, production or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within the meaning of the marking laws and regulations. The case of *U.S. v. Gibson-Thomsen Co., Inc.*, 27 C.C.P.A. 267 (C.A.D. 98)(1940), provides that an article used in manufacture which results in an article having a name, character, or use differing from that of the constituent article will be considered substantially transformed and, as a result, the manufacturer or processor will be considered the ultimate purchaser of the constituent materials. In such circumstances, the imported article is excepted from marking and only the outermost container is required to be marked. See, 19 CFR 134.35(a).

Generally, U.S. Customs and Border Protection ("CBP") has held that cutting or shaping materials to defined shapes or patterns suitable for use in making finished articles, as opposed to mere cutting to length or width which does not render an article suitable for a particular use, constitutes a substantial transformation. See, for example, Headquarters Ruling Letter ("HRL") 555702, dated January 7, 1991 (finding steel plates dedicated to use in "hydraulic balers" by cutting, folding, binding, and scraping were considered substantially transformed) and HRL 553574, dated August 15, 1985 (holding aluminum strips cut to length, punched, drilled, or both with holes and notched which gave the strips specific shape or pattern for use in window frames were substantially transformed). Such cases may be distinguished, however, because the tissue paper presently under consideration is not cut or shaped to a defined shape or pattern for use in making a finished article. Rather, the processed tissue paper in this case appears to be used as an accessory that complements a variety of finished articles such as gift bags, boxes, or baskets.

In support of Plus Mark's position, counsel cites HRL 557462, dated September 13, 1994, stating that CBP found in that case that decorative paper that was shaped, creased, folded, cut to length, and glued to produce gift bags was substantially transformed. In that case, CBP considered whether various gift-wrapping and packaging articles were substantially transformed in Mexico for purposes of determining their eligibility for preferential treatment under the Generalized System of Preferences ("GSP"). In or-

der to produce the gift bags, gift-wrap paper reams were placed onto a ream rolling machine where the paper was pulled through feed rollers. The gift-wrap paper was thereafter systematically shaped, creased, folded, and cut to the length of the desired gift bag. The completed folded and shaped gift bag was then sent through a machine where liquid adhesive was placed onto the bottom end of the bag and compressed to secure the folds that enclosed the bag. In a separate process involving some of the bags, handles were glued onto the inside of the bag and a peel-off paper backer was applied to the top of the glued handle and also on the inside of the bag to provide stability to the handle. CBP held that the gift bags under consideration were substantially transformed because the operations involved were complex and meaningful and the finished items were new and distinct articles of commerce that possessed a new name, character, and use clearly distinguishable from the material from which it was made.

However, please be advised that CBP also held in that case that reams of gift-wrap were not substantially transformed when put onto cardboard rolls. In making this determination, HRL 557462 noted that the process of cutting the wrapping paper to length, and affixing it to cardboard tubes with one-inch strips of adhesive was a simple assembly process requiring little skill and did not constitute a complex and meaningful operation sufficient for the paper to lose its separate identity.

Also relevant is HRL 561025, dated October 21, 1998, pertaining to the country of origin marking requirements applicable to certain photographic film. In HRL 561025, "jumbo" film (5 feet wide, 4 feet in diameter, 7 millimeters thick, 8,000 feet long, and weighing 2,000 pounds) was imported into the United States for processing into film cartridges. Such processing consisted of slitting the jumbo film into widths of 35 millimeters or 16 millimeters (depending on type of film to be produced); perforating the film to ensure proper alignment in the camera; cutting the film to exact lengths required by the 110 and 135 film cartridges; subjecting the film to latent image flashing operations; assembling the cartridges from various parts; reducing the residual moisture content of the film; and, removing defects. In finding that the imported jumbo film was not substantially transformed, CBP noted that the imported product was the "essence" of the completed article and thus did not undergo a substantial transformation within the United States.

In 734720, dated October 22, 1992, CBP considered self-adhesive tape, normally used in portable or desktop style dispensers, which was manufactured in the United States in continuous rolls of varying widths. After manufacture, these "log rolls" were exported to Canada where they were cut to length and width. In finding that such cutting operations did not substantially transform the log rolls of tape, CBP relied primarily on HRL 729316, dated April 20, 1989. In HRL 729316, abrasive belts were manufactured in the United States in continuous rolls of varying widths. The belts were exported to Mexico where they were cut to length (and in some instances, also to width), 3/8 of an inch of the abrasive was ground off each end, and the two ends were spliced together with an adhesive before being returned to the United States. Under this set of facts, CBP held that the operations performed in Mexico did not substantially transform the abrasive belts of U.S. origin.

With respect to printing operations, please note that by General Notice dated August 11, 1995, and published August 30, 1995, in the Customs Bul-

letin, Volume 29, Number 35 (which modified HRL 557034/557072, dated July 14, 1993), CBP concluded that the printing of paper rollstock or plastic film used in the production of shopping bags with colors, designs, and/or customer graphics, changes the character of paper or plastic film from a raw material with numerous uses to a material with limited uses to a degree sufficient to constitute a substantial transformation. However, CBP maintained that a substantial transformation does not occur when printing operations do not alter the use of an article. For example, printing roll stock with only labeling information (such as a UPC label, company logo, or country of origin marking) does not substantially transform the rollstock.

In HRL 560155, dated April 10, 1997, pallets of uncut sheets of trading cards were imported into the United States from the United Kingdom for finishing and combination with U.S.-origin cards. In the United Kingdom, images were printed onto specialized sheets of paper stock, the sheets were laminated with film, and the laminated sheets were thereafter packaged for shipment to the United States. In the United States, the uncut sheets were slit into individual cards (in cases where only one side of the sheets were printed, two halves were glued together and then cut). The individual cards were thereafter combined with cards produced entirely within the United States to form completed packages of trading cards, with the majority of the cards being of U.S. origin. CBP held that such processing did not substantially transform the imported sheets into products of the United States and that the finished card packages were required to be marked so as to inform the ultimate purchaser in the United States of the origin of the imported cards, the United Kingdom. Citing, HRL 734706, dated January 15, 1993 (cutting paper board sheets of baseball cards and sorting and packaging the cut cards are minor finishing operations) and HRL 555241, dated July 3, 1989 (cutting sheets of self-adhesive office labels on backing paper was not a substantial transformation). As the various cases and rulings set forth above demonstrate, in order to determine whether a substantial transformation occurs, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. As applied, it is our opinion that the master rolls of tissue paper from China are substantially transformed when printed with colors and designs and cut to size within Country A. In making this determination, we note that the printing and cutting operations performed in Country A change the character of the plain tissue paper from a material with numerous uses to a material intended for use as decorative gift packaging material. We additionally recognize that the ink used for printing is a product of Country A and that the totality of the processing which occurs in Country A accounts for a significant portion of the value of the final product.

However, it is also our opinion that a substantial transformation does not occur in instances where master rolls of tissue paper from Vietnam are cut and folded, but not printed, in Country A. We believe that such operations can be construed as mere finishing operations because the essence of the finished product (plain tissue paper) is actually imparted by the material that is imported from Vietnam. Packaging the cut, plain tissue paper with paper that is a product of Country A will not effect a substantial transformation in the Vietnamese-origin product. Accordingly, the country of origin of gift tissue sheets produced under these circumstances will be Vietnam. It should be noted that the country of origin of gift tissue sheets produced in this man-

ner will be Country A only when the master rolls of tissue paper are sourced from within that country as discussed, *supra*.

HOLDING:

Based upon the specific facts of this case, we find that the master rolls of tissue paper from China are substantially transformed when printed with colors and designs and cut to size to form gift tissue sheets within Country A. Therefore, when imported into the United States, the country of origin of such gift tissue products for marking purposes will be Country A. However, we also find that a substantial transformation does not occur in instances where master rolls of tissue paper from Vietnam are cut and folded, but not printed, in Country A. Therefore, when imported into the United States, the country of origin of such gift tissue products for marking purposes will be Vietnam. The country of origin of gift tissue sheets produced in this manner will be Country A only when the master rolls of tissue paper are sourced from within Country A.

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

MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 967997  
CLA-2 RR:CTF:TCM 967997 KSH  
CATEGORY: MARKING

MS. MARCELA B. STRAS, ESQ.  
BAKER & HOSTETLER LLP  
*Washington Square, Suite 1100*  
*1050 Connecticut Avenue, N.W.*  
*Washington, D.C. 20036-5304*

RE: Modification of Headquarters Ruling Letter (HQ) 563262, dated July 15, 2005; Country of origin marking requirements applicable to certain gift tissue products; substantial transformation; 19 U.S.C. §1304

DEAR MS. STRAS:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered Headquarters Ruling Letter (HQ) 563262, issued to you on July 15, 2005, on behalf of your client, Plus Mark, Inc., concerning the country of origin of certain gift tissue products. In HQ 563262, we determined that master rolls of tissue paper from China are substantially transformed when printed with colors and designs and cut to size to form gift tissue sheets within Country A. However, we also determined that a substantial transformation does not occur in instances where master rolls of tissue paper from Vietnam are cut and folded, but not printed, in Country

A. We have reviewed that ruling and found it to be in error as it pertains to the country of origin of the printed and cut gift tissue sheets. Therefore, this ruling modifies HQ 563262.

FACTS:

Master rolls of tissue paper are imported into Country A from China. The tissue paper is printed (with either designs or colors) on a six-color gravure printing press with ink that is a product of Country A. The printed tissue paper is thereafter cut to size on a computer controlled automatic cutter/slitter. Various printed designs are collated and folded to size by hand. The folded tissue is either banded or placed into plastic polybags that are packed into master cartons by hand.

We note that you advised that prior to the processing operations performed in Country A, the master rolls of tissue paper could be used to produce products such as crepe paper, crepe paper streamers, toilet seat covers, and other articles.

ISSUE:

Whether the processing operations described above substantially transform the master rolls of tissue paper from China into a product of Country A.

LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930 (19 U.S.C. §1304), provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. §1304 was that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. "The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will." United States v. Friedlander & Co., 27 C.C.P.A. 297 at 302 (1940).

Part 134 of the Customs and Border Protection (CBP) Regulations (19 CFR Part 134), implements the country of origin marking requirements and the exceptions of 19 U.S.C. §1304. Section 134.1(b) of the CBP Regulations (19 CFR 134.1(b)), defines "country of origin" as the country of manufacture, production or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within the meaning of the marking laws and regulations. The case of U.S. v. Gibson - Thomsen Co., Inc., 27 C.C.P.A. 267 (C.A.D. 98)(1940), provides that an article used in manufacture which results in an article having a name, character, or use differing from that of the constituent article will be considered substantially transformed and, as a result, the manufacturer or processor will be considered the ultimate purchaser of the constituent materials. In such circumstances, the imported article is excepted from marking and only the outermost container is required to be marked. See, 19 CFR 134.35(a).

CBP has generally held that adding a name or decorative mark, whether by painting, printing or engraving, will not be considered to result in a sub-

stantial transformation. In HQ 731779, dated December 9, 1988, we determined that the printing of advertising information on wooden pens did not constitute a substantial transformation. We noted:

First, the printing does not materially alter the name, character or use of the imported articles. At the time of importation, the articles in question would properly be referred to as pens and more specifically characterized as wooden pens in the shape of baseball bats, hockey sticks and rulers. The use of the pens is as writing implements. After the printing of the advertising information, they remain articles properly referred to as pens, characterized as wooden pens in the shape of baseball bats, hockey sticks and rulers, and used as writing implements. The fact that the pens may also be used for advertising purposes, does not, in our opinion, materially change their underlying use as writing implements.

Similarly, in HQ 734152, dated August 26, 1991, CBP found that the printing of U.S.-origin balloons in Canada did not materially alter the name, character, or use of the balloons, and therefore the balloons were not substantially transformed into products of Canada.

By General Notice, dated August 11, 1995, and published August 30, 1995, in the Customs Bulletin, Volume 29, Number 35 (which modified HQ 557034/557072, dated July 14, 1993), CBP concluded that the printing of paper rollstock or plastic film used in the production of shopping bags with colors, designs, and/or customer graphics, changes the character of paper or plastic film from a raw material with numerous uses to a material with limited uses to a degree sufficient to constitute a substantial transformation. However, CBP maintained that a substantial transformation does not occur when printing operations do not alter the use of an article. For example, printing roll stock with only labeling information (such as a UPC label, company logo, or country of origin marking) does not substantially transform the rollstock.

In HQ 560155, dated April 10, 1997, pallets of uncut sheets of trading cards were imported into the United States from the United Kingdom for finishing and combination with U.S.-origin cards. In the United Kingdom, images were printed onto specialized sheets of paper stock, the sheets were laminated with film, and the laminated sheets were thereafter packaged for shipment to the United States. In the United States, the uncut sheets were slit into individual cards (in cases where only one side of the sheets were printed, two halves were glued together and then cut). The individual cards were thereafter combined with cards produced entirely within the United States to form completed packages of trading cards, with the majority of the cards being of U.S. origin. CBP held that such processing did not substantially transform the imported sheets into products of the United States and that the finished card packages were required to be marked so as to inform the ultimate purchaser in the United States of the origin of the imported cards, the United Kingdom. Citing, HQ 734706, dated January 15, 1993 (cutting paper board sheets of baseball cards and sorting and packaging the cut cards are minor finishing operations) and HQ 555241, dated July 3, 1989 (cutting sheets of self-adhesive office labels on backing paper was not a substantial transformation).

We issued HQ 565262 based on a belief that the master rolls of tissue paper were susceptible to multiple uses prior to the printing and cutting in Country A. However, we have learned that tissue paper suitable for use as

decorative wrapping tissue whether in white, color, printed or unprinted must exhibit specific characteristics that are established at the time the master rolls are manufactured and cannot be altered or imparted by further processing. Decorative or wrapping tissue paper must be light weight, usually between 10 and 30 grams per square meter (GSM). We note that the tissue paper at issue weighs between 17 and 19 GSM. It must also be free of surface imperfections and have a smooth finish.

Tissue paper generally has a low tensile strength and has an open porous surface making it undesirable to print. Thus, tissue paper which will be printed must meet a minimal tensile strength to withstand printing, be smooth to allow even printing and contain sizing to hold but not absorb the ink. The tissue paper may also have "wet strength" additives to retain its structural integrity when wet.

As indicated above, tissue paper that will be printed for use as decorative gift wrap has a fixed identity imparted by specific characteristics present at the time the master rolls of tissue paper are manufactured. Tissue paper for use as printed decorative gift wrap cannot be further processed, after the master rolls are produced, into articles with any number of end uses. Decorative tissue paper manufactured to be printed is an article with limited use. It is not further limited by the printing to a degree sufficient to constitute a substantial transformation. The printing does not materially alter the name, character or use of the tissue paper. At the time of importation into Country A, the articles in question would properly be referred to as tissue paper. After the printing of the tissue paper, it remains an article properly referred to as tissue paper.

Printing and cutting the plain tissue paper in Country A will not effect a substantial transformation in the Chinese-origin product. Accordingly, the country of origin of tissue paper sheets produced under these circumstances will be China.

**HOLDING:**

The master rolls of tissue paper from China are not substantially transformed when printed with colors and designs and cut to size to form gift tissue sheets in Country A. When imported into the United States, the country of origin of these products for marking purposes will be China.

**EFFECT ON OTHER RULINGS:**

HQ 563262, dated July 15, 2005, is hereby modified.

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