

Bureau of Customs and Border Protection

General Notices

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

Washington, DC, October 11, 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.*

REVOCAION OF RULING LETTER AND REVOCAION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF A NOVELTY TOP HAT

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

ACTION: Notice of revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of a novelty top hat.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is revoking one ruling letter relating to the tariff classification of a novelty top hat under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on July 26, 2006, in Volume 40, Number 31, 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EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 24, 2006.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 proposed to revoke one ruling letter pertaining to the tariff classification of a novelty top hat was published in the July 26, 2006, CUSTOMS BULLETIN, Volume 40, Number 31. 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. 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 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 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 this final decision.

In NY A81378, CBP ruled that a novelty top hat was classified in subheading 9505.90.6020, HTSUS, which provided for "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other: Hats: Other." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error. If the novelty top hat is knitted or crocheted or made up of knitted or crocheted fabric, it should be classified in subheading 6505.90.6090, HTSUS, which provides for "Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; . . . : Other: Of man-made fibers: Knitted or crocheted or made up from knitted or crocheted fabric: Other: Not in part of braid, Other: Other: Other." If made of felt or other textile fabric, the novelty top hat should be classified in subheading 6505.90.8090, HTSUS, which provides for "Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; . . . : Other: Of man-made fibers: Other: Not in part of braid, Other: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY A81378 and revoking or modifying any other ruling not specifically identified, to reflect the proper classification of the novelty top hat according to the analysis contained in Headquarters Ruling Letter (HQ) 968139, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. In accordance with 19 U.S.C. 1625 (c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

DATED: October 5, 2006

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

Attachment

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968139
October 5, 2006
CLA-2 RR:CTF:TCM 968139 KSH
CATEGORY: Classification
TARIFF NO.: 6505.90

MR. DENNIS A. SCHLUCKBIER
HAYES SPECIALTIES CORPORATION
1761 East Genesee
Saginaw, Michigan 48601

RE: Revocation of New York Ruling Letter (NY) A81378, dated April 11, 1996; Classification of a Novelty Hat.

DEAR MR. SCHLUCKBIER:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) A81378, issued to you on April 11, 1996, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a novelty top hat. The article was classified in subheading 9505.90.6020, HTSUS, which provided for "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof. Other: Other: Hats: Other." We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY A81378.

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 A81378 was published in the *Customs Bulletin*, Vol. 40, No. 31, on July 26, 2006. No comments were received in response to the notice.

FACTS:

The novelty top hat is intended for use at parties, carnivals, Mardi Gras and the like. The top portion of the hat extends almost 11 inches high and its brim measures two inches wide. The hat is made of man-made fiber material. The hat is unlined with single stitching throughout. It is available in assorted colors and is identified by the following item numbers: 9648, 9649, 9650, 9651, 9652 and 9653.

ISSUE:

Whether the novelty top hat is classified in heading 9505, HTSUS, as festive, carnival or other entertainment articles or in heading 6505, HTSUS, as hats and other headgear.

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).

Chapter 65, HTSUS, covers headgear and parts thereof. Note 1(c) to chapter 65, HTSUS, states that "This chapter does not cover: Dolls' hats, other toy hats or carnival articles of chapter 95."

Although Note 1(c) excludes toy hats and carnival articles, it does not similarly exclude festive and entertainment articles from its scope.

The Explanatory Notes further identify the class of goods covered by Chapter 65, HTSUS. They read in pertinent part:

With the **exception** of the articles listed below this Chapter covers hat-shapes, hat-forms, hat bodies and hoods, and hats and other headgear of all kinds, irrespective of the materials of which they are made and of their intended use (daily wear, theatre, disguise, protection, etc.).

* * *

This Chapter **does not include**:

* * *

(f) Dolls' hats, other toy hats or carnival articles (**Chapter 95**).

Among other items, heading 9505, HTSUS, provides for festive, carnival or other entertainment articles.

Subheading 9505.90.6000, HTSUS, provides for "[f]estive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof; [o]ther:[o]ther."

The EN to heading 9505, HTSUS, state, in part, that the heading covers:

(A) **Festive, carnival or other entertainment articles**, which in view of their intended use are generally made of non-durable material. They include:

(1) Festive decorations used to decorate rooms, tables, etc. (such as garlands, lanterns, etc.); decorative articles for Christmas trees (tinsel, coloured balls, animals and other figures, etc); cake decorations which are traditionally associated with a particular festival (e.g., animals, flags).

(2) Articles traditionally used at Christmas festivities, e.g., artificial Christmas trees, nativity scenes, nativity figures and animals, angels, Christmas crackers, Christmas stockings, imitation yule logs, Father Christmases.

(3) Articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and moustaches (**not being** articles of postiche - **heading 67.04**), and paper hats. However, the heading **excludes** fancy dress of textile materials, of **Chapter 61** or **62**.

(4) Throw-balls of paper or cotton-wool, paper streamers (carnival tape), cardboard trumpets, "blow-outs", confetti, carnival umbrellas, etc.

* * *

CBP has consistently classified novelty hats substantially similar to the hat at issue in subheading 6505.90, HTSUS. See, e.g., HQ 961728, dated April 8, 1999, HQ 962434, dated November 19, 1999, NY G80946, dated September 12, 2000, NY F82865, dated February 22, 2000, NY F89393, dated

August 3, 2000, NY G88704, dated April 11, 2001, NY H87806, dated March 15, 2002, NY I82388, dated June 27, 2002 and NY L88538, dated November 25, 2005. In NY B85369, dated June 9, 1997, CBP classified novelty hats of 100% polyester tricot in heading 6505, HTSUS. In so doing, we indicated that hats classifiable in heading 9505, HTSUS, are those which qualify as a costume and are made of non-durable material and flimsy construction. *Id.*¹

The Explanatory Notes to Chapter 65, HTSUS, state that the chapter covers all hats irrespective of their use such as daily wear, theatre, disguise or protection. Indeed hats have many functions beyond and in addition to protection from the elements. Among those functions are as a sign of prestige and power, cultural and ethnic identity, religious affirmation, cultural traditions and beliefs or simply adornment. While the hat, with its comical and whimsical appearance, will be a source of enjoyment, humorous diversion and frivolous entertainment, the hat likely will not generate the same type of enjoyment and emotion one derives from actually playing with objects commonly thought of as articles whose primary purpose is amusement.

When an article has both the potential for amusement and utility, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purposes incidental to the amusement (See *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, C.D. 4688 (1977)). As previously noted, the hat is not only amusing but also fully functional. Not all merchandise that amuses is properly classified in an entertainment provision.

We are of the opinion that the hat is specifically provided for as a hat of heading 6505, HTSUS, even if the style of the hat may prevent its use on more than an occasional basis. The hat remains an object used to wear upon the head of the purchaser. As such, it is not described by heading 9505, HTSUS, as a festive, carnival or other entertainment article.

HOLDING:

By application of GRI 1, the novelty top hat is classified in heading 6505, HTSUS. If the novelty top hat is knitted or crocheted or made up of knitted or crocheted fabric, it is classified in subheading 6505.90.6090, HTSUS, which provides for "Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; . . . Other: Of man-made fibers: Knitted or crocheted or made up from knitted or crocheted fabric: Not in part of braid, Other: Other: Other." The rate of duty is 20 cents per kilogram plus 7% *ad valorem*. If made up of felt or of other textile fabric, the novelty top hat is classified in subheading 6505.90.8090, HTSUS, which provides for "Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; . . . Other: Of man-made fibers: Other: Not in part of braid, Other: Other: Other." The rate of duty is 18.7 cents per kilogram plus 6.8% *ad valorem*.

Merchandise classified in subheadings 6505.90.6090 and 6505.90.8090, HTSUS, fall within textile category 659. Quota/visa requirements are no

¹ We acknowledge that witches and santa hats of durable material have been previously classified in heading 9505, HTSUS. See HQ 084288, dated July 6, 1989 and HQ 088410, dated April 18, 1991. However, we may reconsider the classification of these articles in heading 9505, HTSUS, in the future.

longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent negotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas," which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at <http://otexa.ita.doc.gov>.

EFFECT ON OTHER RULINGS:

NY A81738, 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.

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

**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: 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 revoking four ruling letters and modifying 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 revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on August 2, 2006, in Volume 40, Number 32, 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 December 24, 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 proposed to revoke four ruling letters and modify four ruling letters pertaining to the classification of Styrofoam articles covered with paper or natural materials was published in the August 2, 2006, CUSTOMS BULLETIN, Volume 40, Number 32. No comments were received in response to the notice.

As stated in the proposed notice, this revocation and modification will cover any rulings on this merchandise that 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 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 this notice period. An importer's failure to advise CBP of substantially identical transac-

tions 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 this final decision.

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, 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 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 rul-

ing, 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 modifying NY G83315, NY C87269, NY L81907 and NY K83112 and revoking 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 A–H 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: October 5, 2006

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

Attachments



[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968060
October 5, 2006
CLA-2 RR:CTF:TCM 968060 KSH
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, 2186 (1993)), 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. Notice of the proposed revocation of HQ 958043 was published in the Customs Bulletin, Vol. 40, No. 32, on August 2, 2006. No comments were received in response to the notice.

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, HTSUS, 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).

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968061
October 5, 2006
CLA-2 RR:CTF:TCM 968061 KSH
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.

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 J89446 was published in the Customs Bulletin, Vol. 40, No. 32, on August 2, 2006. No comments were received in response to the notice.

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 2 ½ 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 item is 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. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

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



[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968062
October 5, 2006
CLA-2 RR:CTF:TCM 968062 KSH
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.

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 L81907 was published in the Customs Bulletin, Vol. 40, No. 32, on August 2, 2006. No comments were received in response to the notice.

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

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



[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968063
October 5, 2006
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.

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 G88449 was

published in the Customs Bulletin, Vol. 40, No. 32, on August 2, 2006. No comments were received in response to the notice.

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.

HOLDING:

The foil covered Styrofoam pumpkin is classified in subheading 6702.10.2000, HTSUSA, if the foil is plastic or in subheading 6702.90.6500, HTSUSA, if the foil is metal. We are not able to provide a more specific classification at this time without a sample of the foil covered pumpkin at issue.

We invite you to request a new ruling on the foil covered pumpkin pursuant to Section 177 of the Customs Regulations to obtain a more precise classification of the foil covered pumpkin.

EFFECT ON OTHER RULINGS:

NY G88449, dated April 12, 2001 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.

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

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968064
October 5, 2006
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 116
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.

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 HQ 956065 was published in the *Customs Bulletin*, Vol. 40, No. 32, on August 2, 2006. No comments were received in response to the notice.

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

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

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968065
October 5, 2006
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.

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 C87269 was published in the Customs Bulletin, Vol. 40, No. 32, on August 2, 2006. No comments were received in response to the notice.

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

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

[ATTACHMENT G]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968066
October 5, 2006
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.

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 K83112 was published in the Customs Bulletin, Vol. 40, No. 32, on August 2, 2006. No comments were received in response to the notice.

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

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

[ATTACHMENT H]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968067
October 5, 2006
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 flex-

ible 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.

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 G83315 was published in the Customs Bulletin, Vol. 40, No. 32, on August 2, 2006. No comments were received in response to the notice.

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

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

**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 modifying one ruling letter relating to the country of origin of printed gift tissue paper.

CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on August 2, 2006, in Volume 40, Number 32, of the CUSTOMS BULLETIN. CBP received five comments in support of the modification.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 24, 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 proposed to modify one ruling letter pertaining to the country of origin of printed gift tissue paper was published in the August 2, 2006, CUSTOMS BULLETIN, Volume 40, Number 32. Five comments were received in support of the proposed notice.

As stated in the proposed notice, this modification will cover any rulings on this merchandise that 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 in-

terpretive 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 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 this final decision.

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 is modifying HQ 563262 and revoking or modifying 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 HQ 967997, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

DATED: October 5, 2006

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967997
October 5, 2006
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.

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 HQ 563262 was published in the *Customs Bulletin*, Vol. 40, No. 32, on August 2, 2006. Five comments in support of the modification were received in response to the notice.

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 substantial 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 563262 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. Deco-

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

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

**REVOCATION OF RULING LETTERS AND TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
CERTAIN PLASMA MODULES**

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

ACTION: Notice of revocation of ruling letters and treatment relating to the tariff classification of certain plasma modules.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking two ruling letters and any treatment on substantially identical transactions pertaining to the tariff classification of certain plasma modules under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of this proposed action was published in the CUSTOMS BULLETIN on December 21, 2005. Comments from seven interested parties were received in response to this notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouses for consumption on or after December 24, 2006.

FOR FURTHER INFORMATION CONTACT: Tom Peter Beris, Tariff Classification and Marking Branch, at (202) 572-8789.

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 CBP 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 CBP and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the December 21, 2005, Vol. 39, No. 52, CUSTOMS BULLETIN proposing to revoke two ruling letters pertaining to the tariff classification of certain plasma modules. Comments from seven interested parties were received in response to this notice and are addressed in the attached ruling.

As stated in the proposed notice, this revocation covers 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., 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, as amended (19 U.S.C. 1625(c)(2)), 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 this notice period. An importer's reliance on a treatment of substan-

tially identical transactions or on a specific ruling concerning the merchandise covered by this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY K83248, NY K83886 and any other ruling not specifically identified, pursuant to the analysis set forth in HQ 967693. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by the 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: October 12, 2006

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

Attachments

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967693
October 12, 2006
CLA-2 RR:CTF:TCM 967693 TPB
CATEGORY: Classification
TARIFF NO.: 8529.90.89

MR. JAMES F. O'HARA
STEIN, SHOSTAK, SHOSTAK, POLLACK & O'HARA, LLP
865 S. Figueroa St
Suite 1388
Los Angeles, CA 90017

RE: Pioneer Flat Panel Modules; Revocation of NY K83248 and NY K83886

DEAR MR. O'HARA:

This is in regard to your request of April 26, 2005, on behalf of your client, Pioneer Electronics Technology ("PET") for a binding ruling concerning the tariff classification of plasma display panel modules for color television displays under the Harmonized Tariff Schedule of the United States ("HTSUS"). We note that in a letter to the National Commodity Specialist Division, New York, dated September 23, 2004, you indicated that PET had previously been issued rulings by U.S. Customs and Border Protection ("CBP") and that the panels "which are the subject of this request are identical in all material respects to the Plasma Modules which were the subject of those rulings except for part number designations." To that end, rather than issue new prospective rulings, we decided to reconsider the previous rulings issued to you. Those rulings are identified as NY K83248, dated February 20, 2004 and NY K83886, dated March 9, 2004. In both rulings, CBP deter-

mined that the imported plasma modules were classified under subheading 8529.90.53, HTSUS, which provides for flat panel screen assemblies for the apparatus of subheadings 8528.12.62, 8528.12.64, 8528.12.72, 8528.21.55, 8528.21.60, 8528.21.65, 8528.21.70, 8528.30.62, 8528.30.64, 8528.30.66 and 8528.30.68.

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 certain plasma modules was published on December 21, 2005, in the CUSTOMS BULLETIN, Volume 39, Number 52. Comments from seven interested parties were received on this proposal. While all of the comments agreed with the proposed classification of the subject plasma modules, three of the comments disagreed with CBPs view with regard to what constitutes "drive" and "control" electronics as they pertain to flat panel screen assemblies. A discussion of the comments and CBPs reasoning are found in the "Law and Analysis" section below.

Based upon our analysis of the issue and for the reasons set forth below, CBP considers the plasma modules to be classified under subheading 8529.90.89, HTSUS, which provides for: "Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528: Other: Other: Of television receivers: Subassemblies, for color television receivers, containing two or more printed circuit boards or ceramic substrates with components assembled thereon, except tuners or convergence assemblies: Other." In reaching our decision, we also considered the information provided by you in our meeting of August 5, 2005. Consequentially, NY K83248 and NY K83886 are revoked.

FACTS:

The merchandise described in NY K83248 is as follows:

The item in question is a plasma module denoted as part number PDU-5003/T/WL. The module is to be used in the manufacture of a Television Plasma Monitor, model number PDP-504PU. This particular model is a 50-inch gas plasma television monitor designed for television viewing.

The module in question (descriptive literature provided) is in fact the gas plasma screen for the monitor. It consists of a 50-inch diagonal glass sandwich containing the necessary gas typical of such flat panel gas plasma monitors. It also contains electronic assemblies described as the address assembly, the scan A & B assemblies and various connector assemblies.

The merchandise described in NY K83886 is as follows:

The items in question are plasma modules denoted as part numbers PDU-M5003/T/WL and PDU-M4303/T/WL. Model PDU-M5003/T/WL is the 50 inch diagonally measured unit and model PDU-M4303/T/WL is the 43-inch diagonally measured unit. Each module is to be used in the manufacture of a gas plasma television monitor.

Each of these units is actually the gas plasma screen for the appropriate television monitor. They each consist of a glass sandwich, of their respective diagonal screen size, and the necessary gas typical of such flat panel gas plasma monitors. They also contain electronic assemblies and various connector assemblies.

In your letter of April 26, 2005 and at our meeting on August 5, 2005, you further described the merchandise at issue. Additionally, you went into detail as to what electronic assemblies and connectors are on the panel at the time of its importation:

- Panel: The panels at issue come in two variations: a 50-inch model and a 43-inch model. In both cases, the panel consists of front and rear glass plates sandwiching a honeycomb of thousands of tiny cells or pixels. Each cell or pixel is subdivided into 3 sub cells whose walls are coated with red, green and blue phosphor, respectively. Each cell is filled with discharge gas as well. Long electrodes are also sandwiched between the glass plates, on both sides of the cells. The address electrodes sit behind the cells, along the rear glass plate. The transparent display electrodes, which are surrounded by an insulating dielectric material and covered by a magnesium oxide protective layer, are mounted above the cell, along the front glass plate. The display electrodes are arranged in horizontal rows along the screen and the address electrodes are arranged in vertical columns. Thus, the vertical and horizontal electrodes form a basic grid. To ionize the discharge gas in a particular cell, the modules' Scan and Address Assemblies charge the electrodes that intersect at that cell. When the intersecting electrodes are charged (with a voltage difference between them), an electric current flows through the gas in the cell. By varying the pulses of current flowing through the different cells, the intensity or brightness of each sub cell color can be manipulated to create different combinations of red, green and blue to produce colors across the entire spectrum. The 50-inch panel has 983,040 (1280x768) cells and the 43-inch panel has 786,432 cells (1024x768) cells. The panel is where the image is displayed for viewing;
- Scan Assemblies (A and B): these printed circuit assemblies (PCAs) select vertically which pixels should receive an electrical charge according to the control signals from the Y Drive Assembly. The Scan Assemblies also provides power from the Y Drive Assemblies;
- Address Assemblies: these PCAs select horizontally which pixels should receive an electrical charge according to the control signals from the Digital Video Assembly ("DVA"). They also provide power from the DVA;
- X Connector Assemblies: these are the physical link between the X Drive Assemblies and the panel;
- Metal chassis: structural support for the assemblies

After importation, PET assembles the following components at its factory in Pomona, California:

- X Drive Assemblies: coupled with the Y Drive Assemblies, these PCAs generate driving pulses to make the panel emit light and send the pulses to the cells on the panel;
- Y Drive Assemblies: coupled with the X Drive Assemblies, these PCAs generate driving pulses to make the panel emit light and send the pulses to the cells on the panel through the Scan Assemblies;
- Digital Video Assembly ("DVA"): contains control electronics circuitry and a digital signal processor (microcomputer); converts conventional

digital Red-Green-Blue (RGB) signals into driving and timing instructions suitable for plasma display. The instructions are sent to the X and Y Drive Assemblies and the Address Assemblies.

- Power Supply Unit: the power supply unit has three main functions:
 - 1) isolates power from primary to secondary;
 - 2) converts AC (alternating current) into DC (direct current); and
 - 3) provides all components in the plasma display with DC power;
- “Fukugo” Assembly: this is a complex assembly that contains a number of PCAs:
 - o Panel Interface Assembly: for plasma models that operate with a Media Receiver, this assembly receives scrambled digital signals from the Media Receiver (the Media Receiver being a part of a plasma display system and performs the television reception function as well as decoding functions for video images such as composite and S-video signals) and descrambles them;
 - o LED Assembly: contains red and green LEDs;
 - o Front Key Assembly: Switches for power on/off, volume up/down, etc.;
 - o Key Control Assembly: contains a key scan microprocessor connected to the Front Key Assembly;
 - o Panel IR Assembly: contains infrared (IR) receiver for the remote control.
- Audio Assembly: amplifies audio signals (e.g., sent from a Media Receiver) and transmits the signals to the speakers.

ISSUE:

What is the proper classification of the plasma modules under the HTSUS?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (“GRIs”). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

When the subheadings, rather than the headings are at issue, GRI 6 is applied. GRI 6 provides in pertinent part that: “the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes, and *mutatis mutandis*, to [rules 1 through 5] on the understanding that only subheadings at the same level are comparable for the purposes of this rule and the relative section and chapter notes also apply, unless the context otherwise requires.”

The modules are component parts that are used in the manufacture of finished flat panel screen televisions or a flat panel screen video monitor of heading 8528, HTSUS. Note 2 to Section XVI, provides, in pertinent part, that:

Subject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading

8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

- (a) Parts which are goods included in any of the headings of chapters 84 and 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8485, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;
- (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;

Because the modules are not included in any of the headings of chapters 84 and 85, classification cannot be determined by application of Note 2(a) to Section XVI. According to the information you submitted in your letter of April 26, 2005, the modules are designed to be solely or principally used in the manufacture of finished televisions, which are classified in heading 8528, HTSUS. Based on the application of Note 2(b) to Section XVI, we find that the modules meet the terms of heading 8529, HTSUS, as parts suitable for use solely or principally with the apparatus of heading 8528.

The subheadings under consideration are as follows:

8529	Parts suitable for use solely or principally with the apparatus of heading 8525 to 8528:
8529.90	Other:
8529.90.53	Flat panel screen assemblies for the apparatus of subheadings 8528.12.62, 8528.12.64, 8528.12.68, 8528.12.72, 8528.21.55, 8528.21.60, 8528.21.65, 8528.21.70, 8528.30.62, 8528.30.64, 8528.30.66, and 8528.30.68
	Other:
	Of television receivers:
	Subassemblies, for color television receivers, containing two or more printed circuit boards or ceramic substrates with components assembled thereon, except tuners or convergence assemblies:
8529.90.89	Other [than the components enumerated in additional U.S. note 4 to this chapter ¹]. . .

¹Additional U.S. Note 4 to Chapter 85 states in relevant part, for the purposes of 8529.90.88 and 8529.90.89:

“(a) Each subassembly that contains as a component, or is covered in the same entry with, one or more of the following television components, viz.,
tuner, channel selector assembly, antenna, deflection yoke, degaussing coil, picture

Subheading 8529.90.53, HTSUS, was added to the tariff as part of the North American Free Trade Agreement (NAFTA) Implementation Act (Pub. L. 103-182, 107 Stat. 2057) on December 8, 1993. This subheading was created to implement the NAFTA rules of origin² (ROO). Under these rules, preferential tariff treatment is not afforded a finished television, video monitor or projector if it is produced from a non-originating flat panel screen assembly of subheading 8529.90.53, HTSUS. Conversely, the rule requires that some portion of the flat panel screen assembly be manufactured within the NAFTA territories in order for the final television, monitor or projector to qualify for NAFTA preference.

However, the NAFTA does not provide a definition or description of "flat panel screen assemblies." As this term appears in each NAFTA party's domestic tariff schedule, and pursuant to Article 513 of the NAFTA, the NAFTA Customs Subgroup held extensive discussions on this matter which resulted in a document entitled Clarification of TV Technologies: Flat Panel Screen Assemblies, on August 4, 2004, (hereafter "the Clarification") which memorializes the assent of the NAFTA parties to its common interpretation of this tariff term:

"For purposes of tariff item 8529.90.ee [footnote 2], the phrase 'flat panel screen assemblies' means an assembly consisting of at least drive electronics, control electronics and a display device, other than LCD technologies."

"[footnote 2] If at least one of the components of the definition of 'flat panel screen assemblies' is not incorporated, such assembly shall not be classifiable within tariff item 8529.90.ee."

The Clarification does not further expand upon the terms "drive" or "control" electronics. Two of the commenters correctly pointed out that neither "drive" electronics nor "control" electronics were terms that appear in the HTSUS and objected to their characterization as "tariff terms." CBP agrees that the terms do not appear in the tariff. Nor do they appear in the Explanatory Notes to the HTSUS. However, the terms are relevant to the classification of the subject merchandise in light of their use in the Clarification, which reflects the parties understanding of the scope of subheading

tube mounting bracket, grounding assembly, parts necessary for fixing the picture tube or tuner in place, consumer-operated controls or speaker, shall be classified in subheading . . . 8529.90.88, as appropriate; and

- (b) Each subassembly shall be counted as a single unit, except that two or more different printed circuit boards or ceramic substrates covered by the same entry and designed for assembly into the same television models shall be counted as one unit."

² See General Note 12(t), HTSUS, specifically:

GN 12(t)

Chapter 85

90. A change to tariff items 8528.12.62, 8528.12.64, 8528.12.68 or 8528.12.72 from tariff items 8528.12.04 or 8528.12.08 or any other heading, except from tariff item 8529.90.53. (GN p. 139)

92H. A change to tariff items 8528.21.55, 8528.21.60, 8528.21.65 or 8528.21.70 from tariff items 8528.21.05 or 8528.21.10 or any other heading, except from tariff item 8529.90.53. (GN p. 140)

92O. A change to tariff items 8528.30.62, 8528.30.64, 8528.30.66 or 8528.30.68 from tariff items 8528.30.10 or 8528.30.20 or any other heading, except from tariff item 8529.90.53. (GN p. 141)

8529.90.53, HTSUS. Accordingly, CBP seeks to apply these terms so as to effectuate the intention of the NAFTA parties.

Absent specific definitions in the Clarification, as with tariff terms, it is appropriate to resort to the common and commercial meaning of the terms at issue. See *Nippon Kogaku (USA), Inc. v. United States*, 69 CCPA 89, 673 F2d. 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. See *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F2d. 1268 (1982).

Flat panel displays utilize a number of sophisticated electronics, including microcomputers to process signals; thus we find it appropriate to examine the meaning of these terms from a technical viewpoint. Alan Freedman's *Computer Glossary* (9th ed.) defines "driver" as follows:

(2) a device that provides signals or electrical current to activate a transmission line or display screen.

Merriam-Webster's Collegiate Dictionary (10th ed.) offers the following definition:

drive (n.): 5 a: the means for giving motion to a machine or machine part.

Based upon CBPs discussions with industry and our own research, CBP finds that "drive" electronics, as they pertain to flat panel assemblies, energize and de-energize the appropriate cell on the display in order to create an image.

Similarly, the meaning of the term "control" electronics was examined through the use of various technical dictionaries. Freedman's *Computer Glossary* defines "control unit" as:

(2) Within the computer, a control unit, or controller, is hardware that performs the physical data transfers between memory and a peripheral device, such as a disk or screen, or a network.

The Dictionary of Multimedia - Terms and Acronyms (1999 ed.) provides the following definition:

controller (n). 1. In computer hardware, a processing component that manages the flow of data between the computer and peripheral devices.

Finally, the *IBM Dictionary of Computing* (1994) defines "control" as follows:

(1) The determination of the time and order in which the parts of a data processing system and the devices that contain those parts perform the input, processing, storage and output functions.

Thus, although the term "control" may encompass a number of functions when it comes to a data processing system, or, for that matter, a complete flat panel television or video monitor, with respect to flat panel screen assemblies CBP believes that "control" electronics manage the data (timing and order), which is used to ultimately create an image on the display.

Therefore, "control" electronics direct video signals and timing instructions to the "drive" electronics. The "drive" electronics take the information

from the “control” electronics and energize and de-energize particular cells on the display in order to create an image for viewing³.

Among the comments received by CBP during the notice and comment period, some questioned the correctness of the definitions used by CBP in determining the meaning of “drive” and “control” electronics with regard to flat panel displays⁴.

One commenter indicated that:

[E]ven if resort to the dictionary (rather than to the common meaning in the industry and in commerce) is warranted, the dictionary definition of ‘drive’ includes timing and ordering functions, as in:

4 a : to direct the motions and course of (a draft animal) **b** : to operate the mechanism and controls and direct the course of (as a vehicle)

Merriam-Webster Online Dictionary. And, by far the most common use of the word ‘drive’ in the United States is in reference to driving a car, when the ‘driver’ consistently performs timing and ordering functions.”

CBP notes that the above definition applies to the verb, “drive” while the definition in Proposed Revocation of December 21, 2005, referred to the noun, “drive.” After giving due consideration to the above arguments, CBP is not persuaded that “drive” electronics should be construed to include timing and ordering functions as the submission contends.

Another commenter proffers the following reasons why CBP has misapplied the definitions for “drive” and “control” electronics in the December 21, 2005, *Proposed Revocation*:

- 1) It is inappropriate to apply technical dictionaries which relate strictly to computer functions within the computer industry to flat panel assemblies within the plasma display panel industry;
- 2) The proposed definition for “control electronics” and “drive electronics” as applied to flat panel assemblies is not directly based or referenced to any reliable source. CBP is unable to cite to any reliable source for its independent determination of either “control electronics” or “drive electronics” as applied to flat panel assemblies;

³CBP notes that these definitions are with respect to **flat panel screen assemblies** of subheading 8529.90.53, HTSUS. CBP does not infer that a complete or unfinished flat panel television, video monitor or projector may not have other drive and control electronics located in other parts of the article.

⁴Comments from certain submissions which disagreed with CBPs proposed definitions for “drive” and “control” electronics argued that a device referred to as a “Logic Board” ought to be considered a part of the “drive” electronics. One submission indicates that the term “Logic Board” is not universally applied by panel manufacturers, but the functions of the “Logic Board” appear to be similar in nature to those of Pioneer’s DVA, which is installed post-importation. We note that Pioneer concedes that its DVA contains “control” electronics. In any case, the submissions claim either to be distinguishable from Pioneer’s DVA or cannot comment for lack of information if the DVA is akin to the “Logic Board.” As there is neither a “Logic Board” nor a DVA present in the merchandise at issue as imported, we do not decide whether or not a “Logic Board” is a part of the “drive” or “control” electronics in this ruling. If a party seeks a determination as to where a flat panel module imported with a “Logic Board” should be classified, they should submit a ruling request to CBP in accordance with 19 C.F.R. 177.

- 3) The proposed definitions are overly broad, too simplistic and difficult to apply. The proper definitions should promote certainty and predictability in its application;
- 4) The industry requires and deserves definitions which directly apply and relate to flat panel screen assemblies for televisions, video monitors and video projectors. Such definitions should be based upon recognized industry standard, design and function;
- 5) To remain competitive, the plasma display panel industry requires definitions which are clear and concise.

In order to assist CBP, the commenter includes definitions for “drive” and “control” electronics that it believes are acceptable⁵.

CBP has given consideration to the arguments set forth in the submission and offers the following replies:

- 1) CBP referred to a number of sources in its research, including computer glossaries and dictionaries, multimedia dictionaries and general use dictionaries. CBP does not believe that because the item before us is not a “computer” that these reference sources should not be consulted. Indeed, the reference sources themselves describe a number of entries which may not be strictly considered “computer” entries. What is clear to CBP is that flat panel televisions, monitors and projectors contain very sophisticated circuitry and electronics (including microcomputers, as per Pioneer’s submission) that justify the use of such sources.
- 2) As indicated above, CBP cited to a number of reliable sources in its *Proposed Revocation*. The objection of this particular comment appears to be that none of the sources dealt specifically with flat panel assemblies⁶. Interestingly, the commenter does not reference any sources which it would accept as “reliable.” Indeed, it was the observation of an expert who commented in one submission that “[c]ontrol electronics does not have a single, universally agreed upon meaning in the art, and its definition depends on the context and supporting descriptions⁷.”
- 3) The definitions proposed by CBP refer to the function of the electronics, rather than any name that they may be referred to. This will result in greater certainty and predictability in its application. The definitions serve to support the intent of the drafters of the August, 2004 NAFTA Customs Subgroup Clarification.

⁵The commenter definitions are as follows:

Drive Electronics: Electronic circuitry that processes a digital video stream and provides, either directly or indirectly the voltages or current necessary to activate and de-activate the pixels on the panel and produce a video image.

Control Electronics: Electronic circuitry that receives and decodes a broadcast signal, subscription signal, or external video signal and then sends the signal to the drive electronics. It also contains the main microprocessor to control various display modes of the display panel.

No citations or references were submitted along with these definitions.

⁶We note that most of the reference sources used by CBP include definitions or entries for “flat panel” screens.

⁷Affidavit of Professor of Electrical Engineering, Department of Electrical Engineering and Computer Science, Exhibit D.

- 4) The definitions set forth by CBP take into consideration a number of different views expressed by industry as well as lexicon sources that ultimately result in administrable definitions for both the trade and CBP for the goods of subheading 8529.90.53, HTSUS.
- 5) CBPs definitions, as noted above, are based upon function, which is both clear and concise. After due consideration, CBP does not find that the definitions proposed by the commenter offer greater clarity or understanding than do those proposed by CBP.

To summarize, the purpose of the NAFTA Clarification on Flat Panel Screen Assemblies of August 4, 2004 was to clarify the meaning of the subheading term “flat panel screen assemblies.” The Clarification states that in order to have a flat panel screen assembly of subheading 8529.90.53, three elements must be present: 1) a display device (other than LCD); 2) drive electronics; and 3) control electronics. The parties clearly made a distinction between “drive” and “control” electronics as they pertain to finished “flat panel screen assemblies” of subheading 8529.90.53, HTSUS. CBP has determined that as used in the clarification, control electronics direct video signals and timing instructions to the drive electronics. The drive electronics take these instructions and energize and de-energize the appropriate pixels of the display device in the correct sequence, so as to produce a video image on the display.

The definition for “control” electronics provided by one commenter may indeed describe actions that can be described as “control.” However, these “control” functions are more associated with “control” of a television or video monitor. They take information from an outside source and ultimately deliver this information to the “drive” electronics which produce an image on the display. For the purposes of the Clarification, we are only concerned with the “drive” and “control” electronics associated with the flat panel screen assembly; i.e., the three items the Clarification indicated that needed to be present to have an article of 8529.90.53, HTSUS. Accepting the commenters definition of “control” would expand the scope of that provision to include the components necessary to turn a flat panel screen assembly into a complete television or video monitor.

With the foregoing understanding of the terms in the Clarification, we next examine the products at issue before us, as imported into the United States.

1. The Panel

The panel fulfills the requirement of a “display device” set forth in the clarification. As described in the “Facts” section above, the display contains thousands of cells which are energized to create a viewable image.

2. Scan Assemblies

As indicated in the “Facts” section above, the Scan Assemblies select vertically which pixels should be on and off according to the control signals from the Y Drive Assemblies. The Scan Assemblies also provide power from the Y Drive Assemblies.

PET contends that the Scan Assemblies are neither “drive” nor “control” electronics. However, CBP believes that the Scan Assemblies fall within the scope of the term “drive electronics.” The Scan Assemblies send drive pulses generated from the Y Drive Assemblies to instruct the panel to emit light.

3. Address Assemblies

Similarly, CBP views these boards as “drive” electronics. They receive a control signal provided by the DVA and energize the appropriate cell, ultimately producing a video image.

4. X Connector Assemblies

The X Connector Assemblies are a physical link or connection between the X Drive Assemblies and the panel.

5. Metal chassis

This is a structural support for the above components.

In light of the foregoing, CBP concludes that the modules at issue do not meet the terms of the phrase, “flat panel screen assemblies,” as they only contain two of the three required elements; i.e., the display device and drive electronics. The panels, as imported, do not contain “control” electronics, that is, electronics that send data, such as timing and order signals, to the drive electronics. Therefore, the modules cannot be classified under subheading 8529.90.53, HTSUS. The modules are subassembly parts of television receivers consisting of two or more printed circuit board assemblies and none of the components listed in Additional U.S. Note 4(a) to Chapter 85. Thus, we find that the modules are classified in subheading 8529.90.89, HTSUS, as other subassemblies for color television receivers.

HOLDING:

For the reasons set forth above by application of GRIs 1 and 6, the subject plasma modules are classified under subheading 8529.90.8900, HTSUSA, as: “[p]arts suitable for use solely or principally with the apparatus of heading 8525 to 8528: [o]ther: [o]ther: [o]f television receivers: [s]ubassemblies, for color television receivers, containing two or more printed circuit boards or ceramic substrates with components assembled thereon, except tuners or convergence assemblies: [o]ther [than the components enumerated in additional U.S. note 4 to this chapter]. . . .” The 2006 column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY K83248 and NY K83886 are revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

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

