

# Bureau of Customs and Border Protection

## *General Notices*

### **MONETARY GUIDELINES FOR SETTING BOND AMOUNTS FOR IMPORTATIONS SUBJECT TO ENHANCED BONDING REQUIREMENTS**

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

**ACTION:** General notice; request for comments.

**SUMMARY:** This Notice serves to provide additional information on the process used to determine bond amounts for importations involving elevated collection risks and to seek public comment on that process. The process published in this Notice is in effect. Public comments will assist CBP in identifying factors that may further improve the process to ensure the bond amounts protect the revenue and facilitate trade. After consideration of the comments, a revised version of the Monetary guidelines for Setting Bond Amounts Customs Directive 99-3510-004 July 23, 1991 (1991 Monetary Guidelines) will be published.

**DATES:** Comments must be received on or before December 26, 2006.

**ADDRESSES:** Commenters must submit comments, identified by docket number, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2006-0119.
- Mail: Trade and Commercial Regulations Branch, Office of Regulations and Rulings in the Office of International Trade, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

**Instructions:** All submissions received must include the agency name and docket number for this Notice. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments, see the “Public Participation” heading of the SUPPLEMENTARY INFORMATION section of this document.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings in the Office of International Trade, Bureau of Customs and Border Protection, 799 9th Street, NW, 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572-8768.

**FOR FURTHER INFORMATION CONTACT:** David Genovese, Office of International Trade at [David.Genovese@dhs.gov](mailto:David.Genovese@dhs.gov), Tel: (202) 863-6020.

**SUPPLEMENTARY INFORMATION:**

**PUBLIC PARTICIPATION**

Interested persons are invited to submit written data, views, or arguments on all aspects of this Notice. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this Notice. Comments that will provide the most assistance to CBP in developing these procedures will reference a specific portion of this Notice, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

**BACKGROUND**

A key CBP mission is to collect all import duties determined to be due to the United States. Under customs statutes and regulations release of merchandise prior to the determination of all duties that may be owed is ordinarily permitted, provided the importer posts a bond or other security to insure payment of duties and compliance with other applicable laws and regulations. Estimated duties are collected at entry, a bond is posted, and final duties await liquidation at a later point in time.

In the case of antidumping (AD) or countervailing duties (CVD) determined by the Department of Commerce (DOC) (which administers the AD/CVD laws in conjunction with the U.S. International Trade Commission), the administrative and judicial process for determining the appropriate rate of duty for AD/CVD merchandise may significantly delay the liquidation of an entry of AD/CVD merchandise. At liquidation, CBP follows DOC instructions regarding the applicable AD/CVD rate. CBP must collect the duties owed of whatever nature. However, importers have increasingly failed to pay additional AD/CVD duties determined to be due at liquidation. Recent defaults for AD/CVD supplemental bills are substantially

higher than defaults that were the previous norm and are unprecedented. This troubling trend caused an internal policy review of revenue protection strategies at CBP.

During the review, CBP reconsidered its general continuous bond formula which provides that the minimum continuous bond may be in an amount equal to the greater of \$50,000 or ten percent of the amount of the previous year's duties, taxes and fees. In response to the growing collection problem, CBP announced an enhanced customs bonding requirement for those continuous bonds that secure the promise to pay all duties finally determined to be due on certain merchandise subject to AD/CVD. Amendment to Bond Directive 99-3510-004 for Certain Merchandise Subject to Antidumping Countervailing Duty Cases (July 9, 2004) (July 2004 Amendment to the Bond Guidelines); see also Clarification to the July 9, 2004 Amended Monetary Guidelines for Setting Bond Amounts (August 10, 2005) (August 2005 Clarification). Application of the enhanced bonding requirement thus far has been limited in scope—having been applied to merchandise subject to the first antidumping orders involving aquaculture merchandise imposed after issuance of the July 2004 Amendment to the Bond Guidelines. Aquaculture is the industry sector with the highest share of total defaults in recent years.

CBP commenced its policy of reviewing the sufficiency of continuous bonds related to imports of AD/CVD merchandise with the release of its July 2004 Amendment to the Bond Guidelines. That document and the August 2005 Clarification were posted on CBP's website.

The bond guidelines are designed to ensure the amount of the continuous bond reflects a reasonable amount necessary to secure against non-payment of any additional revenue ultimately legally owed and not paid in cash deposits at entry. As noted earlier, U.S. laws and regulations afford importers the opportunity to post such bonds in order to facilitate prompt release of the goods at the border without creating an undue burden on importers or international trade and commerce.

CBP includes guidelines on determining sufficient bond amounts in its regulations at 19 CFR §113.13. The regulations direct CBP to review bonds periodically and to notify the principal in writing if CBP determines the bond amount is insufficient to adequately protect the revenue and ensure compliance with U.S. laws and regulations. The principal has 30 days from date of notification to remedy the deficiency. During those 30 days, principals have frequently requested CBP to adjust its bond determination.

This Notice seeks public comment on the procedures for setting bond amounts on merchandise subject to increased default risk and,

therefore, designated as Special Category Merchandise that may be subject to enhanced bonding requirements. An explanation of Special Category Merchandise appears later in this document under "Procedures for Setting Bond Amount." History of compliance with customs laws and regulations, ability to pay, existence of assets available as recourse for nonpayment, past payment history, similarity to previous circumstances giving rise to uncollected revenue problems, and other relevant factors will be considered in determining whether to reduce the bond amount otherwise required under the enhanced bond formula. Importers will be offered the opportunity to submit information on their financial condition related to the risk of non-collection for that importer and CBP will determine bond amounts based on that information, the importer's compliance history and other relevant information available to CBP. In the absence of a submission by the importer, CBP would calculate the bond amount using the formulas set forth below.

This document will be incorporated into the 1991 Monetary Guidelines and represents the comprehensive and exclusive statement of the policy and processes expressed in the July 2004 Amendment to the Bond Guidelines, the Bond Formulas posted on CBP's website, and the August 2005 Clarification. After consideration of any comments received, an incorporated policy will be published.

### **PROCEDURE FOR SETTING BOND AMOUNT**

In order to provide a consistent bond formula and to ensure the bond amounts protect the revenue and facilitate trade, CBP issued bond guidelines. Under the August 2005 Clarification, CBP indicated that it would designate Special Categories of Merchandise and designate Covered Cases within those Special Categories. CBP will continue to evaluate on an industry wide basis those types of merchandise where additional bond requirements may be needed. However, because importers are only affected when merchandise is subject to different bond requirements, CBP will only designate Special Categories, that is, merchandise for which an enhanced bond amount may be required.

#### **Designation of Special Categories**

- Special Categories may be designated when additional bond requirements in the form of greater continuous entry bonds or other security may be required.
- At least 60 days before new bonding requirements take effect, CBP will provide public notice of designation of a Special Category in the Customs Bulletin and on the CBP's website ([www.cbp.gov](http://www.cbp.gov)). The notice will solicit comment from affected parties and will provide a description of the reasons for the Special Category. Affected parties will have 30 days from the date the designation notice is published to submit comments.

- When conditions no longer exist that warrant the Special Category designation, the designation will be removed and the public will be notified through the Customs Bulletin and the CBP website.

#### Criteria for Special Categories

In considering which merchandise should be designated Special Category merchandise subject to enhanced bond requirements, the following criteria shall be considered:

1. Previous collection problems concerning the industry involved;
2. The similarity to previous imports or industries experiencing uncollected revenue problems;
3. Payment history;
4. Indications that liquidated duty rates may exceed existing security;
5. Any other factors that are deemed relevant.

All Special Categories will be monitored on a regular basis to determine whether a material change in factors has occurred so that the amount of the required bond for the Special Categories should be adjusted up or down or that the conditions that warranted the designations no longer exist.

#### Continuous Bond Formulas for Special Category Merchandise

CBP will review the sufficiency of bonds covering Special Category merchandise. Importers of Special Category merchandise may be required to obtain larger continuous bonds. In such circumstances, importers will be offered the opportunity to submit information on their financial condition related to the risk of non-collection for that importer, and CBP will determine bond amounts based on that information, the importer's compliance history, and other relevant information available to CBP. In the absence of a submission by the importer, CBP may calculate the bond amount using the formulas determined on the basis of the risk of non-collection posed by the Special Category merchandise. These formulas may be adjusted in accordance with the revenue risks identified for future importations of designated Special Category merchandise.

For Special Category merchandise which is merchandise subject to AD/CVD, the formulas determined on the basis of the risk of non-collection will be based upon the importer's previous 12 months cumulative import value of merchandise subject to the AD/CVD Order and the rate that the DOC establishes in its Order or, if the bond amount is established after an administrative review, it will be calculated using the rate determined by DOC in the most recent admin-

istrative review. The amount of additional coverage will be calculated using the following formula:

- AD/CVD rate established in DOC Order (or the rate established in the most recently completed administrative review)  
  × previous 12 months' cumulative import value of subject merchandise.

For example, if an importer has imported \$1 million of the subject AD/CVD merchandise during the previous 12 months and the DOC rate is 40%, the importer's continuous bond amount will be increased by \$400,000.

For new importers with no prior history of imports who import Special Category merchandise subject to AD/CVD, the continuous bond will be calculated in accordance with the following formula:

- DOC deposit rate in effect on date of entry × the importer's estimated annual value of imported goods subject to the case.

Periodic reviews will be conducted to monitor the sufficiency of the continuous bonds for Special Category merchandise. CBP may adjust the rates in the formulas set forth above to calculate different bond amounts as circumstances warrant. CBP is committed to protecting its ability to collect the amount of money determined to be due at liquidation and to requiring continuous bonds in an amount reasonably necessary to cover its additional financial risk.

Absent exceptional circumstances, the above formulas will determine the bond amounts where a submission has not been made by the principal. Nothing in this policy affects the CBP's authority to require additional security if CBP believes that acceptance of a transaction secured by a continuous bond would place the revenue in jeopardy or otherwise hamper the enforcement of customs laws or regulations.

#### Notice Timing and Adjustment Factors for Individual Importers

In implementing the bond requirements for imports of Special Category merchandise, CBP shall:

- 1) Provide the principal subject to the revised bond requirements with notice of the new bond requirements not less than 30 days before the revised requirements will take effect. Such notice will include a description of the rationale for the new requirements and offer the principal the opportunity to submit information on its financial condition related to the risk of non-collection of that principal, which CBP will use along with other information, such as the importer's compliance history, to determine bond amounts. The notice will inform the principal that in the absence of a submission by the principal, CBP may calculate the bond amount using the formulas determined on

the basis of the risk of non-collection for the Special Category merchandise. The notice will provide examples of additional information that might be submitted in support of the former calculation, how the bond amount would be calculated if the formula were applied, and a description of the procedures for responding to the notice.

- 2) Provide the principal 30 days from the date of the mailing of the notice to respond, including by providing evidence of factors that could support a bond amount other than that resulting from the formula. Such responses may be filed individually or by groups of principals who share common characteristics. Principals who import from the same foreign manufacturer/exporter share common characteristics. Depending upon available resources and workload, CBP shall endeavor to issue decisions to those who respond within 45 days of receipt of a complete, legible response and, in any event, shall issue decisions within a reasonable time. The new bond requirement will not take effect with respect to a principal until 14 days after the date of CBP's reply to the principal's response. The reply to the principal will include the rationale for the determination. In the absence of a submission by the principal, CBP may calculate the bond amount using the formulas determined on the risk of non-collection posed by the Special Category merchandise as provided in the notice. The bond requirement will take effect with respect to that principal 30 days after the date of the mailing of the notice.
- 3) Consistent with 19 CFR §113.13(b), consider the following factors when determining a bond amount, other than the amount resulting from the formula, for a principal who has responded in accordance with (2) above:
  - a) The prior record of the principal regarding timely payment of duties, taxes and charges with respect to the transactions involving such payments;
  - b) The prior record of the principal in complying with CBP demands for redelivery, the obligation to hold unexamined merchandise intact, and other requirements relating to enforcement and administration of CBP and other laws and regulations;
  - c) The value and nature of the merchandise involved in the transaction(s) to be secured;
  - d) The degree and type of supervision that CBP will exercise over the transaction(s);
  - e) The prior record of the principal in honoring bond commitments, including the payment of liquidated damages and AD/CVD;

- f) Any additional information contained in any application for a bond, or contained in any request for adjustment of the bond amount, including information that provides proof of ability to pay such as independently audited financial statements, tax returns submitted by the principal, availability of assets, including securities in the United States and elsewhere, credit rating, and length of time in business; and
  - g) Any other relevant information.
- 4) If CBP determines that the principal has a record of compliance with customs laws and regulations and that the principal has demonstrated an ability to pay, CBP may decide not to require an increased bond amount even though the principal imports Special Category merchandise.

A request for reconsideration may be made by submitting a new bond application and CBP Form 301 at any time after six months from the date of the notice of new bond amount set forth in paragraph (1) above, if no response to CBP's notice was received under paragraph (2). If the principal filed a response under paragraph (2) requesting a bond amount other than that resulting from the formula, the principal may request further reconsideration at any time after six months from the date of the decision issued under paragraph (2). A request for reconsideration of the bond amount based on a material error by CBP that affects the bond amount may be made at any time.

At any time after CBP determines a bond amount for a principal below that provided by the formula, if the principal fails to remain compliant with customs laws and regulations, CBP will recalculate the principal's bond amount in accordance with the formulas outlined in this notice.

#### Affected Parties

This Notice affects only continuous bonds for imports of Special Category merchandise. This Notice does not affect laws and regulations regarding cash deposits or other security with respect to merchandise subject to AD/CVD proceedings. CBP notes those initial deposits and bonds sometimes are not sufficient to cover the final assessed duty liabilities. Defaults on such additional duty liability have increased. Congress has provided CBP authority to require security in order to ensure the payment of all duties determined to be due to the United States, including any revenue collection gaps between estimated duty deposits and final assessed duties that the importer fails to satisfy. Please note that this Notice does not limit CBP's authority to require additional security under 19 CFR

§113.13(d) and the requirements of the 1991 Monetary Guidelines remain in effect consistent with this Notice.

Dated: October 20, 2006

DEBORAH J. SPERO,  
*Acting Commissioner,*  
*Customs and Border Protection.*

[Published in the Federal Register, October 24, 2006 (71 FR 62276)]

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## 19 CFR Part 123

### **Required Advance Electronic Presentation of Cargo Information for Truck Carriers: ACE Truck Manifest**

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

**ACTION:** Notice.

**SUMMARY:** Pursuant to section 343(a) of the Trade Act of 2002 and implementing regulations published in December, 2003, truck carriers and other eligible parties were directed to transmit advance electronic truck cargo information to the Bureau of Customs and Border Protection (CBP) through a CBP-approved electronic data interchange (EDI). This Notice announces that CBP is designating the Automated Commercial Environment (ACE) Truck Manifest System as the approved EDI for the transmission of the required data and that the requirement that advance electronic truck cargo information be transmitted through ACE will be phased in by groups of ports of entry identified in this document.

**DATES:** Trucks entering the United States through all ports of entry in the states of Washington and Arizona and through the ports of Pembina, Neche, Walhalla, Maida, Hannah, Sarles and Hansboro in North Dakota will be required to transmit the advance information through the ACE Truck Manifest system effective January 25, 2007. ACE will be phased in as the mandatory transmission system for the other ports identified in this notice in the sequential order that they are listed, following publication of 90 days notice in the **Federal Register** for each group of ports.

**FOR FURTHER INFORMATION CONTACT:** James Swanson, Field Operations, (202) 344-2576.

**SUPPLEMENTARY INFORMATION:****Background**

Section 343(a) of the Trade Act of 2002, as amended (the Act; 19 U.S.C. 2071 note), required that CBP promulgate regulations providing for the mandatory transmission of electronic cargo information by way of a CBP-approved electronic data interchange (EDI) system before the cargo is brought into or departs the United States by any mode of commercial transportation (sea, air, rail or truck). The cargo information required is that which is reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling pursuant to the laws enforced and administered by CBP.

On December 5, 2003, CBP published in the **Federal Register** (68 FR 68140) a final rule to effectuate the provisions of the Act. In particular, a new section 123.92 (19 CFR 123.92) was added to the regulations to implement the inbound truck cargo provisions. Section 123.92 describes the general requirement that, in the case of any inbound truck required to report its arrival under section 123.1(b), if the truck will have commercial cargo aboard, CBP must electronically receive certain information regarding that cargo through a CBP-approved EDI system no later than 1 hour prior to the carrier's reaching the first port of arrival in the United States. For truck carriers arriving with shipments qualified for clearance under the FAST (Free and Secure Trade) program, section 123.92 provides that CBP must electronically receive such cargo information through the CBP-approved EDI system no later than 30 minutes prior to the carrier's reaching the first port of arrival in the United States.

**ACE Truck Manifest Test**

On September 13, 2004, CBP published a general notice in the **Federal Register** (69 FR 55167) announcing a test allowing participating Truck Carrier Accounts to transmit electronic manifest data for inbound cargo through ACE, with any such transmissions automatically complying with advance cargo information requirements as provided in section 343(a) of the Trade Act of 2002. Truck Carrier Accounts participating in the test have the ability to electronically transmit the truck manifest data and obtain release of their cargo, crew, conveyances, and equipment via the ACE Portal or electronic data interchange messaging.

A series of notices have announced additional deployments of the test, with deployment sites being phased in as clusters. Clusters were announced in subsequent notices published in the **Federal Register** including: 70 FR 30964, published on May 31, 2005; 70 FR 43892, published on July 29, 2005; 70 FR 60096, published on Octo-

ber 14, 2005; 71 FR 3875, published on January 24, 2006; and 71 FR 23941, published on April 25, 2006.

The use of ACE to transmit advance electronic truck cargo information will not be required in any port in which CBP has not first conducted the test. ACE will be phased in as the required transmission system at some ports even while it is still being tested at other ports. CBP will continue, as necessary, to announce in subsequent notices in the **Federal Register** the deployment of the ACE truck manifest system test at additional ports.

#### **Designation of ACE Truck Manifest System as the Approved Data Interchange System**

Throughout the deployment process, CBP and system users from the trade have expended considerable resources in a collaborative effort to test the ACE Truck Manifest System. This collaboration has helped correct operational difficulties, improve processing times, and develop system enhancements not present in the original configuration. Full implementation of the enhancements will occur over the next few months. Accordingly, CBP has determined that the ACE Truck Manifest System should be mandated for all and is the approved EDI system for transmission of the advance information required pursuant to section 343(a) of the Trade Act of 2002 and the implementing regulations.

Section 123.92(e) of the regulations (19 CFR 123.92(e)) requires CBP, 90 days prior to mandating advance electronic information at a port of entry, to publish notice in the **Federal Register** informing affected carriers that the EDI system is in place and fully operational. Effective 90 days from the date of publication of this notice, truck carriers entering the United States through all ports of entry in the states of Washington and Arizona and through the ports of Pembina, Neche, Walhalla, Maida, Hannah, Sarles and Hansboro in North Dakota, will be required to present advance electronic cargo information regarding truck cargo through the ACE Truck Manifest. CBP will be publishing notice in the **Federal Register** as it phases in the requirement that truck carriers utilize the ACE system to present advance electronic truck cargo information at other ports.

Although other systems that have been deemed acceptable by CBP for transmitting advance truck manifest data will continue to operate and may still be used in the normal course of business for purposes other than transmitting advance truck manifest data, use of systems other than ACE will no longer satisfy advance electronic cargo information requirements at a particular port of entry once the 90 day notice for that port has been published and the 90 day period has elapsed.

### **Compliance Sequence**

At all ports of entry in the states of Washington and Arizona, and the ports of Pembina, Neche, Walhalla, Maida, Hannah, Sarles, and Hansboro in North Dakota, ACE will be the mandatory truck cargo information transmission system as of January 25, 2007.

Subsequently, ACE will continue to be phased in as the mandatory EDI system, at the ports identified below in the sequential order of the group in which they are listed. As mandatory ACE is phased in at these remaining ports, CBP will provide 90 days' notice through publication in the **Federal Register** prior to requiring the use of ACE for the transmission of advance electronic truck cargo information at a particular group of ports.

The remaining ports at which the mandatory use of ACE will continue to be phased in are divided into 5 groups, listed in sequential order, as follows:

1. All ports of entry in the states of Michigan, Texas, California, New Mexico, and New York.
2. All ports of entry in the states of Vermont and Alaska.
3. All ports in the states of Maine, Idaho, and Montana.
4. All remaining ports in the state of North Dakota (those not identified as having a specific compliance date).
5. All ports in the state of Minnesota.

Dated: October 23, 2006

DEBORAH J. SPERO,  
*Acting Commissioner,*  
*Customs and Border Protection.*

[Published in the Federal Register, October 27, 2006 (71 FR 62922)]

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

*Washington, DC, October 25, 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,  
*Executive Director,*  
*Regulations and Rulings,*  
*Office of International Trade.*

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**REVOCATION OF RULING LETTER AND TREATMENT  
RELATING TO TARIFF CLASSIFICATION OF A CERTAIN  
FLORAL PORCELAIN VASE FROM CHINA**

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

**ACTION:** Notice of revocation of ruling letter and treatment relating to the tariff classification of a certain floral porcelain vase from China.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking a ruling relating to the classification of a certain floral porcelain vase under the Harmonized Tariff Schedule of the United States (HTSUS), and revoking any treatment CBP has previously accorded to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 40, No. 38, on September 13, 2006. No comments were received in response to the notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 8, 2007.

**FOR FURTHER INFORMATION CONTACT:** Heather K. Pinnoch, Tariff Classification and Marking Branch, at (202) 572-8828.

**SUPPLEMENTARY INFORMATION:****Background**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 40, No. 38, on September 13, 2006, proposing to revoke one ruling letter relating to the tariff classification of a certain floral porcelain vase from China. No comments were received in response to the notice. As stated in the proposed notice, this modification will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice period.

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

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY L88645 to reflect the proper tariff classification of the merchandise under heading 6913, HTSUS, specifically in subheading 6913.10.5000, HTSUSA, which provides for: "statuettes and other ornamental ceramic articles: of porcelain or china: other: other", pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 968347 (Attachment). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment it previously accorded to substantially identical transactions.

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

**DATED:** October 24, 2006

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

Attachment

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

HQ 968347

October 24, 2006

**CLA-2 RR:CTF:TCM 968347 CAM**

**CATEGORY:** Classification

**TARIFF NO.:** 6913.10.5000

Ms. FRANCINE MARCOUX  
HAMPTON DIRECT  
350 Pioneer Drive  
P.O. Box 1199  
Williston, VT 05495

**RE:** Revocation of NY L88645; Floral Porcelain Vase From China

DEAR MS. MARCOUX:

In New York Ruling Letter (NY) L88645, dated November 28, 2005, a floral porcelain vase from China that your company manufactures was classified in subheading 6911.90.0050 under the Harmonized Tariff Schedule of the United States (HTSUS), which provides for: "tableware, kitchenware, other household articles and toilet articles of porcelain or china: other, other." Customs and Border Protection (CBP) has reviewed NY L88645, and has found that ruling to 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 was published on September 13, 2006, in the Customs Bulletin, Volume 40, No. 38. No comments were received in response to this notice.

**FACTS:**

The subject merchandise is a fluted vase made of porcelain that measures 4.5 inches in length by 4.5 inches in width by 7.25 inches in height. On the side of the vase is a floral design. The descriptive information concerning the vase indicates that it is suitable for holding flowers.

In NY L88645, the floral porcelain vase was classified in subheading 6911.90.0050, HTSUS, which provides for: "tableware, kitchenware, other household articles and toilet articles of porcelain or china; other, other." Classification in subheading 6913.10.5000, HTSUS, which provides for: "statuettes and other ornamental ceramic articles: of porcelain or china; other; other" was never considered. Based on our review of this matter, CBP is of the view that the floral porcelain vase should be classified in heading 6913, HTSUS.

**ISSUE:**

What is the proper classification under the HTSUS of the subject floral porcelain vase?

**LAW AND ANALYSIS:**

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not require otherwise, then CBP may apply the remaining GRIs.

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

The HTSUS provisions under consideration are as follows:

6911              Tableware, kitchenware, other household articles and toilet articles, of porcelain or china:

\* \* \*

6911.90.00        Other

\* \* \*

6911.90.0050      Other

6913              Statuettes and other ornamental ceramic articles:

6913.10            Of Porcelain or china:

\* \* \*

Other:

\* \* \*

6913.10.5000      Other

The Explanatory Notes (ENs) to heading 6911 direct us to the ENs to heading 6912 for guidance. The ENs to 6912 list the following merchandise

as coming within the scope of that heading, which provides for, in relevant part:

(A) Tableware such as tea or coffee services, plates, soup tureens, salad bowls, dishes and trays of all kinds, coffee-pots, teapots, sugar bowls, beer mugs, cups, sauce-boats, fruit bowls, cruets, salt cellars, mustard pots, egg-cups, teapot stands, table mats, knife rests, spoons and serviette rings.

\* \* \*

(C) Other household articles such as ash trays, hot water bottles and match box holders.

\* \* \*

In the instant case, the subject merchandise is not specifically listed in the items enumerated in the above-described ENs.

More significantly, the ENs to heading 6911 state that the heading excludes "statuettes and other ornamental articles of heading 6913." Accordingly, the floral porcelain vase is not classified in heading 6911, HTSUS, if CBP determines that the subject merchandise is classified in heading 6913, HTSUS.

CBP finds that the subject merchandise meets the terms of heading 6913, HTSUS, because the floral vase is an ornamental article made of porcelain. The ENs to heading 6913, HTSUS, support the inclusion of the subject merchandise in that heading. The ENs state that heading 6913 includes the following:

(A) Articles which have no utility value but are wholly ornamental, and articles whose only usefulness is to support or contain other decorative articles or to add to their decorative effect, e.g.:

\* \* \*

(3) Purely ornamental table-bowls, vases, pots, jardinières.

Like the merchandise described in EN (A), the subject merchandise is "wholly ornamental" and has the primary function of containing "other decorative articles," in this case flowers, in order to add to the decorative effect. Additionally, EN (A)(3) specifically states that heading 6913, HTSUS, covers vases. The description provided in the ENs to heading 6913, HTSUS, supports CBP's finding that the subject merchandise is classifiable in that heading.

As the subject merchandise is classifiable in heading 6913, it is excluded from classification in heading 6911. This classification is supported by several rulings in which CBP has classified porcelain vases like the subject merchandise in heading 6913, HTSUS. In Headquarters Ruling Letter (HQ) 951608, dated August 12, 1992, CBP determined that an 11-inch round porcelain vase was an ornamental article classifiable in heading 6913, HTSUS. In that ruling CBP referenced EN (A)(3) to heading 6913, HTSUS, and noted that the primary use of the vase was to support other decorative articles. Likewise, in HQ 952168, dated August 20, 1992, CBP classified porcelain vases shaped like bags, napkins, fans, and bouquets in heading 6913, HTSUS. Various other rulings have classified similar merchandise in heading 6913, HTSUS. See HQ 966040, dated April 1, 2003; HQ 086100, dated April 3, 1990; see also NY J83610, dated April 29, 2003; NY F84574, dated

April 5, 2000; NY B85211, dated May 7, 1997; NY B88384, dated September 8, 1997; NY A86551, dated August 30, 1996.

**HOLDING:**

By applying GRI 1, the floral porcelain vases are classified in heading 6913, specifically subheading 6913.10.5000, HTSUS, which provides for: "statuettes and other ornamental ceramic articles: of porcelain or china: other: other." The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

NY L88645, dated November 28, 2005, is revoked. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

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