

Bureau of Customs and Border Protection

CBP Decisions

(CBP Dec. 06-02)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR DECEMBER, 2005

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in CBP Decision 05-42 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): December 25, 2005

Brazil real

December 19, 2005	0.420964
December 20, 2005	0.425116
December 27, 2005	0.423012
December 28, 2005	0.425532

India rupee

December 5, 2005	0.021617
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Japan yen

December 1, 2005	0.008290
December 2, 2005	0.008280
December 3, 2005	0.008280
December 4, 2005	0.008280
December 5, 2005	0.008276
December 6, 2005	0.008277
December 7, 2005	0.008269
December 8, 2005	0.008315
December 9, 2005	0.008296
December 10, 2005	0.008296
December 11, 2005	0.008296

FOREIGN CURRENCIES—Variances from quarterly rates for December 2005 (continued):

Japan yen (continued):

December 12, 2005	0.008340
December 13, 2005	0.008326

Dated: January 3, 2006

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



(CBP Dec. 06-03)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR DECEMBER, 2005

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

Holiday(s): December 25, 2005

European Union euro:

December 1, 2005	1.170200
December 2, 2005	1.169900
December 3, 2005	1.169900
December 4, 2005	1.169900
December 5, 2005	1.178700
December 6, 2005	1.178400
December 7, 2005	1.172200
December 8, 2005	1.183000
December 9, 2005	1.182400
December 10, 2005	1.182400
December 11, 2005	1.182400
December 12, 2005	1.196900
December 13, 2005	1.192600
December 14, 2005	1.204100
December 15, 2005	1.196500
December 16, 2005	1.201200
December 17, 2005	1.201200
December 18, 2005	1.201200
December 19, 2005	1.199600

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly
list for December 2005 (continued):

European Union euro: (continued):

December 20, 2005	1.184800
December 21, 2005	1.181600
December 22, 2005	1.188300
December 23, 2005	1.185700
December 24, 2005	1.185700
December 25, 2005	1.185700
December 26, 2005	1.185700
December 27, 2005	1.185600
December 28, 2005	1.187500
December 29, 2005	1.184600
December 30, 2005	1.184200
December 31, 2005	1.184200

South Korea won:

December 1, 2005	0.000964
December 2, 2005	0.000966
December 3, 2005	0.000966
December 4, 2005	0.000966
December 5, 2005	0.000965
December 6, 2005	0.000967
December 7, 2005	0.000966
December 8, 2005	0.000967
December 9, 2005	0.000967
December 10, 2005	0.000967
December 11, 2005	0.000967
December 12, 2005	0.000968
December 13, 2005	0.000976
December 14, 2005	0.000988
December 15, 2005	0.000985
December 16, 2005	0.000984
December 17, 2005	0.000984
December 18, 2005	0.000984
December 19, 2005	0.000985
December 20, 2005	0.000984
December 21, 2005	0.000982
December 22, 2005	0.000984
December 23, 2005	0.000987
December 24, 2005	0.000987
December 25, 2005	0.000987
December 26, 2005	0.000987
December 27, 2005	0.000988
December 28, 2005	0.000987
December 29, 2005	0.000991
December 30, 2005	0.000990
December 31, 2005	0.000990

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly list for December 2005 (continued):

Taiwan N.T. dollar:

December 1, 2005	0.029797
December 2, 2005	0.029824
December 3, 2005	0.029824
December 4, 2005	0.029824
December 5, 2005	0.029860
December 6, 2005	0.029886
December 7, 2005	0.029869
December 8, 2005	0.029851
December 9, 2005	0.029851
December 10, 2005	0.029851
December 11, 2005	0.029851
December 12, 2005	0.029806
December 13, 2005	0.029895
December 14, 2005	0.030014
December 15, 2005	0.030139
December 16, 2005	0.030193
December 17, 2005	0.030193
December 18, 2005	0.030193
December 19, 2005	0.030139
December 20, 2005	0.030075
December 21, 2005	0.030075
December 22, 2005	0.030111
December 23, 2005	0.030184
December 24, 2005	0.030184
December 25, 2005	0.030184
December 26, 2005	0.030184
December 27, 2005	0.030221
December 28, 2005	0.030248
December 29, 2005	0.030395
December 30, 2005	0.030488
December 31, 2005	0.030488

Dated: January 3, 2006

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

1/3/06

LIQ-03-01-RR:OO:CI

RE: SECTION 159.34 CFR

SUBJECT: CERTIFIED RATES OF FOREIGN EXCHANGE: FIRST
QUARTER, 2006

LISTED BELOW ARE THE BUYING RATES CERTIFIED FOR THE QUARTER TO THE SECRETARY OF THE TREASURY BY THE FEDERAL RESERVE BANK OF NEW YORK UNDER PROVISION OF 31 USC 5151. THESE QUARTERLY RATES ARE APPLICABLE THROUGHOUT THE QUARTER EXCEPT WHEN THE CERTIFIED DAILY RATES VARY BY 5% OR MORE. SUCH VARIANCES MAY BE OBTAINED BY CALLING (646) 733-3065 OR (646) 733-3057.

QUARTER BEGINNING January 3, 2006 AND ENDING
March 31, 2006

COUNTRY	CURRENCY	U.S. DOLLARS
AUSTRALIA	DOLLAR	\$0.737900
BRAZIL	REAL	\$0.428816
CANADA	DOLLAR	\$0.864678
CHINA, P.R.	YUAN	\$0.123913
DENMARK	KRONE	\$0.160555
HONG KONG	DOLLAR	\$0.128974
INDIA	RUPEE	\$0.022262
JAPAN	YEN	\$0.008595
MALAYSIA	RINGGIT	\$0.264550
MEXICO	PESO	\$0.093958
NEW ZEALAND	DOLLAR	\$0.681500
NORWAY	KRONE	\$0.150575
SINGAPORE	DOLLAR	\$0.605290
SOUTH AFRICA	RAND	\$0.160439
SRI LANKA	RUPEE	\$0.009802
SWEDEN	KRONA	\$0.128046
SWITZERLAND	FRANC	\$0.772917
THAILAND	BAHT	\$0.024534
UNITED KINGDOM	POUND STERLING	\$1.740400
VENEZUELA	BOLIVAR	\$0.000466

MARGARET BLOM,
Acting Chief,
Customs Information Exchange.

General Notices

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

Washington, DC, January 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.*

19 CFR PART 177

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF A LA PERRUCHE SUGAR CHUNKS

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

ACTION: Notice of proposed modification of a ruling letter and revocation of treatment relating to the tariff classification of A La Perruche sugar chunks.

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 Customs and Border Protection (“CBP”) intends to modify a ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of A La Perruche brown sugar chunks and to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before February 24, 2006.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations and Disclosure Law Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street,

NW, Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, Tariff Classification and Marking Branch, (202) 572-8782.

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, this notice advises interested parties that CBP intends to modify a ruling letter pertaining to the tariff classification of A La Perruche brown sugar chunks. Although in this notice CBP is specifically referring to one ruling, HQ 952419, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases 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.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice

period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In HQ 952419, dated October 15, 1992, set forth as "Attachment A" to this document, CBP found that A La Perruche brown sugar chunks were classified in subheading 1701.11.0125, HTSUSA, as raw cane sugar, not containing added flavoring or coloring matter.

CBP has reviewed the matter and determined that the correct classification of the A La Perruche brown sugar chunks is in subheading 1701.91.1000, HTSUSA, which provides for "Cane or beet sugar and chemically pure sucrose in solid form: Other: Containing added flavoring or coloring matter: Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions." If not imported as described in additional note 5 to Chapter 17 and not entered pursuant to its provisions, the correct classification of the A La Perruche brown sugar chunks is in subheading 1701.91.3000, HTSUSA, which provides for "Cane or beet sugar and chemically pure sucrose, in solid form: Other: Containing added flavoring or coloring matter: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify HQ 952419, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 967303, as set forth in "Attachment B" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: January 10, 2006

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 952419
October 15, 1992
CLA-2 CO:R:C:F 952419 LPF
CATEGORY: Classification
TARIFF NO.: 1701.11.0125, 1701.11.0325, 1701.99.0125,
1701.99.0225, 9904.40.20

SIMEON M. KREISBERG, ESQ.
MAYER, BROWN & PLATT
2000 Pennsylvania Avenue, NW
Washington, D.C. 20006-1885

RE: "A la Perruche" sugar chunks in 1701, HTSUSA; Cane or beet sugar and chemically pure sucrose, in solid form; Agricultural import fees in 9904, HTSUSA; Additional U.S. Note 3 to Chapter 17; Import restrictions; Substantial transformation - Country of origin; Texas Instruments; Superior Wire; HRL 082033.

DEAR MR. KREISBERG:

This is in response to your letter of August 14, 1992, submitted on behalf of Bri-Al, Inc. You request, in regard to "A la Perruche" sugar chunks, the proper classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) and a determination whether the refining of the sugar constitutes a substantial transformation.

FACTS:

The merchandise consists of brown and white irregular sugar chunks sold under the name "A la Perruche." According to your letter, a company in Paris, France imports raw cane sugar from Swaziland. In France, the raw sugar is refined through filtration, crystallization and maturation until the sugar agglomerates into bars. The brown sugar is produced by adding caramelized syrup made from the cane sugar during refining. The bars are broken into irregular lumps and are packaged into 17 and 35 ounce boxes, which are imported into the United States for sale to food service distributors. You state that the brown sugar has a polarity of 98.9 degrees and the white sugar has a polarity of 99.7 degrees. You also explain that the Department of Agriculture does not consider these products to be "Specialty Sugar" as defined in 15 CFR 2011.202 (j) (1992).

ISSUE:

Whether the sugar chunks are classifiable in heading 1701 as cane or beet sugar and chemically pure sucrose, in solid form, or are classifiable elsewhere in the HTSUSA, and whether the refining, in France, of raw sugar, from Swaziland, substantially transforms the sugar into a French product for duty and quota purposes.

LAW AND ANALYSIS:

Classification under the HTSUSA

The General Rules of Interpretation (GRI's) taken in their appropriate order provide a framework for classification of merchandise under the HTSUSA. Most imported 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. The Explanatory Notes (EN's) 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's.

Heading 1701 provides for cane or beet sugar and chemically pure sucrose, in solid form. The EN's to 1701 provide, in pertinent part that, "cane sugar is derived from the juices of the sugar cane stalk." As the sugar chunks fit this description, they are classifiable in heading 1701.

At the six digit subheading level, 1701.11 provides for raw cane or beet sugar, not containing added flavoring or coloring matter, while 1701.99 provides for other cane or beet sugar. In this regard, the EN's to 1701 indicate that:

Raw or crude cane or beet sugars occur in the form of brown crystals, the colour being due to the presence of impurities. Their sucrose content by weight, in the dry state, corresponds to a polarimeter reading of less than 99.5 degrees. . . . They are generally destined for processing into refined sugar products. Raw sugar may, however, be of such a high degree of purity that it is suitable for human consumption without refining.

The brown sugar chunk's sucrose content by weight, in the dry state, is 98.9 international sugar degrees, which indicates it is raw sugar. See Subheading Note 1 and Additional U.S. Note 1 to Chapter 17, HTSUSA, Sugar and Sugar Confectionery. Also, the addition of a dark or caramelized syrup to the brown sugar is not considered an added coloring or flavoring since such sugar cane products are provided for in Chapter 17, and they are products commonly added to refined sugar in order to produce brown sugar. The product is classifiable, at the six digit level, in subheading 1701.11.

Insofar as the product is described in, and entered pursuant to, Additional U.S. Note 3(a) and 3(b) to Chapter 17 (Notes 3(a) and 3(b)), and is not further refined or improved in quality, it is classifiable in subheading 1701.11.0125. If the product is not entered pursuant to Notes 3(a) and 3(b), and is not further refined or improved in quality, it is classifiable in subheading 1701.11.0325.

The white sugar chunk's sucrose content by weight, in the dry state, is 99.7 international sugar degrees, which indicates it is not raw sugar. Since the product does not contain added coloring or flavoring, it is classifiable, at the six digit level, in subheading 1701.99. Insofar as the product is described in, and entered pursuant to, Additional U.S. Note 3(a) and 3(b) to Chapter 17 (Notes 3(a) and 3(b)), and is not further refined or improved in quality, it is classifiable in subheading 1701.99.0125. If the product is not entered pursuant to Notes 3(a) and 3(b), and is not further refined or improved in quality, it is classifiable in subheading 1701.99.0225.

Since neither Title II of the Sugar Act of 1948, nor substantially equivalent legislation is presently in effect, the products remain subject to the currently applicable HTSUSA duty rates. See Additional U.S. Note 2 to Chapter 17.

Country of Origin - Substantial Transformation

When addressing the issue of substantial transformation, we must question whether the refining operations performed on the sugar in the country of exportation, that is France, are of such a substantial nature as to justify the conclusion that the resulting product is a manufacture of that country.

See Headquarters' Ruling Letter 082033, issued September 5, 1989. In general, a substantial transformation occurs when an article emerges from a process with a new name, character or use different from that possessed by the article prior to processing. See *Texas Instruments, Inc. v. United States*, 69 CCPA 152, 681 F.2d 778 (1982); See also *Superior Wire v. U.S.*, 11 CIT 608 (1987), 669 F. Supp. 472, *aff'd*, 867 F.2d 1409 (1989).

In HRL 082033, Customs determined that the refining of raw sugar would not substantially transform the product, since the refining process did not change the essential character of the raw sugar and make it into a new article with a new name, character, or use. Customs explained that:

[t]he refining process does not change the product's intended use, which is dictated by the very nature of the product—the raw sugar with its desired sucrose.

The raw sugar already possesses the qualities sought after in sugar (its sweetness and nutritiousness).

These are not the result of the refining process. While the refining of sugar changes its color and increases its purity, . . . the refining process is not necessary to obtain its essential qualities. Refining cane sugar upgrades and purifies the sugar, but it does not change the essential character of the product.

In this case, since the refining of the raw sugar in France is not a substantial transformation, the sugar remains a product of Swaziland for country of origin and quota purposes.

Importation Restrictions

Certain requirements must be met in order for the product to be entered pursuant to Notes 3(a) and 3(b) and thus be classified in subheading 1701.11.0125 or 1701.99.0125. Note 3(a) provides, in pertinent part, that the total amount of sugar entered under subheading 1701.11.01 and 1701.99.01, shall not exceed, in the aggregate, an amount established by the Secretary of Agriculture (Secretary). This total amount consists of (1) a base quota amount, (2) a quota adjustment amount and (3) an amount reserved for the importation of specialty sugars. Modifications of such quantitative limitations and authorization to charge sugar entering the U.S. to a previous or subsequent quota period are subject to the Secretary's approval.

Note 3(b) explains, in pertinent part, that sugar imported from Swaziland, and classifiable in subheading 1701.11.01 or 1701.99.01, is allocated 1.6 percent of the total base quota amount for certain sugars, syrups and molasses to be imported from the various supplying countries and areas listed in Note 3(b)(i). The United States Trade Representative presently requires that certificates of eligibility accompany such imported sugar.

HOLDING:

"A la Perruche" brown sugar chunks, entered pursuant to Notes 3(a) and 3(b), and not to be further refined or improved in quality, are classifiable in subheading 1701.11.0125. The general column one rate of duty is 1.4606 cents per kilogram less 0.020668 cents per kilogram for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.943854 cents.

If not entered pursuant to Notes 3(a) and 3(b), and not to be further refined or improved in quality, the brown sugar chunks are classifiable in subheading 1701.11.0325. The general column one rate of duty is 37.386 cents

per kilogram less 0.529 cents per kilogram for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 24.161 cents per kilogram.

“A la Perruche” white sugar chunks, entered pursuant to Notes 3(a) and 3(b), and not to be further refined or improved in quality, are classifiable in subheading 1701.99.0125. The general column one rate of duty is 1.4606 cents per kilogram less 0.020668 cents per kilogram for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 0.943854 cents.

If not entered pursuant to Notes 3(a) and 3(b), and not to be further refined or improved in quality, the white sugar chunks are classifiable in subheading 1701.99.0225. The general column one rate of duty is 37.386 cents per kilogram less 0.529 cents per kilogram for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 24.161 cents per kilogram.

We note that a product, from Swaziland, classified in either 1701.11.0125 or 1701.99.0125 is eligible for duty free treatment under the Generalized System of Preferences (GSP), provided it meets the requirements of General Note 3(c)(ii), HTSUSA.

In addition, subheading 9904.40.20 provides that, in any event, the product carries a supplemental agricultural import fee of 2.2 cents per kilogram, but not in excess of 50 percent.

In order to determine which, if any, quantitative limitations or regulations apply when importing your product, we suggest you contact:

Foreign Agricultural Service U.S. Dept. of Agriculture-Room 5531 Import Policies & Trade Analysis Division Washington, D.C. 20250-1000 (202) 720-5676

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967303
CLA-2 RR:CTF:TCM 967303 KBR
CATEGORY: Classification
TARIFF NO.: 1701.91.1000

SIMEON M. KRIESBERG, ESQ.
1909 K Street, N.W.
Washington, D.C. 20006-1101

RE: Modification of HQ 952419; A La Perruche Sugar Chunks

DEAR MR. KRIESBERG:

This is in reference to HQ 952419, issued to you, on behalf of you client Bri-Al, Inc., by the U.S. Customs Service (now Customs and Border Protection (“CBP”)), on October 15, 1992. That ruling concerned the classification of A La Perruche white and brown sugar chunks under the Harmonized Tar-

iff Schedule of the United States Annotated (HTSUSA). In HQ 952419, we determined that caramel added to brown sugar chunks was not added coloring and, therefore, the brown sugar chunks were classified in subheading 1701.11.0125, HTSUSA, as “Cane or beet sugar and chemically pure sucrose, in solid form: Raw sugar not containing added flavoring or coloring matter: Cane sugar.” We have reviewed HQ 952419 and determined that the classification provided for the brown sugar chunks is incorrect. Classification of the white sugar chunks was correctly stated in HQ 952419 and will not be addressed here.

FACTS:

The article consists of brown and white irregularly shaped sugar chunks sold under the name “A La Perruche”. The sugar chunks are created by first taking raw sugar and refining it through filtration, crystallization and maturation until the sugar agglomerates into bars. The brown sugar is produced by adding caramelized syrup made from the cane sugar during refining. The bars are broken into irregular lumps and are packaged into boxes which are imported into the United States for retail sale. You stated that the brown sugar has a polarity of 98.9 degrees. You also stated that the Department of Agriculture does not consider this product to be “Specialty Sugar” as defined in 15 C.F.R. § 2011.202(j).

ISSUES:

Whether the caramel added to the sugar chunks is considered coloring matter?

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) in accordance with the General Rules of Interpretation (GRIs). Under GRI 1, merchandise is classifiable 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 on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In interpreting the headings and subheadings, CBP looks to the Harmonized Commodity Description and Coding System Explanatory Notes (EN). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUSA. It is CBP’s 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).

The HTSUSA provisions under consideration are as follows:

1701	Cane or beet sugar and chemically pure sucrose, in solid form:
	Raw sugar not containing added flavoring or coloring matter:
1701.11	Cane sugar:
	* * * * *

1701.11.1000	Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions.
*	* * * * *
	Other:
1701.91	Containing added flavoring or coloring matter: Containing added coloring but not containing added flavoring matter:
*	* * * * *
1701.91.1000	Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions.
1701.91.3000	Other.
*	* * * * *
1701.99	Other:
*	* * * * *
1701.99.10	Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions.

At issue is the classification of brown sugar chunks. The sugar forming the chunks have caramelized sugar syrup added to change the color to a brown or amber shade.

Heading 1701 provides for cane or beet sugar and chemically pure sucrose, in solid form. The EN's to 1701 provide, in pertinent part that, "**Cane sugar** is derived from the juices of the sugar cane stalk." As the sugar chunks fit this description, they are classifiable in heading 1701.

At the six digit subheading level, 1701.11 provides for raw cane or beet sugar, not containing added flavoring or coloring matter, while 1701.91 provides for other cane and beet sugar, containing added coloring but not containing added flavoring matter and 1701.99 provides for other cane or beet sugar, other.

The Subheading Note 1 to Chapter 17 states that:

For the purposes of subheadings 1701.11 and 1701.12, "raw sugar" means sugar whose content of sucrose by weight, in the dry state, corresponds to a polarimeter reading of less than 99.5 degrees.

The EN's to 1701 indicate that:

Raw or crude cane or beet sugars occur in the form of brown crystals, the colour being due to the presence of impurities. Their sucrose content by weight, in the dry state, corresponds to a polarimeter reading of less than 99.5° . . . They are generally destined for processing into refined sugar products. Raw sugar may, however, be of such a high degree of purity that it is suitable for human consumption without refining.

Refined cane or beet sugars are produced by the further processing of raw sugar. They are generally produced as a white crystalline substance

which is marketed in various degrees of fineness or in the form of small cubes, loaves, slabs, or sticks or regularly moulded, sawn or cut pieces.

In addition to the raw or refined sugars mentioned above, this heading covers brown sugar consisting of white sugar mixed with small quantities of, e.g. caramel or molasses, and sugar candy consisting of large crystals produced by slow crystallization of concentrated solutions of sugar.

* * * * *

The instant A La Perruche brown sugar chunks' sucrose content by weight, in the dry state, is 98.9 international sugar degrees. HQ 952419, citing Subheading Note 1 and Additional U.S. Note 1 to Chapter 17, HTSUSA, found that this indicated the product was raw sugar. We agree. However, in HQ 952419, because the caramelized syrup is itself a sugar product and it is commonly added to refined sugar in order to produce brown sugar, CBP found that the addition of caramelized syrup to the sugar was not considered adding coloring or flavoring. We disagree that the addition of the caramelized syrup is not added coloring.

The purpose of adding the caramelized syrup is to change the color of the sugar. Further, this issue was considered by the Harmonized System Committee of the World Customs Organization. In NC0728E1 (HSC/31) in November 2003 (Annex F/8 to Doc. NCO796E2), the Harmonized System Committee decided that the addition of a small quantity of caramel to produce brown sugar chunks was adding a coloring matter. Therefore, the Harmonized System Committee issued a Compendium of Classification Opinion which classified the brown sugar chunks under consideration in subheading 1701.91, HTSUSA. *See* HSC/33 Doc. NC0845B2, Annex M/5, May 2004.

As stated in T.D. 89-80, decisions in the Compendium of Classification Opinions should be treated in the same manner as the EN's, *i.e.*, while neither legally binding nor dispositive, they provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. T.D. 89-80 further states that EN's and decisions in the Compendium of Classification Opinions "should receive considerable weight." *See* HQ 966328 (March 31, 2003). Therefore, because we find the caramelized syrup to be added coloring and because we find the Harmonized System Committee decision informative, we hold that the A La Perruche brown sugar chunks are classified in subheading 1701.91, HTSUSA, as "Cane or beet sugar and chemically pure sucrose, in solid form: Other: Containing added flavoring or coloring matter".

HOLDING:

In accordance with the above discussion, the A La Perruche brown sugar chunks are classified in heading 1701, specifically in subheading 1701.91, HTSUSA, as "Cane or beet sugar and chemically pure sucrose, in solid form: Other: Containing added flavoring or coloring matter". If the A La Perruche brown sugar chunks are as described in additional U.S. note 5 to Chapter 17 and entered pursuant to its provisions, the specific classification will be as subheading 1701.91.1000, HTSUSA, which provides for "Cane or beet sugar and chemically pure sucrose, in solid form: Other: Containing added flavoring or coloring matter: Containing added coloring but not containing added flavoring matter: Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions." The 2006 column one, general rate of duty is 3.6606 cents per kilogram less 0.020668 cents per kilogram for each de-

gree under 100 degrees (and fractions of a degree in proportion) but not less than 3.143854 cents per kilogram. If not described in additional note 5 to Chapter 17 and not entered pursuant to its provisions, the applicable classification will be in subheading 1701.91.3000, HTSUSA, as “Cane or beet sugar and chemically pure sucrose, in solid form: Other: Containing added flavoring or coloring matter: Containing added coloring but not containing added flavoring matter: Other.” The 2006 column one, general rate of duty is 35.74 cents per kilogram. In addition, products classified under subheading 1701.91.3000, HTSUSA, may be subject to additional duties based on their value as described in subheadings 9904.17.08 to 9904.17.16, HTSUSA. 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 World Wide Web at www.usitc.gov/tata/hts.

EFFECT ON OTHER RULINGS:

HQ 952419 dated October 15, 1992, is **modified** as to the classification under the HTSUSA of the A LA Perruche brown sugar chunks.

MYLES B. HARMON,

Director;

Commercial and Trade Facilitation Division.

19 CFR PART 177

**MODIFICATION OF RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO TARIFF CLASSIFICATION
OF CERTAIN “SNAPPIN’ SLAP BRACELETS”**

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

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to the tariff classification of certain “Snappin’ Slap Bracelets” under the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) is modifying a ruling concerning the tariff classification of, among other things, certain “Snappin’ Slap Bracelets” and is revoking any treatment CBP has previously accorded to substantially identical transactions. Notice of the proposed modification was published on November 23, 2005, in Vol. 39, No. 48 of the *Customs Bulletin*. 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 March 26, 2006.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, Tariff Classification and Marking Branch: (202) 572-8776.

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 concepts that emerged 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 CBP's obligations, notice proposing to modify New York Ruling Letter ("NY") K82999, dated March 2, 2004, as it pertains to the classification of certain "Snappin' Slap Bracelets," was published on November 23, 2005, in Vol. 39, No. 48 of the *Customs Bulletin*. No comments were received in response to this notice.

As stated in the proposed notice, the modification action 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 other than those herein identified; no further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice 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 substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to the effective date of this final decision.

In NY K82999, merchandise described as "Snappin' Slap Bracelets" (textile covered metal bracelets that are snapped around the wrist), among other things, were classified under subheading 9503.70.0000, HTSUSA, which provides for other toys, put up in sets or outfits, and parts and accessories thereof. We have reconsidered that determination and now consider the articles to be described *eo nomine* under the tariff as imitation jewelry classifiable under heading 7117, HTSUS, pursuant to the analysis in Headquarters Ruling Letter ("HQ") 967932.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY K82999 as it pertains to the tariff classification of certain "Snappin' Slap Bracelets," and any other ruling not specifically identified, to reflect the proper classification of the merchandise under heading 7117, specifically, subheading 7117.19.9000, HTSUSA, which provides for "Imitation jewelry: Of base metal, whether or not plated with precious metal: Other: Other: Other" pursuant to the analysis set forth in HQ 967932, set forth as the 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 sixty (60) days after its publication in the *Customs Bulletin*.

Dated: January 10, 2006

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967932
January 10, 2006
CLA-2 RR:CTF:TCM 967932 AML
CATEGORY: Classification
TARIFF NO.: 7117.19.9000

BARBARA Y. WIERBICKI
TOMPKINS & DAVIDSON, LLP
One Astor Plaza
1515 Broadway
New York, NY 10036-8901

RE: "Snappin' Slap Bracelets"; NY K82999 modified

DEAR MS. WIERBICKI:

This letter is in regard to New York Ruling Letter ("NY") K82999, dated March 2, 2004, which was issued to you on behalf of Tara Toy Corporation by the National Commodity Specialist Division, concerning the tariff classification of, among other things, "Snappin' Slap Bracelets" under the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"). In NY K82999, the "Snappin' Slap Bracelets" were classified under subheading 9503.70.0000, HTSUSA, which provides for "other toys . . . : other toys, put up in sets or outfits, and parts and accessories thereof." We have reconsidered the classification of the "Snappin' Slap Bracelets" and determined that it is incorrect. This letter sets forth the correct classification of those articles. The classification of the other articles considered in NY K82999 remains unchanged.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057, 2186 (1993)), notice of the proposed modification was published on November 23, 2005, in Vol. 39, No. 48 of the *Customs Bulletin*. No comments were received in response to the notice.

FACTS:

In NY K82999, we described the "Snappin' Slap Bracelets" as follows:

The first, Snappin' Slap Bracelets, consists of two bracelets bases and stickers, bracelet strips, slide-ons, charms and markers which are used to create, decorate and change the appearance of the bracelets.

All of these components are packaged as a set for retail sale, and on the package are detailed instructions on how to assemble (insert the metal into the textile sleeve) and decorate (glue cutouts to the textile sleeves) the articles with the included supplies to prepare them to be snapped upon the wrist and worn as personal adornment.

ISSUE:

Whether the "Snappin' Slap Bracelets" are classifiable as imitation jewelry under heading 7117, HTSUS, or as toys under heading 9503, HTSUS?

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") in accordance with the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined ac-

ording 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, the remaining GRIs may be applied.

The Harmonized Commodity Description And Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise. U.S. Customs and Border Protection ("CBP") believes the ENs should always be consulted. See T.D. 89-80, published in the Federal Register August 23, 1989 (54 FR 35127, 35128).

The HTSUS provisions under consideration are as follows:

- 7117 Imitation jewelry:
 - Of base metal, whether or not plated with precious metal:
- 7117.19 Other:
 - Other:
- 7117.19.90 Other.
 - * * *
- 9503 Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
- 9503.70.00 Other toys, put up in sets or outfits, and parts and accessories thereof.

The ENs to heading 9503, HTSUS, provide, in pertinent part, that:

This heading covers toys intended essentially for the amusement of persons (children or adults) . . . The heading includes:

- (A) All toys not included in headings 95.01 and 95.02. Many of the toys of this heading are mechanically or electrically operated.

These include:

* * *

- (17) Educational toys (*e.g.*, toy chemistry, printing, sewing and knitting sets).

* * *

Collections of articles, the individual items of which if presented separately would be classified in other headings in the Nomenclature, are classified in this Chapter when they are put up in a form clearly indicating their use as toys (*e.g.*, instructional toys such as chemistry, sewing, etc., sets).

* * *

In *Minnetonka Brands Inc. v. United States*, 110 F. Supp. 1020 (CIT 2000), the court stated in regard to the scope of heading 9503, HTSUS, at 1026-7 that:

Because heading 9503 is, in relevant part, a principal use provision, classification under this provision is controlled by the principal use “of goods of that class or kind to which the imported goods belong” in the United States at or immediately prior to the date of importation. ARI 1(a) (emphasis added); see *Primal Lite, Inc. v. United States*, 182 F.3d 1362, 1365 (Fed. Cir. 1999) (construing ARI 1(a) as “calling for a determination as to the group of goods that are [**1027] commercially fungible with the imported goods”); *Group Italglass U.S.A., Inc. v. United States*, 17 C.I.T. 1177, 1177, 839 F. Supp. 866, 867 (1993) (stressing “that it is the principal use of the class or kind of goods to which the imports belonged” at or immediately prior to the dates of importation, “and not the principal use of the specific imports[,] that is controlling under the Rules of Interpretation”). “Principal use” is defined as the use “which exceeds any other single use of the article.” Conversion of the Tariff Schedules of the United States Annotated Into the Nomenclature Structure of the Harmonized System: Submitting Report at 34–35 (USITC Pub. No. 1400) (June 1983).

Minnetonka continues at 1027:

To determine whether the subject imports are of the “class or kind” of merchandise whose principal use is amusement, diversion or play, as Plaintiff claims, or the conveyance or packaging of goods, as Defendant claims, the court examines all pertinent circumstances. *United States v. Carborundum Co.*, 63 C.C.P.A. 98, 102, 536 F.2d 373, 377 (1976). Factors which have been considered in making this determination include (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels, class or kind of trade in which the merchandise moves; (4) the environment of the sale (*i.e.*, accompanying accessories and the manner in which the merchandise is advertised and displayed); (5) usage, if any, in the same manner as merchandise which defines the class; (6) the economic practicality of so using the import; and (7) the recognition in the trade of the use. *Id.*; see, *e.g.*, *United States v. Border Brokerage Co., Inc.*, 706 F.2d 1579, 1582 (Fed. Cir. 1983); *Hartz Mountain Corp. v. United States*, 19 C.I.T. 1149, 1151, 903 F. Supp. 57, 59–60 (1995); *Kraft, Inc. v. United States*, 16 C.I.T. 483, 489 (1992) (applying *Carborundum* factors). “Susceptibility, capability, adequacy, or adaptability of the import to the common use of the class is not controlling.” *Carborundum*, 63 C.C.P.A. at 102, 536 F.2d at 377.

Application of the *Carborundum* factors to the articles at issue yields the following results:

- (1) The general physical characteristics of the merchandise: slap bracelets are ultimately designed and intended to be worn as articles of personal adornment. Once the purchaser decides the bracelets are sufficiently decorated, exhausts the decorations provided with the bracelets, decides not to use the decorations, or loses or has no interest in decorating the slap bracelets, the articles can be worn on the wrist to adorn the person.
- (2) The expectation of the ultimate purchasers: to wear an article of personal adornment on the wrist.

- (3) The channels, class or kind of trade in which the merchandise moves: the articles are designed for children.
- (4) The environment of the sale (*i.e.*, accompanying accessories and the manner in which the merchandise is advertised and displayed): the package depicts seven decorated bracelets (contracted into the shape of a bracelet and a girl “holding” an illustration of the bracelet being snapped around her wrist. We reiterate the finite nature of the act of decorating (exhaustion of supplies, etc.) described in the discussion of *Carborundum* factor 1 above.
- (5) Usage, if any, in the same manner as merchandise which defines the class: the amusing use of decoration is finite whereas the use as imitation jewelry lasts as long as the materials or the interest of the wearer last.
- (6) The economic practicality of so using the import: the adorning feature of the bracelets imparts the value of the articles.
- (7) The recognition in the trade of the use: Snap bracelets are intended to be trendy articles of personal adornment.

The application of the *Carborundum* factors indicates that the articles of a class or kind intended for use as articles of personal adornment, rather than as educational toy sets. While the child can decorate and personalize the snap bracelets, any amusement value provided by the decoration of the bracelets is finite. That is, once the bracelet is decorated to the degree deemed appropriate by the child, the playful characteristic ends. Further, the amusement of decorating is the means to the end — wearing a snap bracelet. The activity of decorating what could be worn as a bracelet does not constitute emulative or educational play; gluing and such are creative activities at best. Thus, we conclude that the “slap bracelets” are not educational toy sets.

Heading 7117 provides for “imitation jewelry”. Imitation jewelry is defined in Note 11, Chapter 71 as:

Articles of jewelry within the meaning of paragraph (a) of note 9, not incorporating natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed) nor (except as plating or as minor constituents) precious metal or metal clad with precious metal.

Articles of jewelry are described in Note 9 to Chapter 71, in pertinent part, as follows:

- a) Any small objects of personal adornment (gem-set or not) (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia).

The subject articles comprise articles of jewelry; small articles of personal adornment, within the meaning of Note 9 to Chapter 71. They also meet the terms of Note 11 of Chapter 71, as articles of imitation jewelry. Therefore, the snap bracelets are provided for *eo nomine* in heading 7117.

This conclusion comports with that made in several prior rulings: NY L83505, dated March 24, 2005; HQ 088222, dated February 15, 1991 and HQ 088126, dated January 10, 1991. See also NY I85472, dated August 28,

2002 and HQ 082736, dated March 20, 1990, which classified “paper craft” and “crochet and knitting” kits, respectively, outside of heading 9503, HTSUS.

We are cognizant that rulings exist in which beading kits and the like are classified as toys or toy sets under heading 9503, HTSUS. See, for example, the Foam Purse Assortment and the Magically Magnetic Hair Styling Set in the subject ruling. See too Headquarters Ruling Letter 959401, dated April 14, 1997. Those articles are distinguishable because the child creates the entire article (be it necklace, bracelet, etc.) rather than merely decorating an existing snap bracelet.

HOLDING:

At GRI 1, the “Snappin’ Slap Bracelets” are classified under heading 7117, specifically under subheading 7117.19.9000, HTSUSA, which provides for “Imitation jewelry: Of base metal, whether or not plated with precious metal: Other: Other: Other”. The 2005 general, column rate of duty is 11% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY K82999 dated March 2, 2004 is hereby modified as it pertains to the classification of “Snappin’ Slap Bracelets.” In accordance with 19 U.S.C. §1625 (c)(2), this ruling will become effective sixty (60) days after its publication in the *Customs Bulletin*.

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

cc: National Commodity Specialist Division
NIS Wong
NIS Mushinske

