

Bureau of Customs and Border Protection

CBP Decisions

19 CFR PART 12

CBP Dec. 06-01

USCBP-2006-0016

RIN 1505-AB63

EXTENSION OF IMPORT RESTRICTIONS IMPOSED ON ARCHAEOLOGICAL MATERIAL ORIGINATING IN ITALY AND REPRESENTING THE PRE-CLASSICAL, CLASSICAL, AND IMPERIAL ROMAN PERIODS

AGENCY: Customs and Border Protection; Homeland Security; Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Bureau of Customs and Border Protection (CBP) regulations to indicate the extension of the import restrictions that were imposed by Treasury Decision 01-06 on certain archaeological material originating in Italy and representing the pre-Classical, Classical, and Imperial Roman periods of its cultural heritage, ranging in date from approximately the 9th century B.C. through approximately the 4th century A.D. that were imposed by Treasury Decision (T.D.) 01-06. The Assistant Secretary for Educational and Cultural Affairs, United States Department of State, has determined that conditions continue to warrant the imposition of import restrictions.

Accordingly, the restrictions will remain in effect for an additional 5 years, and the CBP regulations are being amended to reflect this extension. These restrictions are being extended pursuant to determinations of the United States Department of State made under the terms of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. T.D. 01-06 contains the Designated List of

archaeological material originating in Italy and representing the pre-Classical, Classical, and Imperial Roman periods of its cultural heritage, ranging in date from approximately the 9th century B.C. through approximately the 4th century A.D.

EFFECTIVE DATE: January 19, 2006.

FOR FURTHER INFORMATION CONTACT: For legal aspects, George F. McCray, Esq., Chief, Intellectual Property Rights and Restricted Merchandise Branch, (202) 572-8710. For operational aspects, Michael Craig, Chief, Other Government Agencies Branch, (202) 344-1684.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to the provisions of the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention, codified into U.S. law as the Convention on Cultural Property Implementation Act (Pub. L. 97-446, 19 U.S.C. 2601 *et seq.*), the United States entered into a bilateral agreement with Italy on January 19, 2001, concerning the imposition of import restrictions on archeological material originating in Italy and representing the pre-Classical, Classical, and Imperial Roman periods. On January 23, 2001, the United States Customs Service published T.D. 01-06 in the **Federal Register** (66 FR 7399), which amended 19 CFR 12.104g(a) to indicate the imposition of these restrictions and included a list designating the types of archaeological material covered by the restrictions.

Import restrictions listed in 19 CFR 12.104g(a) are “effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States. This period can be extended for additional periods not to exceed five years if it is determined that the factors which justified the initial agreement still pertain and no cause for suspension of the agreement exists” (19 CFR 12.104g(a)).

After reviewing the findings and recommendations of the Cultural Property Advisory Committee, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, concluding that the cultural heritage of Italy continues to be in jeopardy from pillage of archaeological material representing the pre-Classical, Classical, and Imperial Roman periods, made the necessary determination to extend the import restrictions for an additional five years on December 5, 2005. Accordingly, CBP is amending 19 CFR 12.104g(a) to indicate the extension of the import restrictions.

The Designated List of Archaeological Material Originating in Italy and Representing the pre-Classical, Classical, and Imperial Roman periods of Italy covered by these import restrictions is set forth

in T.D. 01-06. The Designated List and accompanying image database may also be found at the following internet website address: <http://exchanges.state.gov/culprop/it01fr01.html>. The restrictions on the importation of these archaeological materials originating in Italy are to continue in effect for an additional 5 years. Importation of such material continues to be restricted unless:

(1) Accompanied by appropriate export certification issued by the Government of Italy; or

(2) With respect to archaeological material originating in Italy and representing the pre-Classical, Classical, and Imperial Roman periods, verifiable documentation exists that exportation occurred prior to January 19, 2001.

INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATE

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). In addition, CBP has determined that such notice or public procedure would be impracticable and contrary to the public interest because the action being taken is essential to avoid interruption of the application of the existing import restrictions (5 U.S.C. 553(b)(B)). For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

REGULATORY FLEXIBILITY ACT

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

EXECUTIVE ORDER 12866

This amendment does not meet the criteria of a “significant regulatory action” as described in Executive Order 12866.

SIGNING AUTHORITY

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).

LIST OF SUBJECTS IN 19 CFR PART 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise.

AMENDMENT TO CBP REGULATIONS

For the reasons set forth above, part 12 of Title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

PART 12 – SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

2. In § 12.104g(a), the table of the list of agreements imposing import restrictions on described articles of cultural property of State Parties is amended in the entry for Italy by removing the reference to “T.D. 01–06” in the column headed “Decision No.” and adding in its place the language “T.D. 01–06 extended by CBP Dec. 06–01”.

DEBORAH J. SPIRO,
Acting Commissioner;

Bureau of Customs and Border Protection

Approved: January 17, 2006

TIMOTHY E. SKUD,

Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, January 19, 2006 (71 FR 3000)]

General Notices

USCBP-2006-0011

**AGENCY INFORMATION COLLECTION ACTIVITIES:
APPLICATION FOR EXTENSION OF BOND FOR
TEMPORARY IMPORTATION**

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Application for Extension of Bond for Temporary Importation. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the bur-

den hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (70 FR 58451) on October 6, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before February 17, 2006.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-7285.

SUPPLEMENTARY INFORMATION:

Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Application for Extension of Bond for Temporary Importation

OMB Number: 1651-0015

Form Number: CBP Form-3173

Abstract: Imported merchandise that is to remain in the Bureau of Customs and Border Protection territory for 1-year or less without

duty payment is entered as a temporary importation. The importer may apply for an extension of this period on CBP Form-3173.

Current Actions: This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Estimated Number of Respondents: 1,200

Estimated Time Per Respondent: 14 minutes

Estimated Total Annual Burden Hours: 348

Estimated Total Annualized Cost on the Public: \$5,568

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: January 9, 2006

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, January 18, 2006 (71 FR 2953)]

USCBP-2006-0003

AGENCY INFORMATION COLLECTION ACTIVITIES: IMPORTERS OF MERCHANDISE SUBJECT TO ACTUAL USE PROVISIONS

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Importers of Merchandise Subject to Actual Use Provisions. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extension without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (70 FR 58457) on October 6, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before February 17, 2006.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Importers of Merchandise Subject to Actual Use Provisions

OMB Number: 1651-0032

Form Number: None

Abstract: The Importers of Merchandise Subject to Actual Use Provision is part of the regulation which provides that certain items may be admitted duty-free such as farming implements, seed, potatoes etc., providing the importer can prove these items were actually used as contemplated by law. The importer must maintain detailed records and furnish a statement of use.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)
Affected Public: Businesses, Institutions
Estimated Number of Respondents: 12,000
Estimated Time Per Respondent: 60 minutes
Estimated Total Annual Burden Hours: 13,000
Estimated Total Annualized Cost on the Public: N/A

If additional information is required contact: Tracey Denning,
Customs and Border Protection, 1300 Pennsylvania Avenue NW,
Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: January 9, 2006

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, January 18, 2006 (71 FR 2949)]

USCBP-2006-0004

PROPOSED COLLECTION; COMMENT REQUEST

ANDEAN TRADE PREFERENCES

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning Andean Trade Preferences. This proposed information collection was previously published in the **Federal Register** (70 FR 58454) on October 6, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 17, 2006.

ADDRESS: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and

Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Andean Trade Preferences

OMB Number: 1651-0091

Form Number: None

Abstract: This collection identifies the country of origin and related rules which apply for purposes of duty-free or reduced-duty treatment and specifies the documentary and other procedural requirements for preferential tariff treatment under the Andean Trade Preferences Act 19 U.S.C. 3201 through 3206.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 48,000

Estimated Time Per Respondent: 10 minutes

Estimated Total Annual Burden Hours: 7,968

Estimated Total Annualized Cost on the Public: N/A

Dated: January 9, 2006

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, January 18, 2006 (71 FR 2952)]

PROPOSED COLLECTION; COMMENT REQUEST

USCBP-2006-0002

Application for Withdrawal of Bonded Stores For Fishing Vessels and Certification of Use

AGENCY: Customs and Border Protection (CBP), Department of Homeland Security

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Withdrawal of Bonded Stores For Fishing Vessels and Certification of Use. This proposed information collection was previously published in the **Federal Register** (70 FR 58455) on October 6, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 17, 2006.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and

purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application for Withdrawal of Bonded Stores For Fishing Vessels and Certification of Use

OMB Number: 1651-0092

Form Number: CBP Form 5125

Abstract: The CBP Form 5125 is used for the withdrawal and lading of bonded merchandise (especially alcoholic beverages) for use on board fishing vessels. The form also certifies the use: total consumption or partial consumption with secure storage for use on next voyage.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension

Affected Public: Businesses

Estimated Number of Respondents: 500

Estimated Time Per Respondent: 5 minutes

Estimated Total Annual Burden Hours: 42

Estimated Total Annualized Cost on the Public: N/A

Dated: January 10, 2006

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, January 18, 2006 (71 FR 2949)]

USCBP-2006-0009

PROPOSED COLLECTION; COMMENT REQUEST

Bond Procedures for Articles Subject to Exclusion Orders Issued by the U.S. International Trade Commission

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Bond Procedures for Articles Subject to Exclusion Orders Issued by the U.S. International Trade Commission. This proposed information collection was previously published in the **Federal Register** (70 FR 58453) on

October 6, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 17, 2006.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection Service, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection Service, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Bond Procedures for Articles Subject to Exclusion Orders Issued by the U.S. International Trade Commission

OMB Number: 1651–0099

Form Number: None

Abstract: This collection is required to ensure compliance with section 337 of the Tariff Act of 1930, as amended by section 321 of the Uruguay Round Agreements regarding bond procedures for entry of articles subject to exclusion orders issued by the U.S. International Trade Commission.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension

Affected Public: Businesses

Estimated Number of Respondents: 100

Estimated Time Per Respondent: 30 minutes

Estimated Total Annual Burden Hours: 50

Estimated Total Annualized Cost on the Public: N/A

Dated: January 10, 2006

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, January 18, 2006 (71 FR 2950)]

USCBP-2006-0005

PROPOSED COLLECTION; COMMENT REQUEST

DECLARATION OF OWNER OF MERCHANDISE OBTAINED (OTHER THAN) IN PURSUANCE OF A PURCHASE AGREEMENT TO PURCHASE AND DECLARATION OF IMPORTER OF RECORD WHEN ENTRY IS MADE BY AN AGENT

AGENCY: Customs and Border Protection (CBP), Department of Homeland Security

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration of Owner of Merchandise Obtained (other than) in Pursuance of a Purchase or Agreement to Purchase and Declaration of Importer of Record When Entry is Made by an Agent. This proposed information collection was previously published in the **Federal Register** (70 FR 58455-58456) on October 6, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 17, 2006.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Declaration of Owner of Merchandise Obtained (other than) in Pursuance of a Purchase or Agreement to Purchase and Declaration of Importer of Record When Entry is Made by an Agent.

OMB Number: 1651-0093

Form Number: CBP Forms-3347 and 3347A

Abstract: CBP Forms-3347 and 3347A allow an agent to submit, subsequent to making the entry, the declaration of the importer of record that is required by statute. These forms also permit a nominal importer of record to file the declaration of the actual owner and to be relieved of statutory liability for the payment of increased duties.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 5,700
Estimated Time Per Respondent: 6 minutes
Estimated Total Annual Burden Hours: 570
Estimated Total Annualized Cost on the Public: N/A

Dated: January 9, 2006

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, January 18, 2006 (71 FR 2952)]

USCBP-2006-0006

PROPOSED COLLECTION; COMMENT REQUEST

**Declaration of a Person Abroad Who Receives and is
Returning Merchandise to the U.S.**

AGENCY: Customs and Border Protection (CBP), Department of Homeland Security

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration of a Person Abroad Who Receives and is Returning Merchandise to the U.S. This proposed information collection was previously published in the **Federal Register** (70 FR 58456) on October 6, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 17, 2006.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document the CBP is soliciting comments concerning the following information collection:

Title: Declaration of a Person Abroad Who Receives and is Returning Merchandise to the U.S.

OMB Number: 1651-0094

Form Number: None

Abstract: This declaration is used under conditions where articles are imported and then exported and then reimported free of duty due. The declaration is to insure CBP control over duty-free merchandise.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension

Affected Public: Individuals, business or other for-profit institutions

Estimated Number of Respondents: 1500

Estimated Time Per Respondent: 10 minutes

Estimated Total Annual Burden Hours: 250

Estimated Total Annualized Cost on the Public: N/A

Dated: January 10, 2006

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

USCBP-2006-0010**PROPOSED COLLECTION; COMMENT REQUEST****Guam Visa Waiver Information (I-736)**

AGENCY: Customs and Border Protection (CBP), Department of Homeland Security

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Guam Visa Waiver Information. This proposed information collection was previously published in the **Federal Register** (70 FR 58452-58453) on October 6, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 17, 2006.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for

Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Guam Visa Waiver Information

OMB Number: 1651-0109

Form Number: CBP Form I-736

Abstract: The CBP Form I-736 is used to track an alien's application for waiver of the nonimmigrant visa requirement for entry into Guam.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension

Affected Public: Individuals

Estimated Number of Respondents: 170,000

Estimated Time Per Respondent: 5 minutes

Estimated Total Annual Burden Hours: 14,110

Estimated Total Annualized Cost on the Public: N/A

Dated: January 10, 2006

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, January 18, 2006 (71 FR 2948)]

USCBP-2006-0008

PROPOSED COLLECTION; COMMENT REQUEST

NAFTA Regulations and Certificate of Origin

AGENCY: Customs and Border Protection (CBP), Department of Homeland Security

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the NAFTA Regulations and Certificate of Origin. This proposed information collection was previously published in the **Federal Register** (70 FR 58456) on October 6, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 17, 2006.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document the CBP is soliciting comments concerning the following information collection:

Title: NAFTA Regulations and Certificate of Origin

OMB Number: 1651-0098

Form Number: CBP Forms 434 and 446

Abstract: The objectives of NAFTA are to eliminate barriers to trade in goods and services between the United States, Mexico, and Canada; facilitate conditions of fair competition within the free trade area; liberalize significantly conditions for investments within the free trade area; establish effective procedures for the joint administration of the NAFTA; and the resolution of disputes.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 120,050

Estimated Time Per Respondent: 15 minutes

Estimated Total Annual Burden Hours: 30,037
Estimated Total Annualized Cost on the Public: N/A

Dated: January 10, 2006

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, January 18, 2006 (71 FR 2950)]

USCBP-2006-0007

PROPOSED COLLECTION; COMMENT REQUEST

TRANSFER OF CARGO TO A CONTAINER STATION

AGENCY: Customs and Border Protection (CBP), Department of Homeland Security

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Transfer of Cargo to a Container Station. This proposed information collection was previously published in the **Federal Register** (70 FR 58452) on October 6, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 17, 2006.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Re-

duction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Transfer of Cargo to a Container Station

OMB Number: 1651-0096

Form Number: None

Abstract: The container station operator may file an application for transfer of a container to a container station which is moved from the place of unloading, or from a bonded carrier after transportation in-bond before filing of the entry for the purpose of breaking bulk and redelivery.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 21,660

Estimated Time Per Respondent: 7 minutes

Estimated Total Annual Burden Hours: 2,513

Estimated Total Annualized Cost on the Public: N/A

Dated: January 9, 2006

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, January 18, 2006 (71 FR 2951)]

Address Change for Filing Annual Election to Average For Motor Vehicles

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

ACTION: General notice

SUMMARY: This document announces an address change for the Regulatory Audit Division, Office of Strategic Trade, Customs and Border Protection for filing annual election of average for motor vehicles.

The new address for the Regulatory Audit Division, Office Strategic Trade, Customs and Border Protection is as follows:

Regulatory Audit Division
Office of Strategic Trade
Customs and Border Protection
1300 Pennsylvania Avenue, N.W.
c/o 1400 L Street, N.W.
Washington, D.C. 20229
Telephone number: 202-863-6010
Fax number: 202-863-6050

Dates: Effective January 23, 2006.

Supplementary information: Under Section 11 - Motor Vehicle Averaging, Appendix To Part 181 - Rules of Origin Regulations, North American Free Trade Agreement. All filings for the annual election of average for motor vehicles under Section 11 of Appendix to Part 181, Rules of Origin Regulations of North American Free Trade Agreement, must be submitted to the above address.

Dated: 1/9/06

Cynthia A. Covell
Director, Regulatory Audit Division
Office of Strategic Trade
Bureau of Customs and Border Protection

[Published in the Federal Register, January 23, 2006 (71 FR 3521)]

**Automated Commercial Environment (ACE): National
Customs Automation Program Test of Periodic Monthly
Payment Statement Process**

USCBP-2006-0017

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

ACTION: General notice.

SUMMARY: This document announces a modification in the Bureau of Customs and Border Protection's (CBP) National Customs Automation Program (NCAP) test concerning periodic monthly de-

posit of estimated duties and fees. CBP will no longer require Automated Clearing House (ACH) credit participants to initiate payment earlier than the 15th working day of the month as was required by a Federal Register notice published on August 8, 2005. CBP, however, must receive the settlement for the credit by the 15th working day in order to have the periodic monthly statement marked paid and treated as a timely payment.

DATES: The changes announced in this Notice are effective immediately.

FOR FURTHER INFORMATION CONTACT: For questions regarding periodic monthly statement payments: Mr. Michael Maricich via email at Michael.Maricich@dhs.gov, or by telephone at (703) 921-7520.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 2004, the Bureau of Customs and Border Protection (CBP) published a General Notice in the **Federal Register** (69 FR 5362) announcing the National Customs Automation Program (NCAP) test for Periodic Monthly Payment Statement Process. The test, which is part of CBP's Automated Commercial Environment (ACE), benefits participants by giving them access to operational data through the ACE Secured Data Portal ("ACE Portal"), which provides them the capability to interact electronically with CBP, and by allowing them to deposit estimated duties and fees on a monthly basis based on a Periodic Monthly Statement issued by CBP.

When the test started, only importers were eligible to apply for the test. Eligibility was later expanded to allow brokers to apply if they were specifically designated by an ACE importer.

On September 8, 2004, CBP published a General Notice in the **Federal Register** (69 FR 54302) which invited customs brokers, regardless of whether they were designated by participating importers to make Periodic Monthly Statement payments on their behalf, to apply to participate in the test. That notice set forth eligibility requirements for both importers and brokers.

On February 1, 2005, CBP published a General Notice in the **Federal Register** (70 FR 5199) announcing that applicants seeking to establish importer or broker accounts so as to access the ACE Portal, or to participate in any ACE test (including the test for Periodic Monthly Payment Statement Process), are no longer required to provide a statement certifying participation in the Customs Trade Partnership Against Terrorism (C-TPAT).

As provided in the February 4, 2004 General Notice announcing the test, participants in the Periodic Monthly Statement test are required to schedule entries for monthly payment. A Periodic Monthly Statement will list Periodic Daily Statements that have been desig-

nated for monthly payment. The Periodic Monthly Statement can be created on a port basis by the importer or broker, as was the case with existing daily statements in the Automated Commercial System (ACS) (ACE is the successor to ACS). The Periodic Monthly Statement can be created on a national basis by an Automated Broker Interface (ABI) filer. If an importer chooses to file the Periodic Monthly Statement on a national basis he must use his filer code and schedule and pay the monthly statements. The Periodic Monthly Statement will be routed under existing CBP procedures. Brokers will only view / receive information that they have filed on an importer's behalf. ACE will not route a Periodic Monthly Statement to a broker through ABI if that statement lists information filed by another broker.

On August 8, 2005, CBP published a General Notice in the **Federal Register** (70 FR 45736) changing the time period allowed for the periodic monthly deposit of estimated duties and fees from the 15th calendar day to the 15th working day of the month following the month in which the goods are either entered or released. That change was made in order to comply with the provisions of section 2004 of the Miscellaneous Trade and Technical Corrections Act of 2004, Public Law 108-429, which extended the time of deposit of those estimated duties and fees from the 15th calendar day to the 15th working day of the month following the month in which the goods are either entered or released. The document also advised that entries containing Census errors will be eligible to be placed on a Periodic Daily Statement and designated for monthly payment. Finally, the document announced that a participant would be subject to a claim for liquidated damages if the participant removed an entry from a Periodic Daily Statement after expiration of a 10-working-day period after release.

On September 22, 2005, CBP published a General Notice in the **Federal Register** (70 FR 55623) eliminating the requirement that participants in the Periodic Monthly Statement test provide a bond rider covering the periodic payment of estimated duties and fees. The Notice indicated that nonpayment or untimely payment of estimated duties and fees, however, may result in action by CBP to impose sanctions on the delinquent importer of record or to allow the surety to terminate its basic importation bond. If the bond principal is a participant in the Periodic Monthly Statement test, sureties will now be allowed, under certain conditions, to terminate bonds with 3 business days notice to the bond principal and CBP.

Modification of the Monthly Payment Statement Process

This Notice modifies the payment procedure set forth in the August 8, 2005 Notice (70 FR 45736) by specifically eliminating the requirement that "*ACH credit participants must initiate payment no later than the 14th working day of the month.*" CBP did not intend to

dictate the time in which payment must be initiated. CBP must receive the settlement for the credit by the 15th working day in order to have the periodic monthly statement marked paid and treated as a timely payment.

The August 8, 2005 Notice (70 FR 45736) established monthly payment processing procedures that incorporated the changes regarding the extended time for payment of duties and fees, and the removal of entries from the Periodic Daily Statement after expiration of the 10-working-day period after release.

The process for entries scheduled for monthly payment, as of this date including the modifications made by this Notice, is as follows:

- a. As entries are filed with CBP, the importer or its designated broker schedules them for monthly payment;
- b. Those entries scheduled for monthly payment will appear on the Preliminary Periodic Daily Statement;
- c. The importer or its designated broker processes entry summary presentation transactions for Periodic Daily Statements within 10 working days of the date of entry;
- d. After summary information has been filed, the scheduled entries will appear on the Final Periodic Daily Statement;
- e. Periodic Daily Statements scheduled for monthly payment will appear on the Preliminary Periodic Monthly Statement; CBP will generate the Preliminary Periodic Monthly Statement on the 11th working day of the month following the month in which the merchandise is either entered or released, whichever comes first, unless the importer or designated broker selects an earlier date;
- f. On the 15th working day of the month, for Automated Clearing House (ACH) debit participants, CBP will transmit the debit authorizations for the periodic daily statements to the financial institution and the periodic monthly statement will be marked paid. The Final Periodic Monthly Statement will be generated by CBP and be transmitted to the importer or his designated broker. ACH Debit participants must ensure that the money amount identified on the Preliminary Monthly Statement is, in fact, available in their bank account by the 15th working day of the month.
- g. CBP must receive the settlement for the credit by the 15 working day of the month in order to have the periodic monthly statement marked paid and treated as a timely payment. The Final Periodic Monthly Statement will be generated by CBP and be transmitted to the importer or his designated broker.

For both ACH Credit and ACH Debit participants, CBP will generate the Final Periodic Monthly Statement on the night that payment is processed.

Participants should note that if they voluntarily remove an entry from a Periodic Daily Statement before expiration of the 10-working-day period after release, that entry may be placed on another Periodic Daily Statement falling within the same 10-working-day period.

If, however, participants remove an entry from a Periodic Daily Statement after expiration of the 10-working-day period after release, the entry may be the subject of a claim for liquidated damages for late payment of estimated duties.

Suspension of Regulations

During the testing of the Periodic Monthly Statement process, CBP is suspending provisions in Parts 24, 141, 142, and 143 of the CBP Regulations (Title 19 Code of Federal Regulations) pertaining to financial, accounting, entry procedures, and deposit of estimated duties and fees. Absent any specified alternate procedure, the current regulations apply. All of the terms of the test and criteria for participation therein, as announced in the previous notices identified above, continue to be applicable unless changed by this notice.

DATED: January 12, 2006

JAYSON P. AHERN,
*Assistant Commissioner,
Office of Field Operations.*

[Published in the Federal Register, January 20, 2006 (71 FR 3315)]



Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions (COAC)

ACTION: Notice of meeting.

SUMMARY: This notice announces the date, time, and location for the fifth meeting of the ninth term of the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions (COAC), and the expected agenda for its consideration.

DATES: The next meeting of the COAC will be held on Thursday, February 9, 2006, 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held in the Pavilion Room of the Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ms. Monica Frazier, Office of the Assistant Secretary for Policy, Department of Homeland Security, Washington, DC 20528, telephone 202-282-8431; facsimile 202-282-8504. Members of the public may submit written comments at any time before or after the meeting to the contact person for consideration by this Advisory Committee.

SUPPLEMENTARY INFORMATION: The fifth meeting of the ninth term of the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions (COAC) will be held at the date, time and location specified above. This notice also announces the expected agenda for that meeting below. This meeting is open to the public; however, participation in COAC deliberations is limited to COAC members, Homeland Security and Treasury Department officials, and persons invited to attend the meeting for special presentations. Since seating is limited, all persons attending this meeting should provide notice preferably by close of business Monday, February 6, 2006, to Ms. Monica Frazier, Office of the Assistant Secretary for Policy, Department of Homeland Security, Washington, DC 20528, telephone 202-282-8431; facsimile 202-282-8504.

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Monica Frazier, Office of the Assistant Secretary for Policy, Department of Homeland Security, Washington, DC 20528, telephone 202-282-8431; facsimile 202-282-8504, as soon as possible.

Draft Agenda

1. Introductory Remarks
2. WCO (World Customs Organization) "Security Framework" Implementation
3. Update on HSPD-13 (Homeland Security Presidential Directive-13) & National Maritime Security Advisory Committee
4. Security Subcommittee:
C-TPAT (Customs-Trade Partnership Against Terrorism) Carrier Criteria (Ocean and Truck)
5. Green Lane Task Force - Benefits Review
6. Textiles & Apparel Entry Processing
7. ACE (Automated Commercial Environment)/ITDS (International Trade Data System)
8. New Action Items
9. Adjourn

STEWART A. BAKER,
Assistant Secretary for Policy,
United States Department of Homeland Security.

Dated: January 18, 2006

[Published in the Federal Register, January 23, 2006 (71 FR 3521)]

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

Washington, DC, January 18, 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,
*Assistant Commissioner,
Office of Regulations and Rulings.*

19 CFR PART 177

**REVOCATION OF RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF A CERTAIN SILK CAPELET**

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

ACTION: Notice of revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of a certain silk capelet.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a certain silk capelet. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice proposing these actions and inviting comments on their correctness was published in the *Customs Bulletin*, Volume 39, Number 48, on November 23, 2005. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 2, 2006.

FOR FURTHER INFORMATION CONTACT: Brian Barulich, Tariff Classification and Marking Branch, at (202) 572-8883.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke New York Ruling Letter (NY) L82042 was published in the *Customs Bulletin*, Volume 39, Number 48, on November 23, 2005. No comments were received in response to this notice. As stated in the proposed notice, the revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical

transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY L82042, CBP classified a silk capelet from China in subheading 6217.10.1090, HTSUS, which provides for: "Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212: Accessories: Containing 70 percent or more by weight of silk or silk waste, other." Based on our recent review of NY L82042, heading 6214, HTSUS, the Explanatory Notes to heading 6214, and previous CBP rulings on the classification of capelets, we have determined that the classification set forth for the capelet in NY L82042 is incorrect. Based on our recent review, we now believe that the capelet is classified in subheading 6214.10.1000, HTSUS, which provides for: "Shawls, scarves, mufflers, mantillas, veils and the like: Of silk or silk waste: Containing 70 percent or more by weight of silk or silk waste."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY L82042 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 967889, which is set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

DATED: January 11, 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 967889
January 11, 2006
CLA-2 RR:CTF:TCM 967889 BtB
CATEGORY: Classification
TARIFF NO.: 6214.10.1000

STEPHEN M. ZELMAN, ESQ.
STEPHEN M. ZELMAN & ASSOCIATES
888 Seventh Avenue—Suite 4500
New York, NY 10106

Re: Classification of a silk capelet from China; NY L82042 revoked

DEAR MR. ZELMAN:

On February 16, 2005, the National Commodity Specialist Division (“NCS”) of U.S. Customs and Border Protection (“CBP”) issued New York Ruling Letter (“NY”) L82042 to you, on behalf of Elie Tahari, Ltd. In NY L82042, CBP classified a silk capelet from China in subheading 6217.10.1090, Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”), which provides for: “Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212: Accessories: Containing 70 percent or more by weight of silk or silk waste, other.”

We have reviewed NY L82042 and have determined that the classification set forth for the capelet in that ruling is incorrect. This ruling, Headquarters Ruling (“HQ”) 967889, revokes NY L82042 and provides the correct classification of the capelet.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY L82042 was published in the *Customs Bulletin*, Volume 39, Number 48, on November 23, 2005.

FACTS:

In NY L82042, the capelet, also identified as “Style No. G88OK505,” was described as follows:

The submitted sample style no. G88OK505 is a woven 100% silk capelet. The sheer lightweight garment fits over the head through a center slit. The article has no collar or means of closure. It covers the shoulders and the upper portion of the wearer’s arms. It does not cover the elbows or reach the wearer’s waist.

ISSUE:

Whether the classification of the capelet at issue?

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be “determined according to the terms of the headings and any

relative section or chapter notes." If the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied, in order.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

The headings under consideration for classification of the capelet are: heading 6202, heading 6211, heading 6214, and heading 6217, HTSUSA. Heading 6202, HTSUSA, provides for: "Women's or girls' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets), other than those of heading 6204." Heading 6211, HTSUSA, provides for: "Track suits, ski-suits and swimwear; other garments." Heading 6214, HTSUSA, provides for: "Shawls, scarves, mufflers, mantillas, veils and the like." And, heading 6217, HTSUSA, provides for: "Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212."

Tariff terms are "construed in accordance with their common and popular meaning, in the absence of contrary legislative intent." *E.M. Chemicals v. United States*, 920 F.2d 910, 913 (Fed. Cir. 1990). "Capelet" is not mentioned in the HTSUSA or the EN. However, the common definition of "capelet" is a "small cape." See *DICTIONARY OF FASHION*, CHARLOTTE MANKEY CALASIBETTA 90 (1998).

Capelets share the features of several articles: shawls, capes, and ponchos. A discussion of the features of each of these articles is relevant to the classification of the instant capelet. See HQ 963859, dated June 9, 2000; HQ 964261, HQ 964319, HQ 964320, HQ 964321, HQ 964322, all dated July 7, 2000; and HQ 964232, dated September 1, 2000. These articles are also not defined in the HTSUSA; however, we have recognized that the following definitions represent their common meanings:

- Shawl:** square or oblong piece of material used for shoulder covering and is worn by women; The term also implies any material used for shoulder or head covering in the accepted sense of today. *THE MODERN TEXTILE AND APPAREL DICTIONARY*, GEORGE E. LINTON 506 (1973).
- Cape:** sleeveless outer garment of any length hanging loosely from the shoulders; usually covering back, shoulders, arms. *THE FASHION DICTIONARY*, MARY BROOKS PICKEN 56 (1973).
- Poncho:** (1) fashion item shaped like a square or small oblong blanket with a hole in the center for the head, frequently fringed; (2) utilitarian garment consisting of waterproof fabric with a slash in the center for the head; when worn it was used as a rain cape, when not worn it could be used as a blanket. *DICTIONARY OF FASHION* AT 446.

The capelet at issue is pulled over the head like a poncho, yet its length is not to or below the waist as a typical poncho. Much like a cape or poncho, the item also has no arms or sleeves. Additionally, the size of the item and the amount of coverage provided to the wearer resembles the amount of coverage typically afforded by a shawl in that it does not extend beyond the mid-upper body. Keeping these features in mind, we turn to the headings under consideration in this matter.

Heading 6202, HTSUSA, provides for: "Women's or girls' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets), other than those of heading 6204." The EN to heading 62.02 state that: the provisions of the EN to heading 61.02 apply, *mutatis mutandis*, to the articles of this heading. The EN to heading 61.02, in turn, state that the provisions of the EN to heading 61.01 apply *mutatis mutandis*, to the articles of heading 61.02. The EN to heading 6101 state that the heading covers a category of garments characterized by the fact that they are generally worn over all other clothing for protection against weather, and notes that capes and ponchos are specifically included in the heading.

While we have acknowledged that the capelet at issue does share certain features with a cape or poncho, it is worn for style and decorative purposes and lacks coverage and other features which would afford the wearer protection from the elements. The short length of the item is not conducive for providing any warmth below the shoulder or chest area. CBP views the length of a garment to be sometimes an influential factor in determining how a garment is classified. In the case at hand, if the article at issue reached to at least the waist, the classification would not be an issue; the article would most likely be described as a poncho within heading 6202, HTSUSA. However, due to the capelet at issue's length and its lack of protection against the weather, we find that it is not described by heading 6202, HTSUSA.

Heading 6211, HTSUSA, provides for: "Track suits, ski suits and swimwear; other garments." The EN to heading 6211 state that the provisions of the EN to heading 61.12 concerning track suits, ski suits and swimwear and of the EN to heading 61.14 concerning other garments apply, *mutatis mutandis*, to the articles of this heading. As we are concerned if the capelet is classified as an "other garment," we consult the EN to heading 6114, HTSUSA, which state, in pertinent part, that the "heading covers knitted or crocheted garments which are not included more specifically in the preceding headings of th[e] Chapter." This EN lists exemplars included in the heading, and none are similar to the capelet at issue. While this heading serves as a basket provision, the garments classifiable in heading 6114, HTSUSA, generally are those garments that either provide a greater degree of coverage to the wearer than the subject capelet or could be worn without any other articles of clothing. In light of these considerations, we find that the capelet at issue is not described by heading 6211, HTSUSA.

Heading 6214, HTSUSA, provides for: "Shawls, scarves, mufflers, mantillas, veils and the like." The EN to the heading state, in pertinent part, that:

This heading includes:

(1) **Shawls.** These are usually square, triangular or circular, and large enough to cover the head and shoulders.

(2) **Scarves and mufflers.** These are usually square or rectangular and are normally worn around the neck.

(3) **Mantillas.** These are kinds of light shawls or scarves, usually of lace, worn by women over the head and shoulders.

While heading 6214 does not specifically cover the article at issue, it does contain a list of particular items followed by a general phrase, “. . . and the like.” It is well settled that when a list of items is followed by a general word or phrase, the rule of *ejusdem generis* is used to determine the scope of the general word or phrase. See *Totes, Inc. v. United States*, 69 F.3d 495, 498 (Fed. Cir. 1995). In classification cases, *ejusdem generis* requires that, for any imported merchandise to fall within the scope of the general term or phrase, the merchandise must possess the same essential characteristics or purposes that united the listed exemplars preceding the general term or phrase. See *Sports Graphics, Inc. v. United States*, 24 F.3d 1390, 1392 (Fed. Cir. 1994). However, a classification under the *ejusdem generis* principle is inappropriate when an imported article has a specific and primary purpose that is inconsistent with that of the listed exemplars in a particular heading. See *Aves. In Leather, Inc. v. United States*, 178 F.3d 1241, 1244 (Fed. Cir. 1999).

CBP has, in multiple rulings, examined whether capelets possess the same essential characteristics and purposes of the exemplars listed in heading 6214, HTSUSA. See *e.g.*, HQ 963859, HQ 964261, HQ 964319, HQ 964320, HQ 964321, HQ 964322, and HQ 964232. In each these rulings, CBP found that capelets do possess the essential characteristics and purposes of shawls, articles listed in heading 6214, HTSUSA. CBP’s findings were based on the fact that capelets and shawls are worn in the same manner, are of similar length, and offer similar elemental protection. In each of these rulings, CBP stated that the capelet at issue in that ruling “. . . is intended to be worn in much the same sense as a shawl in that it is to cover the shoulders and to be worn over other garments when the weather would not require a heavier coat or wrap.”

We do not find the essential characteristics and purposes of the capelet at issue in this ruling to be different than the capelets that were the subjects of the previous CBP rulings cited above. As a result, we find the capelet at issue to be classified in heading 6214, HTSUSA, pursuant to an *ejusdem generis* analysis.

Heading 6217, HTSUSA, provides for: “Other made up clothing accessories; parts of garments or of clothing accessories, **other than** those of heading 6212.” The EN to heading 6217 states that: “This heading covers made up textile clothing accessories, other than knitted or crocheted, not specified or included in other headings of this Chapter or elsewhere in the Nomenclature.” As we have established that the capelet at issue is included in heading 6214, HTSUSA, pursuant to an *ejusdem generis* analysis, the article is therefore not classified in heading 6217, HTSUSA.

HOLDING:

The capelet at issue, also identified as “Style No. G88OK505,” is classified in heading 6214, HTSUSA. It is specifically provided for in subheading 6214.10.1000, HTSUSA, which provides for: “Shawls, scarves, mufflers, mantillas, veils and the like: Of silk or silk waste: Containing 70 percent or more by weight of silk or silk waste.” The applicable column one, general duty rate for the merchandise under the 2006 HTSUSA is 1.2% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are

provided on the world wide web at www.usitc.gov. Quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

EFFECT ON OTHER RULINGS:

NY L82042, dated February 16, 2005, is hereby 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 and Facilitation Division.

**PROPOSED MODIFICATION OF RULING LETTER
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A TORQUE WRENCH,
RATCHET, TOOL SET, AND SCREWDRIVER BIT AND
SOCKET SET**

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

ACTION: Notice of proposed modification of ruling letter and treatment relating to tariff classification of a torque wrench, ratchet, tool set, and screwdriver bit and socket set.

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 of a torque wrench, ratchet, socket set and screwdriver bit and socket set under the Harmonized Tariff Schedule of the United States ("HTSUS"). CBP also intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before March 3, 2006.

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

FOR FURTHER INFORMATION CONTACT: Ieva O'Rourke, Tariff Classification and Marking Branch, (202) 572-8803.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that CBP intends to modify a ruling letter pertaining to the classification of a torque wrench, ratchet, tool set, and screwdriver bit and socket set. Although in this notice CBP is specifically referring to the modification of New York Ruling Letter (NY) K82360, dated January 15, 2004 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones 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, as amended (19 U.S.C. 1625(c)(2)), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY K82360, set forth as Attachment A to this document, CBP classified the torque wrench and ratchet, in heading 8204, HTSUS, as socket wrenches, with or without handles, drives, or extensions, and the tool set and screwdriver bit and socket set in heading 8207, HTSUS, as interchangeable tools for handtools. It is now CBP's position that the torque wrench, ratchet, and screwdriver bit and socket set are classified under heading 8466, HTSUS, specifically subheading 8466.10.80, HTSUS, as toolholders, and the tool set is classified under heading 8204, HTSUS, specifically subheading 8204.20.00, as socket wrenches, with or without handles, drives, or extensions.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY K82360, and revoke or modify any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 967400 (Attachment B). 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, we will give consideration to any written comments timely received.

DATED: January 11, 2006

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

Attachments

[ATTACHMENT A]

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

NY K82360

January 15, 2004

CLA-2-82:RR:NC:1:118 K82360

CATEGORY: Classification

TARIFF NO.: 8204.20.0000; 8207.90.6000

MR. JOHN CARRIER
CENTRAL PURCHASING, INC.
Import Operations Group
3491 Mission Oaks Blvd.
Camarillo, CA 93012

RE: The tariff classification of various handtools from Taiwan.

DEAR MR. CARRIER:

In your letter dated December 29, 2003, you requested a tariff classification ruling. The samples that you have submitted will be returned to you as requested.

You have described your samples as follows:

(Sku 40592, Ratchet, 1/4" drive, quick release, 5 1/2" long (Sku 2696, Torque ratchet, 1/4" drive, torque range 20 to 200 lbs., 10" long in a molded plastic case (Sku 45466, a 23 piece Metric socket set, containing a 1/4" drive ratchet, nut driver, flexible universal joint, 9 sockets, 7 deep sockets, two extensions and 1 finger ratchet - all packed in a metal holder (Sku 04142, a 53 piece Socket set, containing a 3/8" drive with a 3/8 x 1/4" adapter, 35 sockets, 6 allen hex keys, one 3" extension, 3 open end wrenches, one ratchet drive handle and four screwdriver bits - all packed in a zippered toolholder with specific holders for each tool (Sku 45785, a 16 piece Screwdriver bit and socket set, containing one drive handle with quick release, 2 Philips head screw bits, 2 slot head screw bits, 6 star head screw bits, one socket adapter, 9 ea. 1/4" drive sockets from 3/16" to 1/2" sizes - all in a plastic molded case.

The applicable subheading for the Sku 40592, ratchet, Sku 2696, Square drive torque wrench, and the Sku 45466, 23 piece Metric socket set will be 8204.20.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for hand-operated spanners and wrenches (including torque meter wrenches but not including tap wrenches); socket wrenches, with or without handles, drives or extensions; base metal parts thereof: socket wrenches, with or without handles, drives and extensions, and parts thereof. The rate of duty will be 9% ad valorem.

The applicable subheading for the Sku 04142, 53 piece Socket set and the Sku 45785, 16 piece Screwdriver bit and socket set will be 8207.90.6000, HTS, which provides for interchangeable tools for handtools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screwdriving), including dies for drawing or extruding metal, and rock drilling or earth boring tools; base metal parts thereof: other interchangeable tools, and parts thereof: other: not suitable for cutting metal, and parts thereof: for handtools, and parts thereof. The rate of duty will be 4.3% ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kathy Campanelli at 646-733-3021.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967400
CLA-RR:CTF:TCM 967400 IOR
CATEGORY: Classification
TARIFF NO. 8204.20.00, 8466.10.80

MR. JOHN CARRIER
CENTRAL PURCHASING, INC.
Import Operations Group
3491 Mission Oaks Blvd.
Camarillo, CA 93012

RE: Torque wrench; ratchet; tool set; screwdriver bit and socket set; modification of NY K82360

DEAR MR. CARRIER:

This is in reference to New York Ruling Letter (NY) K82360, issued to you on January 15, 2004, by the National Commodity Specialist Division, regarding the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of two handtools and three handtool sets. We have reconsidered NY K82360 and have determined that the classification of the two handtools and two of the handtool sets is not correct.

In NY K82360, Customs and Border Protection (CBP) ruled that SKU 2696, a torque wrench, and SKU 40592, a ratchet, were classified in subheading 8204.20.00, HTSUS, as socket wrenches, with or without handles, drives, or extensions. SKU 04142, and 45785, tool sets, were classified in subheading 8207.90.60, HTSUS, which provides for interchangeable tools for handtools. Upon review, CBP has determined that the merchandise was erroneously classified in NY K82360. This ruling letter sets forth the correct classification determination.

FACTS:

SKU 40592 consists of a ratchet, 1/4" drive, quick release, 5 1/2" long. SKU 2696 consists of a torque wrench, 1/4" drive, torque range 20 to 200 lbs., 10" long, in a molded plastic case. SKU 04142 consists of a 53 piece set containing a 3/8" drive with a 3/8 x 1/4" adapter, 35 sockets, 6 allen hex keys, one 3" extension, 3 open end wrenches, one ratchet drive handle, and four screw-

driver bits, all packed in a zippered toolholder with specific holders for each item. SKU 45785 consists of a 16 piece set containing one non-ratcheting drive handle with quick release, 2 Phillips head screwdriver bits, 2 slot head screwdriver bits, 6 star head screwdriver bits, one socket adapter, and a total of 9, ¼" drive sockets from 3/16" to ½" size, all in a plastic molded case.

ISSUE:

What is the correct classification of the subject merchandise?

LAW AND ANALYSIS:

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

With respect to SKU 2696, the torque wrench, the HTSUS provisions under consideration are as follows:

- 8204 Hand-operated spanners and wrenches (including torque meter wrenches but not including tap wrenches); socket wrenches, with or without handles, drives or extensions; base metal parts thereof:
 - Hand-operated spanners and wrenches, and parts thereof:
 - 8204.11.00 Nonadjustable, and parts thereof
 - 8204.12.00 Adjustable, and parts thereof
 - 8204.20.00 Socket wrenches, with or without handles, drives and extensions, and parts thereof
- 8466 Parts and accessories suitable for use solely or principally with the machines of headings 8456 to 8465, including work or tool holders, self-opening dieheads, dividing heads and other special attachments for machine tools; tool holders for any type of tool for working in the hand:
 - 8466.10 Tool holders and self-opening dieheads:
 - 8466.10.80 Other

The legal text of heading 8204, HTSUS, includes torque meter wrenches among "hand-operated spanners and wrenches." A torque meter wrench can be set to apply a specific torque on bolts, nuts and other fasteners. Torque can be measured in ounce-inches, pound-inches, pound-feet, as well as metric measure. The subject wrench performs the same function as a torque meter wrench, measuring the torque in pound-inches. Torque meter wrenches are used with sockets. The wrenching action on the nut or bolt is performed by the sockets.

Heading 8204, HTSUS, is in section XV, HTSUS. Note 1(f) to section XV, HTSUS provides that articles of section XVI are not covered in section XV. Heading 8466, HTSUS, is in section XVI, HTSUS. Note 1(k) to section XVI, HTSUS, provides that articles of chapter 82 are not covered in section XVI,

HTSUS. Note 1 to Chapter 82, HTSUS, provides that, with certain exceptions not applicable here, “this chapter covers only articles with a blade, working edge, working surface or other working part of (a) Base metal; (b) Metal carbides or cermets; (c) Precious or semiprecious stones (natural, synthetic or reconstructed) on a support of base metal, metal carbide or cermet; or (d) Abrasive materials on a support of base metal, provided that the articles have cutting teeth, flutes, grooves or the like, of base metal, which retain their identity and function after the application of the abrasive.”

The predecessor provision to note 1 to Chapter 82, HTSUS (Schedule 6, part 3, subpart E headnote 1, Tariff Schedules of the United States (TSUS)) was the subject of the decision in Continental Arms Corp. v. United States, 65 Cust. Ct. 80 (1970). In Continental Arms, the classification under the Tariff Schedule of the United States (TSUS), of a “valvespot oiler” was at issue. In Continental Arms, the court considered what constitutes a working edge, surface or part, for the purpose of determining whether the oilers met the requirement of headnote 1. The court held that the term “working part” was used to refer to “that part of the tool which does work in relation to a workpiece or object external to the tool.” The Court found that the spout in the valvespout is a passive conduit and does not work on an external object, and is therefore not a “working part” of the oiler.

Decisions by the Customs Service and the courts interpreting nomenclature under the HTSUS’ predecessor tariff code, the TSUS, are not deemed dispositive under the HTSUS. However, on a case-by-case basis, such decisions should be deemed instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTS. Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418, August 23, 1988, 102 Stat. 1107, 1147; H.R. Rep. No. 576, 100th Cong., 2d Sess. 549-550 (1988); 1988 U.S.C.C.A.N. 1547, 1582-1583. The Continental Arms decision pertained to legal text which is substantially unchanged in the HTSUS, and no dissimilar interpretation is required by the text of the HTSUS. Accordingly, we find the decision instructive for purposes of the application of Note 1 to Chapter 82, HTSUS.

The torque wrench in this case, does not include a socket or sockets, and as such cannot operate on a nut or bolt. Therefore, without the socket, the torque wrench in this case does not have a “working part” within the meaning of Note 1 to Chapter 82, and as such, although specifically named in the text of heading 8204, HTSUS, cannot be classified in Chapter 82, HTSUS. As the torque wrench is not an article of Chapter 82, it is not precluded from classification in section XVI.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive nor legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to 84.66 (C) provide as follows, in pertinent part, with respect to tool holders for any type of tool for working in the hand:

The very wide range of parts and accessories classified here includes:

(1) Tool holders which hold, guide or operate the working tool and which permit the interchange of such tool-pieces. They are of varied types, e.g.:

...

This heading also includes tool holders for any type of tool designed for operation in the hand.

We find that the torque meter wrench, without sockets, is described in heading 8466, as it is a tool holder for sockets, which are designed for hand operation. Based on the language of heading 8466, HTSUS, the torque wrench, SKU 2696, is classified in subheading 8466.10.80, HTSUS, as “[p]arts and accessories suitable for use solely or principally with the machines of headings 8456 to 8465, including work or tool holders, self-opening dieheads, dividing heads and other special attachments for machine tools; tool holders for any type of tool for working in the hand: Tool holders and self-opening dieheads: Other.” The molded plastic case, is classifiable under subheading 8466.10.80, HTSUS, under GRI 5, if it is specially shaped or fitted to contain the torque wrench, suitable for long-term use and entered with the torque wrench. Otherwise the plastic case would be classified separately.

With respect to SKU 40592, ratchets have been consistently classified under heading 8466, HTSUS, which is set out above. Specifically, ratchets have been classified in subheading 8466.10.80, HTSUS, as tool holders. *See e.g.* Headquarters Ruling (HQ) 084551, dated August 9, 1989, HQ 089976, dated August 7, 1991, and HQ 964699, dated November 16, 2001. Although a ratchet is sometimes referred to as a “ratchet wrench” or “socket wrench,” similar to the torque wrench described above, a ratchet does not have a “working edge” within the meaning of Note 1 to Chapter 82, and is precluded from classification in Chapter 82. Therefore, the ratchet, SKU 40592, is classified in subheading 8466.10.80, HTSUS, as “[p]arts and accessories suitable for use solely or principally with the machines of headings 8456 to 8465, including work or tool holders, self-opening dieheads, dividing heads and other special attachments for machine tools; tool holders for any type of tool for working in the hand: Tool holders and self-opening dieheads: Other.”

With respect to SKU 04142 and 45785, the tool sets were correctly classified as sets under GRI 3. The classification of goods put up in sets for retail sale is governed by GRI 3(b). GRI 3(b) provides, in relevant part, that goods put up for retail sale shall be classified as if they consisted of the material or component which gives them their essential character. According to the ENs for GRI 3(b), “goods put up in sets for retail sale” refers to goods which “consist of at least two different articles which are, *prima facie*, classifiable in different headings; . . . consist of products or articles put up together to meet a particular need or carry out a specific activity; and . . . are put up in a manner suitable for sale directly to users without repacking”.

With respect to SKU 04142, the items contained in the set, if entered separately, would be, *prima facie*, classified, with the 3/8” drive and ratchet drive handle in subheading 8466.10.80, HTSUS, the adapter, 35 sockets and extension in subheading 8204.20.00, HTSUS, 6 hex keys and 3 open end wrenches in heading 8204.11.00, HTSUS, and four screwdriver bits in subheading 8207.90.60, HTSUS.

The factor or factors which determine essential character will vary with the goods. EN Rule 3(b)(VIII) lists as factors the nature of the material or

component, their bulk, quantity, weight or value, and the role of a constituent material in relation to the use of the goods. There are more sockets than any other one article in the set, and numerous items in the set are for use with the sockets, such as the 3/8" drive, the adapter and the extension. In this case, the factors of bulk, quantity, and role of a constituent material, indicate that the essential character of the set, in SKU 04142, is given by the sockets, which are classified under subheading 8204.20.00, HTSUS, as "[h]and-operated spanners and wrenches (including torque meter wrenches but not including tap wrenches); socket wrenches, with or without handles, drives or extensions; base metal parts thereof: Socket wrenches, with or without handles, drives and extensions, and parts thereof."

With respect to SKU 45785, the items contained in the set, if entered separately, would be, *prime facie*, classified, with the drive handle in subheading 8466.10.80, HTSUS, the 10 screwdriver bits in subheading 8207.90.60, HTSUS, and the socket adapter and 9 sockets in 8204.20.00, HTSUS. For tool sets with drive handles and sockets and screwdriver bits, CBP has consistently held that under GRI 3(b), the essential character of the set is imparted by the drive handle or ratchet, based on the role of the drive handle or ratchet in relation to the use of the goods. *See e.g.* HQ 084551, *supra*, HQ 089976, *supra*, and NY J85063, dated June 16, 2003. The drive handle is necessary for the use of the screwdriver bits, sockets, and adapter.

Therefore for the tool set, SKU 45785, the essential character is imparted by the drive handle, and it is classified under heading 8466, HTSUS, accordingly. Specifically the tool set, SKU 45785, is classified under subheading 8466.10.80, HTSUS, as "[p]arts and accessories suitable for use solely or principally with the machines of headings 8456 to 8465, including work or tool holders, self-opening dieheads, dividing heads and other special attachments for machine tools; tool holders for any type of tool for working in the hand: Tool holders and self-opening dieheads: Other."

The zippered toolholder with specific holders for SKU 04142, is, specially shaped or fitted to contain the tool set, and is suitable for long-term use. Provided that it is entered with SKU 04142, it is classifiable under subheading 8204.20.00, HTSUS, in accordance with GRI 5. The plastic molded case for SKU 45785, is classifiable under subheading 8466.10.80, HTSUS, under GRI 5, if it is specially shaped or fitted to contain the set with which it is sold, suitable for long-term use and entered with the set. Otherwise the zippered toolholder and plastic case would be classified separately.

HOLDING:

By application of GRI 1, the torque wrench, SKU 2696, and ratchet, SKU 40592, are classified in heading 8466, HTSUS, specifically 8466.10.8075, HTSUSA, which provides for: "[p]arts and accessories suitable for use solely or principally with the machines of headings 8456 to 8465, including work or tool holders, self-opening dieheads, dividing heads and other special attachments for machine tools; tool holders for any type of tool for working in the hand: Tool holders and self-opening dieheads: Other...Other," with a column one, general duty rate of 3.9% ad valorem.

By application of GRI 3(b), the tool set, SKU 04142, is classified in heading 8204, HTSUS, specifically 8204.20.0000, HTSUSA, which provides for: "[h]and-operated spanners and wrenches (including torque meter wrenches but not including tap wrenches); socket wrenches, with or without

handles, drives or extensions; base metal parts thereof: Socket wrenches, with or without handles, drives and extensions, and parts thereof.”

By application of GRI 3(b), the tool set, SKU 45785, is classified in heading 8466, HTSUS, specifically 8466.10.8075, HTSUSA, which provides for: “[p]arts and accessories suitable for use solely or principally with the machines of headings 8456 to 8465, including work or tool holders, self-opening dieheads, dividing heads and other special attachments for machine tools; tool holders for any type of tool for working in the hand: Tool holders and self-opening dieheads: Other . . . Other,” with a column one, general duty rate of 3.9% 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 internet at www.usits.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY K82360, dated January 15, 2004, is modified with respect to the classification of SKU 2696, 40592, 04142 and 45785. The classification of the remaining item that is described in NY K82360 is unchanged.

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

MYLES B. HARMON,

Director;

Commercial and Trade Facilitation Division.

**PROPOSED REVOCATION OF TWO RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A RADIOTELEPHONY BASE
STATION CABINET AND A NOISE-LIMITING HOOD.**

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

ACTION: Proposed revocation of two tariff classification ruling letters and revocation of treatment relating to the classification of a radiotelephony base station cabinet and noise limiting hood.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is proposing to modify one ruling letter relating to the tariff classification of a radiotelephony base station cabinet and to revoke one ruling letter relating to the tariff classification of a noise-limiting hood under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP is also proposing to revoke any treatment previously accorded by it to substantially identical merchandise.

DATE: Comments must be received on or before March 3, 2006.

ADDRESS: Written comments are to be addressed to the U.S. Bureau of Customs and Border Protection, Office of Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at the offices of 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: Kelly Herman, Tariff Classification and Marking Branch: (202) 572-8713.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of a radiotelephony base station cabinet and revoke one ruling letter relating to the tariff classification of a noise-limiting hood. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) R00933, dated October 18, 2004 (Attachment A) and the revocation of New York Ruling Letter (NY) R02586, dated September 27, 2005 (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rul-

ings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In NY R00933, CBP ruled that the radiotelephony base station cabinet was classified in subheading 9403.10.0040, HTSUSA, which provides for "Other furniture and parts thereof: Metal furniture of a kind used in offices, Other." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error, and that the radiotelephony base station cabinet should be classified in subheading 8529.90.8600, HTSUS, which provides for "Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528: Other parts of articles of headings 8525 and 8527, except parts of cellular telephones: Other."

In NY R02586, CBP ruled that the noise-limiting hood was classified in subheading 9403.90.8040, HTSUSA, which provides for "Other furniture and parts thereof: Parts: Other: Other, Of metal." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error, and that the noise-limiting hood should be classified in subheading 8529.90.8600, HTSUS, which provides for "Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528: Other parts of articles of headings 8525 and 8527, except parts of cellular telephones: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to modify NY R00933, revoke NY R02586 and any other ruling not specifically identified, to reflect the proper classification of the radiotelephony base station cabinet according to the analysis contained in Headquarters Ruling Letter (HQ) 967961, set forth as Attachment C to this document and the proper classification of the noise-limiting hood according to the analysis contained in Headquarters Ruling Letter (HQ) 967960, set forth as Attachment D to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially

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

DATED: January 11, 2006

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

Attachments

[ATTACHMENT A]

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

NY R00933
October 18, 2004
CLA-2-94:RR:NC:SP:233 R00933
CATEGORY: Classification
TARIFF NO.: 9403.10.0040

MR. ROBB LANE
ERICSSON INC.
6300 Legacy Drive
Plano, TX 75024

RE: The tariff classification of unequipped cabinets from Sweden.

DEAR MR. LANE:

In your letter dated October 12, 2004, you requested a tariff classification ruling.

The items to be imported are unequipped cabinets, part numbers BFM 901 042/3 and BFM 901 042/4. Essentially an empty rack, an unequipped cabinet does not contain any telecom functional equipment, whereas an equipped cabinet would include telecom functional equipment such as magazines, printed circuit boards, transceivers, and cooling fans. The metal cabinets are made up of various parts; doors, mounting sets, earthing set, nuts, screws and angle bars. These cabinets are designed to meet the increasingly stringent demands for disturbance immunity, heat dissipation, flexibility of layout and maintainability. The metal cabinet is designed for placement on the floor or ground and will be used to house telephone switching or radio base station equipment. You have submitted descriptive and illustrative information for our review.

The applicable subheading for the unequipped cabinets, part numbers BFM 901 042/3 and BFM 901 042/4 will be 9403.10.0040, Harmonized Tariff Schedule of the United States (HTS), which provides for "Other furniture and parts thereof: Metal furniture of a kind used in offices, Other." The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 646-733-3036.

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



[ATTACHMENT B]

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

NY R02586
September 27, 2005
CLA-2-71:RR:NC:SP:233 R02586
CATEGORY: Classification
TARIFF NO.: 9403.90.8040

MS. MELISSA HOFFMAN
ERICSSON, INC.
6300 Legacy Drive
Plano, TX 75024

RE: The tariff classification of a Noise Limiting Hood from Sweden

DEAR MS. HOFFMAN:

In your letter dated September 14, 2005, you requested a tariff classification ruling.

The item to be imported is identified as Item# BFY 102 06/08 Noise Limiting Hood. The item is designed specifically for radio base stations which are floor standing cabinets used to house telephone switching or radio base station equipment. The hood is made of aluminum that is coated with a sound absorbent polyurethane plastic. The item also includes small stainless steel brackets that are used for installation. The hood functions to reduce the noise level of the operating radio base station by approximately 10 decibels. You have submitted a diagram of the Noise Limiting Hood, a description of the Noise Limiting Hood, and photos of a radio base station with the Noise Limiting Hood.

Although the Noise Limiting Hood is an optional accessory to the radio base stations, the noise limiting hoods are designed for certain model radio base stations (furniture), and have no other use. In accordance with *Bauerhin vs. the United States*, they are classified as parts of furniture.

The applicable subheading for the Noise Limiting Hood will be 9403.90.8040, Harmonized Tariff Schedule of the United States (HTS), which provides for "Other furniture and parts thereof: Parts: Other: Other: Of metal." The rate of duty will be Free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is im-

ported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 646-733-3036.

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

[ATTACHMENT C]

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

HQ 967961
CLA-2 RR:CTF:TCM 967961 KSH
TARIFF NO.: 8529.90.8600

MS. MELISSA HOFFMAN
ERICSSON, INC.
6300 Legacy Drive
Plano, TX 75024

RE: Revocation of New York Ruling Letter (NY) R00933, dated October 18, 2004; Classification of a radiotelephony base station cabinet.

DEAR MS. HOFFMAN:

This is in response to your letter of October 3, 2005, in which you request reconsideration of New York Ruling Letter (NY) R00933, issued on October 18, 2004, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a radiotelephony base station cabinet. The radiotelephony base station cabinet was classified in subheading 9403.10.0040, HTSUSA, which provides for: "Other furniture and parts thereof: Metal furniture of a kind used in offices, Other." You assert that the radio-telephony base station cabinet is classified in subheading 8529.90.8600, HTSUSA, which provides for: "Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528: Other: Other parts of articles of headings 8525 and 8527, except parts of cellular telephones: Other." At your request, CBP has reviewed the classification of this item and has determined that the cited ruling is in error.

FACTS:

The unequipped metal cabinets, part numbers BFM 901 042/3 and BFM 901 042/4 contain an empty rack and are made up of doors, mounting sets, earthing set, nuts, screws and angle bars. The cabinets are designed for placement outdoors and are designed to meet demands for disturbance immunity, heat dissipation, flexibility of layout and maintainability. The cabinets are used to house all of the necessary radiotelephonic equipment necessary for cellular phones to operate. The cabinet will be located outdoors on the roofs of buildings to provide the necessary signal generation, amplification and networking necessary for radiotelephonic communications.

ISSUE:

Whether the radiotelephonic base station cabinet is classified in heading 9403, HTSUSA, or in heading 8529, HTSUSA.

LAW AND ANALYSIS:

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

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

Note 1(g) to Chapter 94, HTSUS states in pertinent part:

This chapter does not cover: . . .

- (g) Furniture specially designed as part of apparatus . . . of headings 8525 to 8528 (heading 8529).

Therefore, it must be determined if the article in question is a piece of furniture specially designed for apparatus of heading 8525 to 8528, HTSUS.

Heading 8525, HTSUS, covers:

Transmission apparatus for radiotelephony, radiotelegraphy, radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras; still image video cameras or other video camera recorders; digital cameras.

Heading 8529, HTSUS, provides for "[p]arts suitable for use solely or principally with the apparatus of headings 85.25 to 85.28."

The E.N. to heading 8529, HTSUS, provides in relevant part:

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), this heading covers parts of the apparatus of the four preceding headings. The range of parts classified here includes :

- (3) Cases and cabinets specialised to receive the apparatus of headings 85.25 to 85.28.

Based upon the internal design schematics of the cabinet and exterior design of the cabinet which allow it to be located outdoors on the roofs of buildings to provide the necessary signal generation, amplification and networking necessary for radiotelephonic communications, the radiotelephony base station cabinet is clearly intended to house cellular telephone equipment. Radiotelephony equipment is classified in heading 8525, HTSUS. See HQ 962909, dated May 20, 2000. As such it is principally used with the apparatus of heading 8525, HTSUS. Note 1(g) to Chapter 94, HTSUS, excludes fur-

niture specially designed as part of apparatus . . . of headings 8525 to 8528 (heading 8529). Accordingly, pursuant to GRI 1, the radiotelephony base station cabinet is classified in heading 8529, HTSUS. It is specifically provided for in subheading 8529.90.8600, HTSUS.

HOLDING:

The radiotelephony switching base cabinet is classified in heading 8529, HTSUS. It is specifically provided for in subheading 8529.90.8600, HTSUS, which provides for "Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528: Other parts of articles of headings 8525 and 8527, except parts of cellular telephones: Other." The column one, general rate of duty is free.

EFFECT ON OTHER RULINGS:

NY R00933, dated October 18, 2004, is hereby revoked.

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

[ATTACHMENT D]

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

HQ 967960
CLA-2 RR:CTF:TCM 967960 KSH
TARIFF NO.: 8529.90.8600

MS. MELISSA HOFFMAN
ERICSSON, INC.
6300 Legacy Drive
Plano, TX 75024

RE: Revocation of New York Ruling Letter (NY) R02586, dated September 27, 2005; Classification of a noise-limiting hood.

DEAR MS. HOFFMAN:

This is in response to your letter of October 3, 2005, in which you request reconsideration of New York Ruling Letter (NY) R02586, issued on September 27, 2005, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUS) of a noise-limiting hood. The noise limiting hood was classified in subheading 9403.90.8040, HTSUS, which provides for "Other furniture and parts thereof: Parts: Other: Other, Of metal." You assert that the noise-limiting hood is classified in heading 8529.90.8600, HTSUS, which provides for "Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528: Other: Other parts of articles of headings 8525 and 8527, except parts of cellular telephones: Other." At your request, CBP has reviewed the classification of this item and has determined that the cited ruling is in error.

FACTS:

The noise-limiting hood is constructed from aluminum that is coated with a sound absorbent polyurethane plastic. It also includes small stainless steel brackets that are used for installation. The hood functions to reduce the noise level of the operating radio base station by approximately 10 decibels. It is designed exclusively for use within a radiotelephonic base station. A radiotelephonic base station contains all necessary transmission and or reception devices necessary for the proper operation of cellular telephone service.

ISSUE:

Whether the noise-limiting hood is classified in heading 9403, HTSUS, or in heading 8529, HTSUS.

LAW AND ANALYSIS:

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

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

Note 1(g) to Chapter 94, HTSUS, states in pertinent part:

This chapter does not cover: . . .

- (g) Furniture specially designed as part of apparatus . . . of headings 8525 to 8528 (heading 8529).

Therefore, it must be determined if the article in question is a piece of furniture specially designed for apparatus of heading 8525 to 8528, HTSUS.

Heading 8525, HTSUS, covers:

Transmission apparatus for radiotelephony, radiotelegraphy, radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras; still image video cameras or other video camera recorders; digital cameras.

Heading 8529, HTSUS, provides for "[p]arts suitable for use solely or principally with the apparatus of headings 85.25 to 85.28."

The noise-limiting hood is used exclusively with radiotelephonic equipment. Radiotelephony equipment is classified in heading 8525, HTSUS. See HQ 962909, dated May 20, 2000. Radio base station cabinets are classified under heading 8529, HTSUS. See the E.N. to heading 8529, HTSUS, which reads in relevant part:

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), this heading covers parts of the apparatus of the four preceding headings. The range of parts classified here includes :

(3) Cases and cabinets specialised to receive the apparatus of headings 85.25 to 85.28.

In accordance with Note 1(g) to Chapter 94, HTSUS, the noise-limiting hood is not a part of furniture since it is used within a radio base station cabinet. Pursuant to GRI 1, the noise-limiting hood is classified in heading 8529, HTSUS. It is specifically provided for in subheading 8529.90.8600, HTSUS.

HOLDING:

The noise-limiting hood is classified in heading 8529, HTSUS. It is specifically provided for in subheading 8529.90.8600, HTSUS, which provides for "Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528: Other parts of articles of headings 8525 and 8527, except parts of cellular telephones: Other." The column one, general rate of duty is free.

EFFECT ON OTHER RULINGS:

NY R02586, dated September 27, 2005, is hereby revoked.

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

