

U.S. Customs and Border Protection

CBP Decisions

DEPARTMENT OF THE TREASURY

19 CFR PART 12

CBP Dec. 07-52

RIN 1505-AB80

**EXTENSION OF IMPORT RESTRICTIONS IMPOSED ON
PRE-CLASSICAL AND CLASSICAL ARCHAEOLOGICAL
OBJECTS AND BYZANTINE PERIOD ECCLESIASTICAL
AND RITUAL ETHNOLOGICAL MATERIAL FROM CYPRUS**

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends U.S. Customs and Border Protection (CBP) regulations to reflect the extension of import restrictions on Pre-Classical and Classical Archaeological Objects and Byzantine Ecclesiastical and Ritual Ethnological Material from Cyprus which were imposed by Treasury Decision (T.D.) 02-37 and CBP Dec. 06-22. 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 indicate 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. This document also contains the Designated List of Archaeological Objects and Ethnological Material that describes the articles to which the restrictions apply. Note that

one subcategory, Coins of Cypriot Types, has been added to the category entitled Metal.

EFFECTIVE DATE: July 16, 2007.

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 the Republic of Cyprus on July 16, 2002, concerning the imposition of import restrictions on certain archaeological material of Cyprus representing the Pre-Classical and Classical periods of its cultural heritage. On July 19, 2002, the former United States Customs Service published Treasury Decision (T.D.) 02-37 in the **Federal Register** (67 FR 47447), which amended 19 CFR 12.104g(a) to reflect the imposition of these restrictions, and included a list designating the types of archaeological materials 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)). T.D. 02-37 is set to expire on July 16, 2007.

We note that prior to the issuance of T.D. 02-37, the former United States Customs Service had issued T.D. 99-35 (64 FR 17529, April 12, 1999) imposing “emergency” import restrictions on certain Byzantine Ecclesiastical and Ritual Ethnological Material from Cyprus. Under T.D. 99-35, Sec. 12.104g(b) (19 CFR 12.104g(b)) of the regulations pertaining to emergency import restrictions was amended accordingly. This emergency protection was extended in CBP Dec. 03-25 (68 FR 51903, August 29, 2003). The ethnological material protected by the emergency restrictions was not covered by the 2002 bilateral agreement and the 2002 Treasury Decision.

On August 17, 2006, the Republic of Cyprus and the United States amended the bilateral agreement of July 16, 2002, to include the list of Byzantine Ecclesiastical and Ritual Ethnological Material from Cyprus that was protected pursuant to the emergency action. The

amendment of the bilateral agreement to include this material was reflected in CBP Dec. 06–22, which was published in the **Federal Register** (71 FR 51724) on August 31, 2006. CBP Dec. 06–22 set forth the list of Byzantine Ecclesiastical and Ritual Ethnological Material from Cyprus that was previously protected pursuant to emergency action and announced that import restrictions were now imposed on this cultural property pursuant to the amended bilateral agreement. The amended bilateral agreement is set to expire on July 16, 2007, unless extended by the Parties.

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 Cyprus continues to be in jeopardy from pillage of certain archaeological objects and ethnological materials, made the necessary determination to extend the import restrictions on all the cultural property encompassed by the amended bilateral agreement for an additional five years on May 30, 2007. In addition to all the previously protected cultural material, import restrictions are also being imposed on a new subcategory of objects (Coins). Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect the extension of the import restrictions on the currently protected cultural property as well as the new subcategory.

The Designated List of articles that are protected pursuant to the bilateral agreement, as extended, on Pre-Classical and Classical Archaeological Objects and Byzantine Period Ecclesiastical and Ritual Ethnological Material from Cyprus has been revised and is published below. We note that the subcategory Coins of Cypriot Types has been added to the category entitled Metal, pursuant to 19 U.S.C. 2604. This addition comes in response to a request from the Government of the Republic of Cyprus to amend the Designated List. Coins constitute an inseparable part of the archaeological record of the island, and, like other archaeological objects, they are vulnerable to pillage and illicit export.

List of Archaeological Objects From Cyprus Representing Pre-Classical and Classical Periods Ranging in Date From Approximately the 8th Millennium B.C. to Approximately 330 A.D.

I. Ceramic

A. Vessels

1. Neolithic and Chalcolithic (c. 7500–2300 B.C.)—Bowls and jars, including spouted vessels. Varieties include Combed ware, Black Lustrous ware, Red Lustrous ware, and Red-on-White painted ware. Approximately 10-24 cm in height.

2. Early Bronze Age (c. 2300–1850 B.C.)—Forms are hand-made and include bowls, jugs, juglets, jars, and specialized forms, such as askoi, pyxides, gourd-shape, multiple-body ves-

sels, and vessels with figurines attached. Cut-away spouts, multiple spouts, basket handles, and round bases commonly occur. Incised, punctured, molded, and applied ornament, as well as polishing and slip, are included in the range of decorative techniques. Approximately 13–60 cm in height.

3. Middle Bronze Age (c. 1850–1550 B.C.)—Forms are hand-made and include bowls, jugs, juglets, jars, zoomorphic askoi, bottles, amphorae, and amphoriskoi. Some have multiple spouts and basket or ribbon handles. Decorative techniques include red and brown paint, incised or applied decoration, and polishing. Varieties include Red Polished ware, White Painted ware, Black Slip ware, Red Slip ware, and Red-on-Black ware. Approximately 4–25 cm in height.

4. Late Bronze Age (c. 1550–1050 B.C.)—Forms include bowls, jars, jugs and juglets, tankards, rhyta, bottles, kraters, alabastra, stemmed cups, cups, stirrup jars, amphorae, and amphoriskoi. A wide variety of spouts, handles, and bases are common. Zoomorphic vessels also occur. Decorative techniques include painted design in red or brown, polishing, and punctured or incised decoration. Varieties include White Slip, Base Ring ware, White Shaved ware, Red Lustrous ware, Bichrome Wheel-made ware, and Proto-White Painted ware. Some examples of local or imported Mycenaean Late Helladic III have also been found. Approximately 5–50 cm in height.

5. Cypro-Geometric I–III (c. 1050–750 B.C.)—Forms include bowls, jugs, juglets, jars, cups, skyphoi, amphorae, amphoriskos, and tripods. A variety of spouts, handles and base forms are used. Decorative techniques include paint in dark brown and red, ribbing, polish, and applied projections. Varieties include White Painted I–II wares, Black Slip I–II wares, Bichrome II–III wares, and Black-on-Red ware. Approximately 7–30 cm in height.

6. Cypro-Archaic I–II (c. 750–475 B.C.)—Forms include bowls, plates, jugs and juglets, cups, kraters, amphoriskoi, oinochoe, and amphorae. Many of the forms are painted with bands, lines, concentric circles, and other geometric and floral patterns. Animal designs occur in the Free Field style. Molded decoration in the form of female figurines may also be applied. Red and dark brown paint is used on Bichrome ware. Black paint on a red polished surface is common on Black-on-Red ware. Other varieties include Bichrome Red, Polychrome Red, and Plain White. Approximately 12–45 cm in height.

7. Cypro-Classical I–II (c. 475–325 B.C.)—Forms include bowls, shallow dishes, jugs and juglets, oinochoai, and amphorae. The use of painted decoration in red and brown, as

well as blue/green and black continues. Some vessels have molded female figurines applied. Decorative designs include floral and geometric patterns. Burnishing also occurs. Varieties include Polychrome Red, Black-on-Red, Polychrome Red, Stroke Burnished, and White Painted wares. Approximately 6–40 cm in height.

8. Hellenistic (c. 325 B.C.–50 B.C.)—Forms include bowls, dishes, cups, unguentaria, jugs and juglets, pyxides, and amphorae. Most of the ceramic vessels of the period are undecorated. Those that are decorated use red, brown, or white paint in simple geometric patterns. Ribbing is also a common decorative technique. Some floral patterns are also used. Varieties include Glazed Painted ware and Glazed ware. Imports include Megarian bowls. Approximately 5–25 cm in height.

9. Roman (c. 50 B.C.–330 A.D.)—Forms include bowls, dishes, cups, jugs and juglets, unguentaria, amphora, and cooking pots. Decorative techniques include incision, embossing, molded decoration, grooved decoration, and paint. Varieties include Terra Sigillata and Glazed and Green Glazed wares. Approximately 5–55 cm in height.

B. Sculpture

1. Terracotta Figurines (small statuettes)

(a) Neolithic to Late Bronze Age (c. 7500–1050 B.C.)—Figurines are small, hand-made, and schematic in form. Most represent female figures, often standing and sometimes seated and giving birth or cradling an infant. Features and attributes are marked with incisions or paint. Figurines occur in Red-on-White ware, Red Polished ware, Red-Drab Polished ware, and Base Ring ware. Approximately 10–25 cm in height.

(b) Cypro-Geometric to Cypro-Archaic (c. 1050–475 B.C.)—Figurines show a greater diversity of form than earlier figurines. Female figurines are still common, but forms also include male horse-and-rider figurines; warrior figures; animals such as birds, bulls and pigs; tubular figurines; boat models; and human masks. In the Cypro-Archaic period, terra cotta models illustrate a variety of daily activities, including the process of making pottery and grinding grain. Other examples include musicians and men in chariots. Approximately 7–19 cm in height.

(c) Cypro-Classical to Roman (c. 475 B.C.–330 A.D.)—Figurines mirror the classical tradition of Greece and Roman. Types include draped women, nude youths, and winged figures. Approximately 9–20 cm in height.

2. Large Scale Terracotta Figurines—Dating to the Cypro-Archaic period (c. 750–475 B.C.), full figures about half life-size, are commonly found in sanctuaries. Illustrated examples include the head of a woman decorated with rosettes and a bearded male with spiral-decorated helmet. Approximately 50–150 cm in height.

3. Funerary Statuettes—Dating to the Cypro-Classical period (c. 475–325 B.C.), these illustrate both male and female figures draped, often seated, as expressions of mourning. Approximately 25–50 cm in height.

C. Inscriptions

Writing on clay is restricted to the Late Bronze Age (c. 1550–1050 B.C.). These occur on clay tablets, weights, and clay balls. Approximately 2–7 cm in height.

II. Stone

A. Vessels

Ground stone vessels occur from the Neolithic to the Hellenistic period (c. 7500–50 B.C.). Early vessels are from local hard stone. Most are bowl-shaped; some are trough-shaped with spouts and handles. Neolithic vessels often have incised or perforated decoration. Late Bronze Age vessels include amphoriskoi and kraters with handles. Sometimes these have incised decoration. Alabaster was also used for stone vessels in the Late Bronze Age and Hellenistic period. In the latter period, stone vessels are produced in the same shapes as ceramic vessels: amphorae, unguentaria, etc. Approximately 10–30 cm in height.

B. Sculpture

1. Neolithic to Chalcolithic (c. 7500–2300 B.C.)—Forms include small scale human heads, fiddle-shaped human figures, steatopygous female figures, cruciform idols with incised decoration, and animal figures. Andesite and limestone are commonly used in these periods. Approximately 5–30 cm in height.

2. Cypro-Classical (c. 475–325 B.C.)—Small scale to life-size human figures, whole and fragments, in limestone and marble, are similar to the Classical tradition in local styles. Examples include the limestone head of a youth in Neo-Cypriote style, votive female figures in Proto-Cypriot style, a kouros in Archaic Greek style, statues and statuettes representing Classical gods such as Zeus and Aphrodite, as well as portrait heads of the Greek and Roman periods. Approximately 10–200 cm in height.

C. Architectural Elements Sculpted stone building elements occur from the 5th century B.C. through the 3rd century A.D. These include columns and column capitals, relief decoration, chancel panels, window frames, revetments, offering tables, coats of arms, and gargoyles.

D. Seals

Dating from the Neolithic (7500 B.C.) through 3rd century A.D., conical seals, scarabs, cylinder seals, and bread stamps are incised with geometric decoration, pictorial scenes, and inscriptions. Approximately 2–12 cm in height.

E. Amulets and Pendants

Dating to the Chalcolithic period, these pendants are made of picrolite and are oval or rectangular in form. Approximately 4–5 cm in length.

F. Inscriptions

Inscribed stone materials date from the 6th century B.C. through the 3rd century A.D. During the Cypro-Classical period, funerary stelae, and votive plaques were inscribed. From the 1st to the 3rd century A.D. funerary plaques, mosaic floors, and building plaques were inscribed.

G. Funerary Stelae (uninscribed)

Funerary stelae date from the 6th century B.C. to the end of the Hellenistic period (c. 50 B.C.). Marble and other stone sculptural monuments have relief decoration of animals or human figures seated or standing. Stone coffins also have relief decoration. Approximately 50–155 cm in height.

H. Floor Mosaics

Floor mosaics date as early as the 4th century B.C. in domestic and public contexts and continue to be produced through the 3rd century A.D. Examples include the mosaics at Nea Paphos, Kourion, and Kouklia.

III. Metal

A. Copper/Bronze

1. Vessels—Dating from the Bronze Age (c. 2300 B.C.) through the 3rd century A.D., bronze vessel forms include bowls, cups, amphorae, jugs, juglets, pyxides, dippers, lamp stands, dishes, and plates. Approximately 4–30 cm in height.

2. Bronze Stands—Dating from the Late Bronze Age (c. 1550 B.C.) through the end of the Classical period (c. 325 B.C.), are bronze stands with animal decoration.

3. Sculpture—Dating from the Late Bronze Age (c. 1550) to the end of the Hellenistic period (c. 50 B.C.), small figural sculpture includes human forms with attached attributes such as spears or goblets, animal figures, animal- and vessel-shaped weights, and Classical representations of gods and mythological figures. Approximately 5–25 cm in height.

4. Personal Objects—Dating from the Early Bronze Age (c. 2300 B.C.) to the end of the Roman period (330 A.D.), forms include toggle pins, straight pins, fibulae, and mirrors.

B. Silver

1. Vessels—Dating from the Bronze Age (c. 2300 B.C.) through the end of the Roman period (330 A.D.), forms include bowls, dishes, coffee services, and ceremonial objects such as incense burners. These are often decorated with molded or incised geometric motifs or figural scenes.

2. Jewelry—Dating from the Cypro-Geometric period (c. 1050 B.C.) through the end of the Roman period (330 A.D.), forms include fibulae, rings, bracelets, and spoons.

C. Gold Jewelry

Gold jewelry has been found on Cyprus from the Early Bronze Age (c. 2300 B.C.) through the end of the Roman period (330 A.D.). Items include hair ornaments, bands, frontlets, pectorals, earrings, necklaces, rings, pendants, plaques, beads, and bracelets.

D. Coins of Cypriot Types

Coins of Cypriot types made of gold, silver, and bronze including but not limited to:

1. Issues of the ancient kingdoms of Amathus, Kition, Kourion, Idalion, Lapethos, Marion, Paphos, Soli, and Salamis dating from the end of the 6th century B.C. to 332 B.C.

2. Issues of the Hellenistic period, such as those of Paphos, Salamis, and Kition from 332 B.C. to c. 30 B.C.

3. Provincial and local issues of the Roman period from c. 30 B.C. to 235 A.D. Often these have a bust or head on one side and the image of a temple (the Temple of Aphrodite at Palaipaphos) or statue (statue of Zeus Salaminios) on the other.

List of Ecclesiastical and Ritual Ethnological Material from Cyprus
Representing the Byzantine Period dating from approximately the
4th Century A.D. through the 15th century A.D.

I. Metal

A. Bronze

Ceremonial objects include crosses, censers (incense burners), rings, and buckles for ecclesiastical garments. The objects may be decorated with engraved or modeled designs or Greek inscriptions. Crosses, rings and buckles are often set with semi-precious stones.

B. Lead

Lead objects date to the Byzantine period and include ampulla (small bottle-shaped forms) used in religious observance.

C. Silver and Gold

Ceremonial vessels and objects used in ritual and as components of church treasure. Ceremonial objects include censers (incense burners), book covers, liturgical crosses, archbishop's crowns, buckles, and chests. These are often decorated with molded or incised geometric motifs or scenes from the Bible, and encrusted with semi-precious or precious stones. The gems themselves may be engraved with religious figures or inscriptions. Church treasure may include all of the above, as well as rings, earrings, and necklaces (some decorated with ecclesiastical themes) and other implements (e.g., spoons).

II. Wood

Artifacts made of wood are primarily those intended for ritual or ecclesiastical use during the Byzantine period. These include painted icons, painted wood screens (iconstasis), carved doors, crosses, painted wooded beams from churches or monasteries, thrones, chests and musical instruments. Religious figures (Christ, the Apostles, the Virgin, and others) predominate in the painted and carved figural decoration. Ecclesiastical furniture and architectural elements may also be decorated with geometric or floral designs.

III. Ivory and Bone

Ecclesiastical and ritual objects of ivory and bone boxes, plaques, pendants, candelabra, stamp rings, crosses. Carved and engraved decoration includes religious figures, scenes from the Bible, and floral and geometric designs.

IV. Glass

Ecclesiastical objects such as lamps and ritual vessels.

V. Textiles—Ritual Garments

Ecclesiastical garments and other ritual textiles from the Byzantine period. Robes, vestments and altar clothes are often of a fine fabric and richly embroidered in silver and gold. Embroidered designs include religious motifs and floral and geometric designs.

VI. Stone

A. Wall Mosaics

Dating to the Byzantine period, wall mosaics are found in ecclesiastical buildings. These generally portray images of Christ, Archangels, and the Apostles in scenes of Biblical events. Surrounding panels may contain animal, floral, or geometric designs.

B. Floor Mosaics

Floor mosaics from ecclesiastical contexts. Examples include the mosaics at Nea Paphos, Kourion, Kouklia, Chrysopolitissa Basilica and Campanopetra Basilica. Floor mosaics may have animal, floral, geometric designs, or inscriptions.

VII. Frescoes/Wall Paintings

Wall paintings from the Byzantine period religious structures (churches, monasteries, chapels, etc.) Like the mosaics, wall paintings generally portray images of Christ, Archangels, and the Apostles in scenes of Biblical events. Surrounding paintings may contain animal, floral, or geometric designs.

More information on import restrictions can be obtained from the International Cultural Property Protection web site (<http://exchanges.state.gov/culprop>). The restrictions on the importation of these archaeological and ethnological materials from Cyprus are to continue in effect for an additional 5 years. Importation of such materials continues to be restricted unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

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)). For the same reason, 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

Because this rule involves a foreign affairs function of the United States, it is not subject to 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;

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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 Cyprus by removing the reference to “T.D. 02–37, as amended by CBP Dec. 06–22” and adding in its place “CBP Dec. 07–52” in the column headed “Decision No.”.

DEBORAH J. SPERO,
Acting Commissioner,
Bureau of Customs and Border Protection.

Approved: July 9, 2007

TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, (72 FR 38470)]

General Notices

PROPOSED COLLECTION; COMMENT REQUEST

Articles Assembled Abroad with Textile Components Cut to Shape in the U.S.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning Articles Assembled Abroad with Textile Components Cut to Shape in the U.S. 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 September 10, 2007, to be assured of consideration.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. 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: Articles Assembled Abroad with Textile Components Cut to Shape in the U.S.

OMB Number: 1651-0070

Form Number: N/A

Abstract: This collection of information enables CBP to ascertain whether the conditions and requirements relating to 9802.00.80, Harmonized Tariff Schedule (HTSUS), have been met.

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: 500

Estimated Time Per Respondent: 80 minutes

Estimated Total Annual Burden Hours: 667

Estimated Total Annualized Cost on the Public: N/A

Dated: July 5, 2007

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

[Published in the Federal Register, (72 FR 38094)]



PROPOSED COLLECTION; COMMENT REQUEST

Declaration by the Person Who Performed the Processing of Goods Abroad

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning Declaration by the Person Who Performed the Processing of Goods Abroad. 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 September 10, 2007, to be assured of consideration.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. 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: Declaration by the Person Who Performed the Processing of Goods Abroad

OMB Number: 1651-0039

Form Number: N/A

Abstract: This declaration, which is prepared by the foreign processor and submitted by the filer with each entry, provides details on the processing performed abroad and is necessary to assist CBP in determining whether the declared value of the processing is accurate.

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: 7,500

Estimated Time Per Respondent: 15 minutes

Estimated Total Annual Burden Hours: 1,880

Estimated Total Annualized Cost on the Public: N/A

Dated: July 5, 2007

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

[Published in the Federal Register, (72 FR 38093)]

PROPOSED COLLECTION; COMMENT REQUEST

Free Trade Agreements

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning Free Trade Agreements. 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 September 10, 2007, to be assured of consideration.

ADDRESS: Direct all written comments to the U.S. Customs and Border Protection, Information Services Branch, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. 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 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: Free Trade Agreements

OMB Number: 1651-0117

Form Number: None

Abstract: Free Trade Agreements are established to reduce and eliminate barriers, strengthen and develop economic relations, and to lay the foundations for further cooperation. These Agreements establish free trade by reduced duty-treatment on imported goods.

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

Estimated Number of Respondents: 109,000

Estimated Time Per Respondent: 12 minutes

Estimated Total Annual Burden Hours: 21,000

Estimated Total Annualized Cost on the Public: N/A

Dated: July 5, 2007

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

[Published in the Federal Register, (72 FR 38093)]

PROPOSED COLLECTION; COMMENT REQUEST

Haitian Hemispheric Opportunity Through Partnership Encouragement Act of 2006

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border Protection (CBP)

invites the general public and other Federal agencies to comment on an information collection requirement concerning Haitian Hemispheric Opportunity Through Partnership Encouragement (“HOPE”) Act of 2006 . 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 September 10, 2007, to be assured of consideration.

ADDRESS: Direct all written comments to the U.S. Customs and Border Protection, Information Services Branch, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. 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 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: Haitian Hemispheric Opportunity Through Partnership Encouragement (“HOPE”) Act of 2006

OMB Number: 1651–0129

Form Number: None

Abstract: The Haiti HOPE Act is a trade program that provides for duty-free treatment of certain apparel articles and certain wire harness automotive components from Haiti.

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

Estimated Number of Respondents: 34

Estimated Time Per Respondent: 39.2 hours

Estimated Total Annual Burden Hours: 1,333

Estimated Total Annualized Cost on the Public: N/A

Dated: July 5, 2007

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

[Published in the Federal Register, (72 FR 38092)]

PROPOSED COLLECTION; COMMENT REQUEST

Importation Bond Structure

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning Importation Bond Structure. 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 September 10, 2007, to be assured of consideration.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. 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: Importation Bond Structure

OMB Number: 1651–0050

Form Number: CBP–301 and CBP–5297

Abstract: Bonds are used to assure that duties, taxes, charges, penalties, and reimbursable expenses owed to the Government are paid. They are also used to provide legal recourse for the Government for noncompliance with CBP laws and regulations.

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: 590,250

Estimated Time Per Respondent: 15 minutes

Estimated Total Annual Burden Hours: 147,596

Estimated Total Annualized Cost on the Public: N/A

Dated: July 5, 2007

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

PROPOSED COLLECTION; COMMENT REQUEST**U.S.-Jordan Free Trade Agreement**

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S.-Jordan Free Trade Agreement. 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 September 10, 2007, to be assured of consideration.

ADDRESS: Direct all written comments to the U.S. Customs and Border Protection, Information Services Branch, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. 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 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: U.S.-Jordan Free Trade Agreement

OMB Number: 1651-0128

Form Number: None

Abstract: The U.S.-Jordan Free Trade Agreement was established to reduce and eliminate barriers, strengthen and develop economic relations, and to lay the foundations for further cooperation by reduced duty-treatment on imported goods.

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

Estimated Number of Respondents: 2,500

Estimated Time Per Respondent: 12 minutes

Estimated Total Annual Burden Hours: 500

Estimated Total Annualized Cost on the Public: N/A

Dated: July 5, 2007

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

[Published in the Federal Register, (72 FR 38092)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, July 11, 2007

The following documents of the U.S. Customs and Border Protection (“CBP”), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the Customs Bulletin.

SANDRA L. BELL,
Executive Director,
Regulations and Rulings Office of Trade.

**MODIFICATION OF RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF PRINTED BOOKS**

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

ACTION: Notice of modification of tariff classification ruling letter and revocation of treatment relating to the classification of printed books.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a 38–page paperbound book measuring 5½ inches by 8½ inches. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 41, No. 18, on April 25, 2007. 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 September 23, 2007.

FOR FURTHER INFORMATION CONTACT: Beth Safeer, Tariff Classification and Marking Branch, at (202) 572–8825.

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 to 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 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice proposing to modify HQ 089388, dated July 12, 1991, was published on April 25, 2007 in Vol. 41, No. 18 of the Customs Bulletin. No comments were received in response to this notice. As stated in the proposed notice, this modification will cover any rulings, which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. § 1625 (c)(2)), as amended by section 623 or 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 this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its

agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying HQ 089388 to reflect the proper classification of the merchandise pursuant to the analysis set forth in the HQ W968178. In HQ 089388, CBP classified a paperbound book, measuring 5½ by 8½ inches under subheading 4901.99.0075, HTSUSA, which provides for “printed books: other: other: other: rack size paperbound books.” For the reasons set forth in HQ W968178, we find that the printed book is properly classified under subheading 4901.99.0092, HTSUSA, which provides for “Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets: Other: Other: Other: Other: Other: Containing 5 or more pages each, but not more than 48 pages each (excluding covers).” Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

DATED: July 2, 2007

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

Attachment

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,

HQ W968178

July 2, 2007

CLA-2 OT:RR:CTF:TCM W968178 BAS

CATEGORY: Classification

TARIFF NO.: 4901.99.0092

PENNY L. ELLIOTT
CHERSAR SERVICES, INC.
P.O. Box 3025
Sarnia, Ontario N7T 7M1
Canada

RE: Classification of a Paperbound book; HQ 089388 modified

DEAR MS. ELLIOTT:

This is in reference to Headquarters Ruling Letter (HQ) 089388, dated July 12, 1991, which classified, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), certain paperbound printed books. In that ruling the products at issue were classified in subheading 4901.99.0075, HTSUSA, which provides for rack size paperbound books. We

have reviewed HQ 089388 and determined the classification provided therein is incorrect at the statistical level. This ruling modifies HQ 089388.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of HQ 089388, dated July 12, 1991, as described below, was published in the *Customs Bulletin*, Volume 41, Number 18, on April 25, 2007. U. S. Customs and Border Protection (CBP) received no comments during the notice and comment period that closed on May 25, 2007.

FACTS:

The book at issue is entitled, “What’s the Duty? The 1991 Smart Shopper’s Guide to Bringing Goods Back to Canada” and is a 38 page paperback measuring five and a half inches by eight and a half inches.” The publishing company is Chersar, Inc.

ISSUE:

Is the subject merchandise classifiable in subheading 4901.99.0075, HTSUSA, which provides for “Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets: Other: Other: Other: Other: Rack size paperbound books” or under subheading 4901.99.0092, HTSUSA, which provides for “Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets: Other: Other: Other: Other: Other: Containing 5 or more pages each but not more than 48 pages each (excluding covers)”?

LAW AND ANALYSIS:

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

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs and Border Protection (CBP) believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Neither the HTS nor the ENs offer any definition of “rack size paperbound books.” Trade sources indicate that the American mass-market paperback, referred to as “rack size,” is approximately 6¾ inches —7 inches by 4½ or 4¼ inches. See www.bookdist.com; www.alwdb.com; www.pw.org; www.sff.net/people/dllyle/macdonald/publishing.htm; and www.sizes.com/tools/books.htm. In addition, trade sources indicate that the mass market paperbacks are intended for non-bookstore outlets such as news stands, grocery stores, etc. They are often distributed in the same way as magazines and newspapers.

Trade sources state, further, that there are two basic kinds of paperbacks, one of which is market, the small “rack size book”- approximately 7 by 4 inches, which “easily fits in the back pocket of a pair of jeans” and the other

which is the trade paperback which is usually a larger or oversized softcover book. The subject merchandise, which measures 5½ by 8½ inches is clearly larger than the industry definition of a rack size or mass market book. It would be very difficult to imagine that the book at issue would fit into the back pocket of a pair of jeans as would a “rack size book” as contemplated by the trade source. The distribution outlet in this case is not determinative as it may be sold at either a bookstore or possibly in a newstand at an airport.

The classification of substantially similar merchandise was addressed in HQ 967939, dated April 21, 2006. The 5 ½” by 8 ½” paperback book at issue is substantially similar in construction and function to the 5” x 8” printed book at issue in HQ 967939. Although different topics and slightly different lengths, both are quick reference books and are approximately the same size.

In HQ 967939, it was determined that the paper book was properly classified under subheading 4901.99.0093, HTSUSA, which provides for “Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets: Other: Other: Other: Other: Other: Other: Containing 49 or more pages each (excluding covers).” As the subject merchandise is substantially similar to the merchandise addressed in the aforementioned ruling, the merchandise would be classified accordingly.

HOLDING:

The proper classification for the paperback printed book at issue is subheading 4901.99.0092, HTSUSA, which provides for “Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets: Other: Other: Other: Other: Other: Other: Containing 5 or more pages each, but not more than 48 pages each (excluding covers).” The general column one rate of duty is free.

EFFECT ON OTHER RULINGS:

In HQ 089388, although the paper book was correctly classified in heading 4901, HTSUSA, the merchandise was improperly classified as to the subheading within 4901, HTSUSA. Accordingly, HQ 089388 is modified to reflect the above classification. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

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

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

**PROPOSED REVOCATION OF A RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF 1,1-DI (TERT-BUTYLPEROXY)
CYCLOHEXANE**

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

ACTION: Notice of proposed revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of 1,1-Di (tert-butylperoxy) cyclohexane.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is proposing to revoke one ruling letter relating to the tariff classification of 1,1-Di (tert-butylperoxy) cyclohexane under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also proposing to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before August 24, 2007.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the tariff classification of 1,1-Di (tert-butylperoxy) cyclohexane. Although in this notice, CBP is specifically referring to the revocation of Headquarters Ruling Letter (HQ) 967885 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In HQ 967885, CBP ruled that 1,1-Di (tert-butylperoxy) cyclohexane was classified in heading 3815, HTSUS, which provides for "Reaction initiators, reaction accelerators and catalytic preparations, not elsewhere specified or included." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error. The 1,1-Di (tert-butylperoxy) cyclohexane is properly classified in heading 2909, HTSUS, which provides for "Ethers, ether-alcohols, ether-phenols, ether-alcohol-phenols, alcohol peroxides, ether peroxides, ketone peroxides (whether or not chemically defined), and their halogenated, sulfonated, nitrated or nitrosated derivatives."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke HQ 967885 and to revoke or modify any other ruling not specifically identified, to reflect the proper classification of 1,1-Di (tert-butylperoxy) cyclohexane according to the analysis contained in proposed Headquarters Ruling Letter H004099, set forth as 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, consideration will be given to any written comments timely received.

DATED: July 2, 2007

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,

HQ 967885

February 1, 2006

CLA-2: RR:CTF:TCM 967885 KSH

CATEGORY: Classification TARIFF NO.: 3815.90.5000

PORT DIRECTOR
U.S. CUSTOMS AND BORDER PROTECTION
PORT OF CLEVELAND 6747
Engle Road
Middleburg Heights, Ohio 44130-7939

RE: Application for Further Review of Protest 4101-05-100247

DEAR PORT DIRECTOR:

This is in reply to your correspondence forwarding Application for Further Review of Protest (AFR) 4101-05-100247, filed by Degussa Initiators, Inc. The protest at issue is against Customs and Border Protection's (CBP) rate advance on nine entries of "CH-50-WO" under subheading 3815.90.5000 of the Harmonized Tariff Schedule of the United States (HTSUS).

FACTS:

The merchandise at issue is identified as CH-50-WO. It is described as 1,1-Di (tert-butylperoxy) cyclohexane, non-aromatic cyclanic alcohol peroxide in a 50% white mineral oil diluent. The diluent is required for safety in transport. When the white mineral oil is added to the 1,1-Di(tert-butylperoxy) cyclohexane ("CH"), it becomes "CH-50-WO." Protestant states that CH-50-WO is used commercially for the polymerization of monomers, crosslinking of polymers, curing of unsaturated polyester resins and graft polymerization.

A lab report issued by the CBP Laboratories and Scientific Services on September 16, 2004, confirmed that the merchandise is a mixture of 1,1-Di(tert-butylperoxy) cyclohexane in white mineral oil. The report also determined that the CH-50-WO is a reaction initiator of the kind described in EN 3815(b)(i) as a free radical catalyst.

Protestant entered the merchandise subject to this protest free of duty in subheading 2909.60.5000, HTSUS, which provides for: "Ethers, ether-alcohols, ether-phenols, ether-alcohol-phenols, alcohol peroxides, ether peroxides, ketone peroxides (whether or not chemically defined), and their halogenated, sulfonated, nitrated or nitrosated derivatives: Alcohol peroxides ether peroxides, ketone peroxides and their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic: Other." However, the merchan-

dise was liquidated on April 15, 2005, under subheading 3815.90.5000, HTSUS, which provides for: "Reaction initiators, reaction accelerators and catalytic preparations, not elsewhere specified or included: Other: Other" dutiable at 5% ad valorem. Protestant filed a protest with an application for further review on April 25, 2005. The protest was timely filed pursuant to 19 U.S.C. 1514 (c)(3) and 19 C.F.R. 174.12 (e)(1). The AFR request was subsequently approved. In support of protestant's application for further review, protestant alleges that it involves matters previously ruled upon by the Commissioner of Customs or his designee or by the Customs courts but facts are alleged or legal arguments presented which were not considered at the time of the original ruling. Protestant has submitted additional factual information which was not previously considered when the merchandise was rate advanced. Accordingly, further review is warranted pursuant to 19 CFR §§174.24(c) and 174.25.

ISSUE: Whether CH-50-WO is classified in heading 2909, HTSUS, as a peroxide and its derivatives or heading 3815, HTSUS, as reaction initiator.

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

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI. See T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989). Heading 2909, HTSUS, provides for "Ethers, ether- alcohols, ether-phenols, ether-alcohol-phenols, alcohol peroxides, ether peroxides, ketone peroxides (whether or not chemically defined), and their halogenated, sulfonated, nitrated or nitrosated derivatives." Chapter 29 Note 1(e), HTSUS, provides for separate chemically defined organic compounds dissolved in solvents "provided that the solution constitutes a normal and necessary method of putting up these products adopted solely for reasons of safety or for transport and that the solvent does not render the product particularly suitable for specific rather than for general use." (Emphasis added).

Protestant argues that the diluent does not provide additional functionality to the 1,1-Di(tert-butylperoxy) cyclohexane but is present solely for safety in manufacturing, transport, handling and storage. As such, protestant states that the CH-50-WO is classified in heading 2909, HTSUS.

There is no dispute that the white mineral oil is added for reasons of safety or transport. However, in accordance with Chapter 29 Note 1(e), HTSUS, the addition of the white mineral oil must not also render the product particularly suitable for specific rather than for general use. 1,1-Di(tert-butylperoxy) cyclohexane is high in energy content and is available in various grades of purity. It may be mixed with varying percentages of differing diluents. The diluents are required for safety in transport but are also used to produce a specific type of polymer. The purity of the 1,1-Di(tert-butylperoxy) cyclohexane and the percentage of diluent used cause specific reaction times, decomposition, cross-linking, chain branching etc. of the

polymer to be produced. Thus, while the white mineral oil is used for reasons of safety in manufacturing, transport, handling and storage, the addition of the white mineral oil also renders the product particularly suitable for specific use in the production of polymers. Therefore, it is precluded from classification in Chapter 29, HTSUS. Heading 3815, HTSUS, provides for reaction initiators, reaction accelerators and catalytic preparations, not elsewhere specified or included. The EN to heading 3815, HTSUS, reads in relevant part:

This heading covers preparations which initiate or accelerate certain chemical processes. Products which retard these processes are not included. These preparations fall broadly into two groups.

* * * *

(b) Those of the second group are mixtures with a basis of compounds whose nature and proportions vary according to the chemical reaction to be catalysed. These preparations include:

(i) “free radical catalysts” (e.g., organic solutions of organic peroxides or of azo compounds, redox mixtures);

* * * *

The preparations of the second group are generally used in the course of manufacture of polymers.

CH-50-WO is a “free radical catalyst” (i.e., an organic solution of organic peroxide in white mineral oil). Among other uses, protestant states that the CH-50-WO is used to manufacture polymers. As such, the CH-50-WO falls squarely within the terms of heading 3815, HTSUS. This determination is further supported by the CBP Laboratories and Scientific Services laboratory report of September 16, 2004, referred to above.

HOLDING:

Ch-50-WO is classified in heading 3815, HTSUS. It is specifically provided for in subheading 3815.90.5000, HTSUS, which provides for “Reaction initiators, reaction accelerators and catalytic preparations, not elsewhere specified or included: Other: Other.” The general column one rate of duty is 5% ad valorem. The protest and application for further review should be denied in full. In accordance with the Protest/Petition Processing Handbook, (CIS HB, January 2002, pp 18 and 21), you are to mail this decision, together with the Customs Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry in accordance with the decision must be accomplished prior to mailing the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will make the decision available to CBP personnel, and to the public on the CBP Home Page on the World Wide Web at www.cbp.gov, by means of the Freedom of Information Act, and other methods of public distribution.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,

HQ H004099
CLA-2: OT:RR:CTF:TCM H004099 KSH
CATEGORY: Classification
TARIFF NO.: 2909.60.5000

FREDERIC D. VAN ARNAM, ESQ.
BARNES, RICHARDSPM & COLBURN
475 Park Avenue South
25th Floor
New York, New York, 10016

RE: Revocation of HQ 967885, dated February 1, 2006

DEAR MR. VAN ARNAM:

This is in reply to your correspondence on behalf of your client, DeGussa Initiators, Inc., dated November 21, 2006, in which you have requested reconsideration of Headquarters Ruling Letter (HQ) 967885, dated February 1, 2006. In HQ 967885, a substance identified as "CH-50-WO" was classified under subheading 3815.90.5000 of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Reaction initiators, reaction accelerators and catalytic preparations, not elsewhere specified or included: Other: Other."

In your request for reconsideration, you have provided additional information that the white oil present in the product is used solely for safety during transport and handling and has no other use. Thus, you maintain that the CH-50-WO should be classified in subheading 2909.60.5000, HTSUS, which provides for "Ethers, ether- alcohols, ether-phenols, ether-alcohol-phenols, alcohol peroxides, ether peroxides, ketone peroxides (whether or not chemically defined), and their halogenated, sulfonated, nitrated or nitrosated derivatives: Alcohol peroxides, ether peroxides, ketone peroxides and their halogenated, sulfonated, nitrated or nitrosated derivatives: Other." In accordance with your request for reconsideration of HQ 967885, CBP has reviewed the classification of this item and has determined that the cited ruling is in error.

HQ 967885 is a Headquarters ruling on Protest 4101-05-100247. In accordance with *San Francisco Newspaper Printing Co. v. United States*, 9 CIT 517, 620 F. Supp. 738 (1985), the liquidation of the entries covering the merchandise which was the subject of Protest 4101-05-100247 was final on both the protestant and CBP. Therefore, this decision has no effect on those entries.

FACTS:

The merchandise was described in HQ 967885 as follows:

The merchandise at issue is identified as CH-50-WO. It is described as 1,1-Di (tert-butylperoxy) cyclohexane, non-aromatic cyclanic alcohol peroxide in a 50% white mineral oil diluent. The diluent is required for safety in transport. When the white mineral oil is added to the 1,1-Di(tert-butylperoxy) cyclohexane ("CH"), it becomes "CH-50-WO." Protestant states that CH-50-WO is used commercially for the polymeriza-

tion of monomers, crosslinking of polymers, curing of unsaturated polyester resins and graft polymerization.

A lab report issued by the CBP Laboratories and Scientific Services on September 16, 2004, confirmed that the merchandise is a mixture of 1,1-Di(tert-butylperoxy) cyclohexane in white mineral oil. The report also determined that the CH-50-WO is [a ketone peroxide of the other type described in Note 1(e) to Chapter 29, HTSUS, and] a reaction initiator of the kind described in EN 3815(b)(i), HTSUS, as a free radical catalyst.

In a lab report issued by the CBP Laboratories and Scientific Services on April 5, 2007, the lab noted in relevant part, that the normal and usual mode of transport and storage of peroxide is in a solvent. The lab also determined that there was no indication that CH-50-WO is for specific use rather than general use.

ISSUE:

Whether CH-50-WO is classified in heading 2909, HTSUS, as a peroxide or its derivative or heading 3815, HTSUS, as a reaction initiator.

LAW AND ANALYSIS:

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

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI. See T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Heading 2909, HTSUS, provides for “Ethers, ether- alcohols, ether-phenols, ether-alcohol-phenols, alcohol peroxides, ether peroxides, ketone peroxides (whether or not chemically defined), and their halogenated, sulfonated, nitrated or nitrosated derivatives.” Except where the context otherwise requires, Chapter 29, Note 1(e), HTSUS, provides for, among other goods, separate chemically defined organic compounds dissolved in solvents “provided that the solution constitutes a normal and necessary method of putting up these products adopted solely for reasons of safety or for transport and that the solvent does not render the product particularly suitable for specific use rather than for general use.”

Heading 3815, HTSUS, provides for “reaction initiators, reaction accelerators and catalytic preparations, not elsewhere specified or included.” The EN to heading 3815, HTSUS, reads in relevant part:

This heading covers preparations which initiate or accelerate certain chemical processes. Products which retard these processes **are not included**.

These preparations fall broadly into two groups.

* * * *

(b) Those of the second group are mixtures with a basis of compounds whose nature and proportions vary according to the chemical reaction to

be catalysed. These preparations include:

- (i) “free radical catalysts” (e.g., organic solutions of organic peroxides or of azo compounds, redox mixtures);

* * * *

The preparations of the second group are generally used in the course of manufacture of polymers.

This heading **does not include:**

* * * *

- (b) Separate chemically defined compounds (**Chapter 28 or 29**).

* * * *

Subject to the five exceptions listed in Chapter Note 1(a) to Chapter 38, HTSUS, the Chapter Note also states that the Chapter does not cover separate chemically defined elements or compounds.

1,1-Di(tertbutylperoxy) cyclohexane is a separate chemically defined compound that is dissolved in a solution of white mineral oil. There is no dispute that the white mineral oil is added for reasons of safety or transport. However, in accordance with Chapter 29, Note 1(e), HTSUS, the addition of the solution of white mineral oil must not render the product particularly suitable for specific rather than for general use. If the white mineral oil renders the product suitable for a specific use then the CH-50-WO is classified in Chapter 38, HTSUS.

1,1-Di (tert-butylperoxy) cyclohexane is high in energy content and is available in various grades of purity. It may be mixed with varying percentages of differing diluents. In the merchandise at issue, the 1,1-Di(tert-butylperoxy) cyclohexane is mixed with white mineral oil. Mineral oil is a by-product in the distillation of petroleum to produce gasoline. It is a chemically inert, transparent, colorless oil composed mainly of alkanes and cyclic paraffins, related to white petrolatum. Mineral oil is a substance of relatively low value, and it is produced in very large quantities. See www.Wikipedia.org.

It is mineral oil’s property of non-reactivity that is being utilized when it is added to 1,1-di-(tert-butylperoxy) cyclohexane for shipment. By placing the organic peroxide in an environment of mineral spirits, contact with any water vapor in the atmosphere (i.e. container) is minimized. Peroxides such as the merchandise at issue react readily with water, thereby destroying the original product. In HQ 967885, we determined that the white mineral oil rendered the merchandise suitable for specific use in the production of polymers and therefore it was excluded from Chapter 29, HTSUS, by virtue of Chapter Note 1(e) to Chapter 29, HTSUS. However, based on the additional information submitted in conjunction with the request for reconsideration as well as corroborating information supplied by CBP’s Office of Laboratory and Scientific Services, we have determined that the mineral oil does not function as an initiator nor does it participate in reactions such as cross-linking, cross-branching, or any other chemical reaction which would affect the rate of polymer formation as we had previously determined.

In accordance with Chapter Note 1(e) to Chapter 29, HTSUS, and Chapter Note 1(a) to Chapter 38, HTSUS, CH-50-WO is classified in Chapter 29, HTSUS, because the white mineral oil is used for reasons of safety in manufacturing, transport, handling and storage, but does not render the product particularly suitable for specific use in the production of polymers.

HOLDING:

CH-50-WO is classified in heading 2909, HTSUS. It is provided for in subheading 2909.60.5000, HTSUS, which provides for "Ethers, ether-alcohols, ether-phenols, ether-alcohol-phenols, alcohol peroxides, ether peroxides, ketone peroxides (whether or not chemically defined), and their halogenated, sulfonated, nitrated or nitrosated derivatives: Alcohol peroxides, ether peroxides, ketone peroxides and their halogenated, sulfonated, nitrated or nitrosated derivatives: Other." The general column one rate of duty is 3.7% *ad valorem*.

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

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**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO TARIFF CLASSIFICATION
OF MILLAD® 3988i**

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 MILLAD® 3988i.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is revoking one ruling letter relating to the tariff classification of MILLAD® 3988i under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on April 25, 2007, in Volume 41, Number 18, of the CUSTOMS BULLETIN. CBP received no comments in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 23, 2007.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY R03248, dated May 18, 2006, pertaining to the tariff classification of MILLAD® 3988i was published in the April 25, 2007, CUSTOMS BULLETIN, Volume 41, Number 18. No comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in the 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 R03248, CBP ruled that MILLAD® 3988i was classified in heading 3824, HTSUS, which provides for “Chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances.” Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY R03248 and is revoking or modifying any other ruling not specifically identified, to reflect the proper classification of MILLAD® 3988i according to the analysis contained in Headquarters Ruling Letter H003890, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

DATED: June 27, 2007

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

Attachment

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,

HQ H003890
June 27, 2007
CLA-2 RR:CTF:TCM H003890 KSH
TARIFF NO.: 2932.99.6100

BARRY COHEN, ESQ.
CROWELL & MORING LLP
1001 Pennsylvania Avenue N.W.
Washington, D.C. 20004

RE: Revocation of New York Ruling Letter (NY) R03248, dated May 18, 2006; Classification of MILLAD® 3988i.

DEAR MR. COHEN:

This is in response to your letter of June 16, 2006, on behalf of your client Milliken Chemical, in which you request reconsideration of New York Ruling Letter (NY) R03248, issued on May 18, 2006, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of MILLAD® 3988i. The MILLAD® 3988i was classified in subheading 3824.90.2800, HTSUS, which provides for "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances: Other."

You have provided additional information not included with the original ruling request to support the assertion that the silicon dioxide present in the product is for anti-caking purposes. Thus, you maintain that the MILLAD® 3988i should be classified in subheading 2932.99.6100, HTSUS, which provides for "Heterocyclic compounds with oxygen hetero-atom(s) only: Other: Other: Aromatic: Other: Products described in additional U.S. note 3 to sec-

tion VI.” In accordance with your request for reconsideration of NY R03248, CBP has reviewed the classification of this item and has determined that the cited ruling is in error.

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 of the proposed action was published on April 25, 2007, in Volume 41, Number 18, of the CUSTOMS BULLETIN. CBP received no comments in response to the notice.

FACTS:

The merchandise at issue is identified as MILLAD® 3988i. It is used as a clarifying agent for polyolefin plastics. The MILLAD® 3988i is composed of 96–98% D-Glucitol, 1,3:2,4-bis-o-[(3,4-dimethylphenyl) methylene]-(CAS 135861–56–2) and 2–4% silated silicon dioxide.

ISSUE:

Whether the MILLAD® 3988i is classified as a chemical product or preparation of the chemical or allied industries of heading 3824, HTSUS, or as a separate chemically defined organic compound of heading 2932, HTSUS.

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 of the tariff 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.

In accordance with Note 1 to Chapter 38, HTSUS, MILLAD® 3988i cannot be classified in Chapter 38, HTSUS, if it is determined to be a separate chemically defined compound. Note 1 to Chapter 38, HTSUS, provides in relevant part:

1. This chapter does not cover:

(a) Separate chemically defined elements or compounds with the exception¹ of the following:

* * * *

Note 1 to Chapter 29, HTSUS, provides in relevant part:

1. Except where the context otherwise requires, the headings of this chapter apply only to:

(a) Separate chemically defined organic compounds, whether or not containing impurities;

* * * *

(f) The products mentioned in (a), (b), (c), (d) or (e) above with an added stabilizer (including an anticaking agent) necessary for their preservation or transport;

¹Millad does not fall within any of the exceptions.

* * * *

MILLAD® 3988i will be classified in Chapter 29, HTSUS, only if the silicon dioxide is present as a stabilizer necessary for its preservation or transport. In NY R03248, we determined that silicon dioxide is applied in the polymer industry for several applications, including as a slip and block agent in the formulation of polyolefins. As an additive for a specific use rather than a general use, we concluded that Note 1(f) to Chapter 29, HTSUS, precluded MILLAD® 3988i from classification in Chapter 29, HTSUS.

You have now provided information that silicon dioxide which is used as a slip and block agent in polyolefins is present in amounts of 0.1 to 0.4 percent by weight of the polyolefin product. The MILLAD® 3988i only comprises 0.2 percent by weight of the final polyolefin product and therefore the silicon dioxide comprises no more than 0.008 percent of the final product. Thus, it cannot be used for slip and anti-block purposes.

We have confirmed in New York Laboratory Report NY20061573, dated November 6, 2006, that the silicon dioxide present in MILLAD® 3988i is insufficient for use as a slip and anti-block agent. Further, the silicon dioxide is present for anti-caking purposes. Accordingly, MILLAD® 3988i is classified in heading 2932, HTSUS.

HOLDING:

The MILLAD® 3988i is classified in heading 2932, HTSUS. It is provided for in subheading 2932.99.6100, HTSUS, which provides for "Heterocyclic compounds with oxygen hetero-atom(s) only: Other: Other: Aromatic: Other: Products described in additional U.S. note 3 to section VI." The general column one rate of duty is 6.5% *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.usitc.gov.

EFFECT ON OTHER RULINGS:

NY R03248, dated May 18, 2006, 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 and Trade Facilitation Division.

19 CFR PART 177

REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF CERTAIN PVC-COATED GLASS BOTTLES

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

ACTION: Notice of revocation of one ruling letter and revocation of treatment relating to the classification of certain polyvinylchloride (PVC) - coated glass bottles.

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 certain PVC-coated glass bottles. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 41, No. 20, on May 9, 2007. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 23, 2007.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (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, a notice was published in the Customs Bulletin, Vol. 41, No. 20, on May 9, 2007, proposing to revoke one ruling letter relating to the tariff classification of certain PVC-coated glass bottles. No comments were received in

response to the notice. However, CBP now realizes that, based on the capacity of the bottles at issue, the proposed subheading is incorrect. The final decision, set forth as an attachment to this notice, reflects the classification for the proper capacity. As stated in the proposed notice, this 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 this notice period.

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

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking HQ 968112 to reflect the proper classification of certain PVC-coated glass bottles in subheading 7010.90.0530, HTSUSA, which provides for, among other things: "Carboys, bottles . . . and other containers, of glass, of a kind used for the conveyance or packing of goods; . . . : Other: Serum bottles, vials and other pharmaceutical containers: Of a capacity exceeding 0.15 liter but not exceeding 0.33 liter," pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) H005541 (Attachment). Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

DATED: July 5, 2007

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,

HQ H005541

July 5, 2007

CLA-2 OT:RR:CTF:TCM H005541 HkP

CATEGORY: Classification

TARIFF NO.: 7010.90.0530

LEONARD M. SHAMBON, ESQ.
3619 LEGATION STREET, NW
Washington, D.C. 20015

RE: Revocation of HQ 968112; PVC-coated glass bottles

DEAR MR. SHAMBON:

This is in response to your request for reconsideration of Headquarters Ruling Letter (“HQ”) 968112, issued on June 8, 2006, concerning the classification of certain merchandise under the Harmonized Tariff Schedule of the United States (“HTSUS”). At issue is the correct classification of PVC (polyvinylchloride) – coated bottles made of “Type III” (also, “Type 3”) glass imported by your client Saint-Gobain Desjonquieres (“SGD”). U.S. Customs and Border Protection (“CBP”) classified this merchandise under heading 7017, HTSUS, as laboratory, hygienic or pharmaceutical glassware. It is your contention that the bottles are properly classified in heading 7010, HTSUS, as glass bottles of a kind used for the conveyance or packing of goods. For the reasons set forth in this ruling, we hereby revoke HQ 968112.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published on May 9, 2007, in the Customs Bulletin, Volume 41, No. 20. No comments were received in response to this notice.

FACTS:

The merchandise at issue is 250 ml bottles made of transparent amber colored Type III glass, also known as Soda Lime glass. In HQ 968112, CBP incorrectly described this product as having a “3-neck finish” because this was the description provided in section 7 of the Application for Further Review (AFR) of the Protest submitted to CBP. Further, no sample of the product was provided to CBP. You have now told us that the correct product description is: “Amber glass type 3, Neck finish AER32”, and have provided a sample of the bottle for our inspection. We are now aware that the bottle actually has one neck, which you say is specifically designed to allow the bottle to be sealed with a non-removable crimp top consisting of an aluminum seal with a spray head device of plastic parts. The spray head device is subsequently used in a specially designed vaporizer to administer anesthetic. However, the top is not under consideration here.

Generally, Type III/Soda Lime glass is used to manufacture bottles, jars, everyday drinking glasses and window glass, among other things (www.lenntech.com/Glass.htm). In addition, Soda Lime glass is one of the glass types approved by the United States Pharmacopeia – National Formulary (USP–NF) for use in pharmaceutical packaging.

In our previous ruling on this merchandise, CBP found that your client's broker failed to allege sufficient facts to demonstrate that the principal use of the class of glass bottles to which the subject merchandise belongs is for the conveyance or packing of goods. In addition, CBP found that the bottle was provided for, *eo nomine*, in heading 7017, HTSUS, because "it is a glass bottle that a pharmaceutical company uses in the manufacture of anesthesia." You have now provided CBP with additional information about your merchandise. We have considered your arguments and, based on the new information provided to CBP, we now conclude that the previous classification of your merchandise under heading 7017, HTSUS, was incorrect. Our reasoning is set forth in the "Law and Analysis" section below.

ISSUE:

What is the correct classification of the PVC-coated glass bottles?

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 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

7010	Carboys, bottles, flasks, jars, pots, vials, ampoules and other containers, of glass, of a kind used for the conveyance or packing of goods; preserving jars of glass; stoppers, lids and other closures, of glass:			
		*	*	*
7010.90	Other:			
7010.90.05	Serum bottles, vials and other pharmaceutical containers. . . .			
		*	*	*
7010.90.0530	Of a capacity exceeding 0.15 liter but not exceeding 0.33 liter			
7017	Laboratory, hygienic or pharmaceutical glassware, whether or not graduated or calibrated:			
		*	*	*
7017.90	Other:			
		*	*	*
7017.90.5000	Other. . . .			

As an initial matter, we note that the PVC-coated glass bottles are composite goods, consisting as they do, of the different materials of glass and plastic. Therefore, they cannot be classified according to GRI 1. GRI 3(b) directs that composite goods consisting of different materials shall be classified as if they consisted of the material or component which gives them their essential character. After examining the merchandise, we conclude that its essential character is the glass bottle because it gives the merchandise its shape, weighs more than the PVC component, and by its color protects the

product it contains from ultraviolet (“UV”) light. The PVC coating is merely a safety coating that reduces slippage and breakage of the bottle.

CBP previously classified the bottles at issue in heading 7017, HTSUS, as pharmaceutical glassware because they are glass bottles used by a pharmaceutical company. However, based on the sample and additional information provided to CBP and after consulting the ENs to heading 7017, HTSUS, we are now of the view that the bottles are not described in heading 7017, HTSUS.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80. EN 70.17 explains:

This heading covers **glass articles of a kind in general use in laboratories** (research, pharmaceutical, industrial, etc.) including special bottles (gas washing, reagent, Woulf’s, etc.), . . .

* * *

The expression “hygienic or pharmaceutical glassware” refers to articles of general use **not** requiring the services of a practitioner. The heading therefore covers, *inter alia*, irrigators, nozzles (for syringes, enemas, etc.), urinals, bed pans, chamber pots, spittoons, cupping-glasses, breast relievers . . . eye-baths, inhalers and tongue depressors. . . .

Articles of this heading may be graduated or calibrated. They may be made of ordinary glass (particularly for pharmaceutical or hygienic purposes), but laboratory glassware is frequently of borosilicate glass, fused quartz or other fused silica because of the greater chemical stability and low coefficient of expansion of such glass.

The heading excludes:

(a) Containers for the conveyance or packing of goods (**heading 70.10**)[.]

* * *

Generally, a “pharmaceutical” is a drug or medicine that is prepared or dispensed in pharmacies and used in medical treatment. In that sense, any bottle that holds a pharmaceutical may generally be considered “pharmaceutical glassware”. However, when we compare the examples of hygienic or pharmaceutical glassware provided in the ENs with the sample of your merchandise, we find that they are dissimilar. EN 70.17 describes items themselves used for pharmaceutical or medical purposes; your merchandise will contain goods to be used for medical purposes. For this reason, we conclude that your merchandise is outside the scope of heading 7017, HTSUS.

It is your view that the correct classification of this merchandise is under heading 7010, HTSUS, as bottles of glass of a kind used for the conveyance or packing of goods. In HQ 968112, CBP applied specific identifiable characteristics¹ set forth in Treasury Decision (T.D.) 96–7 (November 29, 1995), 30

²These characteristics would include containers of all shapes and sizes:

1. generally having a large opening, a short neck (if any) and as a rule, a lip or flange to hold the lid or cap, made of ordinary glass (colorless or colored) and manufactured by machines which automatically feed molten glass into molds where the finished articles are formed by the action of compressed air;

Cust. B. & Dec. No. 30, which CBP found to be indicative, though not conclusive, of the class of containers of glass of a kind used for the conveyance or packing of goods. However, in applying T.D. 96-7, we failed to take into account the U.S. Customs Service's (now, CBP) response to a comment submitted by industry that the first criterion enumerated, physical characteristics of the class, was too narrow for the entire class because the entire class included four different types of containers: (A) Carboys, demijohns, bottles, and similar containers of all sizes and shapes; (B) Jars, pots and similar containers; (C) Ampoules; and (D) Tubular containers and similar containers. Based on the expressed concerns, Customs agreed that physical description together with descriptions found in the ENs are indicative but not conclusive of glass articles belonging to the class "containers of a kind used for the conveyance or packing of goods".

EN 70.10 explains, in relevant part, that heading 7010, HTSUS:

[C]overs all glass containers of the kinds commonly used commercially for the conveyance or packing of liquids or of solid products (powders, granules, etc.). They include:

- (A) Carboys, demijohns, bottles (including syphon vases), phials and similar containers, of all shapes and sizes, used as containers for chemical products (acids, etc.), beverages, oils, meat extracts, perfumery preparations, pharmaceutical products, inks, glues, etc.

These articles, formerly produced by blowing, are now almost invariably manufactured by machines which automatically feed molten glass into moulds where the finished articles are formed by the action of compressed air. They are usually made of ordinary glass (colourless or coloured) although some bottles (e.g., for perfumes) may be made of lead crystal, and certain large carboys are made of fused quartz or other fused silica.

The above-mentioned containers are generally designed for some type of closure; these may take the form of ordinary stoppers . . . or special devices . . .

These containers remain in this heading ..., **provided** that they are not of a kind used as laboratory glassware.

* * *

The heading **does not include**:

* * *

-
- 2. in which the ultimate purchaser's primary expectation is to discard the container after the conveyed or packed goods are used;
 - 3. sold from the importer to a wholesaler/distributor who then packs them with goods;
 - 4. sold in an environment of sale that features the goods packed in the jar and not the jar itself;
 - 5. used to commercially convey foodstuffs, beverages, oils, meat extracts, etc.;
 - 6. capable of being used in the hot packing process; and
 - 7. recognized in the trade as used primarily to pack and convey goods to a consumer who then discards the container after this initial use.

(e) Laboratory, hygienic or pharmaceutical glassware (**heading 70.17**).

As we have previously stated, USP Type III Soda Lime glass is one of the glass types approved by the USP-NF for use in pharmaceutical packaging. Our research on the Internet indicates that the use of yellow amber glass of the types required by pharmaceutical standards is recommended for preparations sensitive to ultraviolet rays. Pharmaceutical standards prescribe that the transmission of light must be below 10 % of the incident radiation of each wavelength between 290/450 mμ (See, for e.g., http://www.bormioliroccopackaging.com/pharmaceutical/technical_know_how/glass/index.htm). Although, you have not provided specific information on whether your bottles are below the 10% ceiling prescribed by pharmaceutical standards, you have informed us that your client sells 100 percent of its imports of this type of PVC coated bottle to a pharmaceutical manufacturer. That manufacturer fills the bottles with anesthetic - a volatile product with a higher pressure than the atmosphere. Each bottle is sealed with a non-removable crimp top spray head device. The bottles are delivered to the manufacturer's customers - hospitals, clinics or doctor's or dentist's offices where surgery may take place. Based on this information, we proceed on the assumption that your bottles meet the standard. This information also indicates that your bottles are designed for closure by a special device, as mentioned in the ENs. Finally, you have provided information which indicates that plastic coated glass bottles are generally regarded by the pharmaceutical and chemical industry as being useful for the transportation of chemical and pharmaceutical products because the coating reduces slippage and breakage, thereby protecting personnel from exposure to dangerous materials. We find, therefore, that your bottles are "of a kind" used for the packing or conveyance of chemical or pharmaceutical products, as explained by the EN 70.10(A) and are classified in heading 7010, HTSUS.

HOLDING:

By application of GRI 1, the PVC-coated bottles at issue are classified in heading 7010, HTSUS, and are specifically provided for in subheading 7010.90.0530, HTSUSA, which provides for: "Carboys, bottles . . . and other containers, of glass, of a kind used for the conveyance or packing of goods; . . . : Other: Serum bottles, vials and other pharmaceutical containers: Of a capacity exceeding 0.15 liter but not exceeding 0.33 liter."

EFFECT ON OTHER RULINGS:

HQ 968112, dated June 8, 2006, 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 and Trade Facilitation Division.

**PROPOSED MODIFICATION OF TWO RULING LETTERS
AND PROPOSED MODIFICATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
CERTAIN ARTICLES OF SEMI-PRECIOUS STONES**

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

ACTION: Notice of proposed revocation of a tariff classification ruling letter and proposed revocation of treatment relating to the classification of certain articles of semi-precious stones.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), this notice advises interested parties that Customs and Border Protection (CBP) intends to revoke two ruling letters relating to the tariff classification of certain articles of semi-precious stones under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before August 24, 2007.

ADDRESS: Written comments are to be addressed to Customs and Border Protection, Regulations and Rulings of the Office of International Trade, Attention: Commercial Trade and Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments 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 Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Sasha Kalb, Tariff Classification and Marking Branch: (202) 572-8791

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke two ruling letters pertaining to the tariff classification of certain articles of semi-precious stones. Although in this notice, CBP is specifically referring to the revocation of N003697 and NY N003975. (Attachments A through 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 rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In the above mentioned rulings, CBP determined that the subject articles of semi-precious stones were classifiable under subheading 7117.19.9000, HTSUSA. Based upon our analysis of heading 7117, HTSUS, we have determined that the articles of semi-precious stones are properly classified in subheading 7116.20.15.00, HTSUSA, the provision for "articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Articles of jewelry: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY N003697, NY N003975 and any other ruling not specifically identified, to reflect the proper classification of the articles of semi-precious stones according to the analysis contained in proposed Headquarters Ruling Letter H007655, set forth as Attachment C to

this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: July 10, 2007

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,

December 4, 2006
CLA-2-71:RR:E:NC:2:SP:233
CATEGORY: Classification
TARIFF NO.: 7117.19.9000

MS. ALTHEA NICHOLAS-WOOD
LIZ CLAIBORNE I.
1 Claiborne Ave.
North Bergen, NJ 07047

RE: The tariff classification of jewelry from China.

DEAR MS. NICHOLAS-WOOD:

In your letter dated November 21, 2006, you requested a tariff classification ruling.

The items under consideration are three imitation jewelry necklaces. The first, Style ULRU0090 is made of base metal leaf and chain with one tiger's eye stone. The second, Style UKRU0091 is made of a base metal circular pendant with wood, plastic and intermittent gold tone plastic beads with one tiger's eye stone, strung on textile thread. The third, Style UKRU0129 is made of a base metal circular pendant and beads strung on a leather cord with one tiger's eye bead. The essential Character of all three necklaces is the metal as the tiger's eye stones are considered minor constituents.

The applicable subheading for the three imitation necklaces will be 7117.19.9000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for imitation jewelry of base metal, other. The rate of duty will be 11% ad valorem.

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

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,
U.S. CUSTOMS AND BORDER PROTECTION,
December 18, 2006
CLA-2-71:RR:E:NC:SP:233
CATEGORY: Classification
TARIFF NO.: 7117.90.9000

MS. ALTHEA NICHOLAS-WOOD
LIZ CLAIBORNE I.
1 Claiborne Ave.
North Bergen, NJ 07047

RE: The tariff classification of a bracelet and a necklace from China.

DEAR MS. NICHOLAS-WOOD:

In your letter dated November 30, 2006, you requested a tariff classification ruling.

The items under consideration are as follows:

Style A9-1109-CD-8 is a bracelet with a base metal chain, large glass stones, mini goldtone plastic beads and one cubic zirconium stone on the tail chain.

Style A9-1109-CD-5 is a necklace with a base metal chain and pendant, one large glass pendant and one cubic zirconium stone on the tail chain.

You have digital submitted photographs, cost and weight breakdowns and detailed component information.

The Explanatory Notes to the Harmonized Tariff System provide guidance in the interpretation of the Harmonized Commodity Description and Coding System at the international level. General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes. Goods that are, prima facie, classifiable under two or more headings, are classifiable in accordance with GRI 3, HTSUS. GRI 3 (a) states in part when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods, those headings are to be regarded as equally specific, even if one heading gives a more precise description of the good. Goods classifiable under GRI 3 (b) are classified as if they consisted of the material or component which gives them their essential character, which may be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the article. GRI 3 (c) provides that when goods cannot be classified by ref-

erence to GRI 3 (a) or 3 (b), they are to be classified in the heading that occurs last in numerical order among those which equally merit consideration. Style A9-1109-CD-8 bracelet consists of a base metal chain, large glass stones, mini goldtone plastic beads and one cubic zirconium stone. Style A9-1109-CD-5 necklace consists of a base metal chain and pendant, one large glass pendant and one cubic zirconium stone. In each case, no component imparts the essential character, so both are classified in accordance with GRI 3 (c). The provision that covers the glass component appears last in numerical order among the competing headings which equally merit consideration.

The applicable subheading for the bracelet, Style A9-1109-CD-8, and the necklace, Style A9-1109-CD-5, will be 7117.90.9000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Imitation jewelry: Other: Valued over 20 cents per dozen pieces or parts: Other: Other." The rate of duty will be 11% ad valorem.

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

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 C]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,

HQ H007655
CLA-2 OT: RR: CTF: TCM H007655 ADK
CATEGORY: Classification
TARIFF NO.: 7116.20.0500

MS. ALTHEA NICHOLAS-WOOD
LIZ CLAIBORNE I.
1 Claiborne Ave.
North Bergen, NJ 07047

RE: Classification of jewelry; Reconsideration of New York Ruling Letters (NY) N003697 and NY N003975

DEAR MS. NICHOLAS-WOOD:

This letter is in response to your request of January 31, 2007, for reconsideration of NY N003697, dated December 4, 2006, and NY N003975, dated December 18, 2006. In those rulings, United States Customs and Border Protection (CBP) determined that the subject articles were classifiable un-

der subheading 7117.19.9000, Harmonized Tariff Schedule United States Annotated (HTSUSA). We have reviewed NY N003697 and NY N003975 and found them to be in error.

FACTS:

In N003697, three necklaces were under consideration. The first, Style ULRU0090 was made of a leaf-shaped pendant of base metal and chain with one tiger's eye stone¹. The second, Style UKRU0091 was made of a base metal circular pendant with wood, plastic and intermittent gold tone plastic beads with one tiger's eye stone, strung on textile thread. The third, Style UKRU0129 was made of a base metal circular pendant and beads strung on a leather cord with one tiger's eye bead. According to the importer, Liz Claiborne, Inc. (Liz Claiborne), the subject necklaces were all valued at less than \$40 each.

In NY N003975, two items were under consideration. The first, style A9-1109-CD-8, was a bracelet with a base metal chain, large glass stones, mini gold tone plastic beads and one cubic zirconium² stone on the tail chain. The second, style A9-1109-CD-5, was a necklace with a base metal chain and pendant, one glass pendant and one cubic zirconium stone on the tail chain. According to Liz Claiborne, the subject necklace and bracelet were valued at less than \$40 each.

In both rulings, the imports were classified under subheading 7117.19.9000, HTSUSA, which provides for "[I]mitation Jewelry: Of base metal, whether or not plated with precious metal: Other: Other: Other." Liz Claiborne asserts that the jewelry is properly classifiable under subheading 7116.20.15.00, HTSUSA, which provides for: "articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Articles of jewelry: Other."

ISSUE:

What is the proper classification, under the HTSUS, for the jewelry containing semi-precious stones?

LAW AND ANALYSIS:

Classification under the HTSUSA 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 2 through 6 may then be applied in order.

There is no dispute that the subject imports are classifiable in chapter 71. At issue is whether the various items are classifiable as imitation jewelry or as articles of semi-precious stones. The HTSUS provisions under consideration are as follows:

¹Tiger's Eye is a variety of semiprecious quartz. See Encyclopedia Britannica online at www.britannica.com

²A semi-precious "synthetic gemstone of zirconia resembling a diamond." See Merriam Webster Dictionary, www.m-w.com. See Explanatory Notes to heading 7104, HTSUS.

7116	Articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed):
7116.20	Of precious or semiprecious stones (natural, synthetic or reconstructed):
	Articles of jewelry:
7116.20.0500	Valued not over \$40 per piece
	* * *
7116.20.1500	Other
	* * *
7117	Imitation jewelry:
	Of base metal, whether or not plated with previous metal:
7117.19	Other:
	Other:
7117.19.9000	Other . . .
	* * *

In addition to the terms of the headings, classification of goods under the HTSUS is governed by any applicable section or chapter notes. Chapter 71, Note 9 provides, in pertinent part:

For the purposes of heading 7113, the expression “articles of jewelry” means:

(a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia):

* * *

Chapter 71, Note 11 provides, in pertinent part:

For the purposes of heading 7117, the expression “imitation jewelry” means articles of jewelry within the meaning of paragraph (a) of note 9 above . . . not incorporating natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed). . . .

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80. The ENs under consideration are as follows:

The EN to heading 7116, HTSUS (EN 7116), provides, in pertinent part:

The heading covers all articles . . . wholly of natural or cultured pearls, precious or semi-precious stones, or consisting partly of natural or cultured pearls or precious or semi-precious stones, but **not** containing precious metals or metals clad with precious metal . . .

It thus includes:

(A) **Articles of personal adornment and other decorated articles** . . . containing natural or cultured pearls, precious or semi-

precious stones, set or mounted on base metal (whether or not plated with precious metal), ivory, wood, plastics etc.

(Emphasis in original)

* * *

The EN to heading 7117, HTSUS (EN 7117), provides, in pertinent part: For the purposes of this heading, the

expression **imitation jewellery** . . . [does] not incorporate precious metal or metal clad with precious metal . . . nor natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed).

(Emphasis in original)

* * *

In both In NY N003697 and NY N003975, the items under consideration were composite goods, consisting of at least two different materials. According to GRI 3 (b), most composite goods are to be classified “as if they consisted of the material or component which gives them their essential character. . . .” The term ‘essential character,’ refers to “the attribute which strongly marks or serves to distinguish what an article is; that which is indispensable to the structure, core or condition of the article.” HQ 956538, Dated November 29, 1994; See also Better Home Plastics Corp. v. United States, 20 CIT. 221; 916 F. Supp. 1265 (1996). “When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.” GRI 3(c).

In NY N003697, CBP determined that the essential character of the three necklaces was the base metal. Pursuant to GRI 3(b), the necklaces were classified under heading 7117, HTSUS as “articles of imitation jewelry: of base metal.” In NY N003975, CBP determined that none of the component parts for either article imparted the essential character. Pursuant to GRI 3(c), the pieces were classified under heading 7117, HTSUS which was the heading which occurred last in numerical order.

We now find that the application of GRI 3 in both cases was in error. While the vast majority of composite goods are classified according to GRI 3, its application here is unnecessary. The relevant heading terms and corresponding ENs are broad enough to encompass this merchandise by application of GRI 1.

The subject articles were originally classified in heading 7117, HTSUS, as “imitation jewelry.” According to chapter 71 legal note 11, articles containing precious or semi-precious stones are not considered “imitation jewelry.” See also EN 71.17. All of the items under consideration contain semi-precious stones. The three necklaces of NY N003697, all feature tiger’s eyes, and the necklace and bracelet of NY N003975, each feature a cubic zirconia. By application of legal note 11 to chapter 71, the subject imports are excluded from heading 7117, HTSUS.

We next consider heading 7116, HTSUS. According to the EN, heading 7116, HTSUS, covers articles of personal adornment articles containing semi-precious stones, set or mounted on base metal. The subject imports satisfy this definition. Each is an article of personal adornment that contains a semi-precious stone. Furthermore, these stones are mounted on base metal chains. Accordingly, the articles are classifiable under heading 7116,

HTSUS. Specifically, they are classifiable under subheading 7116.20 as “Articles of . . . semi-precious stones . . . :Of precious or semiprecious stones”

The importer, Liz Claiborne, asserts that the items are classifiable as “articles of jewelry” under subheading 7116.20.15, HTSUS. The legal notes to chapter 71 offer guidance as to the definition of the term “jewelry.” According to note 9(a)³, articles of jewelry include “any small objects of personal adornment (for example . . . bracelets, necklaces” Under consideration are four necklaces of semi-precious stones and one bracelet of semi-precious stones. The subject articles therefore satisfy this definition *eo nomine*. While we concur with Liz Claiborne’s determination at the 6–digit level, we disagree at the 8–digit level. Because each of the items is valued at less than \$40, the more specific subheading is 7116.20.0500, HTSUSA, which provides for “. . . Articles of jewelry: Valued not over \$40 per piece.” They are not classifiable under subheading 7116.20.1500, HTSUSA, which provides more generally for “. . . Articles of jewelry: Other.”

HOLDING:

By application of GRI 1, the subject articles of jewelry are classifiable under heading 7116, HTSUS. Specifically, they are classifiable under subheading 7116.20.0500, HTSUSA, which provides for: “Articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or (reconstructed): Articles of jewelry: Valued not over \$40 per piece.” The 2007 column one rate, general rate of duty is 3.3 percent *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N003697, dated December 4, 2006, and NY N003975, dated December 18, 2006 are hereby revoked.

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

19 CFR PART 177

**MODIFICATION OF RULING LETTER AND TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
HANDBAGS**

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

ACTION: Notice of modification of a ruling letter and treatment relating to the classification of certain handbags.

³Although this note refers specifically to headings 7113 and 7117, HTSUS, it provides guidance in the present matter because it offers an official HTSUS interpretation of the term “articles of jewelry.” See HQ 958831, dated April 1, 1997.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain handbags. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Volume 41, Number 8, on February 14, 2007. Four comments were received in response to this notice. CBP has now considered the comments (described further below) and is issuing notice of this final action.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 23, 2007.

FOR FURTHER INFORMATION CONTACT: Beth A. Safeer, Tariff Classification and Marking Branch, at (202) 572–8825.

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, a notice was published in the Customs Bulletin, Volume 41, Number 8, on February

14, 2007, proposing to modify New York Ruling Letter (NY) M84931, dated August 1, 2006, relating to the tariff classification of certain handbags. Four comments were received in response to the notice. As stated in the proposed notice, this modification 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 ruling identified above. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice period.

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

As mentioned above, four comments were received in response to the notice published in the February 14, 2007, CUSTOMS BULLETIN, Volume 41, Number 8, proposing to modify New York Ruling Letter (NY) M84931, dated August 1, 2006, and to revoke any treatment accorded to substantially identical transactions. The comments received oppose modification of NY M84931. All four commenters argued that the bag at issue is too large to be considered a handbag. In response to the comments received, we have modified Headquarters Ruling Letter (HQ) W968454 to more clearly describe the subject merchandise. We have also included a digital picture of the merchandise.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY M84931 and any other ruling not specifically identified to reflect the proper legal analysis found in HQ W968454, 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 that are contrary to the determination set forth in this notice.

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

DATED: July 10, 2007

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,

HQ W968454
July 10, 2007
CLA-2 OT:RR:CTF:TCM W968454 BAS
CATEGORY: Classification
TARIFF NO.: 4202.22.4500

MELISSA FOX
BARTHCO INTERNATIONAL, INC.
5101 S. Broad Street
Philadelphia, PA 19112-1404

RE: Request for Reconsideration of New York Ruling Letter (NY) M84931;
Classification of a Hand Bag; NY M84931 modified

DEAR MS. FOX:

This is in reply to a letter you submitted, dated September 13, 2006, on behalf of Nine West, Inc., requesting reconsideration of New York Ruling (NY) M84931, dated August 1, 2006, insofar as it concerned classification of a polyvinylchloride (PVC) bag. You submitted a sample to aid us in our determination. For the following reasons, this ruling modifies NY M84931.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S. C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY M84931, dated August 1, 2006, as described below, was published in the *Customs Bulletin*, Volume 41, Number 8, on February 14, 2007. U.S. Customs and Border Protection (CBP) received four comments during the notice and comment period that closed on March 16, 2007.

FACTS:

In NY M84931, CBP classified the merchandise at issue in heading 4202.92.1500, HTSUSA, which provides for travel, sports and similar bags, with outer surface of textile materials, of vegetable fibers and not of pile or tufted construction, of cotton. The merchandise under consideration is a bag, Style Number N-0041203NW, made in China and manufactured of polyvinylchloride (PVC) with an exterior surface of 100% cotton openwork knit fabric that allows the PVC to be visible. The bag features a thick silver chain with a narrow textile fabric woven through openings in the top two inches of the body of the bag. Two silver plated rings connect the shoulder strap to the bag. At its widest point the bag measures 13.5 inches by 8.25

inches by 4 inches in depth, excluding the shoulder strap. The width of the bag decreases from the bottom to the top, with the width of the opening of the bag only measuring 10.5 inches. The depth allowance also narrows from the bottom of the bag to the top. At the bottom of the bag the side panels measure four inches across, however these panels measure only 2¾ inches just below the two inch PVC band at the top of the bag. The shoulder strap adds 11 inches in height. In addition to the shoulder strap, the bag features one zippered interior compartment and an interior band with a magnetic closure. The zippered interior compartment features a “Nine West” label.

The merchandise at issue is pictured below:



ISSUE:

Are the bags under consideration classifiable in subheading 4202.22, HTSUSA, as handbags or under subheading 4202.92, HTSUSA, as travel, sports and similar bags?

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relevant Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI.

Heading 4202, HTSUSA, encompasses the following articles:

Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases,

tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper.

In HQ 957917, dated July 7, 1995, Customs (now CBP) cited Adolco Trading Co. v. United States, 71 Cust. Ct. 145, C.D. 4487 (1973), which held that tote bags were described in broad terms. The court stated:

The evidence establishes that . . . the term tote or tote bag is used in the trade to cover various types of carry bags, including shopping bags, and bags which may be luggage . . . and others which may be handbags. . . . Thus the fact that an article may be bought, sold or referred to as a tote or tote bag does not establish that it is a handbag, as defined in the tariff schedules. . . .

In your opinion, the bag at issue, is more appropriately classified as a handbag under 4202.22.4500, HTSUSA, than the provision for travel, sports, and similar bags.

The provision for travel, sports and similar bags is defined by Additional U.S. Note 1, Chapter 42, HTSUSA, as follows:

For the purposes of heading 4202, the expression “travel, sports and similar bags” means goods, other than those falling in subheadings 4202.11 through 4202.39, of a kind used for carrying clothing and other personal effects during travel, including backpacks and shopping bags of this heading, but does not include binocular cases, camera cases, musical instrument cases, bottle cases and similar containers.

In HQ 957917, *supra*, CBP classified certain “tote” bags as travel, sport and similar bags within the meaning of Additional U.S. Note 1, Chapter 42, HTSUSA. The bags in that ruling were made from coarse, cotton canvas and were often printed with company logos or promotional or advertising information. Two styles had single snap closures; the rest had no means of closure. The bags had no pockets and were not lined or reinforced. Based on those characteristics, we found it unlikely that the bags were used in a manner similar to a women’s handbag. We further found that the canvas tote bags were multipurpose bags used to carry any number of sundry articles, such as food, books and/or clothing. See also HQ 085327, September 20, 1989 (holding that a “tote” is classified under subheading 4202.92, HTSUSA, because the bag is larger than a handbag, substantially constructed and designed to contain various items including clothing and personal effects while traveling).

Another ruling in which CBP classified a “tote” under subheading 4202.92, as a travel bag is HQ 955515, dated May 5, 1994. In that ruling, we held that tote bags are generally used to transport from place to place personal belongings, including clothing. We said “transport could be local, such as between home and office, or extended, as when clothing and/or other personal belongings are packed in a tote bag for a picnic, day at the beach, weekend trip or the like.” The bag in that case measured 12 inches by 14.75 inches by 4 inches. The upper portion was made of clear plastic and the bottom was made of leather. It also had leather covered handles. The bag was not lined and had no pockets.

CBP has also classified bags referred to as “totes” under subheading 4202.22, as handbags. The term “handbags” includes pocket books, purses, shoulder bags, clutch bags, and similar articles customarily carried by women or girls, but does not include luggage, flat goods or shopping bags. Tote bags are those bags that are larger than handbags. HQ 961358, dated January 20, 1999. They are substantially constructed and designed to contain various items including clothing and personal effects while traveling, and usually have at least one side, which exceeds 12 inches in length. HQ 082271, dated December 1, 1988. Tote bags generally have no lining, reinforcements, pockets, or closures (or only single snap closures), provide little protection for their contents and are unlikely to be used in a manner similar to a woman’s handbag. HQ 950708, December 24, 1991; See also HQ 951113, issued May 19, 1992, affirming HQ 950708.

In HQ 955552, dated August 15, 1994, CBP classified a pink lady’s shoulder bag as a handbag under subheading 4202.22, HTSUSA. The bag measured approximately 14 inches by 9½ inches with a tapered gusset two inches wide at the top and four inches wide at the bottom. The bag had two shoulder straps approximately 26 inches in length and was divided into two separate compartments, each with a zipper. The interior of the bag was lined and the bottom and corners were reinforced. We held that the bag was not a multipurpose bag used to carry a number of articles such as food, books, or clothing, and that it was not suitable for travel or shopping. While the bag could conceivably have been employed for some limited use as a sports bag, we stated that the primary purpose of the bag was as a traditional woman’s handbag. Its design and construction, notably the shoulder straps, reinforcement, linings, inside zipper pocket, style of compartmentalization and zipper closure were all strongly indicative of a bag which is used normally by women and girls to carry personal items on a daily basis. The measurements of the handbag refute one commenter’s assertion that any bag with a measurement over 12 inches cannot be classified as a handbag.

In another ruling, HQ 961849, dated June 5, 1998, CBP classified a women’s “tote” bag under subheading 4202.22, as a handbag. That bag measured approximately 11½ inches by 10 inches by 3 inches. It had an outer surface of 100 percent nylon woven fabric and was lined with woven fabric of man-made fibers. It also had two leather carrying straps. The interior featured a large zippered central compartment which divided the bag’s interior and created three separate, full-sized compartments, two of which were open topped and without closures. It also had a smaller zippered pocket within one of the interior sides. In that ruling, we found that the bag was designed, constructed and intended to be used as a woman’s handbag, not as a tote or shopping bag. Again, its dimensions, lining, zippered pockets, and manner of compartmentalization indicated its purpose to contain certain items normally carried in a woman’s handbag, such as money, keys, glasses, etc. Moreover, the bag had insufficient additional capacity for use as a multipurpose carrier of any number of sundry articles (such as food, books, and/or clothing).

In a more recent ruling, HQ 961358, dated January 20, 1999, CBP classified two styles of bags as women’s or girls’ handbags. In HQ 961358, there were two bags at issue: Style A970669, measuring approximately 11 inches by 8 inches by 3½ inches and Style A970709, measuring approximately 9 inches by 6 inches by 3 inches. Both bags featured the following characteristics:

- A) Textile lined undivided interior.
- B) Interior sidewall zippered pocket.
- C) Top metal snap closure.
- D) Self material shoulder straps.
- E) Exterior pocket without closure.
- F) Metal emblem on exterior "COLLECTION NEW YORK".
- G) Outer surface is a textile backed PVC sheeting. PVC is embossed to imitate a vinyl fabric.

In HQ 961358, we held that the bags did not have sufficient capacity for use as a multipurpose bag for carrying books, clothing, etc. Furthermore, the bags are lined and, although they do not have individual compartments, they have zippered pockets within the interior and a pocket on the exterior without a closure. The bags also have a snap closure. They are sufficient to carry keys, a wallet, sunglasses and similar articles generally carried in a woman's handbag. Thus, CBP found that the bags were classified as handbags under subheading 4202.22.1500, HTSUSA.

In HQ 961358, we stated that characteristics A through F above do not establish that the bags are handbags. However, they are relevant factors that CBP considers when classifying handbags as well as travel, sports and similar bags.

As noted above, CBP received four comments in response to the proposed modification of NY M84931, dated August 1, 2006. Two commenters argue that the presence of an undivided interior does not support classification as a handbag. While compartmentalization of a bag is one of the many factors used to determine whether or not it is a handbag, it is not determinative. The analysis considers many factors including whether or not the bag is lined, has a zippered interior pocket, a means of closure, shoulder straps and whether the bag provides protection for its contents and is therefore likely to be used in a manner similar to a women's handbag. HQ 961358, dated January 20, 1999, is one ruling in which we classified two styles of bags without individualized compartments as handbags in 4202.22, HTSUSA.

Relying on the analysis in HQ 950708, one commenter argues that the absence of a secure closure is an indication that the bag at issue is not classified as a handbag. The tote bags at issue in HQ 950708, dated December 24, 1991 are significantly distinguishable from the subject merchandise. The bags in HQ 950708 are made from cotton canvas and are often printed with company logos or advertising information. They have no pockets, and are not lined or reinforced. Since they provide little protection for the items they may contain it is unlikely that they are used in a manner similar to a woman's handbag. In contrast, the subject merchandise provides ample protection for the items it might contain. It is made of polyvinyl chloride, has a reinforced bottom and a lining. The magnetic closure combined with the gathered opening provides ample protection for the contents of a woman's handbag.

Commenters focused primarily on the size of the bag at issue. One commenter argues that "bags of such size have routinely been treated as too large to carry only small personal articles typically associated with handbags." Another commenter also states that the subject bag has the capacity to carry a handbag plus other articles such as a pair of shoes or work files. Yet another commenter compared the cubic capacity of the subject merchan-

dise to the cubic capacity of other bags in previous CBP rulings and argued that the cubic capacity of the subject merchandise was larger than some bags that had been classified as totes. Finally at least two of the commenters argued that bags that have at least one side, which exceeds 12 inches in length, have been almost uniformly disqualified from classification as handbags, because they have additional capacity to carry items that do not ordinarily fit within a woman's handbag.

Due to the focus on the dimensions of the bag, we reexamined and clarified the description of the bag which is mentioned in the "facts" portion of this ruling. In addition, we have found several rulings which refute the argument that bags which have one side exceeding 12" in length are disqualified from classification as handbags. See HQ 955552, dated August 15, 1994 and HQ 087537, dated October 2, 1990.

Examination of the digital picture reveals that the bag at issue could not contain a handbag and a pair of shoes or work files. Considering the revised description of the bag, we do not find that its size is too large to be classified as a handbag. Visual examination of the bag reveals that it has insufficient capacity for use as a multipurpose carrier of any number of sundry articles (such as food, books or clothing). Although the width of the bag is greater than twelve inches at its widest point, the bag does not have additional capacity to carry items that do not ordinarily fit within a woman's handbag. The fact that the bag's dimensions decrease both in depth and width from the bottom to the top preventing the opening of the bag from accommodating larger items than those that would generally fit into a woman's handbag.

In the instant case, the bag's design and construction, that is the shoulder strap, reinforcement, linings, inside zippered pocket, textile lining and top metal snap closure are all strongly indicative of a bag which is used normally by women and girls to carry personal items on a daily basis. Accordingly, the bag at issue, Style N-0041203NW, is properly classified as a handbag under subheading 4202.22.4500, HTSUSA.

HOLDING:

Style number N-0041203NW, manufactured of polyvinylchloride (PVC) with an exterior surface of 100% cotton openwork knit fabric, which features a shoulder strap, one zippered interior compartment and a magnetic closure is properly classifiable under subheading 4202.22.4500, HTSUSA, which provides for "Handbags, whether or not with shoulder strap, including those without handle: With outer surface of sheeting of plastic or of textile materials: With outer surface of textile materials: Other: Of vegetable fibers and not of pile or tufted construction: Of cotton." The handbag falls within textile category designation 369. It is dutiable at the general column one rate of duty at 6.3% ad valorem.

With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise, which is the product 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 the 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:

In NY M84931, although the handbag was correctly classified in heading 4202, HTSUSA, the merchandise was improperly classified as to the sub-heading within 4202, HTSUSA. Accordingly, NY M84931 is modified to reflect the above classification. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

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

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