

U.S. Customs and Border Protection

CBP Decisions

(CBP Dec. 07-63)

BONDS

APPROVAL TO USE AUTHORIZED FACSIMILE SIGNATURES AND SEAL

The use of facsimile signatures and seal on U. S. Customs and Border Protection bonds by the following corporate surety has been approved effective this date.

First Founders Assurance Company

Authorized facsimile signatures on file for:

John K. Daily, Attorney-in-fact
Bruce S. Haskell, Attorney-in-fact
Lee V. Barther, Attorney-in-fact
John J. Sheppard, II, Attorney-in-fact

The corporate surety has provided U. S. Customs and Border Protection with a copy of the signatures to be used, a copy of the corporate seal, and a copy of the corporate resolution agreeing to be bound by the facsimile signatures and seal. This approval is without prejudice to the surety's right to affix signatures and seals manually.

Date: August 2, 2007

WILLIAM G. ROSOFF,
Chief,
Entry Process and Duty Refunds Branch.

General Notices

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING PRINTER CARTRIDGES

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that the Bureau of Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of certain printer cartridges which may be offered to the United States Government under an undesignated government procurement contract. CBP has concluded that, based upon the facts presented, the operations performed at the United States facility do not result in a substantial transformation of the goods. Therefore, the goods will not be considered to be products of the United States.

DATE: The final determination was issued on August 2, 2007. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of August 8, 2007.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202-572-8792).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on August 2, 2007, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain printer cartridges which may be offered to the United States Government under an undesignated government procurement contract. This final determination, in HQ H009107, was issued at the request of Nukote International, Inc. under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511-18).

In the final determination, CBP concluded that, based upon the facts presented, the operations performed at the United States facility do not result in a substantial transformation of the goods. Therefore, the goods will not be considered to be products of the United States.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the *Federal Register* within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial

review of a final determination within 30 days of publication of such determination in the *Federal Register*.

Dated: August 2, 2007

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

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

HQ H009107
MAR-2-05 OT:RR:CTF:VS H009107 GOB
CATEGORY: Marking

G. MATTHEW KOEHL, ESQ.,
KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP,
1735 New York Avenue NW
Suite 500
Washington, DC 20006-5221

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511); Subpart B, Part 177, CBP Regulations; Country of Origin of Printer Cartridges

DEAR MR. KOEHL:

This is in response to your letter of March 26, 2007, requesting a final determination on behalf of Nukote International, Inc. ("Nukote"), pursuant to subpart B of Part 177, Customs and Border Protection ("CBP") Regulations (19 CFR 177.21 *et seq.*). Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. §2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of certain laser printer cartridge models. We note that Nukote is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination.

FACTS:

You request a final determination with respect to three manufacturing process scenarios and resulting end products. The first scenario involves laser toner cartridges for color laser printers, including both color and monochrome (black) cartridges. The second scenario involves monochrome (black) laser toner cartridges for conventional laser printers with an electronic chip. The third scenario involves monochrome (black) laser toner cartridges for conventional laser printers without an electronic chip.

You describe the first process as follows. Nukote collects empty toner cartridges from end users at collection sites in the United States and, to a sub-

stantially lesser extent, in Canada, Singapore, the United Kingdom, Hong Kong and China. Nukote also purchases used printer cartridges from United States-based brokers. These used printer cartridges were originally manufactured at various locations in different countries. Nukote has no process for identifying the country of origin of the empty cartridges.

Nukote then sends the cartridges to a foreign country, where they are sorted to remove units which cannot be remanufactured. This process identifies cartridge type and printer type, and removes damaged and broken parts and units that cannot be processed. The cartridges which can be remanufactured are then shipped to a different foreign facility, where Nukote has direct management and operational responsibility and where the operations performed are based on proprietary specifications developed by Nukote. At this facility, the used cartridges are split open, disassembled and separated into three sub-assemblies—the developer section, the toner hopper, and the waste hopper. The original doctor blade is cleaned and the original primary charge roller is sandblasted and recoated. The drum is removed from the waste hopper, which, along with the toner hopper, is scraped to remove plastic flash and residual foam seal material, and then blown out to remove residual toner from the original manufacturer. New foam seals are installed on the toner hopper and waste hopper units. New waste hopper drums, recovery blades and wiper blades are also installed. After being rebuilt with a clean blade, roller and gears, the developer section is temporarily assembled with a “host” toner section (the “host” hopper is used repeatedly for this test; it is not a part of an operating toner cartridge) and the rebuilt waste hopper. The temporarily-assembled unit is inserted in a printer which has been “hot-wired” to bypass the need for an electronic chip, which has not been installed. The cartridge then undergoes a test print to check that the seals do not leak and are capable of producing acceptable quality print. This mechanical test does not evaluate whether the cartridge will operate on its own in a printer. It could not do so, as the cartridge has not been charged with toner and the electronic chip has not been installed; without the chip, the cartridge is not operable, as it cannot communicate with the printer. The “host” hopper is then removed and the three main sub-assembly components (the developer section, the toner hopper, and the waste hopper) are prepared for shipment to Nukote’s Rochester facility.

Final assembly of the printer cartridges occurs at Nukote’s Rochester, New York facility. You state that the substantial majority of the operations at this facility are performed by skilled Nukote quality control and technical operations staff, which must complete a minimum of three to four weeks of training in order to become certified to engage in this activity. These operations consist of the following: (1) Incoming Quality Inspection. You state that the goods arrive without the electronic chip and toner that are necessary for the printer cartridge to perform any useful function. (2) Filling and Sealing. The toner hopper is filled with new chemical toner and the hopper is sealed with a plug. The toner in the first manufacturing process scenario is either of U.S. or foreign origin. (3) Mechanical Assembly. The waste hopper, developer section and toner hopper are assembled with screws, springs and clips. (4) Testing. Nukote “process tests” ten percent of the units for print quality and leakage. All of this testing is performed by a Nukote quality control technician and/or quality engineer. Nukote also “life tests” one to two percent of the units. During this process, all seals, clips, blades, PCRs, and rollers are visually inspected for cleanliness and proper assembly. (5) Inspec-

tion. One hundred percent of the units are visually inspected against a defined inspection criteria. (6) External Cleaning. The exterior of the units is cleaned by a pneumatic air line, a toner dust cloth and a dust collection device. (7) Installation of a Computer Chip. A custom-engineered and IP-protected chip, developed and manufactured in the United States, is manually installed in each unit. The chip enables the printer software to recognize the correct laser cartridge and permits the printer to tabulate the page count and toner volume level. The cartridge is non-functional without this chip. (8) Advance Preparation for Shipment. A shipping protector, lot control tag and shipping seals are applied. (9) Packaging for Shipment. The unit is placed in a shipping bag, protective endcaps are installed, an instruction sheet is added, a customer label is applied, and the unit is sealed in a customer-specific box. (10) Skidding and Shipment. The units are placed on a skid and sent to the shipping warehouse for movement to a distribution center in Tennessee. The cost of U.S. origin components for this scenario will vary from approximately 21% to 74%, depending on whether the toner is of U.S. or foreign origin.

The second process scenario involves conventional monochrome printer cartridges with computer chips. This process is substantially the same as the first process, with the following exceptions. The disassembly process at the foreign facility is slightly less complex because the cartridge itself is less complex than a chemical toner color cartridge. The toner is always of U.S. origin and is much less expensive than the toner for the color cartridge. The cost of the drum is considerably less than in the first scenario. The cost of U.S. origin components will range from approximately 69% to 76%, depending on whether certain components are of U.S. or foreign origin. As in the first scenario, a custom-engineered and IP-protected chip, developed and manufactured in the United States, is manually installed in each unit. The chip enables the printer software to recognize the correct laser cartridge and permits the printer to tabulate the page count and toner volume level.

The third manufacturing process scenario is different from the second only in that there is no computer chip in the third scenario. The cost of U.S. origin components will range from approximately 60% to 68%, depending on whether certain components are of U.S. or foreign origin. As in the second scenario, the toner is always of U.S. origin.

ISSUE:

What is the country of origin of the subject laser printer cartridge models for the purpose of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 CFR 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. §2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. §2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been

substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also, 19 CFR 177.22(a).

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 573 F. Supp. 1149 (Ct. Int'l Trade 1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. *See*, C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97. In C.S.D. 85–25, 19 Cust. Bull. 844 (1985), CBP held that for purposes of the Generalized System of Preferences (“GSP”), the assembly of a large number of fabricated components onto a printed circuit board in a process involving a considerable amount of time and skill resulted in a substantial transformation. In that case, in excess of 50 discrete fabricated components (such as resistors, capacitors, diodes, integrated circuits, sockets, and connectors) were assembled. Whether an operation is complex and meaningful depends on the nature of the operation, including the number of components assembled, number of different operations, time, skill level required, attention to detail, quality control, the value added to the article, and the overall employment generated by the manufacturing process.

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item’s components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, or use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

Nukote collects empty toner cartridges from end users at collection sites in the United States and, to a substantially lesser extent, in Canada, Singapore, the United Kingdom, Hong Kong and China. Nukote also purchases used printer cartridges from United States-based brokers. These used printer cartridges were originally manufactured at various locations in different countries. The cartridges are sorted at one foreign location and are then processed at a second foreign location and subsequently in the United States.

At the second foreign location, the cartridges are split open, disassembled, and separated into three sub-assemblies. Worn components of the sub-assemblies are replaced and made operational again. This work constitutes disassembly of the used cartridges, as well as certain preparation for the processing which will occur in the United States. At this point the goods are tested. It is claimed that the sub-assemblies are not functional without the chip which is later installed in the United States (at least in the two scenarios where the chip is involved).

The processing which occurs at Nukote's Rochester, New York facility includes inspection, filling and sealing, mechanical assembly, testing, cleaning, installation of a computer chip, preparation and packaging for shipment, and shipment. We do not believe these operations are complex enough to result in a substantial transformation of the sub-assemblies. The sub-assemblies are essentially made functional again at the foreign facility. While the chip which makes the cartridge work (in two of the three scenarios) is inserted in the United States, we find that the bringing together of the sub-assemblies in the United States does not result in a substantial transformation of the goods. For example, these operations in the United States are not as significant as those in NY G87305, where the cartridges were completely disassembled; salvageable parts were sorted into bins, cleaned, and reconditioned; major components, including the OPC drum and toner were replaced; and other new components were added.

In HQ 561232, dated April 20, 2004, CBP considered the steps necessary to create a fully functional FM tuner, including adjustments to the oscillator coil, two filter coils, and the demodulator coil, selecting and installing two resistors, and enclosing the item in a metal case. CBP held that "while these additional operations are required to create a fully functional product, and are of a certain complexity requiring technical skill, they do not change the essential character of the PCBA [printed circuit board assembly], which at this stage of production has the characteristics of the imported FM tuner but has not quite achieved full functionality." Therefore, CBP held that there was not a second substantial transformation in the Philippines. We believe that HQ 561232 is relevant here as the imported sub-assemblies possess the characteristics of the printer cartridge but, as imported, have not achieved full functionality.

HOLDING:

The operations performed at Nukote's Rochester, New York facility do not result in a substantial transformation of the cartridges. Therefore, the cartridges will not be considered to be products of the United States.

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

[Published in the Federal Register, August 8, 2007 (72 FR 44566)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, August 8, 2007

The following documents of 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.*

GENERAL NOTICE

19 CFR PART 177

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO NAFTA MARKING OF SINUCLEANSE® PACKETS

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

ACTION: Notice of modification of ruling letters and treatment relating to the NAFTA marking of Sinucleanse® packets.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (“CBP”) is modifying a ruling concerning the NAFTA marking of Sinucleanse® packets under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published on June 6, 2007, in Volume 41, Number 24, of the CUSTOMS BULLETIN. One comment was received in response to the notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after October 21, 2007.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, Tariff Classification and Marking Branch, 202–572–8784.

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 CBP’s obligations, a notice was published in the June 6, 2007, Volume 41, Number 24, CUSTOMS BULLETIN, proposing to modify New York Ruling Letter (NY) N005780, dated February 8, 2007, and to revoke any treatment accorded to substantially identical transactions. One comment was received in support of this notice.

In N005780, CBP ruled that Sinucleanse® packets are products of Mexico and must be marked as such. It is now CBP’s position that NY N005780 is incorrect with regard to the marking of Sinucleanse® packets because the U.S. origin sodium chloride imparts the essential character to the product under 19 CFR § 102.11(b)(1).

As stated in the proposed notice, this modification will cover any rulings on this issue which may exist but have not been specifically identified. Any party, who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue 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 Title VI, CBP is revoking any treatment it previously accorded to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer’s reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice

which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to section 625(c)(1), CBP is modifying NY N005780 and any other ruling not specifically identified, to reflect the proper marking of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) H008509, which is set forth as the Attachment to this notice. Additionally, pursuant to section 625(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: August 2, 2007

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



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

H008509
August 2, 2007
CLA-2 OT:RR:CTF:TCM H008509 ARM
CATEGORY: Marking

MS. ALMA R. CARILLO-GARZA
M.J. CARILLO COMPANY, INC.
P.O. Box 1475
Laredo, TX 78042-1475

RE: Modification of NY N005780; country of origin marking of SinuCleanse®, under the North American Free Trade Agreement (NAFTA)

DEAR MS. CARILLO-GARZA:

This is in response to your request, dated February 13, 2007, on behalf of your client, S.F. Contract Packaging S. de R.L. de C.V. (S.F. Contract Packaging Mexico) of Carretera Internacional Km., to reconsider our decision in N005780, dated February 8, 2007, regarding the country of origin of SinuCleanse®, a medicament consisting of two ingredients, namely: sodium chloride (subheading 2501.00, HTSUS) and sodium bicarbonate (subheading 2836.30, HTSUS). The product is indicated for use as a nasal wash to eliminate mucus buildup, improve nasal breathing, and obtain relief from sinus conditions. In that ruling, we found that pursuant to 19 CFR §102.11(d)(3), the country of origin of the good was Mexico. We have reviewed this ruling and find it to be incorrect with regard to the analysis as to the country of origin.

Notice of the proposed revocation was published on June 6, 2007, in Volume 41, Number 24, of the CUSTOMS BULLETIN. One comment was re-

ceived in response to this notice supporting the proposed modification. This letter modifies that ruling and provides the correct marking of the product.

FACTS:

SinuCleanse® will be imported in granular form put up in sealed packets, each containing 700 mg of sodium bicarbonate (approximately 23% of the final product) and 2300 mg of sodium chloride (approximately 77% of the final product). The packets, in turn, will be put up packed for retail sale in sealed, paperboard containers that contain either 40 or 60 packets per container. You indicate that, in addition to shipping the sealed, paperboard retail packages to the U.S., your client will also ship the packets in bulk, in cartons containing 2,000 packets per carton, to their U.S. customers, who will then repack these packets in sealed paperboard containers for retail sale.

Subsequent to importation, a purchaser would dissolve the contents of 1–2 packets of SinuCleanse® in a SinuCleanse® “Neti Pot” or SinuCleanse® Squeeze^(TM) bottle containing lukewarm water. The resulting solution would then be used to wash the nasal passages. Neither the “Neti Pot” nor the Squeeze^(TM) bottle will be imported with the sealed, paperboard retail packages or the packets shipped in bulk (i.e., in master cartons).

You indicate in your letter that the sodium chloride ingredient will be of U.S. origin and the sodium bicarbonate ingredient will be either of U.S. or Mexican origin. In Mexico, the two ingredients, in apportioned amounts (77/23%), will be blended together, with 3 gms of the blended mixture eventually being placed into an individual packet, which (as noted above) is then sealed and exported to the U.S.

LAW AND ANALYSIS:

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

Section 134.1(b), Customs Regulations (19 CFR 134.1(b)), defines “country of origin” as:

the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of this part; however for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

Section 134.1(j) provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) defines a “good of a NAFTA country” as an article for which the country of origin is Canada, Mexico, or the United States as determined under the NAFTA Marking Rules set out at 19 CFR Part 102.

Section 102.11, Customs Regulations (19 CFR 102.11), sets forth the required hierarchy for determining whether a good is a good of a NAFTA country for the purposes of country of origin marking. Paragraph (a) of this section states that the country of origin of a good is the country in which:

- (1) The good is wholly obtained or produced;
- (2) The good is produced exclusively from domestic materials; or
- (3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in section 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

Since the subject preparation is neither wholly obtained or produced in Mexico, nor produced exclusively from domestic (*i.e.*, Mexican) materials, origin cannot be determined under sections 102.11(a)(1) and 102.11(a)(2) and analysis moves to section 102.11(a)(3).

Section 102.11(a)(3) provides that the country of origin is the country in which “each foreign material incorporated in that good undergoes an applicable change in tariff classification as set forth in 19 CFR 102.20 . . .” The term “foreign material” is defined in 19 CFR 102.1(e) as “a material whose country of origin as determined under these rules is not the same country as the country in which the good is produced.” Therefore, in order to determine whether Mexico is the country of origin, we must look at those materials whose country of origin is other than Mexico. Two scenarios are presented: (1) either just the sodium chloride (classifiable in subheading 2501.00, HTS), originates outside Mexico or (2) the sodium chloride and the sodium bicarbonate, (classifiable in subheading 2836.30, HTS), originate outside Mexico.

19 CFR 102.20(f) states in pertinent part:

3004.90 . . . A change to subheading 3004.90 from any other subheading, except from subheading 3003.90 or 3006.80, and, provided that the domestic content of the therapeutic or prophylactic component is no less than 40 percent by weight of the total therapeutic or prophylactic content.

Both the sodium chloride and sodium bicarbonate are listed as “active ingredients” on the package and both should be considered “prophylactic or therapeutic.” “Domestic material” is defined in 19 CFR § 102.2(d) as “a material whose country of origin as determined under these rules is the same country as the country in which the good is produced.” Since the instant product, packets of Sinucleanse® powder, are produced in Mexico, then “domestic material” would be material from Mexico. However, if both the sodium chloride and the sodium bicarbonate are of U.S. origin, then zero percent of the final product’s prophylactic or therapeutic content is made of domestic material. If the sodium bicarbonate is from Mexico, then only 23% of the final product is made of domestic material. In either scenario, origin cannot be determined under section 102.11(a)(3), because the 40% threshold is not met.

Analysis proceeds to 19 CFR 102.11(b), which provides that:

Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a) of this section:

- (1) The country of origin of the good is the country or countries of origin of the single material that imparts the essential character to the good, or

- (2) If the material that imparts the essential character of the good is fungible, has been commingled, and direct physical identification of the origin of the commingled material is not practical, the country or countries of origin may be determined on the basis of an inventory management method provided under the appendix to part 181 of this chapter.

In NY N005780, we stated that “neither the sodium chloride nor the sodium bicarbonate can be said to impart the essential character to the good” because both ingredients are listed as “active” ingredients, and both are necessary to create the cleansing rinse. We find this statement to be incorrect. 19 CFR §102.18(b)(1) states, in pertinent part, the following:

For purposes of identifying the material that imparts the essential character to a good under Sec. 102.11, the only materials that shall be taken into consideration are those domestic or foreign materials that are classified in a tariff provision from which a change in tariff classification is not allowed under the Sec. 102.20 specific rule or other requirements applicable to the good. . . .

In the instant product, neither the sodium chloride from the U.S., nor the sodium bicarbonate from the U.S. or Mexico, is allowed to undergo a change in tariff classification under the §102.20(f) specific rule for 3004.90, HTS, due to the limitation regarding domestic content of the final product. Therefore, both materials merit equal consideration for determining the essential character of the product.

19 CFR §102.18(b)(2) states:

For purposes of determining which one of two or more materials described in paragraph (b)(1) of this section imparts the essential character to a good under Sec. 102.11, various factors may be examined depending upon the type of good involved. These factors include, but are not limited to, the following:

- (i) The nature of each material, such as its bulk, quantity, weight or value; and
- (ii) The role of each material in relation to the use of the good.

The sodium chloride constitutes almost 77% by weight of the final product. Further, when the mixture is added to water by the ultimate purchaser and used as a sinus rinse, it is the sodium chloride that accounts for the sinus cleansing action. The sodium bicarbonate adjusts the pH of the resulting solution so that it does not cause pain, stinging or discomfort for the user. Therefore, we find that the sodium chloride imparts the essential character of the merchandise.

HOLDING:

Accordingly, the single material that imparts the essential character of the good is the sodium chloride and the country of origin of the packaged SinuCleanse® packets is the United States, pursuant to 19 CFR 102.11(b)(1). Inasmuch as the marking requirements of 19 U.S.C. 1304 are applicable only to articles of “foreign origin,” the packaged SinuCleanse® packets are not required to be marked upon importation into the United States, regardless of the origin of the sodium bicarbonate. We note that claims of domestic origin is a matter under the jurisdiction of the Federal

Trade Commission (FTC). Therefore, should you wish to mark the articles with the phrase “Made in the USA” we recommend that you contact that agency at the following address:

Federal Trade Commission
Division of Enforcement
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580.

EFFECT ON OTHER RULINGS:

N005780, dated February 8, 2007, is modified with respect to the NAFTA marking analysis in accordance with the above holding.

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

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

GENERAL NOTICE

19 CFR PART 177

**PROPOSED REVOCATION OF RULING LETTERS AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
CLASSIFICATION OF AN LCD VIDEO PROJECTOR LAMP
ASSEMBLY UNIT**

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

ACTION: Notice of proposed revocation of ruling letters and treatment relating to the classification of an LCD video projector lamp assembly unit.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP intends to modify a ruling concerning the classification of an LCD video projector lamp assembly unit, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before September 21, 2007.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of International Trade, Regulation and Rulings, At-

tention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at 799 9th St. N.W. 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: Allyson Mattanah, Tariff Classification and Marking Branch (202) 572–8784.

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 (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP intends to revoke a ruling pertaining to the classification of an LCD video projector lamp unit. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) 814533, dated September 19, 1995, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice 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., ruling letter, internal advice memorandum or decision or protest review de-

cision) 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 his agents for importations of merchandise subsequent to this notice.

In NY 814533, CBP ruled that an LCD video projector lamp unit is classified in subheading 9405.40.60, HTSUS, which provides for: "Lamps and lighting fitting including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included: Other electric lamps and lighting fittings: of base metal: Other." NY 814533 is attached as Attachment "A" to this document. However, this ruling cannot be found in Customs Ruling Online Search System ("CROSS"), a database of CBP rulings. Hence, Headquarters, in subsequently considering similar merchandise in HQ 963720, dated December 19, 2000, and HQ 964268, dated October 19, 2001, did not realize that in classifying video projector lamp assemblies under subheading 8529.90.99, HTSUS, which provides for: "Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528: Other: Other: Other," the NY ruling should have been revoked. It has now been brought to our attention that inconsistent rulings on this merchandise exist. It is now CBP's position that this product was not correctly classified in NY 814533 because the lamp unit is designed and solely used with a video projector.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY 814533, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter W967918 (see Attachment "B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: August 6, 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,

NY 814533

September 19, 1995

CLA-2-94:S:N:N3:227 814533

CATEGORY: Classification

TARIFF NO.: 9405.40.6000 ADDICVQ

MR. JOHN HANSON
EPSON AMERICA, INC.
20770 Madrona Avenue
Torrance, CA 90503-3777

RE: The tariff classification of an electric lamp unit from Japan

DEAR MR. HANSON:

In your letter dated August 22, 1995, you requested a tariff classification ruling.

The sample submitted is a lamp assembly for a LCD video projector, item number 1023661, which measures approximately 4 inches high by 4 inches wide. It consists of a 150 watt metal halide lamp that is partially enclosed in an open sided metal frame. It is noted that the electrical connection for the lamp is made by wire via the attachment of two connectors on the frame. It is stated that this lamp assembly can be utilized on multi-media projectors as well as video projectors.

You claim that the subject merchandise is more properly identified as an ADP display unit part and should be classified under subheading 8473.30.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for other parts and accessories of automatic data processing machines, or alternatively under subheading 8539.39.0060, HTS, which provides for other discharge lamps, other than ultraviolet lamps.

In support of classification under subheading 8473.30.5000, HTS, you note that LCD video projectors have previously been classified as display units under subheading 8471.92-3000, HTS, and, therefore, the lamp unit in question, being a display unit part, should be classified under the subheading which provides for such parts. Despite the connectors and framework, it has been determined that the instant article is essentially a lamp, noting its value and function, which is more than just a part of a display unit, thereby precluding classification under subheading 8473.30.5000. Moreover, this unit of electrical wiring with connectors creates a lamp that is more specifically covered under Heading 9405, HTS, therefore also precluding consideration of classification under Heading 8539, HTS, which only provides for bulbs.

The applicable subheading for this lamp assembly, item number 1023661, will be 9405.40.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for other electric lamps and lighting fittings of base metal. The rate of duty will be 7.3 percent ad valorem.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed

without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
*Area Director,
New York Seaport.*

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ W967918
CLA-2 OT:RR:CTF:TCM W967918 ARM
CATEGORY: Classification
TARIFF NO.: 8529.90.99

SUZANNE I. OFFERMAN
BAKER & MCKENZIE LLP
*1114 Avenue of the Americas
New York, NY 10036*

RE: Reconsideration of NY 814533

DEAR MS. OFFERMAN:

This is in response to your colleague's letter, dated September 27, 2005, on behalf of Epson America, requesting reconsideration of New York (NY) Ruling Letter 814533, dated September 19, 1995, regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a LCD projector lamp unit, imported from Japan. You have since informed Customs and Border Protection ("CBP") that you are now the assigned attorney to this case.

We have reconsidered NY 814533. However, for the reasons stated below, we propose to revoke NY 814533 in favor of the holding and analysis in Headquarters Ruling (HQ) 964268, dated October 19, 2001.

FACTS:

The merchandise consists of LCD lamp projector units. The projector lamp units consist of a lamp, cemented inside a glass housing. Attached to the lamp is a housing, PCB and a wiring harness unit. The lamp projector units are exclusively designed for placement in, and solely used with, a multimedia projector. The lamp projects computer-generated images or images generated from a video source, such as a DVD player or satellite television receiver.

ISSUE:

Are these LCD lamp projector units specialized lamps of heading 9405, HTSUS, or parts of a multimedia projector of heading 8529, HTSUS?

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely

on the basis of GRI 1, HTSUS, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitutes the official interpretation of the HTSUS at the international level. The ENs, although not dispositive, are used to determine the proper interpretation of the HTSUS by providing a commentary on the scope of each heading of the HTSUS. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

8529 Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528:

8529.90 Other:

Other:

8529.90.99 Other . . .

* * * * *

9405 Lamps and lighting fitting including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:

9405.40 Other electric lamps and lighting fittings:

Of base metal:

9405.40.60 Other . . .

Chapter 94, Note 1(f) states that the chapter does not cover “lamps or lighting fittings of Chapter 85.” In HQ 964268, dated October 19, 2001, citing HQ 963720, dated December 19, 2000, we found that substantially similar merchandise was indeed classified in Chapter 85 as a part of a machine classified in headings 8525 to 8528, HTSUS.

The instant lamp assembly units are similar to those found in HQ 964268 in that they are solely used in a multimedia machine, most often a video projector or the like. These lamp assemblies are necessary components of a projector so that one may visualize the projected image. Moreover, these lamp assemblies cannot be used as lamps or in any fashion other than as a component of a projector. Video projectors are classified in heading 8528 (see HQ 964043, dated July 25, 2000, and HQ 964159, dated July 25, 2000, classifying LCD projectors in heading 8528, HTSUS). Therefore, the lamp assembly, which is a part suitable for use solely or principally with video projectors, is classified in heading 8529, HTSUS. As such, the lamp assemblies are excluded from classification in heading 9405, HTSUS, by virtue of Chapter 94, note 1(f).

HOLDING:

By application of GRI 1, LCD lamp assembly units are classified in heading 8529, HTSUS, specifically subheading 8529.90.99, HTSUS, which provides for: “Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528: Other: Other: Other.”

EFFECT ON OTHER RULINGS:

NY 814533 is revoked. HQ rulings 963720 and 964268 are affirmed.

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

GENERAL NOTICE

**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO TARIFF CLASSIFICATION
OF MICRO SILICA SAND**

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

ACTION: Notice of revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of micro silica sand.

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 micro silica sand under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published on June 13, 2007, in Volume 41, Number 25, 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 October 21, 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 one ruling letter pertaining to the tariff classification of micro silica sand was published in the June 13, 2007, CUSTOMS BULLETIN, Volume 41, Number 25. 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 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 955742, CBP ruled that micro silica sand was classified in heading 2620, HTSUS, which provided for "Ash and residues (other than from the manufacture of iron or steel) containing metals or metal compounds."¹ 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 HQ 955742 and is revoking or modifying any other ruling not specifically identified, to reflect the proper classification of micro silica sand according to the analysis contained in Headquarters Ruling Letter (HQ) H003743, set forth as an Attachment. Additionally, pursuant to 19

¹Heading 2620 in the 2007 HTSUS provides for "Slag, ash and residues (other than from the manufacture of iron or steel), containing arsenic, metals or their compounds."

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: August 6, 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 H003743
August 6, 2007
CLA-2 OT:RR:CTF:TCM H003743 KSH
CATEGORY: Classification
TARIFF NO.: 2621.90.0000

MR. GREG KONESKI
RANDY INTERNATIONAL LTD.
1031 W. Manchester Blvd. #D
Inglewood, CA 90301

RE: Revocation of Headquarters Ruling Letter (HQ) 955742, dated April 7, 1994; Classification of micro silica sand.

DEAR MR. KONESKI:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered Headquarters Ruling Letter (HQ) 955742, issued to you on behalf of your client, Microcell Australia, on April 7, 1994, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of micro silica sand. The micro silica sand was classified under heading 2620, HTSUS, which provided for “[a]sh and residues (other than from the manufacture of iron or steel) containing metals or metal compounds.”² We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes HQ 955742.

HQ 955742 is a decision on a specific protest. A protest is designed to handle entries of merchandise which have entered the U.S. and been liquidated by CBP. A final determination of a protest, pursuant to Part 174, Customs Regulations (19 CFR 174), cannot be modified or revoked as it is applicable only to the merchandise which was the subject of the entry protested. Furthermore, CBP lost jurisdiction over the protested entries in HQ 955742 when notice of denial of the protest was received by the protestant. See, San Francisco Newspaper Printing Co. v. U.S., 9 CIT 517, 620 F.Supp. 738 (1935).

²Heading 2620 in the 2007 HTSUS provides for “Slag, ash and residues (other than from the manufacture of iron or steel), containing arsenic, metals or their compounds.”

However, CBP can modify or revoke a protest review decision to change the legal principles set forth in the decision. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), 60 days after the date of issuance, CBP may propose a modification or revocation of a prior interpretive ruling or decision by publication and solicitation of comments in the CUSTOMS BULLETIN. This revocation will not affect the entries which were the subject of Protest 1001–93–105468, but will be applicable to any unliquidated entries, or future importations of similar merchandise 60 days after publication of the final notice of revocation in the CUSTOMS BULLETIN, unless an earlier date is requested pursuant to 19 CFR 177.12(e)(2)(ii).

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 June 13, 2007, in Volume 41, Number 25, of the CUSTOMS BULLETIN. CBP received no comments in response to the notice.

FACTS:

The product at issue is micro silica sand, D–124 Litefil, which is a lightweight mineral filler used as a partial replacement of heavyweight fillers, i.e., replacement of heavyweight aggregates used in hydraulic cement based slurries for oil/gas well drilling. It is a by-product of fly ash, a waste material derived from the combustion of coal at power stations. The power station disposes of the fly ash by sluicing it into an ash storage dam. The lightweight portion of the ash separates from the heavyweight portion by floating to the surface of the water in the ash dam. The lightweight ash is then extracted from the ash dam, allowed to de-water, dried, screened and packaged for shipment. The chemical composition of the micro silica sand is 55% silica, 43% alumina and less than 1% iron.

ISSUE:

Whether the micro silica sand is classified in heading 2620, HTSUS, as “Slag, ash and residues (other than from the manufacture of iron or steel), containing arsenic, metals or their compounds”, or in heading 2621, HTSUS, as “Other slag and ash, including seaweed ash (kelp).”

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 HTSUS at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is Customs and Border Protection’s (CBP) practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 2620, HTSUS, provides for “Slag, ash and residues (other than from the manufacture of steel or iron), containing arsenic, metals or their compounds.”

The EN to heading 2620, HTSUS, provide in relevant part:

This heading covers slag, ash and residues (**other than** those of heading **26.18, 26.19** or **71.12**) which containing (sic) metals, arsenic (whether or not containing metals), their compounds, and which are of a kind used in industry either for the extraction of arsenic or metals or as a basis for the manufacture of their chemical compounds. They result from the treatment of ores or intermediate metallurgical products (such as mattes) or from electrolytic, chemical or other processes which do not involve the mechanical working of metal. . . .

The micro silica sand contains metals, namely aluminum oxides. However, the micro silica sand is not of a kind used in industry for the extraction of arsenic, metals or as a basis for the manufacture of chemical compounds. Rather, it is used as a filler in cement or as an extender for plastic compounds. Moreover, it does not result from the treatment of ores or intermediate metallurgical products (such as mattes) or from electrolytic, chemical or other processes which do not involve the mechanical working of metal. Accordingly, the micro silica sand cannot be classified in heading 2620, HTSUS.

Heading 2621, HTSUS, provides for among other things, “Other slag and ash, including seaweed ash (kelp).”

The EN to heading 2621, HTSUS, provides in relevant part:

This heading covers slag and ash **not falling in heading 26.18, 26.19** or **26.20**, derived from the working of ores or from metallurgical processes, as well as those derived from any other material or process. Although many of the products are used as fertilisers they are classified here and not in Chapter 31 (**except** in the case of basic slag).

The products covered include:

* * *

(1) Ash and clinker of mineral origin produced primarily from burning coal, lignite, peat or oil in utility boilers. Its principal uses are as a raw material for cement manufacture, as a supplement to cement in concrete, in mine backfill, as a mineral filler in plastics and paints, as a lightweight aggregate in building block manufacture and in civil engineering structures such as embankments, highway ramps and bridge abutments. It includes:

- (a) Fly ash - finely divided particles entrained in furnace flue gases and removed from the gas stream by bag or electrostatic filters;
- (b) Bottom ash - more coarse ash removed by settlement from the gas stream immediately after leaving the furnace;
- (c) Boiler slag - coarse residues removed from the bottom of the furnace;
- (d) Fluidised bed combustor ash (FBC-ash) - inorganic residues from burning coal or oil in a fluidised bed of limestone or of dolomite.

The micro silica sand is derived from fly ash, a waste material derived from the combustion of coal at power stations. The micro silica sand is then extracted from the ash dam, allowed to de-water, dried, screened and packaged for shipment. The EN to heading 2621, HTSUS, explicitly states that the products of this heading are of, among other products, mineral origin, e.g. coal. Accordingly, the micro silica sand is classified in heading 2621, HTSUS.

HOLDING:

The micro silica sand is classified in heading 2621, HTSUS. It is provided for in subheading 2621.90.0000, HTSUS, which provides for “Other slag and ash, including seaweed ash (kelp); ash and residues from the incineration of municipal waste: Other.” The general column one rate of duty is free.

EFFECT ON OTHER RULINGS:

HQ 955742 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.


GENERAL NOTICE**REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF TABLEWARE AVAILABLE IN SPECIFIED SETS**

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

ACTION: Notice of revocation of tariff classification ruling letters and revocation of treatment relating to the classification of tableware available in specified sets.

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 five ruling letters relating to the tariff classification of tableware available in specified sets 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 May 30, 2007, in Volume 41, Number 23, of the CUSTOMS BULLETIN. CBP received one comment in support of the proposed revocations.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 21, 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 five ruling letters pertaining to the tariff classification of tableware available in specified sets was published in the May 30, 2007, CUSTOMS BULLETIN, Volume 41, Number 23. One comment in support of the proposed revocations was 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 HQ 967989, HQ 967920, HQ 967792, HQ 955838, and NY K87695, CBP ruled that certain dinnerware or tableware was not classifiable under provisions for such goods “available in specified sets.” These determinations were based upon the language of Additional U.S. Note 6 to Chapter 69 and CBP’s reading of the dimen-

sional requirements of Additional U.S. Note 6(b) to chapter 69, HTSUSA.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ 955838, HQ 967792, HQ 967920, HQ 967989 and NY K87695, and revoking or modifying any other ruling not specifically identified, to reflect the proper classification of tableware available in specified sets according to the analysis contained in Headquarters Ruling Letters W968400, H004625, H004642, H004643 and H010776 set forth as Attachments A-E. 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: August 6, 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 W968400

August 6, 2007

CLA-2 OT:RR:CTF:TCM W968400 KSH

CATEGORY: Classification

TARIFF NO.: 6911; 6912

STUART P. SEIDEL, ESQ.
BAKER & MCKENZIE LLP
815 Connecticut Avenue, NW
Washington, D.C. 20006

RE: Revocation of Headquarters Ruling Letter (HQ) 967989, dated February 14, 2006; Interpretation of “available in specified sets” maximum size descriptions of Additional U.S. Note 6 to Chapter 69, HTSUSA

DEAR MR. SEIDEL:

On February 14, 2006, we issued Headquarters Ruling Letter (HQ) 967989, Internal Advice 05-028, to the Port of Los Angeles (Seaport) regarding the interpretation of “available in specified sets” maximum size language of Additional U.S. Note 6 to Chapter 69, of the Harmonized Tariff Schedule of the United States (HTSUS). The request for internal advice was initiated on behalf of Noritake Co., Inc. In that decision, it was determined that the language of Additional U.S. Note 6 to Chapter 69 is unequivocal such that an article cannot exceed the dimensional descriptions of Addi-

tional U.S. Note 6(b) to chapter 69, HTSUSA, and still allow for goods described in U.S. Note 6(a) to be classified as being “available in specified sets” in heading 6911 or 6912, HTSUSA.

By letter dated September 5, 2006, you requested, on behalf of Noritake Co. Inc., reconsideration of HQ 967989. We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes HQ 967989.

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 May 30, 2007, in Volume 41, Number 23, of the CUSTOMS BULLETIN. CBP received one comment in support of the proposed revocation.

FACTS:

Noritake imports ceramic tableware articles in specific patterns. It offers sets for sale consisting of the articles listed in Additional U.S. Note 6(b) in such patterns. Some of the tableware articles in these sets, however, exceed the maximum dimensions set forth in Additional U.S. Note 6 to Chapter 69, HTSUSA, for such respective articles.

ISSUE:

Whether an article described in U.S. Note 6(b) to Chapter 69 may exceed the dimensional descriptions therein and not preclude classification of articles described in U.S. Note 6(a) as “available in specified sets” in heading 6911 or 6912, HTSUS.

LAW AND ANALYSIS:

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

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

Additional U.S. Note 6 to Chapter 69, HTSUS, reads:

6. For the purposes of headings 6911 and 6912:

(a) The term “available in specified sets” embraces plates, cups, saucers and other articles principally used for preparing, serving or storing food or beverages, or food or beverage ingredients, which are sold or offered for sale in the same pattern, but no article is classifiable as being “available in specified sets” unless it is of a pattern in which at least the articles listed below in (b) of this note are sold or offered for sale.

(b) If each of the following articles is sold or offered for sale in the same pattern, the classification hereunder in subheadings 6911.10.35, 6911.10.37, 6911.10.38, 6912.00.35 or 6912.00.39, of all articles of such pattern shall be governed by the aggregate value of the following articles in the quantities indicated, as determined by the appropriate cus-

toms officer under section 402 of the Tariff Act of 1930, as amended, whether or not such articles are imported in the same shipment:

- 12 plates of the size nearest to 26.7 cm in maximum dimension, sold or offered for sale,
- 12 plates of the size nearest to 15.3 cm in maximum dimension, sold or offered for sale,
- 12 tea cups and their saucers, sold or offered for sale,
- 12 soups of the size nearest to 17.8 cm in maximum dimension, sold or offered for sale,
- 12 fruits of the size nearest to 12.7 cm in maximum dimension, sold or offered for sale,
- 1 platter or chop dish of the size nearest to 38.1 cm in maximum dimension, sold or offered for sale,
- 1 open vegetable dish or bowl of the size nearest to 25.4 cm in maximum dimension, sold or offered for sale,
- 1 sugar of largest capacity, sold or offered for sale,
- 1 creamer of largest capacity, sold or offered for sale.

If either soups or fruits are not sold or offered for sale, 12 cereals of the size nearest to 15.3 cm in maximum dimension, sold or offered for sale, shall be substituted therefor.

Additional U.S. Note 6 to Chapter 69, HTSUS, was adopted from the former Tariff Schedules of the United States (TSUS). Schedule 5 of the TSUS (1987) contained the following headnote:

2. (a) For the purposes of this subpart, the term “available in specified sets” (items 533.22, 533.24, 533.62 and 533.64) embraces plates, cups, saucers and other articles chiefly used for preparing, serving or storing food or beverages, or food or beverage ingredients, which are sold or offered for sale in the same pattern, but no article is classifiable as being “available in specified sets” unless it is of a pattern in which at least the articles listed below in (b) of this headnote are sold or offered for sale.

(b) If each of the following articles is sold or offered for sale in the same pattern, the classification hereunder in items 533.22, 533.24, 533.62 or 533.64, of all articles of such pattern shall be governed by the aggregate value of the following articles in the quantities indicated, as determined by the appropriate customs officer under section 402 of the Tariff Act of 1930, as amended, whether or not such articles are imported in the same shipment:

- 12 plates of the size nearest to 10.5 inches in maximum dimension, sold or offered for sale,
- 12 plates of the size nearest to 6 inches in maximum dimension, sold or offered for sale,
- 12 tea cups and their saucers, sold or offered for sale,
- 12 soups of the size nearest to 7 inches in maximum dimension, sold or offered for sale,
- 12 fruits of the size nearest to 5 inches in maximum dimension, sold or offered for sale,

1 platter or chop dish of the size nearest to 15 inches in maximum dimension, sold or offered for sale,

1 open vegetable dish or bowl of the size nearest to 10 inches in maximum dimension, sold or offered for sale,

1 sugar of largest capacity, sold or offered for sale,

1 creamer of largest capacity, sold or offered for sale.

If either soups or fruits are not sold or offered for sale, 12 cereals of the size nearest to 6 inches in maximum dimension, sold or offered for sale, shall be substituted therefor.

Tariff Classification Study, Seventh Supplemental Report (Aug 14, 1963), Appendix C titled “Additional Explanatory Notes and Background Materials” explained the meaning of the term “maximum dimension” as it appeared in the TSUS. It stated in relevant part:

The term “of the size nearest to” in headnote 2(b) of this subpart means either more or less than the dimension specified, and within a rather wide range. For example, as indicated in the original explanatory notes on page 84, “the size nearest to 6 inches in maximum dimension” may actually be a salad plate of more than 8-inch diameter. The size nearest to 10-1/2 inches in maximum dimension is intended to designate a dinner plate, however, and even though any plate over 8-1/4 inches in diameter would be nearer to 10-1/2 inches than to 6 inches in diameter, it could hardly be considered to be a dinner plate unless it were over 9 inches in maximum dimension. The term “maximum dimension” means the maximum straight-line distance from edge to edge across the face or top of the article whose dimension is specified.

Despite the minor changes in the provisions converted from the TSUS to the HTSUS, we determined in HQ 967989, that while the Seventh Supplemental Report “did indicate that the dimensions for table and kitchen pottery claimed to be ‘available in specified sets’ could be larger or smaller than the dimensional requirements set forth for such articles in the TSUS, no similar note was adopted for the HTSUS” and we concluded that this evidenced Congress’ intent that no such tolerances should apply to Additional U.S. Note 6 to Chapter 69, HTSUS.

Unless a contrary legislative intent is shown, tariff terms are construed in accordance with their common and commercial meanings, which are presumed to be the same. See, e.g., Nippon Kogaku (USA), Inc. v. United States, 673 F.2d 380, 382 (1982); Schott Optical Glass, Inc. v. United States, 612 F.2d 1283, 1285 (1979). The common meaning of a tariff term presents a question of law to be decided by the court. American Express Co. v. United States, 10, C.A.D. 456 (1951). In cases where a term is defined by statute, the court need not undertake a common-meaning inquiry, for the statutory definition is controlling. Overton & Co. v. United States, 85 Cust. Ct. 76, 80–81 (1980). Absent an express definition, however, dictionaries, lexicons, scientific authorities, and other such reliable sources may be consulted to determine common meaning. C.J. Tower & Sons of Buffalo, Inc. v. United States, 673 F.2d 1268, 1271 (1982).

It may appear that the TSUS interpretation of “maximum dimension” was deliberately abandoned as the HTSUS failed to provide any alternative definition despite retaining the term in Additional Note 6 to Chapter 69, HTSUS. However, “the common meaning of a tariff term, once established,

remains controlling until a subsequent change in statute compels a revised construction of the term's meaning." United States v. Great Pacific Co., 324, T.D. 48192 (1936); see Sears, Roebuck & Co. v. United States, 83, C.A.D. 701(1959). Absent clear evidence of legislative intent to embrace an alternative statutory definition, and in light of its historical pedigree, the TSUS definition of the term "maximum dimension" survives as the common and commercial meaning of the term under the HTSUS. Lonza, Inc. v. United States, 46 F.3d 1098 (Fed. Cir. 1995).

Where the text of a tariff provision has undergone only minor changes from the TSUS to the HTSUS, the high values of uniformity and predictability — not to mention the merits of honoring Congress' decision to retain prior policy — counsel courts to credit prior decisions interpreting the TSUS provision. See, e.g., Pima Western, Inc. v. United States, 915 F. Supp. 399, 404–05 (Ct. Int'l Trade 1996) (“[O]n a case-by-case basis prior decisions should be considered instructive in interpreting the HTS[US], particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTS[US].” (quoting the Conference Report on the Omnibus Trade Act of 1988, H.R. Conf. Rep. No. 576, 100th Cong., 2d Sess. 515, 549–50 (1988)). Hewlett-Packard Co. v. United States, 189 F.3d 1346 at 1349 (Fed. Cir. 1999).

As there have been no major changes to the tariff provisions for articles “available in specified sets” from the TSUS to the HTSUS and no dissimilar interpretation is required by the text of the HTSUS, there is no clear evidence which would require a different interpretation than that given under the TSUS. The term “maximum dimension” refers to the straight-line distance across the face or top of the article whose dimension is specified. It does not place a limit on the size of the item. An article specified in U.S. Note 6(b) to Chapter 69 may exceed the noted dimension so long as it is a reasonable variation. Accordingly, an article described in U.S. Note 6(a) may be classified as being “available in specified sets” in heading 6911 or 6912, HTSUS, even if it, or another article listed in U.S. Note 6(b), exceeds the dimensional descriptions of Additional U.S. Note 6, HTSUS, so long as the dimensional variation is reasonable and provided sufficient evidence is submitted that all 77 pieces of the set are being sold or offered for sale.

HOLDING:

An article may exceed the dimensional descriptions of Additional U.S. Note 6 to Chapter 69, HTSUS, and be classified as being “available in specified sets” in heading 6911 or 6912, HTSUS, and not preclude classification of matching articles described in U.S. Note 6(a) to Chapter 69 as “available in specified sets”, so long as the dimensional variation is reasonable and provided sufficient evidence is submitted that all 77 pieces of the set are being sold or offered for sale.

EFFECT ON OTHER RULINGS:

HQ 967989 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.

[ATTACHMENT B]

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

HQ H004625
August 6, 2007
CLA-2 OT:RR:CTF:TCM H004625 KSH
TARIFF NO.: 6912.00.39

HIMARK ENTERPRISES, INC.
155 Commerce Drive
Hauppauge, NY 11787

RE: Revocation of Headquarters Ruling Letter (HQ) 955838, dated August 8, 1994; Classification of Ceramic tableware; Additional U.S. Note 6 (a) and (b), Chapter 69.

DEAR SIR OR MADAM:

This is in reference to Headquarters Ruling Letter (HQ) 955838 issued to the Regional Commissioner of Customs, New York, NY, on August 8, 1994, with regard to protest 1001-93-105468 concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUSA), of ceramic tableware. The articles were classified in subheading 6912.00.48, HTSUS, as other ceramic tableware and kitchenware. Since the issuance of that ruling, the Bureau of Customs and Border Protection (CBP) has reviewed the classification of this item and has determined that the cited ruling is in error.

HQ 955838 is a decision on a specific protest. A protest is designed to handle entries of merchandise which have entered the U.S. and been liquidated by CBP. A final determination of a protest, pursuant to Part 174, Customs and Border Protection (CBP) Regulations (19 CFR 174), cannot be modified or revoked as it is applicable only to the merchandise which was the subject of the entry protested. Furthermore, CBP lost jurisdiction over the protested entries in HQ 955838 when notice of denial of the protest was received by the protestant. See, *San Francisco Newspaper Printing Co. v. U.S.*, 9 CIT 517, 620 F.Supp. 738 (1935).

However, CBP can modify or revoke a protest review decision to change the legal principles set forth in the decision. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), 60 days after the date of issuance, CBP may propose a modification or revocation of a prior interpretive ruling or decision by publication and solicitation of comments in the CUSTOMS BULLETIN. This revocation will not affect the entries which were the subject of Protest 1001-93-105468, but will be applicable to any unliquidated entries, or future importations of similar merchandise 60 days after publication of the final notice of revocation in the CUSTOMS BULLETIN, unless an earlier date is requested pursuant to 19 CFR 177.12(e)(2)(ii).

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 May 30, 2007, in Volume 41, Number 23, of the CUSTOMS BULLETIN. CBP received one comment in support of the proposed revocation.

FACTS:

The articles in question are ceramic rice platters, salad bowls, and 5 piece pasta sets. All three articles were imported in the “Caffe Italia” pattern. A sample of a 20.3 cm plate was provided. Additionally, some of the salad bowls were imported in a “Morning Mist” pattern and some rice platters were imported in a “San Remo” pattern.

You provided a manufacturer’s price list that indicates that each pattern is available in a 77 piece set valued over \$38. The price lists indicate that all three patterns contain the following:

| | |
|----|--------------------------------|
| 12 | 26.42 cm dinner plates |
| 12 | 21.34 cm soup plates |
| 12 | 20.32 cm fruit plates |
| 12 | 12.7 cm bread plates |
| 12 | teacups with saucers |
| 1 | 39.88 cm x 61.31 cm oval plate |
| 1 | 21.59 cm salad bowl |
| 1 | sugar with cover |
| 1 | creamer |

ISSUE:

Whether the tableware meets the “available in specified sets” requirements of U.S. Note 6(b) to chapter 69, HTSUS.

LAW AND ANALYSIS:

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

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

Additional U.S. Note 6 to Chapter 69, HTSUS, reads:

6. For the purposes of headings 6911 and 6912:

(a) The term “available in specified sets” embraces plates, cups, saucers and other articles principally used for preparing, serving or storing food or beverages, or food or beverage ingredients, which are sold or offered for sale in the same pattern, but no article is classifiable as being “available in specified sets” unless it is of a pattern in which at least the articles listed below in (b) of this note are sold or offered for sale.

(b) If each of the following articles is sold or offered for sale in the same pattern, the classification hereunder in subheadings 6911.10.35, 6911.10.37, 6911.10.38, 6912.00.35 or 6912.00.39, of all articles of such pattern shall be governed by the aggregate value of the following articles in the quantities indicated, as determined by the appropriate customs officer under section 402 of the Tariff Act of 1930, as amended, whether or not such articles are imported in the same shipment:

12 plates of the size nearest to 26.7 cm in maximum dimension, sold or offered for sale,

12 plates of the size nearest to 15.3 cm in maximum dimension, sold or offered for sale,

12 tea cups and their saucers, sold or offered for sale,

12 soups of the size nearest to 17.8 cm in maximum dimension, sold or offered for sale,

12 fruits of the size nearest to 12.7 cm in maximum dimension, sold or offered for sale,

1 platter or chop dish of the size nearest to 38.1 cm in maximum dimension, sold or offered for sale,

1 open vegetable dish or bowl of the size nearest to 25.4 cm in maximum dimension, sold or offered for sale,

1 sugar of largest capacity, sold or offered for sale,

1 creamer of largest capacity, sold or offered for sale.

If either soups or fruits are not sold or offered for sale, 12 cereals of the size nearest to 15.3 cm in maximum dimension, sold or offered for sale, shall be substituted therefor.

Additional U.S. Note 6 to Chapter 69, HTSUS, was adopted from the former Tariff Schedules of the United States (TSUS). Schedule 5 of the TSUS (1987) contained the following headnote:

2. (a) For the purposes of this subpart, the term “available in specified sets” (items 533.22, 533.24, 533.62 and 533.64) embraces plates, cups, saucers and other articles chiefly used for preparing, serving or storing food or beverages, or food or beverage ingredients, which are sold or offered for sale in the same pattern, but no article is classifiable as being “available in specified sets” unless it is of a pattern in which at least the articles listed below in (b) of this headnote are sold or offered for sale.

(b) If each of the following articles is sold or offered for sale in the same pattern, the classification hereunder in items 533.22, 533.24, 533.62 or 533.64, of all articles of such pattern shall be governed by the aggregate value of the following articles in the quantities indicated, as determined by the appropriate customs officer under section 402 of the Tariff Act of 1930, as amended, whether or not such articles are imported in the same shipment:

12 plates of the size nearest to 10.5 inches in maximum dimension, sold or offered for sale,

12 plates of the size nearest to 6 inches in maximum dimension, sold or offered for sale,

12 tea cups and their saucers, sold or offered for sale,

12 soups of the size nearest to 7 inches in maximum dimension, sold or offered for sale,

12 fruits of the size nearest to 5 inches in maximum dimension, sold or offered for sale,

1 platter or chop dish of the size nearest to 15 inches in maximum dimension, sold or offered for sale,

- 1 open vegetable dish or bowl of the size nearest to 10 inches in maximum dimension, sold or offered for sale,
- 1 sugar of largest capacity, sold or offered for sale,
- 1 creamer of largest capacity, sold or offered for sale.

If either soups or fruits are not sold or offered for sale, 12 cereals of the size nearest to 6 inches in maximum dimension, sold or offered for sale, shall be substituted therefor.

Tariff Classification Study, Seventh Supplemental Report (Aug 14, 1963), Appendix C titled “Additional Explanatory Notes and Background Materials” explained the meaning of the term “maximum dimension” as it appeared in the TSUS. It stated in relevant part:

The term “of the size nearest to” in headnote 2(b) of this subpart means either more or less than the dimension specified, and within a rather wide range. For example, as indicated in the original explanatory notes on page 84, “the size nearest to 6 inches in maximum dimension” may actually be a salad plate of more than 8-inch diameter. The size nearest to 10–1/2 inches in maximum dimension is intended to designate a dinner plate, however, and even though any plate over 8–1/4 inches in diameter would be nearer to 10–1/2 inches than to 6 inches in diameter, it could hardly be considered to be a dinner plate unless it were over 9 inches in maximum dimension. The term “maximum dimension” means the maximum straight-line distance from edge to edge across the face or top of the article whose dimension is specified.

Unless a contrary legislative intent is shown, tariff terms are construed in accordance with their common and commercial meanings, which are presumed to be the same. See, e.g., Nippon Kogaku (USA), Inc. v. United States, 673 F.2d 380, 382 (1982); Schott Optical Glass, Inc. v. United States, 612 F.2d 1283, 1285 (1979). The common meaning of a tariff term presents a question of law to be decided by the court. American Express Co. v. United States, 10, C.A.D. 456 (1951). In cases where a term is defined by statute, the court need not undertake a common-meaning inquiry, for the statutory definition is controlling. Overton & Co. v. United States, 85 Cust. Ct. 76, 80–81 (1980). Absent an express definition, however, dictionaries, lexicons, scientific authorities, and other such reliable sources may be consulted to determine common meaning. C.J. Tower & Sons of Buffalo, Inc. v. United States, 673 F.2d 1268, 1271 (1982).

“The common meaning of a tariff term, once established, remains controlling until a subsequent change in statute compels a revised construction of the term’s meaning.” United States v. Great Pacific Co., 324, T.D. 48192 (1936); see Sears, Roebuck & Co. v. United States, 83, C.A.D. 701(1959). Absent clear evidence of legislative intent to embrace an alternative statutory definition, and in light of its historical pedigree, the TSUS definition of the term “maximum dimension” survives as the common and commercial meaning of the term under the HTSUS. Lonza, Inc. v. United States, 46 F.3d 1098 (Fed. Cir. 1995).

Where the text of a tariff provision has undergone only minor changes from the TSUS to the HTSUS, the high values of uniformity and predictability — not to mention the merits of honoring Congress’ decision to retain prior policy — counsel courts to credit prior decisions interpreting the TSUS provision. See, e.g., Pima Western, Inc. v. United States, 915 F. Supp. 399, 404–05 (Ct. Int’l Trade 1996) (“[O]n a case-by-

case basis prior decisions should be considered instructive in interpreting the HTS[US], particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTS[US].’ ”) (quoting the Conference Report on the Omnibus Trade Act of 1988, H.R. Conf. Rep. No. 576, 100th Cong., 2d Sess. 515, 549–50 (1988)). Hewlett-Packard Co. v. United States, 189 F.3d 1346 at 1349 (Fed. Cir. 1999).

In HQ 955838, we determined that the tableware at issue:

. . . do not meet the necessary size requirements to be considered “available in specified sets”. As the measurements in the note above indicate, a “cereal” can not exceed 15.3 cm. Protestant’s plate is 20.3 cm. It is too large to be substituted for a fruit plate or a cereal bowl. Therefore, the dinnerware is not considered “available for sale in specified sets.”

However, as there have been no major changes to the tariff provisions for articles “available in specified sets” from the TSUS to the HTSUS and no dissimilar interpretation is required by the text of the HTSUS, there is no clear evidence which would require a different interpretation than that given under the TSUS. The term “maximum dimension” refers to the straight-line distance across the face or top of the article whose dimension is specified. It does not place a limit on the size of the item. An article specified in US Note 6(b) to Chapter 69 may exceed the noted dimension so long as it is a reasonable variation. Accordingly, an article described in U.S. Note 6(a) may be classified as being “available in specified sets” in heading 6911 or 6912, HTSUS, even if it, or another article listed in U.S. Note 6(b), exceeds the dimensional descriptions of Additional U.S. Note 6, HTSUS, so long as the dimensional variation is reasonable and provided sufficient evidence is submitted that all 77 pieces of the set are being sold or offered for sale. The ceramic tableware at issue is classified in subheading 6912.00.39, HTSUS.

HOLDING:

The ceramic tableware is classified in heading 6912, HTSUS (2007). Specifically, it is provided for in subheading 6912.00.3900, HTSUS, which provides for “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Other: Available in specified sets: In any pattern for which the aggregate value of the articles listed in additional U.S. Note 6(b) of this chapter is over \$38.” The applicable rate of duty is 4.5 percent *ad valorem*.

EFFECT ON OTHER RULINGS:

HQ 955838, dated August 8, 1994, 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.

CC: Port of New York/Newark

[ATTACHMENT C]

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

HQ H004642
August 6, 2007
CLA-2 OT:RR:CTF:TCM H004642 KSH
CATEGORY: Classification
TARIFF NO.: 6911.10.35

MR. CURT DEVLIN
ACTION INDUSTRIES, INC.
460 Nixon Rd.
Cheswick, PA 15024

RE: Revocation of Headquarters Ruling Letter (HQ) 967920, dated January 20, 2006; Interpretation of "available in specified sets" maximum size descriptions of Additional U.S. Note 6 to Chapter 69, HTSUSA

DEAR MR. DEVLIN:

On January 20, 2006, we issued Headquarters Ruling Letter (HQ) 967920, to you regarding the tariff classification of certain porcelain tableware "available in specified sets" under the Harmonized Tariff Schedule of the United States ("HTSUS"). In HQ 967920, we determined that inasmuch as some of the articles in the porcelain dinnerware at issue exceeded the maximum dimension set forth in the HTSUS, the goods were classifiable under subheading 6911.10.8010, HTSUS.

We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes HQ 967920.

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 May 30, 2007, in Volume 41, Number 23, of the CUSTOMS BULLETIN. CBP received one comment in support of the proposed revocation.

FACTS:

The merchandise is porcelain dinnerware that is identified as in the Joy Of Christmas pattern, Item Number 17637. Previous information submitted indicated that the patterns are principally for household use. It was stated that the aggregate value of the porcelain dinnerware was not over \$56.

ISSUE:

Whether an article described in U.S. Note 6(b) to Chapter 69 may exceed the dimensional descriptions therein and not preclude classification of articles described in U.S. Note 6(a) as "available in specified sets" in heading 6911 or 6912, HTSUS.

LAW AND ANALYSIS:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the

EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. It is Customs and Border Protection's (CBP) practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Additional U.S. Note 6 to Chapter 69, HTSUS, reads:

6. For the purposes of headings 6911 and 6912:

(a) The term "available in specified sets" embraces plates, cups, saucers and other articles principally used for preparing, serving or storing food or beverages, or food or beverage ingredients, which are sold or offered for sale in the same pattern, but no article is classifiable as being "available in specified sets" unless it is of a pattern in which at least the articles listed below in (b) of this note are sold or offered for sale.

(b) If each of the following articles is sold or offered for sale in the same pattern, the classification hereunder in subheadings 6911.10.35, 6911.10.37, 6911.10.38, 6912.00.35 or 6912.00.39, of all articles of such pattern shall be governed by the aggregate value of the following articles in the quantities indicated, as determined by the appropriate customs officer under section 402 of the Tariff Act of 1930, as amended, whether or not such articles are imported in the same shipment:

12 plates of the size nearest to 26.7 cm in maximum dimension, sold or offered for sale,

12 plates of the size nearest to 15.3 cm in maximum dimension, sold or offered for sale,

12 tea cups and their saucers, sold or offered for sale,

12 soups of the size nearest to 17.8 cm in maximum dimension, sold or offered for sale,

12 fruits of the size nearest to 12.7 cm in maximum dimension, sold or offered for sale,

1 platter or chop dish of the size nearest to 38.1 cm in maximum dimension, sold or offered for sale,

1 open vegetable dish or bowl of the size nearest to 25.4 cm in maximum dimension, sold or offered for sale,

1 sugar of largest capacity, sold or offered for sale,

1 creamer of largest capacity, sold or offered for sale.

If either soups or fruits are not sold or offered for sale, 12 cereals of the size nearest to 15.3 cm in maximum dimension, sold or offered for sale, shall be substituted therefor.

Additional U.S. Note 6 to Chapter 69, HTSUS, was adopted from the former Tariff Schedules of the United States (TSUS). Schedule 5 of the TSUS (1987) contained the following headnote:

2. (a) For the purposes of this subpart, the term "available in specified sets" (items 533.22, 533.24, 533.62 and 533.64) embraces plates, cups, saucers and other articles chiefly used for preparing, serving or storing food or beverages, or food or beverage ingredients, which are sold or offered for sale in the same pattern, but no article is classifiable as being "available in specified sets" unless it is of a pattern in which at least the articles listed below in (b) of this headnote are sold or offered for sale.

(b) If each of the following articles is sold or offered for sale in the same pattern, the classification hereunder in items 533.22, 533.24, 533.62 or 533.64, of all articles of such pattern shall be governed by the aggregate value of the following articles in the quantities indicated, as determined by the appropriate customs officer under section 402 of the Tariff Act of 1930, as amended, whether or not such articles are imported in the same shipment:

12 plates of the size nearest to 10.5 inches in maximum dimension, sold or offered for sale,

12 plates of the size nearest to 6 inches in maximum dimension, sold or offered for sale,

12 tea cups and their saucers, sold or offered for sale,

12 soups of the size nearest to 7 inches in maximum dimension, sold or offered for sale,

12 fruits of the size nearest to 5 inches in maximum dimension, sold or offered for sale,

1 platter or chop dish of the size nearest to 15 inches in maximum dimension, sold or offered for sale,

1 open vegetable dish or bowl of the size nearest to 10 inches in maximum dimension, sold or offered for sale,

1 sugar of largest capacity, sold or offered for sale,

1 creamer of largest capacity, sold or offered for sale.

If either soups or fruits are not sold or offered for sale, 12 cereals of the size nearest to 6 inches in maximum dimension, sold or offered for sale, shall be substituted therefor.

Tariff Classification Study, Seventh Supplemental Report (Aug 14, 1963), Appendix C titled "Additional Explanatory Notes and Background Materials" explained the meaning of the term "maximum dimension" as it appeared in the TSUS. It stated in relevant part:

The term "of the size nearest to" in headnote 2(b) of this subpart means either more or less than the dimension specified, and within a rather wide range. For example, as indicated in the original explanatory notes on page 84, "the size nearest to 6 inches in maximum dimension" may actually be a salad plate of more than 8-inch diameter. The size nearest to 10-1/2 inches in maximum dimension is intended to designate a dinner plate, however, and even though any plate over 8-1/4 inches in diameter would be nearer to 10-1/2 inches than to 6 inches in diameter, it could hardly be considered to be a dinner plate unless it were over 9 inches in maximum dimension. The term "maximum dimension" means the maximum straight-line distance from edge to edge across the face or top of the article whose dimension is specified.

Unless a contrary legislative intent is shown, tariff terms are construed in accordance with their common and commercial meanings, which are presumed to be the same. See, e.g., *Nippon Kogaku (USA), Inc. v. United States*, 673 F.2d 380, 382 (1982); *Schott Optical Glass, Inc. v. United States*, 612 F.2d 1283, 1285 (1979). The common meaning of a tariff term presents a question of law to be decided by the court. *American Express Co. v. United States*, 10, C.A.D. 456 (1951). In cases where a term is defined by statute, the court need not undertake a common-meaning inquiry, for the statutory

definition is controlling. Overton & Co. v. United States, 85 Cust. Ct. 76, 80–81 (1980). Absent an express definition, however, dictionaries, lexicons, scientific authorities, and other such reliable sources may be consulted to determine common meaning. C.J. Tower & Sons of Buffalo, Inc. v. United States, 673 F.2d 1268, 1271 (1982).

In HQ 967920, we determined that “the language of the additional U.S. note is unequivocal. The word ‘maximum’ means ‘the greatest possible quantity or degree; the greatest quantity or degree reached or recorded; the upper limit of variation.’ See www.thefreedictionary.com.” Thus, we concluded, “[s]tated plainly, articles of table- and kitchenware ‘available in specified sets’ cannot exceed the maximum dimensions set forth in Additional U.S. Note 6 to Chapter 69.”

However, “the common meaning of a tariff term, once established, remains controlling until a subsequent change in statute compels a revised construction of the term’s meaning.” United States v. Great Pacific Co., 324, T.D. 48192 (1936); see Sears, Roebuck & Co. v. United States, 83, C.A.D. 701(1959). Absent clear evidence of legislative intent to embrace an alternative statutory definition, and in light of its historical pedigree, the TSUS definition of the term “maximum dimension” survives as the common and commercial meaning of the term under the HTSUS. Lonza, Inc. v. United States, 46 F.3d 1098 (Fed. Cir. 1995).

Where the text of a tariff provision has undergone only minor changes from the TSUS to the HTSUS, the high values of uniformity and predictability — not to mention the merits of honoring Congress’ decision to retain prior policy — counsel courts to credit prior decisions interpreting the TSUS provision. See, e.g., Pima Western, Inc. v. United States, 915 F. Supp. 399, 404–05 (Ct. Int’l Trade 1996) (“[O]n a case-by-case basis prior decisions should be considered instructive in interpreting the HTS[US], particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTS[US].”) (quoting the Conference Report on the Omnibus Trade Act of 1988, H.R. Conf. Rep. No. 576, 100th Cong., 2d Sess. 515, 549–50 (1988)). Hewlett-Packard Co. v. United States, 189 F.3d 1346 at 1349 (Fed. Cir. 1999).

As there have been no major changes to the tariff provisions for articles “available in specified sets” from the TSUS to the HTSUS and no dissimilar interpretation is required by the text of the HTSUS, there is no clear evidence which would require a different interpretation than that given under the TSUS. Accordingly, an article described in U.S. Note 6(a) may be classified as being “available in specified sets” in heading 6911 or 6912, HTSUS, even if it, or another article listed in U.S. Note 6(b), exceeds the dimensional descriptions of Additional U.S. Note 6, HTSUS, so long as the dimensional variation is reasonable and provided sufficient evidence is submitted that all 77 pieces of the set are being sold or offered for sale. The porcelain tableware is classified in subheading 6911.10.3500, HTSUS.

HOLDING:

An article may exceed the dimensional descriptions of Additional U.S. Note 6 to Chapter 69, HTSUS, and be classified as being “available in specified sets” in heading 6911 or 6912, HTSUS, and not preclude classification of matching articles described in U.S. Note 6(a) to Chapter 69 as “available in specified sets”, so long as the dimensional variation is reasonable and pro-

vided sufficient evidence is submitted that all 77 pieces of the set are being sold or offered for sale. The porcelain dinnerware is classified in heading 6911, HTSUS. Specifically, it is provided for in subheading 6911.10.35, HTSUS, which provides for “Tableware, kitchenware, other household articles and toilet articles, of porcelain or china: Tableware and kitchenware: Other: Other: Available in specified sets: In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of this chapter is not over \$56. The column one general rate of duty is 26% *ad valorem*.”

EFFECT ON OTHER RULINGS:

HQ 967920, 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.

[ATTACHMENT D]

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

HQ H004643
August 6, 2007
CLA-2 OT:RR:CTF:TCM H004643 KSH
CATEGORY: Classification
TARIFF NO.: 6912.00.39

MR. DONALD F. WRIGHT
EXCEL IMPORTING CORPORATION
100 Andrews Road
Hicksville, NY 11801

RE: Revocation of Headquarters Ruling Letter (HQ) 967792, dated January 20, 2006; Interpretation of “available in specified sets” maximum size requirements of Additional U.S. Note 6 to Chapter 69, HTSUSA

DEAR MR. WRIGHT:

On January 20, 2006, we issued Headquarters Ruling Letter (HQ) 967792, to you regarding the tariff classification of certain stoneware dinnerware “available in specified sets” under the Harmonized Tariff Schedule of the United States (“HTSUS”). In HQ 967792, we determined that inasmuch as some of the articles in the stoneware dinnerware at issue exceeded the maximum dimension set forth in the HTSUS, the goods were classified under subheading 6912.00.4810, HTSUS.

HQ 967792 revoked NY B88253. We have reviewed HQ 967792 and found it to be in error. Therefore, this ruling revokes HQ 967792.

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 May 30, 2007, in Volume 41, Number 23, of the CUSTOMS BULLETIN. CBP received one comment in support of the proposed revocation.

FACTS:

The merchandise is stoneware dinnerware that is identified as in the patterns English Garden, Dorchester, Orchard and Cosmos. Previous information submitted indicated that the patterns are principally for household use. They are stated to be “available in specified sets” in accordance with Note 6(b), HTSUS, with an aggregate value over \$38. Some of the pieces in the stoneware dinnerware exceed the maximum dimensions set forth in U.S. Note 6(b), HTSUS.

ISSUE:

Whether an article described in U.S. Note 6(b) to Chapter 69 may exceed the dimensional descriptions therein and not preclude classification of articles described in U.S. Note 6(a) as “available in specified sets” in heading 6911 or 6912, HTSUS.

LAW AND ANALYSIS:

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

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

Additional U.S. Note 6 to Chapter 69, HTSUS, reads:

6. For the purposes of headings 6911 and 6912:

(a) The term “available in specified sets” embraces plates, cups, saucers and other articles principally used for preparing, serving or storing food or beverages, or food or beverage ingredients, which are sold or offered for sale in the same pattern, but no article is classifiable as being “available in specified sets” unless it is of a pattern in which at least the articles listed below in (b) of this note are sold or offered for sale.

(b) If each of the following articles is sold or offered for sale in the same pattern, the classification hereunder in subheadings 6911.10.35, 6911.10.37, 6911.10.38, 6912.00.35 or 6912.00.39, of all articles of such pattern shall be governed by the aggregate value of the following articles in the quantities indicated, as determined by the appropriate customs officer under section 402 of the Tariff Act of 1930, as amended, whether or not such articles are imported in the same shipment:

12 plates of the size nearest to 26.7 cm in maximum dimension, sold or offered for sale,

12 plates of the size nearest to 15.3 cm in maximum dimension, sold or offered for sale,

12 tea cups and their saucers, sold or offered for sale,

12 soups of the size nearest to 17.8 cm in maximum dimension, sold or offered for sale,

12 fruits of the size nearest to 12.7 cm in maximum dimension, sold or offered for sale,

1 platter or chop dish of the size nearest to 38.1 cm in maximum dimension, sold or offered for sale,

1 open vegetable dish or bowl of the size nearest to 25.4 cm in maximum dimension, sold or offered for sale,

1 sugar of largest capacity, sold or offered for sale,

1 creamer of largest capacity, sold or offered for sale.

If either soups or fruits are not sold or offered for sale, 12 cereals of the size nearest to 15.3 cm in maximum dimension, sold or offered for sale, shall be substituted therefor.

Additional U.S. Note 6 to Chapter 69, HTSUS, was adopted from the former Tariff Schedules of the United States (TSUS). Schedule 5 of the TSUS (1987) contained the following headnote:

2. (a) For the purposes of this subpart, the term “available in specified sets” (items 533.22, 533.24, 533.62 and 533.64) embraces plates, cups, saucers and other articles chiefly used for preparing, serving or storing food or beverages, or food or beverage ingredients, which are sold or offered for sale in the same pattern, but no article is classifiable as being “available in specified sets” unless it is of a pattern in which at least the articles listed below in (b) of this headnote are sold or offered for sale.

(b) If each of the following articles is sold or offered for sale in the same pattern, the classification hereunder in items 533.22, 533.24, 533.62 or 533.64, of all articles of such pattern shall be governed by the aggregate value of the following articles in the quantities indicated, as determined by the appropriate customs officer under section 402 of the Tariff Act of 1930, as amended, whether or not such articles are imported in the same shipment: 12 plates of the size nearest to 10.5 inches in maximum dimension, sold or offered for sale,

12 plates of the size nearest to 6 inches in maximum dimension, sold or offered for sale,

12 tea cups and their saucers, sold or offered for sale,

12 soups of the size nearest to 7 inches in maximum dimension, sold or offered for sale,

12 fruits of the size nearest to 5 inches in maximum dimension, sold or offered for sale,

1 platter or chop dish of the size nearest to 15 inches in maximum dimension, sold or offered for sale,

1 open vegetable dish or bowl of the size nearest to 10 inches in maximum dimension, sold or offered for sale,

1 sugar of largest capacity, sold or offered for sale,

1 creamer of largest capacity, sold or offered for sale.

If either soups or fruits are not sold or offered for sale, 12 cereals of the size nearest to 6 inches in maximum dimension, sold or offered for sale, shall be substituted therefor.

Tariff Classification Study, Seventh Supplemental Report (Aug 14, 1963), Appendix C titled “Additional Explanatory Notes and Background Materi-

als” explained the meaning of the term “maximum dimension” as it appeared in the TSUS. It stated in relevant part:

The term “of the size nearest to” in headnote 2(b) of this subpart means either more or less than the dimension specified, and within a rather wide range. For example, as indicated in the original explanatory notes on page 84, “the size nearest to 6 inches in maximum dimension” may actually be a salad plate of more than 8-inch diameter. The size nearest to 10–1/2 inches in maximum dimension is intended to designate a dinner plate, however, and even though any plate over 8–1/4 inches in diameter would be nearer to 10–1/2 inches than to 6 inches in diameter, it could hardly be considered to be a dinner plate unless it were over 9 inches in maximum dimension. The term “maximum dimension” means the maximum straight-line distance from edge to edge across the face or top of the article whose dimension is specified.

Unless a contrary legislative intent is shown, tariff terms are construed in accordance with their common and commercial meanings, which are presumed to be the same. See, e.g., Nippon Kogaku (USA), Inc. v. United States, 673 F.2d 380, 382 (1982); Schott Optical Glass, Inc. v. United States, 612 F.2d 1283, 1285 (1979). The common meaning of a tariff term presents a question of law to be decided by the court. American Express Co. v. United States, 10, C.A.D. 456 (1951). In cases where a term is defined by statute, the court need not undertake a common-meaning inquiry, for the statutory definition is controlling. Overton & Co. v. United States, 85 Cust. Ct. 76, 80–81 (1980). Absent an express definition, however, dictionaries, lexicons, scientific authorities, and other such reliable sources may be consulted to determine common meaning. C.J. Tower & Sons of Buffalo, Inc. v. United States, 673 F.2d 1268, 1271 (1982).

In HQ 967792, we determined that “the language of the additional U.S. note is unequivocal. The word ‘maximum’ means ‘the greatest possible quantity or degree; the greatest quantity or degree reached or recorded; the upper limit of variation.’ See www.thefreedictionary.com.” Thus, we concluded, “[s]tated plainly, articles of table- and kitchenware ‘available in specified sets’ cannot exceed the maximum dimensions set forth in Additional U.S. Note 6 to Chapter 69.”

However, “the common meaning of a tariff term, once established, remains controlling until a subsequent change in statute compels a revised construction of the term’s meaning.” United States v. Great Pacific Co., 324, T.D. 48192 (1936); see Sears, Roebuck & Co. v. United States, 83, C.A.D. 701(1959). Absent clear evidence of legislative intent to embrace an alternative statutory definition, and in light of its historical pedigree, the TSUS definition of the term “maximum dimension” survives as the common and commercial meaning of the term under the HTSUS. Lonza, Inc. v. United States, 46 F.3d 1098 (Fed. Cir. 1995).

Where the text of a tariff provision has undergone only minor changes from the TSUS to the HTSUS, the high values of uniformity and predictability — not to mention the merits of honoring Congress’ decision to retain prior policy — counsel courts to credit prior decisions interpreting the TSUS provision. See, e.g., Pima Western, Inc. v. United States, 915 F. Supp. 399, 404–05 (Ct. Int’l Trade 1996) (“[O]n a case-by-case basis prior decisions should be considered instructive in interpreting the HTS[US], particularly where the nomenclature previously interpreted

in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTS[US].’ ”) (quoting the Conference Report on the Omnibus Trade Act of 1988, H.R. Conf. Rep. No. 576, 100th Cong., 2d Sess. 515, 549–50 (1988)). Hewlett-Packard Co. v. United States, 189 F.3d 1346 at 1349 (Fed. Cir. 1999).

As there have been no major changes to the tariff provisions for articles “available in specified sets” from the TSUS to the HTSUS and no dissimilar interpretation is required by the text of the HTSUS, there is no clear evidence which would require a different interpretation than that given under the TSUS. Accordingly, an article described in U.S. Note 6(a) may be classified as being “available in specified sets” in heading 6911 or 6912, HTSUS, even if it, or another article listed in U.S. Note 6(b), exceeds the dimensional descriptions of Additional U.S. Note 6, HTSUS, so long as the dimensional variation is reasonable and provided sufficient evidence is submitted that all 77 pieces of the set are being sold or offered for sale. The stoneware tableware is classified in subheading 6912.00.3500, HTSUS.

HOLDING:

An article may exceed the dimensional descriptions of Additional U.S. Note 6 to Chapter 69, HTSUS, and be classified as being “available in specified sets” in heading 6911 or 6912, HTSUS, and not preclude classification of matching articles described in U.S. Note 6(a) to Chapter 69 as “available in specified sets”, so long as the dimensional variation is reasonable and provided sufficient evidence is submitted that all 77 pieces of the set are being sold or offered for sale. The stoneware dinnerware is classified in heading 6912, HTSUS. It is provided for in subheading 6912.00.39, HTSUS, which provides for “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Other: Available in specified sets: In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of this chapter is over \$38. The general column one rate of duty is 4.5% *ad valorem*.”

EFFECT ON OTHER RULINGS:

HQ 967792 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.

[ATTACHMENT E]

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

HQ H010776
August 6, 2007
CLA-2 OT:RR:CTF:TCM H010776 KSH
CATEGORY: Classification
TARIFF NO.: 6911.10.38

MR. DONALD STEIN
GREENBERG TRAURIG
800 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20006

RE: Revocation of New York Ruling Letter (NY) K87695, dated August 5, 2004; Interpretation of “available in specified sets” maximum size descriptions of Additional U.S. Note 6 to Chapter 69, HTSUSA

DEAR MR. STEIN:

On August 5, 2004, New York Ruling Letter (NY) K87695 was issued to you on behalf of your client, Martin’s Herend Imports, regarding the tariff classification of certain porcelain tableware and kitchenware “available in specified sets” under the Harmonized Tariff Schedule of the United States (“HTSUS”). In NY K87695, CBP determined that inasmuch as an article in the porcelain dinnerware and kitchenware at issue exceeded the maximum dimension set forth in the HTSUS, the goods were classifiable under sub-headings 6911.10.80, HTSUS, 6911.10.45, HTSUS and 6911.10.41, HTSUS.

We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY K87695.

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 May 30, 2007, in Volume 41, Number 23, of the CUSTOMS BULLETIN. CBP received one comment in support of the proposed revocation.

FACTS:

The merchandise at issue is three porcelain products described as a heart-shaped bonbon dish, pepper shaker and coffee mug. The merchandise is manufactured in Hungary. It was stated to have an aggregate value over \$200.

ISSUE:

Whether an article described in U.S. Note 6(b) to Chapter 69 may exceed the dimensional descriptions therein and not preclude classification of articles described in U.S. Note 6(a) as “available in specified sets” in heading 6911 or 6912, HTSUS.

LAW AND ANALYSIS:

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

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

Additional U.S. Note 6 to Chapter 69, HTSUS, reads:

6. For the purposes of headings 6911 and 6912:

(a) The term “available in specified sets” embraces plates, cups, saucers and other articles principally used for preparing, serving or storing food or beverages, or food or beverage ingredients, which are sold or offered for sale in the same pattern, but no article is classifiable as being “available in specified sets” unless it is of a pattern in which at least the articles listed below in (b) of this note are sold or offered for sale.

(b) If each of the following articles is sold or offered for sale in the same pattern, the classification hereunder in subheadings 6911.10.35, 6911.10.37, 6911.10.38, 6912.00.35 or 6912.00.39, of all articles of such pattern shall be governed by the aggregate value of the following articles in the quantities indicated, as determined by the appropriate customs officer under section 402 of the Tariff Act of 1930, as amended, whether or not such articles are imported in the same shipment:

12 plates of the size nearest to 26.7 cm in maximum dimension, sold or offered for sale,

12 plates of the size nearest to 15.3 cm in maximum dimension, sold or offered for sale,

12 tea cups and their saucers, sold or offered for sale,

12 soups of the size nearest to 17.8 cm in maximum dimension, sold or offered for sale,

12 fruits of the size nearest to 12.7 cm in maximum dimension, sold or offered for sale,

1 platter or chop dish of the size nearest to 38.1 cm in maximum dimension, sold or offered for sale,

1 open vegetable dish or bowl of the size nearest to 25.4 cm in maximum dimension, sold or offered for sale,

1 sugar of largest capacity, sold or offered for sale,

1 creamer of largest capacity, sold or offered for sale.

If either soups or fruits are not sold or offered for sale, 12 cereals of the size nearest to 15.3 cm in maximum dimension, sold or offered for sale, shall be substituted therefor.

Additional U.S. Note 6 to Chapter 69, HTSUS, was adopted from the former Tariff Schedules of the United States (TSUS). Schedule 5 of the TSUS (1987) contained the following headnote:

2. (a) For the purposes of this subpart, the term “available in specified sets” (items 533.22, 533.24, 533.62 and 533.64) embraces plates, cups, saucers and other articles chiefly used for preparing, serving or storing food or beverages, or food or beverage ingredients, which are sold or of-

ferred for sale in the same pattern, but no article is classifiable as being “available in specified sets” unless it is of a pattern in which at least the articles listed below in (b) of this headnote are sold or offered for sale.

(b) If each of the following articles is sold or offered for sale in the same pattern, the classification hereunder in items 533.22, 533.24, 533.62 or 533.64, of all articles of such pattern shall be governed by the aggregate value of the following articles in the quantities indicated, as determined by the appropriate customs officer under section 402 of the Tariff Act of 1930, as amended, whether or not such articles are imported in the same shipment:

12 plates of the size nearest to 10.5 inches in maximum dimension, sold or offered for sale,

12 plates of the size nearest to 6 inches in maximum dimension, sold or offered for sale,

12 tea cups and their saucers, sold or offered for sale,

12 soups of the size nearest to 7 inches in maximum dimension, sold or offered for sale,

12 fruits of the size nearest to 5 inches in maximum dimension, sold or offered for sale,

1 platter or chop dish of the size nearest to 15 inches in maximum dimension, sold or offered for sale,

1 open vegetable dish or bowl of the size nearest to 10 inches in maximum dimension, sold or offered for sale,

1 sugar of largest capacity, sold or offered for sale,

1 creamer of largest capacity, sold or offered for sale.

If either soups or fruits are not sold or offered for sale, 12 cereals of the size nearest to 6 inches in maximum dimension, sold or offered for sale, shall be substituted therefor.

Tariff Classification Study, Seventh Supplemental Report (Aug 14, 1963), Appendix C titled “Additional Explanatory Notes and Background Materials” explained the meaning of the term “maximum dimension” as it appeared in the TSUS. It stated in relevant part:

The term “of the size nearest to” in headnote 2(b) of this subpart means either more or less than the dimension specified, and within a rather wide range. For example, as indicated in the original explanatory notes on page 84, “the size nearest to 6 inches in maximum dimension” may actually be a salad plate of more than 8-inch diameter. The size nearest to 10-1/2 inches in maximum dimension is intended to designate a dinner plate, however, and even though any plate over 8-1/4 inches in diameter would be nearer to 10-1/2 inches than to 6 inches in diameter, it could hardly be considered to be a dinner plate unless it were over 9 inches in maximum dimension. The term “maximum dimension” means the maximum straight-line distance from edge to edge across the face or top of the article whose dimension is specified.

Unless a contrary legislative intent is shown, tariff terms are construed in accordance with their common and commercial meanings, which are presumed to be the same. See, e.g., *Nippon Kogaku (USA), Inc. v. United States*, 673 F.2d 380, 382 (1982); *Schott Optical Glass, Inc. v. United States*, 612 F.2d 1283, 1285 (1979). The common meaning of a tariff term presents a

question of law to be decided by the court. American Express Co. v. United States, 10, C.A.D. 456 (1951). In cases where a term is defined by statute, the court need not undertake a common-meaning inquiry, for the statutory definition is controlling. Overton & Co. v. United States, 85 Cust. Ct. 76, 80–81 (1980). Absent an express definition, however, dictionaries, lexicons, scientific authorities, and other such reliable sources may be consulted to determine common meaning. C.J. Tower & Sons of Buffalo, Inc. v. United States, 673 F.2d 1268, 1271 (1982).

“The common meaning of a tariff term, once established, remains controlling until a subsequent change in statute compels a revised construction of the term’s meaning.” United States v. Great Pacific Co., 324, T.D. 48192 (1936); see Sears, Roebuck & Co. v. United States, 83, C.A.D. 701(1959). Absent clear evidence of legislative intent to embrace an alternative statutory definition, and in light of its historical pedigree, the TSUS definition of the term “maximum dimension” survives as the common and commercial meaning of the term under the HTSUS. Lonza, Inc. v. United States, 46 F.3d 1098 (Fed. Cir. 1995).

Where the text of a tariff provision has undergone only minor changes from the TSUS to the HTSUS, the high values of uniformity and predictability — not to mention the merits of honoring Congress’ decision to retain prior policy — counsel courts to credit prior decisions interpreting the TSUS provision. See, e.g., Pima Western, Inc. v. United States, 915 F. Supp. 399, 404–05 (Ct. Int’l Trade 1996) (“[O]n a case-by-case basis prior decisions should be considered instructive in interpreting the HTS[US], particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTS[US].”) (quoting the Conference Report on the Omnibus Trade Act of 1988, H.R. Conf. Rep. No. 576, 100th Cong., 2d Sess. 515, 549–50 (1988)). Hewlett-Packard Co. v. United States, 189 F.3d 1346 at 1349 (Fed. Cir. 1999).

As there have been no major changes to the tariff provisions for articles “available in specified sets” from the TSUS to the HTSUS and no dissimilar interpretation is required by the text of the HTSUS, there is no clear evidence which would require a different interpretation than that given under the TSUS. Accordingly, an article may exceed the dimensional descriptions of Additional U.S. Note 6 to Chapter 69, HTSUS, and be classified as being “available in specified sets” in heading 6911 or 6912, HTSUS, so long as it is reasonable and provided sufficient evidence is submitted that all 77 pieces of the set are being sold or offered for sale. The porcelain tableware is classified in subheading 6911.10.38, HTSUS.

HOLDING:

An article may exceed the dimensional descriptions of Additional U.S. Note 6 to Chapter 69, HTSUS, and be classified as being “available in specified sets” in heading 6911 or 6912, HTSUS, and not preclude classification of matching articles described in U.S. Note 6(a) to Chapter 69 as “available in specified sets”, so long as the dimensional variation is reasonable and provided sufficient evidence is submitted that all 77 pieces of the set are being sold or offered for sale. The porcelain dinnerware is classified in heading 6911, HTSUS. Specifically, it is provided for in subheading 6911.10.38, HTSUS, which provides for “Tableware, kitchenware, other household articles and toilet articles, of porcelain or china: Tableware and kitchenware:

Other: Other: Available in specified sets: In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of this chapter is over \$56: Aggregate value over \$200. The column one general rate of duty is 6% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY K87695 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.