

# Bureau of Customs and Border Protection

## *CBP Decisions*

DEPARTMENT OF THE TREASURY

19 CFR PARTS 113, 141, AND 151

(CBP Dec. 07 - 02)

RIN 1505-AB57

### CONDITIONAL RELEASE PERIOD AND CBP BOND OBLIGATIONS FOR FOOD, DRUGS, DEVICES, AND COSMETICS

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

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs and Border Protection (CBP) regulations to clarify the responsibilities of importers of food, drugs, devices, and cosmetics under the basic CBP importation bond and to provide a reasonable period of time to allow the Food and Drug Administration (FDA) to perform its enforcement functions with respect to these covered articles. The amendments include a provision for a specific conditional release period of 30 days for any food, drug, device, or cosmetic which has been released under bond and for which admissibility is to be determined under the provisions of the Federal Food, Drug, and Cosmetic Act (the Act). The amendments also clarify the amount of liquidated damages that may be assessed when there is a breach of the terms and conditions of the bond and authorize any representative of FDA to obtain a sample of any imported article subject to section 801 of the Act, as amended.

**EFFECTIVE DATE:** The amendments set forth in this document are effective on May 1, 2007.

**FOR FURTHER INFORMATION CONTACT:** Wende Schuster, Office of International Trade, (202-572-8761).

**SUPPLEMENTARY INFORMATION:****BACKGROUND**Federal Food, Drug, and Cosmetic Act

Section 801 of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 381 referred to herein as section 381), and the regulations promulgated under that statute, provide the basic legal framework governing the importation of food, drugs, devices, and cosmetics into the United States. Under 21 U.S.C. 381(a), the Secretary of the Treasury shall deliver to the Secretary of Health and Human Services, upon request, samples of food, drugs, devices, and cosmetics which are being imported or offered for import. The Secretary of Health and Human Services is authorized under section 381(a) to refuse admission of, among other things, any article that appears from the examination or otherwise to be adulterated or misbranded or to have been manufactured, processed, or packed under insanitary conditions. In addition, the Secretary of the Treasury is required by section 381(a) to cause the destruction of any article refused admission unless the article is exported, under regulations prescribed by the Secretary of the Treasury, within 90 days of the date of notice of the refusal or within such additional time as may be permitted pursuant to those regulations.

Under 21 U.S.C. 381(b), pending decision (by FDA) as to the admission of an article being imported or offered for import, the Secretary of the Treasury may authorize delivery of that article to the owner or consignee upon the execution by him of a good and sufficient bond providing for the payment of liquidated damages in the event of default, as may be required pursuant to regulation. In addition, section 381(b) allows the owner or consignee in certain circumstances to take action to bring an imported article into compliance for admission purposes under such bonding requirements as the Secretary of the Treasury may prescribe by regulation.

Authority Delegation

On November 25, 2002, the President signed into law the Homeland Security Act of 2002, Public Law 107-296, 116 Stat. 2135 (referred to in this document as “the HS Act”), which involved, among other things, the creation of a new cabinet-level department, the Department of Homeland Security (DHS), and the transfer or reorganization of a number of executive branch agencies and offices within existing cabinet-level departments. This legislation and subsequent reorganization plans affected the organization and operation of the Customs Service.

Section 402 of the HS Act provides that the Secretary of Homeland Security shall be responsible for administering the customs laws of the United States. With regard to the Customs Service, section 403(1) of the HS Act transferred the functions, personnel, assets,

and liabilities of the Customs Service, including the functions of the Secretary of the Treasury relating to the Customs Service, to the Secretary of Homeland Security. However, notwithstanding the transfer of the Customs Service to DHS, section 412 of the HS Act provides that the legal authority vested in the Secretary of the Treasury over customs revenue functions is to be retained by the Secretary of the Treasury. Section 412 also authorizes the Secretary of the Treasury to delegate any of the retained legal authorities over the customs revenue functions to the Secretary of Homeland Security.

By Treasury Order 100-16, dated May 15, 2003, the Secretary of the Treasury, by virtue of authority vested in him/her by 31 U.S.C. 321(b) and section 412 of the Homeland Security Act of 2002, delegated to the Secretary of Homeland Security authority for customs revenue functions with certain exceptions, including that contained in paragraph (1)(a)(i) of the Order by which the Secretary of the Treasury retains the sole authority to approve regulations concerning import quotas or trade bans, user fees, marking, labeling, copyright and trademark enforcement, and the completion of entry or substance of entry summary including duty assessment and collection, classification, valuation, application of the U.S. Harmonized Tariff Schedules, eligibility or requirements for preferential trade programs, and establishment of related recordkeeping requirements. As this final rule concerns activities involving both the completion of entry and the substance of the entry summary focusing on bond obligations and consequences that might arise as a result of post-entry and post-summary determinations of admissibility of merchandise, its subject matter is excepted from the delegation of authority to the Secretary of Homeland Security. Thus, the responsibility for this regulation rests with the Secretary of the Treasury.

#### Applicable Regulations

Based upon the above Federal Food, Drug, and Cosmetic Act statutory provisions, imported foods, drugs, devices, and cosmetics are conditionally released under bond while determinations as to admissibility are made; see 19 CFR 12.3. Under current 19 CFR 141.113(c), CBP may demand the return to CBP custody of most types of merchandise that fail to comply with the laws or regulations governing their admission into the United States (also referred to as the redelivery procedure).

The condition of the basic importation and entry bond contained in 19 CFR 113.62(d) sets forth the obligation of the importer of record to timely redeliver released merchandise to CBP on demand and provides that a demand for redelivery will be made no later than 30 days after the date of release of the merchandise or 30 days after the end of the conditional release period, whichever is later. Under current procedures, when imported merchandise is refused admission by the Food and Drug Administration (FDA), CBP issues a notice of redelivery in order to establish a claim for liquidated damages if the

importer of record fails to export, destroy, or redeliver the refused merchandise in the time period prescribed in that notice of redelivery. CBP has taken the position in C.S.D. 86-21 that the term "end of the conditional release period" in 19 CFR 113.62(d) has reference to a set time limitation that is either established by regulation (see, for example, 19 CFR 141.113(b) which prescribes a 180-day conditional release period for purposes of determining the correct country of origin of imported textiles and textile products) or by express notification to the importer of record. The end of the conditional release period does not refer to the liquidation of the entry covering the imported merchandise.

#### Proposed Regulatory Changes

On June 7, 2002, a Notice of Proposed Rulemaking was published in the **Federal Register** (67 FR 39322; the NPRM) that proposed to amend the regulations to provide for a specific conditional release period for merchandise for which the FDA is authorized to determine admissibility. The changes proposed were intended to clarify importers' responsibilities under the bond, provide a defined period of time to allow the FDA to perform its enforcement functions, and provide finality to the process.

The NPRM proposed to make the following specific changes to what were then referred to as the Customs regulations (now the CBP regulations):

1. To redesignate some paragraphs in 19 CFR 141.113 due to the addition of a new paragraph (c), which provided for a specific conditional release period of 180 days for any food, drug, device, or cosmetic. The FDA would have this time period to make its determination of admissibility. Similar to the case of textiles and textile products mentioned above, the proposed amendment specified a 180-day conditional release period but also provided for a shorter period if FDA made a determination of inadmissibility before the expiration of that 180-day period. It is noted that under the proposed regulatory text, a demand for redelivery under 19 CFR 113.62(d) could be made up to 210 days (that is, 180 days plus 30 days) after the date of release of the merchandise. (The standard CBP bond condition states that redelivery may be demanded within 30 days after release or 30 days after the end of any applicable conditional release period, whichever is later.) The proposed regulation also made clear that the failure to redeliver merchandise would result in the assessment of liquidated damages equal to three times the value of the merchandise or equal to the domestic value of the merchandise in those instances where the port director has required a bond equal to the domestic value as permitted by current 19 CFR 12.3.

2. To amend 19 CFR 151.11 to authorize a representative of the FDA to obtain samples of food, drugs, devices, and cosmetic products covered by the Federal Food, Drug, and Cosmetic Act.

## COMMENTS

One hundred and forty (140) comments were received from importers, brokers, sureties, freight forwarders, express consignment operators, and trade associations. All commenters were opposed to the length of time of the proposed conditional release period. An analysis of those comments follows.

### Comment

The vast majority of commenters stated that, as importers of food and health and beauty aid products, having a conditional release period of 180 days would effectively put them out of business. The costs involved in warehousing the goods would make their businesses unmanageable. Additionally, the long waiting period could cause products to fall out of specification, lose effectiveness, or become obsolete or unusable. These comments assume that any FDA-regulated merchandise must be held intact for 180 days after entry. Other commenters who stated that the 180-day period is too long recognize that the intent of the regulation was not to require that all this merchandise be held during the pendency of the conditional release period, but rather that it only apply to merchandise for which an admissibility decision by FDA is not made. Many of these commenters specifically recommended that the conditional release period end upon issuance of a notice from FDA providing that the goods may proceed (a may proceed notice) or issuance of a notice of refusal if those acts occur before the end of the 180-day conditional release period. Various other commenters noted that under FDA's own Regulatory Procedures Manual, articles which have been released by FDA are no longer considered to be in import status by that agency.

### Response

After review of all the comments, CBP concurs that the 180-day conditional release period is too long. Thus, the regulatory text of this final rule is amended to provide that the conditional release period ends upon the soonest occurring of the following events: issuance by the FDA that the merchandise may proceed, issuance of a notice of refusal of admission, or expiration of the 30-day period after release of the goods.

It was not the intention of the proposed regulation to require that all goods regulated by the FDA be warehoused for 6 months while the conditional release period runs its course. When FDA issues a notice that the merchandise may proceed (which is the case on the vast majority of entries that come under FDA scrutiny), that act will serve to end the conditional release period. Accordingly, we concur with the commenter who recommended amendment of the proposed rule to indicate that the conditional release period ends upon issuance of the notice by FDA that the merchandise may proceed. In addition, the issuance of a notice of refusal of admission would end the conditional release period.

There may be some situations where FDA will need additional time to determine admissibility. Accordingly, the final rule also includes regulatory language that would permit FDA to extend the general 30-day conditional release period through express notification to the importer identifying the necessary testing requiring this extension.

Comment

Many commenters opposed the 180-day conditional release period for the reason that it extends the current conditional release period of 30 days.

Response

Under the conditions of the basic importation bond, in order to establish a valid claim for liquidated damages for failure to redeliver merchandise into CBP custody, CBP must issue a notice of redelivery within 30 days of CBP release of merchandise or within 30 days after the end of the conditional release period, whichever is later. As stated in the notice of proposed rulemaking, there currently exists no conditional release period created by regulation for merchandise the admissibility of which is determined by the FDA. Therefore, neither the proposed rulemaking nor this final rule extends the conditional release period from 30 to 180 days because no express conditional release period for FDA contexts has ever been created by regulation. The commenters were apparently confusing the conditional release period with the 30-day period, after the conditional release period, during which CBP may still demand redelivery.

Comment

One commenter suggested that the proposed sampling procedures would result in the compromising of its packaging between manufacturing sites and customers' facilities. The commenter proposed a process whereby it and other manufacturers could provide dedicated samples of present and proposed imported products, and CBP could maintain a data bank of importers and known imported products covered by these regulations.

Response

The commenter's suggestion is outside the scope of the regulation because it proposes an examination procedure that is not done on a shipment-by-shipment basis. Under the provisions of 21 U.S.C. 381, CBP delivers to the Secretary of Health and Human Services such samples of food, drugs, devices, and cosmetics that are being imported or offered for import into the United States. Through these regulations, this sampling authority is delegated to the FDA in recognition of the practicalities of merchandise inspection. This will clarify that FDA inspectors may, under section 381(a), pull samples of imports of food, drugs, devices, and cosmetics.

Comment

One commenter asked whether CBP contemplates changing line release (otherwise known as Border Release Advanced Screening and Selectivity (BRASS)) procedures to accommodate the exchange of information necessary for providing notices of sampling.

Response

Contemplated changes to line release (otherwise known as BRASS release) systems are operational in nature and are, thus, outside the scope of this rulemaking.

Comment

One commenter suggested that the rule must be rescinded in order to comply with Executive Order (E.O.) 12866. The commenter stated that given the huge volume of imports involved, the storage costs alone would almost certainly exceed the \$100 million threshold or would, at the very least, adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs.

Response

The commenter did not provide detail or justification for these comments, but CBP does not believe that storage costs of this magnitude would be incurred as a result of the rule now being promulgated. As noted above, CBP does believe that the 180-day conditional release period originally proposed is too long and realizes that this time period could negatively affect importers. To that end, CBP has modified the conditional release period from 180 days to 30 days in the final rule to reduce potential negative impacts to imports and corresponding storage costs.

Comment

Various commenters state that CBP has failed to comply with the Regulatory Flexibility Act, disagreeing with the statement in the proposed rulemaking that the proposed amendments, if adopted, will not have a significant impact on a substantial number of small entities. The commenters claim that, contrary to the assertion in the notice of proposed rulemaking, assessment of liquidated damages of three times the value of imported merchandise could have a devastating impact upon the many thousands of small companies engaged in the importation of FDA-regulated products. It is also stated that the proposed rulemaking represents a radical departure from current CBP policy with regard to redelivery of FDA-regulated products.

Response

CBP does not agree because the rule is not a radical departure from current CBP policy. Additionally, in response to the comments to the proposed rule, the final rule reduces the conditional release period time from 180 days to 30 days, and potential costs that could be incurred should now be substantially less. The rule should not af-

fect small entities that are compliant with redelivery requirements, and the rule does not impose further entry requirements or additional paperwork burden.

#### Comment

Various commenters suggested that CBP rescind or place a stay on consideration of the proposed rulemaking until the implications of recently passed legislation governing port security can be considered in relation to FDA's inspection protocol and CBP's release procedures. The commenters indicated that the new law requires that importers provide CBP and FDA with advance notice of their intent to import food products - a procedure that should enhance FDA's ability to promptly identify shipments that pose a safety concern. Those commenters also stated that the proposed rule should be rescinded in order to allow CBP and FDA to examine and discuss standardization of FDA notifications to importers and to take into account the commercial needs of the importing community.

#### Response

CBP disagrees. We are unaware of legislation governing port security that impinges upon or supplants FDA's authority to refuse merchandise pursuant to the provisions of 21 U.S.C. 381(a). That provision allows for the release of merchandise under bond while the determination as to admissibility is made. This rulemaking simply provides for the creation of a conditional release period for FDA contexts that is more clearly defined than the practice that currently exists. Furthermore, the Bioterrorism Act creates a new section 21 U.S.C. 381(m) which specifically indicates that FDA-regulated food and food products for which prior notice of arrival is not received shall not be released under a bond authorized by section 381(b). As set out in implementing regulations issued by FDA and CBP (see 68 FR 58974), decisions regarding compliance with new prior notice requirements are different from, and may precede, determinations of admissibility under other sections of the Federal Food, Drug, and Cosmetic Act or other laws. (See 21 CFR 1.283(g).) While CBP believes that the Bioterrorism Act will affect the importation of FDA-regulated products, it does not serve to overrule regulations concerning longstanding FDA and CBP authorities. Effect must be given to all of the substantive provisions of 21 U.S.C. 381, not part of them. Further, since the FDA-regulated food or food products for which prior notice of arrival is not received will not be released under a bond authorized by section 381(b), any issues arising concerning a conditional release period for merchandise released under bond are moot.

#### Comment

One commenter suggested that the time period to comment on the proposed rule be extended because of the complex underlying issues involved.

### Response

CBP disagrees that the comment period needed to be extended. CBP received 140 comments to the proposed rule, and a wide variety of issues were presented in these comments. The primary concern, which was raised by all commenters to the proposed rule, was the length of the conditional release period. In response to this concern CBP has reduced the conditional release period from 180 to 30 days.

### Comment

Many commenters conceded that it may be appropriate to clearly define a conditional release period, but they also suggested that 30 days would be a reasonable conditional release period for these products. Those same commenters also stated that CBP must further clarify and limit the scope of the proposed rule. Clarification is needed that clearly exempts from the conditional release period shipments that have been issued a may proceed notice. The commenters also suggested that FDA should notify importers when an entry is deemed conditional. As proposed, the commenters claimed that the rule represents a radical departure from current practices when the release of imported product is only rendered conditional through FDA's timely notification of its intent to examine or sample the product.

### Response

CBP agrees that the rule should make clear that a conditional release period ends when FDA provides a may proceed notice. The final rule has been amended accordingly. CBP also agrees that a conditional release period shorter than 180 days is appropriate and has amended the rule to provide for a conditional release period of 30 days after the release of the merchandise unless FDA issues a may proceed notice or a notice of refusal which would immediately end the conditional period as provided for in the final rule. However, shipments that have been issued a may proceed notice are still subject to demands for redelivery for 30 days from the issuance of the may proceed notice. The regulation confirms that all FDA-regulated products under the Federal Food, Drug, and Cosmetic Act are conditionally released pending FDA's determination of admissibility. In the vast majority of cases the conditional release period will end when the may proceed notice is provided before the end of the time certain provided in the regulation.

### Comment

Various commenters contended that CBP seeks to modify its regulations in order to reverse the result of the court decision in United States v. So's USA Company, Inc., 23 CIT 605 (1999). These commenters stated that the So's court indicated that an importer must have affirmative notice that goods are released conditionally in order to extend the redelivery period beyond the 30 days from the date of release. Another stated that under the proposed regulation, FDA

would no longer be required to advise an importer why its product is on hold, or even that it is on hold, within the first 30 days of entry.

Response

CBP disagrees. The final rule is entirely consistent with the So's opinion and it does not conflict with that opinion in any respect. Further, this regulation does not affect any notice that FDA provides to an importer under its authorities.

Comment

One commenter stated that the proposal is arbitrary because the Government has not explained the need for a 180-day period to render a decision on admissibility. The statement in the proposed rule that the 180-day period is a reasonable period of time to allow the FDA to perform its enforcement functions is not supported by any explanation.

Response

Again, CBP agrees that the 180-day period is too long a time period to have this merchandise conditionally released by regulation. Accordingly, the conditional release period has been reduced to 30 days in the final regulation. The 30-day release period can be shortened by the earlier issuance of a may proceed notice or a notice of refusal of admission. It also can be extended by an express notification from FDA to the importer.

Comment

One commenter suggested that FDA import inspectors issue a notice of review with regard to any shipment for which a may proceed notice is not provided. The commenter stated that the conditional release period could be established from the issuance date of the notice of review. That same commenter stated that for perishable products, the conditional release period should not exceed 5 days. For non-perishable products, the conditional release period should not exceed 30 days.

Response

Issuance of a new FDA form of notice that a shipment is under review is beyond the scope of this regulation. CBP disagrees that a conditional release period should be for as little as 5 days. The taking of samples and testing of merchandise could exceed that 5-day time period.

Comment

Some commenters stated that the 180-day conditional release period is not consistent with the Customs-Trade Partnership Against Terrorism (C-TPAT) in that homeland security efforts are focused on increased review of imports at the time of admission. The proposed 180-day period would provide no potential homeland security ben-

efits since the materials would already be conditionally released to importers.

Response

CBP acknowledges that the proposed 180-day conditional release period is too long and has revised the regulation accordingly. Review of cargo for terrorism concerns preferably is performed earlier than the time of admission of merchandise. In fact, review for terrorism concerns is performed in the information transmission or presentation process, which is in advance of arrival. For example, the FDA's prior notice regulations (21 CFR 1.276 *et seq.*) require notice of food being imported or offered for import into the United States in advance of the foods' arrival, and CBP's advance electronic cargo information regulations (set forth in 68 FR 68140) require information concerning cargo before the cargo is brought into the United States by any mode of transportation, so that CBP can pre-screen all cargo based on advance data transmission. CBP's enforcement of these requirements is consistent with C-TPAT. The conditional release period is meant to address the longstanding application of the provisions of the Federal Food, Drug, and Cosmetic Act, which allow for the release of merchandise under good and sufficient bond pending an admissibility determination and therefore is in addition to the prior notice and advance cargo information requirements that implement border security measures.

Comment

Many commenters stated that a 180-day conditional release period is contrary to public policy in that merchandise which causes a public health or safety issue should be identified and refused by FDA as quickly as possible. A 180-day period raises an unreasonable risk.

Response

CBP has revised the regulation to provide for a 30-day conditional release period in order to address this concern.

Comment

Many commenters indicated that if the redelivery period was shorter than the 180-days prescribed, companies would hold merchandise pending such a period and there would be more chance for a successful recall for safety concerns, since there is less chance that the goods would have been used or consumed.

Response

CBP agrees and has revised the final rule to provide for a 30-day conditional release period in order to address this concern.

Comment

One commenter suggested that CBP should strive to allow unconditional release of FDA-regulated merchandise with the filing of the CF-3461 (CBP entry document) as long as the entry summary and

carrier manifest data are consistent with information contained within the FDA approved product listings.

Response

CBP disagrees because this would have CBP making decisions as to admissibility under the Federal Food, Drug, and Cosmetic Act when this decision-making authority clearly resides with the Secretary of Health and Human Services.

Comment

Many commenters stated that the proposed amendment to 19 CFR 151.10 of the CBP regulations regarding the collection of samples is not necessary. The commenters noted that the provisions of section 702(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 372) already allow for the taking of samples by representatives of FDA.

Response

Under the provisions of 21 U.S.C. 381(a), CBP delivers samples of food, drugs, devices, and cosmetics that are being imported or offered for import into the United States, to the Secretary of Health and Human Services upon his request. The proposed amendment simply clarifies that such delivery authority is delegated to representatives of FDA and is not intended to intrude on any other authority that the Secretary of Health and Human Services may already have.

Comment

A group of commenters suggested the adoption of regulatory language that would preclude the issuance of fines or penalties against an importer who distributes articles after having received an FDA may proceed notice.

Response

CBP disagrees with this proposed language. CBP cannot by regulatory amendment exempt an importer from incurring fines or penalties that may otherwise be imposed for violation of a statute.

Comment

Various commenters stated that imposition of a 180-day conditional release period is violative of U.S. international obligations under the GATT 1994, and one commenter indicated that the proposed rule is violative of the Agreement on the Application of Sanitary and Phytosanitary Measures. While conceding that some additional controls at the border are acceptable, these commenters asserted that extending CBP control over imports for a seven-month period after importation would not stand scrutiny. Additionally, it was noted that sanitary and phytosanitary procedures must be undertaken and completed without undue delay (commenter's emphasis) and in no less favorable a manner for imported products than for like domestic products. Imposition of a conditional release period of 180 days is claimed to be violative of this "undue delay" proscription.

Response

Again, CBP has reduced the conditional release period from 180 to 30 days in the final rule.

Comment

Some commenters indicated that continuation of a conditional release period after FDA admits goods into commerce is inconsistent with the provisions of the Federal Food, Drug, and Cosmetic Act. The commenters stated that conditional delivery of the merchandise to the owner is made pending a decision as to admission generally, and not solely a decision to deny admission. It is argued that conditional release also ends upon admission of the article and, as such, CBP's proposal to extend the conditional release period to 180 days without concern as to whether the merchandise has been admitted defeats the statutory intent of the Act. In contrast, another commenter stated that once a positive determination as to admissibility is made, the importer should not have to be subjected to the possibility of a redelivery demand for sampling or testing of the product. The latter commenter further contended that even after receiving a may proceed notice, an importer is left in the dark as to the status of goods that are apparently admitted into the commerce.

Response

CBP agrees that issuance of a notice from FDA that the merchandise may proceed would usually make it unnecessary to issue a redelivery notice in order to establish liability under the bond. For purposes of clarity, CBP is amending the language in the final rule to indicate that one of three acts occurring first in time - issuance of a notice of refusal, issuance of a may proceed notice or passage of 30 days from the date of conditional release - will end the conditional release period. However, it should be understood that issuance of a may proceed notice does not mean that CBP is precluded from issuing a subsequent demand to redeliver within 30 days from the end of that conditional release period.

Comment

Two commenters suggested that sureties be given the earliest possible notice (preferably in electronic form) that goods they have secured are subject to detention, refusal, and/or redelivery in order that immediate action can be taken with regard to pending and future importations. Also, mitigation guidelines should be adopted that provide extraordinary mitigation to sureties for efforts to locate, redeliver, and/or rehabilitate goods which are subject to liquidated damages for failure to redeliver into CBP custody.

Response

Mitigation guidelines for claims for liquidated damages are outside the scope of this rulemaking. Issuance of notices of detention and refusal are governed by FDA statute and regulation and any

changes to issuance of those documents are also outside the scope of this regulation. Notices of redelivery may include private or confidential business information that would not be releasable to a surety unless a demand for payment was made against its bond.

#### Comment

One commenter proposed that the regulation require that all demands for redelivery be made contemporaneously with the notice of refusal issued by FDA. The commenter contended that this change would promote cooperation between FDA and CBP and encourage compliance through the more efficient issuance of required notices.

#### Response

CBP does not agree because, for operational reasons, it may not always be possible for notices to be issued contemporaneously.

### **CONCLUSION**

In accordance with the foregoing analysis of the comments and further consideration of the matter, CBP has determined that the amendments of the proposed rule should be adopted as final with the sole major change being a reduction in the conditional release period from 180 days to 30 days, as set forth in the regulatory text further below. In addition, cross-references to the section of the regulations involving conditional release periods are being added to the relevant portion of the section on basic importer and entry bond conditions in 19 CFR 113.62.

### **EXECUTIVE ORDER 12866 AND THE REGULATORY FLEXIBILITY ACT**

This rule is not considered to be a significant regulatory action under Executive Order 12866. Accordingly, a regulatory assessment is not required.

It is certified, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), that the regulatory amendments set forth in this final rule will not have a significant economic impact on a substantial number of small entities. The rule should not affect small entities that are compliant with redelivery requirements, and the rule does not impose further entry requirements or additional paperwork burdens.

A review of data for FY2004 indicates actual CBP liquidated damage collections for FDA jurisdiction goods are comparatively rare and of modest amounts. The total amount of liquidated damages collected in FY2004 for these goods was approximately \$4 million. The total revenue (including those liquidated damages) collected for all imports was \$27 billion. This amount reflects 6,000 liquidated damage cases, compared to 28.1 million entries of all goods worth \$1.41 trillion. Pertinent cases and liquidated damage amounts are a tiny

fraction (less than 1 percent) of overall revenue collected and import value. The value of liquidated damages collected changes minimally from year to year based on the number of importers, the number of bonds, and the number of violations. CBP does not expect this amount to change as a result of this rule.

Additionally, the conditional release period should help importers, regardless of size, by clarifying that CBP must issue a redelivery notice within 30 days if it wishes to collect liquidated damages. As noted previously, there is currently no set date to issue a redelivery notice. The rule will compel CBP to act more quickly to provide notice to importers that violate the conditions of their bond. If CBP cannot act within the 30 days, it then foregoes collecting any liquidated damages.

### LIST OF SUBJECTS

#### 19 CFR Part 113

Customs bond conditions

#### 19 CFR Part 141

Bonds, Customs duties and inspection, Entry procedures, Imports, Prohibited merchandise, Release of merchandise.

#### 19 CFR Part 151

Customs duties and inspection, Examination, Sampling and testing, Imports, Laboratories, Penalties, Reporting and recordkeeping requirements.

### AMENDMENTS TO THE REGULATIONS

For the reasons stated above, Parts 113, 141, and 151 of the CBP regulations (19 CFR Parts 141 and 151) are amended as set forth below.

#### **Part 113 - CUSTOMS BOND CONDITIONS**

1. The authority citation for Part 113 continues to read in part as follows:

**AUTHORITY:** 19 U.S.C. 66, 1623, 1624.

\* \* \* \* \*

2. Section 113.62(d) is amended by adding a sentence at the end to read as follows: "(See §§ 141.113(b), 12.73(b)(2), and 12.80 of this chapter.)"

#### **PART 141 - ENTRY OF MERCHANDISE**

3. The authority citation for Part 141 continues to read in part as follows:

**AUTHORITY:** 19 U.S.C. 66, 1448, 1484, 1624.

\* \* \* \* \*

Section 141.113 also issued under 19 U.S.C. 1499, 1623.

4. Section 141.113 is amended as follows:

a. The heading of the section is revised to read as set forth below:

b. Paragraph (a) is amended by, after the heading, designating the introductory text of paragraph (a) as paragraph (a)(1), redesignating current paragraphs (1) through (5) as paragraphs (a)(i) through (a)(v), and designating the remaining text, after redesignated paragraph (a)(1)(v), as paragraph (a)(2);

c. In redesignated paragraph (a)(2), first sentence, the words "Customs custody" are removed and replaced with the words "CBP custody";

d. In paragraph (b), the two references to "Customs" are replaced with reference to "CBP" and the three references to "Customs custody" are replaced with reference to "CBP custody";

e. Current paragraphs (c) through (h) are redesignated as paragraphs (d) through (i);

f. New paragraph (c) is added;

g. In redesignated paragraph (d), the words "in paragraph (a) or (b) of this section" are removed and replaced with the words "in paragraph (a), (b), or (c) of this section", and the words "Customs custody" are removed and replaced with the words "CBP custody";

h. In redesignated paragraphs (e) and (f), the words "Customs custody" are removed and replaced with the words "CBP custody";

i. In redesignated paragraph (g), first sentence, the words "Customs custody" are removed and replaced with the words "CBP custody"; and

j. In redesignated paragraph (h) and in the first sentence of redesignated paragraph (i), the words "Customs custody" are removed and replaced with the words "CBP custody".

The revisions read as follows:

**§ 141.113 Recall of merchandise released from Customs and Border Protection Custody.**

\* \* \* \* \*

(c) Food, drugs, devices, and cosmetics. (1) Conditional release period. For purposes of determining the admissibility of any food, drug, device, or cosmetic imported pursuant to section 801(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(a)), as amended, the release from CBP custody of any such product will be deemed conditional. Unless extended in accordance with paragraph (c)(2) of this section, the conditional release period will terminate upon the earliest occurring of the following events:

(i) The date that FDA issues a notice of refusal of admission;

(ii) The date that FDA issues a notice that the merchandise may proceed; or

(iii) Upon the end of the 30-day period following the date of release.

(2) Extension of conditional release period. The conditional release period provided under this paragraph (c) may be extended. The FDA must issue a written or electronic notice of sampling, detention, or other FDA action to the bond principal (i.e., importer of record) within 30 days of the release of the merchandise in order for the extension of the conditional release period to be valid.

(3) Issuance of a redelivery notice. If FDA refuses admission of a food, drug, device or cosmetic into the United States, or if any notice of sampling or other request is not complied with, FDA will communicate that fact to the CBP port director who will demand the redelivery of the product to CBP custody. CBP will issue a notice of redelivery within 30 days from the date the product was refused admission by the FDA or from the date FDA determined the noncompliance with a notice of sampling or other request. The demand for redelivery may be made contemporaneously with the notice of refusal issued by the FDA. Notwithstanding the provisions of paragraph (i) of this section, a failure to comply with a demand for redelivery made under this paragraph (c) will result in the assessment of liquidated damages equal to three times the value of the merchandise involved unless the port director has prescribed a bond equal to the domestic value of the merchandise pursuant to § 12.3(b) of this Chapter.

\* \* \* \* \*

#### **PART 151 - EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE**

5. The general authority citation for Part 151 continues to read, and a specific authority citation for § 151.11 is added to read, as follows:

**AUTHORITY:** 19 U.S.C. 66, 1202 (General Notes 3(i) and 3(j), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

Section 151.11 also issued under 21 U.S.C. 381;

\* \* \* \* \*

6. Section 151.11 is amended as follows:

a. In the first sentence, the words "Customs custody" are removed and replaced with the words "CBP custody";

b. In the second sentence, the words "Customs custody" are replaced with the words "CBP custody"; and

c. After the second sentence, a third sentence is added, to read as follows:

#### **§ 151.11 Request for samples or additional examination packages after release of merchandise.**

\* \* \* \* \* For purposes of determining admissibility, representatives of the Food and Drug Administration may obtain samples of

any food, drug, device, or cosmetic, the importation of which is governed by section 801 of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 381).

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

Approved: January 25, 2007

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

[Published in the Federal Register, January 31, 2007 (72 FR 4423)]

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## *General Notices*

### **COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS**

**(No. 11 2006)**

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

SUMMARY: Presented herein are the copyrights, trademarks, and trade names recorded with U.S. Customs and Border Protection during the month of November 2006. The last notice was published in the CUSTOMS BULLETIN on December 6, 2006.

Corrections or updates may be sent to: Department of Homeland Security, U.S. Customs and Border Protection, Office of Regulations and Rulings, IPR Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Delois Johnson, Paralegal, Intellectual Property Rights Branch, (202) 572-8710.

Dated: January 31, 2007

GEORGE MCCRAY, ESQ.,  
*Chief,  
Intellectual Property Rights Branch.*

## MONTH OF NOVEMBER 2006

TMK	11/20/2006	11/7/2016	MID-CONTINENT INSTRUMENTS	MID-CONTINENT INSTRUMENT CO., INC.	No
TMK 06-01352	11/20/2006	11/7/2016	MID-CONTINENT INSTRUMENTS	MID-CONTINENT INSTRUMENT CO., INC.	No
TMK 97-00346	11/21/2006	8/6/2016	WOLFORD AND DESIGN	WOLFORD AKTIENGESELLSCHAFT	No
TMK 97-00732	11/21/2006	6/19/2016	SUNKIST	SUNKIST GROWERS INC.	No
TMK 05-00872	11/21/2006	5/20/2016	PLAYBOY	PLAYBOY ENTERPRISES INTERNATIONAL, INC.	No
TMK 97-00078	11/21/2006	7/1/2016	CANAC	KOHLER LTD. D/B/A KOHLER LTD./KOHLER LEE	No
TMK 02-00296	11/21/2006	10/2/2016	D AND DESIGN	DETROIT TIGERS, INC.	No
TMK 03-00023	11/21/2006	7/6/2016	CUBS & DESIGN	CHICAGO NATIONAL LEAGUE BALL CLUB, INC.	No
TMK 04-01096	11/21/2006	11/5/2016	HELMET DESIGN	CLEVERLAND BROWNS FOOTBALL COMPANY LLC	No
TMK 05-00451	11/21/2006	10/3/2015	DESIGN ONLY	ATHLETICS INVESTMENT GROUP, LLC	No
TMK 06-01356	11/21/2006	8/4/2014	THALLIUM	SPC PARIS BLEU CORPORATION	No
TMK 06-01357	11/21/2006	5/6/2012	USS IN A CIRCLE	UNITED STATES STEEL CORPORATION	No
COP 06-00147	11/21/2006	11/21/2026	BVLGARI - DIAMONDS BROCHURE 2005	BVLGARI S.P.A.	No
COP 06-00148	11/21/2006	11/21/2026	BVLGARI-CHRISTMAS CATALOGUE 2005	BVLGARI S.P.A.	No
COP 06-00149	11/21/2006	11/21/2026	BVLGARI-2005 OPTHALMIC COLLECTION & SUNGLASS UPDATE	BVLGARI S.P.A.	No
TMK 06-01106	11/21/2006	10/29/2016	VACU-TAINER	BECTON, DICKINSON AND COMPANY	No
TMK 06-01359	11/21/2006	2/4/2015	ISXPPLD	LATTICE SEMICONDUCTOR CORPORATION	No
TMK 06-01358	11/21/2006	6/18/2016	L LATTICE	LATTICE SEMICONDUCTOR CORPORATION	No
TMK 06-01360	11/21/2006	5/9/2016	ELISABETH BY LIZ CLAIBORNE	L.C. LICENSING, INC.	No
TMK 06-01361	11/21/2006	4/4/2016	EXTRON	RGB SYSTEMS, INC.	No
TMK 06-01367	11/21/2006	11/24/2007	ISPGAL	LATTICE SEMICONDUCTOR CORPORATION	No
TMK 06-01368	11/21/2006	11/24/2008	ISPGDX	LATTICE SEMICONDUCTOR CORPORATION	No
TMK 06-01381	11/21/2006	5/30/2016	SACRAMENTO KINGS	SACRAMENTO KINGS LIMITED PARTNERSHIP, L.P.	No
TMK 06-01369	11/21/2006	5/27/2016	GAL	LATTICE SEMICONDUCTOR CORPORATION	No
TMK 06-01370	11/21/2006	8/8/2016	MEXX (STYLIZED)	MEXX INTERNATIONAL B.V.	No
TMK 06-01371	11/21/2006	4/18/2016	LAUNDRY BY SHELLI SEGAL	L.C. LICENSING, INC.	No
TMK 06-01372	11/21/2006	9/21/2013	ISPLST	LATTICE SEMICONDUCTOR CORPORATION	No
TMK 06-01373	11/21/2006	8/1/2016	MAC & JACK	WESTCOAST CONTEMPO FASHIONS LIMITED	No

## MONTH OF NOVEMBER 2006

Recordation No.	Effective Date	Name of Copr/Tm/Trm	Owner Name	
COP 06-00107	11/14/2006	RIBBON-ROSE CUPID TEST TEST	ACSYBARITE INC.	No
TMK 97-00708	11/16/2006	SK (STYLIZED)	SUNKIST GROWERS, INC.	No
TMK 06-00145	11/16/2006	PLAYBOY	PLAYBOY ENTERPRISES INC.	No
TMK 05-00867	11/16/2006	RABBIT HEAD DESIGN	PLAYBOY ENTERPRISES INTERNATIONAL, INC.	No
TMK 98-00494	11/16/2006	GROUND CONTROL	SPECIALIZED BICYCLE COMPONENTS, INC.	No
TMK 06-01263	11/16/2006	K'NEX	CONNECTOR SET LIMITED PARTNERSHIP	No
TMK 98-00019	11/16/2006	KALLISTA	KALLISTA, INC.	No
TMK 06-00238	11/16/2006	FREDERIC REMINGTON	FREDERIC REMINGTON TRUST 1861 C/O DFK INTERNATIONAL	No
TMK 99-00463	11/16/2006	OLD NAVY	HONDA GIKEN KOGYO KABUSHIKI KAISHA	No
TMK 96-00730	11/16/2006	ACURA	(HONDA MOTOR CO., LTD.)	No
TMK 97-00043	11/16/2006	CIVIC	HONDA GIKEN KOGYO KABUSHIKI KAISHA (HONDA MOTOR CO., LTD.)	No
TMK 00-00301	11/16/2006	HORMEL	HORMEL FOODS, LLC.	No
TMK 02-00533	11/16/2006	MAGIC	UNIVERSAL SEWING SUPPLY INC.	No
TMK 04-00384	11/16/2006	MARQUIS	WATERFORD CRYSTAL LIMITED	No
TMK 04-01085	11/16/2006	CISCO SYSTEMS	CISCO TECHNOLOGY, INC.	No
TMK 05-00645	11/16/2006	CHESTER CHEETAH	FRITO-LAY NORTH AMERICA, INC.	No
TMK 05-00653	11/16/2006	LAY'S LOGO	FRITO-LAY NORTH AMERICA, INC.	No
TMK 86-00332	11/16/2006	NEVA	BEIERSDORF A.G.	No
TMK 88-00166	11/16/2006	MAXKUM	MINQUTA CORP.	No
TMK 91-00019	11/16/2006	HARLEY	HARLEY-DAVIDSON, INC.	No
TMK 06-01264	11/16/2006	FOGGY MOUNTAIN	1ST LICENSING, LTD.	No
TMK 06-01265	11/16/2006	CYRUS	SPPC PARIS BLEU CORPORATION	No
TMK 06-01266	11/16/2006	COOKIE	FAIRCHILD PUBLICATIONS, INC.	No
TMK 06-01267	11/16/2006	LWCC	LOUISIANA WORKER'S COMPENSATION CORPORATION	No
TMK 06-01268	11/16/2006	DESIGN ONLY	MADELAINE CHOCOLATE NOVELTIES, INC.	No
TMK 06-01269	11/16/2006	PCS	PROJECT CONSULTING SERVICES, INC.	No
TMK 06-01270	11/16/2006	PCS AND DESIGN	PROJECT CONSULTING SERVICES, INC.	No
TMK 06-01271	11/16/2006	MANKIND	SEVEN FOR ALL MANKIND, LLC	No
COP 06-00108	11/16/2006	H.E.R.O.E.S. AIR, LAND & SEA PLAY SET #00106	TOY CENTURY INDUSTRIAL COMPANY, LTD.	No

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TMK 06-01272	11/16/2006	7/29/2016	DESIGN	CARTIER INTERNATIONAL B.V.	No
TMK 06-01273	11/16/2006	4/4/2016	FREDERIC REMINGTON	FREDERIC REMINGTON TRUST 1861	No
TMK 06-01274	11/16/2006	5/18/2013	ANNE MICHELLE	J.P. ORIGINAL CORPORATION	No
TMK 06-01275	11/16/2006	7/13/2016	DESIGN ONLY	GR TECHNOLOGIES, LLC	No
TMK 06-01276	11/16/2006	8/2/2015	STORKSAK	MARSHALL BERGMAN LTD	No
TMK 06-01277	11/16/2006	6/6/2016	INDIANA PACERS	PACERS BASKETBALL CORPORATION	No
TMK 06-01278	11/16/2006	5/23/2016	LOS ANGELES LAKERS	THE LOS ANGELES LAKERS, INC	No
TMK 06-01279	11/16/2006	6/6/2016	DALLAS MAVERICKS	DALLAS BASKETBALL LIMITED	No
TMK 06-01280	11/16/2006	9/12/2016	WILD IRIS	CLARK-CLAUDON VINEYARDS, LLC	No
TMK 06-01281	11/16/2006	9/5/2016	PLAYBOY	PLAYBOY ENTERPRISES INTERNATIONAL, INC.	No
TMK 06-01282	11/16/2006	4/13/2013	ACOUSTIC WAVE	BOSE CORPORATION	No
TMK 06-01283	11/16/2006	9/1/2016	CASIO	CASIO KEISANKI KABUSHIKI KAISHA DBA CASIO COMPUTER LTD.	No
TMK 06-01284	11/16/2006	12/13/2015	PERLANE	HA NORTH AMERICAN SALES AB	No
COP 06-00109	11/16/2006	11/16/2026	AUBUSSON WEAVE: DESIGN 104-R.	RENAISSANCE CARPET & TAPESTRY (RCT)	No
TMK 06-01285	11/16/2006	11/2/2012	SP	SRI USA, INC.	No
TMK 06-01286	11/16/2006	4/12/2015	DIREZZA	SRI USA, INC.	No
COP 06-00110	11/16/2006	11/16/2026	AUBUSSON LOUIS PHILIPPE STYLE: NO. 364-A.	RENAISSANCE CARPET & TAPESTRY, INC. (RCT)	No
TMK 06-01287	11/16/2006	2/8/2015	SP 483	SRI USA, INC.	No
TMK 06-01288	11/16/2006	12/17/2012	SP SPORT A2	SRI USA, INC.	No
TMK 06-01289	11/16/2006	9/19/2016	ZS	ERMENEGILDO ZEGNA CORP.	No
TMK 06-01290	11/16/2006	6/6/2016	CLARK-CLAUDON	CLARK-CLAUDON VINEYARDS, LLC	No
TMK 06-01291	11/16/2006	1/24/2016	G	GUARDIAN AIR SERVICES, L.P.	No
TMK 06-01292	11/16/2006	6/27/2016	GUARDIAN AIR	GUARDIAN AIR SERVICES, L.P.	No
TMK 06-01293	11/16/2006	6/19/2010	HARLEY-DAVIDSON	H-D MICHIGAN, INC.	No
TMK 06-01294	11/16/2006	5/8/2011	ROCKET AND FLAME DESIGN	ROBISON'S, INC.	No
TMK 06-01295	11/16/2006	4/11/2010	PLUMB	COOPER INDUSTRIES	No
COP 06-00111	11/16/2006	11/16/2026	JIBBITZ TIGER	JIBBITZ, LLC	No
TMK 06-01296	11/16/2006	6/9/2012	CAMPBELL	COOPER INDUSTRIES	Yes
COP 06-00112	11/16/2006	11/16/2026	JIBBITZ FISH	JIBBITZ, LLC	No
TMK 06-01297	11/16/2006	9/11/2012	WISS	COOPER INDUSTRIES	No
COP 06-00113	11/16/2006	11/16/2026	JIBBITZ BEE.	JIBBITZ, LLC	No
TMK 06-01298	11/16/2006	8/15/2016	COLINAS	EL CENTAURO DE ORO, LTDA. DBA TABACOS DE LA CORDILLERA	No
TMK 06-01299	11/16/2006	5/26/2007	SOF-STEP	GREENDELL FARMS, INC.	No
TMK 06-01300	11/16/2006	4/20/2014	JOE ROCKET	ROBISON'S, INC.	No
TMK 06-01301	11/16/2006	1/18/2014	JOE ROCKET	ROBISON'S, INC.	No
TMK 06-01302	11/16/2006	8/6/2013	WISS	COOPER INDUSTRIES	No
COP 06-00114	11/16/2006	11/16/2026	JIBBITZ LADYBUG	JIBBITZ, LLC	No
COP 06-00115	11/16/2006	11/16/2026	JIBBITZ COW	JIBBITZ, LLC	No

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COP 06-00116	11/16/2006	11/16/2026	JIBBITZ UMBRELLA	JIBBITZ, LLC	No
COP 06-00117	11/16/2006	11/16/2026	JIBBITZ FLIP FLOPS	JIBBITZ, LLC	No
TMK 06-01303	11/16/2006	8/3/2009	ACCESS MORTGAGE CORPORATION	ACCESS MORTGAGE CORPORATION	No
TMK 06-01304	11/16/2006	3/10/2008	CD-RAMA	PARISH FINANCIAL SERVICES, INC.	No
TMK 06-01305	11/16/2006	8/30/2015	S DESIGN LOGO	MICRON TECHNOLOGY, INC.	No
TMK 06-01306	11/16/2006	6/3/2013	AC DC	LEIDSEPLEIN PRESS B.V.	No
TMK 06-01307	11/16/2006	3/26/2015	TRANS AM (STYLIZED)	SPORTS CAR CLUB OF AMERICA, INC.	No
TMK 06-01308	11/16/2006	5/7/2016	WARMILITE	ALTARE INTERNATIONAL CORP.	No
COP 06-00118	11/16/2006	11/16/2026	STICKUP BULB INSTRUCTIONS	TELEBRANDS CORPORATION	No
TMK 06-01309	11/16/2006	4/12/2015	DESIGN ONLY	SOUTHERN TRADING IMPORT & EXPORT CO., LTD.	No
TMK 06-01310	11/16/2006	4/23/2016	SNELL	SNELL MEMORIAL FOUNDATION, INC.	No
TMK 06-01311	11/16/2006	1/13/2016	DESIGN ONLY	THE NORTH FACE APPAREL CORP.	No
TMK 06-01312	11/16/2006	6/27/2010	PARISH	PARISH NATIONAL BANK, INC.	No
TMK 06-01313	11/16/2006	8/16/2015	OMNET	LOUISIANA WORKERS' COMPENSATION CORPORATION	No
TMK 06-01314	11/16/2006	10/3/2016	CB-3000	A.L. ENTERPRISES, INC.	No
TMK 06-01315	11/16/2006	9/19/2007	SPECTEK	MICRON TECHNOLOGY, INC.	No
TMK 06-01316	11/16/2006	9/9/2016	VICALM	FORTELE TRAFFIC, INC.	No
TMK 06-01318	11/16/2006	2/28/2009	ST LOGO	STMICROELECTRONICS, INC.	No
TMK 06-01317	11/16/2006	5/21/2011	PHILIPS AND DESIGN	KONINKLIJKE PHILIPS ELECTRONICS N.V.	No
COP 06-00119	11/16/2006	11/16/2026	STICK UP BULB INSTRUCTIONS II.	TELEBRANDS CORPORATION	No
TMK 06-00880	11/20/2006	10/11/2015	JUSTICE	TWEEN BRANDS INVESTMENT, LLC	No
TMK 06-01319	11/20/2006	2/3/2014	THOMSON LEARNING	THOMSON CANADA LIMITED	No
TMK 06-01320	11/20/2006	4/29/2013	GIVE ME FACE	MP SPORTSWEAR, INC.	No
TMK 06-01321	11/20/2006	4/20/2013	SP SPORT	SRI USA, INC.	No
TMK 06-01323	11/20/2006	9/12/2016	ZEGNASPORT Z	ERMENEGILDO ZEGNA CORP.	No
TMK 06-01322	11/20/2006	12/20/2015	CRUISIN' FRIED CHICKEN	CRUISIN' FRIED CHICKEN, LLC	No
TMK 06-01324	11/20/2006	3/10/2008	ROOTS	ROOTS CANADA LTD.	No
TMK 06-01325	11/20/2006	2/3/2014	JOE ROCKET	ROBISON'S, INC.	No
TMK 06-01326	11/20/2006	3/14/2015	CHESTER FRIED	CHESTER'S INTERNATIONAL, LLC	No
COP 06-00120	11/20/2006	11/20/2026	JIBBITZ ARROWHEAD	JIBBITZ, LLC	No
COP 06-00121	11/20/2006	11/20/2026	JIBBITZ CARDINAL	JIBBITZ, LLC	No
COP 06-00122	11/20/2006	11/20/2026	JIBBITZ DOG	JIBBITZ, LLC	No
TMK 06-01327	11/20/2006	10/15/2011	HARLEY-DAVIDSON MOTOR CYCLES & DESIGN	HARLEY-DAVIDSON, INC.	No
TMK 06-01328	11/20/2006	11/29/2012	CRESCENT	COOPER INDUSTRIES	No
COP 06-00123	11/20/2006	11/20/2026	JIBBITZ BUTTERFLY	JIBBITZ, LLC	No
COP 06-00124	11/20/2006	11/20/2026	JIBBITZ CRAYONS	JIBBITZ, LLC	No
COP 06-00125	11/20/2006	11/20/2026	JIBBITZ DINOSAUR	JIBBITZ, LLC	No
COP 06-00126	11/20/2006	11/20/2026	JIBBITZ EASTER EGG	JIBBITZ, LLC	No

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TMK 06-01329	11/20/2006	3/10/2008	ANCHOR BLUE	HUB DISTRIBUTING	No
TMK 06-01330	11/20/2006	1/6/2014	BABOLAT	HUB DISTRIBUTING INC.	No
TMK 06-01331	11/20/2006	2/18/2007	ANCHOR BLUE	HUB DISTRIBUTING INC.	No
TMK 06-01332	11/20/2006	11/19/2012	SPECTEK BRILLIANT MEMORY SOLUTIONS AND DESIGN	MICRON TECHNOLOGY, INC.	No
TMK 06-01333	11/20/2006	11/19/2012	STMICROELECTRONICS	STMICROELECTRONICS	No
COP 06-00127	11/20/2006	11/20/2026	STICKUP BULB PACKAGING	TELEBRANDS CORPORATION	No
TMK 06-01334	11/20/2006	5/11/2014	AC DC & DESIGN	LEIDSEPLEIN PRESS B.V.	No
TMK 06-01335	11/20/2006	3/27/2010	ANCHOR BLUE (STYLIZED)	HUB DISTRIBUTING INC.	No
TMK 06-01336	11/20/2006	11/5/2012	LIND	LIND ELECTRONICS, INC.	No
COP 06-00128	11/20/2006	11/20/2026	THE SWEARING FINGER	O'SMILE INDUSTRIAL, LTD.	No
TMK 06-01337	11/20/2006	9/4/2014	ANCHOR BLUE	HUB DISTRIBUTING INC.	No
COP 06-00129	11/20/2006	11/20/2026	FLOWER POWER COLLECTION DESIGN	SAFE SKIES LLC.	No
TMK 06-01338	11/20/2006	5/31/2015	AMERICAN COTTAGE	AMERICAN COTTAGE, LLC	No
TMK 06-01339	11/20/2006	1/6/2014	REEF ROOM	RAWBAR, INC.	No
TMK 06-01340	11/20/2006	12/20/2009	LURKIN (STYLIZED)	COOPER INDUSTRIES	No
COP 06-00130	11/20/2006	11/20/2026	JIBBITZ PALM TREE	JIBBITZ, LLC	No
COP 06-00131	11/20/2006	11/20/2026	JIBBITZ CLOWN FISH	JIBBITZ, LLC	No
COP 06-00132	11/20/2006	11/20/2026	JIBBITZ SKULL AND CROSSBONES	JIBBITZ, LLC	No
COP 06-00133	11/20/2006	11/20/2026	JIBBITZ DAISY	JIBBITZ, LLC	No
COP 06-00134	11/20/2006	11/20/2026	JIBBITZ BLUE JAY	JIBBITZ, LLC	No
COP 06-00135	11/20/2006	11/20/2026	WEBAUDIOCC : ISLU-SWISWF : VER. 3.0	P/1/E GLOBAL HOLDINGS, LLC.	No
TMK 06-01341	11/20/2006	7/25/2011	HAPI	JFC INTERNATIONAL INC.	No
COP 06-00136	11/20/2006	11/20/2026	AIR, LAND & SEA DEFENDER SET #89132	TOY CENTURY INDUSTRIAL COMPANY, LTD.	No
TMK 06-01342	11/20/2006	8/30/2015	OMNET GOLD	LOUISIANA WORKERS' COMPENSATION CORPORATION	No
TMK 06-01343	11/20/2006	8/26/2013	TURBODOG	ABITA BREWING COMPANY, L.L.C.	No
COP 06-00137	11/20/2006	11/20/2026	2005 PLANT LIGHT COLLECTION 1	RUSSCO III, INC.	No
TMK 06-01344	11/20/2006	5/23/2016	MT18HS	MITEK HOLDINGS, INC.	No
TMK 06-01345	11/20/2006	10/14/2013	CHESTER FRIED	CHESTER'S INTERNATIONAL, LLC	No
TMK 06-01346	11/20/2006	2/28/2016	THE CHEF'S GARDEN	THE CHEF'S GARDEN, INC.	No
TMK 06-01347	11/20/2006	9/19/2016	MT20HS	MITEK HOLDINGS, INC.	No
TMK 06-01348	11/20/2006	9/28/2009	FAIRCHILD SEMICONDUCTOR	FAIRCHILD SEMICONDUCTOR CORPORATION	No
COP 06-00138	11/20/2006	11/20/2026	RAT IN A TRAP	O'SMILE INDUSTRIAL, LTD.	No
TMK 06-01349	11/20/2006	1/11/2014	ROOTS	ROOTS CANADA LTD.	No
TMK 06-01350	11/20/2006	12/5/2010	FAIRCHILD SEMICONDUCTOR (AND DESIGN)	FAIRCHILD SEMICONDUCTOR CORPORATION	No
TMK 06-01351	11/20/2006	2/14/2016	MT16	MITEK HOLDINGS, INC.	No

## MONTH OF NOVEMBER 2006

TMK 06-01374	11/21/2006	12/28/2009	ISPPAC		LATTICE SEMICONDUCTOR CORPORATION	No
TMK 06-01375	11/21/2006	10/7/2013	ISXPAGA		LATTICE SEMICONDUCTOR CORPORATION	No
TMK 06-01376	11/21/2006	7/25/2016		LAUNDRY BY SHELLI SEGAL (STYLIZED)	L.C. LICENSING, INC.	No
TMK 06-01377	11/21/2006	7/4/2016		ELLEN TRACY	L.C. LICENSING, INC.	No
COP 06-00139	11/21/2006	11/21/2026		JIBBITZ MONSTER--THREE	JIBBITZ, LLC	No
COP 06-00150	11/21/2006	11/21/2026		JIBBITZ MONSTER--TWO.	JIBBITZ, LLC	No
COP 06-00140	11/21/2006	11/21/2026		JIBBITZ BROWN BEAR	JIBBITZ, LLC	No
COP 06-00151	11/21/2006	11/21/2026		JIBBITZ SNAKE HEAD.	JIBBITZ, LLC	No
TMK 06-01353	11/21/2006	7/6/2014		ZIPS	INGRAM ENTERPRISES, INC.	No
COP 06-00152	11/21/2006	11/21/2026		NEW SHADOW GRASS	HAAS OUTDOORS, INC.	No
TMK 06-01378	11/21/2006	4/2/2011		JW & DESIGN	JOHN WILEY & SONS, INC.	No
TMK 06-01382	11/21/2006	9/22/2008		CETROTIDE	ZENTARIS GMBH	No
TMK 06-01383	11/21/2006	1/10/2016		CETROTIDE & DESIGN	ZENTARIS GMBH	No
COP 06-00153	11/21/2006	11/21/2026		JIBBITZ LION	JIBBITZ, LLC	No
COP 06-00154	11/21/2006	11/21/2026		JIBBITZ SANTA	JIBBITZ, LLC	No
COP 06-00155	11/21/2006	11/21/2026		JIBBITZ BLACK PANTHER.	JIBBITZ, LLC	No
COP 06-00156	11/21/2006	11/21/2026		JIBBITZ FALCON	JIBBITZ, LLC	No
COP 06-00141	11/21/2006	11/21/2026		CUBE WORLD : SER. 1	RADICA GAMES, LTD.	No
TMK 06-01384	11/21/2006	9/11/2014		DESIGN ONLY	PEAVEY ELECTRONICS CORPORATION	No
COP 06-00142	11/21/2006	11/21/2026		CUBE WORLD : SER. 2	RADICA GAMES, LTD.	No
COP 06-00143	11/21/2006	11/21/2026		200 GAME	RADICA GAMES, LTD.	No
TMK 06-01385	11/21/2006	2/24/2014		K'NEX	CONNECTOR SET LIMITED PARTNERSHIP	No
TMK 06-01386	11/21/2006	1/6/2014		STT	SUNRISE TELECOM INCORPORATED	No
COP 06-00144	11/21/2006	11/21/2026		GEOMETRIC AND ANIMAL PATTERNS DESIGN	SAFE SKIES LLC.	No
TMK 06-01365	11/21/2006	8/17/2014		LID KIDS	CONNECTOR SET LIMITED PARTNERSHIP	No
TMK 06-01362	11/21/2006	10/25/2014		CARON	PARFUMS CARON	No
TMK 06-01363	11/21/2006	1/9/2011		BLUE STAR PASTEURIZED CRAB JK JOHN KEELER & CO., INC.	JOHN KEELER & CO., INC.	No
TMK 06-01364	11/21/2006	12/28/2014		BLUE STAR FOOD PRODUCTS	JOHN KEELER & CO., INC.	No
TMK 06-01366	11/21/2006	7/29/2013		KID K'NEX	CONNECTOR SET LIMITED PARTNERSHIP	No
TMK 06-01387	11/21/2006	9/6/2015		MISCELLANEOUS DESIGN	TEIN INC.	No
TMK 06-01388	11/21/2006	1/7/2013		T TEIN	KABUSHIKI KAISHA TEIN	No
TMK 06-01389	11/21/2006	2/28/2016		BE LOOSE AND HAVE FUN. BAKE PHENOMENAL BREAD. RUN FAST TO HELP CUSTOMERS.	GREAT HARVEST FRANCHISING, INC.	No

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TMK 06-01354	11/21/2006	1/18/2010	ROOTS	ROOTS CANADA LTD.	No
TMK 06-01379	11/21/2006	1/7/2017	ELEUTHERO GINSENG EXTRACT ORAL LIQUID	CHUNG INC., DBA SUPERIOR TRADING COMPANY	No
TMK 06-01380	11/21/2006	9/13/2015	JUICY COUTURE BABY	L.C. LICENSING, INC.	No
TMK 06-01355	11/21/2006	9/19/2016	MIT20	MITEK HOLDINGS, INC.	No
COP 06-00145	11/21/2006	11/21/2026	JIBBITZ TOOTH/MOLAR	JIBBITZ, LLC	No
COP 06-00146	11/21/2006	11/21/2026	JIBBITZ HORSE	JIBBITZ, LLC	No
TMK 06-01392	11/22/2006	12/21/2014	CHAMPAGNE WEDDING CONFETTI	INGRAM ENTERPRISES, INC.	No
TMK 06-01390	11/22/2006	8/31/2014	INCIDENCE	SPCC PARIS BLEU CORPORATION	No
TMK 06-01414	11/22/2006	5/17/2015	ESTOLIA	SPCC PARIS BLEU CORPORATION	No
TMK 06-01415	11/22/2006	9/7/2014	RED PEARL	SPCC PARIS BLEU CORPORATION	No
TMK 06-01393	11/22/2006	7/6/2014	SURPRISE SURPRISE	INGRAM ENTERPRISES, INC.	No
TMK 06-01394	11/22/2006	3/16/2013	GOLDEN DIAMOND	INGRAM ENTERPRISES, INC.	No
COP 06-00157	11/22/2006	4/22/2016	CAPILENE	PATAGONIA, INC.	No
TMK 06-01413	11/22/2006	11/22/2026	CUBE WORLD : SER. 2.	RADICA GAMES, LTD.	No
COP 06-00158	11/22/2006	8/5/2007	CRINDONE	COLUMBIA LABORATORIES INC	No
COP 06-00158	11/22/2006	11/22/2026	WEBAUDIOCC : ISLD-SWISWF : VER. 3.0	P/7/E GLOBAL HOLDINGS, LLC.	No
COP 06-00162	11/22/2006	11/22/2026	BVLGARI PERFUMES CATALOGUE 2005	BULGARI, SPA )	No
TMK 06-01411	11/22/2006	10/14/2015	PARAMOUNT	BACON FELT CO., INC.	No
TMK 06-01412	11/22/2006	4/25/2016	EBEL	MGI LUXURY GROUP SA	No
TMK 06-01395	11/22/2006	1/24/2016	CHESTER'S	CHESTER'S INTERNATIONAL, LLC	No
TMK 06-01396	11/22/2006	5/28/2013	USS	UNITED STATES STEEL CORPORATION	No
COP 06-00159	11/22/2006	11/22/2026	JIBBITZ AMERICAN INDIAN.	JIBBITZ, LLC	No
COP 06-00160	11/22/2006	11/22/2026	BULGARI, 2005 OPTICAL UPDATE NO. 2.	BULGARI, SPA (EMPLOYER FOR HIRE OF APAOLO BULGARI)	No
COP 06-00161	11/22/2006	11/22/2026	JIBBITZ MONSTER--FOUR.	JIBBITZ, LLC	No
TMK 06-01398	11/22/2006	2/28/2016	CRUISIN' FRIED CHICKEN	CRUISIN' FRIED CHICKEN, LLC	No
TMK 06-01399	11/22/2006	1/18/2015	COSMIC HAIL	INGRAM ENTERPRISES, INC.	No
TMK 06-01400	11/22/2006	8/31/2014	PYRO SPLASH	INGRAM ENTERPRISES, INC.	No
TMK 06-01401	11/22/2006	2/19/2013	RED RASCALS	INGRAM ENTERPRISES, INC.	No
TMK 06-01402	11/22/2006	9/30/2013	UFO UNBELIEVABLE FLYING OBJECTS	INGRAM ENTERPRISES, INC.	No
TMK 06-01403	11/22/2006	1/18/2015	TOO HOT TO HANDLE	INGRAM ENTERPRISES, INC.	No
TMK 06-01404	11/22/2006	12/10/2012	WHAT A BLAST	INGRAM ENTERPRISES, INC.	No
TMK 06-01405	11/22/2006	6/1/2009	MARTIAN METEORITE	INGRAM ENTERPRISES, INC.	No
TMK 06-01410	11/22/2006	8/26/2013	COLORS OF AMERICA	INGRAM ENTERPRISES, INC.	No
TMK 06-01406	11/22/2006	1/25/2015	RESCUEPRO	SANDISK CORPORATION	No
TMK 06-01407	11/22/2006	3/31/2008	WILDLY WICKED	INGRAM ENTERPRISES, INC.	No
TMK 06-01408	11/22/2006	6/2/2008	BLUE FIRED ICE	INGRAM ENTERPRISES, INC.	No
TMK 06-01408	11/22/2006	10/1/2016	NEON RAINBOW	INGRAM ENTERPRISES, INC.	No

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TMK 06-01409	11/22/2006	7/7/2012	CRACKLIN' THUNDER	INGRAM ENTERPRISES, INC.	No
TMK 06-01417	11/27/2006	5/12/2010	NEW HOLLAND (STYLIZED)	CASE, LLC	No
TMK 06-01418	11/27/2006	1/5/2013	MII	MIKTEK INDUSTRIES, INC.	No
TMK 06-01429	11/27/2006	6/20/2016	LUCKY BRAND DUNGAREES & DESIGN	LUCKY BRAND DUNGAREES, INC.	No
COP 06-00163	11/27/2006	11/27/2026	H.E.R.O.E.S. - THE ULTIMATE BADGE OF COURAGE - RESCUE TEAM TANK, ITEM #89823	TOY CENTURY INDUSTRIAL COMPANY, LTD.	No
COP 06-00164	11/27/2006	11/27/2026	H.E.R.O.E.S. - THE ULTIMATE BADGE OF COURAGE - THE RESCUE TEAM UTILITY TRUCK, ITEM #89932	TOY CENTURY INDUSTRIAL COMPANY, LTD.	No
TMK 06-01428	11/27/2006	7/4/2010	SUNRISE TELECOM	SUNRISE TELECOM, INC.	No
COP 06-00165	11/27/2006	11/27/2026	ACTION PLAY SET - ITEM #00045	TOY CENTURY INDUSTRIAL COMPANY, LTD.	No
COP 06-00166	11/27/2006	11/27/2026	H.E.R.O.E.S. - THE ULTIMATE BADGE OF COURAGE - RESCUE TEAM VEHICLE, ITEM #89824	TOY CENTURY INDUSTRIAL COMPANY, LTD.	No
TMK 06-01416	11/27/2006	5/2/2010	SPACE MONKEYS	INGRAM ENTERPRISES, INC.	No
COP 06-00167	11/27/2006	11/27/2026	COLOR CERAMIC DESIGNS	HONG YI GAO	No
TMK 06-01430	11/27/2006	8/29/2016	TR THEATER RESEARCH & DESIGN	SMITH, GLENN	No
TMK 06-01431	11/27/2006	9/13/2015	JUICY	L.C. LICENSING, INC.	No
TMK 06-01432	11/27/2006	1/3/2016	JUICY	L.C. LICENSING, INC.	No
TMK 06-01433	11/27/2006	6/13/2016	LUCKY BRAND	LUCKY BRAND DUNGAREES, INC.	No
TMK 06-01434	11/27/2006	3/21/2016	POUR UN HOMME DE CARON (STYLIZED)	PARFUMS CARON	No
TMK 06-01435	11/27/2006	2/4/2015	WILEY	JOHN WILEY & SONS, INC.	No
TMK 06-01436	11/27/2006	7/26/2015	JUICY COUTURE	L.C. LICENSING, INC.	No
TMK 06-01437	11/27/2006	11/26/2015	POUR UN HOMME & DESIGN FOR DUMMIES	PARFUMS CARON	No
TMK 06-01419	11/27/2006	12/7/2009	JH (STYLIZED)	WILEY PUBLISHING, INC.	No
TMK 06-01420	11/27/2006	3/4/2013	NEW HOLLAND & DESIGN	CNH AMERICA LLC	No
TMK 06-01421	11/27/2006	10/26/2014	CNH	CNH AMERICA LLC	No
TMK 06-01422	11/27/2006	1/14/2013	SANDISK ULTRA	CNH GLOBAL N.V.	No
TMK 06-01423	11/27/2006	5/5/2011	CASE (STYLIZED)	SANDISK CORPORATION	No
TMK 06-01439	11/27/2006	6/19/2016	CREWCUTS	CNH AMERICA LLC	No
TMK 06-01424	11/27/2006	9/15/2008	CASE	CNH AMERICA LLC	No
TMK 06-01425	11/27/2006	10/31/2016	FASTRAK	TARPSTOP, LLC	No
TMK 06-01426	11/27/2006	11/2/2009	TRIM-TEX	TRIM-TEX, INC.	No
TMK 06-01442	11/27/2006	5/28/2015	SANDISK EXTREME	SANDISK CORPORATION	No
TMK 06-01447	11/28/2006	10/4/2015	VERONA	SPPC PARIS BLEU CORPORATION	No
COP 06-00168	11/28/2006	11/28/2026	H.E.R.O.E.S. - THE ULTIMATE BADGE OF COURAGE - RESCUE TEAM HELICOPTER, ITEM #89820	TOY CENTURY INDUSTRIAL COMPANY, LTD.	No

MONTH OF NOVEMBER 2008

TMK 06-01441	11/28/2006	9/12/2016	JWIN	JWIN ELECTRONICS CORP.	No
TMK 06-01444	11/28/2006	12/13/2015	STORE YOUR WORLD IN OURS	SANDISK CORPORATION	No
TMK 06-01440	11/28/2006	8/19/2013	CRUZER	SANDISK CORPORATION	No
TMK 06-01443	11/28/2006	11/7/2016	POST-IT	3M COMPANY	No
TMK 06-01446	11/29/2006	8/21/2011	BAMBOO	J.P. ORIGINAL CORP.	No
TMK 06-01445	11/29/2006	12/15/2012	MIITEK	MIITEK HOLDINGS, INC.	No
TMK 06-01447	11/29/2006	1/13/2016	DESIGN OF THE HANDLE OF A GARDEN TOOL	GARDEN CLAW CORPORATION	No
TMK 06-01448	11/29/2006	9/17/2013	MADEWELL	MILLARD S. DREXLER, INC.	No
TMK 06-01449	11/29/2006	6/25/2016	SOUTH POLE	WICKED FASHIONS, INC.	No
TMK 06-01450	11/30/2006	3/5/2007	NEW HOLLAND	CNH AMERICA LLC	No
TMK 06-01451	11/30/2006	3/25/2008	CASE TO LEAD!	CNH AMERICA LLC	No
TMK 06-01455	11/30/2006	7/12/2015	DARE TO LEAD!	DEBBIE KOOP, ALLAN LAFONTAINE	No
TMK 06-01452	11/30/2006	1/14/2007	CASE AND DESIGN	CNH AMERICA LLC	No
TMK 06-01453	11/30/2006	2/11/2007	CASE IH	CASE CORPORATION	No
TMK 06-01454	11/30/2006	11/16/2014	CNH & DESIGN	CNH AMERICA LLC	No
TMK 06-01456	11/30/2006	11/21/2016	BOCA CLASSICS	BDSRCD, INC.	No

Total Records: 284  
Date as of: 12/6/2006

**COPYRIGHT, TRADEMARK, AND  
TRADE NAME RECORDATIONS**

**(No. 12 2006)**

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

SUMMARY: Presented herein are the copyrights, trademarks, and  
trade names recorded with U.S. Customs and Border Protection dur-  
ing the month of December 2006. The last notice was published in  
the CUSTOMS BULLETIN on December 6, 2006.

Corrections or updates may be sent to: Department of Homeland  
Security, U.S. Customs and Border Protection, Office of Regulations  
and Rulings, IPR Branch, 1300 Pennsylvania Avenue, N.W., Mint  
Annex, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Delois Johnson,  
Paralegal, Intellectual Property Rights Branch, (202) 572-8710.

Dated: February 1, 2007

GEORGE MCCRAY, Esq.,  
*Chief,*  
*Intellectual Property Rights Branch.*

MONTH OF DECEMBER 2006

Recordation No.	Effective Date	Name of Cop/Tmk/Tm	Owner Name	
COP 06-00169	12/5/2006	BULGARI, 2005 OPHTHALMIC & SUNGLASS UPDATE	BULGARI, SPA (EMPLOYER FOR HIRE OF APAOLO BULGARI)	No
COP 06-00170	12/6/2006	BULGARI, 2006 SUNGLASS COLLECTION	BULGARI, SPA (EMPLOYER FOR HIRE OF APAOLO BULGARI)	No
COP 06-00171	12/12/2006	JIBBITZ BIKE	JIBBITZ, LLC	No
COP 06-00172	12/12/2006	FEMALE JIBBITZ SILLY FACES HAIR.	JIBBITZ, LLC	No
COP 06-00173	12/12/2006	JIBBITZ CAT	JIBBITZ, LLC	No
COP 06-00174	12/13/2006	EUREKA SEVEN : NO. 1-2, JAPANESE VERSION.	BONES, INC. & BANIDAI COMPANY, LTD.	No
COP 06-00175	12/15/2006	JIBBITZ MONSTER ONE	JIBBITZ, LLC	No
COP 06-00176	12/15/2006	JIBBITZ AMERICAN FLAG	JIBBITZ, LLC	No
COP 06-00177	12/15/2006	JIBBITZ OWL	JIBBITZ, LLC	No
COP 06-00178	12/19/2006	THE HUMANITY BRACELET	LHH&F, INC.	No
TMK 06-01457	12/1/2006	RADO & DESIGN	RADO UHREN A.G. (RADO WATCH CO. LTD.) (MONTRES RADO S.A.)	No
TMK 06-01458	12/1/2006	TIME	J&J DISTRIBUTING CO.	No
TMK 06-01459	12/5/2006	HOYLE	THE UNITED STATES PLAYING CARD COMPANY	No
TMK 06-01460	12/5/2006	RADO	RADO UHREN AG (RADO WATCH CO. LTD.)	No
TMK 06-01461	12/6/2006	DESIGN	(MONTRES RADO S.A.)	No
TMK 06-01462	12/6/2006	SWATCH	MODERN FENCE TECHNOLOGIES	No
TMK 06-01463	12/6/2006	A DESIGN	SWATCH AG (SWATCH SA) (SWATCH LTD)	No
TMK 06-01464	12/6/2006	MAVERICK	ADAMS MFG. CORP.	No
TMK 06-01465	12/6/2006	BICYCLE	THE UNITED STATES PLAYING CARD COMPANY	No
TMK 06-01466	12/6/2006	DIANE VON FURSTENBERG	THE UNITED STATES PLAYING CARD COMPANY	No
TMK 06-01467	12/6/2006	BEXXAR	DIANE VON FURSTENBERG STUDIO COMPOSED OF GENERAL PARTNER(S) & CITIZENSHIP/INCORPORATION.	No
TMK 06-01468	12/7/2006	HOYLE	SMITHKLINE BEECHAM CORPORATION	No
TMK 06-01469	12/8/2006	CREATIVE NAIL DESIGN	THE UNITED STATES PLAYING CARD COMPANY	No
TMK 06-01470	12/8/2006	CHESTER'S AND DESIGN	CREATIVE NAIL DESIGN, INC.	No
TMK 06-01471	12/11/2006	LIFESAVER	CHESTER'S INTERNATIONAL, LLC	No
TMK 06-01472	12/11/2006	PUREOLOGY	MID-CONTINENT INSTRUMENT CO., INC.	No
			PUREOLOGY RESEARCH LLC	No

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TMK 06-01473	12/11/2006	8/6/2012	TEXAS INSTRUMENTS	TEXAS INSTRUMENTS INCORPORATED	No
TMK 06-01474	12/11/2006	7/2/2015	TIMENTIN	SMITHKLINE BEECHAM CORPORATION	No
TMK 06-01475	12/11/2006	12/12/2007	U AND DESIGN	LINTRODE CORPORATION	No
TMK 06-01476	12/12/2006	8/5/2013	HALEBOB	FRENCH WEST, INC.	No
TMK 06-01477	12/12/2006	2/13/2011	C PIM AND DESIGN	AMERICAN PRODUCTION & INVENTORY CONTROL SOCIETY	No
TMK 06-01478	12/12/2006	12/7/2013	APICS	AMERICAN PRODUCTION & INVENTORY CONTROL SOCIETY	No
TMK 06-01479	12/13/2006	11/30/2014	BOOSTRIX	GLAXOSMITHKLINE BIOLOGICALS S.A.	No
TMK 06-01480	12/13/2006	9/10/2016	COREG	SMITHKLINE BEECHAM PLC	No
TMK 06-01481	12/13/2006	6/24/2013	PEDIARIX	GLAXOSMITHKLINE BIOLOGICALS, S.A.	No
TMK 06-01482	12/13/2006	10/15/2012	VOLT	VOLT INFORMATION SCIENCES, INC.	No
TMK 06-01483	12/13/2006	12/5/2016	MARINE ENTERPRISES INTERNATIONAL & DESIGN	MARINE ENTERPRISES INTERNATIONAL, INC.	No
TMK 06-01484	12/13/2006	5/4/2013	MEPRON	SMITHKLINE BEECHAM CORPORATION	No
TMK 06-01485	12/14/2006	10/5/2014	MYLERAN	SMITHKLINE BEECHAM CORPORATION	No
TMK 06-01486	12/15/2006	2/22/2010	ARIXTRA	GLAXO GROUP LIMITED	No
TMK 06-01487	12/15/2006	11/14/2016	PAN AM	PAN AMERICAN WORLD AIRWAYS, INC.	No
TMK 06-01488	12/15/2006	8/22/2016	DESIGN ONLY (SERVICE MARK)	BUILD-A-BEAR RETAIL MANAGEMENT, INC	No
TMK 06-01489	12/15/2006	10/19/2014	TYKERB	SMITHKLINE BEECHM (CORK) LIMITED	No
TMK 06-01490	12/15/2006	3/9/2014	PAXIL CR (STYLIZED)	SMITHKLINE BEECHAM CORPORATION	No
TMK 06-01491	12/15/2006	3/10/2008	REQUIP	SMITHKLINE BEECHAM P.L.C.	No
TMK 06-01492	12/19/2006	8/2/2015	TOP GUN	RICHEMONT INTERNATIONAL S.A.	No
TMK 06-01493	12/19/2006	10/8/2012	FORTEO	ELI LILLY AND COMPANY	No
TMK 97-00300	12/6/2006	2/18/2017	CIM	C.I.M. INDUSTRIES INC.	No

Total Records: 48  
Date as of: 1/10/2007

**Automated Commercial Environment (ACE): National Customs Automation Program Test Of Automated Truck Manifest for Truck Carrier Accounts; Deployment Schedule**

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

**ACTION:** General notice.

**SUMMARY:** The Bureau of Customs and Border Protection, in conjunction with the Department of Transportation, Federal Motor Carrier Safety Administration, is currently conducting a National Customs Automation Program (NCAP) test concerning the transmission of automated truck manifest data. This document announces a new group, or cluster, of ports to be deployed for this test.

**DATES:** The ports identified in this notice, all in the state of North Dakota, are expected to be fully deployed for testing by January 31, 2007. Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Swanson via e-mail at [james.d.swanson@dhs.gov](mailto:james.d.swanson@dhs.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The National Customs Automation Program (NCAP) test concerning the transmission of automated truck manifest data for truck carrier accounts was announced in a General Notice published in the **Federal Register** (69 FR 55167) on September 13, 2004. That notice stated that the test of the Automated Truck Manifest would be conducted in a phased approach, with primary deployment scheduled for no earlier than November 29, 2004.

A series of **Federal Register** notices have announced the implementation of the test, beginning with a notice published on May 31, 2005 (70 FR 30964). As described in that document, the deployment sites for the test have been phased in as clusters. The ports identified belonging to the first cluster were announced in the May 31, 2005, notice. Additional clusters were announced in subsequent notices published in the **Federal Register** including: 70 FR 43892, published on July 29, 2005; 70 FR 60096, published on October 14, 2005; 71 FR 3875, published on January 24, 2006; 71 FR 23941, published on April 25, 2006; 71 FR 42103, published on July 25, 2006; and 71 FR 77404, published on December 26, 2006.

**New Cluster**

Through this notice, CBP announces that a new cluster of ports to be brought up for purposes of deployment of the test, to be fully deployed by January 31, 2007, will be the following ports in the state of

North Dakota: St. John; Dunseith; Carbury; Westhope; Antler; Sherwood; Northgate; Portal; Noonan; Ambrose; and Fortuna. This deployment is for purposes of the test of the transmission of automated truck manifest data only; the Automated Commercial Environment (ACE) Truck Manifest System is not yet the mandated transmission system for these ports. The ACE Truck Manifest System will become the mandatory transmission system in these ports only after publication in the **Federal Register** of 90 days notice, as explained by CBP in the **Federal Register** notice published on October 27, 2006 (71 FR 62922).

**Previous NCAP Notices Not Concerning Deployment Schedules**

On Monday, March 21, 2005, a General Notice was published in the **Federal Register** (70 FR 13514) announcing a modification to the NCAP test to clarify that all relevant data elements are required to be submitted in the automated truck manifest submission. That notice did not announce any change to the deployment schedule and is not affected by publication of this notice. All requirements and aspects of the test, as set forth in the September 13, 2004 notice, as modified by the March 21, 2005 notice, continue to be applicable.

Dated: January 25, 2007

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

[Published in the Federal Register, February 1, 2007 (72 FR 5070)]

**Bureau Of Customs And Border Protection**

**Docket No. USCBP-2007-0003**

**Notice of Meeting of The Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (COAC)**

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

**ACTION:** Notice of Federal Advisory Committee Meeting

**SUMMARY:** The Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection and Related Homeland Security Functions (popularly known as "COAC") will meet on February 14, 2007 in Washington, DC. The meeting will be open to the public.

**DATE:** COAC will meet Wednesday, February 14th from 9:00 a.m. to 1:00 p.m. Please note that the meeting may close early if the committee has completed its business.

**ADDRESSES:** The meeting will be held at the Ronald Reagan Building in the Rotunda Ballroom, 1300 Pennsylvania Avenue, NW., Washington, DC 20004. Written material, comments, and requests to make oral presentations at the meeting should reach the contact person listed below by February 1st. Requests to have a copy of your material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by February 7, 2007. Comments must be identified by USCBP-2007-0003 and may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **E-mail:** [traderelations@dhs.gov](mailto:traderelations@dhs.gov). Include the docket number in the subject line of the message.
- **Fax:** 202-344-1969.
- **Mail:** Ms. Wanda Tate, Office of International Affairs and Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, Room 2.4B, Washington, DC 20229.

**Instructions:** All submissions received must include the words “Department of Homeland Security” and the docket number for this action. Comments received will be posted without alteration at [www.regulations.gov](http://www.regulations.gov), including any personal information provided.

**Docket:** For access to the docket to read background documents or comments received by the COAC, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Wanda Tate, Office of International Affairs and Trade Relations, Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Ave., NW., Room 2.4B, Washington, DC 20229; [traderelations@dhs.gov](mailto:traderelations@dhs.gov); telephone 202-344-1440; facsimile 202-344-1969.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92-463). The Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection and Related Homeland Security Functions (COAC) is tasked with providing advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within DHS or the Department of the Treasury.

The first meeting of the tenth term of COAC will be held at the date, time and location specified above. A tentative agenda for the meeting is set forth below.

Tentative Agenda

1. Introduction of the newly-appointed tenth term COAC members.
2. Collection of additional data elements for cargo security.
3. Trade Resumption.
4. International Container Security.
5. CSI (Container Security Initiative).
6. C-TPAT (Customs-Trade Partnership Against Terrorism).
7. Office of International Trade.
8. Export Enforcement – training and policy.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished.

Participation in COAC deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations.

All visitors to the Ronald Reagan Building will have to go through a security checkpoint to be admitted to the building. Since seating is limited, all persons attending this meeting should provide notice, preferably by close of business Monday, February 12, 2007, to Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, Washington, DC 20229, telephone 202-344-1440; facsimile 202-344-1969.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate as soon as possible.

Dated: January 26, 2007

MICHAEL C. MULLEN,  
*Assistant Commissioner,  
Office of International  
Affairs and Trade Relations  
Customs and Border Protection.*

**QUARTERLY IRS INTEREST RATES USED IN  
CALCULATING INTEREST ON OVERDUE ACCOUNTS  
AND REFUNDS ON CUSTOMS DUTIES**

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

**ACTION:** General notice.

**SUMMARY:** This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning January 1, 2007, the interest rates for overpayments will remain at 7 percent for corporations and 8 percent for non-corporations, and the interest rate for underpayments will remain at 8 percent. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

**EFFECTIVE DATE:** January 1, 2007.

**FOR FURTHER INFORMATION CONTACT:** Ron Wyman, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614-4516.

**SUPPLEMENTARY INFORMATION:**

**Background**

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2006-63, the IRS determined the rates of interest for the calendar quarter beginning January 1, 2007, and ending March 31, 2007. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (5%) plus three percentage points (3%) for a total of eight percent (8%). For corporate overpayments, the rate is the Federal short-term rate (5%) plus two percentage points (2%) for a total of seven percent (7%). For overpayments made by non-corporations, the rate is the Federal short-term rate

(5%) plus three percentage points (3%) for a total of eight percent (8%). These interest rates are subject to change for the calendar quarter beginning January 1, 2007, and ending March 31, 2007.

For the convenience of the importing public and Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

<u>Beginning Date</u>	<u>Ending Date</u>	<u>Under- payments (percent)</u>	<u>Over- payments (percent)</u>	<u>Corporate Overpay- ments (Eff. 1-1-99) (percent)</u>
070174	063075	6%	6%	
070175	013176	9 %	9 %	
020176	013178	7 %	7 %	
020178	013180	6 %	6 %	
020180	013182	12 %	12 %	
020182	123182	20 %	20 %	
010183	063083	16 %	16 %	
070183	123184	11 %	11 %	
010185	063085	13 %	13 %	
070185	123185	11 %	11 %	
010186	063086	10 %	10 %	
070186	123186	9 %	9 %	
010187	093087	9 %	8 %	
100187	123187	10 %	9 %	
010188	033188	11 %	10 %	
040188	093088	10 %	9 %	
100188	033189	11 %	10 %	
040189	093089	12 %	11 %	
100189	033191	11 %	10 %	
040191	123191	10 %	9 %	
010192	033192	9 %	8 %	
040192	093092	8 %	7 %	
100192	063094	7 %	6 %	
070194	093094	8 %	7 %	
100194	033195	9 %	8 %	
040195	063095	10 %	9 %	
070195	033196	9 %	8 %	
040196	063096	8 %	7 %	
070196	033198	9 %	8 %	
040198	123198	8%	7%	
010199	033199	7%	7%	6%
040199	033100	8%	8%	7%
040100	033101	9%	9%	8%
040101	063001	8%	8%	7%

<u>Beginning Date</u>	<u>Ending Date</u>	<u>Under- payments (percent)</u>	<u>Over- payments (percent)</u>	<u>Corporate Overpay- ments (Eff. 1-1-99) (percent)</u>
070101	123101	7%	7%	6%
010102	123102	6%	6%	5%
010103	093003	5%	5%	4%
100103	033104	4%	4%	3%
040104	063004	5%	5%	4%
070104	093004	4%	4%	3%
100104	033105	5%	5%	4%
040105	093005	6%	6%	5%
100105	063006	7%	7%	6%
070106	033107	8%	8%	7%

Dated: January 25, 2007

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

[Published in the Federal Register, January 31, 2007 (72 FR 4524)]

**DATES AND DRAFT AGENDA OF THE THIRTY-NINTH SESSION OF THE HARMONIZED SYSTEM COMMITTEE OF THE WORLD CUSTOMS ORGANIZATION**

**AGENCIES:** U.S. Customs and Border Protection, Department of Homeland Security, and U.S. International Trade Commission.

**ACTION:** Publication of the dates and draft agenda for the thirty-ninth session of the Harmonized System Committee of the World Customs Organization.

**SUMMARY:** This notice sets forth the dates and draft agenda for the next session of the Harmonized System Committee of the World Customs Organization.

**DATE:** January 29, 2007.

**FOR FURTHER INFORMATION CONTACT:** Joan A. Jackson, Staff Assistant, Tariff Classification and Marking Branch, U.S. Customs and Border Protection (202-572-8831), or David Beck, Director, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission (202-205-2592).

**SUPPLEMENTARY INFORMATION:****BACKGROUND**

The United States is a contracting party to the International Convention on the Harmonized Commodity Description and Coding System ("Harmonized System Convention"). The Harmonized Commodity Description and Coding System ("Harmonized System"), an international nomenclature system, forms the core of the U.S. tariff, the Harmonized Tariff Schedule of the United States. The Harmonized System Convention is under the jurisdiction of the World Customs Organization (established as the Customs Cooperation Council).

Article 6 of the Harmonized System Convention establishes a Harmonized System Committee ("HSC"). The HSC is composed of representatives from each of the contracting parties to the Harmonized System Convention. The HSC's responsibilities include issuing classification decisions on the interpretation of the Harmonized System. Those decisions may take the form of published tariff classification opinions concerning the classification of an article under the Harmonized System or amendments to the Explanatory Notes to the Harmonized System. The HSC also considers amendments to the legal text of the Harmonized System. The HSC meets twice a year in Brussels, Belgium. The next session of the HSC will be the thirty-ninth, and it will be held from March 19, 2007 to March 30, 2007.

In accordance with section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), the Department of Homeland Security, represented by U.S. Customs and Border Protection, the Department of Commerce, represented by the Census Bureau, and the U.S. International Trade Commission ("ITC"), jointly represent the U.S. government at the sessions of the HSC. The Customs and Border Protection representative serves as the head of the delegation at the sessions of the HSC.

Set forth below is the draft agenda for the next session of the HSC. Copies of available agenda-item documents may be obtained from either Customs and Border Protection or the ITC. Comments on agenda items may be directed to the above-listed individuals.

GAIL A. HAMILL,  
*Chief,*

*Tariff Classification and Marking Branch.*

Attachment



WORLD CUSTOMS ORGANIZATION  
 ORGANISATION MONDIALE DES DOUANES  
 Established in 1952 as the Customs Co-operation Council  
 Créée en 1952 sous le nom de Conseil de coopération douanière

HARMONIZED SYSTEM  
 COMMITTEE

NC1124E1a

39<sup>th</sup> Session

O. Eng.

Brussels, 23 January 2007.

DRAFT AGENDA FOR THE 39<sup>TH</sup> SESSION  
 OF THE HARMONIZED SYSTEM COMMITTEE

From : Monday, 19 March 2007 (11.00 a.m.)

To : Friday, 30 March 2007

**N.B.** : Wednesday, 14 March 2007 (15.00 a.m.) to Friday, 16 March 2007 : Presessional Working Party (to examine the questions under Agenda Item VII)

Monday, 19 March 2007 (9.30 a.m. – 10.30 a.m.) : Adoption of the Report of the 34<sup>th</sup> Session of the Review Sub-Committee

**I. ADOPTION OF THE AGENDA**

- |    |                       |           |
|----|-----------------------|-----------|
| 1. | Draft Agenda .....    | NC1124E1a |
| 2. | Draft Timetable ..... | NC1125B1a |

**II. REPORT BY THE SECRETARIAT**

- |    |  |                        |
|----|--|------------------------|
| 1. | Position regarding Contracting Parties to the HS Convention and related matters .....                | NC1127E1a              |
| 2. | Report on the last meeting of the Policy Commission (56 <sup>th</sup> Session) .....                 | NC1128E1a              |
| 3. | Approval of decisions taken by the Harmonized System Committee at its 38 <sup>th</sup> Session ..... | NG0122E1a<br>NC1126E1a |
| 4. | Capacity building activities of the Nomenclature and Classification Sub-Directorate .....            | NC1129E1a              |

Note : Shaded parts will be removed when documents are placed on the WCO documentation database available to the public.

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NC1124E1a

- 5. Co-operation with other international organisations ..... NC1130E1a
- 6. New information provided on the WCO Web site ..... NC1131E1a
- 7. Publication of WCO documents on the Web site for the public ..... NC1132E1a
- 8. Possible invitation of non-WCO Members to become HS Contracting Parties ..... NC1167E1a
- 9. Other .....

III. GENERAL QUESTIONS

- 1. Possible amendment of Article 8 of the HS Convention with a view to removing the Council from its purely administrative role with regard to HS reservations, and to making the fast-track procedure the default reservation procedure ..... NC1133E1a
- 2. Possible separate publication of surveys on FTAs and Customs duties on the WCO Web site for the public ..... NC1134E1a

IV. RECOMMENDATIONS

- 1. Draft Recommendation of the Customs Co-operation Council on the insertion in national statistical nomenclatures of subheadings for substances controlled under the Convention on the Prohibition of the development, production, stockpiling and use of Chemical Weapons and on their destruction ..... NC1135E1a

V. REPORT OF THE SCIENTIFIC SUB-COMMITTEE

- 1. Report of the 22<sup>nd</sup> Session of the Scientific Sub-Committee ..... NS0145E1a
- 2. Matters for decision ..... NC1136E1a

VI. REPORT OF THE REVIEW SUB-COMMITTEE

- 1. Report of the 34<sup>th</sup> Session of the Review Sub-Committee ..... NR0668E1b
- 2. Matters for decision ..... NC1137E1a
- 3. Possible amendment of the Subheading Explanatory Note to heading 42.02 ..... NC1138E1a

VII. REPORT OF THE PRESESSIONAL WORKING PARTY

- 1. Amendments to the Compendium of Classification Opinions to reflect the separate classification of tea and a ceramic container . Annex A NC1139E1a

		NC1124E1a
2.	Amendments to the Compendium of Classification Opinions to reflect the classification of water pipe tobacco in subheading 2403.10 .....	NC1139E1a Annex B
3.	Amendments to the Compendium of Classification Opinions to reflect the classification of prafefovir in subheading 2934.99 and possible amendment to the Explanatory Note .....	NC1139E1a Annex C
4.	Amendments to the Compendium of Classification Opinions to reflect the classification of <del>DOMULIDATEM 1992</del> and <del>Militec 0809-252005</del> in subheading 3824.90 .....	NC1139E1a Annex D
5.	Amendments to the Compendium of Classification Opinions to reflect the classification of a heat expandable mineral wool mat by the name <del>MINITERAZOL 1000H</del> in subheading 6806.90 ....	NC1139E1a Annex E
6.	Amendments to the Compendium of Classification Opinions to reflect the classification of thin, lightweight disposable aluminium containers in subheading 7815.19 .....	NC1139E1a Annex F
7.	Amendments to the Compendium of Classification Opinions to reflect the classification of an indoor unit presented separately in subheading 8415.90 .....	NC1139E1a Annex G
8.	Amendments to the Compendium of Classification Opinions and to the Explanatory Note to reflect the classification of a two-wheeled vehicle in subheading 8711.90 .....	NC1139E1a Annex H
9.	Amendments to the Compendium of Classification Opinions to reflect the classification of tubes with reagents and without reagents in subheading 9018.39 .....	NC1139E1a Annex IJ
10.	Amendments to the Compendium of Classification Opinions to reflect the classification of a set consisting of a table and two chairs in subheading 9403.60 .....	NC1139E1a Annex K
11.	Possible amendment of the Explanatory Note with respect to optical discs of a kind used solely with a game machine of heading 95.04 .....	NC1139E1a Annex L

#### VIII. FURTHER STUDIES

1.	Classification of certain non-wovens (Reservation by <del>080600</del> ) ....	NC1165E1a
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## NC1124E1a

2.	Study on the application of the set rule .....	NC1140E1a
3.	Possible amendment of the Explanatory Notes to Chapter 2 .....	NC1141E1a
4.	Classification of milk proteins .....	NC1142E1a
5.	Possible amendment of the General Explanatory Note to Chapter 12 .....	NC1143E1a
6.	Classification of sets of spices, oil and vinegar (Request from <b>Monaco</b> ) .....	NC1144E1a
7.	Scope of headings 22.06 and 22.08 .....	NC1145E1a
8.	Possible amendment of the Explanatory Notes or of the legal provisions to clarify the distinction between headings 21.06 and 38.24 .....	NC1146E1a
9.	Classification of products containing more than 99.2 % of sodium sulphate and more than 98.5 % of sodium sulphate, respectively (Reservation by <b>Russia</b> ) .....	NS0145E1a, Annex A/5 and A/8 (SSC/22) NC1147E1a
10.	Possible amendment of the Explanatory Notes to headings 28.23 and 32.06 .....	NS0145E1a, Annex A/9 (SSC/22) NC1148E1a
11.	Possible amendment of the Explanatory Notes with respect to mercury compounds .....	NS0145E1a, Annex A/11 (SSC/22) NC1149E1a
12.	Classification of ivermectin (INN) and similar products .....	NC1150E1a
13.	Study on the scope of Note 2 to Chapter 30 and of subheading 3002.10 .....	NS0145E1a, Annex A/7 (SSC/22) NC1151E1a
14.	Possible amendment of the Subheading Explanatory Note to subheading 4101.20 .....	NC1152E1a
15.	Classification of lamp posts (Request from <b>Mexico</b> ) .....	NC1153E1a
16.	Possible amendment of the General Explanatory Note to Chapter 84 (Proposal by <b>Australia</b> ) .....	NC1154E1a
17.	Possible amendment of the Explanatory Note to heading 84.24 ..	NC1155E1a

NC1124E1a

- |     |  |           |
|-----|--|-----------|
| 18. | Classification of radio equipment (Classification Opinion 8525.20/1 (HS 2002)) ..... | NC1156E1a |
| 19. | Possible amendment of the Explanatory Notes to Chapter 87 .....                      | NC1157E1a |

IX. NEW QUESTIONS

- |    |   |           |
|----|---|-----------|
| 1. | Classification of <b>9605</b> Gripe water .....   | NC1158E1a |
| 2. | Possible amendment of the General Explanatory Notes to Chapter 85 and Section XVII, and of the Explanatory Notes to headings 85.19, 85.36, 85.43 and 87.08 (editorial errors) ..... | NC1159E1a |
| 3. | Possible amendment of the Explanatory Note to heading 85.09 ..  | NC1160E1a |
| 4. | Classification of electronic waste .....  | NC1161E1a |
| 5. | Possible amendment of the Explanatory Note to heading 96.05 (Proposal by the <b>9605</b> ) .....  | NC1162E1a |
| 6. | Classification of certain sodium chloride solutions .....   | NC1163E1a |
| 7. | Possible amendment of Note 3 (a) to Chapter 62 (Proposal by the <b>6201</b> ) .....   | NC1166E1a |

X. ADDITIONAL LISTXI. OTHER BUSINESS

- |    |   |           |
|----|---|-----------|
| 1. | List of questions which might be examined at a future session ..... | NC1164E1a |
|----|---|-----------|

XII. ELECTIONSXIII. DATES OF NEXT SESSIONS


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DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS,  
*Washington, DC, January 31, 2007*

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

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

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**19 CFR PART 177**

**PROPOSED MODIFICATION OF RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO COUNTRY  
OF ORIGIN OF ROASTED COFFEE**

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

**ACTION:** Notice of proposed modification of ruling letter and treatment relating to the country of origin of roasted coffee.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify a ruling letter pertaining to the country of origin of roasted coffee and to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed action.

**DATE:** Comments must be received on or before March 16, 2007.

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

**FOR FURTHER INFORMATION CONTACT:** Peter T. Lynch, Tariff Classification and Marking Branch, 202-572-8778.

**SUPPLEMENTARY INFORMATION:**

**Background**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify that portion of New York Ruling Letter (NY) R03084 pertaining to the country of origin of roasted coffee. Although in this notice CBP is specifically referring to one ruling, New York Ruling Letter (NY) R03084, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may

raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to this notice.

In NY R03084, dated January 24, 2006, the country of origin of roasted coffee was determined to be the country which produced the raw coffee. This ruling letter is set forth in "Attachment A" to this document. Since the issuance of that ruling, CBP has had a chance to review the country of origin of this merchandise and has determined that the country of origin of the roasted coffee is in error.

CBP, pursuant to 19 U.S.C. 1625(c)(1), intends to modify NY R03084, and any other ruling not specifically identified to reflect the proper country of origin of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) W968185 (*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: January 30, 2007

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

Attachments



[ATTACHMENT A]

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

NY R03084  
January 24, 2006  
CLA-2-09:RR:NC:SP:232 R03084  
CATEGORY: Classification  
TARIFF NO.: 0901.21.0030; 0901.21.0060

MR. JOHN MARTIN SANDERS  
16270 80A Ave.  
Surrey, British Columbia Canada V3S8Y1

RE: The tariff classification of roasted coffee from Canada

DEAR SANDERS:

In your letter dated January 11, 2006 you requested a ruling on the classification of roasted coffee from Canada. Your request also asks for the country of origin for marking purposes of the product.

You indicate that raw or green coffee is imported into Canada in burlap bags holding 60 to 70 kilograms. The coffee is roasted in Canada and then shipped to the United States for consumption.

The applicable tariff provision for the roasted coffee, if imported in retail containers weighing 2 kg or less, will be 0901.21.0030, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Coffee, roasted: Not decaffeinated . . . In retail containers weighing 2 kg or less. The general rate of duty will be free.

The applicable tariff provision for the roasted coffee, if imported in other than retail containers weighing 2 kg or less, will be 0901.21.0060, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Coffee, roasted: Not decaffeinated . . . other. The general rate of duty will be free.

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

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

Your inquiry also requests a ruling on the country of origin marking requirements for an imported article, which is processed in a NAFTA country prior to being imported into the U.S. A marked sample was not submitted with your letter for review.

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 the ultimate purchaser in the U.S. 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.

The country of origin marking requirements for a "good of a NAFTA country" are also determined in accordance with Annex 311 of the North American Free Trade Agreement ("NAFTA"), as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat 2057) (December 8, 1993) and the appropriate Customs Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, Customs Regulations. The marking requirements of these goods are set forth in Part 134, Customs Regulations.

Section 134.1(b) of the regulations, defines "country of origin" as the country of manufacture, production, or growth of any article of foreign origin entering the U.S. 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 this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin. (Emphasis added).

Section 134.1(j) of the regulations, 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) of the regulations, 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. Section 134.45(a)(2) of the regulations, provides that a “good of a NAFTA country” may be marked with the name of the country of origin in English, French or Spanish.

You state that the imported roasted coffee is processed in a NAFTA country “Canada” prior to being imported into the U.S. Since, “Canada” is defined under 19 CFR 134.1(g), as a NAFTA country, we must first apply the NAFTA Marking Rules in order to determine whether the imported roasted coffee is a good of a NAFTA country, and thus subject to the NAFTA marking requirements.

Part 102 of the regulations, sets forth the “NAFTA Marking Rules” for purposes of determining whether a good is a good of a NAFTA country for marking purposes. Section 102.11 of the regulations, sets forth the required hierarchy for determining country of origin for marking purposes.

Applying the NAFTA Marking Rules set forth in Part 102 of the regulations to the facts of this case, we find that the imported roasted coffee is a good of the country which produced the raw or green coffee, for marking purposes, noting the requirements of Section 102.20 (b). Section 14 of the Miscellaneous Trade and Technical Corrections Act of 1996, Pub. L. 104-295, 110 Stat. 3514 (October 11, 1996) amended the country of origin marking statute (19 U.S.C. 1304) to exempt imports of certain specified coffee, tea and spices from the marking requirements of 19 U.S.C. 1304 subsections (a) and (b). The roasted coffee is among the products included in this statutory marking exemption. Therefore, neither the roasted coffee nor its container is required to be marked with the foreign country of origin.

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at telephone number (301) 575-0156, or at the Web site [www.fda.gov/oc/bioterrorism/bioact.html](http://www.fda.gov/oc/bioterrorism/bioact.html).

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist John Maria at 646-733-3031.

Should you wish to request an administrative review of this ruling, submit a copy of this ruling and all relevant facts and arguments within 30 days of the date of this letter, to the Director, Commercial Rulings Division, Bureau of Customs and Border Protection, 1300 Pennsylvania Ave. N.W., Washington, D.C. 20229.

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist John Maria at 646-733-3031.

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

## [ATTACHMENT B]

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

HQ W968185  
CLA-2 RR:CTF:TCM W968185ptl  
CATEGORY: Country of Origin  
RE: Modification of NY R03084

MR. JOHN MARTIN SANDERS  
*16270 80A Avenue  
Surrey, British Columbia  
Canada, V3S8Y1*

DEAR MR. SANDERS:

On January 24, 2006, the Customs and Border Protection (CBP) National Import Specialist Division in New York issued ruling NY R03084 to you providing the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of raw or green coffee that was imported into Canada in bulk where it was then roasted before being shipped to the United States. That ruling also provided a determination of the country of origin for the roasted coffee. We have reviewed the country of origin decision of that ruling and determined that it is incorrect. This ruling corrects that decision.

**FACTS:**

According to information you provided, you will be importing raw or green coffee beans into Canada in burlap bags holding 60 to 70 kilograms. The coffee will then be roasted in Canada. The roasted coffee will then be imported into the United States for consumption. In ruling NY R03084, which was issued to you on March 16, 2006, the roasted coffee was classified in either subheading 0901.21.0030, HTSUS, or 0901.21.0060, HTSUS, (depending on the size of the container) as "Coffee, roasted: not decaffeinated." That ruling also stated that ". . . we find that the imported roasted coffee is a good of the country which produced the raw or green coffee, for marking purposes, noting the requirements of Section 102.20 (b)" of the CBP Regulations.

**ISSUE:**

Is the country of origin of coffee beans roasted in a North American Free Trade Agreement (NAFTA) country, the country which produced the raw or green coffee beans, or the country in which the roasting occurred?

**LAW AND ANALYSIS:**

The country of origin marking requirements for a "good of a NAFTA country" are determined in accordance with Annex 311 of the NAFTA, as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat 2057) (December 8, 1993), and the appropriate CBP Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, CBP Regulations. The marking requirements of these goods are set forth in Part 134, CBP Regulations.

Section 134.1(b) of the regulations, defines "country of origin" as the country of manufacture, production, or growth of any article of foreign origin entering the U.S. 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 this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin. (Emphasis added).

Section 134.1(j) of the regulations, 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) of the regulations, 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. Section 134.45(a)(2) of the regulations, provides that a “good of a NAFTA country” may be marked with the name of the country of origin in English, French or Spanish.

You state that the imported roasted coffee is processed in a NAFTA country “Canada” prior to being imported into the U.S. Since, “Canada” is defined under 19 CFR 134.1(g), as a NAFTA country, we must first apply the NAFTA Marking Rules in order to determine whether the imported roasted coffee is a good of a NAFTA country, and thus subject to the NAFTA marking requirements.

The Marking rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, CBP Regulations (19 CFR 102).

Section 102.11(a), CBP Regulations (19 CFR 102.11(a)), sets forth the procedures for determining the country of origin of goods for NAFTA purposes and provides, in relevant part, as follows:

- (a) 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 § 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

Section 102.1, CBP Regulations, provides definitions used in applying the NAFTA rules of origin. Section 102.1(g) defines “a good wholly obtained or produced” as being, in relevant part:

- (2) A vegetable or plant good harvested in that country;

\* \* \*

- (10) A good produced in that country exclusively from goods referred to in paragraphs (g)(1) through (10) of this section or from their derivatives, at any stage of production.

Because the raw or green coffee beans have been imported into Canada before roasting, the roasted coffee does not qualify as “a good wholly obtained or produced” in Canada, or any other country. Therefore, the country of origin of the roasted coffee cannot be determined under section 102.11(a)(1).

Since we cannot use section 102.11(a)(1) to determine the country of origin, we must move to section 102.11(a)(2). That subsection provides that the country of origin may be settled if a good is produced exclusively from domestic materials. “Domestic materials” is defined in section 102.1(d), CBP Regulations, as meaning “a material whose country of origin as determined under these rules is the same country as the country in which the good is

produced.” Because the roasted coffee is not produced exclusively from domestic (Canadian) materials, the country of origin cannot be determined under section 102.11(a)(2).

We must proceed to section 102.11(a)(3) which provides that the country of origin of a good is the country in which “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.” Section 102.1(e), CBP Regulations, defines “foreign material” 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.” The applicable tariff change specified in section 102.20(b), CBP Regulations, states:

0901.21 – 0901.22 A change to subheading 0901.21 through 0901.22 from any subheading outside that group.

The raw, or green, coffee which was imported into Canada would be classified in subheading 0901.11, HTSUS, which provides for coffee, not roasted. However, the roasted coffee is classified in subheading 0901.21, HTSUS, which provides for coffee, roasted. Thus, the applicable tariff shift provided for in section 201.20(b), CBP Regulations, has been met, and the country of origin of the roasted coffee is Canada.

However, as stated in NY R03084, Section 14 of the Miscellaneous Trade and Technical Corrections Act of 1996, Pub. L. 104–295, 110 Stat. 3514 (October 11, 1996) amended the country of origin marking statute (19 U.S.C. 1304) to exempt imports of certain specified coffee, tea and spices from the marking requirements of 19 U.S.C. 1304 subsections (a) and (b). The roasted coffee is among the products included in this statutory marking exemption. Therefore, neither the roasted coffee nor its container is required to be marked with the foreign country of origin.

**HOLDING:**

New York Ruling Letter R03084, dated January 24, 2006, is modified to provide that the country of origin of the roasted coffee is Canada.

MYLES B. HARMON,  
*Director,*

*Commercial and Trade Facilitation Division.*

**PROPOSED REVOCATION OF RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF CERTAIN DUAL FUNCTION  
FLASHLIGHT/LANTERNS FROM CHINA**

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

**ACTION:** Notice of proposed revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of certain dual function flashlight/lanterns from China.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), this notice advises interested parties that Customs

and Border Protection (CBP) intends to revoke one ruling letter relating to the tariff classification of certain dual function flashlight/lanterns from China under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

**DATE:** Comments must be received on or before March 16, 2007.

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

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

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the tariff classification of certain dual function flashlight/

lanterns. Although in this notice, CBP is specifically referring to the revocation of Headquarters Ruling (HQ) 967976, dated April 20, 2006 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In the above mentioned ruling, CBP determined that the subject flashlight/lantern was primarily used as a flashlight and therefore classifiable under subheading 8513.10.20, HTSUS. Based upon our analysis of Section XVI, Note 3 and the General Explanatory Notes to Section XVI, we have determined that the dual function flashlight/lantern is properly classified in subheading 8513.10.40, HTSUS, the provision for "[p]ortable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof: [l]amps: [o]ther."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke HQ 967976, and any other ruling not specifically identified, to reflect the proper classification of the dual function flashlight/lanterns according to the analysis contained in proposed Headquarters Ruling Letter HQ W968278, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: January 29, 2007

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

Attachments

[ATTACHMENT A]

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

HQ 967976  
April 20, 2006  
CLA-2 RR:CTF:TCM 967976 KBR  
CATEGORY: Classification  
TARIFF NO.: 8513.10.2000

ROBERT J LEO, ESQ.  
MEEKS & SHEPPARD  
*330 Madison Avenue, 39th Floor*  
*New York, NY 10017*

RE: Companion Flashlight/Lantern

DEAR MR. LEO:

This is in reference to your letter on behalf of The Coleman Company, Inc., dated October 12, 2005, to the Bureau of Customs and Border Protection ("CBP"), Director, National Commodity Specialist Division, New York, in which you requested a binding ruling concerning the classification of a Companion™ Lantern under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). You also provided a sample for our review. The binding ruling request was referred to this office for reply.

FACTS:

The subject article, "Companion™ Lantern", model number 5373, is a portable, battery operated plastic flashlight which may be adjusted to become an area light. The flashlight/lantern measures approximately 6 1/4 inches high when not extended and 8 inches high when extended. It has a flared, dome-like top with a cylindrical midsection and a base. The flared, dome-like top makes it look like a miniature version of a traditional table-top camping lantern. When not extended, the base incorporates a filament light bulb with a reflector and lens and operates as a strong-focused beam. When the flashlight is extended, the light bulb is raised into a clear-translucent cylindrical midsection to become an area light which may be used in a standing position. There is a push-button switch in the midsection to activate the light. The article is easily held in the hand. The top of the article has an accessory nylon-wrist lanyard for ease in carrying or to allow the light to be used in a hanging position. The light functions on 4 "AA" batteries. The batteries are enclosed in a separate and visible area of the retail packaging.

On the front of the packaging for the Companion™ Lantern, in large print the same size as the trademarked name of the article, the article is described as a "RETRACTABLE FLASHLIGHT". The packaging also describes the article as "CONVERTS EASILY From flashlight into area light when extended" and "Operates as a concentrated flashlight beam and also an area lantern". The packaging also states "DURABLE HOUSING Protects lantern against breakage", and in small print, "The assigned Coleman lantern rating is based on brightness and runtime, two of the most desired attributes in a Coleman lantern. This personal-size battery lantern has been given a rating based on its relative position within the Coleman line of personal-size battery powered lanterns." You believe that the Companion™ Lantern

should be classified in heading 8513, HTSUSA, specifically subheading 8513.10.4000, HTSUSA, as “[p]ortable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof: [l]amps: [o]ther.”

**ISSUE:**

Should the subject Companion™ Lantern be classified as a “flashlight” under the HTSUSA?

**LAW AND ANALYSIS:**

Classification of merchandise under the HTSUSA is in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. The ENs, although neither dispositive nor legally binding, facilitate classification by providing a commentary on the scope of each heading of the HTSUSA, and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUSA provisions under consideration are as follows:

8513	Portable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof:
8513.10	Lamps:
8513.10.2000	Flashlights
8513.10.4000	Other

The Section XVI, HTSUS, legal notes state, in pertinent part, the following:

\* \* \* \* \*

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

\* \* \* \* \*

5. For the purposes of these Notes, the expression “machine” means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of chapter 84 or 85.

The ENs to the section notes state, in pertinent part, the following:

(VI) MULTI-FUNCTION MACHINES AND COMPOSITE MACHINES (Section Note 3)

In general, multi-function machines are classified according to the principal function of the machine.

\* \* \* \* \*

Where it is not possible to determine the principal function, and where, as provided in Note 3 to the Section, the context does not otherwise require, it is necessary to apply General Interpretative Rule 3 (c); such is the case, for example, in respect of multi-function machines potentially classifiable in several of the headings 84.25 to 84.30, in several of the headings 84.58 to 84.63 or in several of the headings 84.69 to 84.72.

There is no dispute that the subject good is described by and is thus classifiable in heading 8513, HTSUS. The issue arises at the 8 digit level. Therefore, we begin the analysis using GRI 6. Flashlights have been defined as small, battery operated, portable electric lights normally held in the hand by the housing. *Sanyo Electric Inc. v. United States*, 496 F.Supp. 1311, aff'd., 642 F.2d 435 (1981). The primary function of a flashlight is to project a beam of light. Subheading 8513.10.20, HTSUS, covers flashlights. Subheading 8513.10.40, HTSUS, covers all other portable electric lamps designed to function by their own source of energy. Here, the lighting device functions as a flashlight with a telescoping head and base to enable it to temporarily be used as an area light. You argue that pursuant to Section XVI, Note 3, the principal function of the Companion<sup>TM</sup> Lantern is as a "personal area lantern", not as a flashlight, and it should therefore be classified in subheading 8513.10.4000, HTSUSA, as other than a flashlight.

While the Companion<sup>TM</sup> Lantern incorporates both a flashlight function and an area light function, such functions do not require classification in subheading 8513.10.4000, HTSUSA. Section XVI, Note 3, HTSUSA, states:

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

Although the article incorporates an area light feature, in accordance with Section XVI, Note 3, the article principally functions as flashlight of heading 8513, HTSUSA. See HQ 951855, dated July 24, 1992 (Beam-N-Blink light with flashlight and emergency beacon features classified as a flashlight). The packaging of the Companion<sup>TM</sup> Lantern seems to acknowledge the primacy of the flashlight function when on the front of the packaging in large print, the same size as the trademarked name of the article, it is described as a "RETRACTABLE FLASHLIGHT". Further, when discussing both functions of the article, the packaging puts the function of 'flashlight' in the primary position when it describes the article as "CONVERTS EASILY From flashlight into area light when extended" and "Operates as a concentrated flashlight beam and also an area lantern". CBP has previously ruled that for other similar multi-purpose lights the principal function of the article was determined by the flashlight feature and the lights have been classified in subheading 8513.10.2000, HTSUSA. See HQ 967450 (May 9, 2005), HQ 964495 (February 12, 2001), HQ 967480 (June 2, 2005), NY 804092 (December 13, 1994), NY K87841 (June 27, 2004), NY R00399 (June 2, 2004) (concerning another Coleman flashlight/lantern), and NY I84814 (August 16, 2002).

Here the principal function of the article is as a flashlight. The article meets the definition of a flashlight as established in *Sanyo Electric*, supra, and will be used as such. The pull-out area light function and textile cord

are secondary attributes to the Companion™ Lantern. The lighting device in the Companion™ Lantern functions as a flashlight with an attached cord which may temporarily be used as an area light and attached to a tree or tent or placed upright. Since the device in question projects a beam of light, is battery-operated and is held in the hand by its housing, the Companion™ Lantern is a flashlight and cannot simultaneously be considered something “other than a flashlight.” As between the two subheadings at issue, only the text of subheading 8513.10.2000, HTSUSA, describes the article, and it does so *eo nomine*.

Alternatively, you argue that if the principal function cannot be determined then, using GRI 3(c), the merchandise should be classified in the later descriptive subheading, in this case, 8513.10.4000, HTSUSA. First, GRI 3 can only be used when goods are, *prima facie*, classifiable under two or more subheadings. That is not the case here as discussed above. The merchandise is classifiable at GRI 1 in the *eo nomine* provision for flashlights in subheading 8513.10.2000, HTSUSA. The principal function of this merchandise can be determined and we need not resort to GRI 3(c) for classification purposes. See HQ 964495 (February 12, 2001).

The Companion™ Lantern is packaged with 4 AA batteries included in a separate and visible area of the retail packaging. The batteries are classifiable in heading 8506, HTSUSA, a different heading than the light component. The light and batteries meet the GRI 3(b) and attendant EN (X) definition of “goods put up in sets for retail sale.” First, the article consists of at least two different items which are, *prima facie*, classifiable in two different headings. Secondly, the items are put up together to carry out the specific activity of providing light and the items will be used together or in conjunction with one another. Lastly, the articles are put up in a manner suitable for sale directly to users without repacking. We thus believe that the Companion™ Lantern and batteries qualify as a set of GRI 3(b); and we must now determine which item imparts the essential character to the set.

The factor which determines essential character may be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods. GRI 3(b) EN (VIII). In this case, it is clear that the light component will provide the essential character for the set. Therefore, the Companion™ Lantern, packaged with batteries, is classified in heading 8513, HTSUSA, specifically subheading 8513.10.2000, HTSUSA, as “[p]ortable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof: [l]amps: [f]lashlights.”

**HOLDING:**

Pursuant to Section XVI, Note 3, GRI 1 and GRI 3(b), the Companion™ Lantern is classified in heading 8513, HTSUSA, specifically subheading 8513.10.2000, HTSUSA, as “[p]ortable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof: [l]amps: [f]lashlights.” The 2006 column one general rate of duty is 12.5% *ad valorem*.

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

GAIL A. HAMILL,  
*Chief,*  
*Tariff Classification and Marking Branch.*

[ATTACHMENT B]

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

HQ W968278  
**CLA-2 RR:CTF:TCM W968278 ADK**  
**CATEGORY:** Classification  
**TARIFF NO.:** 8513.10.40

MR. ROBERT LEO,  
MS. BARBARA DAWLEY  
MEEKS & SHEPPARD  
*330 Madison Avenue, 39th Floor,*  
*New York, NY 10017*

**RE:** Revocation of Ruling HQ 967976, dated April 20, 2006; Classification of a Dual Function Flashlight/Lantern from China.

DEAR MR. LEO:

This letter is in response to your request of June 20, 2006, on behalf of your client, The Coleman Company Inc. (Coleman), for reconsideration of Headquarters Ruling (HQ) 967976. In that ruling, United States Customs and Border Protection (CBP) determined that The Companion™ Lantern should be classified under subheading 8513.10.20, Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed HQ 967976 and found it to be in error.

**FACTS:**

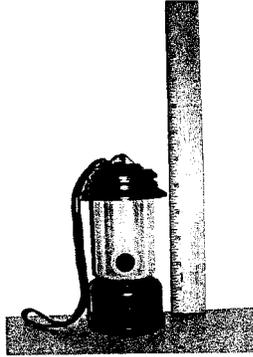
The subject article, The Companion™ Lantern, model number 5373, is a portable, battery-operated flashlight/lantern measuring approximately 6 1/4 inches high when closed, and 8 inches when extended. It is shaped to resemble a miniature version of a traditional table-top camping lantern. It has a flared, dome-like top with a cylindrical midsection and base. A nylon-wrist lanyard is attached to the top of the article. The housing, or handgrip area, is approximately 6 3/4 inches in circumference and 2 1/2 inches in length. A push-button switch, which activates both the flashlight and the lantern, is situated in the housing's midsection and protrudes approximately 1 inch from the surface. The size and shape of the housing is such that it is difficult to hold comfortably in the hand.

The Companion™ Lantern operates both as a flashlight and as a lantern. When in the flashlight position, the base incorporates a filament light bulb with a reflector and lens and emits a strong, focused beam. When extended, the light bulb is raised into a translucent cylindrical midsection to become an area light. Unlike the flashlight function, the area light emits a weak ray

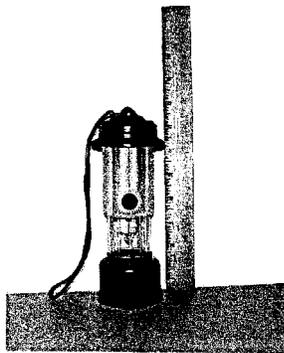
of light which extends over a narrow radius. Both the flashlight and lantern function on 4 "AA" batteries. Pictures of the Companion™ Lantern are shown below. For ease of reference, the item was placed next to a standard 12-inch ruler.

Text on retail packaging highlights the machine's dual function. Coleman describes the product as a "Personal-Size Companion™ Lantern", a "Retractable Flashlight" and indicates that the product "Converts easily from a flashlight into an area light when extended." The packaging also shows The Companion™ Lantern emitting light in both its extended and contracted positions.

Coleman argues that the Companion™ Lantern functions principally as an area light and should be classified under subheading 8513.10.40, HTSUS, as "[p]ortable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof: [l]amps: [o]ther."



The Companion™ Lantern in a closed position.



The Companion™ Lantern in an open position.

**ISSUE:**

Is the Companion™ Lantern classifiable as a flashlight or other portable lamp under heading 8513, HTSUS?

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. GRI 6 provides that the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to GRIs 1 through 5, on the understanding that only subheadings at the same level are comparable.

There is no dispute that the subject merchandise is classifiable under heading 8513, HTSUS. The complication arises at the 8-digit level as to whether the flashlight or the area light serves as the article's principal function. The HTSUS provisions under consideration are as follows:

8513	Portable electric lamps designed to function by their own sources of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof:
8513.10	Lamps:
8513.10.2000	Flashlights
	* * *
8513.10.4000	Other
*	* * *

Section XVI, Note 3:

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

\* \* \*

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

Section XVI, General Explanatory Note VI:

In general, the multi-function machines are classified according to the principal function of the machine.

Where it is not possible to determine the principal function, and where, as provided in Note 3 to the Section, the context does not otherwise require, it is necessary to apply General Interpretive Rule 3 (c) . . .

\* \* \*

GRI 3 (c) provides:

When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs in last numerical order among those which equally merit consideration.

\* \* \*

The Companion™ Lantern is a multi function machine designed to perform two complementary or alternative operations. When closed, it is a flashlight, of the kind classifiable under subheading 8513.10.20, HTSUS. When extended, it is an area light, of the kind classifiable under subheading 8513.10.40, HTSUS. As a multi-function machine, it should be classified “as if consisting only of that component . . . which performs the principal function.” Section XVI, Note 3. At issue is whether the flashlight or area light constitutes the principal function. If the principal function cannot be determined, classification will be in accordance with GRI 3(c).

The term “flashlight” has been judicially determined to mean a small, battery-operated, portable electric light, normally held in the hand by the housing. *Sanyo Electric Inc. v. United States*, 496 F.Supp. 1311, *aff’d.*, 642 F.2d 435 (CAFC 1981). Subsequent CBP rulings have expanded the definition of flashlight to mean a small, battery operated light, held in the hand by the housing, the primary purpose of which is to emit a strong, focused beam of light. *See* HQ 951855, dated July 24, 1992; HQ 084852, dated March 28, 1990; HQ 953262, dated July 26, 1993. Machines that satisfy this definition are classified under the *eo nomine* subheading 8513.10.20, HTSUS. Importers seeking to classify their multi-function goods elsewhere must show that the flashlight function is either a subordinate feature, or a coequal feature thus triggering GRI 3 (c). In the present matter, Coleman argues that the flashlight is a subordinate feature, and that the area light serves as the article’s principal function.

Coleman’s principal function argument is three-fold. First, it indicates that the article satisfies the definition of ‘lantern,’ when extended. While we agree that the article meets the definition of ‘lantern’ when extended, these definitions do not assist in the principal function determination. Furthermore, CBP has not disputed the fact that the article can function as a lantern when extended.

Coleman also relies on HQ 952087 in which we classified “floating” lanterns. In that ruling, CBP determined that “one of the differences between a flashlight and a lantern is that a flashlight is **normally** held entirely in the hand by the housing itself, while a lantern has a handle on its framework so that it can be carried.” (Emphasis added). Coleman has interpreted this ruling to mean that any portable lamp which features a handle, *prima facie* cannot be classified under subheading 8513.10.20, HTSUS. This argument overlooks CBP’s use of the word “normally.” In HQ 952087, CBP determined that flashlights are **normally**, but not always, held entirely in the hand by the housing itself. The presence of a handle alone is insufficient to warrant an alternative classification. Furthermore, Coleman itself markets and sells

flashlights which feature molded plastic carrying handles<sup>1</sup>. These products, the 4D Water Activated Waterbeam™ Spotlight, and the Floating 4D Spotlight, can be held in the hand by the housing, or by the handle.

Finally, Coleman relies on U.S. Additional Rule of Interpretation 1(a) (Rule 1(a)) which provides for classification of goods governed by principal use. According to Rule 1(a), in the absence of special language or context which otherwise requires, such use “is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.” In other words, the article’s principal use at the time of importation determines whether it is classifiable within a particular class or kind. While Rule 1(a) provides general criteria for discerning the principal use of an article, it does not provide specific criteria for individual tariff provisions. However, the CIT has provided factors which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. The two factors relied upon by counsel are the article’s physical characteristics and the environment of sale. In addition to those identified by counsel, these factors include the (2) expectation of the ultimate purchaser . . . (4) use in the same manner as merchandise which defines the class, (5) economic practicality of so using the import, and (6) recognition in the trade of this use.” *See Lennox Collections v. United States*, 20 CIT 194, 196 (1996). *See also United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), *cert. denied*, 429 U.S. 979 (1976). We will first consider the Companion™ Lantern’s physical characteristics.

Unlike other multifunction Coleman lights, such as the Floating 4AA Flashlight/Lantern, this particular model is not shaped to be held in the hand by the housing. *See* HQ W968269, dated January 17, 2007. If the housing were larger, the article would fall within the clearly established precedent that classifies substantially similar multi-function machines as flashlights. *See* HQ W968269, (The Coleman Floating Lantern, a dual function flashlight/lantern, classified under subheading 8513.10.20, HTSUS), HQ 962528, dated February 18, 2000 (The multifunction Coleman Power Failure light was classified under subheading 8513.10.20, HTSUS); NY R00399, dated June 4 2004 (The Coleman dual function flashlight/lantern, classified under subheading 8513.10.20, HTSUS); HQ 965772, dated September 25, 2002 (The multifunction rechargeable emergency light was classified under subheading 8513.10.20); HQ 953262, dated July 26, 1993 (The Rally Rite Lites designed to fit all hard hats were classified under subheading 8513.10.20, HTSUS); HQ 951855, dated July 24, 1992 (The multifunction Beam-N-Blink light was classified under subheading 8513.10.20, HTSUS). This Companion™ Lantern is distinguishable only because it does not comfortably fit into the average person’s hand. Both the dome-shaped top and the on/off switch which protrudes from the housing, prevent the consumer

<sup>1</sup> (1) 4D Water Activated Waterbeam™ Spotlight:  
[http://www.coleman.com/coleman/colemancom/detail.asp?product\\_id=5338-782&categoryid=1160](http://www.coleman.com/coleman/colemancom/detail.asp?product_id=5338-782&categoryid=1160); (2) Floating 4D Spotlight:  
[http://www.coleman.com/coleman/colemancom/detail.asp?product\\_id=5338B732&categoryid=1160](http://www.coleman.com/coleman/colemancom/detail.asp?product_id=5338B732&categoryid=1160)

from maintaining an ergonomic grip. The Companion™ Lantern's current size and shape, prevent it from functioning principally as a flashlight.

The strength of the light bulb is another physical characteristic indicative of principal function. In HQ 962528, CBP was asked to determine the principal function of a Coleman Power Failure Light. In that ruling, we held that “the **dim light emitted** upon power failure is insufficient to illuminate a substantial area, **a fact that reinforces the conclusion that the article is intended to be used primarily as a flashlight.**” (Emphasis added). The same reasoning is applicable to the present matter. When extended, The Companion™ Lantern emits a weak radius of light. Unlike the flashlight which emits a strong, focused beam, the lantern function “is insufficient to illuminate a substantial area.” This supports the conclusion that the lantern does not serve as the principal function.

The expectations of the ultimate purchaser similarly fail to identify a principal function. Based on the other Coleman lighting products put up for retail sale, the ultimate purchaser should reasonably expect to buy this particular Companion™ Lantern as a multi-function machine. According to their website, Coleman carries a line of Pack-Away® lights which are single function, retractable lanterns. These small lanterns are designed for compact storage and feature large bulbs which distribute a wide radius of light. A purchaser seeking to buy a compact lantern would likely select such an item because it is both retractable and superior in function to the Companion™ Lantern. Similarly, a purchaser seeking to buy a simple flashlight would likely buy an item which is better suited to being held in the hand. Many Coleman flashlights are marketed as having housings that feature “[e]asy-to-hold rubber grip[s]”<sup>2</sup>, “ergonomic . . . grip handle[s]”<sup>3</sup>, or “[n]o-slip rubber grip[s]”<sup>4</sup>. The Companion™ Lantern features no such handle and is not easily held in the hand by the housing.

Finally, the manner of packaging and marketing fails to identify a principal function. Counsel argues that use of the word ‘lantern’ in the trademarked name, the presence of illustrative photographs printed on the article’s packaging, and descriptive language used on the packaging all identify the area light as the principal function.

Coleman’s trademarked name, Companion™ Lantern, is not evidence that the article primarily functions as a lantern. Many of Coleman’s multi-function light machines are given the name The Companion™ Lantern. The Coleman 8D Companion™ Lantern, specifically carries the same trademarked name but is marketed as a “flashlight [which] doubles as an area light.”<sup>5</sup> Similarly, the Coleman Floating Companion™ Lantern is also trademarked as a lantern but CBP has identified its flashlight mode as the principal function<sup>6</sup>. The trademarked name “The Companion™ Lantern” is a

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<sup>2</sup> [http://www.coleman.com/coleman/colemancom/detail.asp?product\\_id=5338-781&categoryid=1160](http://www.coleman.com/coleman/colemancom/detail.asp?product_id=5338-781&categoryid=1160), [http://www.coleman.com/coleman/colemancom/detail.asp?product\\_id=5338C701&categoryid=1185](http://www.coleman.com/coleman/colemancom/detail.asp?product_id=5338C701&categoryid=1185)

<sup>3</sup> [http://www.coleman.com/coleman/colemancom/detail.asp?product\\_id=5306-700C&categoryid=1140](http://www.coleman.com/coleman/colemancom/detail.asp?product_id=5306-700C&categoryid=1140)

<sup>4</sup> [http://www.coleman.com/coleman/colemancom/detail.asp?product\\_id=5338-770&categoryid=1185](http://www.coleman.com/coleman/colemancom/detail.asp?product_id=5338-770&categoryid=1185)

<sup>5</sup> [http://www.walmart.com/catalog/product.do?product\\_id=4722924](http://www.walmart.com/catalog/product.do?product_id=4722924)

<sup>6</sup> See HQ 968269

marketing tool employed by Coleman to sell its products. Inclusion of the word 'lantern' in the name itself is not dispositive of principal function.

Counsel also relies on Coleman's use of the words 'lantern' and 'area light' more frequently than the word 'flashlight.' The packaging describes The Companion™ Lantern as a "retractable flashlight," a "personal size companion lantern." The packaging also states that The Companion™ Lantern "converts easily" from a flashlight to an area light. Modern dictionaries define the word "convert" as a process that diverts "from the original or intended use."<sup>7</sup> According to this definition, The Companion™ Lantern's original or intended use is a flashlight. This alone, however, is insufficient to warrant classification under subheading 8513.10.20, HTSUS. Without more, The Companion™ Lantern's principal function cannot be identified only by reference to packaging and advertising.

After applying the *Carborundum* factors, we find that the principal function cannot be identified. When it is not possible to determine the principal function of an item, classification is made in accordance with GRI 3 (c). The Companion™ Lantern is *prima facie* classifiable under both subheading 8513.10.20, HTSUS, and subheading 8513.10.40, HTSUS. By application of GRI 3 (c), therefore, the article is classified under subheading 8513.10.40, HTSUS.

**HOLDING:**

By application of GRIs 1, 3(c) and 6, and Section XVI, Note 3, The Companion™ Lantern is classifiable under subheading 8513.10.40 HTSUS, which provides for: "[p]ortable electric lamps designed to function by their own sources of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof: Lamps: Other." The column one, general rate of duty is 3.9 percent *ad valorem*.

**EFFECT ON OTHER RULINGS:**

HQ 967976, dated April 20, 2006, is hereby revoked.

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

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

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

**ACTION:** Notice of proposed modification of tariff classification ruling letter and of any treatment relating to the classification of handbags.

<sup>7</sup> [www.dictionary.com](http://www.dictionary.com); <http://www.infoplease.com/ipd/A0386759.html>

**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 & Border Protection (CBP) intends to modify one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a lined polyvinylchloride (PVC) handbag with a shoulder strap, snap closure and interior zippered pocket. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

**DATE:** Comments must be received on or before March 16, 2007.

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

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

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

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

information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify one ruling letter relating to the tariff classification of a handbag. Although in this notice CBP is specifically referring to the modification of New York Ruling Letter (NY) M84931, dated August 1, 2006, (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

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

In NY M84931, CBP classified a handbag, manufactured of polyvinylchloride (PVC) with an exterior of 100% cotton openwork knit fabric and designed to contain personal effects and accessories on a daily basis under heading 4202.92.1500, HTSUSA, which provides for "travel, sports and similar bags, with outer surface of textile materials, of vegetable fibers and not of pile or tufted construction, of cotton."

For the reasons set forth in proposed HQ W968454 (Attachment B), we find that the handbag is properly classified under heading 4202.22.4500, HTSUSA, as "Handbags, whether or not with shoulder strap, including those without handle: With outer surface of sheeting of plastic or of textile materials: With outer surface of textile materials: Other: Of vegetable fibers and not of pile or tufted construction: Of cotton." Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY M84931 and to modify or revoke any ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ W968454. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any

treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice.

Before taking this action, consideration will be given to any written comments timely received.

DATED: January 29, 2007

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

Attachment



[ATTACHMENT A]

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

NY M84931  
August 1, 2006  
CLA-2-42:RR:NC:TA:341 M84931  
CATEGORY: Classification  
TARIFF NO.: 4202.92.1500

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

RE: The tariff classification of a tote bag from China.

DEAR MS. FOX:

In your letter dated July 10, 2006, you requested a tariff classification ruling on behalf of Nine West Inc.

You have submitted a sample of style N-0041203NW. The item is a tote bag designed to contain personal effects and accessories on a daily basis. It is manufactured of polyvinylchloride (PVC) with an exterior surface of 100% cotton openwork knit fabric that allows the PVC to be visible. The bag features a shoulder strap, one zippered interior compartment, and magnetic closure.

The applicable subheading for the tote bag will be 4202.92.1500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for travel, sports and similar bags, with outer surface of textile materials, of vegetable fibers and not of pile or tufted construction, of cotton. The duty rate will be 6.3% ad valorem.

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

HTS 4202.92.1500 falls within textile category designation 369. Quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current informa-

tion as to whether quota and visa requirements apply to this merchandise, we suggest that you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" available at our web site at [www.cbp.gov](http://www.cbp.gov). In addition, you will find current information on textile import quotas, textile safeguard actions and related issues at the web site of the Office of Textiles and Apparel, at [www.otexa.ita.doc.gov](http://www.otexa.ita.doc.gov).

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist 341 at 646-733-3041.

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

[ATTACHMENT B]

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

HQ W968454  
CLA-2 RR:CTF:TCM W968454 BAS  
CATEGORY: Classification  
TARIFF NO.: 4202.22.4500

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

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

DEAR MS. FOX:

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

**FACTS:**

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

plated rings connect the shoulder strap to the bag. The bag measures 14.5 inches by 8.25 inches by 6 inches, excluding the shoulder strap. The shoulder strap adds 11 inches in height. In addition to the shoulder strap, the bag features one zippered interior compartment and an interior band with a magnetic closure. The zippered interior compartment features a "Nine West" label.

**ISSUE:**

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

**LAW AND ANALYSIS:**

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

Heading 4202, HTSUSA, encompasses the following articles:

Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper.

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

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

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

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

For the purposes of heading 4202, the expression "travel, sports and similar bags" means goods, other than those falling in subheadings

4202.11 through 4202.39, of a kind used for carrying clothing and other personal effects during travel, including backpacks and shopping bags of this heading, but does not include binocular cases, camera cases, musical instrument cases, bottle cases and similar containers.

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

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

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

In HQ 955552, dated August 15, 1994, CBP classified a pink lady’s shoulder bag as a handbag under subheading 4202.22, HTSUSA. The bag measured approximately 14 inches by 9 1/2 inches with a tapered gusset two inches wide at the top and four inches wide at the bottom. The bag had two shoulder straps approximately 26 inches in length and was divided into two separate compartments, each with a zipper. The interior of the bag was lined and the bottom and corners were reinforced. We held that the bag was not a multipurpose bag used to carry a number of articles such as food, books, or clothing, and that it was not suitable for travel or shopping. While the bag could conceivably have been employed for some limited use as a sports bag, we stated that the primary purpose of the bag was as a tradi-

tional woman's handbag. Its design and construction, notably the shoulder straps, reinforcement, linings, inside zipper pocket, style of compartmentalization and zipper closure were all strongly indicative of a bag which is used normally by women and girls to carry personal items on a daily basis.

In another ruling, HQ 961849, dated June 5, 1998, CBP classified a woman's "tote" bag under subheading 4202.22, as a handbag. That bag measured approximately 11 1/2 inches by 10 inches by 3 inches. It had an outer surface of 100 percent nylon woven fabric and was lined with woven fabric of man-made fibers. It also had two leather carrying straps. The interior featured a large zippered central compartment which divided the bag's interior and created three separate, full-sized compartments, two of which were open topped and without closures. It also had a smaller zippered pocket within one of the interior sides. In that ruling, we found that the bag was designed, constructed and intended to be used as a woman's handbag, not as a tote or shopping bag. Again, its dimensions, lining, zippered pockets, and manner of compartmentalization indicated its purpose to contain certain items normally carried in a woman's handbag, such as money, keys, glasses, etc. Moreover, the bag had insufficient additional capacity for use as a multipurpose carrier of any number of sundry articles (such as food, books, and/or clothing).

In a more recent ruling, HQ 961358, dated January 20, 1999, CBP classified two styles of bags as women's or girls' handbags. In HQ 961358, there were two bags at issue: Style A970669, measuring approximately 11 inches by 8 inches by 3 1/2 inches and Style A970709, measuring approximately 9 inches by 6 inches by 3 inches. Both bags featured the following characteristics:

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

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

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

Similarly, in the instant case, the bag's design and construction, that is the shoulder strap, reinforcement, linings, inside zippered pocket, textile lining, undivided interior and top metal snap closure are all strongly indica-

tive of a bag which is used normally by women and girls to carry personal items on a daily basis. As in the aforementioned rulings, the bags dimensions and manner of compartmentalization indicate its purpose to contain certain items generally carried in a woman's handbag such as money, keys, glasses, etc. The bag, further, has insufficient additional capacity for uses as a multipurpose carrier of any number of sundry articles (such as food, books and/or clothing). Accordingly, the bag at issue, Style N-0041203NW, is properly classified as a handbag under subheading 4202.22.4500, HTSUSA.

**HOLDING:**

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

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

In NY M84931, although the handbag was correctly classified in heading 4202, HTSUSA, the merchandise was improperly classified as to the subheading within 4202, HTSUSA. Accordingly, NY M84931 is modified to reflect the above classification.

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

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