

U.S. Customs and Border Protection

CBP Decisions

19 CFR PART 122

[CBP Dec. 08–23]

TECHNICAL AMENDMENTS TO LIST OF USER FEE AIRPORTS: ADDITIONS OF CAPITAL CITY AIRPORT, LANSING, MICHIGAN AND KELLY FIELD ANNEX, SAN ANTONIO, TEXAS

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

ACTION: Final rule; technical amendments.

SUMMARY: This document amends the Customs and Border Protection (CBP) Regulations by revising the list of user fee airports to reflect the recent user fee airport designations for Capital City Airport in Lansing, Michigan, and Kelly Field Annex in San Antonio, Texas. User fee airports are those airports which, while not qualifying for designation as international or landing rights airports, have been approved by the Commissioner of CBP to receive, for a fee, the services of CBP officers for the processing of aircraft entering the United States, and the passengers and cargo of those aircraft.

EFFECTIVE DATE: June 23, 2008.

FOR FURTHER INFORMATION CONTACT: Michael Captain, Office of Field Operations, 703–261–8516.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Title 19, Code of Federal Regulations (CFR), sets forth at Part 122 regulations relating to the entry and clearance of aircraft in international commerce and the transportation of persons and cargo by aircraft in international commerce.

Generally, a civil aircraft arriving from a place outside of the United States is required to land at an airport designated as an in-

ternational airport. Alternatively, the pilot of a civil aircraft may request permission to land at a specific airport, and, if landing rights are granted, the civil aircraft may land at that landing rights airport.

Section 236 of Pub. L. 98–573 (the Trade and Tariff Act of 1984), codified at 19 U.S.C. 58b, created an option for civil aircraft desiring to land at an airport other than an international airport or a landing rights airport. A civil aircraft arriving from a place outside of the United States may ask for permission to land at an airport designated by the Secretary of Homeland Security¹ as a user fee airport.

Pursuant to 19 U.S.C. 58b, an airport may be designated as a user fee airport if the Commissioner of CBP as delegated by the Secretary of Homeland Security determines that the volume of business at the airport is insufficient to justify customs services at the airport and the governor of the state in which the airport is located approves the designation. Generally, the type of airport that would seek designation as a user fee airport would be one at which a company, such as an air courier service, has a specialized interest in regularly landing.

As the volume of business anticipated at this type of airport is insufficient to justify its designation as an international or landing rights airport, the availability of customs services is not paid for out of appropriations from the general treasury of the United States. Instead, customs services are provided on a fully reimbursable basis to be paid for by the user fee airport on behalf of the recipients of the services.

The fees which are to be charged at user fee airports, according to the statute, shall be paid by each person using the customs services at the airport and shall be in the amount equal to the expenses incurred by the Commissioner of CBP in providing customs services which are rendered to such person at such airport, including the salary and expenses of those employed by the Commissioner of CBP to provide the customs services. To implement this provision, generally, the airport seeking the designation as a user fee airport or that airport's authority agrees to pay a flat fee for which the users of the airport are to reimburse the airport/airport authority. The airport/airport authority agrees to set and periodically review the charges to ensure that they are in accord with the airport's expenses.

The Commissioner of CBP designates airports as user fee airports pursuant to 19 U.S.C. 58b. See 19 CFR 122.15. If the Commissioner decides that the conditions for designation as a user fee airport are

¹Sections 403(1) and 411 of the Homeland Security Act of 2002 ("the Act," Pub. L. 107–296) transferred the United States Customs Service and its functions from the Department of the Treasury to the Department of Homeland Security; pursuant to section 1502 of the Act, the President renamed the "Customs Service" as the "Bureau of Customs and Border Protection." Effective on March 31, 2007, DHS changed the name of "Bureau of Customs and Border Protection" to "U.S. Customs and Border Protection (CBP)" (See 72 FR 20131, April 23, 2007).

satisfied, a Memorandum of Agreement (MOA) is executed between the Commissioner of CBP and the local responsible official signing on behalf of the state, city or municipality in which the airport is located. In this manner, user fee airports are designated on a case-by-case basis. Section 19 CFR 122.15 sets forth the grounds for withdrawal of a user fee designation and sets forth the list of designated user fee airports. Periodically, CBP updates the list of user fee airports at 19 CFR 122.15(b) to reflect those that have been currently designated by the Commissioner. This document updates that list of user fee airports by adding Capital City Airport, in Lansing, Michigan, and Kelly Field Annex, in San Antonio, Texas, to the list. On January 22, 2008, and February 8, 2008, respectively, the Commissioner signed MOA's approving the designation of user fee status for Capital City Airport and Kelly Field Annex.

INAPPLICABILITY OF PUBLIC NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS

Because these amendments merely update the list of user fee airports to include airports already designated by the Commissioner of CBP in accordance with 19 U.S.C. 58b and neither impose additional burdens on, nor take away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply. These amendments do not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

SIGNING AUTHORITY

This document is limited to technical corrections of CBP regulations. Accordingly, it is being signed under the authority of 19 CFR 0.1(b).

LIST OF SUBJECTS IN 19 CFR PART 122

Air carriers, Aircraft, Airports, Customs duties and inspection, Freight.

AMENDMENTS TO REGULATIONS

Part 122, Code of Federal Regulations (19 CFR part 122) is amended as set forth below:

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 continues to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

2. The listing of user fee airports in section 122.15(b) is amended as follows: by adding, in alphabetical order, in the “Location” column “Lansing, Michigan” and by adding on the same line, in the “Name” column, “Capital City Airport”; by adding, in alphabetical order, in the “Location” column “San Antonio, Texas” and by adding on the same line, in the “Name” column “Kelly Field Annex.”

DATE: June 18, 2008

JAYSON P. AHERN,
Acting Commissioner,
U.S. Customs and Border Protection.

[Published in the Federal Register, June 23, 2008 (73 FR 35339)]


*General Notices***RECEIPT OF APPLICATIONS FOR
“LEVER-RULE” PROTECTION**

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

ACTION: Notice of receipt of applications for “Lever-rule” protection.

SUMMARY: Pursuant to 19 CFR 133.2(f), this notice advises interested parties that Customs & Border Protection (CBP) has received applications from the Colgate-Palmolive Company seeking “Lever-rule” protection for two federally registered and recorded trademarks.

FOR FURTHER INFORMATION CONTACT: Richard Chovanec, Intellectual Property Rights Branch, Regulations & Rulings, Office of International Trade (202) 572–8826.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

Pursuant to 19 CFR § 133.2(f), this notice advises interested parties that CBP has received applications from the Colgate-Palmolive Company seeking “Lever-rule” protection. Protection is sought

against the importation of several toothpaste products not authorized for sale in the United States that bear the (1) COLGATE word mark (U.S. Trademark Registration No. 0,227, 647; CBP Recordation No. TMK 88-00297) and (2) the COLGATE word & design mark (U.S. Trademark Registration No. 1,290,656; CBP Recordation No. TMK 04-01107). The products and country of origin are as follows:

- COLGATE Cavity Protection (South Africa, China, Canada, Mexico, India)
- COLGATE Gel (South Africa)
- COLGATE Triple Action (South Africa, Mexico, China)
- COLGATE Fresh Confidence (South Africa, Canada, Mexico)
- COLGATE Total (South Africa, Canada, Mexico, China, India)
- COLGATE Herbal (Brazil, China, India)
- COLGATE Tartar Control (Canada)
- COLGATE Max Fresh (Canada, Mexico, China, India)

In the event that CBP determines the toothpaste products under consideration are physically and materially different from the toothpaste products authorized for sale in the United States, CBP will publish a notice in the *Customs Bulletin*, pursuant to 19 CFR 133.2(f), indicating that the two above-referenced trademarks are entitled to Lever-rule protection with respect to those physically and materially different toothpaste products.

Dated: June 24, 2008

Charles Stewart for GEORGE FREDERICK MCCRAY,
Chief,
Intellectual Property Rights Branch,
Regulations & Rulings,
Office of International Trade.

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING FIBER OPTIC CABLE WITH END CONNECTORS

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of certain fiber optic cable with end connectors which may be offered to the United States Government under an undesignated government procurement contract. Based upon the facts presented, in the final determination CBP concluded that the United States is the country of origin of the fiber optic cable with

end connectors for purposes of U.S. Government procurement.

DATE: The final determination was issued on June 20, 2008. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR § 177.22(d), may seek judicial review of this final determination within [insert 30 days from date of publication in the Federal Register].

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

SUPPLEMENTARY INFORMATION: Notice is hereby given that on June 20, 2008, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of fiber optic cable with end connectors which may be offered to the United States Government under an undesignated government procurement contract. This final determination, in HQ H025747, was issued at the request of Score Fiber Optics under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511-18). In the final determination, CBP concluded that, based upon the facts presented, certain fiber optic cable exported from the United States, processed in China into fiber optic cable with end connectors is not substantially transformed in China, such that the United States is the country of origin of the finished article for purposes of U.S. Government procurement.

Section 177.29, Customs Regulations (19 CFR § 177.29), provides that notice of final determinations shall be published in the Federal Register within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR § 177.30), provides that any party-at-interest, as defined in 19 CFR § 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the Federal Register.

Dated: June 20, 2008

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

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H025747
June 20, 2008
MAR-2-05 OT:RR:CTF:VS H025747 GOB
CATEGORY: Marking

CRAIG J. CATALANO
VICE PRESIDENT OF GLOBAL DEVELOPMENT
SCORE FIBER OPTICS
380 Townline Road
Hauppauge, NY 11788

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

DEAR MR. CATALANO:

This is in response to your letter of December 13, 2007, requesting a final determination on behalf of Score Fiber Optics (“Score”), pursuant to subpart B of Part 177, Customs and Border Protection (“CBP”) Regulations (19 CFR § 177.21 *et seq.*). Your letter of December 13, 2007, as well as your later correspondence of January 24, 2008 and February 27, 2008, were forwarded to this office by the National Commodity Specialists Division by memorandum of March 25, 2008. Under the pertinent regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of certain fiber optic cable with end connectors. We note that Score is a party-at-interest within the meaning of 19 CFR § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

You describe the pertinent facts as follows. Both Score and its parent company, Epcom,² purchase fiber optic cable from an unrelated company in the United States, Corning, Inc. (“Corning”). Corning states that the fiber optic cable is produced in the United States and has provided a Certificate of Origin indicating that 50 cartons of the fiber optic cable are a product of the United States. The fiber optic cable is a standard fiber optic cable and may consist of one or more fiber optic fibers for strength. A thermoplastic coating provides protection for the very thin fibers. Score exports the spools of finished fiber optic cable to China where the fiber optic cable is cut to length and metal connectors made in China are applied to the fiber optic cable. Specifically, the spooled fiber optic cable is cut to length. Each end of the cut cable is threaded through a metal holder where about two inches of sheathing are removed from each end of the cable. Any exposed fiber is cut off and

¹Your submission indicates that Score and Epcom act together in the activities described in this ruling.

the plastic jacketing of the optical fiber is removed. The exposed fiber is cleaned with alcohol and measured. It is then threaded through a connector, glued to the connector, and excess fiber is trimmed. The connectors are placed into a finishing machine, where the fiber ends are automatically beveled and polished. Metal springs are inserted into a connector and welded into place. The connectors are cleaned and tested.

Score purchases or manufactures a metal ferrule in China. The ferrule, which is a hollow cylinder, is used to align the ends of the optical fibers as the fibers are inserted into the connectors. The hollow center of the ferrule contains one channel that is designed to fit the optical fiber and to align the fiber ends, enabling light to pass through the connection. Score purchases or manufactures metal parts to be used in the cable connectors. These parts are made in China.

You furnished a sample (item no. SS-11SCU-SCU-001) which is a single optic fiber, approximately 42 inches long, with thermoplastic coating and connectors at each end. You state that Score will be exporting and reimporting many similar products. The finished article is used to connect equipment to telecommunication networks.

In addition to country of origin for government procurement, you ask if you may mark the fiber optic cable "Made in the United States."

ISSUE:

What is the country of origin of the subject fiber optic cable with end connectors for the purpose of U.S. Government procurement?

LAW AND ANALYSIS:

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

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

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also, 19 CFR § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. See 19 CFR § 177.21. In this regard, CBP recognizes that the Federal Procurement Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. See 48 CFR § 25.403(c)(1). The Federal Procurement Regulations define "U.S.-made end product" as:

... an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United

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

48 CFR § 25.003.

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 573 F. Supp. 1149 (Ct. Int'l Trade 1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. *See*, C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97. If the manufacturing or combining process is a minor one which leaves the identity of the article intact, a substantial transformation has not occurred. *Uniroyal, Inc. v. United States*, 3 CIT 220, 542 F. Supp. 1026 (1982), *aff'd* 702 F. 2d 1022 (Fed. Cir. 1983). In *Uniroyal*, the court determined that a substantial transformation did not occur when an imported upper, the essence of the finished article, was combined with a domestically produced outsole to form a shoe.

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

In HQ 561392 dated June 21, 1999, CBP considered the country of origin marking requirements of an insulated electric conductor which involved an electrical cable with pin connectors at each end used to connect computers to printers or other peripheral devices. The cable and connectors were made in Taiwan. In China, the cable was cut to length and connectors were attached to the cable. CBP held that cutting the cable to length and assembling the cable to the connectors in China did not result in a substantial transformation. In HQ 560214 dated September 3, 1997, CBP held that where wire rope cable was cut to length, sliding hooks were put on the rope, and end ferrules were swaged on in the U.S., the wire rope cable was not substantially transformed. CBP concluded that the wire rope maintained its character and did not lose its identity and did not become an integral part of a new article when attached with the hardware. In HQ 555774 dated December 10, 1990, CBP held that Japanese wire cut to length and electrical connectors crimped onto the ends of the wire was not a substantial transformation. In HQ 562754 dated August 11, 2003, CBP found that cutting of cable to length and assembling the cable to the Chinese-origin connectors in China did not result in a substantial transformation of the cable.

Based upon the facts presented and the pertinent authorities, we determine that U.S.-origin fiber optic cable exported to China and processed in China as described above, is not substantially transformed in China into a

new and different article of commerce with a name, character, and use distinct from the article exported. Therefore, the fiber optic cable with end connectors is considered a product of the United States for the purpose of government procurement.

Further, the fiber optic cable with end connectors is not required to be marked "Made in China." For a determination as to whether you may mark the finished product "Made in the U.S.," please contact the Federal Trade Commission.

HOLDING:

The fiber optic cable of U.S. origin, which is exported to China and processed in China as described above, is not substantially transformed in China into a new and different article of commerce with a name, character, and use distinct from the article exported. Therefore, the fiber optic cable is considered a product of the United States for the purpose of government procurement.

Notice of this final determination will be given in the *Federal Register*, as required by 19 CFR § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR § 177.30, any party-at-interest may, within 30 days after publication of the *Federal Register* notice referenced above, seek judicial review of this final determination before the Court of International Trade.

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

[Published in the Federal Register, June 26, 2008 (73 FR 36345)]

**PROPOSED COLLECTION; COMMENT REQUEST ENTRY
AND MANIFEST OF MERCHANDISE FREE OF DUTY**

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

ACTION: 60-Day Notice and request for comments; Extension of existing collection of information: 1651-0013

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Entry and Manifest of Merchandise Free of Duty. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before August 26, 2008, to be assured of consideration.

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

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

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

Title: Entry and Manifest of Merchandise Free of Duty

OMB Number: 1651-0013

Form Number: CBP Form-7523

Abstract: CBP Form-7523 is used by carriers and importers as a manifest for the entry of merchandise free of duty under certain conditions, and by CBP to authorize the entry of such merchandise. It is also used by carriers to show that the articles being imported have been released to the importer or consignee.

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

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 4,950

Estimated Number of Annual Responses: 99,000

Estimated Time Per Response: 5 minutes

Estimated Total Annual Burden Hours: 8,247

Dated: June 23, 2008

TRACEY DENNING,
*Agency Clearance Officer,
Customs and Border Protection.*

[Published in the Federal Register, June 27, 2008 (73 FR 36544)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:
Certificate of Origin**

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

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0016

ACTION: Proposed collection; comments requested.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Certificate of Origin. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (73 FR 15766-15767) on March 25, 2008, allowing for a 60-day comment period. One public comment was received. CBP will respond to this comment. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 28, 2008.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION:

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

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

Title: Certificate of Origin

OMB Number: 1651–0016

Form Number: CBP Form-3229

Abstract: This certification is required to determine whether an importer is entitled to duty-free for goods which are the growth or product of a U.S. insular possession and which contain foreign materials representing no more than 70 percent of the goods total value.

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

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 10

Estimated Number of Annual Responses: 310

Estimated Time Per Response: 22 minutes

Estimated Total Annual Burden Hours: 113

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

Dated: June 18, 2008

TRACEY DENNING,
Agency Clearance Officer,
Customs and Border Protection.

[Published in the Federal Register, June 27, 2008 (73 FR 36544)]

**PROPOSED COLLECTION; COMMENT REQUEST
VESSEL ENTRANCE OR CLEARANCE STATEMENT**

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

ACTION: 60-Day Notice and request for comments; Extension of existing collection of information: 1651-0019

SUMMARY: The Department of Homeland Security, as part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning Vessel Entrance of Clearance Statement. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before August 26, 2008, to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the

collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Vessel Entrance or Clearance Statement Form

OMB Number: 1651-0019

Form Number: CBP Form 1300

Abstract: This form is used by a master of a vessel to attest to the truthfulness of all other forms associated with the manifest.

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

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 12,000

Estimated Number of Annual Responses: 264,000

Estimated Time Per Response: 5 minutes

Estimated Total Annual Burden Hours: 21,991

Dated: June 23, 2008

TRACEY DENNING,
Agency Clearance Officer,
Customs and Border Protection.

[Published in the Federal Register, June 27, 2008 (73 FR 36543)]

**PROPOSED COLLECTION; COMMENT REQUEST
CREW'S EFFECTS DECLARATION**

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

ACTION: 60-Day Notice and request for comments; Extension of existing collection of information: 1651-0020

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Crew's Effects Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before August 26, 2008, to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION:

CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Crew's Effects Declaration

OMB Number: 1651-0020

Form Number: CBP Form-1304

Abstract: CBP Form-1304 contains a list of crew's effects that are accompanying them on the trip, which are required to be manifested,

and also the statement of the master of the vessel attesting to the truthfulness of the merchandise being carried on board the vessel as crew's effects.

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

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 9,000

Estimated Number of Annual Responses: 206,100

Estimated Time Per Response: 5 minutes

Estimated Total Annual Burden Hours: 17,326

Dated: June 23, 2008

TRACEY DENNING,
*Agency Clearance Officer,
Customs and Border Protection.*

[Published in the Federal Register, June 27, 2008 (73 FR 36543)]

PROPOSED COLLECTION; COMMENT REQUEST ENTRY SUMMARY AND CONTINUATION SHEET

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

ACTION: 60-Day Notice and request for comments; Extension of existing collection of information: 1651-0022

SUMMARY: The Department of Homeland Security, as part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Entry Summary and Continuation Sheet. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before August 26, 2008, to be assured of consideration.

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

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

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

Title: Entry Summary and Continuation Sheet

OMB Number: 1651-0022

Form Number: CBP Form-7501, 7501A

Abstract: Form CBP-7501 is used by CBP as a record of the impact transaction, to collect proper duty, taxes, exactions, certifications and enforcement endorsements.

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

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondent: 38,500

Estimated Number of Annual Responses: 22,001,956

Estimated Time Per Respondent: 20 minutes

Estimated Total Annual Burden Hours: 6,627,678

Dated: June 23, 2008

TRACEY DENNING,
Agency Clearance Officer,
Customs and Border Protection.

**PROPOSED COLLECTION; COMMENT REQUEST
FOREIGN TRADE ZONE ANNUAL RECONCILIATION
CERTIFICATION AND RECORD KEEPING REQUIREMENT**

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

ACTION: 60-Day Notice and request for comments; Extension of existing collection of information: 1651-0051

SUMMARY: The Department of Homeland Security, as part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Foreign Trade Zone Annual Reconciliation Certification and Record Keeping Requirement. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before August 26, 2008, to be assured of consideration.

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

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

SUPPLEMENTARY INFORMATION:

CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Foreign Trade Zone Annual Reconciliation Certification and Record Keeping Requirement

OMB Number: 1651-0051

Form Number: None

Abstract: Each Foreign Trade Zone Operator will be responsible for maintaining its inventory control in compliance with statute and regulations. The operator will furnish CBP an annual certification of their compliance.

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

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 260

Estimated Time Per Respondent: 45 minutes

Estimated Total Annual Burden Hours: 195

Dated: June 23, 2008

TRACEY DENNING,
*Agency Clearance Officer,
Customs and Border Protection.*

[Published in the Federal Register, June 27, 2008 (73 FR 36542)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:
Drawback Process Regulations**

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

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection with a change to the burden hours: 1651-0075

ACTION: Proposed collection; comments requested.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Drawback Process Regulations. This is a proposed extension with a change to the burden hours of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (73 FR 15764) on March

25, 2008, allowing for a 60-day comment period. Three public comments were received. CBP will respond to these comments. This notice allows for an additional 30 days for public comments.

DATES: Written comments should be received on or before July 28, 2008.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION:

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

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

Title: Drawback Process Regulations

OMB Number: 1651-0075

Form Number: Forms CBP-7551, 7552, 7553,

Abstract: The information is to be used by CBP officers to expedite the filing and processing of drawback claims, while maintaining necessary enforcement information to maintain effective administrative oversight over the drawback program.

Current Actions: This submission is being submitted to extend the expiration date with a change to the burden hours.

Type of Review: Extension (with change)

Affected Public: Businesses, Institutions

Estimated Number of Respondents: 8,150

Estimated Number of Annual Responses: 163,000

Estimated Time Per Response: 34 minutes

Estimated Total Annual Burden Hours: 93,250

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

Dated: June 23, 2008

TRACEY DENNING,
*Agency Clearance Officer,
Customs and Border Protection.*

[Published in the Federal Register, June 27, 2008 (73 FR 36545)]

PROPOSED COLLECTION; COMMENT REQUEST
Petition for Remission or Mitigation of Forfeitures and Penalties

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

ACTION: 60-Day Notice and request for comments; Extension of existing collection of information: 1651-0100

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Petition for Remission or Mitigation of Forfeitures and Penalties. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before August 26, 2008, to be assured of consideration.

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

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

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

Title: Petition for Remission or Mitigation of Forfeitures and Penalties

OMB Number: 1651-0100

Form Number: CBP Form 4609

Abstract: Persons whose property is seized or who incur monetary penalties due to violations of the Tariff Act are entitled to seek remission or mitigation by means of an informal appeal. This form gives the violator the opportunity to claim mitigation and provides a record of such administrative appeals.

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

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 28,000

Estimated Number of Annual Responses: 28,000

Estimated Time Per Respondent: 14 minutes

Estimated Total Annual Burden Hours: 6,500

Dated: June 23, 2008

TRACEY DENNING,
*Agency Clearance Officer,
Customs and Border Protection.*

[Published in the Federal Register, June 27, 2008 (73 FR 36546)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, June 25, 2008

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

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

**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF AN ELECTRIC FIREPLACE**

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the classification of an electric fireplace.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking a ruling letter relating to the tariff classification of an electric fireplace under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 42, No. 20, on May 7, 2008. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 7, 2008.

FOR FURTHER INFORMATION CONTACT: Richard Mojica, Tariff Classification and Marking Branch, at (202) 572-8789.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the Customs Bulletin, Vol. 42, No. 20, on May 7, 2008, proposing to revoke a ruling letter relating to the tariff classification of an electric fireplace. No comments were received in response to the notice. As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially iden-

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

In New York Ruling Letter (NY) R03085, dated January 20, 2006, CBP classified the subject electric fireplace in subheading 8516.79.0000, HTSUS, which provides for "[e]lectric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof: [o]ther electrothermic appliances: [o]ther." Upon further review, CBP is now of the opinion that the cited ruling is in error.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke NY R03085 and any other ruling not specifically identified, to reflect the proper classification of the electric fireplace according to the analysis contained in proposed Headquarters Ruling Letter H005076 (Attachment). 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.

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

DATED: June 19, 2008

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H005076
June 19, 2008
CLA- OT: RR: CTF: TCM H005076 RM
CATEGORY: Classification
TARIFF NO.: 8516.29.0090

MS. LINDA HAMANAKA
KEN HAMANAKA CO., INC.
5777 West Century Boulevard, #760
Los Angeles, CA 90045

RE: Request for reconsideration of New York Ruling Letter R03085, dated January 20 2006; Classification of an Electric Fireplace

DEAR MS. HAMANAKA:

We have reviewed New York Ruling (NY) R03085, dated January 20, 2006, issued to Dagan Industries, concerning the tariff classification of an electric fireplace and found it to be in error. In that ruling, U.S. Customs and Border Protection (CBP) classified the subject electric fireplace in subheading 8516.79.0000, Harmonized Tariff Schedule of the United States (HTSUS).

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. 103-82, 107 Stat. 2057, 2186 (1993), notice of the proposed modification was published on May 7, 2008, in the Customs Bulletin, Volume 42, No. 20. No comments were received in response to this notice.

FACTS:

The merchandise at issue is a freestanding electric fireplace designed to be placed in front of a wall. The unit is fitted with an electric heater with a blower as well as colored lamps and a flicker device to imitate coal or wood fire. The heater is encased in a wooden housing that is 46 inches wide, 16 inches deep and 22 inches tall.

ISSUE:

What is the correct tariff classification of the electric fireplace under the 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.

The HTSUS provisions under consideration are as follows:

8516	Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof:
	* * *
	Electric space heating apparatus and electric soil heating apparatus:
	* * *
8516.29.00	Other . . .
	* * *
	Portable Space heaters:
8516.29.0030	Fan-forced
	* * *
8516.29.0090	Other
	* * *
	Other electrothermic appliances:
	* * *
8516.79.0000	Other

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

There is no dispute that the subject merchandise is classified in heading 8516, HTSUS. What is at issue is whether the electric fireplace is included in the scope of subheading 8516.29, HTSUS, as an “electric space heating apparatus,” or in subheading 8516.79, HTSUS, as an “other electrothermic appliance.”

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. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

Subheading 8516.29, HTSUS, provides for “electric space heating apparatus.” The term “space heater” is not defined in the HTSUS. When a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. See Rocknel Fastener, Inc.

v. *United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). “To ascertain the common meaning of a term, a court may consult ‘dictionaries, scientific authorities, and other reliable information sources’ and ‘lexicographic and other materials.’” *Id.* (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271, 69 C.C.P.A. 128 (C.C.P.A. 1982); *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989)). Finally, the explanatory notes, while not binding law, offer guidance as to how tariff terms are to be interpreted. See *Len-Ron Mfg. Co. v. United States*, 334 F.3d 1304, 1309 (Fed. Cir. 2003) (noting explanatory notes are “intended to clarify the scope of HTSUS subheadings and to offer guidance in their interpretation”).

Webster’s Third New International Dictionary (unabridged ed.; 1993) defines “space heater” as: “a self-contained unit that warms a room or space by converting to heat in that space the fuel or electric energy supplanted to it.” *The Random House Dictionary of the English Language* (unabridged ed.; 1973) defines “space heater” as: “a small furnace for air in the room in which it is situated.” Merriam-Webster’s Dictionary Online defines “space heater” as: “a usu. portable appliance for heating a relatively small area.” (<http://www.m-w.com/cgi-bin/dictionary>; last viewed on March 25, 2008).

Based on the definitions stated above, we find the electric fireplace at issue to be “a small furnace” that “warms a room or space” by “converting to heat . . . the electric energy supplanted to it.”¹ Moreover, the unit is fitted with an electric heater with a blower capable of heating a “relatively small area” or “the room in which it is situated.” Accordingly, it is classifiable under subheading 8516.29, HTSUS, the *eo nomine* provision for electric space heaters.²

Our conclusion is consistent with the ENs to heading 8516, HTSUS, which provide, in pertinent part:

(B) ELECTRIC SPACE HEATING APPARATUS AND SOIL HEATING APPARATUS

This group includes:

(2) **Electric Fires (fan heaters and radiant heaters)**, including portable types with parabolic reflectors and sometimes with built-in fans. Many of these fires are fitted with colored lamps and flicker devices to imitate a coal or wood fire.

The subject fireplace is fitted with an electric heater and blower (i.e., a built-in fan). Moreover, it has colored lamps and a flicker device to imitate a coal or wood fire. Thus, it is the type of “space heating apparatus” described in the ENs to heading 8516, HTSUS. Specifically, it is an “electric fire.”

We now turn to whether the electric fireplace is a “portable” space heater. The term “portable” is not defined in the HTSUS. Webster’s Third New International Dictionary (unabridged ed.; 1993) defines “portable” as: “1. Capable of being carried: easily or conveniently transported: light or manageable enough to be readily moved (a — grill) (a — power drill).” *The Compact*

¹The term “furnace” is defined by Merriam-Webster’s Dictionary Online as: “an enclosed structure in which heat is produced (as for heating a house or for reducing ore).” (<http://www.merriam-webster.com/dictionary/furnace>).

²In NY N003331, dated December 6, 2006, CBP classified a freestanding electric fireplace under subheading 8516.29.0090, HTSUS.

Edition of the Oxford English Dictionary (1987) defines “portable” as: “1. Capable of being carried by hand or on the person; capable of being moved from place to place; easily carried or conveyed . . .” The Random House Dictionary of the English Language (unabridged ed.; 1973) defines “portable” as: “1. Capable of being transported or conveyed; a portable stage; 2. Easily carried or conveyed by hand: a portable typewriter . . .” Merriam-Webster’s Dictionary Online defines portable as: “1. a: capable of being carried or moved about [a portable TV] . . .” (<http://www.m-w.com/cgi-bin/dictionary>; last viewed on March 25, 2008).

In HQ 964803, dated January 10, 2002, we discussed the portability of barbecue grills. The eleven grill models at issue in that ruling weighed between 175 and 300 pounds (without propane tanks) and had cooking compartments of steel, and frames constructed of steel, stainless steel, or steel and wood. The grills were approximately four feet tall, five feet wide and two feet deep. All of the grills had castors or wheels. There, despite the fact that the grills could be “moved from place to place” via their wheels, CBP determined that they were “not easily carried or conveyed by hand” and “not of the class or kind of article normally considered by the industry to be portable.”

Similarly, the instant electric fireplace is designed for fixed use in a living room. See Facts. While it is “capable of being moved from place to place,” it is not “easily carried or conveyed by hand” or “on the person.” Moreover, there is a separate type of space heater that the industry considers to be portable because it is smaller, lighter and easier to move. See, e.g., NY M86531, dated October 13, 2006; NY R03588, dated April 14, 2006; and NY 869033, dated December 2, 1991. The applicable subheading for the electric fireplace is 8516.29.0090, HTSUS.

HOLDING:

By application of GRI 1 through GRI 6, the subject electric fireplace is classifiable in subheading 8516.29.0090, HTSUS, which provides for: “[e]lectric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof: [e]lectric space heating apparatus and electric soil heating apparatus: [o]ther: [o]ther. The 2008 column one, general rate of duty is 3.7 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY R03085, dated January 20, 2006, is hereby revoked.

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

**PROPOSED REVOCATION OF FIVE RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
CERTAIN FOOD PREPARATIONS CONTAINING COCOA**

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

ACTION: Notice of proposed revocation of five tariff classification ruling letters and proposed revocation of treatment relating to the classification of certain food preparations containing cocoa.

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

DATE: Comments must be received on or before August 8, 2008.

ADDRESS: Written comments are to be addressed to U.S. Customs and 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 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: Isaac D. Levy, Tariff Classification and Marking Branch: (202) 572-8794.

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 revoke five ruling letters pertaining to the tariff classification of certain food preparations containing cocoa. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) N005039 (January 22, 2007), NY N005523 (February 13, 2007), NY N005972 (February 20, 2007), NY N005974 (February 20, 2007), and NY N006098 (February 20, 2007) (Attachments A through E), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., 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 NY N005039, CBP classified certain liquid chocolate, shipped in bulk in tanker trucks and to be used for enrobing and panning deserts, under subheading 1806.20.5000, HTSUSA. In NY N005523, CBP classified certain bittersweet chocolate, shipped in 5-kilogram blocks and intended for use in enrobing food items, under subheadings 1806.20.9500 or 1806.20.9800, HTSUSA (depending on whether quota levels were reached at the time of entry). Upon our review of both NY N005039 and NY N005523, we have determined that the chocolate products described in these rulings are classified under subheading 1806.20.9900, HTSUSA, which provides for: "Chocolate

and other food preparations containing cocoa: Other preparations in blocks, slabs or bars, weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg: Other: Other: Other: Other: Other.”

In NY N005972 and NY N005974, CBP classified certain chocolate bars, shipped in 12-kilogram cases and wrapped in foil and ready for consumption “as-is”, under subheading 1806.32.0600, HTSUSA. Upon our review of NY N005972 and NY N005974, we have determined that such chocolate bars are classified under subheading 1806.32.3000, HTSUSA, which provides for: “Chocolate and other food preparations containing cocoa: Other, in blocks, slabs or bars: Not filled: Preparations consisting wholly of ground cocoa beans, with or without added cocoa fat, flavoring or emulsifying agents, and containing not more than 32 percent by weight of butterfat or other milk solids and not more than 60 percent by weight of sugar: Other.”

In NY N006098, CBP classified certain milk chocolate coating, shipped in 10-pound slabs, ready for consumption, and intended for use in coating desserts, under subheading 1806.20.3600, HTSUSA. Upon our review of NY N006098, we have determined that such chocolate coating is covered under subheading 1806.20.20, HTSUS, which provides for: “Chocolate and other food preparations containing cocoa: Other preparations in blocks, slabs or bars, weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg: Preparations consisting wholly of ground cocoa beans, with or without added cocoa fat, flavoring or emulsifying agents, and containing not more than 32 percent by weight of butterfat or other milk solids and not more than 60 percent by weight of sugar: In blocks or slabs weighing 4.5 kg or more each.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP intends to revoke NY N005039, NY N005523, NY N005972, NY N005974, and NY N006098, and to revoke or modify any other ruling not specifically identified to reflect the proper classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H008517, HQ H008511, HQ H008518, and HQ H008515, set forth as Attachments F through I 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: June 19, 2008

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
NY N005039
January 22, 2007
CLA-2-18:RR:E:NC:N2:232
CATEGORY: Classification
TARIFF NO.: 1806.20.5000

MR. BOB FORBES
ROE LOGISTICS
660 Bridge Street
Montreal, Quebec Canada H3K 3K9

RE: The tariff classification of "Liquid chocolate" (product number LSH 484) from Canada

DEAR MR. FORBES:

In your letter dated January 5, 2007 you requested a tariff classification ruling.

The subject merchandise is stated to contain 63.70 percent sugar, 25.80 percent cocoa liquor, 9.8 percent cocoa butter, 0.30 percent soya lecithin, 0.20 percent salt hydrate, and 0.20 percent admul emulsifier. The product will be shipped in bulk in tanker trucks. The product is for use in enrobing and panning cakes, pastries and confectionery.

The applicable subheading for the bulk liquid chocolate will be 1806.20.5000, Harmonized Tariff Schedule of the United States, Annotated, (HTSUS), which provides for Chocolate and other food preparations containing cocoa: Other preparations in blocks or slabs weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg: Preparations consisting wholly of ground cocoa beans, with or without added cocoa fat, flavoring or emulsifying agents, and containing not more than 32 percent by weight of butterfat or other milk solids and not more than 60 percent by weight of sugar: Other: Other. The general rate of duty will be 4.3 percent ad valorem.

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

This 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 301-575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

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 Paul Hodgkiss at 646-733-3031.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
NY N005523
February 13, 2007
CLA-2-18:RR:E:NC:N2:232
CATEGORY: Classification
TARIFF NO.: 1806.20.9500; 1806.20.9800

MR. BOB FORBES
ROE LOGISTICS
660 Bridge Street
Montreal, Quebec Canada H3K 3K9

RE: The tariff classification of "bittersweet chocolate" (product number CHD-F050100-15-105) from France

DEAR MR. FORBES:

In your letter dated January 16, 2007, you requested a tariff classification ruling.

The subject merchandise is stated to contain 44.0 percent cocoa paste, 28.5 percent sugar, 11.5 percent cocoa butter, 9.0 percent inulin, 6.5 percent corn dextrin, 1.0 percent soya lecithin and 0.5 percent vanillin. It is shipped in 5-kilogram blocks and it is intended for use in enrobing.

The applicable subheading for the semi sweet chocolate chunks if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, and entered pursuant to its provisions will be 1806.20.9500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Chocolate and other food preparations containing cocoa: Other preparations in blocks, slabs or bars, weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg: Other: Other: Other: Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17: Described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The general rate of duty will be 10 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading 1806.20.9800, HTSUS, and dutiable at the rate of 37.2 cents per kilogram plus 8.5 percent ad valorem. In addition, products classified in subheading

1806.20.9800, HTSUS, will be subject to additional duties based on their value, as described in subheadings 9904.17.49 to 9904.17.56, HTSUS.

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 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 301-575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

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 Frank Troise at 646-733-3031.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
NY N005972
February 20, 2007
CLA-2-18:RR:E:NC:SP:232
CATEGORY: Classification
TARIFF NO.: 1806.32.0600

MR. BOB FORBES
ROE LOGISTICS
660 Bridge Street
Montreal, Quebec Canada H3K-3K9

RE: The tariff classification of "Neutral 5.5g Cupid" (Product number 0563920-500) from Canada

DEAR MR. FORBES:

In your letter dated January 26, 2007, you requested a tariff classification ruling.

The subject merchandise is stated to contain 59.39 percent sugar, 15.86 percent cocoa butter, 10.95 percent chocolate liquor, 10.01 percent skim milk powder, 3.31 percent milk fat, 0.43 percent soya lecithin and 0.01 percent vanillin. The total milk fat is 3.39 percent and the total milk solids are 13.33 percent. It will be shipped in 12-kilogram cases. You indicate that the product is flat pieces of confectionery wrapped in foil ready for consumption as is.

The applicable subheading for the product "Neutral 5.5g Cupid" will be 1806.32.0600, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Chocolate and other food preparations containing cocoa: Other, in blocks slabs or bars: Not filled: Preparations consisting wholly of ground cocoa beans, with or without added cocoa fat, flavoring or emulsify-

ing agents, and containing not more than 32 percent by weight of butterfat or other milk solids and not more than 60 percent by weight of sugar: Containing butterfat or other milk solids (excluding articles for consumption at retail as candy or confection): Other, containing over 5.5 percent by weight of butterfat: Other: Containing less than 21 percent by weight of milk solids. The rate of duty will be 37.2 cents per kilogram plus 4.3 percent ad valorem.

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

This 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 301-575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

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 Frank Troise at 646-733-3031.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.

U.S. CUSTOMS AND BORDER PROTECTION,

NY N005974

February 20, 2007

CLA-2-18:RR:E:NC:SP:232

CATEGORY: Classification

TARIFF NO.: 1806.32.0600

MR. BOB FORBES

ROE LOGISTICS

660 Bridge Street

Montreal, Quebec Canada H3K-3K9

RE: The tariff classification of "XMAS FLAT 14G in bulk" (Product number 0304020-500) from Canada

DEAR MR. FORBES:

In your letter dated January 26, 2007, you requested a tariff classification ruling.

The subject merchandise is stated to contain 59.39 percent sugar, 15.86 percent cocoa butter, 10.95 percent chocolate liquor, 10.01 percent skim milk powder, 3.31 percent milk fat, 0.43 percent soya lecithin and 0.01 percent vanillin. Total milk fat is 3.39 percent and total milk solids are 13.33 percent. You indicate that the product is flat pieces of confectionery wrapped in foil ready for consumption as is. It will be shipped in 12-kilogram cases.

The applicable subheading for the product XMAS FLAT 14G in bulk will be 1806.32.0600, Harmonized Tariff Schedule of the United States, Annotated, (HTSUS), which provides for Chocolate and other food preparations containing cocoa: Other, in blocks, slabs or bars: Not filled: Preparations consisting wholly of ground cocoa beans, with or without added cocoa fat, flavoring or emulsifying agents, and containing not more than 32 percent by weight of butterfat or other milk solids and not more than 60 percent by weight of sugar: Containing butterfat or other milk solids (excluding articles for consumption at retail as candy or confection): Other: Containing less than 21 percent by weight of milk solids. The rate of duty will be 37.2 cents per kilogram plus 4.3 percent ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>. This 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 301-575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

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 Frank Troise at 646-733-3031.

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

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
NY N006098
February 20, 2007
CLA-2-18:RR:E:NC:SP:232
CATEGORY: Classification
TARIFF NO.: 1806.20.3600

MR. BOB FORBES
ROE LOGISTICS
660 Bridge Street
Montreal, Quebec Canada H3K-3K9

RE: The tariff classification of "milk chocolate coating" (Product number 0757180-400) from Canada

DEAR MR. FORBES:

In your letter dated January 30, 2007, you requested a tariff classification ruling.

The subject merchandise is stated to contain 54.55 percent sugar, 18.85 percent cocoa butter, 13.40 percent chocolate liquor, 9.36 percent skim milk

powder, 3.34 percent anhydrous milk fat, 0.48 percent soya lecithin and 0.01 percent vanillin. Total milk solids are 12.7 percent and total milk fat is 3.40 percent. It will be shipped in 10-pound slabs. You indicate that the product is ready for consumption; it just needs to be melted prior to coating and is intended for use in coating cakes, pastries and confectionery.

The applicable subheading for the product milk chocolate coating will be 1806.20.3600, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Chocolate and other food preparations containing cocoa: Other preparations in blocks or slabs weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg: Preparations consisting wholly of ground cocoa beans, with or without added cocoa fat, flavoring or emulsifying agents, and containing not more than 32 percent by weight of butterfat or other milk solids and not more than 60 percent by weight of sugar . . . other: containing butterfat or other milk solids (excluding articles for consumption at retail as candy or confection) . . . other . . . other: containing less than 21 percent by weight of milk solids. The rate of duty will be 37.2 cents per kilogram plus 4.3 percent ad valorem Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>. This 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 301-575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

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 Frank Troise at 646-733-3031.

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

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H008517
CLA-2 OT:RR:CTF:TCM H008517 IDL
CATEGORY: Classification
TARIFF NO.: 1806.20.9900

MR. BOB FORBES
ROE LOGISTICS
660 Bridge Street
Montreal, Quebec Canada H3K 3K9

Re: Liquid Chocolate; Revocation of NY N005039

DEAR MR. FORBES:

This letter concerns NY N005039, dated January 22, 2007, issued to you on behalf of your client, Barry Callebaut Canada, Inc., by the National Commodity Specialist Division, U.S. Customs and Border Protection (CBP). At issue in that ruling was the correct classification of "liquid chocolate" (Product No. LSH 484) under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY N005039 and have found that it is incorrect. Our discussion on this matter is set forth below.

FACTS:

In NY N005039, CBP described the liquid chocolate at issue as Product No. LSH 484, which contained 63.70 percent sugar, 25.80 percent cocoa liquor, 9.8 percent cocoa butter, 0.30 percent soya lecithin, 0.20 percent salt hydrate, and 0.20 percent admul emulsifier. According to the information submitted, the liquid chocolate was to be shipped in bulk in tanker trucks. The product was used for enrobing and panning cakes, pastries and confectionery.

CBP previously classified the product at issue under subheading 1806.20.5000, HTSUSA. We now believe that the liquid chocolate was classified incorrectly and that the correct classification is under subheading 1806.20.9900, HTSUSA.

ISSUE:

Whether the liquid chocolate described above is correctly classified under subheading 1806.20.5000 or under subheading 1806.20.9900, HTSUSA?

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUSA provisions under consideration are as follows:

1806 Chocolate and other food preparations containing cocoa:

* * *

1806.20	<p>Other preparations in blocks, slabs or bars, weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg:</p> <p>Preparations consisting wholly of ground cocoa beans, with or without added cocoa fat, flavoring or emulsifying agents, and containing not more than 32 percent by weight of butterfat or other milk solids and not more than 60 percent by weight of sugar:</p> <p style="text-align: center;">* * *</p> <p>Other:</p> <p style="text-align: center;">* * *</p>
1806.20.5000	<p>Other</p> <p style="text-align: center;">* * *</p> <p>Other:</p> <p style="text-align: center;">* * *</p> <p>Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17:</p>
1806.20.9500	Described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions
1806.20.9800	Other <u>2</u> ³
1806.20.9900	Other

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

³ Goods falling under this provision are subject to quota under chapter 99, HTSUS.

EN 18.06 provides the following:

Chocolate is composed essentially of cocoa paste and sugar or other sweetening matter, usually with the addition of flavouring and cocoa butter; in some cases, cocoa powder and vegetable oil may be substituted for cocoa paste.

* * *

The heading also includes all sugar confectionery containing cocoa in any proportion (including chocolate nougat), sweetened cocoa powder, chocolate powder, chocolate spreads, and, in general, all food preparations containing cocoa (**other than** those **excluded** in the General Explanatory Note to this Chapter).

As stated above, the liquid chocolate contains ingredients that include sugar, cocoa liquor, and cocoa butter. Therefore, it meets the requirements of heading 1806, HTSUS, and the description provided in EN 18.06. As such, the liquid chocolate is properly classified in heading 1806, HTSUS. Further, subheading 1806.20, HTSUS, provides for preparations containing cocoa, of more than 2 kg, in liquid form, in containers or immediate packings. As stated above, the liquid chocolate is shipped in bulk in tankers. It is the understanding of CBP that the normal capacity of a commercial tanker far exceeds 2 kgs. On this basis, we find that the liquid chocolate meets the requirements of subheading 1806.20, HTSUS.

At the eight-digit level, we find that, contrary to CBP's decision in NY N005039, the liquid chocolate is precluded from classification under subheading 1806.20.5000, HTSUSA. According to the terms of that subheading, the sugar content of any cocoa preparation falling under that provision may not exceed 60 percent by weight. As described above, the liquid chocolate at issue contains 63.70 percent sugar, exceeding the stated limit.

Further, we note that in order to be classified under subheading 1806.20.9500 or 1806.20.9800, HTSUSA, the liquid chocolate would have to contain "over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17", as provided by the corresponding article description in the HTSUS. Although the liquid chocolate in the instant case does contain over 10 percent by dry weight of sugar, we find that it is excluded from classification in subheading 1806.20.95/98, HTSUS, by Additional U.S. Note 3 to Chapter 17, which provides, in pertinent part, the following:

For purposes of this schedule, the term "articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17" means articles containing over 10 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, except . . . (d) cake decorations and similar products to be used in the same condition as imported without any further processing other than the direct application to individual pastries or confections, finely ground or masticated coconut meat or juice thereof mixed with those sugars, and sauces and preparations therefor.

Since the liquid chocolate was intended for use in enrobing and panning cakes, pastries and confectionery, it falls under the "cake decoration and similar products" exception listed in subsection (d) of Additional U.S. Note 3 to Chapter 17. Accordingly, we find that the liquid chocolate is classified under subheading 1806.20.9900, HTSUSA. CBP has previously classified chocolate products containing over 10 percent by dry weight of sugars and

used for enrobing desserts under subheadings 1806.20.9900, HTSUSA. See NY I89145 (January 9, 2003) and NY I89812 (January 24, 2003).

HOLDING:

By application of GRI 1, the liquid chocolate is classified in heading 1806, HTSUS, and is specifically provided for under subheading 1806.20.9900, HTSUSA, as “Chocolate and other food preparations containing cocoa: Other preparations . . . in liquid . . . or other bulk form in containers or immediate packings, of a content exceeding 2 kg: Other . . . Other . . . Other . . . Other . . . Other.” The 2008 column one, general rate of duty is 8.5% *ad valorem*.

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

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 the FDA, at (301) 575-0156, or from the World Wide Web at <http://www.fda.gov/oc/bioterrorism/bioact.html>.

EFFECT ON OTHER RULINGS:

NY N005039, dated January 22, 2007, is hereby revoked.

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division.

[ATTACHMENT G]

DEPARTMENT OF HOMELAND SECURITY.

U.S. CUSTOMS AND BORDER PROTECTION,

HQ H008511

CLA-2 OT:RR:CTF:TCM H008511 IDL

CATEGORY: Classification

TARIFF NO.: 1806.20.9900

MR. BOB FORBES

ROE LOGISTICS

660 Bridge Street

Montreal, Quebec Canada H3K 3K9

Re: Bittersweet Chocolate; Revocation of NY N005523

DEAR MR. FORBES:

This letter concerns New York Ruling Letter (NY) N005523, dated February 13, 2007, issued to you by the National Commodity Specialist Division, U.S. Customs and Border Protection (CBP). At issue in that ruling was the correct classification of bittersweet chocolate (Product No. CHD-F050100-15-105) under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY N005523 and have found that it is incorrect. Our discussion on this matter is set forth below.

FACTS:

In NY N005523, CBP classified bittersweet chocolate from France “stated to contain 44.0 percent cocoa paste, 28.5 percent sugar, 11.5 percent cocoa

butter, 9.0 percent inulin, 6.5 percent corn dextrin, 1.0 percent soya lecithin and 0.5 percent vanillin” under subheadings 1806.20.9500 or 1806.20.9800, HTSUSA, depending on whether the quantitative limits of Additional U.S. Note 8 to Chapter 17 had been reached. The bittersweet chocolate was shipped in 5-kilogram blocks and was intended for use in enrobing food items.

CBP is now taking the position that the bittersweet chocolate described in NY N005523 was classified incorrectly, and that the chocolate should be classified under subheading 1806.20.9900, HTSUSA.

ISSUE:

Whether the bittersweet chocolate described above is correctly classified under subheadings 1806.20.9500/9800, HTSUSA, or under subheading 1806.20.9900, HTSUSA?

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUSA provisions under consideration are as follows:

1806	Chocolate and other food preparations containing cocoa: * * *
1806.20	Other preparations in blocks, slabs or bars, weighing more than 2 kg or in liquid, paste powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg: * * * Other: * * * Other: * * * Other: * * * Other: * * *
1806.20.9500	Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17: Described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions

1806.20.9800 Other 2⁴

1806.20.9900 Other

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 18.06 provides the following:

Chocolate is composed essentially of cocoa paste and sugar or other sweetening matter, usually with the addition of flavouring and cocoa butter

Chocolate and chocolate goods may be put up either as blocks, slabs tablets, bars, pastilles, croquettes, granules or powder, or in the form of chocolate products filled with creams, fruits, liqueurs, etc.

The heading also includes all sugar confectionery containing cocoa in any proportion (including chocolate nougat), sweetened cocoa powder, chocolate powder, chocolate spreads, and, in general, all food preparations containing cocoa (**other than** those **excluded** in the General Explanatory Note to this Chapter).

As stated above, the bittersweet chocolate contains ingredients that include cocoa paste, sugar, cocoa butter, and vanillin (flavoring). On that basis, we find that it meets the requirements of heading 1806, HTSUS, and the description of chocolate and chocolate goods provided in EN 18.06. As such, the bittersweet chocolate is properly classified in heading 1806, HTSUS. Further, we find that because the bittersweet chocolate is shipped in 5-kilogram blocks, it meets the requirements of subheading 1806.20, HTSUS.

According to the information submitted, the bittersweet chocolate contains over 10 percent by dry weight of sugar. However, subheadings 1806.20.9500 and 1806.20.9800, HTSUSA, require that articles containing over 10 percent by dry weight of sugar be described in Additional U.S. Note 3 to Chapter 17, which provides as follows:

For purposes of this schedule, the term “articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17” means articles containing over 10 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, except . . . (d) cake decorations and similar products to be used in the same condition as imported without any further processing other than the direct application to individual pastries or confections, finely ground or masticated coconut meat or juice thereof mixed with those sugars, and sauces and preparations therefor.

Although the bittersweet chocolate does contain over 10 percent by dry weight of sugar, when CBP previously classified this merchandise we failed to consider that the bittersweet chocolate was “intended for use in enrobing” and, therefore, fell under the exception listed in subsection (d) of Additional

⁴Goods falling under this provision are subject to quota under chapter 99, HTSUS.

U.S. Note 3 to Chapter 17. As such, the bittersweet chocolate should have been precluded from classification under subheadings 1806.20.9500 and 1806.20.9800, HTSUSA. Accordingly, we now find that the bittersweet chocolate is classified under subheading 1806.20.9900, HTSUSA. CBP has previously classified chocolate products containing over 10 percent by dry weight of sugars and used for enrobing desserts under subheadings 1806.20.9900, HTSUSA. See NY I89145, dated January 9, 2003, and NY I89812, dated January 24, 2003.

HOLDING:

By application of GRI 1, the bittersweet chocolate is classified in heading 1806, HTSUS, and is specifically provided for under subheading 1806.20.9900, HTSUSA, as “Chocolate and other food preparations containing cocoa: Other preparations in blocks, slabs or bars, weighing more than 2 kg . . . Other . . . Other . . . Other . . . Other . . . Other.” The 2008 column one, general rate of duty is 8.5% *ad valorem*.

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

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 the FDA, at (301) 575-0156, or from the World Wide Web at <http://www.fda.gov/oc/bioterrorism/bioact.html>.

EFFECT ON OTHER RULINGS:

NY N005523, dated February 13, 2007, is hereby revoked.

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division.

[ATTACHMENT H]

DEPARTMENT OF HOMELAND SECURITY.

U.S. CUSTOMS AND BORDER PROTECTION,

HQ H008518

CLA-2 OT:RR:CTF:TCM H008518 IDL

CATEGORY: Classification

TARIFF NO.: 1806.32.3000

MR. BOB FORBES

ROE LOGISTICS

660 Bridge Street

Montreal, Quebec Canada H3K 3K9

Re: Chocolate Bars; “Neutral 5.5G Cupid”; “Xmas Flat 14G in Bulk”; Revocation of NY N005972 and NY N005974

DEAR MR. FORBES:

This letter concerns New York Ruling Letter (NY) N005972 and NY N005974, both dated February 20, 2007, issued to you by the National Commodity Specialist Division, U.S. Customs and Border Protection (CBP) on behalf of your client, Barry Callebaut Canada, Inc. At issue in NY N005972

was the correct classification of “Neutral 5.5G Cupid” (Product No. 0563920–500) chocolate bars under the Harmonized Tariff Schedule of the United States (HTSUS). At issue in NY N005974 was the correct classification of “Xmas Flat 14G in bulk (Product No. 0304020-500)” chocolate bars under the HTSUS. We have reviewed NY N005972 and NY N005974 and have found that they are incorrect. Our discussion on this matter is set forth below.

FACTS:

In both NY N005972 and NY N005974, the merchandise at issue was described as being “flat pieces of confectionery wrapped in foil ready for consumption as is . . . [to] be shipped in 12-kilogram cases.” Both the “Neutral 5.5G Cupid” and the “Xmas Flat 14G in bulk” chocolate bars were further described as being composed of 59.39 percent sugar, 15.86 percent cocoa butter, 10.95 percent chocolate liquor, 10.01 percent skim milk powder, 0.43 percent soya lecithin and 0.01 percent vanillin, with a total milk solids content of 13.33 percent. In error, two percentage values, 3.31 and 3.39, were given in each ruling for the total milk fat content of each type of chocolate bar.

CBP classified the chocolate bars described in NY N005972 and in NY N005974 under subheading 1806.32.0600, HTSUSA, which provides for: “Chocolate and other food preparations containing cocoa: Other, in blocks, slabs or bars: Not filled: Preparations consisting wholly of ground cocoa beans, with or without added cocoa fat, flavoring or emulsifying agents, and containing not more than 32 percent by weight of butterfat or other milk solids and not more than 60 percent by weight of sugar: Containing butterfat or other milk solids (excluding articles for consumption at retail as candy or confection): Other, containing over 5.5 percent by weight of butterfat: Other: Containing less than 21 percent by weight of milk solids.”

CBP now takes the position that the chocolate bars were classified incorrectly and that the correct classification is under subheading 1806.32.3000, HTSUSA.

ISSUE:

Whether the chocolate bars described above are correctly classified under subheading 1806.32.0600 or subheading 1806.32.3000, HTSUSA?

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

1806	Chocolate and other food preparations containing cocoa:
	* * *
	Other, in blocks, slabs or bars:
	* * *
1806.32	Not filled:

Preparations consisting wholly of ground cocoa beans, with or without added cocoa fat, flavoring or emulsifying agents, and containing not more than 32 percent by weight of butterfat or other milk solids and not more than 60 percent by weight of sugar:

Containing butterfat or other milk solids (excluding articles for consumption at retail as candy or confection):

* * *

Other, containing over 5.5 percent by weight of butterfat:

* * *

Other:

1806.32.0600

Containing less than 21 percent by weight of milk solids ^{1/5}

* * *

1806.32.3000

Other

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 18.06 provides the following:

Chocolate is composed essentially of cocoa paste and sugar or other sweetening matter, usually with the addition of flavouring and cocoa butter; in some cases, cocoa powder and vegetable oil may be substituted for cocoa paste. . . .

Chocolate and chocolate goods may be put up either as blocks, slabs, tablets, bars, pastilles, croquettes, granules or powder, or in the form of chocolate products filled with creams, fruits, liqueurs, etc.

The heading also includes all sugar confectionery containing cocoa in any proportion (including chocolate nougat), sweetened cocoa powder, chocolate powder, chocolate spreads, and, in general, all food preparations containing cocoa (**other than** those **excluded** in the General Explanatory Note to this Chapter).

As stated above, the chocolate bars contain ingredients that include sugar, cocoa butter, chocolate liquor, and vanillin (flavor). The chocolate bars meet the requirements of heading 1806, HTSUS, and the description provided in EN 18.06. As such, the chocolate bars are properly classified in heading 1806, HTSUS. At the six-digit level, we find that the chocolate bars meet the

⁵ Goods falling under this provision are subject to quota under chapter 99, HTSUS.

requirements of 1806.32, HTSUS, because they are in bar form and not filled.

CBP previously classified the bars in subheading 1806.32.0600, HTSUSA. However, the text superior to subheadings 1806.32.0100 through 1806.32.1800, HTSUSA, which governs classification in the range of subheadings in which subheading 1806.32.0600 falls, excludes “articles for consumption at retail as candy or confection.” The chocolate bars at issue were described as being “confectionery wrapped in foil ready for consumption as is.” On the basis of the condition in which they were to be imported, we now find that the chocolate bars are excluded from classification in subheading 1806.32.0600, HTSUSA, by the terms of that subheading. Consequently, CBP’s previous classification of the bars was incorrect.

We now find that the chocolate bars are classified under subheading 1806.32.3000, HTSUSA, because they consist wholly of ground cocoa and do not contain, by weight, more than 32 percent milk solids or more than 60 percent of sugar, and are articles for consumption at retail as candy or confection. We note that the discrepancy in the milk fat percentage found in NY N005972 and in NY N005974 is inconsequential to this classification analysis.

HOLDING:

By application of GRI 1, the chocolate bars are classified in heading 1806, HTSUS, and are specifically provided for under subheading 1806.32.3000, HTSUSA, as “Chocolate and other food preparations containing cocoa: Other, in blocks, slabs or bars: Not filled: Preparations consisting wholly of ground cocoa beans, with or without added cocoa fat, flavoring or emulsifying agents, and containing not more than 32 percent by weight of butterfat or other milk solids and not more than 60 percent by weight of sugar: Other.” The 2008 column one, general rate of duty is 4.3% *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 the World Wide Web at <http://www.usitc.gov/tata/hts/>.

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 the FDA, at (301) 575-0156, or from the World Wide Web at <http://www.fda.gov/oc/bioterrorism/bioact.html>.

EFFECT ON OTHER RULINGS:

NY N005972 and NY N005974, both dated February 20, 2007, are hereby revoked.

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

[ATTACHMENT I]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H008515
CLA-2 OT:RR:CTF:TCM H008515 IDL
CATEGORY: Classification
TARIFF NO.: 1806.20.20

MR. BOB FORBES
ROE LOGISTICS
660 Bridge Street
Montreal, Quebec Canada H3K 3K9

Re: Milk Chocolate “Coating” (Slabs); Revocation of NY N006098

DEAR MR. FORBES:

This letter concerns New York Ruling Letter (NY) N006098, dated February 20, 2007, issued to you by U.S. Customs and Border Protection (CBP). At issue in that ruling was the classification of “milk chocolate coating (Product No. 0757180–400)” under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed N006098 and have found that it is incorrect. Our discussion on this matter is set forth below.

FACTS:

In NY N006098, CBP described the milk chocolate product as follows:

The subject merchandise is stated to contain 54.55 percent sugar, 18.85 percent cocoa butter, 13.40 percent chocolate liquor, 9.36 percent skim milk powder, 3.34 percent anhydrous milk fat, 0.48 percent soya lecithin and 0.01 percent vanillin. Total milk solids are 12.7 percent and total milk fat is 3.40 percent. It will be shipped in 10-pound slabs . . . the product is ready for consumption; it just needs to be melted prior to coating and is intended for use in coating cakes, pastries and confectionery.

CBP classified the product under subheading 1806.20.3600, HTSUSA. However, it is now our position that the milk chocolate product described in NY N006098 was classified incorrectly, and that the chocolate should be classified under subheading 1806.20.20, HTSUS.

ISSUE:

Whether the milk chocolate product described above is correctly classified under subheading 1806.20.20 or under subheading 1806.20.3600, HTSUS?

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

1806 Chocolate and other food preparations containing cocoa:

* * *

1806.20 Other preparations in blocks, slabs or bars, weighing more than 2kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg:

Preparations consisting wholly of ground cocoa beans, with or without added cocoa fat, flavoring or emulsifying agents, and containing not more than 32 percent by weight of butterfat or other milk solids and not more than 60 percent by weight of sugar:

1806.20.20 In blocks or slabs weighing 4.5 kg or more each

* * *

Other:

Containing butterfat or other milk solids (excluding articles for consumption at retail as candy or confection):

Other:

* * *

Other:

1806.20.3600 Containing less than 21 percent by weight of milk solids 1/6

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 18.06 provides the following:

Chocolate is composed essentially of cocoa paste and sugar or other sweetening matter, usually with the addition of flavouring and cocoa butter; in some cases, cocoa powder and vegetable oil may be substituted for cocoa paste

* * *

The heading also includes all sugar confectionery containing cocoa in any proportion (including chocolate nougat), sweetened cocoa powder, chocolate powder, chocolate spreads, and, in general, all food preparations containing cocoa (**other than** those **excluded** in the General Explanatory Note to this Chapter).

As an initial matter, we note that, although in N006098 CBP referred to the product at issue as a “milk chocolate coating”, the product is actually entered in slab form and is melted and used as coating after importation; it is not imported in liquid form.

As stated above, the milk chocolate product contains ingredients that in-

⁶Goods falling under this provision are subject to quota under chapter 99, HTSUS.

clude sugar, flavoring, and cocoa butter. We find that the milk chocolate product meets the requirements of heading 1806, HTSUS, as well as the description provided in EN 18.06. As such, the milk chocolate product is properly classified in heading 1806, HTSUS. Further, subheading 1806.20, HTSUS, provides for “other preparations in . . . slabs . . . weighing more than 2 kg”. As earlier described, the milk chocolate is imported in slab form and weighs in excess of 2 kg. On that basis, we find that it meets the requirements of subheading 1806.20, HTSUS.

Contrary to our previous decision, at the eight-digit level, we now find that the milk chocolate slabs meet the requirements of subheading 1806.20.20, HTSUS, because, at 10 pounds, they exceed the stated minimum weight requirement of 4.5 kg (1 kg = 2.2 lbs.; 4.5 kg = 9.9 lbs.). Further, they are not described by the terms of subheading 1806.20.3600, HTSUSA. Accordingly, the milk chocolate slabs are classified under subheading 1806.20.20, HTSUS.

HOLDING:

By application of GRI 1, the milk chocolate slabs are classified in heading 1806, HTSUS, and are specifically provided for under subheading 1806.20.20, HTSUS, as: “Chocolate and other food preparations containing cocoa: . . . Other preparations in . . . slabs . . . weighing more than 2 kg: Preparations consisting wholly of ground cocoa beans, with or without added cocoa fat, flavoring or emulsifying agents, and containing not more than 32 percent by weight of butterfat or other milk solids and not more than 60 percent by weight of sugar: In blocks or slabs weighing 4.5 kg or more each.” The 2008 column one, general rate of duty is “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 the World Wide Web at <http://www.usitc.gov/tata/hts/>.

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 the FDA, at (301) 575-0156, or from the World Wide Web at <http://www.fda.gov/oc/bioterrorism/bioact.html>.

EFFECT ON OTHER RULINGS:

NY N006098, dated February 20, 2007, is hereby revoked.

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

**REVOCATION OF RULING LETTERS AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF CERTAIN PORCELAIN TOOTHPICK
HOLDERS**

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

ACTION: Notice of revocation of tariff classification ruling letters and revocation of treatment relating to the classification of certain porcelain toothpick holders.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U. S. Customs and Border Protection (CBP) is revoking two ruling letters, New York Ruling (“NY”) A88963 and Headquarters Ruling Letter (“HQ”) 960657, relating to the tariff classification of certain porcelain toothpick holders under the Harmonized Tariff Schedule of the United States Annotated (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 42 No. 20, on May 7, 2008. No comments were received in response to the proposed revocation.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 7, 2008.

FOR FURTHER INFORMATION CONTACT: John Rhea, Tariff Classification and Marking Branch: (202) 572–8785.

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, a notice was published in the Customs Bulletin, Vol. 42 No. 20, on May 7, 2008 proposing to revoke two ruling letters pertaining to the tariff classification of certain porcelain toothpick holders. Although in this notice, CBP specifically referred to the revocation of NY A88963 and HQ 960657, the revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice period.

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY A88963 and HQ 960657 and any other ruling not specifically identified, to reflect the proper classification of the porcelain toothpick holder according to the analysis contained in HQ H005207 and HQ H005209, set forth as Attachment A and B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

DATED: June 20, 2008

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

Attachments:

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H005207
June 20, 2008
CLA-2 OT:RR:CTF:TCM H005207 JER
CATEGORY: Classification
TARIFF NO.: 6911.10.80; 6912.00.48

MR. JOE SCHMID
JS INTERNATIONAL
CUSTOM HOUSE BROKER
110 West Ocean Blvd., Suite 307
Long Beach, CA 90802

RE: Classification of Porcelain, China and Ceramic Toothpick Holders; Revocation of NY A88963

DEAR MR. SCHMID:

This is in regard to New York Ruling Letter (NY) Ruling A88963, dated November 12, 1996 issued to you for the tariff classification of the above captioned product under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (CBP) determined that the product referred to as “The Porcelain Toothpick Holder” was classified in heading 6911, HTSUS, specifically subheading 6911.90.00, HTSUS, which provides, in relevant part, for household articles of porcelain or china.

We have recently revisited this issue and for the reasons set forth below, CBP presently considers a “Toothpick Holder” made of porcelain or china to be classified under heading 6911, HTSUS and specifically subheading 6911.10.80 HTSUS, as other tableware and kitchenware of porcelain or china. Likewise, a toothpick holder made of ceramic shall be classified under subheading 6912.00.48, HTSUS, as other tableware and kitchenware not of porcelain or china.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY A88963 was published on May 7, 2008, in the Customs Bulletin, Volume 42, Number 20. No comments were received in response to the proposed revocation.

FACTS:

The merchandise in issue was described as a porcelain toothpick holder.

ISSUE:

Whether a “Toothpick Holder” should be classified as tableware, kitchenware under subheading 6911.10.80, HTSUS, or as other household article under subheading 6911.90.00, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (“GRIs”). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to

the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. 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.

When the subheadings, rather than the headings are at issue, GRI 6 is applied. GRI 6 provides in pertinent part 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 [rules 1 through 5] on the understanding that only subheadings at the same level are comparable for the purposes of this rule and the relative section and chapter notes also apply, unless the context otherwise requires."

The HTSUS headings and subheadings under consideration are as follows:

6911	Tableware, kitchenware, other household articles and toilet articles, of porcelain or china:
6911.10	Tableware and kitchenware:
	Other:
	Other:
	Other:
	* * *
6911.10.80	Other
	* * *
6911.90.00	Other
6912.00	Ceramic tableware, kitchenware, other household articles and toilet articles, other than porcelain or china:
	Tableware and kitchenware:
	Other:
	Other:
	Other:
	* * *
6912.00.48	Other
	* * *
6912.00.50	Other
	* * *

NY A88963 based its classification on the rationale that a toothpick holder could be located in any room of the house (not just the kitchen) and therefore classified the product under the provision for other household articles rather than as tableware or kitchenware. The decision in NY A88963 narrowly construed the scope of the heading and thereby failed to give meaning to terms of the heading as indicated in the Explanatory Notes to heading 6911,

HTSUS. As a result, NY A88963 reasoned that a toothpick holder should be treated as an item within the same class or kind as utilitarian household articles of heading 6911, HTSUS.

In cases where a term is not defined in the section notes, chapter notes or the ENs of the HTSUS, it is construed in accordance with its common and commercial meaning. Unless a contrary legislative intent is shown, tariff terms are construed in accordance with their common and commercial meanings, which are presumed to be the same. Nippon Kogaku (USA), Inc. v. United States, 673 F.2d 380, 382 (1982); Schott Optical Glass, Inc. v. United States, 612 F.2d 1283, 1285 (1979). Absent an express definition, however, dictionaries, lexicons, scientific authorities, and other such reliable sources may be consulted to determine common meaning. C.J. Tower & Sons of Buffalo, Inc. v. United States, 673 F.2d 1268, 1271 (1982). By definition, the term tableware includes those items traditionally used in serving food or associated with table settings. See Webster's Collegiate Dictionary, 1195, 10th ed., (2001) (tableware is defined as: "utensils as of china, glass or silver for table use). The definition of kitchenware is, "utensils and appliances for use in a kitchen." Webster's Collegiate Dictionary at 643. Moreover, a "toothpick" is defined as a "slender pointed piece of wood used after eating to remove food lodged between the teeth." Webster's Third New International Dictionary of the English Language, Unabridged (1993). A "holder" is defined as a "device or container in which something is held." Id. It follows that the common and commercial meaning of a toothpick holder firmly suggests that its primary usage is associated with foods and that its primary location is therefore associated with kitchen areas if not the dining table.

In addition to the dictionary definitions, the exemplars set forth in the Explanatory Notes ("ENs") to heading 6911, HTSUS, indicate the type of goods considered to be within the class or kind classifiable as tableware and kitchenware. The ENs to heading 6911, HTSUS, while not legally binding or dispositive, provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The ENs to heading 6912 (and by reference to heading 6911) HTSUS, state in pertinent part that:

[t]he headings therefore include:

(A) Tableware such as tea or coffee services, plates, soup tureens, salad bowls, dishes . . . sugar bowls, beer mugs, cups . . . salt cellars, mustard pots, egg-cups, teapot stands, table mats, knife rests, spoons and serviette rings.

(B) Kitchenware such as stew-pans, casseroles of all shapes and sizes, baking or roasting dishes, basins, pastry or jelly moulds, kitchen jugs, preserving jars, storage jars and bins (tea caddies, bread bins, etc.), funnels, ladles, graduated kitchen capacity measures and rolling-pins.

(C) Other household articles such as ashtrays, hot water bottles and matchbox holders.

According to the ENs to heading 6911, HTSUS, and dictionary definitions, tableware and kitchenware of this heading are articles immediately associ-

ated with food preparation, food storage and food consumption.⁷ Unlike household articles, the articles listed in the ENs to heading 6911, HTSUS, as tableware and kitchenware, can be used in a variety of table and kitchen related functions. For instance, such merchandise can be used in the preparation of food and beverage items or act as table settings. These articles may also store or display foods as well as serve food and beverage items.

In HQ 087602, dated, February 13, 1991, we noted that the ENs to heading 6911, HTSUS, distinguish between household articles and kitchenware articles. Whereas the latter category includes such sundries as ashtrays, hot water bottles and the like, the subject provision covers kitchenware such as storage jars, measuring utensils and baking dishware. Likewise, in NY R03430, dated March 29, 2006, CBP classified a toothpick holder made of ceramic in heading 6912, HTSUS, and specifically subheading 6912.00.48, HTSUS, as tableware and kitchenware. We stated in NY R03430, that the article was intended to be placed on a (kitchen) table, countertop or the like.

In order to fully discern whether the instant toothpick holder is classifiable as a household article or more appropriately as tableware and kitchenware, we refer to the statutory construction known as the rule of *ejusdem generis*. In Sports Graphics, Inc. v. United States, the Court noted that:

“As applicable to classification cases, *ejusdem generis* (which means “of the same kind”) requires that the imported merchandise possess the essential character or purpose that unite the articles enumerated *eo nomine*, in order to be classified under the general terms. (24 F. 3D 1390, 1392, Fed. Cir 1994), citing Nissho-Iawi Am. Corp. v. United States, 10 CIT 154, 157, 641 F. Supp. 808 (1986).

Those articles enumerated *eo nomine* (which means “by name”) in the ENs to heading 6912, HTSUS (and by reference, 6911, HTSUS) among other things, have as their primary purpose(s) to hold, display, store, prepare and serve food items. Without question, toothpicks are used in connection with the consumption of foods, with the serving of hors d’oeuvres, mixed drinks and for removing food particles from between the teeth. Additionally, according to our research, toothpick holders are marketed in retail sections under kitchenware, cookware or dining.⁸ Hence, the character and purpose of this item suggests that it be used in close connection with dining areas, food and beverage preparation or consumption.

The U.S. Court of International Trade (CIT) has provided factors to apply when determining whether merchandise falls within a particular class or kind. They include among other things: “general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale, use in the same manner as merchandise which defines the class . . . and recognition in the trade of this use.” See Kraft, Inc. v. United States, USITR, 16 CIT 483, (June 24, 1992). Insofar as the use of a toothpick

⁷Note that for purposes of this discussion a reference made to food(s) encompasses a reference to ingredients, beverages and other items associated therein.

⁸See generally, *Kitchen & Dining*, Wexner Center Store at <http://store.wexnercenterstore.com>; *Kitchenware*, CNKC Kitchenware Co. Ltd www.kitchenwarecn.com; *Toothpick Holders*, Stainless Steel Kitchenware.com www.stainless-steel-kitchenware.com/toothpick-holders.html

holder is associated with dining, food preparation and food consumption, it would appear that this merchandise falls within the class or kind of those articles enumerated *eo nomine* in heading 6911, HTSUS, as tableware and kitchenware. Conversely, a toothpick holder is not used in a manner similar to an ashtray, hot water bottle or other utilitarian household articles. Instead it is used in a substantially similar manner as other merchandise classified as either tableware or kitchenware.

CBP has on several occasions ruled that items closely connected with serving food, storing certain foods and merchandise ancillary to other kitchen or table articles, are merchandise classifiable as either tableware or kitchenware. For example, in NY A81749, dated May 14, 1996, we stated that a porcelain tea bag holder was tableware of heading 6911, HTSUS, despite its limited association with the actual consumption of tea. Likewise, in NY N006490, we classified a ceramic condiment bowl as tableware in heading 6912, HTSUS. These items are of the same class or kind enumerated in the headings at issue as either tableware or kitchenware.

By contrast, we have classified certain (ceramic) articles unassociated with food consumption, food storage or food preparation under heading 6912, HTSUS, as other household articles. For example, in NY 885897, dated June 15, 1993, CBP classified a ceramic “memo holder” as a household article of heading 6912, HTSUS. Similarly, in HQ 964364, dated January 9, 2001, CBP classified a ceramic “Treasured Heart Box” as a household article of heading 6912, HTSUS. Likewise, in NY 818767, dated February 26, 1996, we classified a hand-held “teddy bell” as a household article of heading 6912, HTSUS, because its functional purpose was that of a household bell.

We find that the scope of the heading as indicated by the ENs to heading 6911, HTSUS, demonstrate a distinction between household articles and articles classifiable as either tableware or kitchenware. We do not agree that a toothpick holder is a general household item located in any area of the house. By contrast, we find that the expectation of the consumer would in all reasonable contemplation, not place a toothpick holder in a den, bedroom or study but rather in the kitchen area or dining area. Based on the analysis above, we find that a toothpick holder is *ejusdem generis* with those articles enumerated *eo nomine* in heading 6911, HTSUS, and by reference, heading 6912, HTSUS, and therefore is classifiable as tableware and kitchenware.

HOLDING:

For the reasons set forth above and by application of GRI 1, the subject “Porcelain Toothpick Holder” is classified under heading 6911, HTSUS, and specifically subheading 6911.10.80 which provides for: “Tableware, kitchenware, other household articles and toilet articles, of porcelain or china: Tableware and kitchenware: Other: Other: Other: Other.” The 2008 column one, general rate of duty is 20.8% *ad valorem*.

By application of GRI 1, a “Ceramic Toothpick Holder” is classified in heading 6912 HTSUS, and specifically subheading 6912.00.48 which provides for: “Ceramic tableware, kitchenware, other household articles and toilet articles, other than porcelain or china: Tableware and kitchenware: Other: Other: Other: Other.” The 2008 column one, general rate of duty is 9.8% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY Ruling Letter A88963, dated November 12, 1996, is hereby revoked. In accordance with 19 USC §1625 (c), this ruling will become effective 60 days after publication the Customs Bulletin.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H005209
June 20, 2008
CLA-2 OT:RR:CTF:TCM H005209 JER
CATEGORY: Classification
TARIFF NO.: 6911.10.80; 6912.00.48

DAVID G. PORTER
FINGERHUT CORPORATION
4400 Baker Road, Suite 228
Minnetonka, MN 55343

RE: Classification of Porcelain, China and Ceramic Toothpick Holders; Revocation of HQ 960657

DEAR MR. PORTER:

This is in regard to Headquarters Ruling Letter (“HQ”) 960657, dated June 9, 1998, issued for the tariff classification of the above captioned products under the Harmonized Tariff Schedule of the United States (HTSUS). In this ruling letter, U.S. Customs and Border Protection (CBP) determined that the product referred to as a “Toothpick Holder” was classifiable as other household articles in subheading 6911.90.00, HTSUS, rather than as a tableware or kitchenware articles in subheading 6911.10.80, HTSUS. Based on the decision in HQ 960657, subheading 6911.90.00 HTSUS would apply to a porcelain toothpick holder and subheading 6912.00.50 would apply to a ceramic toothpick holder.

HQ 960657 is a Headquarters ruling on Protest 3001-97-100168. Under San Francisco Newspaper Printing Co. v. United States, 9 CIT 517, 620 F. Supp. 738 (1985), the liquidation of the entries covering the merchandise which was the subject of Protest 3001-97-100168 was final on both the protestant and CBP. Therefore, this decision has no effect on those entries.

We have recently revisited this issue and for the reasons set forth below, CBP presently considers a “Toothpick Holder” made of porcelain or china to be classified under heading 6911, HTSUS and specifically subheading 6911.10.80 HTSUS, as other tableware and kitchenware of porcelain or china. Likewise, a toothpick holder made of ceramic shall be classified under subheading 6912.00.48, HTSUS, as other tableware and kitchenware not of porcelain or china.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107

Stat. 2057, 2186 (1993), notice of the proposed revocation of HQ 960657 was published on May 7, 2008, in the Customs Bulletin, Volume 42, Number 20. No comments were received in response to the proposed revocation.

FACTS:

The merchandise in HQ 960657 was described as a porcelain milk can toothpick holder and was in the shape of a miniature milk can. It was described as having a one inch opening at the top and being approximately 2 ¼ inches in height. There was a cow and country scene depicted on the article. Twelve wooden toothpicks were included with the sample.

ISSUE:

Whether a “Toothpick Holder” should be classified as tableware, kitchenware under subheading 6911.10.80, HTSUS, or as other household article under subheading 6911.90.00, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (“GRIs”). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. 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.

When the subheadings, rather than the headings are at issue, GRI 6 is applied. GRI 6 provides in pertinent part 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 [rules 1 through 5] on the understanding that only subheadings at the same level are comparable for the purposes of this rule and the relative section and chapter notes also apply, unless the context otherwise requires.”

The item consists of more than one component which in addition to the toothpick holder includes twelve wooden toothpicks. Therefore, the item is not specifically provided for at the heading level and cannot be classified solely on the basis of GRI 1. HQ 960657 found that the subject merchandise was a composite good consisting of different components.

GRI 3 (b) provides that when, by application of rule 2(b), goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

While not legally binding nor dispositive, the Explanatory Notes provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The ENs to GRI 3 (b) provide in pertinent part:

- (IX) For purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, **provided** these components are adapted one to the other and are mutually

complementary and that together they form a whole which would normally be offered for sale in separate parts.

The Explanatory Notes to GRI 3 (b) further provide in part:

- (X) For purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:
- (a) consist of at least two different articles which are *prima facie*, classifiable in different headings. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule;
 - (b) consists of products or articles put up together to meet a particular need or carry out a specific activity; and
 - (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

We find that the subject merchandise does not meet the terms of Explanatory Note (IX) to GRI 3 (b) as the holder and toothpicks are not adapted one to the other and do not form a whole. Therefore, they are not classifiable as a composite good. Instead we consider the instant merchandise to be classifiable as “goods put up for retail sale” as a set according to Explanatory Note (X) to GRI 3 (b).

We find that the toothpick holder rather than the actual toothpicks, by reason of its function and essential nature, imparts the essential character of the toothpick holder “set” as a whole. Hence, our analysis will discuss the subject merchandise as a retail set whose activity is to hold, display and to make toothpicks readily accessible.

The HTSUS provisions under consideration are as follows:

6911	Tableware, kitchenware, other household articles and toilet articles, of porcelain or china:
6911.10	Tableware and kitchenware:
	Other:
	Other:
	* * *
6911.10.80	Other
	* * *
6911.90.00	Other
6912.00	Ceramic tableware, kitchenware, other household articles and toilet articles, other than porcelain or china:
	Tableware and kitchenware:
	Other:
	Other:
	* * *

6912.00.48	Other			
		*	*	*
6912.00.50	Other			
		*	*	*

HQ 960657 based its classification on the position that toothpick holders are not tableware but rather general household articles. In HQ 960657, CBP reasoned that by its common and commercial meaning, tableware is limited to utensils chiefly used for setting a table or serving food or drinks. We find that the reasoning in HQ 960657 relied too heavily upon court cases interpreting the previous tariff schedules and did not fully consider the structure of the HTSUS. Likewise, HQ 960657 narrowly interpreted the scope of the heading and also failed to consider that the heading includes both tableware and kitchenware articles. As noted in H. Conf. Rep. No. 576, p.550, decisions by the Customs Service and courts interpreting nomenclature under the TSUS are not deemed dispositive in interpreting the HTSUSA. Nevertheless, on a case-by-case basis, TSUS decisions should be considered instructive, in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS. In this instance, a dissimilar interpretation is indicated by the text of the HTSUS, which provides for tableware and kitchenware. By definition, the term tableware includes those items traditionally used in serving food or associated with table settings. See Webster's Collegiate Dictionary, 1195, 10th ed., (2001) (tableware is defined as: "utensils {as of china, glass or silver} for table use).” However, we find that the scope of the heading as it relates to either tableware or kitchenware is not limited to articles “chiefly used upon a table to serve foods.”

In cases where a term is not defined in the section notes, chapter notes or the ENs of the HTSUS, it is construed in accordance with its common and commercial meaning. Unless a contrary legislative intent is shown, tariff terms are construed in accordance with their common and commercial meanings, which are presumed to be the same. Nippon Kogaku (USA), Inc. v. United States, 673 F.2d 380, 382 (1982); Schott Optical Glass, Inc. v. United States, 612 F.2d 1283, 1285 (1979). Absent an express definition, however, dictionaries, lexicons, scientific authorities, and other such reliable sources may be consulted to determine common meaning. C.J. Tower & Sons of Buffalo, Inc. v. United States, 673 F.2d 1268, 1271 (1982). The definition of kitchenware is, “utensils and appliances for use in a kitchen.” Webster's Collegiate Dictionary at 643. Moreover, a “toothpick” is defined as a “slender pointed piece of wood used after eating to remove food lodged between the teeth.” Webster's Third New International Dictionary of the English Language, Unabridged (1993). A “holder” is defined as a “device or container in which something is held.” *Id.* It follows that the common and commercial meaning of a toothpick holder firmly suggests that its primary usage is associated with foods and that its primary location is therefore associated with kitchen areas if not the dining table.

In addition to the dictionary definitions, the exemplars set forth in the ENs to heading 6911, HTSUS, indicate the type of goods considered to be within the class or kind classifiable as tableware and kitchenware.

The ENs to heading 6912 (and by reference to heading 6911) HTSUS, state in pertinent part that:

[t]he headings therefore include:

(A) Tableware such as tea or coffee services, plates, soup tureens, salad bowls, dishes . . . sugar bowls, beer mugs, cups . . . salt cellars, mustard pots, egg-cups, teapot stands, table mats, knife rests, spoons and serviette rings.

(B) Kitchenware such as stew-pans, casseroles of all shapes and sizes, baking or roasting dishes, basins, pastry or jelly moulds, kitchen jugs, preserving jars, storage jars and bins (tea caddies, bread bins, etc.), funnels, ladles, graduated kitchen capacity measures and rolling-pins.

According to the ENs to heading 6911, HTSUS, and dictionary definitions, tableware and kitchenware of this heading can be used in a variety of table and kitchen related functions which are not limited to table settings. For instance, such merchandise can remain exposed to public view, used in the preparation of food and beverage items or act as a table setting. These articles may also store or display foods as well as serve food and beverage items. In HQ 087602, dated, February 13, 1991, we noted that the ENs to heading 6911, HTSUS, distinguish between household articles and kitchenware articles. Whereas the latter category includes such sundries as ashtrays, hot water bottles and the like, the subject provision covers kitchenware such as storage jars, measuring utensils and baking dishware. Unlike household articles, the articles listed in the ENs to heading 6911, HTSUS, as tableware and kitchenware are immediately associated with food preparation, food storage and food consumption.⁹

In order to fully discern whether the instant toothpick holder is classifiable as a household article or more appropriately as tableware and kitchenware, we refer to the statutory construction known as the rule of *ejusdem generis*. In Sports Graphics, Inc. v. United States, the Court noted that:

“As applicable to classification cases, *ejusdem generis* (which means “of the same kind”) requires that the imported merchandise possess the essential character or purpose that unite the articles enumerated *eo nomine*, in order to be classified under the general terms. (24 F. 3D 1390, 1392, Fed. Cir 1994), citing Nissho-Iawi Am. Corp. v. United States, 10 CIT 154, 157, 641 F. Supp. 808 (1986).

Those articles enumerated *eo nomine* (which means “by name”) in the ENs to heading 6912, HTSUS (and by reference, 6911, HTSUS) among other things, have as their primary purpose(s) to hold, display, store, prepare and serve food items. The provisions at issue are sufficiently broad in their scope to include tableware articles which are not exclusively used upon a table for the sole purpose of serving food and to include kitchenware articles which have functions similar to and indicative of the subject toothpick holder.

The U.S. Court of International Trade (CIT) has provided factors to apply when determining whether merchandise falls within a particular class or kind. They include among other things: “general physical characteristics,

⁹Note that for purposes of this discussion a reference made to food(s) encompasses a reference to ingredients, beverages and other items associated therein.

the expectation of the ultimate purchaser, channels of trade, environment of sale, use in the same manner as merchandise which defines the class . . . and recognition in the trade of this use.” See *Kraft, Inc. v. United States*, USITR, 16 CIT 483, (June 24, 1992). Insofar as the use of a toothpick holder is associated with dining, food preparation and food consumption, it would appear that this merchandise falls within the class or kind of those articles enumerated *eo nomine* in heading 6911, HTSUS, as tableware and kitchenware. Conversely, a toothpick holder is not used in a manner similar to an ashtray, hot water bottle or other utilitarian household articles. Instead it is used in a substantially similar manner as other merchandise classified as either tableware or kitchenware.

CBP has on several occasions ruled that items closely connected with serving food, storing certain foods and merchandise ancillary to other kitchen or table articles, are merchandise classifiable as either tableware or kitchenware. For example, in NY A81749, dated May 14, 1996, we stated that a porcelain tea bag holder was tableware of heading 6911, HTSUS, despite its limited association with the actual consumption of tea. Likewise, in NY N006490, we classified a ceramic condiment bowl as tableware in heading 6912, HTSUS. These items are of the same class or kind enumerated in the headings at issue. Finally, in NY R03430, dated March 29, 2006, CBP classified a toothpick holder made of ceramic in heading 6912, HTSUS, and specifically subheading 6912.00.48, HTSUS, as tableware and kitchenware. We stated in NY R03430, that the article was intended to be placed on a (kitchen) table, countertop or the like.

By contrast, we have classified certain (ceramic) articles unassociated with food consumption, food storage or food preparation under heading 6912, HTSUS, as other household articles. For example, in NY 885897, dated June 15, 1993, CBP classified a ceramic “memo holder” as a household article of heading 6912, HTSUS. Similarly, in HQ 964364, dated January 9, 2001, CBP classified a ceramic “Treasured Heart Box” as a household article of heading 6912, HTSUS. Likewise, in NY 818767, dated February 26, 1996, we classified a hand-held “teddy bell” as a household article of heading 6912, HTSUS, because its functional purpose was that of a household bell. Furthermore, we find that the expectation of the consumer would in all reasonable contemplation, not place a toothpick holder in a den, bedroom or study but rather in the kitchen area or dining area. Without question, toothpicks are used in connection with the consumption of foods, with the serving of hors d’oeuvres, mixed drinks and for removing food particles from between the teeth. Additionally, according to our research, toothpick holders are marketed in retail sections under kitchenware, cookware or dining.¹⁰ Hence, the use of this item suggests that it be used in close connection with dining areas, food and beverage preparation or consumption.

Based on the analysis above, we find that a toothpick holder is *ejusdem generis* with those articles enumerated *eo nomine* in heading 6911, HTSUS, and by reference, heading 6912, HTSUS, and therefore is classifiable as tableware and kitchenware.

¹⁰See generally, *Kitchen & Dining*, Wexner Center Store at <http://store.wexnercenterstore.com>; *Kitchenware*, CNKC Kitchenware Co. Ltd www.kitchenwarecn.com; *Toothpick Holders*, Stainless Steel Kitchenware.com www.stainless-steel-kitchenware.com/toothpick-holders.html

HOLDING:

For the reasons set forth above and by application of GRI 3 (b), the subject “Porcelain Toothpick Holder” set is classified under heading 6911, HTSUS, and specifically subheading 6911.10.80 which provides for: “Tableware, kitchenware, other household articles and toilet articles, of porcelain or china: Tableware and kitchenware: Other: Other: Other: Other.” The 2008 column one, general rate of duty is 20.8% *ad valorem*.

By application of GRI 3(b), a “Ceramic Toothpick Holder” set is classified in heading 6912 HTSUS, and specifically subheading 6912.00.48 which provides for: “Ceramic tableware, kitchenware, other household articles and toilet articles, other than porcelain or china: Tableware and kitchenware: Other: Other: Other: Other.” The 2008 column one, general rate of duty is 9.8% *ad valorem*.

EFFECT ON OTHER RULINGS:

HQ 960657 dated June 9, 1998, is hereby revoked. In accordance with 19 USC §1625 (c), this ruling will become effective 60 days after publication the Customs Bulletin.

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