

U.S. Customs and Border Protection

General Notices

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, July 30, 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.

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 CERTAIN ELECTRIC VAPORIZERS

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is revoking one ruling letter relating to the tariff classification of certain electric vaporizers under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). 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. 26, on June 18, 2008. Three 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EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 12, 2008.

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, a notice was published in the *Customs Bulletin*, Vol. 42, No. 26, on June 18, 2008, proposing to revoke one ruling letter pertaining to the tariff classification of certain electric vaporizers that use steel electrodes to produce a warm mist. In response to the notice, we received two comments supporting and one comment opposing the proposed revocation. The comment opposing the proposed revocation is further addressed in the final ruling. Although in that notice, CBP specifically proposed to revoke New York Ruling Letter (NY) R00477 (July 19, 2004) (Attachment A), the revocation covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum

or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

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

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY R00477, and any other ruling not specifically identified, to reflect the proper classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letter (HQ) W968423, set forth as Attachment 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 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

DATED: July 28, 2008

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

Attachment

HQ W968423
July 28, 2008

CLA-2 OT:RR:CTF:TCM W968423 IDL
CATEGORY: Classification
TARIFF NO.: 8516.10.0080

MARILYN-COY CERNY
ASSOCIATES, P.C.
24 Smith Street
Building 2, Suite 102
Pawling, New York 12564

Re: Electric Vaporizer; Revocation of NY R00477

DEAR MS. CERNY:

This letter concerns your request, dated September 27, 2006, for reconsideration of NY R00477 (July 19, 2004), on behalf of your client, Sunbeam Products. NY R00477, issued by the Director, National Commodity Specialist Division, concerns the classification of an electric, household room vaporizer under the Harmonized Tariff Schedule of the United States (HTSUS). We have since reviewed NY R00477 and find that it is incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published in the *Customs Bulletin*, Volume 42, No. 26, on June 18, 2008. We received two comments supporting and one opposing the revocation of NY R00477.

FACTS:

The Sunbeam Health at Home Warm Mist Vaporizer, Model 1387, was described in NY R00477 as:

a room vaporizer consisting of an upper housing and a lower tank. The upper housing contains two electrodes. The tank holds the water to be vaporized. The electric current passing through the water between the two electrodes turns the water into steam.

CBP classified the Sunbeam Health at Home Warm Mist Vaporizer as an “other” electrothermic appliance under subheading 8516.79.0000, HTSUSA. In your request for reconsideration, you contend that the subject merchandise should be classified as “[o]ther water heaters and immersion heaters” in subheading 8516.10.0080, HTSUSA.

ISSUE:

Whether the Warm Mist Vaporizer is classified as “other water heaters and immersion heaters” in subheading 8516.10.0080, HTSUSA, or as “other electrothermic appliances” in subheading 8516.79.0000, 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:

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:
8516.10.00	Electric instantaneous or storage water heaters and immersion heaters
	* * *
8516.10.0080	Other water heaters and immersion heaters
	* * *
	Other electrothermic appliances:
	* * *

8516.79.0000 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 85.16 describes different categories of products classifiable as electric instantaneous or storage water heaters and immersion heaters, including “[e]lectrode hot water boilers, in which an AC [alternating current] passes through the water between two electrodes.” EN 85.16(A)(4). Counsel argues that because the subject merchandise “boil[s] water by passing an alternating current through the water between two electrodes”, it meets the parameters of EN 85.16(A)(4), and should be classified in subheading 8516.10.0080, HTSUSA, as an “other electric instantaneous water heater.”

Counsel also cites HQ 968027 (June 21, 2006), in which CBP revoked an earlier ruling (HQ 958017, dated February 13, 1996) that classified certain electrode steam humidifiers in subheading 8543.80.75, HTSUS. The electrode steam humidifiers were described as goods that “creat[e] steam which is used to add moisture, i.e., humidity, to the air that passes through a furnace. The steam is produced by means of hot water produced by an electric current generated between electrodes immersed in the water.” CBP concluded that “the function of electrode boilers is to produce hot water with steam being a byproduct for the purpose of introducing moisture into the air (humidity). Such apparatus is provided for in heading 8516”. By means of that revocation, CBP changed the classification of the merchandise to subheading 8516.10.0080, HTSUSA. See HQ 968027.

One commenter argued that the “ultimate function of the machine is to make steam [rather than] hot water,” that subheading 8516.10.0080, HTSUSA, does not describe the subject merchandise, and that the subject merchandise, as a product similar to “facial saunas...in which water is vaporized for facial skin treatment” (quoting from EN 85.16 (E)16) should continue to be classified under the “other” provision of subheading 8516.79.0000, HTSUSA.

Although the commenter is correct that, ultimately, the subject merchandise produces steam, we disagree with the commenter’s conclusion that the merchandise is not described by the provisions of subheading 8516.10.0080, HTSUSA. We find that the subject merchandise, which functions by passing an electrical current from one steel electrode to another heats water in order to produce steam, and is described by the provisions of subheading 8516.10.0080, HTSUSA, as an electric instantaneous water heater. Therefore, for the reasons set forth above, NY R00477 is revoked.

HOLDING:

By application of GRI 1, the electric vaporizer is classified under subheading 8516.10.0080, HTSUSA, as: “Electric instantaneous . . . water heaters . . . : Electric instantaneous . . . water heaters . . . Other water heaters” The column one, general rate of duty is “free”.

EFFECT ON OTHER RULINGS:

NY R00477 (July 19, 2004) is hereby revoked.

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

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

**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF CERTAIN MILK
CHOCOLATE CHIPS**

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

ACTION: Notice of proposed revocation of a tariff classification ruling letter and proposed revocation of treatment relating to the classification of certain milk chocolate chips.

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 one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of certain milk chocolate chips. 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 September 12, 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 one ruling letter pertaining to the tariff classification of certain milk chocolate chips. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) N007481, dated March 16, 2007 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY N007481, CBP classified certain milk chocolate chips used as dessert decorations, for in home-baking, and “ready-to-eat”. The chips shipped in 25-pound cases were classified under subheading 1806.20.3600, HTSUSA, as: 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: 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”, and the chips shipped in 300-gram retail bags were classified under subheading 1806.90.2800, HTSUSA, as: “Chocolate and other food preparations containing cocoa: Other: Other: 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”.

Upon our review of NY N007481, we have determined that the milk chocolate chip product described in that ruling is classified under subheading 1806.90.1800, HTSUSA, which provides for: “Chocolate and other food preparations containing cocoa: Other: Other: Other: Containing butterfat or other milk solids (excluding articles for consumption at retail a candy or confection): Containing over 5.5 percent by weight of butterfat: Other: Containing less than 21 percent by weight of milk solids.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP intends to revoke NY N007481, 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) H009857, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: July 28, 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,
N007481
CLA-2-18:RR:E:NC:SP:232
CATEGORY: Classification
TARIFF NO.: 1806.20.3600; 1806.90.2800

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

RE: The tariff classification of "Milk Chips 2" from Canada

DEAR MR. FORBES

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

The subject merchandise is stated to contain 47.21 percent sugar, 22 percent cocoa paste, 12.59 percent (non fat) milk powder, 11.07 percent cocoa butter, 7.14 percent milk fat and .008 percent vanillin. The total milk fat is 7.14 percent and the total milk solids are 19.69 percent. The product will be shipped in two formats. Chips will be packaged in 300-gram retail bags, put up for retail sale and 25-pound cases to be re-packaged. Intended use for both of the formats is decoration on cakes/pastries, in home baking and ready to eat.

The applicable subheading for the milk chips 2, shipped in 25-pound cases, 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 general rate of duty will be 37.2 cents per kilogram plus 4.3 percent ad valorem.

The applicable subheading for the milk chips 2, shipped in 300-gram bags, will be 1806.90.2800, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Chocolate and other food preparations containing cocoa: Other: Other: Other: 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 general rate of duty will be 37.2 cents per kilogram plus 4.3 percent ad valorem.

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 B]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H009857
CLA-2 OT:RR:CTF:TCM H009857 IDL
CATEGORY: Classification
TARIFF NO.: 1806.90.1800

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

Re: Milk Chocolate Chips (“Milk Chips 2”); Revocation of NY N007481

DEAR MR. FORBES:

This letter concerns New York Ruling Letter (NY) N007481, dated March 16, 2007, issued to you on behalf of your client, Barry Callebaut, Canada, by the National Commodity Specialist Division, U.S. Customs and Border Protection (CBP). At issue in NY N007481 was the correct classification of “Milk Chips 2” milk chocolate chips under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY N007481 and have found that it is incorrect. Our discussion on this matter is set forth below.

FACTS:

In NY N007481, the merchandise at issue was described as a milk chocolate chip product intended for use as “decoration on cakes/pastries, in home baking and ready-to-eat.” The product was to be shipped in two forms: packaged for retail sale in 300-gram retail bags and packaged in 25-pound cases to be repackaged after importation. The chocolate chips were further described as being composed of 47.21 percent sugar, 22 percent cocoa paste, 12.59 percent (non-fat) milk powder, 11.07 percent cocoa butter, 0.008 percent vanillin, and 7.10 percent milk fat. The total milk solids content of the chocolate was 19.69 percent, and the total milk fat content of the chocolate was 7.14 percent.

CBP classified the chocolate chips shipped in 25-pound cases under sub-heading 1806.20.3600, 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: 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.”

CBP classified the chips shipped in 300-gram retail bags under subheading 1806.90.2800, HTSUSA, which provides for: “Chocolate and other food preparations containing cocoa: Other: Other: 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.”

CBP now takes the position that the milk chocolate chips were classified incorrectly, and that the correct classification of the product is subheading 1806.90.1800, HTSUSA.

ISSUE:

Whether the milk chocolate chips are properly classified under subheading 1806.20.3600, subheading 1806.90.1800, or subheading 1806.90.2800, 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:
 - * * *

- 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:
 - 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:

1806.20.3600

Containing less than 21 per-
cent by weight of milk solids
1¹

* * *

1806.90 Other:

* * *

Other:

* * *

Other:

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

Containing over 5.5 percent by weight of but-
terfat:

* * *

Other:

1806.90.1800

Containing less than 21
percent by weight of milk
solids 1²

* * *

Other:

* * *

Other:

1806.90.2800

Containing less than 21
percent by weight of milk
solids 1³

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:

¹ Goods falling under this provision are subject to quota under chapter 99, HTSUS.
² Goods falling under this provision are subject to quota under chapter 99, HTSUS.
³ Goods falling under this provision are subject to quota under chapter 99, HTSUS.

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 milk chocolate chips contain ingredients that include sugar, cocoa paste, cocoa butter, and vanillin (flavoring). We find that the chips meet the requirements of heading 1806, HTSUS, and the guidelines described in EN 18.06. As such, the milk chocolate chips are properly classified in heading 1806, HTSUS.

Subheading 1806.20, HTSUS, provides for food preparations containing cocoa in “bulk form . . . of a content exceeding 2 kg”. It has long been the position of CBP that the expression “bulk form” in subheading 1806.20 refers to food preparations that will undergo material change into a finished article after importation. See HQ 083901 (May 12, 1989), wherein we classified miniature molded milk chocolate bears under subheading 1806.90, HTSUS, holding that such products were finished articles, rather than a material form to be made into a finished article. See also HQ 087146 (October 10, 1991), wherein we classified chocolate sprinkles and shavings under subheading 1806.90, HTSUS, based on this principle.

Based on the foregoing definition of “bulk form”, we find that although some of the chocolate chips are shipped in bulk quantities (25-pound cases), they are not in “bulk form” as required by subheading 1806.20, HTSUS. “Chips” is not a form cited in the provision and they are not encapsulated by the phrase “other bulk form”. Rather, the chocolate chips are imported as finished goods. As such, we find that the chocolate chips, whether shipped in retail bags or bulk quantities, are precluded from classification under subheading 1806.20, HTSUS. We also find that at the six-digit level, the chocolate chips are not specifically described by any provision and are, therefore, classifiable as “other” food preparations containing cocoa under subheading 1806.90, HTSUS.

CBP previously classified the imported chocolate chips in 300-gram bags under subheading 1806.90.2800, HTSUSA, as other food preparations containing cocoa, butterfat or other milk solids, and less than 21% by weight milk solids. After reviewing this classification, we now find that subheading 1806.90.1800, HTSUSA, is the correct classification for the milk chocolate chips because they contain over 5.5 percent by weight of butterfat.

We note that the text superior to 1806.90.1800, HTSUSA, and which governs classification under that subheading excludes “articles for consumption at retail as candy or confection.” It has been the long-standing position of CBP that “chocolate chips are commonly and commercially known as baking ingredients, and the fact that they may be eaten without any additional preparation does not make them candy.” Further, to the extent that chocolate chips are not usually specifically packaged and marketed as candy, they are not “articles for consumption at retail as candy or confection.” See HQ 953675 (September 15, 1993). Our position is based on the meaning of the

term “confectionery” as defined by the Court of International Trade in Leaf Brands, Inc. v. United States, 70 Cust. Ct. 66, C.D. 4409 (1973) - “many kinds of sweet-tasting articles which are eaten as such for their taste and flavor without further preparation and which are usually sold in confectionery outlets.” Our position is also based on the finding of the court that whether an article is confectionery is determined by its chief use as a confection, which may be evidenced by its character and design and the manner in which it is sold (i.e., through candy brokers, in confectionery outlets), rather than by its shape and texture.⁴

We find, therefore, that the chocolate chips, whether shipped in 25-pound cases or 300-gram retail bags, are classified under subheading 1806.90.1800, HTSUSA.

We note that although the chocolate chips contain over 10 percent by dry weight of sugar, they are not “described in additional U.S. note 3 to chapter 17”, as is required by the text superior to subheadings 1806.90.5500/5900, HTSUSA, that governs classification in those subheadings. Additional U.S. Note 3 to Chapter 17 provides the following:

[T]he 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.

The chocolate chips may be used as decorations for desserts. As such, they are precluded from classification under subheading 1806.90.5500 and subheading 1806.90.5900, HTSUSA, by application of part (d) of Additional U.S. Note 3 to Chapter 17.

HOLDING:

By application of GRI 1, the milk chocolate chips are classified in heading 1806, HTSUS, and are specifically provided for under subheading 1806.90.1800, HTSUSA, as: “Chocolate and other food preparations containing cocoa: Other: Other: Other: Containing butterfat or other milk solids (excluding articles for consumption at retail a candy or confection): Containing over 5.5 percent by weight of butterfat: Other: Containing less than 21 percent by weight of milk solids.” The chocolate chips are subject to quota under chapter 99, HTSUS.

EFFECT ON OTHER RULINGS:

NY N007481, dated March 16, 2007, is hereby revoked.

MYLES B. HARMON,
Director,

Commercial and Trade Facilitation Division.

⁴The concept of “chief use,” which stemmed from General Interpretative Rule 10(e)(i), TSUS, has been superseded by the concept of “principal use” contained in Additional U.S. Rule of Interpretation 1(a), HTSUS.