

# U.S. Customs and Border Protection

## *CBP Decisions*

**19 CFR Part 12**

**CBP Dec. 09-05**

**RIN 1505-AC11**

### **EXTENSION OF IMPORT RESTRICTIONS IMPOSED ON ARCHAEOLOGICAL MATERIAL FROM HONDURAS**

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

**ACTION:** Final rule.

**SUMMARY:** This document amends Customs and Border Protection (CBP) regulations to reflect the extension of import restrictions on certain categories of archaeological material from the Pre-Columbian cultures of the Republic of Honduras (Honduras) that were imposed by CBP Decision (Dec.) 04-08 and expire on March 12, 2009. The Assistant Secretary for Educational and Cultural Affairs, United States Department of State, has determined that conditions continue to warrant the imposition of import restrictions. Accordingly, these import restrictions will remain in effect for an additional 5 years, and the CBP regulations are being amended to reflect this extension until March 12, 2013. These restrictions are being extended pursuant to determinations of the United States Department of State made under the terms of the Convention on Cultural Property Implementation Act in accordance with the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. CBP Dec. 04-08 contains the Designated List of archaeological material that describes the articles to which the restrictions apply.

**EFFECTIVE DATE:** March 11, 2009.

**FOR FURTHER INFORMATION CONTACT:** For legal aspects, George Frederick McCray, Esq., Chief, Intellectual Property Rights

and Restricted Merchandise Branch, Regulations and Rulings, Office of International Trade, (202) 325-0082. For operational aspects, Michael Craig, Chief, Interagency Requirements Branch, Trade Policy and Programs, Office of International Trade, (202) 863-6558.

## **SUPPLEMENTARY INFORMATION:**

### **BACKGROUND**

Pursuant to the provisions of the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention, codified into U.S. law as the Convention on Cultural Property Implementation Act (Pub. L. 97-446, 19 U.S.C. 2601 *et seq.*), the United States entered into a bilateral agreement with the Republic of Honduras (Honduras) on March 12, 2004, concerning the imposition of import restrictions on certain categories of archaeological material from Honduras. The archaeological materials subject to the bilateral agreement represent the Pre-Columbian cultures of Honduras and range in date from approximately 1200 B.C. to 1500 A.D. On March 16, 2004, CBP published CBP Decision (Dec.) 04-08 in the **Federal Register** (69 FR 12267), which amended 19 CFR 12.104g(a) to reflect the imposition of these restrictions and included a list designating the types of archaeological material covered by the restrictions.

Import restrictions listed in 19 CFR 12.104g(a) are “effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States. This period can be extended for additional periods not to exceed five years if it is determined that the factors which justified the initial agreement still pertain and no cause for suspension of the agreement exists” (19 CFR 12.104g(a)).

After reviewing the findings and recommendations of the Cultural Property Advisory Committee, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, concluding that the cultural heritage of Honduras continues to be in jeopardy from pillage of certain archaeological materials, made the necessary determinations to extend the import restrictions for an additional five years on December 4, 2008. Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect the extension of the import restrictions. The Designated List of Pre-Columbian Archaeological Material from Honduras covered by these import restrictions is set forth in CBP Dec. 04-08. The Designated List and accompanying image database may also be accessed from the following internet website address: <http://exchanges.state.gov/heritage/culprop.html>. The restrictions on the importation of these archaeological materials from Honduras are to continue in effect for an additional five years. Importation of such material continues to be restricted unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

### **INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATE**

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

### **REGULATORY FLEXIBILITY ACT**

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

### **EXECUTIVE ORDER 12866**

Because this rule involves a foreign affairs function of the United States, it is not subject to Executive Order 12866.

### **SIGNING AUTHORITY**

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).

### **LIST OF SUBJECTS IN 19 CFR PART 12**

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise.

### **AMENDMENT TO CBP REGULATIONS**

For the reasons set forth above, part 12 of Title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

#### **PART 12—SPECIAL CLASSES OF MERCHANDISE**

1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

\* \* \* \* \*

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

\* \* \* \* \*

2. In § 12.104g, paragraph (a), the table is amended in the entry for Honduras by removing the reference to “CBP Dec. 04–08” in the

column headed "Dec. No." and adding in its place the language "CBP Dec. 04-08 extended by CBP Dec. 09-05".

W. RALPH BASHAM,  
*Commissioner,*  
*U.S. Customs and Border Protection.*

Approved: March 5, 2009

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

[Published in the Federal Register, March 11, 2009 (74 FR 10482)]



## *General Notices*

### **National Customs Automation Program Test Concerning Automated Commercial Environment (ACE) Entry Summary, Accounts, and Revenue**

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

**ACTION:** General notice.

**SUMMARY:** U.S. Customs and Border Protection (CBP) will be conducting a National Customs Automation Program (NCAP) test concerning Automated Commercial Environment (ACE) Entry Summary, Accounts, and Revenue (ESAR II) capabilities. These new capabilities will include functionality specific to the filing and processing of formal consumption entries and informal entries. This entry summary processing will include Automated Broker Interface (ABI) Census Warning Overrides and will accommodate the issuance of certain CBP forms through the ACE Portal. Other new functionality will enhance Portal Account Management and allow for ACE Secure Data Portal reporting. This document announces the deployment schedule for this test.

**DATES:** The test will begin no earlier than March 15, 2009, at each port identified in this notice as part of the first cluster of ports designated for deployment. The test will continue until concluded by way of announcement in the **Federal Register**. Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period.

**ADDRESSES:** Comments concerning this notice should be submitted via e-mail to Janet Pence at [ESARinfoinbox@dhs.gov](mailto:ESARinfoinbox@dhs.gov). Please indicate "ESAR II Federal Register Notice" in the subject line of your email.

**FOR FURTHER INFORMATION CONTACT:** For policy-related questions, please contact Cynthia Whittenburg at [cynthia.whittenburg@dhs.gov](mailto:cynthia.whittenburg@dhs.gov). For technical questions that are non-ABI related, please contact Katrina Marbley at (703) 650-3285. For technical questions related to ABI transmissions, please contact your assigned client representative. Parties without an assigned client representative should direct their questions to the Client Representative Branch at (703) 650-3500.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 26, 2008, CBP published a General Notice in the **Federal Register** (73 FR 50337) announcing the agency's plan to conduct a new test concerning ACE Entry Summary, Accounts, and Revenue (ESAR II) capabilities that will provide new Portal and Electronic Data Interchange (EDI) capabilities specific to Entry Summary filing and processing of consumption and informal entries. The notice stated that functionality will include ABI Census Warning Overrides and issuance of CBP requests for information and notices of action through the ACE Portal, and that new functionality will enhance Portal Account Management and allow for ACE Secure Data Portal reporting. The notice indicated that this release of ESAR II initially will be limited only to formal entries, commonly referred to in the Automated Commercial System (ACS) as type 01 entries, and informal entries, commonly referred to in ACS as type 11 entries. The notice listed the ports where the test was expected to be deployed and requested that interested ABI participants wishing to submit type 01 and 11 entries for this test provide to CBP, within 60 days of the date of publication of the notice, the number of expected ACE entry summaries that will be submitted to the listed ports.

Importer and broker volunteers wishing to benefit from Portal functionality available in this test were also advised that they must have an ACE Portal Account. ABI volunteers wishing to participate in this test were advised that they must have the ability to:

- File entries on a statement, *i.e.*, no non-statement; single pay entry summaries will be allowed; and
- Use a software package that has completed ABI certification testing for ACE.

Changes to the Test

The August 26, 2008, notice indicated that participating importer, broker, and carrier Portal Account types will be able to maintain certain declarations in the ACE Secure Data Portal. The notice stated that declarations that will be supported via the Portal would include: affidavits of manufacturers; North American Free Trade Agreement (NAFTA) Certificates of Origin; Non-Reimbursement

Blanket Statements (Anti-Dumping/Countervailing Duty (AD/CVD)); certain marking rulings; and importer certifying statements. CBP is announcing in this notice that the ACE Portal will not be supporting “certain marking rulings.” All other declarations will be supported as noted in the August notice.

Additionally, CBP is announcing in this notice that, although this ESAR II test will support type 01 and 11 entry types filed through remote location filing, this will not be available on the first day of the test. CBP will support remote location filing at some point following the “go live” date of the test. CBP will issue a message to the trade via the “Cargo Systems Message System” alerting the trade that they may begin filing type 01 and 11 entries remotely.

#### Implementation of the Test

CBP received comments from 39 interested ABI participants in response to the August 26, 2008, notice. ABI respondents provided a breakdown of the anticipated type 01 and 11 ACE entry summaries to be submitted to the ports listed in the August 26, 2008, notice. All 39 ABI filers will receive email notifications confirming their acceptance into the test.

Additionally, 17 software developers contacted their client representative with regard to their interest in ABI certification testing for ACE. All 17 software developers will be contacted by their client representative and will be advised as to the start of certification testing.

For purposes of this test, the system of origin (ACS or ACE) will determine the system of record for that entry summary. For example, if the entry summary is submitted in ACS, the system of record for that entry summary will be ACS. If the entry summary is submitted in ACE, the system of record for that entry summary will be ACE.

Based on the feedback received by CBP to the August 26, 2008, notice, CBP has determined that it will conduct the ESAR II test in a phased approach as set forth below.

#### I. Initial Stage – No Earlier Than March 15, 2009

At the initial stage of the test, transmission of ACE entry summaries will be limited to the following ports:

- Buffalo, New York;
- Chicago, Illinois;
- Long Beach, California; and
- Laredo, Texas.

Any of the 39 respondents who anticipate transmitting type 01 and 11 entries at the above indicated ports should do so no earlier than March 15, 2009.

For purposes of clarification, the port of Long Beach, California includes Long Beach (port code 2709) and Los Angeles (port code

2704), but does not include the Los Angeles Airport (port code 2720).

## II. Second Stage – No Earlier Than April 15, 2009

During the second stage of the test, transmission of ACE entry summaries will be expanded to the following ports:

- Miami, Florida;
- New Orleans, Louisiana;
- Houston, Texas;
- San Francisco, California;
- Seattle, Washington;
- El Paso, Texas;
- Boston, Massachusetts;
- San Diego, California;
- Newark, New Jersey;
- J.F.K. Airport, New York;
- Baltimore, Maryland;
- Philadelphia, Pennsylvania;
- Cleveland, Ohio;
- Tucson, Arizona;
- Tampa, Florida;
- Detroit, Michigan; and
- Atlanta, Georgia.

Any of the 39 respondents who anticipate transmitting type 01 and 11 entries at the above indicated ports should do so no earlier than April 15, 2009.

## III. Third Stage – No Earlier Than June 15, 2009

During the third and final stage of the test, transmission of ACE entry summaries will be expanded nationwide to all remaining ports.

### Expansion of Participation

At this time, CBP would also like to invite any additional interested ABI applicants meeting the eligibility criteria specified in the August 26, 2008, notice to participate in the ESAR II test. Eligible ABI trade volunteers interested in submitting type 01 and 11 entries for this test to the ports identified above should contact their assigned client representative directly. Interested parties without an assigned client representative should contact the Client Representative Branch at (703) 650-3500. Filers will receive an email notification confirming their acceptance into the test.

Interested software developers should similarly contact their client representative with regard to their interest in ABI certification testing for ACE. All software developers will be contacted by their client representative and will be advised as to the start of certification testing.

Acceptance into this test does not guarantee eligibility for, or acceptance into, future technical tests. Participation in the ESAR II test will be expanded in the future as funding allows; however, the eligibility criteria may differ from the criteria listed in this and the August 26, 2008, notice. Additionally, expansion of this test to allow participation by future applicants may be delayed due to funding or technological constraints.

As stated in previous notices, participation in this or any of the previous ACE tests is not confidential and upon a written Freedom of Information Act request, a name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552. If necessary, CBP will reserve the right to limit the number of participants and locations during the initial stages of the test.

#### Previous Notices

All requirements and aspects of the ESAR II test discussed in the August 26, 2008, notice as well as in any other previous notices, except to the extent expressly modified by this notice, are hereby incorporated by reference and continue to be applicable.

Dated: March 3, 2009

DANIEL BALDWIN,  
*Assistant Commissioner,  
Office of International Trade.*

[Published in the Federal Register, March 6, 2009 (74 FR 9826)]

DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS.  
*Washington, DC, March 11, 2009*

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.*

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**PROPOSED REVOCATION OF RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE COUNTRY OF ORIGIN MARKING OF BURIAL  
CASKETS**

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

**ACTION:** Notice of proposed revocation of a ruling letter and treatment relating to the country of origin marking of burial caskets.

**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 CPB intends to revoke a ruling concerning the country of origin marking of burial caskets. Similarly, CPB intends to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATE:** Comments must be received on or before April 25, 2009.

**ADDRESS:** Written comments are to be addressed to the Bureau of Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at the offices of Customs and Border Protection, 799 9th Street, NW, Washington, D.C. during regular business hours. Arrangements to inspect submitted com-

ments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Jacinto P. Juarez, Jr., Tariff Classification and Marking Branch: (202) 325-0027.

**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 is proposing to revoke one ruling letter pertaining to the country of origin marking of burial caskets. Although in this notice, CBP is specifically referring to the proposed revocation of New York Ruling Letter (NY) N013043, dated July 12, 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 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 proposing 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 N013043, CBP determined that marking an imported casket with country of origin "Made in China" near the center of the bottom panel using permanent ink was conspicuous in satisfaction of the marking requirements of 19 U.S.C. 1304 and 19 C.F.R. Part 134. It is now CBP's position that the country of origin marking "Made in China" near the center of the unfinished bottom panel of a casket does not meet the conspicuousness requirements of 19 U.S.C. 1304 and 19 CFR 134.41.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke NY N013043, and any other ruling not specifically identified, to reflect the country of origin marking of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H033598, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing 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:** March 9, 2009

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,  
July 12, 2007  
MAR-2 RR:E:NC:2:230  
CATEGORY: MARKING

MR. PRESLEY MELTON  
MELTON COMPANY INC.  
5900 Patterson Road  
Little Rock, AR 72209

RE: THE COUNTRY OF ORIGIN MARKING OF CASKETS

DEAR MR. MELTON:

This is in response to your letter dated June 19, 2007 requesting a ruling on whether the proposed marking "Made in China" is an acceptable country of origin marking for imported caskets. An electronic photograph was submitted with your letter for review.

Your company imports caskets from China and sells them to funeral homes, who in turn sell them to the final purchasers. The caskets, assumed to be made of wood, have a glossy stained finish on the top and on all sides. You state that these surfaces do not lend themselves to being marked. You propose to mark the caskets on the outside unfinished bottom with the appropriate country of origin along with the model number and other inventory control labeling. The marking will be done using permanent contrasting ink. A photograph shows a clear, legible "Made in China" marking near the center of the bottom panel.

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

As provided in section 134.41(b), Customs Regulations (19 CFR 134.41(b)), the country of origin marking is considered conspicuous if the ultimate purchaser in the U.S. is able to find the marking easily and read it without strain.

With regard to the permanency of a marking, section 134.41(a), Customs Regulations (19 CFR 134.41(a)), provides that as a general rule marking requirements are best met by marking worked into the article at the time of manufacture. For example, it is suggested that the country of origin on metal articles be die sunk, molded in, or etched. However, section 134.44, Customs Regulations (19 CFR 134.44), generally provides that any marking that is sufficiently permanent so that it will remain on the article until it reaches the ultimate purchaser unless deliberately removed is acceptable.

The proposed marking of the bottom of the casket, as described above, is conspicuously, legibly and permanently marked in satisfaction of the marking requirements of 19 U.S.C. 1304 and 19 CFR Part 134 and is an acceptable country of origin marking for the imported caskets.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR Part 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 Garretto at 646-733-3035.

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



## [ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H033598  
MAR-2-05 OT:RR:CTF:TCM H033598 JPJ  
CATEGORY: Marking

MR. PRESLEY MELTON  
MELTON COMPANY INC.  
*5900 Patterson Road*  
*Little Rock, AR 72209*

RE: Country of origin marking of caskets; Bottom of Casket; Conspicuous;  
19 CFR 134.41; NY N013043 Revoked.

DEAR MR. MELTON:

This letter is to inform you that Customs and Border Protection (CBP) has reconsidered New York Ruling letter (NY) N013043, issued to you on July 12, 2007. CBP has determined that NY N013043 is incorrect.

NY N013043 determined, in relevant part, that marking an imported casket with country of origin "Made in China" near the center of the bottom panel using permanent ink was conspicuously, legibly and permanently marked in satisfaction of the marking requirements of 19 U.S.C. 1304 and 19 C.F.R. Part 134.

**FACTS:**

You import burial caskets from China and sell them to funeral homes. In turn, funeral service providers sell the imported caskets to the final consumers.<sup>1</sup>

You currently mark the bottom of each casket using permanent ink with "Made in China" in letters clearly readable from a distance. You provided an electronic photograph of the bottom of a casket displaying the "Made in China" country of origin marking.

You argued that because a casket is finished on all sides and on the top (photograph provided), these finished surfaces do not lend themselves to country of origin marking. Therefore, country of origin marking is affixed on the unfinished bottom, along with other inventory control and model number labeling.

You also argued that country of origin marking on the bottom of the casket was consistent with country of origin marking used in the furniture industry. You stated that you had observed that on virtually all furniture that is finished on all sides (tables, chests, bed frames, wooden chairs, etc.) the country of origin is marked on the bottom. You alleged that marking on the bottom of a casket was clearly available to the purchaser who examined the product, but did not detract from the overall appearance of a casket as it was being used at a funeral.

**ISSUE:**

Whether country of origin marking near the center of the unfinished bottom panel of a casket is conspicuous pursuant to the requirements of 19 U.S.C. 1304 and section 134.41, CBP Regulations (19 C.F.R. 134.41).

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<sup>1</sup>We note that consumers may also purchase burial caskets directly from retailers and wholesalers and off of their internet websites.

**LAW AND ANALYSIS:**

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304) provides that, unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. 1304 was "that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will." United States v. Friedlaender & Co. Inc., 27 CCPA 297, 302, C.A.D. 104 (1940).

Part 134, CBP Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. As provided in section 134.41, CBP Regulations (19 CFR 134.41), the country of origin marking is considered to be conspicuous if the ultimate purchaser in the U.S. is able to find the marking easily and read it without strain. The ultimate purchaser in the U.S. is not the funeral home, but the individual. Section 134.1(k), CBP Regulations (19 CFR 134.1(k)), defines "conspicuous" as "capable of being easily seen with normal handling of the article or container."

Section 134.41(a), CBP Regulations (19 CFR 134.41(a)), provides that as a general rule, marking requirements are best met by marking worked into the article at the time of manufacture. For example, it is suggested that the country of origin on metal articles be die sunk, molded in, or etched. Paper stickers or pressure sensitive labels may be used, but these must be affixed in a conspicuous place and so securely that unless deliberately removed they will remain on the article while it is in storage or on display and until it is delivered to the ultimate purchaser. (19 CFR 134.44(b)). See also 19 CFR 134.41(b).

Section 134.44, CBP Regulations (19 CFR 134.44), generally provides that any marking that is sufficiently permanent so that it will remain on the article until it reaches the ultimate purchaser unless deliberately removed is acceptable.

Under the holding of Charles A. Redden v. United States, T.D. 44964 (Cust. Ct. June 11, 1931), the country of origin of an article need not be marked in the most conspicuous place, "but merely in any conspicuous place which shall not be covered or obscured by subsequent attachments or arrangements."

In determining whether the country of origin marking "Made in China" near the center of the unfinished bottom panel of a casket is conspicuous, we are guided by the principles discussed above. We do not require country of origin marking which would detract from the appearance of the article. We require only that the location of country of origin marking be conspicuous, and not that it be in the most conspicuous location. We take into account where the ultimate purchaser expects to find country of origin marking. We are also guided by the requirement that the marking be easily found and read without strain; that the method of marking is appropriate to the nature of the article; and that the marking will be sufficiently permanent to insure that the marking will remain on the article until it reaches the ultimate pur-

chaser unless deliberately removed. No single factor is considered conclusive in determining whether a marking meets the conspicuousness requirement of 19 CFR §134.41 and 19 U.S.C. 1304. Instead, it is the combination of factors which will determine whether the marking is acceptable.

In CBP ruling HQ 707766 (July 29, 1977), we permitted upholstered furniture to be marked with a fabric label affixed on the underside and followed our prior rulings that large pieces of furniture usually had been required to be marked in large letters on the rear, or on the underside in the case of chairs or tables. See, also, T.D. 45121 (1931)(large pieces of furniture should be marked on the back or underside).

However, in HQ 735336, dated April 27, 1994, CBP stated:

Although Customs has permitted upholstered furniture to be marked with a fabric label affixed on the underside (See HQ 707766 July 29, 1977), we do not believe that such a marking can be considered in a conspicuous location, if the tag is obscured and the marking cannot be observed without lifting up or tilting a heavy piece of furniture. Here, a purchaser could not observe the marking without lifting a heavy piece of furniture, some of which may weigh 110 pounds. An ultimate purchaser should not have to greatly manipulate an article or conduct a difficult search to observe the country of origin marking.

Caskets offered for sale from a showroom may be displayed horizontally on display racks with casket lids open to reveal their interiors. You argued that marking on the bottom of the casket was clearly available to the purchaser who examined the product. However, in NY 013043, the photograph of the unfinished bottom panel of the casket demonstrates that the country of origin marking "Made in China" near the center of the bottom panel can only be seen when the casket is lifted and stood up vertically on one end.

In NY N013043, you argued that the outside finished surfaces of the casket did not lend themselves to marking with the country of origin, and implied that the marking would detract from the overall appearance of the casket as it is being used at a funeral. Again, in HQ 735336, discussed above, CBP recognized that while the furniture was constructed of leather upholstery and that permanent stamping could mar the furniture's appearance, we nevertheless required that the country of origin be in a location other than the bottom where it would be noticeable and legible upon casual inspection by a consumer. In that ruling, we determined that the country of origin marking could not be observed without lifting a heavy piece of furniture, some of which may weigh 110 pounds. We also determined that an ultimate purchaser should not have to greatly manipulate an article or conduct a difficult search to observe the country of origin marking. Likewise, a purchaser of a casket should not have to greatly manipulate the casket or lift it or stand it up at one end in order to find the country of origin marking.

Therefore, while we believe that a purchaser may not expect to find a country of origin marking on the finished surface of a casket, we find that the bottom of a casket is not conspicuous for purposes of country of origin marking because marking a casket with country of origin near the center of the bottom panel renders the marking difficult to locate and read without strain.

Regarding the methods and the permanency of marking, section 134.41(a), CBP Regulations (19 CFR 134.41(a)), provides that as a general rule, marking requirements are best met by marking worked into the article

at the time of manufacture. For example, it is suggested that the country of origin on metal articles be die sunk, molded in, or etched. However, it may be inappropriate to mark the finished surface of a casket with permanent ink, etching, or dye stamping, because each of these methods could damage the special finish, and ruin the aesthetic appeal of a casket.

Section 134.44, CBP Regulations (19 CFR 134.44), generally provides that any marking that is sufficiently permanent so that it will remain on the article until it reaches the ultimate purchaser unless deliberately removed is acceptable. Paper stickers or pressure sensitive labels may be used, but these must be affixed in a conspicuous place and so securely that unless deliberately removed they will remain on the article while it is in storage or on display and until it is delivered to the ultimate purchaser. (19 CFR 134.44(b)). See also 19 CFR 134.41(b). Likewise, hangtags may also be used, but these must be attached in a conspicuous place and in a manner which assures that unless deliberately removed they will remain on the article until it reaches the ultimate purchaser. See 19 CFR 134.44(c).

In this case, use of a pressure sensitive label or a hangtag affixed in a conspicuous place on a casket would be sufficiently permanent to meet the requirements of 19 CFR 134.44. The marking "Made in China" on a label or hangtag affixed in a conspicuous place on a casket would be easy to find, securely affixed, and would, in our opinion, come off only if it were deliberately removed. Accordingly, the requirements of 19 U.S.C. 1304 and 19 CFR 134.44 would be satisfied and this method of marking country of origin on a casket would be acceptable.

**HOLDING:**

The country of origin marking "Made in China" near the center of the unfinished bottom panel of a casket does not meet the conspicuousness requirements of 19 U.S.C. 1304 and 19 CFR 134.41, in that the country of origin marking is not capable of being easily seen with normal handling of the article or container.

**EFFECT ON OTHER RULINGS:**

NY N013043, dated July 12, 2007, is revoked.

MYLES B. HARMON,  
*Director;*

*Commercial and Trade Facilitation Division.*

**REVOCATION OF RULING LETTER AND REVOCATION OF  
TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF CERTAIN "THREE WISE MEN"  
PORCELAIN FIGURINES**

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

**ACTION:** Notice of revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of certain "Three Wise Men" porcelain figurines.

**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 CPB is revoking a ruling letter concerning the tariff classification of certain “Three Wise Men” porcelain figurines under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CPB to substantially identical transactions. Notice of the proposed action was published on October 9, 2008, Vol. 42, No. 42, of the Customs Bulletin. 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 May 25, 2009.

**FOR FURTHER INFORMATION CONTACT:** Jacinto P. Juarez, Jr., Tariff Classification and Marking Branch: (202) 325–0027.

#### **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, notice proposing to revoke one ruling letter pertaining to the tariff classification of certain “Three Wise Men” porcelain figurines was published in the

October 9, 2008, Customs Bulletin, Volume 42, Number 42. No comments were received in response to the notice.

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

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

New York Ruling Letter (NY) A87160 described the merchandise as "three porcelain figurines, item number 97821, which depict the three wise men and measure approximately 11 inches in height". CBP classified the merchandise in subheading 6913.10.50, HTSUS, which provides for "Other ornamental ceramic articles of porcelain." It is now CBP's position that the merchandise is classified under subheading 9505.10.30, HTSUS, which provides for: "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Articles for Christmas festivities and parts and accessories thereof: Nativity scenes and figures thereof."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY A87160, and any other ruling not specifically identified, to reflect the correct classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letter (HQ) H026515, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

**DATED:** March 9, 2009

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 H026515  
March 9, 2009  
CLA-2 OT:RR:CTF:TCM H026515 JPJ  
CATEGORY: Classification  
TARIFF NO.: 9505.10.30

MS. MICHELE SMITH  
SEARS, ROEBUCK AND CO.  
3333 Beverly Road, BC 204A  
Hoffman Estates, IL 60179

Re: "Three Wise Men" Porcelain Figurines; Revocation of NY A87160

DEAR MS. SMITH:

This letter concerns New York Ruling letter ("NY") A87160, dated September 17, 1996, 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 "three porcelain figurines, item number 97821, which depict the three wise men and measure approximately 11 inches in height", under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY A87160 and have found that it is incorrect. Our discussion on this matter is set forth below.

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), notice of the proposed action was published on October 9, 2008, in Vol. 42, No. 42, of the Customs Bulletin. CBP received no comments in response to the notice.

FACTS:

The "three wise men" figurines, item number 97821, are made of porcelain and measure approximately 11 inches in height.

ISSUE:

Whether the "three wise men" porcelain figurines are classified as festive articles of heading 9505, because they constitute figures of a nativity scene.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

6913 Statuettes and other ornamental ceramic articles:

Of porcelain or china:

Other:

6913.10.50

Other

	*       *       *       *       *
9505	Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof:
9505.10	Articles for Christmas festivities and parts and accessories thereof:
9505.10.30	Nativity scenes and figures thereof
	*       *       *       *       *

Chapter 69 Note 2(k) states, in relevant part, that this chapter does not cover articles of Chapter 95. Therefore if we find that the instant merchandise is classified in heading 9505, the merchandise is excluded from classification in Chapter 69.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's 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. 35127-28 (Aug. 23, 1989).

EN 95.05 (A)(2) states, in relevant part, that this heading covers "[a]rticles traditionally used at Christmas festivities, e.g., . . . nativity figures. . . ." In NY A87160, we stated that "a nativity scene must include the characters of Joseph, Mary, and the Child . . ." However, in HQ 952967, dated March 17, 1993, we classified figurines depicting three wise men, or Magi (Melchior, Kaspar, and Balthasar), along with a shepherd, sheep, donkey, cow and camel, but without "Joseph, Mary, and the Child", in heading 9505, HTSUS, as festive articles.

From our Internet research, we conclude that nativity scenes often include the crib or manger scene of Mary, Joseph, and the infant Jesus, as well as the Magi, as described in Matthew 2:1-12. Hence, we find that HQ 952967 correctly states our position that "three wise men" figurines are "nativity figures" commonly and traditionally associated and used as part of nativity scenes at Christmas festivities. See also Headquarters Ruling Letter (HQ) 087894, dated December 4, 1990.

As such, the three wise men porcelain figurines are classified in heading 9505, HTSUS, as festive articles. Specifically, the instant porcelain figurines are figures of nativity scenes classified in subheading 9505.10.30, HTSUS. Pursuant to Chapter 69, Note 2(k), the instant merchandise is specifically excluded from Chapter 69.

**HOLDING:**

The three wise men porcelain figurines, item number 97821, are classified in subheading 9505.10.30, HTSUS, as "Festive, carnival or other entertainment articles, . . . : Articles for Christmas festivities and parts and accessories thereof: Nativity scenes and figures thereof."

**EFFECT ON OTHER RULINGS:**

NY A87160, dated September 17, 1996, is hereby revoked.

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

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

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**MODIFICATION OF A RULING LETTER AND REVOCATION  
OF TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF CRÈME BRÛLÉES**

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

**ACTION:** Notice of modification of a tariff classification ruling letter and revocation of treatment relating to the classification of crème brûlées.

**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) is modifying a ruling letter relating to the tariff classification of crème brûlées under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed modification was published on January 15, 2009, in the Customs Bulletin, Volume 43, No. 4. 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 May 25, 2009.

**FOR FURTHER INFORMATION CONTACT:** Richard Mojica, Tariff Classification and Marking Branch, at (202) 325-0032.

**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), 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), a notice was published on January 15, 2009, in the *Customs Bulletin*, Volume 43, No. 4, proposing to modify New York Ruling Letter (NY) N015908, dated September 5, 2007, as it pertains to the tariff classification of crème brûlées. No comments were received in response to this notice.

As stated in the proposed notice, this modification 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 the notice period.

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

In NY N015908, CBP classified, in relevant part, fully baked crème brûlées imported in a frozen condition in heading 1901, HTSUS, which provides for: "... [F]ood preparations of goods of heading 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included." We have reviewed NY N015908 and determined that the classification set forth in that ruling is incorrect. It is now CBP's position that the subject crème brûlées are

properly classified in heading 1905, HTSUS, which provides for: "Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N015908 and any other ruling not specifically identified, to reflect the proper classification of the crème brûlées according to the analysis contained in proposed Headquarters Ruling Letter H023498 (Attachment). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

**DATED:** March 9, 2009

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 H023498**  
March 9, 2009  
**CLA-2 OT:RR:CTF:TCM H023498 RM**  
**CATEGORY:** Classification  
**TARIFF NO.:** 1905.90.90

MR. BRIAN KAVANAUGH  
DERINGER CONSULTING GROUP  
*One Lincoln Blvd.*  
*Rouses Point, NY*

**RE:** Proposed Modification of New York Ruling Letter N015908, Classification of Crème Brûlées

DEAR MR. KAVANAUGH:

This letter is in response to your request of February 7, 2008, for reconsideration of New York Ruling Letter ("NY") N015908, dated September 5, 2007, issued to you on behalf of your client, Marie Morin Canada, regarding the classification of certain dessert products. On October 21, 2008, you advised that Marie Morin Canada was only seeking reconsideration of NY N015908 as it pertains to the classification of crème brûlées. In that ruling, U.S. Customs and Border Protection ("CBP") classified, in relevant part, crème brûlées in heading 1901, Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for: ". . . [F]ood preparations of goods of heading 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included." We have reviewed NY N015908 and found it to be in error as it relates to crème brûlées.

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

Stat. 2057, 2186 (1993), notice of the proposed modification was published on January 15, 2009, in the Customs Bulletin, Volume 43, No. 4. No comments were received in response to this notice.

**FACTS:**

The Marie Morin brand crème brûlées are fully baked custards consisting of approximately 47 percent cream, 23 percent milk, 14 percent egg yolks, 12 percent sugar, 5 percent egg whites, and less than 1 percent vanilla. They are imported in a frozen condition, in single-serving glass ramekins containing 110 grams, 6 units per retail package. A 3 gram sugar pouch is placed inside every package. Serving instructions direct the consumer to thaw the product for 20 to 24 hours and then sprinkle and burn the brown sugar topping with a chef torch or by placing it in a conventional oven for 1 to 1 ½ minutes.

**ISSUE:**

Whether the crème brûlées are classified as a “cream” product in heading 1901, HTSUS, or as “bakers’ wares” in heading 1905, 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:

1901	. . . [F]ood preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included:
1901.90	Other: Other:  Dairy products described in additional U.S. note 1 to chapter 4: Other:
1901.90.46	Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions . . .
1901.90.47	Other . . . .
. . .	
1905	Bread, pastry, cakes, biscuits and other bakers’ wares, whether or not containing cocoa; communion wafers, empty capsules of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products:

1905.90 Other:

1905.90.90 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).

The ENs to heading 1901, HTSUS, state, in relevant part:

Apart from the preparations excluded by the General Explanatory Note to this Chapter, this heading also **excludes**:

\* \* \* \*

(e) Fully or partially cooked bakers’ wares, the latter requiring further cooking before consumption (**heading 19.05**).

The ENs to heading 1905, HTSUS, state, in relevant part:

This heading covers all bakers’ wares. The most common ingredients of such wares are cereal flours, leavens and salt but they may also contain other ingredients such as: gluten, starch, flour of leguminous vegetables, malt extract or milk, seeds such as poppy, caraway or anise, sugar, honey, eggs, fats, cheese, fruit, cocoa in any proportion, meat, fish, bakery “improvers”, etc. Bakery “improvers” serve mainly to facilitate the working of the dough, hasten fermentation, improve the characteristics and appearance of the products and give them better keeping qualities. The products of this heading may also be obtained from dough based on flour, meal or powder of potatoes.

This heading includes the following products:

\* \* \* \*

(11) **Certain bakery products made without flour** (e.g., meringues made of white of egg and sugar).

In accordance with the terms of heading 1901, HTSUS, we must first determine whether the HTSUS provides for the merchandise in any other heading.

You submit that the crème brûlées are classified as “bakers’ wares” in heading 1905, HTSUS. CBP has previously construed the term “bakers’ wares” to mean “manufactured articles offered for sale by one [who] specializes in the making of breads, cakes, cookies, and pastries.”<sup>2</sup> See HQ H015429, dated December 11, 2007. Most recently, in HQ W968393, dated July 16, 2008, we explained:

The text of heading 1905, HTSUS, provides for “other bakers’ wares” which, when read in the context of the entire clause of which this expression is a part, leads us to now find that **the term “other bakers’ wares” refers to baked goods (or wares) other than the “bread,**

<sup>2</sup>This definition was based on the dictionary definition of the word “baker” and the word “wares” since we were unable to find a dictionary that defined the compound term “bakers’ wares.”

**pastry, cakes, [and] biscuits” specified in the heading.** In addition, based on the heading text and the examples provided by the ENs, it appears that **goods of heading 1905, HTSUS, are consumed “as is” and are not incorporated into other food items.** (Emphasis added).

Based upon our review of the attached marketing literature submitted with your request for reconsideration, we have concluded that the crème brûlées at issue are manufactured goods offered for sale by one who specializes in the making of pastries. They are akin to the bakery products made without flour (e.g., meringues made of white of egg and sugar) described in EN 19.05 (A)(11). Moreover, as imported, they are fully baked and ready for consumption “as is”; they are not incorporated into other food items. Accordingly, we find that they constitute bakers’ wares and are classified in heading 1905, HTSUS.

Our conclusion is in keeping with our administrative precedent. See HQ H015429, dated December 11, 2007 (fully baked crème brûlées imported in a frozen condition classified in heading 1905, HTSUS).

**HOLDING:**

By application of GRI 1, the crème brûlées are classified in heading 1905, HTSUS, and provided for under subheading 1905.90.9090, HTSUS, as: “Bread, pastry, cakes, biscuits and other bakers’ wares, whether or not containing cocoa; . . . Other: Other . . . Other.” The column one, general rate of duty is 4.5 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 the Internet at [www.usits.gov/tata/hts/](http://www.usits.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

NY N015908, dated September 5, 2007, is hereby modified.

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

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**REVOCATION OF A RULING LETTER AND REVOCATION  
OF TREATMENT RELATING TO THE COUNTRY OF  
ORIGIN MARKING OF A BAG OF BAGEL CRISPS**

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

**ACTION:** Notice of revocation of a ruling letter and revocation of treatment relating to the country of origin marking of a bag of bagel crisps.

**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) is revoking a ruling letter re-

lating to the country of origin marking of a bag of bagel crisps. CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on January 15, 2009, in the Customs Bulletin, Volume 43, No. 4. 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 May 25, 2009.

**FOR FURTHER INFORMATION CONTACT:** Richard Mojica, Tariff Classification and Marking Branch, at (202) 325-0032.

**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), 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), a notice was published on January 15, 2009, in the Customs Bulletin, Volume 43, No. 4, proposing to revoke Headquarters Ruling Letter (HQ) H009022, dated June 28, 2007, concerning the country of origin marking of a bag of bagel crisps. No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No

further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

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

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking HQ H009022 and any other ruling not specifically identified, to reflect the proper country of origin marking of the subject merchandise according to the analysis contained in HQ H016234 (Attachment). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

**DATED:** March 3, 2009

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 H016234**  
March 3, 2009  
**CLA-2 OT: RR: CTF: TCM H016234 RM**  
**CATEGORY:** Marking

MICHAEL HODES, ESQ.  
HODES, KEATING & PILON  
134 North LaSalle Street, Suite # 1300  
Chicago, IL 60602

**RE:** Revocation of HQ H009022; Country of Origin Marking of Bagel Crisps

DEAR MR. HODES:

This letter is in response to your August 21, 2007 request for reconsideration of Headquarters Ruling Letter ("HQ") H009022, dated June 28, 2007,

on behalf of Nonni's Food Company Inc, regarding the country of origin marking of the New York Style® Bagel Crisps®.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published on January 15, 2009, in the Customs Bulletin, Volume 43, No. 4. No comments were received in response to this notice.

**FACTS:**

New York Style Brand® Bagel Crisps® (hereinafter "Bagel Crisps") are crisp, twice-baked snack foods resembling a thinly sliced bagel, packaged in a laminated paper bag that holds up to 6 ounces by net weight. The bag features a map of New York City over a green background that includes the words "Manhattan," "Hudson River," "New York City Harbor," "Queens," and "Long Island," in black lettering ranging in size from approximately 6 point to 12 point font. A picture of the Bagel Crisps appears around the bottom of the four sides of the bag. Each side contains an informational panel that overlays the map graphic.

The front panel displays the product's trademark, which consists of the words "New York Style Brand®," in approximately 16 point font, printed on a banner that is superimposed over a graphic of a skyline and a rising sun. The trademark is reproduced in approximately one-half the size on the back panel, above a body of text information about the Bagel Crisps. Included in the text is the statement: "This naturally wholesome snack captures the same delightful taste as the items found in New York City's traditional neighborhood bakeries."

One side panel contains the required U.S. Food and Drug Administration "Nutrition Facts" information, a listing of ingredients, an allergy warning, the name and address of a U.S. distributor, and a web address and a toll free number for questions or comments from consumers within the United States. The other side panel contains another block of "Nutrition Information," the "best before" date, a listing of ingredients, an allergy warning, and the names and addresses of two foreign distributors, one in Australia and another in New Zealand. As initially presented, the product was marked on that side panel with its country of origin, "MADE IN BULGARIA," in black, upper-case lettering of approximately 8 point font, over a cream-colored background, below the names and addresses of the foreign distributors and above the "best before" date.

In HQ H009022, U.S. Customs and Border Protection ("CBP") determined that the front, back, and two side panels of the bag must be marked to comply with the requirements of 19 CFR § 134.46 and § 134.47. The importer has since revised the packaging. The product is now marked with its country of origin on both side panels, in black, upper-case lettering of approximately 8 point font, over a cream-colored background. The words "MADE IN BULGARIA" appear directly below the names and addresses of U.S. distributors and directly above the "best before" date on one side, and on the U.S. nutrition label on the other. The origin marks are approximately the same size font as the names and addresses of the foreign distributors. The front and back remain unmarked.

**ISSUE:**

Does the revised marking of the package of Bagel Crisps satisfy the country of origin marking requirements?

**LAW AND ANALYSIS:**

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. § 1304), provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. § 1304 was “that the ultimate purchaser should be able to know by an inspection of the marking on imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase, the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them if such marking should influence his will.” See United States v. Friedlander & Co., 27 C.C.P.A. 297, 302 (C.C.P.A. 1940). Part 134 of the Customs Regulations implements the country of origin marking requirements and exceptions to 19 U.S.C. §1304. Section 134.41(b) of the Customs Regulations (19 CFR § 134.41(b)), mandates that the ultimate purchaser in the United States must be able to find the marking easily and read it without strain.

Of concern here are the requirements of two related provisions of the marking regulations, 19 CFR §§ 134.46 and 134.47.

19 CFR § 134.46 states:

In any case in which the words “United States,” or “American,” the letters “U.S.A.,” any variation of such words or letters, or the name of any city or location in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced appear on an imported article or its container, and those words, letters or names may mislead or deceive the ultimate purchaser as to the actual country of origin of the article, there shall appear legibly and permanently in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by “Made in,” “Product of,” or other words of similar meaning.

19 CFR § 134.47 states:

When as part of a trademark or trade name or as part of a souvenir marking, the name of a location in the United States or “United States” or “America” appear, the article shall be legibly, conspicuously, and permanently marked to indicate the name of the country of origin of the article preceded by “Made in,” “Product of,” or other similar words, in close proximity or in some other conspicuous location.

The purpose of both provisions is the same, namely to prevent the ultimate purchaser from being misled or deceived when the name of a country or place other than the country of origin appears on an imported article or its container. The critical difference between the two provisions is that 19 CFR § 134.46 requires that the name of the actual country of origin appear “in close proximity” to the U.S. reference and in lettering of at least comparable size. CBP has ruled that in order to satisfy the close proximity require-

ment, the country of origin marking must appear on the same side(s) or surface(s) on which the name of the locality other than the country of origin appears. See HQ 734164, dated September 23, 1991 (holding that country of origin marking of a book must be on the side or surface containing a non-origin reference). The more restrictive requirements of 19 CFR § 134.46 are designed to alleviate the possibility of misleading an ultimate purchaser with regard to the country of origin of an imported article, if such article or its container includes language which may suggest a U.S. origin (or other foreign locality not the correct country of origin).

By contrast, 19 CFR § 134.47 is less stringent, providing that when as part of a trade name, trademark, or as part of a souvenir marking, the name of a location in the U.S. or “United States” or “America” appears on the imported article, the name of the country of origin must appear in close proximity or “in some other conspicuous location.” In such circumstance, no comparable size requirement exists. In other words, the latter provision triggers only a general standard of conspicuousness. In either case, the name of the country of origin must be preceded by “Made in,” “Product of,” or other similar words.

At issue in this case is whether the revised package complies with the marking requirements with respect to: (1) non-origin references appearing in connection with the trademark; (2) non-origin references appearing in connection with distribution information; and (3) other non-origin references.

#### **I. Non-Origin References in Connection with the Trademark**

The front panel of the Bagel Crisps package displays the product’s trademark, which consists of the words “New York Style Brand®,” in approximately 16 point font, printed on a banner that is superimposed over a graphic of a skyline and a rising sun. The trademark is also displayed on the back panel in about half the size. Previously, in HQ H009022, dated June 28, 2007, addressing the non-origin references that are part of the product’s trademark, CBP determined that, “even under section 19 CFR § 134.47, in order to meet the ‘conspicuousness’ requirement, both the front and back panels must be marked with the country of origin preceded by the words ‘Made in . . .’, ‘Product of . . .’ or other similar construction . . . as relatively conspicuous in color and size as the trademark itself.” CBP cited HQ 735085, dated June 4, 1993, as containing a factually similar scenario.

HQ 735085 discussed the country of origin marking requirements for a 16 ounce bag of frozen vegetables bearing the words “American Mixtures,” a registered trademark, at the top and bottom of the front side, in 63 and 36 point font, respectively. Beneath the trademark, and depending on the contents of the product, the words “Manhattan,” “San Francisco,” or “California” were printed in approximately 27 point font, followed by the word “Style” in approximately 9 point font. On the back of the package, the location name (e.g., “San Francisco”) appeared in approximately 18 point font and in 4 other locations, in approximately 6 point font. The words “American Mixtures” appeared again on the back side, in approximately 6 point font, in 3 locations. Also on the back side, the product was marked with its country of origin, “PRODUCT OF MEXICO,” in black ink lettering of approximately 6 point font, over a dark green background, and as the fifth out of six lines in a block of text indicating ingredients, distribution information, and dietary fiber content. In total, CBP counted at least 20 non-origin references. There,

we found that, per 19 CFR § 134.47, “the prominence of the ‘American Mixtures’ name [was] such, that the country of origin marking was not conspicuous unless it appear[ed] on the front side of the retail package.” Upon review, we now find HQ 735085 to be distinguishable from the instant case.

Our rulings have followed the principle that, in determining if a marking is “conspicuous” for purposes of 19 CFR § 134.47, it is necessary to consider the context in which it appears. See HQ 735085. For example, in HQ 562481, dated October 28, 2002, we determined that cigarette cartons bearing the trademark “United King Size American Blend” on the front and back side, and marked with the country of origin in contrasting ink on the lower left corner of a side panel, satisfied the requirements of 19 CFR § 134.47 because “the marking is separated from the other product information in such a way that it may easily be located and read by a potential purchaser.” Likewise, in HQ 559748, dated June 12, 1996, we held that a wooden box of cigars containing the trademark “Zino Relax Sumatra” on the top, front, and two side panels, and marked with the country of origin on the bottom panel, was marked in a conspicuous location because “an ultimate purchaser may easily manipulate the cigar box to reveal the . . . country of origin marking . . .”

We note that in HQ 735085, CBP required that a bag of vegetables be marked in an “unusual” location, i.e., on all panels, and not only on the back side of the bag, as previously authorized under HQ 731830, dated November 21, 1988, because the country of origin mark was difficult to discern and it was surrounded by 20 non-origin references. Conversely, in this case, the product is marked with its country of origin in a place where the ultimate purchaser can notice from a casual inspection and is likely to consult, i.e., next to the nutritional information on one side panel and the “best before” freshness date on the other. The markings are easily distinguishable from the surrounding material because they appear in contrasting black lettering over a cream color background, in upper case font, and in a size comparable to that of the foreign distributors’ information. Based on the foregoing, we find that the revised package of Bagel Crisps is marked in a conspicuous location as required by 19 CFR § 134.47.

## **II. Non-Origin References in Connection to Distribution Information**

The bag of Bagel Crisps contains the name and address of a U.S. distributor in approximately 8 point font on one side panel, and the names and addresses of distributors in Australia and New Zealand in approximately 8 point font on the other. CBP applies the requirements of 19 CFR § 134.46 to distribution information containing non-origin references. See T.D. 97-72, dated August 20, 1997 (“CBP agrees that [non-origin] references made in the context of a statement relating to any aspect of production or distribution of products . . . are misleading to the ultimate purchaser . . . and would still require the country of origin marking in accordance with section 134.46 . . .”). Therefore, the country of origin marking must appear in close proximity to the non-origin references, and in lettering of at least a comparable size. The revised package is marked with the country of origin on both side panels in upper case lettering of approximately 8 point font, a size comparable to that of the non-origin distribution information. We find this marking to be in compliance with the requirements of 19 CFR § 134.46.

### **III. Other Non-Origin References**

The bag of Bagel Crisps contains other non-origin references, specifically, a map of New York City that underlies the package and displays the words “Manhattan,” “Hudson River,” “New York City Harbor,” “Queens,” and “Long Island,” and the phrase “[T]his naturally wholesome snack captures the same delightful taste as the items found in New York City’s traditional bakeries . . .” on the back panel. You submit that these non-origin references do not trigger the requirements of 19 CFR § 134.46 because they are decorative and are not likely to mislead or deceive the ultimate purchaser as to the origin of the goods.

CBP has consistently ruled that non-origin geographical references on imported articles do not trigger the requirements of 19 CFR § 134.46 if they appear in a context that is not likely to confuse the ultimate purchaser as the product’s country of origin. For example, in HQ 559712, dated July 11, 1996, we ruled that the word “Arizona” embroidered on the front right chest of a woman’s imported pullover did not trigger the special marking requirements of 19 CFR § 134.46 because the word “Arizona” “is used as a decoration of the shirt” and “would not reasonably be construed to indicate the country of origin of the article.” Similarly, in HQ 732412, dated August 29, 1989, we found that the placement of the word “Kansas” on different parts of imported jeans was “built into the garment’s design” and “would not mislead or deceive the ultimate purchaser or in any way connote that ‘Kansas’ is the place of manufacture.” Likewise, in HQ 734562, dated August 12, 1992, we found that an imported nylon soccer bag that contained the words “Charleston, MA” printed on the fabric label and the phrases “USA 94” printed on the top, “USA Umbro 1994” printed on the side panels, and “94 to America” printed on the bottom of the bag, did not trigger 19 CFR § 134.46 because “such marking was used as a symbol or decoration and would not be reasonably construed as indicating the country of origin of the article.”

Similarly, in this case, we find that the non-origin references on the Bagel Crisps package are part of the marketing concept associated with the product’s brand, “New York Style Brand®,” and would not likely mislead or deceive the ultimate purchaser as to the origin of the product. To wit, except for the word “Manhattan,” the locations named on the map that underlies the package are not easily discernable. The words “Hudson River” are mostly obscured by the crease in the packaging. “Queens” can only be read if one opens the package. “Long Island” is obstructed by the U.S. nutritional facts label on the side panel. “New York City Harbor” is printed in a faint and very small font. Moreover, the phrase “captures the same delightful taste as the items found in New York City’s traditional bakeries” does not suggest origin. It is a figure of speech. Taken together, and considering that the country of origin marking is displayed in a conspicuous location on the package, we conclude that 19 CFR § 134.46 is not triggered.

#### **HOLDING:**

On the basis of the information and samples submitted, we find that the revised Bagel Crisps package satisfies the marking requirements of 19 CFR § 134.46 and 19 CFR § 134.47.

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

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

**EFFECT ON OTHER RULINGS:**

This ruling revokes HQ H009022, dated June 28, 2007.

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