

U.S. Customs and Border Protection

General Notices

Docket No. USCBP-2008-0112

ENHANCED BONDING REQUIREMENT FOR CERTAIN SHRIMP IMPORTERS

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

ACTION: General notice.

SUMMARY: This notice ends the designation of shrimp subject to antidumping or countervailing duty orders as a special category or covered case subject to an enhanced bonding requirement (EBR). A recent World Trade Organization (WTO) Appellate Body Report held that the application of this requirement to shrimp from Thailand and India was inconsistent with U.S. WTO obligations. In response to this report, Customs and Border Protection (CBP) is ending the designation of shrimp subject to antidumping or countervailing duty orders as a special category or covered case subject to the EBR. The shrimp importers affected by this requirement may request termination of any existing continuous bonds pursuant to 19 CFR 113.27(a) and submit a new bond application pursuant to 19 CFR 113.12(b).

EFFECTIVE DATE: The notice is effective on April 1, 2009.

FOR FURTHER INFORMATION CONTACT: David Genovese, AD/CVD & Revenue Policy & Programs Division, Trade Policy and Programs, Office of International Trade, *David.Genovese@dhs.gov*, (202) 863-6092.

SUPPLEMENTARY INFORMATION:

Background

A key U.S. Customs and Border Protection (CBP) mission is to collect all import duties determined to be due to the United States. Under CBP statutes and regulations, release of merchandise prior to the determination of all duties that may be owed is ordinarily permitted, provided the importer posts a bond or other security to in-

sure payment of duties and compliance with other applicable laws and regulations. The final assessment of duties occurs at liquidation of the entry.

The United States maintains a retrospective antidumping and countervailing duty system. The retrospective system means that in the case of goods subject to antidumping or countervailing (AD/CV) duties, the actual rates of AD/CV duties owed are calculated after the entry is made, in an assessment review conducted by the Department of Commerce (DOC). There is a delay between entry and final duty collection, and the United States requires that a security be provided. When an importer requests an assessment review of an AD/CV duty order, the amount of the duty that is ultimately assessed, based on the final AD/CV duty rate, sometimes does not correspond to the amount of security posted.

CBP follows instructions from the DOC. The DOC determines the actual AD/CV duty rates owed on merchandise subject to an AD/CV duty order. CBP assesses the duties owed on specific entries upon liquidation, pursuant to DOC instructions as to the final rates. However, CBP has found that many importers subject to AD/CV duties fail to pay the additional duties determined to be due at liquidation. As a result, because defaults on AD/CV duty supplemental bills have increased significantly, CBP conducted an internal policy review of revenue protection strategies.

CBP's Enhanced Bonding Requirement (EBR)

In response to importers' increasing failure to pay additional duties determined to be due at liquidation, CBP reconsidered the general bond formula which provides that the minimum continuous bond may be in an amount equal to the greater of \$50,000 or ten percent of the amount of the previous year's duties, taxes and fees. In order to address the growing collection problem, CBP issued four documents. "Amendment to Bond Directive 99-3510-004 for Certain Merchandise Subject to Antidumping/Countervailing Cases," July 9, 2004; "Current Bond Formulas," January 25, 2005; "Clarification to July 9, 2004 Amended Monetary Guidelines for Setting Bond Amounts for Special Categories of Merchandise Subject to Antidumping and/or Countervailing Duty Cases," August 10, 2005; and *Monetary Guidelines for Setting Bond Amounts for Importations Subject to Enhanced Bonding Requirements*, 71 FR 62276 (October 24, 2006) (all four documents are referred to collectively as the Amended Customs Bond Directive).

CBP applied the Amended Customs Bond Directive to merchandise subject to the first antidumping orders involving agriculture and aquaculture merchandise imposed after the issuance of the July

2004 Amendment to the Bond Guidelines.¹ Known as the enhanced bonding requirement (EBR), CBP required that continuous bond amounts for importers of shrimp subject to AD/CV duty orders be increased to the rate established in the final AD/CV duty order, multiplied by the value of the importer's entries of the subject merchandise in the previous 12-month period.

World Trade Organization Disputes Regarding EBR

On April 24, 2006, Thailand requested consultations with respect to certain issues relating to the imposition of antidumping measures on shrimp from Thailand, including the application of the EBR to importers of shrimp from Thailand. Thailand requested the establishment of a dispute settlement panel on September 15, 2006, and the World Trade Organization (WTO) Dispute Settlement Body (DSB) established a panel on October 26, 2006.

On June 6, 2006, India requested consultations with respect to certain issues relating to the Amended Customs Bond Directive and the EBR. India alleged that the United States had imposed on importers a requirement to maintain a continuous entry bond in the amount of the anti-dumping duty margin multiplied by the value of imports of subject shrimp imported by the importer in the preceding year, and that this action breached several provisions of the General Agreement on Tariffs and Trade 1994 (GATT 1994), the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (AD Agreement), and the Agreement on Subsidies and Countervailing Measures (SCM Agreement). India requested the establishment of a panel on October 13, 2006, and the DSB established a panel on November 21, 2006.

The panels circulated the reports in both disputes on February 29, 2008. Among other things, the panels found that the EBR as applied to importers of shrimp from Thailand and India was a "specific action against dumping" inconsistent with Article 18.1 of the AD Agreement and was inconsistent with the Ad Note to paragraphs 2 and 3 of GATT 1994 Article VI because it did not constitute "reason-

¹Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Brazil, 70 FR 5143 (Feb. 1, 2005); Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Thailand, 70 FR 5145 (Feb. 1, 2005); Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India, 70 FR 5147 (Feb. 1, 2005); Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from People's Republic of China, 70 FR 5149 (Feb. 1, 2005); Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 70 FR 5152 (Feb. 1, 2005); and Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Ecuador, 70 FR 5156 (Feb. 1, 2005).

able” security.² Thailand and India disagreed with several of the panels’ findings with respect to the additional bond requirement and appealed those findings on April 17, 2008.³ The United States cross-appealed one aspect of those findings on April 29, 2008.⁴

The Appellate Body report was issued on July 16, 2008.⁵ The Appellate Body agreed with the panels in finding that the Amended Customs Bond Directive was not “as such” inconsistent with the AD Agreement or the SCM Agreement. *Id.* at paras. 270, 275. The Appellate Body found that the panels properly concluded that the EBR as applied to importers of shrimp from Thailand and India did not constitute reasonable security. The Panel and Appellate Body reports were adopted by the DSB on August 1, 2008. On August 29, 2008, the United States indicated that it intended to comply with the recommendations and findings of the DSB.

Notice of Proposed Modification

On January 12, 2009, CBP published a notice in the **Federal Register** (74 FR 1224) that proposed to end the designation of shrimp covered by antidumping or countervailing duty orders as a special category or covered case subject to the requirement of additional bond amounts, to comply with the recommendations of the DSB. The notice also proposed that shrimp importers may request termination of existing continuous bonds pursuant to 19 CFR 113.27(a) and submit a new continuous bond application pursuant to 19 CFR 113.12(b). The notice of proposed modification solicited comments from the public, and the comment period closed on February 11, 2009.

Discussion of Comments

Twelve parties responded to the solicitation of comments in the notice of proposed modification. A description of the comments contained in the submission and CBP’s analysis is set forth below.

Comment:

One commenter argues that CBP should devise a bonding mechanism for imports of shrimp and other agriculture and aquaculture products subject to antidumping or countervailing duties that will

²Panel Report, *United States – Measures Relating to Shrimp from Thailand*, WT/DS343/R, adopted August 1, 2008.

³Annexes I and II to WTO Appellate Body Report, *United States- Measures Relating to Shrimp from Thailand and United States- Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties*, WT/DS343/AB/R and WT/DS345/AB/R, adopted August 1, 2008. (WTO AB Report).

⁴Annexes III and IV to WTO AB Report.

⁵WTO AB Report.

provide additional assurance that all such duties will be collected, that it should explain how any new bonding mechanism addresses “the large and increasing” amount of uncollected or uncollectible duties, and that it must “implement any new bonding mechanism prospectively only, as required by law.” The commenter notes that revenue loss continues to be an issue with agriculture and aquaculture products subject to AD/CV duty orders including shrimp and therefore CBP’s concerns that led to the EBR were appropriate.

The commenter further contends that CBP’s proposal to no longer require the EBR with respect to shrimp importers rewards and further encourages the refusal by certain importers to abide by their legal requirements. The commenter states that as CBP is well aware from its past efforts to enforce the trade laws and collect duties owed, for many agriculture/aquaculture products (and, separately, non-agriculture/aquaculture products of Chinese origin), the companies that become the importer of record for such goods frequently have little intent, much less ability, to pay duties above the deposit rate.

The commenter requests that CBP immediately withdraw its proposal to terminate the designation of shrimp covered by AD/CV orders as a special category or covered case subject to the requirement of additional bond amounts. Instead, the commenter recommends that CBP issue a proposal and/or seek comments on amending the EBR in order to both comply with the WTO’s Appellate Body report and address the under-collection of AD/CV duties.

Another commenter states that CBP should use the proposal as an opportunity to include an individual importer risk assessment into its bond analysis. The commenter asserts that the “one size fits all” EBR policy based on a sector or category wide risk assessment usurps the core factors of objective risk analysis and imposes a severe strain on the balance sheets of otherwise healthy companies. The commenter contends that a bond based on an assessment for individual importers is not only good federal policy, but also a necessary analysis for defense of CBP’s actions before reviewing panels of the WTO. The commenter further contends that a transparent system supported by substantial evidence is essential to an effective EBR. The commenter maintains that the tools are present for CBP to give proper emphasis to companies with proven track records and solid balance sheets.

CBP’s Response:

Although CBP is no longer designating shrimp subject to anti-dumping or countervailing duty orders as a special category or covered case subject to the EBR, CBP is not abandoning its duty to protect revenue or its requirement of sufficient security. In its report, the WTO Appellate Body concluded that the United States could impose “reasonable security” on entries made after the imposition of an

antidumping duty order and before the final assessment of antidumping duties, but that the EBR, *as applied* to importers of shrimp from Thailand and India was not “reasonable security”. Consistent with that finding, CBP is ending the designation of shrimp as a covered case or special category subject to the EBR.

As for the other commenter’s suggestions for possible methods for future bonding requirements, CBP continues to explore options to protect revenue and address issues of uncollected AD/CV duties, consistent with U.S. international obligations.

Comment:

Several commenters support the withdrawal of the designation of shrimp under the EBR, but argue that it should apply retroactively to all entries of subject merchandise covered by bonds calculated using the EBR, and not just to entries made on or after the effective date of the final notice.

Supporters of retroactive application of the proposal contend that because the WTO Appellate Body upheld the panel’s findings that the EBR is inconsistent with WTO agreements, compliance with the WTO’s rulings would preclude CBP from continuing to treat pre-existing EBR-calculated bonds as valid and enforceable security after the date of implementation or from taking any future action to make a claim against the bonds. Consequently, commenters in support of the retroactive application of the proposal argue that in order to comply with the WTO reports, CBP must not only stop applying the EBR to imports of subject shrimp going forward, but must also “cancel” (as one commenter describes it) or “retroactively eliminate” (as another commenter argues), bonds to which the EBR has been applied and replace them with bonds based on the standard bond formula of 10% of the previous year’s duties, taxes, and fees, or \$50,000, whichever is greater. Supporters assert that retroactively applying the proposal is necessary to address surety collateral requirements which have burdened importers’ credit lines, causing significant economic harm.

One supporter of the retroactive application of the proposal cites to *National Fisheries Institute, Inc. v. United States Bureau of Customs and Border Protection* (465 F. Supp. 2d 1300, 1335–36 (Ct. Int’l Trade 2006)) (*National Fisheries*) to argue that CBP has authority to do this, and claim that this authority has been recognized by the courts.

One commenter argues that canceling the bonds to which the EBR was applied would not be retroactive because the United States would be agreeing to make no future claims against the EBR-calculated bonds.

One commenter urges CBP to automatically terminate all existing continuous bonds and institute new bonds at the minimum required

obligation rather than require individual importers to submit individual termination requests in order to expedite U.S. compliance with rulings of the DSB.

Another commenter argues that allowing importers to terminate existing continuous bonds would risk CBP's ability to fully collect duties owed.

CBP's Response:

CBP is ending the designation of frozen warmwater shrimp subject to AD/CV duties as a special category or covered case for purposes of the EBR, and is providing importers with an opportunity to request that existing bonds be terminated pursuant to 19 CFR 113.27(a) and submit a new continuous bond application pursuant to 19 CFR 113.12(b). These actions bring the United States into compliance with the recommendations and rulings of the DSB regarding the EBR. The effective date is the publication date of this notice.

CBP disagrees with the commenters' statement that CBP must apply the proposal retroactively. When a bond is terminated, no further obligations arising from post-termination customs transactions may be charged against the bond. See 19 CFR 113.27(c); see also HQ 211485 (May 12, 1980). The principal (in this case, the importer) and the surety remain liable for the obligations incurred before the date the bond was terminated. See 19 CFR 113.3. Termination of the bond does not alter the obligations charged against the bond before it was terminated, but does prevent any obligations arising from post-termination customs transactions from being charged against the bond. See 19 CFR 113.27(c); see also HQ 211485 (May 12, 1980).

CBP has determined that it will permit importers to terminate EBR-calculated bonds. The only legal authority commenters cite for the proposition that CBP could "cancel" or otherwise retroactively apply the policy is the decision of the U.S. Court of International Trade in National Fisheries. However, the court made no such finding in that case, nor did it order cancellation or "retroactive elimination" of bonds. National Fisheries at 1335–1336. Moreover, bonds are contracts between principals and sureties, and are thus contracts between private parties. CBP is reluctant to interfere in that relationship. See Customs Bond Structure, Revision, 49 FR 41152, 41155 (October 19, 1984). In addition, the existence of two bonds covering the same period could pose legal confusion. If different sureties issued the bonds, each would raise the other as a defense in a collection action, posing serious risk to the agency's ability to collect duties lawfully owed through court action. Furthermore, canceling an existing bond and replacing it with another bond with a different limit of liability (either lower or higher) and with retroactive effect is contrary to sound administrative practice. There are approximately 140,000 bonds currently on file with CBP. The possibility that each and every one of these bonds may be reconsidered and liability reas-

sessed anytime after execution would cause administrative chaos. Finally, to avoid confusion, termination will not occur automatically and importers must request termination pursuant to 19 CFR 113.27(a).

CBP requires bonds to protect revenue and assure compliance with any provision of law, regulation, or instruction the agency is authorized to enforce. See 19 U.S.C 1623. CBP is also required to collect debts aggressively. See 31 U.S.C 3711 and 31 CFR 901.1. In order to fulfill its mandate and also facilitate trade, CBP does not retroactively raise or lower bond security amounts that cover past customs transactions. When CBP determines that an existing bond does not provide sufficient security, the principal is only required to terminate the existing bond and obtain a new bond with additional security for future importations. The obligation of the earlier bond for the earlier time period remains in place. See 19 CFR 113.3.

It is incorrect to state that if the United States were to agree to make no future claims against the EBR-calculated bonds, then the cancellation of the bonds would not be retroactive. Cancelling the bonds would be retroactive because the bonds secure customs transactions, which are, in this case, entries already made into the United States. As discussed in the Background section of this notice, even though the actual amount of AD/CV duties owed may be determined at a later date, the obligation is incurred and security is posted at the time of entry. Finally, the U.S. Court of International Trade in National Fisheries did not order CBP to cancel the bonds at issue in that case, and therefore does not support the commenters' argument that CBP should cancel the EBR-calculated bonds. National Fisheries at 1335–1336.

Therefore, on or after the publication of this notice, an importer with a current bond that was calculated using the EBR may request termination pursuant to 19 CFR 113.27(a), such that no further obligations would be charged against that bond. For existing bonds, CBP will enforce the bonds up to the date of termination, which will be no earlier than the effective date of this notice.

Comment:

Some commenters recommend that even though the proposal indicates that it applies to shrimp imports from all of the countries subject to an AD order, to avoid confusion, CBP should specifically state this in the final notice and list the individual countries.

Another commenter asserts that the proposal should only apply to India and Thailand because the WTO dispute was initiated by these countries and therefore, the recommendation only applies to those countries and not Brazil, China, and Vietnam. The commenter states that continuing to apply the EBR to Brazil, China, and Vietnam would help to offset any revenue loss on those cases. The commenter also states that discontinuing application to those countries would

be contrary to CBP's commitment to Congress to address the issue of non-collection of AD duties and is irrational, unwarranted, and a clear perversion of CBP's mission to collect all import duties determined to be due to the United States.

CBP's Response:

Based on a careful evaluation of the WTO reports and available evidence, CBP has decided to end the designation of shrimp subject to AD/CV duty orders as a special category or covered case subject to the requirement of additional bond amounts for all countries. For a list of orders currently covering shrimp, see footnote 1 of this document.

Conclusion

After analysis of the comments and further review of the matter, CBP has decided to end the designation of shrimp covered by anti-dumping or countervailing duty orders as a special category or covered case subject to the requirement of additional bond amounts. Shrimp importers may request termination of existing continuous bonds pursuant to 19 CFR 113.27(a) and submit a new continuous bond application pursuant to 19 CFR 113.12(b). The requirements for submitting a new bond application pursuant to 19 CFR 113.12 are available on the CBP Web site at http://www.cbp.gov/xp/cgov/trade/priority_trade/revenue/bonds/pilot_program/news_develop/ under the "Policy and Procedures" section.

Dated: March 25, 2009

JAYSON P. AHERN,
*Acting Commissioner,
Customs and Border Protection.*

[Published in the Federal Register, April 1, 2009 (74 FR 14809)]

DEPARTMENT OF THE TREASURY

19 CFR Part 10

USCBP-2008-0105

RIN 1505-AC07

**COST OR VALUE OF FOREIGN REPAIRS, ALTERATIONS,
OR PROCESSING**

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

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a notice of proposed rulemaking, published in the **Federal Register** on March 13, 2009 (74 FR 10849), that proposed to amend the U. S. Customs and Border Protection (CBP) Regulations to exclude from the dutiable value of repairs, alterations, or processing performed abroad on articles exported from the United States and returned under subheading 9802.00.40, 9802.00.50, or 9802.00.60, Harmonized Tariff Schedule of the United States (HTSUS), the value of U.S.-origin parts used in the foreign repairs, alterations, or processing. The notice is being withdrawn to permit further consideration of the relevant issues involved in the proposed rulemaking.

DATE: The notice of proposed rulemaking is withdrawn on March 30, 2009.

FOR FURTHER INFORMATION CONTACT: Monika Brenner, Regulations and Rulings, Office of International Trade, 202-325-0038.

SUPPLEMENTARY INFORMATION:

Background

On March 13, 2009, CBP published in the **Federal Register** (74 FR 10849) a document that proposed to amend §§ 10.8(d) and 10.9(d) of the CBP regulations (19 CFR §§ 10.8(d) and 10.9(d)) to exclude from the dutiable value of repairs, alterations, or processing performed abroad on articles exported and returned to the United States under subheading 9802.00.40, 9802.00.50, or 9802.00.60, HTSUS, the value of U.S.-origin parts used in the foreign repairs, alterations, or processing.

Withdrawal of Notice of Proposed Rulemaking

CBP is withdrawing the notice of proposed rulemaking published in the **Federal Register** on March 13, 2009, so that relevant issues involved in the proposed rulemaking may be further considered.

JAYSON P. AHERN,
*Acting Commissioner,
Customs and Border Protection.*

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

[Published in the Federal Register, March 30, 2009 (74 FR (14099))]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, April 1, 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.

Myles B. Harmon for SANDRA L. BELL,
*Executive Director,
Regulations and Rulings,
Office of International Trade.*

**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF BULLET-PROOF VESTS
FROM ISRAEL**

AGENCY: U.S. 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 bullet-proof vests from Israel.

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 proposing to revoke a ruling letter relating to the tariff classification of bullet-proof vests under the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”). 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 May 17, 2009.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Commercial Trade and Regulations Branch, 799 9th Street N.W., Mint Annex, Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118 during regular business hours.

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)(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 a ruling letter pertaining to the tariff classification of bullet-proof vests. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter ("NY") B86958, dated July 15, 1997 (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 B86958, CBP classified the bullet-proof vests at issue in heading 6211, specifically in subheading 6211.42.0070, HTSUSA, as “Track suits, ski-suits and swimwear; other garments: Other garments, women’s or girls’: Of cotton: Vests,” if containing a cotton outer shell, or in subheading 6211.43.0076, HTSUSA, as “Other garments, women’s or girls’: Of man-made fibers: Vests,” if containing a polyester, nylon, or cotton/polyester/nylon blend outer shell. However, in accordance with Headquarters Ruling Letter (“HQ”) W968350, dated September 28, 2007, it is now our view that bullet-proof vests are protective garments classified in subheading 6211.42.0081, HTSUSA, as “Other garments, women’s or girls’: Of cotton: Other,” if containing a cotton outer shell, or in subheading 62.11.43.0091, HTSUSA, as “Other garments, women’s or girls’: Of man-made fibers: Other,” if containing a polyester, nylon, or cotton/nylon/polyester blend outer shell.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY B86958 and any other ruling not specifically identified, to reflect the proper ten-digit statistical level classification of the bullet-proof vests according to the analysis contained in proposed HQ H020138, 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: March 26, 2009

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
NY B86958
July 15, 1997
CLA-2-62:RR:NC:BCH3:B86958 353
CATEGORY: Classification
TARIFF NO.: 6211.42.0070; 6211.43.0076

MR. MICHAEL EDWARDS
SAFARILAND LTD., INC.
3120 E. Mission Blvd.
Ontario, CA 91761

RE: The tariff classification of a bullet resistant vest from Israel

DEAR MR. EDWARDS:

In your letter dated June 24, 1997 you requested a tariff classification ruling. A sample was submitted for review which will be returned to you.

The article is stated to be a bullet resistant vest of an outer shell which may be made of a cotton, polyester, nylon or a blend of each. Ballistic panels stated to contain aramid fiber are enclosed in a rip stop fabric which are inserted into the outer shell of the vest. The vest itself is a two piece unit, front and back that attach to each other with straps and velcro closures.

If the outer shell is of chief weight cotton the bullet resistant vest, the applicable subheading is 6211.42.0070, Harmonized Tariff Schedule of the United States (HTS) which provides for "Track suits, ski-suits and swimwear; other garments: Of cotton: Vests." The general rate will be 8.4 percent ad valorem. If the outer shell is of chief weight man-made fiber the bullet resistant vest, the applicable subheading is 6211.43.0076, HTS, which provides for "Track suits, ski-suits and swimwear; other garments: Of man-made fibers: Vests: Other." The general rate will be 16.7 percent ad valorem.

Products of Israel are subject to a free rate of duty.

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 Martin Weiss at 212-466-5881.

PAUL K. SCHWARTZ,
Chief, Textiles and Apparel Branch,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H020138
CLA-2 OT: RR: CTF: TCM H020138 RM
CATEGORY: Classification
TARIFF NO.: 6211.42.0081
6211.43.0091

MR. MICHAEL EDWARDS
SAFARILAND LTD., INC.
3120 E. Mission Blvd.
Ontario, CA 91761

RE: Revocation of NY B86958; Classification of Bullet-Proof Vests from Israel

DEAR MR. EDWARDS:

This is in reference to New York Ruling Letter (“NY”) B86958, issued to you on behalf of Safariland Ltd., Inc., on July 15, 1997. In that ruling, U.S. Customs and Border Protection (“CBP”) determined that certain bullet-proof vests imported from Israel were classified in heading 6211, Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”), specifically, in subheading 6211.42.0070, HTSUSA, which provides for: “Other garments women’s or girls’: Of cotton: Vests,” if containing a cotton outer shell, or in subheading 6211.43.0076, which provides for: “Other garments women’s or girls’: Of man-made fibers: Vests,” if containing a polyester, nylon, or cotton/nylon/polyester blend outer shell. We have reviewed NY B86958 with regard to classification at the ten-digit statistical level and have found it to be in error.

FACTS:

In NY B86958, CBP described the merchandise as follows:

The article is stated to be a bullet resistant vest of an outer shell which may be made of cotton, polyester, nylon or a blend of each [fabric]. Ballistic panels stated to contain aramid fiber are enclosed in a rip stop fabric which is inserted into the outer shell of the vest. The vest itself is a two piece unit, front and back that attach to each other with straps and velcro closures.

ISSUE:

Whether the subject bullet-proof vests are classified as vests, in subheading 6211.42.0070 or 6211.43.0076, HTSUSA, or as protective garments other than vests, in subheading 6211.42.0081 or 6211.43.0091, HTSUSA.

LAW AND ANALYSIS:

Classification under the HTSUSA 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 HTSUSA provisions under consideration are as follows:

6211 Track suits, ski-suits and swimwear; other garments:

Other garments, women’s or girls’:

- 6211.42.00 Of cotton:
- 6211.42.0070 Vests . . .
- 6211.42.0081 Other . . .
- 6211.43.00 Of man-made fibers
- 6211.43.0076 Vests . . .
- 6211.43.0091 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 General ENs to Chapter 62 (Note 8), state, in relevant part:

Garments which cannot be identified as either men’s or boys’ garments or women’s or girls’ garments are to be classified in the headings covering women’s or girls’ garments.

The ENs to heading 6211, state, in relevant part:

The provisions . . . of the Explanatory Note to heading 61.14 concerning other garments apply, *mutatis mutandis*, to the articles of this heading.

The ENs to heading 6114, state, in relevant part:

The heading includes, *inter alia*:

- (1) Aprons, boiler suits (coveralls), smocks and other protective clothing of a kind worn by mechanics, factory workers, surgeons, etc.

CBP has consistently classified woven, bullet-proof vests in heading 6211, HTSUS, as “[O]ther garments.” See Headquarters Ruling Letter (“HQ”) W968350, dated September 28, 2007, HQ 955878, dated August 2, 1994, NY L81496, dated January 18, 2005, and NY H86579, dated January 18, 2002. Unisex vests specifically, are classified as “women’s or girls’ garments” at the six-digit level, in accordance with the General ENs to Chapter 62 (Note 8). Further, in HQ W968350, we explained that although bullet-proof vests are referred to as “vests,” they are not vests in the common understanding of such garment, but rather, protective garments.¹ As such, they are classified as “other garments” instead of “vests” at the ten-digit statistical level.

Based on the foregoing, we conclude that the instant bullet-proof vests are classified in subheading 6211.42.0081, HTSUSA, as “. . . Other garments:

¹The term “vest” is defined, in relevant part, in Mary Brooks Picken’s *A Dictionary of Costume and Fashion*, at 367, as “[a] short, close-fitting garment, without sleeves; waist-length in back, below waist in front; similar to a man’s waistcoat or vest. Usually worn with a suit.”

Other garments, women's or girls': Of cotton: Other," if containing a cotton outer shell, or in subheading 6211.43.0091, HTSUSA, as "... Other garments: Other garments, women's or girls': Of man-made fibers: Other," if containing a polyester, nylon, or cotton/nylon/polyester blend outer shell.

HOLDING:

By application of GRI 1, the bullet-proof vests with a cotton outer shell are classified in heading 6211, specifically in subheading 6211.42.0081, HTSUSA, which provides for: "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton: Other." The 2009 column one, special rate of duty applicable to products of Israel, is "Free." Merchandise entered in subheading 6211.42.0081, HTSUSA, falls within textile category 359.

The bullet-proof vests with a polyester, nylon, or cotton/nylon/polyester blend outer shell, are classified in subheading 6211.43.0091, HTSUSA, which provides for: "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of man-made fibers: Other." The 2009 column one, special rate of duty applicable to products of Israel, is "Free." Merchandise entered in subheading 6211.43.0091, HTSUSA, falls within textile category 659.

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

EFFECT ON OTHER RULINGS:

NY B86958, dated July 15, 1997, is hereby revoked.

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division.

**REVOCATION OF TWO RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF CERTAIN DECORATIVE
CERAMIC DISHES**

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

ACTION: Notice of revocation of two tariff classification ruling letters and revocation of treatment relating to the classification of certain decorative ceramic dishes.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking two ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain decorative ceramic dishes. Similarly, CBP is revoking any

treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on February 5, 2009, in Vol. 43, No. 7, 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 June 16, 2009.

FOR FURTHER INFORMATION CONTACT: Isaac D. Levy, Tariff Classification and Marking Branch: (202) 325-0028.

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. 43, No. 7, on February 5, 2009, proposing to revoke two ruling letters pertaining to the tariff classification of certain decorative ceramic dishes. Although in that notice, CBP specifically proposed to revoke New York Ruling Letter (NY) K80905, dated January 8, 2004, and NY R00528, dated July 30, 2004, the notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a rul-

ing 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 K80905 and NY R00528, and revoking or modify 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) H040755 and HQ H003885, respectively, set forth as Attachments "A" and "B" to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

DATED: March 26, 2009

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H040755
March 26, 2009
CLA-2 OT:RR:CTF:TCM H040755 IDL
CATEGORY: Classification
TARIFF NO.: 6912.00.48

MS. MARY BUTTERLINE
LISS GLOBAL, INC.
7746 Dungan Road
Philadelphia, Pennsylvania 19111

Re: Ceramic Decorative Tidbit Dish; Revocation of NY K80905

DEAR MS. BUTTERLINE:

On January 8, 2004, U.S. Customs and Border Protection (CBP) issued New York Ruling Letter (NY) K80905 to you, classifying decorative ceramic articles under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed that decision and have found it to be 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 modification was published in the *Customs Bulletin*, Volume 43, No. 7, on February 5, 2009. No comments were received in response to the notice.

FACTS:

In NY K80905, the merchandise at issue, was described as follows:

The submitted samples are two butterfly-shaped ceramic (non-porcelain) articles, item number 934284, that measure approximately 6 ½ inches at their longest point. Each one features four small compartments that depict the exterior portion of the wings.

In your request for a binding ruling, dated August 18, 2003, you described the merchandise as ceramic tidbit dishes. Due to a deficiency in your initial submission, we asked that you provide us with additional information. In your amended request, dated December 10, 2003, you described the merchandise as ceramic decorative dishes that should be classified as tableware, suitable for contact with food or drink. CBP disagreed with your position.

CBP now finds that it erred in classifying the merchandise in NY K80905, which should have been classified as you had proposed.

ISSUE:

Whether the ceramic articles described above are properly classified under subheading 6912.00.48, HTSUS, as “ceramic tableware and kitchenware suitable for food or drink contact”, or under subheading 6913.90.50, HTSUS, as “other ornamental ceramic articles”?

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, accord-

ing 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:

6912 Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china:

Tableware and kitchenware:

Other:

Other:

Other:

* * *

6912.00.48 Other. . . .

* * *

6913 Statuettes and other ornamental ceramic articles:

* * *

6913.90 Other:

* * *

Other:

* * *

6913.90.5000 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 69.12 provides, in pertinent part, the following:

The headings therefore include:

- (A) Tableware such as tea or coffee services, plates, soup tureens, salad bowls, dishes and trays of all kinds, coffee-pots, teapots, sugar bowls, beer mugs, cups, sauce-boats, fruit bowls, cruets, salt cellars, mustard opts, egg-cups, teapot stands, table mats, knife rests, spoons and serviette rings. [Emphasis added]

EN 69.13 provides, in pertinent part, the following:

This heading covers a wide range of ceramic articles of the type designed essentially for the interior decoration of homes, offices assembly rooms, churches, etc., and outdoor ornaments (e.g., garden ornaments).

The heading **does not include** articles falling in more specific headings of the Nomenclature even if they are suited by reason of their nature or finish for decorative use. . . .

...

The heading covers:

(A) **Articles which have no utility value but are wholly ornamental, and articles whose only usefulness is to support or contain other decorative articles or to add to their decorative effect. . . .**

...

(B) **Tableware and other domestic articles only if the usefulness of the articles is clearly subordinate to their ornamental character. . . .** If, therefore, such decorated articles serve a useful purpose no less efficiently than their plainer counterparts, they are classified in **heading 69.11** or **69.12** rather than in this heading.

In NY K80905, CBP stated that “since this merchandise is found to be decorative multifunctional articles, consideration of classification under subheading 6912.00.4810, HTS[USA] is precluded.” We now believe this statement is incorrect with regard to the subject merchandise. Heading 6912 provides for “ceramic tableware” and similar articles. No exclusion is provided for “decorative” articles, and the ceramic articles retain their identity as ceramic tableware even after being decorated. Further, EN 69.12 includes dishes of all kinds, which includes the ceramic articles described above. Therefore, the subject merchandise is specifically included in heading 6912, HTSUS.

Heading 6913, HTSUS, covers “statuettes” and other articles that are merely ornamental in nature. EN 69.13 precludes articles that are described by more specific headings. As noted above, the subject merchandise is more specifically described as “ceramic tableware”. Further, EN 69.13 excludes from the heading ornamental articles which have a utilitarian value.

The ceramic decorative tidbit dishes are functional articles suitable for contact with food, and are, therefore, precluded from classification in heading 6913, HTSUS, as they are not merely ornamental ceramic articles. See HQ 962671, dated March 14, 2000, wherein we classified ceramic platters under subheading 6912.00.48, HTSUS. Accordingly, we find that the ceramic articles described above are classified in heading 6912, HTSUS, and more specifically, are covered under the provisions of subheading 6912.00.48, HTSUS. Therefore, for the reasons set forth above, NY K80905 is revoked.

HOLDING:

By application of GRI 1, the ceramic decorative tidbit dishes described above are classified under heading 6912, HTSUS, and more specifically, are provided for under subheading 6912.00.48, HTSUS, as: “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Other: Other: Other.” The column one, general rate of duty is 9.8%.

EFFECT ON OTHER RULINGS:

NY K80905, dated January 8, 2004, is revoked. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H003885
March 26, 2009
CLA-2 OT:RR:CTF:TCM H003885 IDL
CATEGORY: Classification
TARIFF NO.: 6912.00.48

TROY CRAGO
IMPORT SPECIALIST
ATICO INTERNATIONAL
501 South Andrews Avenue
Fort Lauderdale, Florida 33301

Re: Candy Dishes; Revocation of NY R00528

DEAR MR. CRAGO:

On July 30, 2004, U.S. Customs and Border Protection (CBP) issued New York Ruling Letter (NY) R00528 to you, classifying decorative ceramic articles under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed that decision and have found it to be 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 modification was published in the Customs Bulletin, Volume 43, No. 7, on February 5, 2009. No comments were received in response to the notice.

FACTS:

In NY R00528, the merchandise at issue was described as follows:

The subject merchandise, which you describe as “Candy Dish” – item #C39E3436, consists of six, decorative, hand-painted ceramic (dolomite) articles. Four of these items are in the shape of a flower and two are in the shape of a butterfly. The measurements are 6 inches by 1 inch.

CBP classified the merchandise described above under subheading 6913.90.50, Harmonized Tariff Schedule of the United States (HTSUS), which provided for: “Statuettes and other ornamental ceramic articles: Other: Other: Other.” CBP now finds that such merchandise was classified incorrectly.

ISSUE:

Whether the candy dishes described above are properly classified under subheading 6912.00.48, HTSUS, as “ceramic tableware and kitchenware suitable for food or drink contact”, or under subheading 6913.90.50, HTSUS, as “other ornamental ceramic articles”?

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:

6912 Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china:

Tableware and kitchenware:

Other:

Other:

Other:

* * *

6912.00.48 Other. . . .

* * *

6913 Statuettes and other ornamental ceramic articles:

* * *

6913.90 Other:

* * *

Other:

* * *

6913.90.5000 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 69.12 provides, in pertinent part, the following:

The headings therefore include:

- (A) Tableware such as tea or coffee services, plates, soup tureens, salad bowls, dishes and trays of all kinds, coffee-pots, teapots, sugar bowls, beer mugs, cups, sauce-boats, fruit bowls, cruets, salt cellars, mustard opts, egg-cups, teapot stands, table mats, knife rests, spoons and serviette rings. [Emphasis added]

EN 69.13 provides, in pertinent part, the following:

This heading covers a wide range of ceramic articles of the type designed essentially for the interior decoration of homes, offices assembly rooms, churches, etc., and outdoor ornaments (e.g., garden ornaments).

The heading **does not include** articles falling in more specific headings of the Nomenclature even if they are suited by reason of their nature or finish for decorative use. . . .

...

The heading covers:

(A) **Articles which have no utility value but are wholly ornamental, and articles whose only usefulness is to support or contain other decorative articles or to add to their decorative effect. . . .**

. . .

(B) **Tableware and other domestic articles only if the usefulness of the articles is clearly subordinate to their ornamental character** If, therefore, such decorated articles serve a useful purpose no less efficiently than their plainer counterparts, they are classified in **heading 69.11 or 69.12** rather than in this heading.

In NY R00528, CBP stated that “[s]ince these products are decorative multifunctional articles, consideration of classification under [subheading] 6912.00.4810, HTS[USA] is precluded.” We now believe this statement is incorrect with regard to the subject merchandise. Heading 6912 provides for “ceramic tableware” and similar articles. No exclusion is provided for “decorative” articles, and the candy dishes retain their identity as ceramic tableware even after being decorated. Further, EN 69.12 includes dishes of all kinds, which includes “candy dishes.” Therefore, the subject merchandise is specifically included in heading 6912, HTSUS.

Heading 6913, HTSUS, covers “statuettes” and other articles that are merely ornamental in nature. EN 69.13 precludes articles that are described by more specific headings. As noted above, the subject merchandise is more specifically described as “ceramic tableware.” Further, EN 69.13 excludes from the heading ornamental articles which have a utilitarian value.

The candy dishes are functional articles suitable for contact with food, and are, therefore, precluded from classification in heading 6913, HTSUS, as they are not merely ornamental ceramic articles. See [HQ 962671](#), dated March 14, 2000, wherein we classified ceramic platters under subheading 6912.00.48, HTSUS. Accordingly, we find that the ceramic candy dishes are classified in heading 6912, HTSUS, and more specifically, are covered under the provisions of subheading 6912.00.48, HTSUS. Therefore, for the reasons set forth above, NY R00528 is revoked.

HOLDING:

By application of GRI 1, the ceramic candy dishes are classified in heading 6912, HTSUS, and more specifically, are provided for under subheading 6912.00.48, HTSUS, as: “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Other: Other: Other.” The column one, general rate of duty is 9.8%.

EFFECT ON OTHER RULINGS:

NY R00528, dated July 30, 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](#).

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

GENERAL NOTICE

19 C.F.R. PART 177

REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO THE COUNTRY OF ORIGIN OF CERTAIN REMANUFACTURED PHOTORECEPTOR CARTRIDGES

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

ACTION: Revocation of two country of origin marking ruling letters and treatment relating to the country of origin marking requirements for certain remanufactured photoreceptor cartridges.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking two ruling letters relating to the country of origin marking requirements for certain remanufactured photoreceptor cartridges and any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed revocations was published in the CUSTOMS BULLETIN on August 15, 2007. Two comments were received in response to this notice.

EFFECTIVE DATE: The revocations are effective for merchandise entered or withdrawn from warehouses for consumption on or after June 16, 2009.

FOR FURTHER INFORMATION CONTACT: Monika Brenner, Valuation and Special Programs Branch: (202) 572–8835.

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 that 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 rights and responsibilities under the customs and related laws. In addition, both the trade and CBP share responsibil-

ity 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 on August 15, 2007, in the CUSTOMS BULLETIN, Volume 41, Number 34, proposing to revoke Headquarters Ruling Letter (“HQ”) 560768, dated May 26, 1998, and HQ 561412, dated January 31, 2000, both of which concerned the country of origin marking requirements for certain remanufactured photoreceptor cartridges. Two comments were received in response to the 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 those 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 comment 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 it previously accorded to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

In both HQ 560768 and HQ 561412, the origin of cartridges remanufactured in Canada was considered. CBP found that for purposes of determining whether there was a change in tariff classification pursuant to the applicable rule under 19 C.F.R. § 102.20, the only “foreign material” incorporated into the remanufactured cartridges was the used cartridges imported into Canada. Neither the component parts disassembled from the used cartridge nor the new component parts used to replace damaged or defective parts were considered. The notice published in the CUSTOMS BULLETIN on August 15, 2007, indicated CBP’s intention to revoke HQ 560768 and HQ 561412 to reflect the proper country of origin designation according to the analysis contained in proposed HQ H012926, namely that for purposes of determining whether there is a change in tariff classification pursuant to the applicable rule under 19 C.F.R. § 102.20,

the “foreign materials” incorporated into a remanufactured cartridge include not only the used cartridge, but also the new parts imported into Canada.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking HQ 560768 to reflect the proper country of origin designation according to the analysis contained in proposed HQ H012926, set forth as the Attachment to this document, namely that for purposes of determining whether there is a change in tariff classification pursuant to the applicable rule under 19 C.F.R. § 102.20, the “foreign materials” incorporated into a remanufactured cartridge include not only the used cartridge, but also the new parts imported into Canada. Inasmuch as HQ 561412 is a reconsideration of HQ 560768 and CBP is revoking HQ 560768, CBP, pursuant to 19 U.S.C. § 1625(c)(1), is revoking HQ 561412. 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 31, 2009

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

Attachment



DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H012926
March 31, 2009
MAR-05 OT:RR:CTF:VS H012926 MLR
CATEGORY: Marking

MR. JOHN PETERSON, ESQ.
NEVILLE, PETERSON & WILLIAMS
17 State Street, 19th Floor
New York, New York 10004

RE: Revocation of HQ 560768 and HQ 561412; country of origin marking of remanufactured photoreceptor cartridges

DEAR MR. PETERSON:

This letter is in reference to two Headquarters Ruling Letters, issued to you on behalf of Xerox Corporation (“Xerox”), regarding the country of origin marking requirements applicable to certain remanufactured photoreceptor cartridges. The first letter, Headquarters Ruling Letter (“HQ”) 560768, was issued on May 26, 1998. The second letter, HQ 561412, was issued on January 31, 2000.

In HQ 560768, Customs and Border Protection (“CBP”) held that the country of origin of the remanufactured cartridges, pursuant to section

102.11(b), Customs Regulations (19 C.F.R. § 102.11(b)), was the country of origin of the single material that imparted the essential character to the goods, which was the used cartridges. In 1999, Xerox requested that CBP reconsider the decision in HQ 560768 on the basis of new information. Based on the new information provided, CBP issued HQ 561412, which held that the country of origin of the remanufactured cartridges was the last country in which the goods underwent production, pursuant to 19 C.F.R. § 102.11(d)(3). In both HQ 560768 and HQ 561412, CBP found that for purposes of determining whether there was a change in tariff classification pursuant to the applicable rule under 19 C.F.R. § 102.20, the only “foreign material” incorporated into the remanufactured cartridges was the used cartridges imported into Canada. Neither the component parts disassembled from the used cartridges nor the new parts used to replace damaged or defective parts were considered.

We have had an opportunity to review both of these rulings. For the reasons set forth below, we hereby revoke HQ 560768 and HQ 561412. 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 revocations was published in the *Customs Bulletin*, Volume 41, Number 34, on August 15, 2007. Two comments were received in response to the notice. Your comment opposed the proposed actions, while the other comment favored them.

FACTS:

The imported merchandise consists of remanufactured photoreceptor cartridges designed for use with automatic data processing (“ADP”) laser printers. Xerox’s 1997 and 1999 ruling requests provide that the remanufactured cartridges were classifiable under subheading 8473.30.30, Harmonized Tariff Schedule of the United States (“HTSUS”). (We note the classification changed under the 2007 version of the HTSUS and the remanufactured cartridges are now classifiable under subheading 8443.99, HTSUS). The rulings requests also provided the following facts.

The cartridges will be imported from Canada, and they will include a photoreceptor belt or cylinder, toner receptacle unit, toner developing unit, charge/discharge unit, and cleaning unit. A Xerox contractor manufactures the cartridges in Canada, in part from components salvaged from “spent” or used cartridges that are sourced from a variety of countries. When the used cartridges arrive at the facility in Canada, they will undergo extensive disassembly operations. Salvageable parts from the spent cartridges will be placed in bins, and new parts will be ordered from inventory. No effort will be made to identify the components that impart the essential identity to any of the spent cartridges or to keep those components together during the manufacturing process. Disassembled parts determined to be damaged or defective will be discarded. Components that are likely to be replaced include toner augers and gears, wiper blades, developer housings, and magnetic rollers. Components such as photoreceptor drums and corona wires will be replaced in virtually all cases. Parts accounting for approximately 15 percent of the value of the used cartridges will be salvaged and reused. The remaining components used in the assembly of the remanufactured cartridges will be new parts originating in Canada and several other countries.

The ruling requests described the disassembly operations as follows:

1. Removal of covers,
2. Removal of corona wires,
3. Removal of springs,
4. Release of springs,
5. Removal of plastic pins,
6. Separation of developer units from waste hoppers,
7. Removal of metal axle from gear housing,
8. Removal of photoreceptor drum,
9. Removal of metal wiper blade,
10. Vacuum cleaning of waste hopper to remove toner chemicals therefrom,
11. Inspection of toner auger (agitator) paddle and white gears,
12. Cleaning of wiper blade,
13. Inspection of wiper blade,
14. If wiper blade is suitable for reuse, dipping wiper blade in cleaning solution,
15. Cleaning of wiper blade removed from solution,
16. Inspection of wiper blade,
17. Reinstallation of blade on clean waste hopper,
18. Inspection of developer housing,
19. Vacuum removal of toner chemicals from housing,
20. Removal and inspection of magnetic roller, and
21. Adjustment of tolerances and sealing of developer unit.

The ruling requests described the assembly operations as follows:

1. Cleaning of magnetic roller (magnetic rollers will be replaced in virtually all cases),
2. Filling of toner hopper with a new supply of electrostatic toner chemical,
3. Checking for leakage in refilled cartridges,
4. Affixing traceability label on cartridge,
5. Cleaning of corona wire in ultrasonic bath,
6. Drying of corona wire and installation in a clean container,
7. Installation of new photoreceptor drum (100 percent replacement part),
8. Installation of metal axle into cartridge housing,
9. Installation of corona wire (many of which will be new replacement parts),
10. Application of toner chemical on magnetic roller,
11. Assembly of finished developer unit to waste hopper,
12. Reinstallation of cartridge cover on housing,
13. Testing of cartridge and completion of "traceability card," and
14. Sealing and labeling of refurbished cartridges.

The comment received in favor of the proposed revocations supports CBP's proposal to consider the nature and origin of the new components used during the remanufacturing process when determining the country of origin of the remanufactured cartridges for marking purposes. The comment suggests that the analysis employed by CBP in HQ 560768 and HQ 561412 failed to consider the complexity of the remanufacturing operations being performed and the nature and origin of the new components assembled into the remanufactured cartridge.

Your comment asserts that the proposed revocations should not proceed at this time. You note that as a result of the amendments to the 2007 HTSUS, effective February 4, 2007, the photoreceptor cartridges in HQ 560768 and HQ 561412 are now classified in new subheading 8443.99, HTSUS. At the time your comment was submitted, you note that CBP had not finalized revisions to the NAFTA Marking Rules or to General Note 12, HTSUS, based on the amendments to the 2007 HTSUS. You state that to be instructive to the importing public or to have any precedential value, the revised ruling should address the current classification of the goods and the applicable NAFTA Marking Rule. Your comment suggests that proposed HQ H012926, as written, would not apply to any current or future trade activity.

You also allege that proposed HQ H012926 is at variance with the NAFTA “disassembly” rule, as set forth in 19 C.F.R. § 181.132. Although you acknowledge that the NAFTA Marking Rules have not been amended to include a “disassembly” rule similar to the one specified in 19 C.F.R. § 181.132, you suggest that the “originating” status of disassembled parts would have an impact on the application of the NAFTA Marking Rules pursuant to the NAFTA preference override provision set forth in 19 C.F.R. § 102.19. You further indicate that the analysis in proposed HQ H012926 may favor “less integrated” producers, who receive already disassembled parts in a NAFTA country, over more fully integrated producers, as the less integrated producers could perform their country of origin analysis beginning with the classification of the disassembled parts. You urge CBP to not adopt a position contrary to the policy set forth in 19 C.F.R. § 181.132.

ISSUE:

What is the country of origin of the remanufactured cartridges for marking purposes?

LAW AND ANALYSIS:

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. § 1304) provides that, unless excepted, every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Part 134, Customs Regulations (19 C.F.R. Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. § 1304. “Country of origin” is defined in 19 C.F.R. § 134.1(b) as follows:

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

Section 134.1(j), Customs Regulations (19 C.F.R. § 134.1(j)), provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. A “good of a NAFTA country” is defined in 19 C.F.R. § 134.1(g) as an article for which the country of origin is Canada, Mexico or the United States, as determined under the NAFTA Marking Rules set out at 19

C.F.R. Part 102. Section 102.11, Customs Regulations (19 C.F.R. § 102.11), sets forth the required hierarchy for determining whether a good is a good of a NAFTA country for marking purposes. Paragraph (a) of this section states that the country of origin of a good is the country in which:

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

As the imported remanufactured cartridges are neither wholly obtained or produced nor produced exclusively from domestic (Canadian) materials, we must first apply 19 C.F.R. § 102.11(a)(3). As noted above, Xerox's ruling requests provide that the finished cartridges are classifiable in subheading 8473.30.30, HTSUS. In your comment opposing the proposed revocations of HQ 560768 and HQ 561412, you note that the photoreceptor cartridges are now classified in new subheading 8443.99, HTSUS, as a result of the amendments to the 2007 HTSUS.

As a result of the 2007 HTSUS modifications, revisions to the NAFTA Marking Rules, set forth in 19 C.F.R. Part 102, and to General Note 12, HTSUS, which incorporates Article 401 of the NAFTA into the HTSUS, are necessary. On October 30, 2008, a final rule setting forth technical corrections to the NAFTA Marking rules was published in the Federal Register. 73 FR 64518 (October 30, 2008). For purposes of changing rulings issued in 1998 and 2000, CBP believes that it is clearer to reference the tariff classification of the subject photoreceptor cartridges, as discussed in those rulings. However, in an effort to be as transparent as possible, we have noted the 2008 classification of the remanufactured cartridges in the "FACTS" section of this ruling and we will set forth and apply the technical correction as set forth in the final rule in parentheses. As noted in the 1998 and 2000 Xerox ruling requests, the remanufactured cartridges were classifiable in heading 8473, HTSUS. (In 2008, the remanufactured cartridges are classifiable in subheading 8443.99, HTSUS.)

The applicable change in tariff classification for goods of heading 8473, HTSUS, (subheading 8443.99, HTSUS (2008)), set out in section 102.20(o), provides:

8473 . . . A change to heading 8473 from any other heading, except from heading 8414, 8501, 8504, 8534, 8541, or 8542 when resulting from a simple assembly.

(8443.99 . . . A change to parts or accessories of printers of subheading 8443.31 or 8443.32 from any other heading, except from heading 8414, 8501, 8504, 8534, 8541, or 8542 when resulting from a simple assembly, or from heading 8473 or subheading 8517.70; or . . .)

Xerox's 1998 and 2000 ruling requests state that several of the new components assembled into the cartridges are classified under heading 8473, HTSUS (classified in 2008 as subheading 8443.99, HTSUS). These components include the magnetic rollers, photoreceptor drums, and machine-

dedicated plastic cartridge housings. The requests claim that to the extent that these components are not of Canadian origin, the requisite tariff shift will not be satisfied.

We find that the “foreign materials” to be considered for purposes of 19 C.F.R. § 102.11(a)(3) include not only the complete, used cartridges, but also the new parts used in the assembly of the remanufactured cartridges, such as the photoreceptor drums, magnetic rollers, corona wires, etc. Indeed, this was the original argument made by Xerox in its 1997 submission. Therefore, the question presented is whether these foreign materials, imported into Canada, undergo the change in tariff classification or other requirements set out in section 102.20 for the good. As noted in HQ 560768 and HQ 561412, the used cartridges are classified under the same heading as the remanufactured cartridges. (In 2008, used cartridges are classified under the same subheading as the remanufactured cartridges and do not undergo a change in heading as set forth in the 2008 rule.) Furthermore, with regard to the disassembly of the used cartridges in Canada, 19 C.F.R. § 102.17 provides that:

A foreign material shall not be considered to have undergone an applicable change in tariff classification specified in section 102.20 . . . or to have met any other applicable requirements of those sections merely by reason of . . . (b) dismantling or disassembly.

Your comment opposing the proposed revocations asserts that CBP should not adopt a position that is at variance with the “disassembly rule” in 19 C.F.R. § 181.132. (In short, the “disassembly rule” of 19 CFR 181.132 provides that a component recovered from a good disassembled in a NAFTA Party may be considered originating.) In response to your comment, we note that the Final Rule on disassembly, published in the “Federal Register”, states that 19 CFR 181.132 does not address country of origin for marking purposes, which is governed by 19 C.F.R. Part 102. See *Tariff Treatment Related to Disassembly Operations Under the North American Free Trade Agreement*, 70 Fed. Reg. 37669, 37673 (June 30, 2005). Subsequent CBP rulings have also followed this position. See HQ H004446, dated April 11, 2007, and HQ 563325, dated November 18, 2005. As these rulings note, pursuant to 19 C.F.R. § 102.17, changes in tariff classification resulting from dismantling or disassembly are considered non-qualifying operations for purposes of determining whether there is a change in tariff classification under the applicable rule in 19 C.F.R. § 102.20. Therefore, the used cartridges will not undergo the prescribed tariff shift specified in section 102.20 even after disassembly into component parts and reassembly in Canada. We believe that this position is consistent with the Final Rule on disassembly, 19 CFR 181.132, and CBP’s subsequent rulings interpreting the disassembly rule and the NAFTA Marking Rules. If however, as alleged, the cartridges became originating per 19 C.F.R. § 181.132 and analysis of the NAFTA Marking Rules did not result in the cartridges being goods of a NAFTA country, 19 C.F.R. § 102.19 would then be applicable.

Returning to our analysis under 19 C.F.R. § 102.11(a)(3), we note that some of the new parts, such as the photoreceptor drums and magnetic rollers, are also classified under heading 8473, HTSUS, (under heading 8443, HTSUS (2008)), the same heading as the remanufactured cartridges. Therefore, to the extent that the new parts of foreign origin are classified under heading 8473, HTSUS, (under 8443, HTSUS (2008)), they will also fail to

undergo the applicable change in tariff classification set out in section 102.20. Accordingly, 19 C.F.R. § 102.11(a)(3) is inapplicable for determining the country of origin of the remanufactured cartridges.

Consequently, our analysis proceeds to 19 C.F.R. § 102.11(b)(1) of the hierarchical rules. This section provides:

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

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

When determining the essential character of a good under 19 C.F.R. § 102.11, 19 C.F.R. § 102.18(b)(1) provides that only domestic and foreign materials that are classified in a tariff provision from which a change in tariff classification is not allowed under the § 102.20 specific rule or other requirements applicable to the good shall be taken into consideration. Section 102.18(b)(2), Customs Regulations (19 C.F.R. § 102.18(b)(2)), provides:

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

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

Several foreign and domestic materials used in the assembly of the remanufactured cartridges do not meet the prescribed tariff shift. These materials include the foreign used cartridges and various new parts like the photoreceptor drums and magnetic rollers classified under heading 8473 (under subheading 8443.99, HTSUS (2008)).

Xerox's ruling requests claim that it is impossible to find any single component of the imported photoreceptor cartridges that imparts the essential character, and that several components are roughly of coequal importance to the function of the article. The ruling requests provide that the components of equal importance are the photoreceptor, toner, developing unit, and housing. As discussed above, we do not consider the components salvaged in the disassembly of the used material to be a "foreign material." Therefore, the plastic housing is not taken into consideration, pursuant to 19 C.F.R. § 102.18(b)(1). However, the used cartridges and the new component parts that fail to satisfy the change in tariff classification set out in section 102.20 are taken into consideration. From among the foreign and domestic materials that do not meet the prescribed tariff shift, we agree that no one single material imparts the essential character to the remanufactured cartridge.

The used cartridge is significant in that salvaged parts from the cartridge are used in the production of the remanufactured cartridge. In addition, new parts like the photoreceptor drum, for example, contribute significantly to the functionality of the remanufactured cartridge. Therefore, 19 C.F.R. § 102.11(b) cannot be used to determine the country of origin of the remanufactured cartridges.

The country of origin of the remanufactured cartridges cannot be determined by application of 19 C.F.R. § 102.11(c), as the cartridges are not specifically described in the Harmonized System as a set or mixture, or classified as a set, mixture, or composite good pursuant to General Rule of Interpretation 3.

Accordingly, we next consider section 102.11(d) of the hierarchical rules, which provides:

(d) Where the country of origin of a good cannot be determined under paragraph (a), (b), or (c) of this section, the country of origin of the good shall be determined as follows:

(1) If the good was produced only as a result of minor processing, the country of origin of the good is the country or countries of origin of each material that merits equal consideration for determining the essential character of the good;

(2) If the good was produced by simple assembly and the assembled parts that merit equal consideration for determining the essential character of the good are from the same country, the country of origin of the good is the country of origin of those parts; or

(3) If the country of origin of the good cannot be determined under paragraph (d)(1) or (d)(2) of this section, the country of origin of the good is the last country in which the good underwent production.

19 C.F.R. § 102.11(d).

“Minor processing” is defined in 19 C.F.R. § 102.1(m) as including, in part, the mere dilution with water or another substance, cleaning, application of preservative or decorative coatings, trimming, filing, or cutting off small amounts of excess materials, unloading, reloading, putting up in measured doses, packing, repacking, packaging, repackaging, testing, marking, sorting, or grading, ornamental or finishing operations incidental to textile good production, repairs and alterations, washing laundering, or sterilizing. “Simply assembly” is defined in section 102.1(o) as “the fitting together of five or fewer parts all of which are foreign (excluding fasteners such as screws, bolts, etc.) by bolting, gluing, soldering, sewing or by other means without more than minor processing.”

Based on the facts provided, we find that the operations performed in Canada constitute more than “minor processing” and exceed a “simple assembly.” Therefore, subparagraphs (1) and (2) of 19 C.F.R. § 102.11(d) are inapplicable. Consequently, by application of 19 C.F.R. § 102.11(d)(3), the country of origin of the remanufactured cartridges is the last country in which the goods underwent production. The term “production,” as defined in 19 C.F.R. § 102.1(n), includes manufacturing, processing, and assembling a good. The operations performed in Canada constitute production. Accordingly, we find that the country of origin of the remanufactured cartridges is Canada, the last country in which the goods underwent production prior to entering the United States.

In your comment opposing the proposed revocations, you allege that pursuant to the foregoing analysis, less integrated producers will have an advantage over more fully integrated producers of remanufactured photoreceptor cartridges. With all other facts being equal to those presented in the instant case, a less integrated producer, who obtains parts from the disassembly of a photoreceptor cartridge in a NAFTA country, must also begin an analysis of the NAFTA Marking Rules by considering the articles that were actually imported into the NAFTA country and therein disassembled. Although the disassembled parts may potentially qualify as NAFTA originating under the specific rules of origin set forth in General Note 12, HTSUS, changes in tariff classification resulting from dismantling or disassembly are considered non-qualifying operations for purposes of determining whether there is a change in tariff classification under the applicable rule in 19 C.F.R. § 102.20. See 19 C.F.R. § 102.17. Accordingly, the “foreign materials” that should be considered for purposes of 19 C.F.R. § 102.11(a)(3) include not only the imported used cartridges, but also any new parts imported into the NAFTA territory that are used in the assembly of the remanufactured cartridge. As the imported cartridge does not satisfy the applicable change in tariff classification under 19 C.F.R. § 102.20, the analysis would proceed to 19 C.F.R. § 102.11(b)(1), in the same manner as the analysis for the subject photoreceptor cartridges. Accordingly, we believe the less integrated producer will not receive an advantage over the more fully integrated producer.

In a second hypothetical, a less integrated producer imports into a NAFTA country already disassembled parts. With all other facts being equal to those presented in the instant case, the less integrated producer must consider whether all of the imported parts undergo the change in tariff classification under the applicable rule in 19 C.F.R. § 102.20. Based on the facts presented in the instant case, at least one imported part, the plastic housing, does not undergo the specified change in tariff classification. Therefore, 19 C.F.R. § 102.11(a)(3) would not be applicable, and the analysis would proceed, in the same manner as the analysis for the subject photoreceptor cartridges, to 19 C.F.R. § 102.11(b)(1). Under this second scenario, we believe the less integrated producer will not receive any advantage over the more fully integrated producer for purposes of applying the NAFTA Marking Rules.

HOLDING:

Based on the information provided and pursuant to 19 C.F.R. § 102.11(d)(3), the country of origin of the remanufactured cartridges is Canada, the last country in which the goods underwent production.

EFFECT ON OTHER RULINGS:

HQ 560768, dated May 26, 1998, and HQ 561412, dated January 31, 2000, are hereby revoked.

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