

U.S. Customs and Border Protection



GENERAL NOTICE

19 CFR PART 177

Revocation of a Ruling Letter and Revocation of Treatment Relating to Classification of The Demy Digital Recipe Reader

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the classification of the Demy Digital Recipe Reader.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CPB is revoking a ruling letter concerning the classification of the Demy Digital Recipe Reader under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed action was published in the *Customs Bulletin*, Vol. 44, No. 24, on June 9, 2010. One comment was received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 5, 2011.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke one ruling letter pertaining to the tariff classification of the Demy Digital Recipe Reader was published in the *Customs Bulletin*, Vol. 44, No. 24, on June 9, 2010. One comment was received in response to this notice.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should 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 his agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N055503, CBP found that the Demy Digital Recipe Reader was classified in subheading 8543.70.96, HTSUS, which provides for: “Electrical machines and apparatus, having individual functions, not

specified or included elsewhere in this chapter: Other machines and apparatus: Other: Other: Other.” We are now of the opinion that the correct classification is subheading 8543.70.92, HTSUS, which provides for: “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter: Other machines and apparatus: Other: Other: Electrical machines with translation or dictionary functions.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N055503 to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H068288, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: September 19, 2011

IEVA K. O’ROURKE

For

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H068288

September 19, 2011

CLA-2: OT:RR:CTF:TCM H068288 TNA

CATEGORY: Classification

TARIFF NO.: 8543.70.92

JANE L. TAEGER, DIRECTOR OF COMPLIANCE
SAMUEL, SHAPIRO & COMPANY, INC.
ONE CHARLES CENTER
100 N. CHARLES STREET, SUITE 1200
BALTIMORE, MD 21201

RE: Revocation of NY N055503; Classification of Demy Digital Recipe Reader

DEAR Ms. TAEGER:

This letter is in response to your request on behalf of your client, Key Ingredient Corporation (“Key Ingredient”), for reconsideration of New York Ruling Letter (“NY”) N055503, dated April 20, 2009. In NY N055503, U.S. Customs and Border Protection (“CBP”) classified the Demy Electronic Recipe Reader under subheading 8543.70.96, Harmonized Tariff Schedule of the United States (HTSUS), as “[e]lectrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter: Other machines and apparatus: Other: Other: Other.” We have reviewed NY N055503 and found it to be incorrect. For the reasons set forth below, we hereby revoke NY N055503.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N018967 was published on June 9, 2010, in Volume 44, Number 24, of the *Customs Bulletin*. CBP received one comment in response to this notice, which is addressed in the ruling.

FACTS:

The merchandise at issue is the “Demy,” a portable digital recipe reader. The Demy measures 7.8 inches in length by 5.4 inches in width and contains a 7 inch color touch-screen with a graphical navigation interface. The screen can be read horizontally or vertically and will automatically adjust based on the device’s placement. The Demy stores and sorts recipes, photographs and definitions of completed food dishes. The device comes preloaded with 250 recipes, and a consumer can download up to 2500 of their own recipes from Key Ingredient’s website. To do so, consumers connect the Demy to their personal computer via a USB cable. On the Demy, recipes are indexed and can be retrieved alphabetically. The recipes can also be filed on the “Short List,” another of the device’s applications, for quick retrieval.

Another of the Demy’s functions is to list common food ingredients, describe each ingredient, supply a photo of it, and suggest a substitute. In addition, the device includes a specialized application for the conversion of measurements but does not otherwise contain a calculating device. It also incorporates a piezo buzzer for the alarm in the device’s “Kitchen Timer” application. The Demy comes packaged with an AC adapter, USB cable, and documentation.

ISSUE:

Whether the Demy electronic recipe reader is classified in subheading 8543.70.96, HTSUS, as an “other” electrical machine or apparatus having individual functions not specified or included elsewhere, or in subheading 8543.70.92, HTSUS, as an electrical machine with translation or dictionary functions?

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings 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 may then be applied. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and, *mutatis mutandis*, to GRIs 1 through 5.

The HTSUS subheadings at issue are as follows:

8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
8543.70	Other machines and apparatus:
	Other:
	Other:
8543.70.9200	Electrical machines with translation or dictionary functions; flat panel displays other than for articles of heading 8528, except for subheadings 8528.51 or 8528.61
8543.70.96	Other

It is not in dispute that electronic digital readers such as the Demy are not specifically provided for in any heading of chapter 85, HTSUS. They are therefore classified in heading 8543, HTSUS, because their only function is to enable recipes to be read electronically. It is also not in dispute that the Demy is classified under subheading 8543.70, HTSUS, because electronic readers are machines “other” than the ones named in subheadings 8543.10 through 8543.30 of the heading. Thus, the issue here is the correct 8-digit classification of the Demy.

In your letter of July 2, 2009, you argue that the Demy is properly classified under subheading 8543.70.92, HTSUS, which provides for electrical machines with translation or dictionary functions. You reason that the Demy performs a dictionary function. In support of your argument, you quote the *Merriam Webster’s Dictionary* definitions of “dictionary,” which include: “a reference source in print or electronic form containing words usually alphabetically arranged along with information about their forms, pronunciations, functions, etymologies, meanings, and syntactical and idiomatic uses,” as well as “a computerized list (as of items of data or words) used for reference

(as for information retrieval or word processing).” See www.merriam-webster.com.

Because the HTSUS does not define the term “dictionary,” CBP is permitted to consult dictionaries and other lexicographic materials to determine its meaning. See, e.g., *Lonza v. United States*, 46 F.3d. 1098; 1995 U.S. App. LEXIS 1821; 16 Int’l Trade Rep (BNA) 2551. The *Oxford English Dictionary*, for example, defines “dictionary” as:

1.a. A book dealing with the individual words of a language (or certain specified classes of them), so as to set forth their orthography, pronunciation, signification, and use, their synonyms, derivation, and history, or at least some of these facts: for convenience of reference, the words are arranged in some stated order, now, in most languages, alphabetical; and in larger dictionaries the information given is illustrated by quotations from literature; a word-book, vocabulary, or lexicon.

d. An ordered list stored in and used by a computer; *spec.* (a) a list of contents, e.g. of a database; (b) a list of words acceptable to a word-processing program, against which each word of text is checked.

2.a. By extension: A book of information or reference on any subject or branch of knowledge, the items of which are arranged in alphabetical order; an alphabetical encyclopædia: as a *Dictionary of Architecture, Biography, Geography, of the Bible, of Christian Antiquities, of Dates*, etc.

The Demy contains both a recipe list and an ingredient list that are in alphabetical order and which contain definitions and pictures of the items. As such, we find that the definition of “dictionary” encompasses the Demy, which is a recipe dictionary. Accordingly, the Demy is classified under subheading 8543.70.92, HTSUS, as an electrical machine with a dictionary function.

The Demy is imported packaged together with various accessories ready for retail sale. Merchandise classifiable under more than one heading is classified according to GRI 3. GRI 3(b) provides, in relevant part:

When, by application of Rule 2(b) or for any other reason, goods are *prima facie* classifiable under two or more headings, classification shall be effected as follows:

...

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

The Harmonized Commodity Description and Coding System Explanatory Notes (EN’s) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the EN’s provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system. CBP believes the EN’s should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN VIII to GRI 3(b) provides:

The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

EN X to GRI 3(b) provides:

For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which: (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings; (b) consist of products or articles put up together to meet a particular need or carry out a specific activity...; and (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

The Demy meets the description of “goods put up in sets for retail sale.” The components of the sets consist of various articles, which, if imported separately, would be classified in different headings. The AC adapter (heading 8504, HTSUS), USB cable (heading 8544, HTSUS) are put up together with the Demy (heading 8543, HTSUS) to carry out the specific activity of operating the Demy. As imported, they are packaged for retail sale to the ultimate purchaser without the need for repacking. *See* EN GRI 3(b). The essential character of this set is conveyed by the Demy because it is the reason why a consumer would purchase the set.

CBP received one comment in response to the proposed revocation. The commenter noted that NY N067876, dated August 7, 2009, classified three models of the Wikireader, one of which is similar to the Demy. As a result, commenter requested that CBP reconsider its classification of that model. In response, we note that NY N067876 was already the subject of a reconsideration request, and that our office is currently considering the matter.

HOLDING:

Under the authority of GRI 1, the Demy is classified in heading 8543, HTSUS. It is specifically provided for in subheading 8543.70.92, HTSUS, which provides for “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter: Other machines and apparatus: Other: Electrical machines with translation or dictionary functions...” The 2009 column one, general rate of duty is free. When the Demy and the accessories with which it is packaged are imported as a set, the set is also classified in subheading 8543.70.92, HTSUS, pursuant to GRI 3(b).

EFFECT ON OTHER RULINGS:

NY N055503, dated April 20, 2009, is revoked. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

Sincerely,

IEVA K. O’ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF A CERTAIN
TERRACOTTA GRILL**

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

ACTION: Notice of proposed revocation of a ruling letter and proposed modification of treatment relating to tariff classification of a terracotta grill.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to revoke one ruling letter relating to the tariff classification of a terracotta grill under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before November 4, 2011.

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

FOR FURTHER INFORMATION CONTACT: Aaron Marx, Tariff Classification and Marking Branch: (202) 325–0195

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, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the tariff classification of a terracotta grill. Although in this notice, CBP is specifically referring to the revocation of NY N025431, dated April 3, 2008 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP proposes 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 notice of this proposed action.

In NY N025431, CBP determined that the terracotta grill was classified in heading 6914, HTSUS, specifically in subheading 6914.90.80, HTSUS, which provides for "Other ceramic articles: Other: Other". It is now CBP's position that the subject terracotta grill is properly classified in heading 6912, HTSUS, specifically in subheading 6912.00.50, HTSUS, which provides for: "Ceramic table-

ware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Other”.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N025431, and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the subject terracotta grill according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H141335, 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: September 19, 2011

LEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N025431

April 3, 2008

CLA-2-69:OT:RR:E:NC:1:128

CATEGORY: Classification

TARIFF NO.: 6914.90.8000

MR. TROY CRAGO
ATICO INTERNATIONAL USA, INC.
501 SOUTH ANDREWS AVENUE
FT. LAUDERDALE, FL 33301

RE: The tariff classification of a terracotta grill from China.

DEAR MR. CRAGO:

In your letter dated March 27, 2008, you requested a tariff classification ruling.

The product under consideration is a Terracotta Grill, Item Number A050AA01448. By weight, the product material consists of 90% terracotta (frame/base) and 10% stainless steel (grill). It measures 17.25" in diameter by 8.25" in height.

The subject terracotta grill is composed of different components and is considered a composite good. Regarding the essential character of the terracotta grill, the Explanatory Notes to GRI 3 (b) (VIII) state that the factor which determines essential character will vary between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods. When the essential character of a composite good can be determined, the whole product is classified as if it consisted only of the part that imparts the essential character to the composite good. In the case of the subject merchandise, the ceramic (terracotta) portion imparts the essential character to the good.

The applicable subheading for the Terracotta Grill, Item Number A050AA01448, will be 6914.90.8000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other ceramic articles: Other: Other." The rate of duty will be 5.6% ad valorem.

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

This 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 Sharon Chung at 646-733-3028.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H141335
CLA-2 OT:RR:CTF:TCM H141335 AMM
CATEGORY: Classification
TARIFF NO.: 6912.00.50

MR. TROY CRAGO
ATICO INTERNATIONAL USA, INC.
501 SOUTH ANDREWS AVENUE
FT. LAUDERDALE, FL 33301

RE: Revocation of New York Ruling Letter N025431; Tariff Classification of a Terracotta Grill

DEAR MR. CRAGO,

This is in reference to New York Ruling Letter (NY) N025431, dated April 3, 2008, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a Terracotta Grill. In that ruling, Customs and Border Protection (CBP) classified the grill under heading 6914, HTSUS, which provides for “Other ceramic articles”. We have reviewed NY N025431 and found it to be incorrect. For the reasons set forth below, we intend to revoke that ruling.

FACTS:

In NY N025431, the product at issue was identified as “a Terracotta Grill, Item Number A050AA01448. By weight, the product material consists of 90% terracotta¹ (frame/base) and 10% stainless steel (grill). It measures 17.25 inches in diameter by 8.25 inches in height.” A black and white photo of the product included in the file indicates that the terracotta base has a bowl shape, with a cut-out on the side for inserting solid fuel. The metal grill lies across the top.

CBP classified the Terracotta Grill as a composite good, pursuant to GRI 3(b), and found that the ceramic portion imparted its essential character. As such, CBP classified the Grill under heading 6914, HTSUS, specifically under subheading 6914.90.80, which provides for “Other ceramic articles: Other: Other”.

ISSUE:

What is the proper classification of the Terracotta Grill under the HTSUS?

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

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

¹ Terracotta is a clay-based unglazed ceramic.

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 2011 HTSUS provisions at issue are as follows:

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

6912.00.50 Other

6914 Other ceramic articles:

6914.90 Other:

6914.90.80 Other

Note 1 of Chapter 69, HTSUS, states: “This chapter applies only to ceramic products which have been fired after shaping. Headings 6904 to 6914 apply only to such products other than those classifiable in headings 6901 to 6903.”

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While neither 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 the headings. It is CBP’s practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to heading 69.12 states, in pertinent part: “The headings therefore include: ... (C) Other household articles such as ash trays, hot water bottles and matchbox holders.”

The EN to heading 69.14 states, in pertinent part:

This heading covers all ceramic articles not covered by other headings of this Chapter or in other Chapters of the Nomenclature.

* * *

It includes, *inter alia* : (1) Stoves and other heating apparatus, made essentially of ceramics (generally of earthenware, sometimes of common pottery, etc.); non-refractory firebrick cheeks; ceramic parts of stoves or fireplaces, ceramic linings for wood burning stoves, including tiles of a kind specially adapted for stoves. Electric heating apparatus is, however, classified in heading 85.16.

* * *

Heading 6912, HTSUS, provides for “ceramic ... other household articles ... other than of porcelain or china”. The phrase “other household articles” is not clearly defined in the HTSUS. When, as in this case, a tariff term is not defined by the HTSUS or its legislative history, “the term’s correct meaning is its common meaning.” *Mita Copystar Am. v. U.S.*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to

be the same as its commercial meaning. *Simod Am. Corp. v. U.S.*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *C.J. Tower & Sons v. U.S.*, 673 F.2d 1268, 1271 (CCPA 1982); *Simod*, 872 F.2d at 1576.

“Household’ is a broad term; the dictionary defines it as ‘of a household or home; domestic.’” *Hartz Mt. Corp. v. United States*, 903 F. Supp. 57, 59 (Ct. Int’l Trade 1995). CBP has consistently interpreted the phrase “household articles” to include items which are used outdoors in the immediate vicinity of the home. For example, in NY N108099, dated June 24, 2010, CBP classified an outdoor plastic key concealing case under heading 3924.90.56, HTSUS, which provides for “... other household articles ... of plastics: other: other”. In NY N104201, dated May 10, 2010, CBP classified a can-shaped cooler which was intended for outdoor, garden, or camping use under heading 7323, HTSUS, which provides for “... other household articles and parts thereof, of iron or steel; ...”. In NY R00617, CBP classified a set of polypropylene stones used to create an outdoor garden pathway under heading 3924.90.55, HTSUS (2004), which provides for “... other household articles ... of plastics: other: other”.

It follows from the above that ceramic products which are intended for use outdoors, in the immediate vicinity of a home, fall within the scope of “other household articles” for purposes of classification under heading 6912, HTSUS. The Terracotta Grill is a ceramic outdoor grill intended for backyard cooking. Therefore, it is properly classified under heading 6912, HTSUS, specifically under subheading 6912.00.50, which provides for “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Other”.

Heading 6914, HTSUS, which provides for “Other ceramic articles”, is a basket provision, which covers ceramic articles that are not provided for in any other heading of Chapter 69. See EN 69.14. Because the Terracotta Grill is properly classified under heading 6912, HTSUS, it is precluded from classification under 6914, HTSUS.

HOLDING:

By application of GRI 1, the Terracotta Grill is classified in subheading 6912.00.50, HTSUS, which provides for: “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Other”. The general, column one rate of duty is 6% *ad valorem*. Duty rates are provided for your convenience and are subject to change.

EFFECT ON OTHER RULINGS:

New York Ruling N025431, dated April 3, 2008, is hereby REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177**PROPOSED MODIFICATION OF RULING LETTER AND
PROPOSED MODIFICATION OF TREATMENT RELATING
TO CLASSIFICATION OF ACETYL L-CARNITINE HCL**

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

ACTION: Notice of proposed modification of ruling letter and treatment relating to the classification of Acetyl L-Carnitine HCl.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CPB proposes to modify one ruling concerning the classification of Acetyl L-Carnitine HCl under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB proposes to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before November 4, 2011.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulation and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor Washington, D.C. 20229–1179. Comments submitted may be inspected at 799 9th St. N.W. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

SUPPLEMENTARY INFORMATION:**Background**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are

“informed compliance” and **“shared responsibility.”** These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (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 proposes to revoke a ruling pertaining to the classification of Acetyl L-Carnitine HCl. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) E82956, dated June 18, 1999 (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 data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., 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 proposes 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 his agents for importations of merchandise subsequent to this notice.

In NY E82956, CBP ruled that subject merchandise was classified in subheading 2923.90.00, HTSUS, which provides for “Quaternary ammonium salts and hydroxides; lecithins and other phosphoamino-lipids, whether or not chemically defined: Other.” NY E82956 also grants the subject merchandise duty-free treatment in accordance with General Note 13, HTSUS. This ruling is incorrect because the subject Acetyl L-Carnitine HCl, while correctly classified in subheading 2923.90.00, HTSUS, is not listed in the Pharmaceutical Appendix as required by General Note 13. As such, it is ineligible for duty-free treatment.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY E82956, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H118441. (*see* Attachment “B” to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes 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: September 19, 2011

IEVA K. O’ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

NY E82956
June 18, 1999
CLA-2-29:RR:NC:2:240 E82956
CATEGORY: Classification
TARIFF NO.: 2923.90.0000

MR. JOSEPH J. CHIVINI
AUSTIN CHEMICAL COMPANY, INC.
1565 BARCLAY BOULEVARD
BUFFALO GROVE, ILLINOIS 60089

RE: The tariff classification of N-Acetyl-L-Carnitine Hydrochloride from Italy

DEAR MR. CHIVINI:

In your letter dated May 27, 1999, you requested a tariff classification ruling.

The applicable subheading for Acetyl-L-Carnitine Hydrochloride will be 2923.90.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for Quaternary ammonium salts and hydroxides; lecithins and other phosphoamino-lipids: Other..... Pursuant to General Note 13 to the Harmonized Tariff Schedule, this product will be free 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 Stephanie Joseph at 212-637-7066.

Sincerely,

ROBERT B. SWIERUPSKI
Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H118441

CLA-2 OT:RR:CTF:TCM H118441 TNA

CATEGORY: Classification

TARIFF NO.: 2923.90.00

MR. JOSEPH J. CHIVINI
AUSTIN CHEMICAL COMPANY, INC.
1565 BARCLAY BOULEVARD
BUFFALO GROVE, ILLINOIS 60089

RE: Modification of NY E82956; Tariff Classification of N-Acetyl-L Carnitine Hydrochloride from Italy

DEAR MR. CHIVINI:

This letter is regarding New York Ruling Letter (“NY”) E82956, dated June 18, 1999, which pertains to the classification of N-Acetyl-L Carnitine Hydrochloride under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed this ruling and have found it to be partly in error. Therefore, this ruling modifies NY E82956.

FACTS:

The merchandise at issue consists of Acetyl-L-Carnitine Hydrochloride. Carnitine is a *quaternary ammonium compound* biosynthesized from amino acids. In living cells, it is required for the transport of *fatty acids* from the intracellular fluid into the *mitochondria* during the breakdown of fats for the generation of metabolic energy. In humans and in other animals, carnitine is produced within the body, primarily in the liver and kidneys. Carnitine exists in two *stereoisomers*: the biologically active form, L-carnitine, and the biologically inactive form, D-carnitine.

In NY E82956, the subject merchandise was classified in subheading 2923.90.00, HTSUS, which provides for “Quaternary ammonium salts and hydroxides; lecithins and other phosphoaminolipids, whether or not chemically defined: Other.” It was also given duty-free treatment pursuant to General Note 13 to the HTSUS.

ISSUE:

Whether Acetyl-L-Carnitine Hydrochloride that is classified in subheading 2923.90.00, HTSUS, is eligible for duty-free treatment under General Note 13, HTSUS?

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

2923 Quaternary ammonium salts and hydroxides; lecithins
 and other phosphoaminolipids, whether or not chemically
 defined:

2923.90.00 Other

General Note 13, HTSUS, states the following:

Pharmaceutical products. Whenever a rate of duty of “Free” followed by the symbol “K” in parentheses appears in the “Special” subcolumn for a heading or subheading, any product (by whatever name known) classifiable in such provision which is the product of a country eligible for tariff treatment under column 1 shall be entered free of duty, provided that such product is included in the pharmaceutical appendix to the tariff schedule. Products in the pharmaceutical appendix include the salts, esters and hydrates of the International Non-proprietary Name (INN) products enumerated in table 1 of the appendix that contain in their names any of the prefixes or suffixes listed in table 2 of the appendix, provided that any such salt, ester or hydrate is classifiable in the same 6-digit tariff provision as the relevant product enumerated in table 1.

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

The EN for heading 29.23 states, in pertinent part, the following:

Quaternary organic ammonium salts contain one tetravalent nitrogen cation $R^1R^2R^3R^4N^+$ where R^1 , R^2 , R^3 and R^4 may be the same or different alkyl or aryl radicals (methyl, ethyl, tolyl etc.).

This cation may be associated with the hydroxide ion (OH^-) to give a **quaternary ammonium hydroxide** of general formula $R_4N^+OH^-$ corresponding to its inorganic parent ammonium hydroxide NH_4OH .

The residuary valence may, however, be filled by other anions (chloride, bromide, iodide, etc.) to give **quaternary ammonium salts**.

As an initial matter, we note that the classification of the subject merchandise in subheading 2923.90.00, HTSUS, is not at issue here. Carnitine is a *quaternary ammonium compound* because it contains one tetravalent nitrogen cation $R^1R^2R^3R^4N^+$. *See* EN 29.23. As such, carnitine is provided for *eo nomine* in heading 2923, HTSUS, and CBP has consistently classified pure L-carnitine in this heading. *See, e.g.*, NY N011436, dated June 1, 2007; NY F80631, dated January 11, 2000; NY E88640, dated December 8, 1999; HQ 964589, dated March 8, 2002. Furthermore, the classification of the subject merchandise in subheading 2923.90.00, HTSUS, in particular, is not challenged because, while the merchandise is correctly classified in heading 2923, HTSUS, it is not covered by the terms of other subheadings therein.

Subheading 2923.90.00, HTSUS, has a “K” listed in the “special” subcolumn; therefore, General Note 13 is applicable. General Note 13 allows pharmaceutical products with this symbol, by whatever name known, to be entered free of duty, provided that the product is listed in the pharmaceutical appendix to the HTSUS. CBP recently addressed the classification of various carnitine compounds. See HQ H081683, dated August 27, 2010. In HQ H081863, CBP classified four different L-carnitine compounds, one of which was the compound Acetyl-L Carnitine Hydrochloride, the same compound at issue in the present case. In conjunction with HQ H081683, we obtained laboratory reports regarding the composition and classification of these compounds. In particular, Laboratory Report #20100816 addressed whether Acetyl-L Carnitine Hydrochloride could be included in the pharmaceutical appendix by virtue of General Note 13.

As described by Laboratory Report #20100816, Acetyl L-Carnitine HCl is a salt of an acetylated derivative of L-carnitine. As such, Laboratory Report #20100816 found that it is not eligible for duty-free treatment under General Note 13, HTSUS, because this specific compound is not listed in the Pharmaceutical Appendix. While both carnitine and levocarnitine are listed in Table 1 of the Pharmaceutical Appendix and hydrochloride is listed in Table 2, no acetylated version of these compounds are listed. As a result, not every component of the subject N-Acetyl L-Carnitine HCl is listed in the pharmaceutical appendix, as required for duty-free treatment. Therefore, NY E82956’s granting duty-free treatment to the subject merchandise in accordance with General Note 13 was incorrect.

HOLDING:

By application of GRI 1, the Acetyl-L-Carnitine is classified in heading 2923, HTSUS, and specifically under subheading 2923.90.00, HTSUS, which provides for: “Quaternary ammonium salts and hydroxides; lecithins and other phosphoaminolipids, whether or not chemically defined: Other.” As such, the applicable duty rate is 6.2% *ad valorem*.

The subject merchandise is NOT eligible for duty-free treatment under General Note 13, HTSUS.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY E82956, dated June 18, 1999, is MODIFIED.

Sincerely,

MYLES B. HARMON

Director,

Commercial and Trade Facilitation Division

19 CFR PART 177

MODIFICATION AND REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF ELECTRIC CHRISTMAS LIGHT SETS FROM CHINA

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

ACTION: Modification and revocation of ruling letters and revocation of treatment relating to the classification of electric Christmas light sets from China.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CPB is modifying two ruling letters and revoking three ruling letters concerning the classification of electric Christmas light sets under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CPB to substantially identical merchandise. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 44, No. 24, on June 9, 2010. CBP received two comments in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 5, 2011.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

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 commu-

nity's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify two ruling letters and revoke three ruling letters pertaining to the classification of electric Christmas light sets from China was published in the *Customs Bulletin*, Vol. 44, No. 24, on June 9, 2010. CBP received two comments in response to this notice.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved 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 his agents for importations of merchandise subsequent to this notice.

In NY I83131, NY I83130, NY R03451, NY H80773, and NY I88935, CBP classified electric Christmas light sets from China in subheading 9405.40.00, HTSUS, which provides for: "Other electric lamps and lighting fittings: Other." It is now CBP's decision that the electric light sets at issue are of the kind used on Christmas trees and are therefore classified as such in subheading 9405.30.00, HTSUS, which provides for: "Lighting sets of a kind used for Christmas trees."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY I83131 and NY I83130, and revoking NY R03451, NY H80773, and NY I88935 and any other ruling not specifically identified, to reflect the proper

classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letters (“HQ”) H070667, H095410, H072441, H070671, and H070673, set forth as attachments 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 the publication in the *Customs Bulletin*.

Dated: September 19, 2011

IEVA K. O’ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ H070667

September 19, 2011

CLA-2 OT:RR:CTF:TCM H070667 TNA

CATEGORY: Classification

TARIFF NO.: 9405.30.00

JENNY DAVENPORT
WAL-MART STORES, INC.
MAIL STOP #0410-L-32
601 N. WALTON
BENTONVILLE, AR 72716-0410

RE: Modification of NY I83131; Classification of electric Christmas light sets from China

DEAR Ms. DAVENPORT:

This letter is in reference to New York Ruling Letter (“NY”) I83131, issued to Wal-mart Stores, Inc. (“Wal-mart”) on July 10, 2002, concerning the tariff classification of electric light sets from China. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under subheading 9405.40.8000, Harmonized Tariff Schedule of the United States (“HTSUS”), as other electric lamps and lighting fittings: of base metal. We have reviewed NY I83131 and found it to be partly in error. For the reasons set forth below, we hereby modify NY I83131.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY I83131 was published on June 9, 2010, in Volume 44, Number 24, of the *Customs Bulletin*. CBP received two comments in response to this notice, neither of which addressed HQ H070667.

FACTS:

The subject merchandise consists of four different styles of light sets, each with electrical green wire harnesses and plastic sockets that contain miniature light bulbs. Style number 76-756M consists of a net-shaped wire harness that measures 7 1/2 feet in length by 8 inches in width and contains 150 plastic sockets with multicolored light bulbs. It is primarily used to decorate the outside area of the home, but could also be used to decorate the mantelpieces or stairways inside the home.

Style number 82505WM consists of an electrical green wire harness that measures approximately 83 feet in length and contains 200 plastic sockets with miniature multicolored light bulbs. It is primarily used to decorate the outside area of the home, but could also be used to decorate the mantelpieces or stairways inside the home.

Style number 78-971M consists of two electrical green wire harnesses which together measure about 18 feet in length and contains 400 plastic sockets with miniature multicolored light bulbs in three-piece clusters. It could be used to decorate Christmas trees as well as the outside area of the home, such as windows and fences.

Style number 66-596M consists of three electrical green wire harnesses which together measure about 114 feet in length and contains 450 plastic

sockets with miniature multicolored light bulbs. It could be used to decorate Christmas trees as well as the outside area of the home, such as windows and fences.

In NY I83131, dated June 13, 2002, CBP classified the light sets under 9405.40.8000, HTSUS, as: “other electric lamps and lighting fittings: of base metal: other.”

ISSUE:

Whether the subject electric light sets should be classified under subheading 9405.40.80, HTSUS, as “other electric lamps,” or under subheading 9405.30, HTSUS, as “lighting sets of a kind used for Christmas trees”?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and, *mutatis mutandis*, to GRIs 1 through 5.

The HTSUS provisions under consideration are as follows:

- | | |
|------------|---|
| 9405 | Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included: |
| 9405.30.00 | Lighting sets of a kind used for Christmas trees |
| 9405.40 | Other electric lamps and lighting fittings:
Of base metal: |
| 9405.40.80 | Other |

In examining the competing subheadings within heading 9405, HTSUS, we note that subheading 9405.30.00, HTSUS, is a “principal use” provision within the meaning ascribed in *Primal Lite v. United States*, 15 F. Supp. 2d 915 (CIT 1998); *aff’d* 182 F. 3d 1362 (Fed. Cir. 1999). In *Primal Lite*, the court concluded that because subheading 9405.30.00, HTSUS, is a principal use provision, it is therefore subject to Additional U.S. Rule of Interpretation 1(a), HTSUS, which states as follows:

a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

Additionally, the *Primal Lite* court, in discussing principal use, held that “it is the use of the class or kind of goods being imported that is controlling, rather than the specific use to which the importation itself is put,” i.e. goods need not be actually used in the same manner as the entire class or kind in order to be recognized as part of that class or kind. CBP has repeatedly upheld this analysis by defining principal use as the use of the class or kind of the merchandise at issue that exceeds any other use. *See, e.g.*, HQ 964954, dated April 18, 2002; HQ 963264, dated May 4, 2001; HQ 963032, dated July 24, 2000; and HQ 083885, dated July 18, 1989. Therefore, to classify the subject merchandise, it is necessary to determine whether it belongs to the class or kind of goods that are recognized as being principally used for the decoration of Christmas trees.

Courts have provided several factors to apply when determining whether merchandise falls within a particular class or kind of good. They include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g. the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *See United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976).

Each of the subject light sets is designed to be used at Christmas. As evidenced by statements in the filing request, style numbers 78–971M and 66–596M are designed for the decoration of Christmas trees, as well as the outside of homes. Style numbers 78–971M, 66–596M, and 82505WM have green wire that is many feet long and contain many multicolored bulbs. They are intended to be used to decorate the outside and the inside of the home during the Christmas season. CBP has consistently held that the ability to use these types of light sets outdoors is not a barrier to classification in subheading 9405.30, HTSUS, when it was determined that they were of the class or kind of merchandise that was principally used for decorating Christmas trees. *See, e.g.*, HQ 967008, dated June 29, 2004 (“Because of this dual indoor and outdoor use, as well as the statements regarding the potential for varied indoor use, it is asserted the [subject merchandise] are not limited to decorating only Christmas trees. Regarding this dual indoor and outdoor use, CBP does not believe that this factor by itself is determinative for finding the lights at issue are part of a class or kind of light that is principally used for decorative purposes other than Christmas trees.”) *See also* HQ 966882, dated March 10, 2004; NY 183154, dated July 17, 2002; NY 183156, dated July 17, 2002; NY 189048, dated November 7, 2003; NY 183157, dated July 10, 2002; NY 182127, dated July 1, 2002; and NY 182362, dated July 1, 2002.

Finally, because of these lights’ packaging, CBP believes that the ultimate expectation of the purchaser is that these lights are intended for use on Christmas trees. Although CBP recognizes that many consumers may purchase these lights for use on objects other than Christmas trees, such as hanging them outdoors or in a living room, the subject merchandise’s long wire harness and shaped bulbs means that it is of the same type of lights as are hung on Christmas trees. We also note that substantially similar merchandise has repeatedly been classified under subheading 9405.30.00, HTSUS. *See, e.g.*, HQ 966882 ; HQ 966962, dated February 9, 2005; HQ 967008;

HQ 967408, dated February 9, 2005; *NY J89048* ; *NY J83867*, dated May 7, 2003, *NY I85459*, dated September 12, 2002; *NY I83664*, dated July 17, 2002; *NY I82126*, dated July 1, 2002; and *NY I83133*, dated July 10, 2002. As a result, CBP finds that style numbers 78–971M, 66–596M, and 82505WM are classified under subheading 9405.30.00, HTSUS, which provides for “Lighting sets of a kind used for Christmas trees.”

By contrast, light sets that are classified under subheading 9405.40.80, HTSUS, because of certain physical characteristics are recognized as not being of the class or kind of merchandise that is principally used for Christmas trees. Net light sets, of which style number 76–756M is a kind, falls into this category. *See, e.g.*, *NY I83486*, dated August 5, 2002. As a result, style number 76–756M remains classified under subheading 9405.40.80, HTSUS, which provides for “Other electric lamps and lighting fittings: Other.”

HOLDING:

Under the authority of GRI 1, the electric light sets, style numbers 82505WM, 78–971M, and 66–596M, are classified in subheading 9405.30.00, HTSUS, which provides for “Lighting sets of a kind used for Christmas trees.” The 2010 column one general rate of duty is 8% *ad valorem*.

Style number 76–756M continues to be classified under subheading 9405.40.80, HTSUS, which provides for “Other electric lamps and lighting fittings: Other.” The 2011 column one general rate of duty is 3.9% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY I83131, dated July 10, 2002, is MODIFIED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

Sincerely,

IEVA K. O’ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT B]

HQ H095410

September 19, 2011

CLA-2 OT:RR:CTF:TCM H095410 TNA

CATEGORY: Classification

TARIFF NO.: 9405.30.00

MS. JENNY DAVENPORT
WAL-MART STORES, INC.
MAIL STOP #0410-L-32
601N. WALTON BENTONVILLE, AR 72716-0410

RE: Modification of NY I83130; Classification of electric Halloween light sets from China

DEAR MS. DAVENPORT:

This letter is in reference to New York Ruling Letter (“NY”) I83130, issued to Wal-Mart Stores, Inc. on July, 3, 2002, concerning the tariff classification of electric Halloween light sets from China. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under subheading 9405.40.8000, Harmonized Tariff Schedule of the United States (“HTSUS”), as other electric lamps and lighting fittings: of base metal. We have reviewed NY I83130 and found it to be partly in error. For the reasons set forth below, we hereby modify NY I83130.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY I83130 was published on June 9, 2010, in Volume 44, Number 24, of the *Customs Bulletin*. CBP received two comments in response to this notice, which are addressed in the ruling.

FACTS:

The merchandise at issue consists of two types of electric light sets.¹ Style Number 65-420 is an electric black wire harness that measures approximately 17 feet in length. It contains 50 plastic sockets with miniature multi-colored light bulbs. Light sets in the same style with orange bulbs, and sets with purple bulbs, were also imported.

Style Number 65-500 is an electrical black wire harness that measures approximately 32 feet in length. It contains 100 plastic sockets with miniature purple light bulbs. Light sets in the same style with orange light bulbs were also imported.

In NY I83130, CBP classified Style Numbers 65-420 and 65-500 under subheading 9405.40.80, HTSUS, as: “other electric lamps and lighting fittings: of base metal: other.”

ISSUE:

Whether the subject electric light sets should be classified under subheading 9504.40.80, HTSUS, as “other electric lamps,” or under subheading 9504.30, HTSUS, as “lighting sets of a kind used for Christmas trees”?

¹ NY I83130 classified four different types of electric light sets. Only two of those, Style Numbers 65-420 and 65-500, are at issue in this ruling.

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and, *mutatis mutandis*, to GRIs 1 through 5.

The HTSUS provisions under consideration are as follows:

- 9405 Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
- 9405.30.00 Lighting sets of a kind used for Christmas trees
- 9405.40 Other electric lamps and lighting fittings:
- 9405.40.80 Other

In examining the competing subheadings within heading 9405, HTSUS, we note that subheading 9405.30.00, HTSUS, is a “principal use” provision within the meaning ascribed in *Primal Lite v. United States*, 15 F. Supp. 2d 915 (CIT 1998); *aff’d* 182 F. 3d 1362 (Fed. Cir. 1999). In *Primal Lite*, the court concluded that because subheading 9405.30.00, HTSUS, is a principal use provision, it is therefore subject to Additional

U.S. Rule of Interpretation 1(a), HTSUS, which states as follows:

a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

The merchandise at issue in *Primal Lite* consisted of 14-foot long lengths of wire set with 10 light bulbs and with two extra light bulbs attached. Plastic shapes in the form of objects such as fruits, vegetables, hearts, rearing horses, guitars and American flags were included to be fitted over the lights. CBP originally classified the merchandise in subheading 9405.30, HTSUS, but the court sided with the plaintiff, classifying it in subheading 9405.40, HTSUS. *See Primal Lite*, 15 F. Supp. 2d 915, 916.

In addition, the *Primal Lite* court, in discussing principal use, held that “it is the use of the class or kind of goods being imported that is controlling, rather than the specific use to which the importation itself is put,” i.e., goods need not be actually used in the same manner as the entire class or kind in order to be recognized as part of that class or kind. CBP has repeatedly upheld this analysis by defining principal use as the use of the class or kind of the

merchandise at issue that exceeds any other use. *See, e.g.*, HQ 964954, dated, April 18, 2002, HQ 963264, dated May 4, 2001, HQ 963032, dated July 24, 2000 and HQ 083885, dated July 18, 1989. Therefore, to classify the subject merchandise, it is necessary to determine whether it belongs to the class or kind of goods that are recognized as being principally used for the decoration of Christmas trees or for other purposes not necessarily relating to Christmas trees.

Courts have also provided several factors to apply when determining whether merchandise falls within a particular class or kind of good. They include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g. the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *See United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976).

In NY I83130, CBP classified the subject merchandise under subheading 9405.40.80, HTSUS. Upon reconsideration, however, CBP notes first that the subject merchandise is distinguishable from the merchandise at issue in *Primal Lite*. There, the lights sets came with plastic coverings in the shape of various figures such as fruits, vegetables, hearts, rearing horses, guitars and American flags, and was classified under subheading 9405.40.80, HTSUS. *Primal Lite*, 22 C.I.T. 697. CBP rulings that have followed *Primal Lite* in classifying light sets under subheading 9405.40.80, HTSUS, have done so where the merchandise contains both light sets and similar plastic figures in shapes such as ghosts and jack-o-lanterns. *See, e.g.*, HQ 962770, dated September 24, 1999; NY N025581, dated April 25, 2008.

In the present case, the subject merchandise contains electrical wire harnesses that incorporate 50 or 100 orange, purple, and black miniature light bulbs. They are sold during the Halloween season, but there is nothing to distinguish them from other light sets that CBP has classified under subheading 9405.30, HTSUS. Orange and purple lights, in themselves, are not exclusive to Halloween, and consumers can use light sets such as the subject merchandise as decoration during the Christmas season as well. This conclusion is supported by the fact that Style Number 65-420 also comes with multi-colored lights. Although CBP recognizes that many consumers may purchase these lights for use on objects other than Christmas trees, such as hanging them outdoors or in a living room, the subject merchandise's long wire harness and shaped bulbs means that it is of the same type of lights as are hung on Christmas trees. We note that substantially similar merchandise has repeatedly been classified under subheading 9405.30.00, HTSUS. *See, e.g.*, HQ 966882, dated March 10, 2004; NY J89048, dated November 7, 2003, NY J83867, dated May 7, 2003; NY I85459, dated September 12, 2002; NY I83664, dated July 17, 2002; NY I82126, dated July 1, 2002; NY I83133, dated July 10, 2002; NY N027262, dated May 20, 2008. The subject merchandise consists of wire and lights in the same shape and configuration as the light sets classified in these rulings. As a result, CBP finds that the subject merchandise is classified under subheading 9405.30.00, HTSUS.

CBP received two comments in response to the proposed revocation, both opposing the revocation, and both advancing the same arguments. These

comments argue that the subject merchandise's black wire harness makes it inappropriate for Christmas trees because the black cord would be a glaring contrast to the tree's green foliage. Furthermore, the comments argue that the black, orange and purple lights are closely associated with Halloween and are therefore also inappropriate for use on a Christmas tree. The comments also note that the stores that sell the subject light sets only do so at Halloween, and that all of these factors contribute to consumer expectations that the subject light sets would not be used on a Christmas tree. As a result, the comments argue that the subject light sets are not commercially fungible with the types of light sets that are of the kind used on Christmas trees, when commercial fungibility is an important standard promulgated by *Primal Lite* and subsequent CBP rulings.

In response, we note that while green Christmas trees are certainly traditional, trees in other colors, including black, have been increasing in popularity. Traditional strings of lights that are generally accepted as lights of the kind used on Christmas trees are manufactured with different color wire harnesses so as to fit in with different color trees, such as white harnesses to blend in with white or chrome trees. Increasingly, strings of lights that are being marketed and sold as Christmas lights are being produced with black wires. In addition, customer reviews of black Christmas trees indicate that that such trees allowed them to continue using the string lights they had purchased during Halloween with their Christmas trees. *See, e.g.*, <http://www.treetopia.com/Colorful-Christmas-Trees-s/23.htm>; [http://www.christmasdepot.com/search/black+ wire](http://www.christmasdepot.com/search/black+wire). Furthermore, we believe that even with a traditional green Christmas tree, the black wire of the subject merchandise would be largely hidden among the tree's branches. As a result, we find that the subject light sets are in fact commercially fungible with light sets sold during the Christmas season. As a whole, the subject light sets are of a kind used on Christmas trees, and they are therefore classified in subheading 9405.30.00, HTSUS.

HOLDING:

Under the authority of GRI 1, the electric light sets from China are provided for in subheading 9405.30.00, HTSUS. The applicable duty rate is 8% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY I83130, dated July 3, 2002, is MODIFIED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

Sincerely,

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT C]

HQ H072441

September 19, 2011

CLA-2 OT:RR:CTF:TCM H072441 TNA

CATEGORY: Classification

TARIFF NO.: 9405.30.00

TROY D. CRAGO

ATICO INTERNATIONAL (USA), INC.

501 SOUTH ANDREWS AVENUE

FORT LAUDERDALE, FL 33301

RE: Revocation of NY R03451; Classification of a Halloween light set from China

DEAR MR. CRAGO:

This letter is in reference to New York Ruling Letter (“NY”) R03451, issued to Atico International (USA), Inc. (“Atico International”) on March 27, 2006, concerning the tariff classification of a Halloween light set from China. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under subheading 9405.40.8000, Harmonized Tariff Schedule of the United States (“HTSUS”), as other electric lamps and lighting fittings: of base metal. We have reviewed NY R03451 and found it to be in error. For the reasons set forth below, we hereby revoke NY R03451.

Pursuant to section 625©(1), Tariff Act of 1930 (19 U.S.C. §1625©(1)), as amended by section 623 of Title VI, notice proposing to revoke NY R03451 was published on June 9, 2010, in Volume 44, Number 24, of the *Customs Bulletin*. CBP received two comments in response to this notice, which are addressed in the ruling.

FACTS:

The subject merchandise consists of item number W079AA00843, which contains an electrical black-wire harness with sockets for the insertion of 70 orange-colored miniature light bulbs. The light set, which contains both flashing and steady lights, is designed for both indoor and outdoor use.

In NY R03451, CBP classified the light sets under 9405.40.8000, HTSUS, as: “other electric lamps and lighting fittings: of base metal: other.”

ISSUE:

Whether the subject electric light set should be classified under subheading 9405.40.80, HTSUS, as “other electric lamps,” or under subheading 9405.30.00, HTSUS, as “lighting sets of a kind used for Christmas trees”?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. GRI 6 requires

that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and, *mutatis mutandis*, to GRIs 1 through 5.

The HTSUS provisions under consideration are as follows:

- 9405 Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
- 9405.30.00 Lighting sets of a kind used for Christmas trees
- 9405.40 Other electric lamps and lighting fittings:
 - Of base metal:
 - 9405.40.80 Other

In examining the competing subheadings within heading 9405, HTSUS, we note that subheading 9405.30.00, HTSUS, is a “principal use” provision within the meaning ascribed in *Primal Lite v. United States*, 15 F. Supp. 2d 915 (CIT 1998); *aff’d* 182 F. 3d 1362 (Fed. Cir. 1999). In *Primal Lite*, the court concluded that because subheading 9405.30.00, HTSUS, is a principal use provision, it is therefore subject to Additional U.S. Rule of Interpretation 1(a), HTSUS, which states as follows:

a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

The merchandise at issue in *Primal Lite* consisted of 14-foot long lengths of wire set with 10 light bulbs and with two extra light bulbs attached. Plastic shapes in the form of objects such as fruits, vegetables, hearts, rearing horses, guitars and American flags were included to be fitted over the lights. CBP originally classified the merchandise in subheading 9405.30, HTSUS, but the court sided with the plaintiff, classifying it in subheading 9405.40, HTSUS. *See Primal Lite*, 15 F. Supp. 2d 915, 916.

Additionally, the *Primal Lite* court, in discussing principal use, held that “it is the use of the class or kind of goods being imported that is controlling, rather than the specific use to which the importation itself is put,” i.e., goods need not be actually used in the same manner as the entire class or kind in order to be recognized as part of that class or kind. CBP has repeatedly upheld this analysis by defining principal use as the use of the class or kind of the merchandise at issue that exceeds any other use. *See, e.g.*, HQ 964954, dated April 18, 2002; HQ 963264, dated May 4, 2001; HQ 963032, dated July 24, 2000; and HQ 083885, dated July 18, 1989. Therefore, to classify the subject merchandise, it is necessary to determine whether it belongs to the class or

kind of goods that are recognized as being principally used for the decoration of Christmas trees or for other purposes not necessarily relating to Christmas trees.

Courts have also provided several factors to apply when determining whether merchandise falls within a particular class or kind of good. They include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g. the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. See *United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976).

In NY R03451, CBP classified the subject merchandise under subheading 9405.40.80, HTSUS, because they were marketed for sale during the Halloween season. Upon reconsideration, however, CBP notes first that the subject merchandise is distinguishable from the merchandise at issue in *Primal Lite*. There, the light sets came with plastic coverings in the shape of various figures such as fruits, vegetables, hearts, rearing horses, guitars and American flags, and was classified under subheading 9405.40.80, HTSUS. *Primal Lite*, 22 C.I.T. 697. CBP rulings that have followed *Primal Lite* in classifying light sets under subheading 9405.40.80, HTSUS, have done so where the merchandise contains both light sets and similar plastic figures in shapes such as ghosts and jack-o-lanterns. See, e.g., HQ 962770, dated September 24, 1999; NY N025581, dated April 25, 2008.

In the present case, the subject merchandise has an electrical black-wire harness with sockets for 70 orange-colored miniature light bulbs, and functions with flashing and steady lights. There is nothing to distinguish it from other light sets that CBP has classified under subheading 9405.30.00, HTSUS. Orange lights, in themselves, are not exclusive to Halloween, and consumers can use light sets such as the subject merchandise as decoration during the Christmas season as well. Although CBP recognizes that many consumers may purchase these lights for use on objects other than Christmas trees, such as hanging them outdoors or in a living room, the subject merchandise's long wire harness and shaped bulbs means that it is of the same type of lights as are hung on Christmas trees. We note that substantially similar merchandise has repeatedly been classified under subheading 9405.30.00, HTSUS. See, e.g., HQ 966882, dated March 10, 2004; NY J89048, dated November 7, 2003, NY J83867, dated May 7, 2003; NY I85459, dated September 12, 2002; NY I83664, dated July 17, 2002; NY I82126, dated July 1, 2002; NY I83133, dated July 10, 2002; and NY N027262, dated May 20, 2008. The subject merchandise consists of wire and lights in the same shape and configuration as the light sets classified in these rulings.

In addition, the subject merchandise is designated for both indoor and outdoor use, but CBP has consistently held that the ability to use these types of light sets outdoors is not a barrier to classification in subheading 9405.30.00, HTSUS, when it was determined that they were of the class or kind of merchandise that was principally used for decorating Christmas trees. See, e.g., HQ 967008, dated June 29, 2004 ("Because of this dual indoor and outdoor use, as well as the statements regarding the potential for varied indoor use, it is asserted the [subject merchandise] are not limited to deco-

rating only Christmas trees. Regarding this dual indoor and outdoor use, CBP does not believe that this factor by itself is determinative for finding the lights at issue are part of a class or kind of light that is principally used for decorative purposes other than Christmas trees.”) See also HQ 966882; NY I83154, dated July 17, 2002; NY I83156, dated July 17, 2002; NY J89048 ; NY I83157, dated July 10, 2002; NY I82127, dated July 1, 2002; and NY I82362, dated July 1, 2002. As a result, CBP finds that Atico International’s Halloween light set is classified under subheading 9405.30.00, HTSUS.

CBP received two comments in response to the proposed revocation, both opposing the revocation, and both advancing the same arguments. These comments argue that the subject merchandise’s black wire harness makes it inappropriate for Christmas trees because the black cord would be a glaring contrast to the tree’s green foliage. Furthermore, the comments argue that the black, orange and purple lights are closely associated with Halloween and are therefore also inappropriate for use on a Christmas tree. The comments also note that the stores that sell the subject light sets only do so at Halloween, and that all of these factors contribute to consumer expectations that the subject light sets would not be used on a Christmas tree. As a result, the comments argue that the subject light sets are not commercially fungible with the types of light sets that are of the kind used on Christmas trees, when commercial fungibility is an important standard promulgated by *Primal Lite* and subsequent CBP rulings.

In response, we note that while green Christmas trees are certainly traditional, trees in other colors, including black, have been increasing in popularity. Traditional strings of lights that are generally accepted as lights of the kind used on Christmas trees are manufactured with different color wire harnesses so as to fit in with different color trees, such as white harnesses to blend in with white or chrome trees. Increasingly, strings of lights that are being marketed and sold as Christmas lights are being produced with black wires. In addition, customer reviews of black Christmas trees indicate that that such trees allowed them to continue using the string lights they had purchased during Halloween with their Christmas trees. See, e.g., <http://www.treetopia.Com/Colorful-Christmas-Trees-s/23.htm>;

<http://www.christmasdepot.com/search/black+ wire>. Furthermore, we believe that even with a traditional green Christmas tree, the black wire of the subject merchandise would be largely hidden among the tree’s branches. As a result, we find that the subject light sets are in fact commercially fungible with light sets sold during the Christmas season. As a whole, the subject light sets are of a kind used on Christmas trees, and they are therefore classified in subheading 9405.30.00, HTSUS.

HOLDING:

Under the authority of GRI 1, the Halloween light set from China is provided for in subheading 9405.30.00, HTSUS. The applicable duty rate is 8% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY R03451, dated March 27, 2006, is REVOKED. In accordance with 19 U.S.C. §1625©, this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT D]

HQ H070671

September 19, 2011

CLA-2 OT:RR:CTF:TCM H070671 TNA

CATEGORY: Classification

TARIFF NO.: 9405.30.00

LINDA C. PEARSON
SEASONAL SPECIALTIES
11455 VALLEY VIEW RD.
EDEN PRAIRIE, MN 55344

RE: Revocation of NY H80773; Classification of electric light sets from China

DEAR Ms. PEARSON:

This letter is in reference to New York Ruling Letter (“NY”) H80773, issued to Seasonal Specialties on June 5, 2001, concerning the tariff classification of electric light sets from China. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under subheading 9405.40.8000, Harmonized Tariff Schedule of the United States (“HTSUS”), as other electric lamps and lighting fittings: of base metal. We have reviewed NY H80773 and found it to be in error. For the reasons set forth below, we hereby revoke NY H80773.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY H80773 was published on June 9, 2010, in Volume 44, Number 24, of the *Customs Bulletin*. CBP received two comments in response to this notice, which are addressed in the ruling.

FACTS:

The merchandise at issue consists of five different sets of electric lights, which are sold only during the Halloween season.

Style numbers 79832-F and 79836-F, contain electrical wire harnesses possessing 50 and 100 sockets, respectively, with miniature purple-colored light bulbs. They are designed for both indoor and outdoor use.

Style numbers 79831-F and 79835-F contain an electrical wire harness possessing 50 and 100 sockets, respectively, with miniature orange-colored light bulbs. They are also designed for both indoor and outdoor use.

Style number 79872, contains an electric wire harness possessing 25 C9 light bulbs for the illumination of black light.

In NY H80773, dated June 5, 2001, CBP classified all five light sets under subheading 9405.40.8000, HTSUS, as: “other electric lamps and lighting fittings: of base metal: other.”

ISSUE:

Whether the subject electric light sets should be classified under subheading 9504.40.80, HTSUS, as “other electric lamps,” or under subheading 9504.30, HTSUS, as “lighting sets of a kind used for Christmas trees”?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation

(GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and, *mutatis mutandis*, to GRIs 1 through 5.

The HTSUS provisions under consideration are as follows:

- 9405 Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
- 9405.30.00 Lighting sets of a kind used for Christmas trees
- 9405.40 Other electric lamps and lighting fittings:
- 9405.40.80 Other

In examining the competing subheadings within heading 9405, HTSUS, we note that subheading 9405.30.00, HTSUS, is a “principal use” provision within the meaning ascribed in *Primal Lite v. United States*, 15 F. Supp. 2d 915 (CIT 1998); *aff’d* 182 F. 3d 1362 (Fed. Cir. 1999). In *Primal Lite*, the court concluded that because subheading 9405.30.00, HTSUS, is a principal use provision, it is therefore subject to Additional U.S. Rule of Interpretation 1(a), HTSUS, which states as follows:

a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

The merchandise at issue in *Primal Lite* consisted of 14-foot long lengths of wire set with 10 light bulbs and with two extra light bulbs attached. Plastic shapes in the form of objects such as fruits, vegetables, hearts, rearing horses, guitars and American flags were included to be fitted over the lights. CBP originally classified the merchandise in subheading 9405.30, HTSUS, but the court sided with the plaintiff, classifying it in subheading 9405.40, HTSUS. *See Primal Lite*, 15 F. Supp. 2d 915, 916.

In addition, the *Primal Lite* court, in discussing principal use, held that “it is the use of the class or kind of goods being imported that is controlling, rather than the specific use to which the importation itself is put,” i.e., goods need not be actually used in the same manner as the entire class or kind in order to be recognized as part of that class or kind. CBP has repeatedly upheld this analysis by defining principal use as the use of the class or kind of the merchandise at issue that exceeds any other use. *See, e.g.*, HQ 964954, dated April 18, 2002, HQ 963264, dated May 4, 2001, HQ 963032, dated July 24, 2000 and HQ 083885, dated July 18, 1989. Therefore, to classify the subject

merchandise, it is necessary to determine whether it belongs to the class or kind of goods that are recognized as being principally used for the decoration of Christmas trees or for other purposes not necessarily relating to Christmas trees.

Courts have provided several factors to apply when determining whether merchandise falls within a particular class or kind of good. They include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g. the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *See United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976).

In NY H80773, CBP classified the subject merchandise under subheading 9405.40.80, HTSUS. Upon reconsideration, however, CBP notes first that the subject merchandise is distinguishable from the merchandise at issue in *Primal Lite*. There, the lights sets came with plastic coverings in the shape of various figures such as fruits, vegetables, hearts, rearing horses, guitars and American flags, and was classified under subheading 9405.40.80, HTSUS. *Primal Lite*, 22 C.I.T. 697. CBP rulings that have followed *Primal Lite* in classifying light sets under subheading 9405.40.80, HTSUS, have done so where the merchandise contains both light sets and similar plastic figures in shapes such as ghosts and jack-o-lanterns. *See, e.g.*, HQ 962770, dated September 24, 1999; NY N025581, dated April 25, 2008.

In the present case, the subject merchandise contains electrical wire harnesses that incorporate 25, 50, or 100 orange, purple, and black miniature light bulbs. They are only sold during the Halloween season, but there is nothing to distinguish them from other light sets that CBP has classified under subheading 9405.30, HTSUS. Orange and purple lights, in themselves, are not exclusive to Halloween, and consumers can use light sets such as the subject merchandise as decoration during the Christmas season as well. Although CBP recognizes that many consumers may purchase these lights for use on objects other than Christmas trees, such as hanging them outdoors or in a living room, the subject merchandise's long wire harness and shaped bulbs means that it is of the same type of lights as are hung on Christmas trees. We note that substantially similar merchandise has repeatedly been classified under subheading 9405.30.00, HTSUS. *See, e.g.*, HQ 966882, dated March 10, 2004; NY J89048, dated November 7, 2003, NY J83867, dated May 7, 2003; NY I85459, dated September 12, 2002; NY I83664, dated July 17, 2002; NY I82126, dated July 1, 2002; NY I83133, dated July 10, 2002; NY N027262, dated May 20, 2008. The subject merchandise consists of wire and lights in the same shape and configuration as the light sets classified in these rulings.

In addition, four out of the five light sets at issue here are designated for both indoor and outdoor use, but CBP has consistently held that the ability to use these types of light sets outdoors is not a barrier to classification in subheading 9405.30, HTSUS, when it was determined that they were of the class or kind of merchandise that was principally used for decorating Christmas trees. *See, e.g.*, HQ967008 ("Because of this dual indoor and outdoor use, as well as the statements regarding the potential for varied indoor use, it is

asserted the [subject merchandise] are not limited to decorating only Christmas trees. Regarding this dual indoor and outdoor use, CBP does not believe that this factor by itself is determinative for finding the lights at issue are part of a class or kind of light that is principally used for decorative purposes other than Christmas trees.”) *See also* HQ 966882; *NY I83154*, dated July 17, 2002; *NY I83156*, dated July 17, 2002; *NY J89048*; *NY I83157*, dated July 10, 2002; *NY I82127*, dated July 1, 2002; and *NY I82362*, dated July 1, 2002. As a result, CBP finds that Seasonal Specialties’ electric light sets are classified under subheading 9405.30.00, HTSUS.

CBP received two comments in response to the proposed revocation, both opposing the revocation, and both advancing the same arguments. These comments argue that the subject merchandise’s black wire harness makes it inappropriate for Christmas trees because the black cord would be a glaring contrast to the tree’s green foliage. Furthermore, the comments argue that the black, orange and purple lights are closely associated with Halloween and are therefore also inappropriate for use on a Christmas tree. The comments also note that the stores that sell the subject light sets only do so at Halloween, and that all of these factors contribute to consumer expectations that the subject light sets would not be used on a Christmas tree. As a result, the comments argue that the subject light sets are not commercially fungible with the types of light sets that are of the kind used on Christmas trees, when commercial fungibility is an important standard promulgated by *Primal Lite* and subsequent CBP rulings.

In response, we note that while green Christmas trees are certainly traditional, trees in other colors, including black, have been increasing in popularity. Traditional strings of lights that are generally accepted as lights of the kind used on Christmas trees are manufactured with different color wire harnesses so as to fit in with different color trees, such as white harnesses to blend in with white or chrome trees. Increasingly, strings of lights that are being marketed and sold as Christmas lights are being produced with black wires. In addition, customer reviews of black Christmas trees indicate that such trees allowed them to continue using the string lights they had purchased during Halloween with their Christmas trees. *See, e.g.*, <http://www.treetopia.com/Colorful-Christmas-Trees-s/23.htm>; <http://www.christmasdepot.com/search/black+ wire>. Furthermore, we believe that even with a traditional green Christmas tree, the black wire of the subject merchandise would be largely hidden among the tree’s branches. As a result, we find that the subject light sets are in fact commercially fungible with light sets sold during the Christmas season. As a whole, the subject light sets are of a kind used on Christmas trees, and they are therefore classified in subheading 9405.30.00, HTSUS.

HOLDING:

Under the authority of GRI 1, the electric light sets from China are provided for in subheading 9405.30.00, HTSUS. The applicable duty rate is 8% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY H80773, dated June 5, 2001, is REVOKED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

Sincerely,

IEVA K. O'ROURKE

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT E]

HQ H070673

September 19, 2011

CLA-2 OT:RR:CTF:TCM H070673 TNA

CATEGORY: Classification

TARIFF NO.: 9405.30.00

MICHELLE ANGELINA

EXPEDITERS INTERNATIONAL OF WASHINGTON, INC.

870 ASHLAND AVENUE

FOLCROFT, PA 19032

RE: Revocation of NY I88935; Classification of an electric Halloween light set from China

DEAR MS. ANGELINA:

This letter is in reference to New York Ruling Letter (“NY”) I88935, issued to Expeditors International of Washington (“Expeditors International”) on December 9, 2002, concerning the tariff classification of an electric Halloween light set from China. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under subheading 9405.40.8000, Harmonized Tariff Schedule of the United States (“HTSUS”), as other electric lamps and lighting fittings: of base metal. We have reviewed NY I88935 and found it to be in error. For the reasons set forth below, we hereby revoke NY I88935.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N018967 was published on June 9, 2010, in Volume 44, Number 24, of the *Customs Bulletin*. CBP received two comments in response to this notice, which are addressed in the ruling.

FACTS:

The merchandise at issue is an electric light set called “Pumpkin-Colored Halloweenies.” It consists of an electric black wire harness that measures about 20 feet in length and incorporates 80 miniature orange light bulbs and an eight-function control box.

In NY I88935, CBP classified the light sets under subheading 9405.40.8000, HTSUS, as: “other electric lamps and lighting fittings: of base metal: other.”

ISSUE:

Whether the “Pumpkin-Colored Halloweenies” are classified under heading 9405.40.80, HTSUS, as “other electric lamps,” or under heading 9405.30, HTSUS, as “lighting sets of a kind used for Christmas trees”?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do

not otherwise require, the remaining GRI may then be applied. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and, *mutatis mutandis*, to GRIs 1 through 5.

The HTSUS provisions under consideration are as follows:

- 9405 Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
- 9405.30.00 Lighting sets of a kind used for Christmas trees
- 9405.40 Other electric lamps and lighting fittings:
 - Of base metal:
 - 9405.40.80 Other

In examining the competing subheadings within heading 9405, HTSUS, we note that subheading 9405.30.00, HTSUS, is a “principal use” provision within the meaning ascribed in *Primal Lite v. United States*, 15 F. Supp. 2d 915 (CIT 1998); *aff’d* 182 F. 3d 1362 (Fed. Cir. 1999). In *Primal Lite*, the court concluded that because subheading 9405.30.00, HTSUS, is a principal use provision, it is therefore subject to Additional U.S. Rule of Interpretation 1(a), HTSUS, which states as follows:

a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

The merchandise at issue in *Primal Lite* consisted of 14-foot long lengths of wire set with 10 light bulbs and with two extra light bulbs attached. Plastic shapes in the form of objects such as fruits, vegetables, hearts, rearing horses, guitars and American flags were included to be fitted over the lights. CBP originally classified the merchandise in subheading 9405.30, HTSUS, but the court sided with the plaintiff, classifying it in subheading 9405.40, HTSUS. *See Primal Lite*, 15 F. Supp. 2d 915, 916.

Additionally, the *Primal Lite* court, in discussing principal use, held that “it is the use of the class or kind of goods being imported that is controlling, rather than the specific use to which the importation itself is put,” i.e. goods need not be actually used in the same manner as the entire class or kind in order to be recognized as part of that class or kind. CBP has repeatedly upheld this analysis by defining principal use as the use of the class or kind of the merchandise at issue that exceeds any other use. *See, e.g.*, HQ 964954, dated, April 18, 2002, HQ 963264, dated May 4, 2001, HQ 963032, dated July 24, 2000, and HQ 083885, dated July 18, 1989. Therefore, to classify the subject merchandise, it is necessary to determine whether it belongs to the class or

kind of goods that are recognized as being principally used for the decoration of Christmas trees or for other purposes not necessarily relating to Christmas trees.

Courts have provided several factors to apply when determining whether merchandise falls within a particular class or kind of good. They include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g. the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. See *United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976).

In NY I88935, CBP classified the subject merchandise under subheading 9405.40.80, HTSUS. Upon reconsideration, however, CBP notes first that the subject merchandise, although it is called a "Halloween light set," is distinguishable from the merchandise at issue in *Primal Lite*. There, the lights sets came with plastic coverings in the shape of various figures such as fruits, vegetables, hearts, rearing horses, guitars and American flags, and was classified under subheading 9405.40.80, HTSUS. *Primal Lite*, 22 C.I.T. 697. CBP rulings that have followed *Primal Lite* in classifying light sets under subheading 9405.40.80, HTSUS, have done so where the merchandise contains both light sets and similar plastic figures in shapes such as ghosts and jack-o-lanterns. See, e.g., HQ 962770, dated September 24, 1999; NY N025581, dated April 25, 2008.

In the present case, by contrast, the subject merchandise lacks the plastic shapes that characterized the merchandise in *Primal Lite*. Instead, it has an electrical black wire harness that is 20 feet long and incorporates 80 orange miniature light bulbs. There is nothing to distinguish it from the types of lights that are used on Christmas trees, or the other light sets that CBP has classified under subheading 9405.30, HTSUS. Orange lights, in themselves, are not exclusive to Halloween, and consumers can use light sets such as the subject merchandise as decoration during the Christmas season. Although CBP recognizes that many consumers may purchase these lights for use on objects other than Christmas trees, such as hanging them outdoors or in a living room, the subject merchandise's long wire harness and shaped bulbs means that it is of the same type of lights as are hung on Christmas trees. We note that substantially similar merchandise has repeatedly been classified under subheading 9405.30.00, HTSUS. See, e.g., HQ 966882, dated March 10, 2004; HQ 966962, dated February 9, 2005; HQ 967008, dated June 29, 2004; HQ 967408, dated February 9, 2005; NY J89048, dated November 7, 2003; NY J83867, dated May 7, 2003, NY I85459, dated September 12, 2002; NY I83664, dated July 17, 2002; NY I82126, dated July 1, 2002; NY I83133, dated July 10, 2002; and NY N027262, dated May 20, 2008. The subject merchandise consists of wire and lights in the same shape and configuration as the light sets classified in these rulings. As a result, CBP finds that the Pumpkin-Colored Halloweenies are classified under subheading 9405.30.00, HTSUS.

CBP received two comments opposing the proposed revocation, both of which advanced the same arguments. These comments argue that the subject merchandise's black wire harness makes it inappropriate for Christmas trees because the black cord would be a glaring contrast to the tree's green foliage. Furthermore, the comments argue that the black, orange and purple lights are closely associated with Halloween and are therefore inappropriate for use on a Christmas tree. The comments also note that the stores that sell the subject light sets only do so at Halloween, and that all of these factors contribute to consumer expectations that the subject light sets would not be used on a Christmas tree. As a result, the comments argue that the subject light sets are not commercially fungible with the types of light sets that are of the kind used on Christmas trees, when commercial fungibility is an important standard promulgated by *Primal Lite* and subsequent CBP rulings.

In response, we note that while green Christmas trees are certainly traditional, trees in other colors, including black, have been increasing in popularity. Traditional strings of lights that are generally accepted as lights of the kind used on Christmas trees are manufactured with different color wire harnesses so as to fit in with different color trees, such as white harnesses to blend in with white or chrome trees. Increasingly, strings of lights that are being marketed and sold as Christmas lights are being produced with black wires. In addition, customer reviews of black Christmas trees indicate that that such trees allowed them to continue using the string lights they had purchased during Halloween with their Christmas trees. See, e.g., <http://www.treetopia.com/Colorful-Christmas-Trees-s/23.htm>; [http://www.christmasdepot.com/search/black+ wire](http://www.christmasdepot.com/search/black+wire). Furthermore, we believe that even with a traditional green Christmas tree, the black wire of the subject merchandise would be largely hidden among the tree's branches. As a result, we find that the subject light sets are in fact commercially fungible with light sets sold during the Christmas season. As a whole, the subject light sets are of a kind used on Christmas trees, and they are therefore classified in subheading 9405.30.00, HTSUS.

HOLDING:

Under the authority of GRI 1, the light set from China is classified in subheading 9405.30.00, HTSUS. The applicable duty rate is 8% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY I88935, dated December 9, 2002, is REVOKED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

Sincerely,
IEVA K. O'ROURKE
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division



19 CFR PART 177

**PROPOSED REVOCATION OF RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
CLASSIFICATION OF HOMEOPATHIC REMEDIES**

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the classification of homeopathic remedies.

SUMMARY: : Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CPB proposes to revoke a ruling concerning the classification of homeopathic remedies under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB intends to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before November 4, 2011.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulation and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor Washington, D.C. 20229–1179. Comments submitted may be inspected at 799 9th St. N.W. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (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 proposes to revoke a ruling pertaining to the classification of homeopathic remedies. Although in this notice CBP is specifically referring to Headquarters Ruling Letter (HQ) H086082, dated October 15, 2010 (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 data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., 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 proposes 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 his agents for importations of merchandise subsequent to this notice.

In HQ H086082, CBP ruled that entries of the homeopathic remedies in liquid form were classified in subheading 2208.90.80, which provides for "undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.: Other: Other: Other." The "Rescue Remedy for Pets" was classified under subheading 3824.90.92, HTSUS, which provides for: "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other." The entries that are in pill form were classified under subheading 2106.90.99, HTSUS, which provides for: "food preparations not elsewhere specified or included: other: other: other: other: other: other." CBP now believes that the instant homeopathic remedies are classified as medicaments in heading 3004, HTSUS, the provision for "Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke HQ H086082, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H145541. (see Attachment "B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes 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: September 19, 2011

IEVA K. O'ROURKE
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

HQ H086082

October 15, 2010

CLA-2 OT:RR:CTF:TCM HQ H086082 TNA

CATEGORY: Classification

TARIFF NO.: 2208.90.80, 2106.90.99, 3824.90.40

PORT DIRECTOR

PORT OF BOSTON

*U.S. CUSTOMS AND BORDER PROTECTION**10 CAUSEWAY STREET - ROOM 603**BOSTON, MA 02222*

RE: Internal Advice Request 09/041; classification of flower essences/ homeopathic remedies

DEAR PORT DIRECTOR:

This is in response to your Request for Internal Advice, dated November 25, 2009, initiated by First Class Cargo Systems, Ltd., on behalf of its client, Nelsons Bach USA Ltd., concerning the proper classification of flower essences/ homeopathic remedies under the Harmonized Tariff Schedule of the United States ("HTSUS"). The request has been forwarded to our office for reply.

FACTS:

The subject merchandise consists of 53 products for human consumption and one product for animal use. These products are prepared from plant material, flower heads, and natural spring water and are sold in different forms. Some, such as the "Arnica Natural Pain Relief," are small, solid pills that are meant to be swallowed. Others, such as the "Rescue Pastilles," are chewable tablets. The majority of the merchandise is in a liquid form that can either be sprayed onto the tongue, or droplets of which can be placed in beverages or on food, or placed under the tongue. They are 27% alcohol by volume 70% water, with 5x dilution of Bach Mother Tinctures in 27% alcohol.

The one product intended for animal use is called "Rescue Remedy for Pets" and can be used with all animals, including dogs, cats, horses and birds. It contains trace amounts of its active ingredients are 5x dilution of *Helianthemum nummularium*, *Clematis vitalba*, *Impatiens glandulifera*, *Prunus cerasifera*, *Ornithogalum*. Its inactive ingredients are glycerine, which makes up 80% of the product, and water, which makes up 20%.

These products are homeopathic remedies for various psychosomatic ailments such as worry; apprehension; nervous tension; fear of failure; lack of courage, lack of confidence, lack of presence of mind, lack of focus, and many similar complaints. They are not indicated to counteract physical ailments such as cancer or other illnesses; to the contrary, many of the merchandise's labels contain warnings about seeking medical attention if the condition at issue persists.

ISSUE:

Whether flower essences that are used as homeopathic remedies are classified under heading 2106, HTSUS, as food preparations not elsewhere specified or included, under heading 2208, HTSUS, as ethyl alcohol, or under heading 3004, HTSUS, as medicaments?

Whether flower essences that are used as homeopathic remedies for animals are classified under heading 2309, HTSUS, as preparations of a kind used in animal feeding; under heading 3004, HTSUS, as medicaments; or under heading 3824, HTSUS, as other mixtures?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

- 2106 Food preparations not elsewhere specified or included:
- 2208 Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages:
- 2309 Preparations of a kind used in animal feeding:
- 3004 Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale:
- 3824 Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. 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 (Aug. 23, 1989).

The EN to heading 21.06 provides, in pertinent part:

Provided that they are not covered by any other heading of the Nomenclature, this heading covers:

- (A) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.), for human consumption.
- (B) Preparations consisting wholly or partly of foodstuffs, used in the making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organic acids, calcium salts, etc.) with foodstuffs (flour, sugar, milk powder, etc.), for incorporation in food preparations either as

ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.) (see the General Explanatory Note to Chapter 38).

The heading includes, *inter alia* : ...

- (14) Products consisting of a mixture of plants or parts of plants (including seeds or fruits) of different species or consisting of plants or parts of plants (including seeds or fruits) of a single or of different species mixed with other substances such as one or more plant extracts, which are not consumed as such, but which are of a kind used for making herbal infusions or herbal “teas”, (e.g., those having laxative, purgative, diuretic or carminative properties), including products which are claimed to offer relief from ailments or contribute to general health and well-being.

The heading **excludes** products where an infusion constitutes a therapeutic or prophylactic dose of an active ingredient specific to a particular ailment (**heading 30.03 or 30.04**).

- (16) Preparations, often referred to as *food supplements*, based on extracts from plants, fruit concentrates, honey, fructose, etc. and containing added vitamins and sometimes minute quantities of iron compounds. These preparations are often put up in packagings with indications that they maintain general health or well-being. Similar preparations, however, intended for the prevention or treatment of diseases or ailments are **excluded (heading 30.03 or 30.04)**.

The EN to heading 23.09 provides, in pertinent part:

This heading covers sweetened forage and prepared animal feeding stuffs consisting of a mixture of several nutrients designed:

- (1) to provide the animal with a rational and balanced daily diet (complete feed);
- (2) to achieve a suitable daily diet by supplementing the basic farm-produced feed with organic or inorganic substances (supplementary feed); or
- (3) for use in making complete or supplementary feeds.

The EN to heading 30.04 provides, in pertinent part:

This heading includes pastilles, tablets, drops, etc., of a kind suitable only for medicinal purposes, such as those based on sulphur, charcoal, sodium tetraborate, sodium benzoate, potassium chlorate or magnesia....

Similarly foodstuffs and beverages containing medicinal substances are excluded from the heading if those substances are added solely to ensure a better dietetic balance, to increase the energy-giving or nutritional value of the product or to improve its flavour, always provided that the product retains its character of a foodstuff or a beverage.

Moreover, products consisting of a mixture of plants or parts of plants or consisting of plants or parts of plants mixed with other substances, used for making herbal infusions or herbal “teas” (e.g., those having laxative, purgative, diuretic or carminative properties), and claimed to offer relief from ailments or contribute to general health and well-being, are also excluded from this heading (heading 21.06).

Further, this heading excludes food supplements containing vitamins or mineral salts which are put up for the purpose of maintaining health or well-being but have no indication as to use for the prevention or treatment of any disease or ailment. These products which are usually in liquid form but may also be put up in powder or tablet form, are generally classified in heading 21.06 or Chapter 22.

The EN to heading 38.24, provides, in relevant part:

The **chemical products** classified here are therefore products whose composition is not chemically defined, whether they are obtained as by-products of the manufacture of other substances (this applies, for example, to naphthenic acids) or prepared directly.

The **chemical or other preparations** are either mixtures (of which emulsions and dispersions are special forms) or occasionally solutions....

The preparations classified here may be either wholly or partly of chemical products (this is generally the case) or wholly of natural constituents

Headings 2106, 2309, and 3004, HTSUS, are principal use provisions. See HQ 967075, dated December 6, 2004; HQ 964944, dated February 8, 2002. The principal use of the class or kind of goods to which an import belongs is controlling, not the principal use of the specific import. *Group Italglass U.S.A., Inc. v. United States*, 17 C.I.T. 1177, 1177, 839 F. Supp. 866, 867 (1993). “Principal use” is defined as the use “which exceeds any other single use.” Conversion of the Tariff Schedules of the United States Annotated Into the Nomenclature Structure of the Harmonized System: Submitting Report at 34–35 (USITC Pub. No. 1400) (June 1983). As a result, “the fact that the merchandise may have numerous significant uses does not prevent the Court from classifying the merchandise according to the principal use of the class or kind to which the merchandise belongs.” *Lenox Collections v. United States*, 20 C.I.T. 194; 18 Int’l Trade Rep. (BNA) 1181; 1996 Ct. Intl. Trade LEXIS 38.

When applying a “principal use” provision, CBP must ascertain the class or kind of goods that are involved and decide whether the subject merchandise is a member of that class. U.S. Additional Rule of Interpretation 1(a) states the following:

In the absence of special language or context which otherwise requires, a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

Courts have also provided several factors to apply when determining whether merchandise falls within a particular class or kind of good. They include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g. the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. See *United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976).

In the present case, the subject merchandise is packaged in various forms in bottles that contain labels that bear indications such as “brings courage and calm to face things that frighten or worry you, also aids the shy and the timid,” and “the natural alternative to manage your everyday stress.” See labels for Kids Rescue Remedy and Mimulus. Many labels also contain warnings advising the user to seek professional medical help should their condition persist or worsen. In addition, both the products’ labels and the manufacturer’s website emphasize the merchandise’s plant-based ingredients, and the subject merchandise can also be obtained without a prescription. These factors as a whole both emphasize the subject merchandise’s use as a remedy for general, non-physical ailments, and also underscore the fact that they cannot replace medical science for the treatment of physical diseases.

Both the language of heading 3004, HTSUS, and its ENs stress that classification in this heading is based on therapeutic or prophylactic use. Products that consist of a mixture of plants and which are claimed to offer relief from ailments or contribute to general health and well-being are excluded from heading 3004, HTSUS. See EN 30.04. As a result, the subject merchandise cannot be classified there.

Heading 2106, HTSUS, is also a use provision, but because it provides for food preparations not elsewhere specified, we must consider other headings before we determine whether the subject merchandise can be classified here. You would classify the subject products that are in liquid form and contain 27% alcohol in heading 2208.90, HTSUS, as other undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent volume. We agree. Denaturing an alcohol involves adding an ingredient that is not intended for human consumption. Water does not denature the alcohol, it simply dilutes it. The liquid forms of the subject merchandise fit this description. As a result, these liquid forms are classified under subheading 2208.90.80, HTSUS, as “undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.: Other: Other: Other.”

This determination is also consistent with a recent decision on Bach’s Flower Remedies published in the Compendium of Classification Opinions of the Harmonized Commodity Description and Coding System. There, homeopathic remedies identical to the subject merchandise were classified in subheading 2208.90, HS. See Opinion No. 220890/2 of the WCO’s Compendium of Classification Opinions (April 1995). As we stated in T.D. 89–80, decisions in the Compendium of Classification Opinions should be treated in the same manner as the EN’s, i.e., while neither legally binding nor dispositive, they provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. T.D. 89–80 further states that EN’s and decisions in the Compendium of Classification Opinions “should receive considerable weight.” As a result, classification of the liquid forms of the subject merchandise in subheading 2208.90.80, HTSUS, is supported by the decision if the WCO.

We note that although heading 2208, HTSUS, covers many types of beverages, the forms of the subject merchandise that are in liquid cannot be classified in heading 2208, HTSUS, as beverages. CBP has consistently held that all beverages may be potable products in liquid form, but for tariff

classification, all potable liquids are not beverages. *See, e.g.*, HQ 966849, dated April 26, 2004 and HQ 966850, dated April 27, 2004. Food preparations that are sold in liquid form that are marketed, sold, or distributed in vials or other similar containers for consumption in small, measured doses or dosage-form quantities, are not classified as beverages. *See, e.g.*, HQ 966849, dated April 26, 2004 and HQ 966850, dated April 27, 2004. This is an analysis with which the Court of International Trade has agreed. *See, e.g., Maxcell Bioscience, Inc. v. United States*, 533 F. Supp. 2d 1261; 30 Int'l Trade Rep. (BNA) 1179; 2007 Ct. Intl. Trade LEXIS 182; SLIP OP. 2007-180. In the present case, the subject merchandise in liquid form is not intended to be ingested on its own as a beverage. To the contrary, the user places a few drops in a glass or bottle of water or on the tongue. As a result, the liquid forms of the subject merchandise cannot be classified as beverages in heading 2208, HTSUS. Because of their alcohol content, however, they fit the definition of undenatured ethyl alcohol, and are classified in subheading 2208.90, HTSUS.

With respect to the forms of the subject merchandise that are in pill format, such as "Arnica Natural Pain Relief," heading 2106, HTSUS, provides for food preparations not elsewhere specified. The heading includes the type of products that are excluded from heading 3004, HTSUS: products that consist of a mixture of plants and which are claimed to offer relief from ailments or contribute to general health and well-being. *See* EN 21.06. It also includes products that are generally marketed as food supplements that are made from extracts of plants and are marketed with indications that they maintain general health and well-being but do not prevent or treat diseases. *See* EN 21.06. As a result, the entries of the subject merchandise that are in pill form are classified in heading 2106, HTSUS, and specifically in subheading 2106.90.99, HTSUS. This conclusion is supported by the EN to heading 3004, HTSUS, which directs classification of these products into heading 2106, HTSUS. It is also consistent with prior CBP rulings. *See, e.g.*, HQ 966849, dated April 26, 2004 and HQ 966850, dated April 27, 2004.

The "Rescue Remedy for Pets" is in liquid form, but, in contrast to the liquid merchandise discussed above, it contains no alcohol. As a result, it cannot be classified in heading 2208, HTSUS. Furthermore, it is packaged and marketed for pets' use; there is no indication that it is intended for human consumption. As a result, it is excluded from heading 2106, HTSUS. *See* EN 21.06. It also is not intended for prophylactic use and is therefore excluded from heading 3004, HTSUS. You classified this product in heading 2309, HTSUS, as preparations of a kind used in animal feeds. However, classification in this heading requires that that merchandise be a mixture of several nutrients and have nutritive value. *See* EN 23.09. The subject merchandise is made up of glycerine and water. Its active ingredients, which only appear in trace amounts, are flowers rather than the types of nutrients and minerals that characterize the merchandise of heading 2309, HTSUS. *See* EN 23.09. As a result, the subject merchandise is excluded from heading 2309, HTSUS. The "Rescue Remedy for Pets" is a mixture of various elements, including trace amounts of flowers. It is intended as an herbal remedy for pets' ailments and has been excluded from classification in a number of headings. As a result, it is provided for in heading 3824, HTSUS,

and specifically in subheading 3824.90.92, HTSUS, which provides for “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other: Other.” This classification is consistent with prior CBP rulings. *See, e.g.*, HQ 964600, dated June 21, 2001; NY J82834, dated April 25, 2003; NY N062262, dated June 15, 2009.

HOLDING:

By application of GRI 1, the entries of the subject merchandise that are in liquid form are classified in heading 2208, HTSUS. They are specifically provided for in subheading 2208.90.80, which provides for “undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.: Other: Other: Other.” The applicable duty rate is 21.1¢/pf.liter. The “Rescue Remedy for Pets” is classified under heading 3824, HTSUS. They are specifically provided for under subheading 3824.90.92, HTSUS, which provides for: “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other.” The applicable duty rate is 5% *ad valorem*. The entries that are in pill form are classified under heading 2106, HTSUS. They are specifically provided for under subheading 2106.90.99, HTSUS, which provides for: “food preparations not elsewhere specified or included: other: other: other: other: other.” The applicable duty rate is 6.4% *ad valorem*.

You are to mail this decision to the internal advice requester no later than 60 days from the date of the decision. At that time, the Office of International Trade, Regulations and Rulings, will make the decision available to CBP personnel and to the public on the CBP Home Page on the World Wide Web at www.cbp.gov, by means of the Freedom of Information Act, and other methods of public distribution.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT B]

HQ H145541
CLA-2 OT:RR:CTF:TCM H145541 TNA
CATEGORY: Classification
TARIFF NO.: 3004.90.91

MR. MICHAEL TOMENGA, ESQ.
NEVILLE PETERSON, LLP
1400 16TH STREET, N.W., SUITE 350
WASHINGTON, D.C. 20036

RE: Request for Reconsideration of HQ H086082; Tariff Classification of Homeopathic Remedies

DEAR MR. TOMENGA:

This is in response to your request for reconsideration, dated January 24, 2011, made on behalf of Nelsons Bach USA, Ltd. (“Nelsons Bach”), of Headquarters Ruling Letter (“HQ”) H086082, dated October 15, 2010, which pertains to the classification of homeopathic remedies under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed HQ H086082 and found it to be in error. For the reasons set forth below, we hereby revoke HQ H086082.

FACTS:

The subject merchandise consists of Nelsons Bach’s homeopathic remedies. These remedies come in a variety of forms and are used to treat a variety of ailments. Some are in the form of alcohol-based homeopathic essences that are packaged in 20 milliliter bottles and contain 27% alcohol and 70% water. Some are labeled for the treatments of such ailments as stress, lack of focus, courage, presence of mind; others “bring courage and calm to face things that frighten or worry, also aids the shy and timid”; “restore energy when you are mentally weary, procrastinate, and doubt your ability to face the task ahead.” Other remedies are in the form of lozenges, and still others are in the form of small pills. All have similar labels describing what ailments they relieve.¹

In HQ H086082, CBP classified entries of the homeopathic remedies in liquid form in subheading 2208.90.80, which provides for “undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.: Other: Other: Other.” The “Rescue Remedy for Pets” was classified under subheading 3824.90.92, HTSUS, which provides for: “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other.” The entries that were in tablet or lozenge form were classified under subheading 2106.90.99, HTSUS, which provides for: “food preparations not elsewhere specified or included: other: other: other: other: other: other.”

¹ We note that you requested reconsideration of all of Nelsons Bach’s products, including some that differ from the merchandise at issue in HQ H086082. In response, we note that we can only reconsider the classification of the merchandise at issue in HQ H086082. We cannot expand this reconsideration to include other merchandise as well.

ISSUE:

Whether homeopathic remedies that have the indicia of use as a drug are classified under heading 3004, HTSUS?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any 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 may then be applied.

The HTSUS provisions under consideration are as follows:

- | | |
|------|---|
| 2106 | Food preparations not elsewhere specified or included: |
| 2208 | Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 percent vol.; spirits, liqueurs and other spirituous beverages: |
| 3004 | Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale: |
| 3824 | Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: |

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither 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 EN to heading 21.06 states, in pertinent part, the following:

Provided that they are not covered by any other heading of the Nomenclature, this heading covers:

- (A) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.), for human consumption.

The EN to heading 22.08 states, in pertinent part, the following:

Provided that **their alcoholic strength by volume is less than 80% vol**, the heading also covers undenatured spirits (ethyl alcohol and neutral spirits) which, contrary to those at (A), (B) and (C) above, are characterised by the absence of secondary constituents giving a flavour or aroma. These spirits remain in the heading whether intended for human consumption or for industrial purposes.

The EN to heading 30.04 states, in pertinent part, the following:

This heading covers medicaments consisting of mixed or unmixed products, **provided they are** :

(a) Put up **in measured doses** or in forms such as tablets, ampoules (for example, re-distilled water, in ampoules of 1.25 to 10 cm³, for use either for the direct treatment of certain diseases, e.g., alcoholism, diabetic coma or as a solvent for the preparation of injectible medicinal solutions), capsules, cachets, drops or pastilles, medicaments in the form of transdermal administration systems, or small quantities of powder, ready for taking as single doses for therapeutic or prophylactic use...

(b) **In packings for retail sale for therapeutic or prophylactic use.** This refers to products (for example, sodium bicarbonate and tamarind powder) which, because of their packing and, in particular, the presence of appropriate indications (statement of disease or condition for which they are to be used, method of use or application, statement of dose, etc.) are clearly intended for sale directly to users (private persons, hospitals, etc.) without repacking, for the above purposes.

These indications (in any language) may be given by label, literature or otherwise. However, the mere indication of pharmaceutical or other degree of purity is not alone sufficient to justify classification in this heading.

The EN to heading 38.24 states, in pertinent part, the following:

(B) CHEMICAL PRODUCTS AND CHEMICAL OR OTHER PREPARATIONS

With only three exceptions (see paragraphs (7), (19) and (32) below), this heading **does not apply** to separate chemically defined elements or compounds.

The **chemical products** classified here are therefore products whose composition is not chemically defined, whether they are obtained as by-products of the manufacture of other substances (this applies, for example, to naphthenic acids) or prepared directly.

The **chemical or other preparations** are either mixtures (of which emulsions and dispersions are special forms) or occasionally solutions. Aqueous solutions of the chemical products of **Chapter 28** or **29** remain classified within those Chapters, but solutions of these products in solvents other than water are, apart from a few exceptions, excluded therefrom and accordingly fall to be treated as preparations of this heading.

The preparations classified here may be either wholly or partly of chemical products (this is generally the case) or wholly of natural constituents (see, for example, paragraph (24) below).

However, the heading **does not cover** mixtures of chemicals with foodstuffs or other substances with nutritive value, of a kind used in the preparation of certain human foodstuffs either as ingredients or to improve some of their characteristics (e.g., improvers for pastry, biscuits, cakes and other bakers' wares), provided that such mixtures or substances are valued for their nutritional content itself. These products

generally fall in **heading 21.06**. (See also the General Explanatory Note to Chapter 38.)

Additional U.S. Rule 1 states, in pertinent part, that:

In the absence of special language or context which otherwise requires-

(a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

In HQ H086082, we classified the subject homeopathic remedies in lozenge and pill form in subheading 2106.90.99, HTSUS; the remedies in liquid form that had 27% alcohol in subheading 2208.90.80, HTSUS; and the Rescue Remedy for Pets in subheading 3824.90.40, HTSUS. You argue, however, that these classifications are contrary to CBP's published precedent. You argue that homeopathic remedies are classified as medicaments in heading 3004, HTSUS. In support of this argument, you assert that HQ 967075, dated December 6, 2004, and HQ 967363, dated December 6, 2004, specifically revoked prior rulings to set forth the standard by which homeopathic remedies are to be classified under the HTSUS.

In HQ 967075 and HQ 967363, we reasoned that headings 2106 and 3004, HTSUS, are principal use provisions. The principal use of the class or kind of goods to which an import belongs is controlling, not the principal use of the specific import. *Group Italglass U.S.A., Inc. v. United States*, 17 C.I.T. 1177, 839 F. Supp. 866, 867 (1993). "Principal use" is defined as the use "which exceeds any other single use." *Minnetonka Brands v. United States*, 24 C.I.T. 645; 110 F. Supp. 2d 1020; 2000 Ct. Intl. Trade LEXIS 87; Slip Op. 2000-86. "The fact that the merchandise may have numerous significant uses does not prevent... classification of] the merchandise according to the principal use of the class or kind to which the merchandise belongs." *Lenox Coll. v. United States*, 20 C.I.T. 194; 18 Int'l Trade Rep. (BNA) 1181; 1996 Ct. Intl. Trade LEXIS 38; SLIP OP. 96-30 (Ct. Int'l Trade 1996).

When applying a "principal use" provision, CBP must ascertain the class or kind of goods which are involved and decide whether the subject merchandise is a member of that class. See Additional US Rule of Interpretation 1 to the HTSUS. In determining the class or kind of goods, the Court examines factors which may include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g. the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. See *United States v. Carborundum Co.*, 63 C.C.P.A. 98, 102, 536 F.2d 373, 377, cert. denied, 429 U.S. 979, 50 L. Ed. 2d 587, 97 S. Ct. 490 (1976); see also *Lenox Coll.*, 20 C.I.T. 194; *E. M. Chemicals v. United States*, 20 C.I.T. 382, 923 F. Supp. 202 (Ct. Intl. Trade 1996). Therefore, the determinative issue in HQ 967075 and HQ 967363, as well as in the present case, is whether the subject homeopathic products, which are regulated as drugs under the FFDCA, belong to the class

or kind of good that is principally prepared for therapeutic or prophylactic use or whether they belong to the class or kind of good that is principally used as a dietary supplement.

Medicaments principally prepared for therapeutic or prophylactic use in the U.S. are packaged for oral, parenteral, or dermatological administration. The ultimate purchaser expects that the substance will cure their condition or reduce its symptoms. They are regulated by the FDA as a drug and typically sold in pharmacies, over the counter or by prescription only or administered by health care personnel in hospitals or clinics. They are also used according to a strict dosage schedule usually with a time limit on the recommended use. By contrast, food supplements encompass a much more expansive group of items. They need only be prepared for human consumption. As such, they are simply packaged for oral ingestion as a capsule, tablet, powder or liquid. They are put up in packaging with indications that they maintain general health or well-being, and are often used daily without a strict dosage schedule or time limit recommended.

The internet web page of the Homeopathic Pharmacopeia of the United States (HPUS) states, in pertinent part, the following:

Homeopathy is the art and science of healing the sick by using substances capable of causing the same symptoms, syndromes and conditions when administered to healthy people. . . . Any substance may be considered a homeopathic medicine if it has known 'homeopathic provings' and/or known effects which mimic the symptoms, syndromes or conditions which it is administered to treat, and is manufactured according to the specifications of the Homeopathic Pharmacopoeia of the United States.

See <http://www.hpus.com/whatishomeopathy.php>.

One of the principal concepts of homeopathy is the "Law of Infinitesimals." This principal holds that the smaller the dose of the substance, the more powerful will be its healing effects. For example, the starting substance is first mixed in alcohol to obtain a tincture. One drop of the tincture is mixed with 99 drops of alcohol (to achieve a ratio of 1:100) and the mixture is strongly shaken. This shaking process is known as succussion. This bottle is labeled as "1C" or "2X." One drop of this 1C is then mixed with 100 drops of alcohol and the process is repeated to make 2C. By the time 3C (6X) is reached, the dilution is 1 part in 1 million.

Whereas prior CBP rulings once held that the relevant standard in classifying homeopathic products was the ability to detect the presence of the active ingredient, HQ 967075 and HQ 967363 specifically overruled that approach to find that homeopathic products are medicaments within the meaning of heading 3004, HTSUS. Such products must comply with the standards listed in the HPUS. Furthermore, these products must be packaged with statements of the specific diseases, ailments or their symptoms for which the product is to be used, the concentration of active substance or substances contained therein, the recommended dosage and the mode of application. They are also marketed and sold in relation to a disease, condition, or ailment which they purport to treat. If the condition is a very serious one, e.g. cancer, they are sold only by prescription. As a result, HQ 967075 and HQ 967363 found that in the context of homeopathic products, the outcome of the principal use test described above should not be based on the degree of dilution of the active ingredient in the homeopathic product.

This reasoning also applies to the homeopathic products at issue in the present case, which are similar to the ones at issue in HQ 967075 and HQ 967363. They contain specific dosage instructions, including how to ingest the product and how often. Each remedy also contains statements regarding the ailments or symptoms they treat, and the concentration of active substances the product contains. They are also sold in relation to the ailment they are purported to treat. Therefore, the subject homeopathic products, which contain an active ingredient or ingredients officially included in the HPUS, and are packaged with statements of the specific diseases, ailments or their symptoms for which the product is to be used, the concentration of active substance or substances contained therein, the recommended dosage and the mode of application, are classified in subheading 3004.90.91, HTSUS, which provides for “Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale: Other: Other: Other.”

HOLDING:

Under the authority of GRI 1, Nelson’s Bach’s homeopathic remedies containing the necessary indicia of therapeutic or prophylactic use are classified in heading 3004, HTSUS. Specifically, they are classified under subheading 3004.90.91, HTSUS, which provides for: “Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale: Other: Other: Other.” The column one general rate of duty is Free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

HQ H086082, dated October 15, 2010, is REVOKED.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division



NOTICE OF AVAILABILITY OF A DRAFT PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT FOR NORTHERN BORDER ACTIVITIES

AGENCY: U.S. Customs and Border Protection, DHS

ACTION: Notice of availability; Request for comments; Notice of public meetings.

SUMMARY: U.S. Customs and Border Protection (CBP) announces that a Draft Programmatic Environmental Impact Statement (PEIS) is now available and open for public comment. The Draft PEIS ana-

lyzes the potential environmental and socioeconomic effects associated with its ongoing and potential future activities along the Northern Border between the United States and Canada. The overall area of study analyzed in the document extends approximately 4,000 miles from Maine to Washington and 100 miles south of the U.S.-Canada Border. CBP also announces that it will be holding a series of public meetings in October to obtain comments regarding the Draft PEIS.

DATES: CBP invites comments on the Draft PEIS during the 45 day comment period, which begins on September 16, 2011. To ensure consideration, comments must be received by October 31, 2011. Comments may be submitted as set forth in the **ADDRESSES** section of this document. CBP will hold public meetings on the Draft PEIS. The locations, dates, and times are listed in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: You may submit comments related to the Draft PEIS by any of the following methods. Please include your name and address and the state or region to which the comment applies, as appropriate. To avoid duplication, please use only *one* of the following methods for providing comments:

- *Project Web site:* <http://www.NorthernBorderPEIS.com/public-involvement/comments.html>;
- *E-mail:* Comments@NorthernBorderPEIS.com;
- *Mail:* CBP Northern Border PEIS, P.O. Box 3625, McLean, Virginia 22102; Phone voicemail box: (866) 760-1421 (comments recorded in the voicemail box will be transcribed). You may download the Draft PEIS from the project Web site: <http://www.NorthernBorderPEIS.com>. It will also be made available on the Department of Homeland Security Web site (<http://www.dhs.gov>). Copies of the Draft PEIS may also be obtained by submitting a request through one of the methods listed below. Please include your name and mailing address in your request.
- *E-mail:* Comments@NorthernBorderPEIS.com and write “Draft PEIS” in the subject line;
- *Mail:* CBP Northern Border PEIS, (Draft PEIS Request), P.O. Box 3625, McLean, VA 22102;
- *Phone:* (866) 760-1421.

FOR FURTHER INFORMATION CONTACT: Jennifer Hass, CBP, Office of Administration, telephone (202) 344-1929. You may also visit the project's Web site at: <http://www.NorthernBorderPEIS.com>.

SUPPLEMENTARY INFORMATION:

Public Meetings and Invitation To Comment

CBP invites comments on all aspects of the Draft PEIS. Comments that will provide the most assistance to CBP will reference a specific section of the Draft PEIS, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. Substantive comments received during the comment period will be addressed in, and included as an appendix to, the Final PEIS. The Final PEIS will be made available to the public through a Notice of Availability in the **Federal Register**.

Comments may be submitted as described in the **ADDRESSES** section of this document. Respondents may request to withhold names or street addresses, except for city or town, from public view or from disclosure under the Freedom of Information Act. Such a request must be stated prominently at the beginning of the comment. Such requests will be honored to the extent allowed by law. This request to withhold personal information does not apply to submissions from organizations or businesses, or from individuals identifying themselves as representatives or officials of organizations or businesses.

CBP will hold public meetings to inform the public and solicit comments about the Draft PEIS. Meetings will be held from 7 p.m. to 9 p.m. at each of the locations and dates provided below. The meeting in the Washington, DC area is for interested parties located outside of the project's areas of interest. Meetings will include displays, hand-outs, and a presentation by CBP, and will provide an opportunity for the public to record their comments on the Draft PEIS. Changes in meeting plans, due to inclement weather or other causes, will be announced on the project's Web site at: <http://www.NorthernBorderPEIS.com>, and on a telephone message at: (866) 760-1421.

Date	City, state	Location
October 3	Duluth, MN	Holiday Inn, 200 West First Street, Duluth, MN 55802.
October 4	Massena, NY	VFW, 101 W Hatfield St., Massena, NY 13662.
October 4	Caribou, ME	Caribou Inn and Convention Center, 19 Main Street, Caribou, ME 04736.

Date	City, state	Location
October 5	Augusta, ME ...	The Senator Inn & Spa, 284 Western Ave., Augusta, ME 04330.
October 5	Bottineau, ND ..	Twin Oaks Resort & Convention Center, 10723 Lake Loop Road, Bottineau, ND 58318.
October 6	St. Albans, VT ..	The Senator Historical Museum, 9 Church Street, St. Albans, VT 05478.
October 6	Detroit, MI	Holiday Inn Express, 1020 Washington Boulevard, Detroit, MI 48226.
October 6	Havre, MT	The Town House Inn, 627 1st Street West, Havre, MT 59501.
October 11	Bellingham, WA	Hampton Inn, 3958 Bennett Drive, Bellingham, WA 98225.
October 11	Rochester, NY ..	Holiday Inn—Rochester Airport, 911 Brooks Avenue, Rochester, NY 14624.
October 12	Erie, PA	Ambassador Banquet Center, 7794 Peach Street, Erie, PA 16509.
October 13	Naples, ID	The Great Northwest Territories Event Center, 336 County Road 8, Naples, ID 83847.
October 17	Washington, DC	Crystal City Marriott at Regan National Airport, 1999 Jefferson Davis Highway, Arlington, VA 22201.

The public may obtain information concerning the status and progress of the PEIS, as well as view and download the document, via the project's Web site at: <http://www.NorthernBorderPEIS.com>.

Background

U.S. Customs and Border Protection (CBP) is charged with the mission of enforcing customs, immigration, agriculture, and numerous other laws and regulations at the Nation's borders and facilitating legitimate trade and travel through legal ports of entry. As the guardian of the United States' borders, CBP protects the roughly 4,000 miles of Northern Border between United States and Canada, from Maine to Washington. The terrain ranges from densely forested lands on the west and east coasts to open plains in the middle of the country.

CBP has completed a Draft Programmatic Environmental Impact Statement (PEIS) for its ongoing and potential future activities along the Northern Border. The Draft PEIS is now available for public review and comment. (For instructions on obtaining a copy of the PEIS or on submitting comments, please *see* the **ADDRESSES** section of this document.) An Environmental Impact Statement (EIS) is a study of the potential effects on the environment from a specific Federal action. A Programmatic EIS (PEIS) is an EIS that looks at the general types of effects of a whole broad program of actions. It often forms the foundation for a “regular” or site-specific EIS, which looks in general detail at the effects of a specific project slated for a particular place. Because this effort is programmatic in nature, the Draft PEIS does not define effects for a specific or planned action. Instead, it analyzes the overall environmental and socioeconomic effects of activities supporting the homeland security mission of CBP focused on applying alternative approaches to better secure the border.

On July 6, 2010, CBP published in the **Federal Register** (75 FR 38822) a notice announcing that CBP intended to prepare four PEISs to analyze the environmental effects of current and potential future CBP border security activities along the Northern Border. Each PEIS was to cover one region of the Northern Border: the New England region, the Great Lakes region, the region east of the Rocky Mountains, and the region west of the Rocky Mountains. The notice also announced and initiated the public scoping process to gather information from the public in preparation for drafting the PEISs. As indicated in the notice, the scoping period concluded on August 5, 2010. However, CBP continued to take comments past the initial scoping period. For more information on this process, please *see* the section of this document entitled Public Scoping Process.

Subsequently, and in part due to comments received during public scoping, CBP decided to refocus its approach and develop one PEIS covering the entire Northern Border, rather than four separate, regional PEISs. This new approach was designed to ensure that CBP could effectively analyze and convey impacts that occur across regions of the Northern Border. CBP published a notice in the **Federal Register** announcing this intention on November 9, 2010 (75 FR 68810). While this makes for a somewhat larger single document, it offers the advantage of less duplication and greater usefulness as a CBP planning tool.

Aided by the information gained during the public scoping process, CBP has prepared the Draft PEIS to analyze the environmental and socioeconomic effects of current and potential future CBP border security activities along the Northern Border between the United States and Canada, including an area extending approximately 100 miles south of the Northern Border. For the purposes of the PEIS, the

Northern Border is defined as the area between the United States and Canada extending from the Atlantic Ocean to the Pacific Ocean encompassing all the States between Maine and Washington, inclusively. (The Alaska-Canada border is not included in this effort.) CBP is evaluating the environmental and socioeconomic impacts of routine aspects of its operations along the Northern Border and considering enhancements to its infrastructure, technologies, and application of manpower to continue to deter existing and evolving threats to the Nation's physical and economic security. Due to the diverse and natural environments along the Northern Border, the Draft PEIS analyzes four Northern Border regions, referred to above: the New England region, the Great Lakes region, the region east of the Rocky Mountains, and the region west of the Rocky Mountains. CBP plans to use the information derived from the analysis in the PEIS in management, planning, and decision-making for its mission and its environmental stewardship responsibilities. It will also be used to establish a foundation for future impact analyses.

More specifically, CBP plans to use the PEIS analysis over the next five to seven years as CBP works to improve security along the Northern Border. To protect the Northern Border against evolving terrorist and criminal threats, CBP plans to implement a diversified approach to border security over the next five to seven years that responds most effectively to those threats. This will involve some combination of facilities, security infrastructure, technologies, and operational activities, although the specific combination of elements that will be used over this period cannot be determined at this time. CBP will use this PEIS as a foundation for future environmental analyses of specific programs or locations as CBP's plans for particular Northern Border security activities develop.

Alternatives Considered

The Draft PEIS considers the environmental impacts of several alternative approaches CBP may use to protect the Northern Border against evolving threats. These alternatives would all support continued deployment of existing CBP personnel in the most effective manner while maintaining officer safety and continued use of partnerships with other Federal, state, and local law enforcement agencies in the United States and Canada. CBP needs to maintain effective control of the Northern Border via all air, land, and maritime pathways for cross-border movement.

The No Action Alternative (or "status quo") would be to continue with the same facilities, technology, infrastructure, and approximate level of personnel currently in use, deployed, or currently planned by

CBP. Normal maintenance of existing facilities is included in this alternative. This alternative would not meet CBP's goals as it would not allow CBP to improve its capability to interdict cross-border violators or to identify and resolve threats at the ports of entry in a manner that avoids adverse effects on legal trade and travel. However, it is evaluated in this Draft PEIS because it provides a baseline against which the impacts of the other reasonable alternatives can be compared.

The Facilities Development and Improvement Alternative would focus on providing new permanent facilities or improvements to existing facilities such as Border Patrol stations, ports of entry, and other facilities to allow CBP agents to operate more efficiently and respond to situations more quickly. This alternative would help meet CBP's goals because the new and improved facilities would make it more difficult for cross-border violators to cross the border. It would also divert traffic from or increase the capacity of the more heavily used ports of entry, decreasing waiting times. The applicability of this alternative would be limited, as most roads crossing the Northern Border already have a crossing facility.

The Detection, Inspection, Surveillance and Communications Technology Expansion Alternative would focus on deploying more effective detection, inspection surveillance and communication technologies in support of CBP activities. This alternative would involve utilizing upgraded systems that would enable CBP to focus efforts on identifying threat areas, improving agent and officer communication systems, and deploying personnel to resolve incidents with maximum efficiency. This alternative would help meet CBP's goals by improving CBP's situational awareness and allowing CBP to more efficiently and effectively direct its resources for interdicting cross-border violators.

The Tactical Security Infrastructure Deployment Alternative would focus on constructing additional barriers, access roads, and related facilities. The barriers would include selective fencing and vehicle barriers at selected points along the border and would deter and delay cross-border violators. The access roads and related facilities would increase the mobility of agents, and enhance their capabilities for surveillance and for responding to various international border violations. This alternative would help meet CBP's goals by discouraging cross-border violators and improving CBP's capacity to respond.

The Flexible Direction Alternative (the Preferred Alternative) would allow CBP to follow any of the above directions in order to employ the most effective response to the changing threat environ-

ment along the Northern Border. This approach would allow CBP to respond more appropriately to a constantly changing threat environment.

Public Scoping Process

CBP developed and executed a public scoping program for the PEIS to identify public concerns to be examined in the PEIS. “Scoping” of an EIS is a process of informing diverse stakeholders about an action that an agency is planning and seeking those stakeholders’ feedback on the environmental concerns that the action could generate. The intent of the scoping effort is to adopt the scope of the planned environmental document to ensure that it addresses relevant concerns identified by interested members of the public as well as organizations, Native American Tribes, and other government agencies and officials.

CBP’s public scoping period for the Northern Border PEIS commenced on July 6, 2010 and concluded on August 5, 2010. *See* 75 FR 38822. The public scoping process was initiated with the publishing of a notice of intent (NOI) notifying the public of CBP’s decision to prepare the PEISs. In coordination with the publication of the NOI, display advertisements were published in various newspapers serving local communities, public service announcements were broadcasted on local radio stations, scoping letters were mailed to potentially interested stakeholders consisting of agencies, organizations, and individuals, and a project Web site was developed. Following the publication of the NOI, a series of public scoping meetings were held in July 2010.

CBP encouraged the public to submit comments concerning the scope of the PEIS during the public meetings, or via Web site, e-mail, or letter. The comments CBP received during the public scoping process were used to adapt the scope of the Draft PEIS and to ensure that it addressed relevant concerns identified by interested members of the public as well as organizations, Native American Tribes, and other government agencies and officials. CBP has compiled a list of comments received in a scoping report. This report is available on the project’s Web site at: <http://www.NorthernBorderPEIS.com>.

NEPA

This environmental analysis is being conducted pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the Council on Environmental Quality Regulations for Implementing the NEPA (40 CFR parts 1500–1508), and Department of Homeland Security Directive 023–01 (renumbered from 5100.1), *Environmental Planning Program of April 19, 2006*. NEPA addresses

concerns about environmental quality and the government's role in protecting it. The essence of NEPA is the requirement that every Federal agency examine the environmental effects of any proposed action before deciding to proceed with it or with some alternative. NEPA and the implementing regulations issued by the President's Council on Environmental Quality call for agencies to document the potential environmental effects of actions they are proposing. Generally, agencies must make those documents public, and seek public feedback on them.

In accordance with NEPA, the PEIS analyzes the effects on the environment of the Northern Border Security Program. CBP will seek public input on these studies and will use them in agency planning and decision making. Because NEPA is a uniquely broad environmental law and covers the full spectrum of the natural and human environment, the PEIS will also address environmental considerations governed by other environmental statutes such as the Clean Air Act, Clean Water Act, Endangered Species Act, and National Historic Preservation Act (NHPA).

NHPA Programmatic Agreement

CBP is developing a Programmatic Agreement (PA) for operations along the Northern Border in accordance with Section 106 of NHPA, 16 U.S.C. 470f, and its implementing regulations (36 CFR part 800). While the PA is being pursued as an independent action from the PEIS, it will be applied to future activities occurring within the Northern Border study area and therefore is relevant to the Northern Border PEIS project. The Northern Border is defined for purposes of the PA as extending from the Atlantic Ocean to the Pacific Ocean encompassing all the States between Maine to Washington, including an area extending approximately 100 miles south of the U.S.-Canada border. This area is identical to the area of study of the PEIS.

CBP is currently consulting and coordinating with the Historic Preservation Officers of the states of Idaho, Maine, Michigan, Minnesota, Montana, New Hampshire, New York, North Dakota, Pennsylvania, Wisconsin, Vermont, and Washington, and the Advisory Council on Historic Preservation (ACHP) to finalize an agreed upon framework for future Section 106 reviews for CBP actions. The PA will be signed by CBP, the ACHP, State Historic Preservation Officers, and other consulting parties. The signed PA will identify (1) activities and projects carried out by CBP that are agreed do not have the potential to affect properties either listed or eligible for listing in the National Register of Historic Places, and (2) activities that are considered undertakings that do not require consultation under Sec-

tion 106. Additionally, the PA identifies actions that may have an effect but that will not require Section 106 review by CBP, State or Tribal Historic Preservation Officers, Tribes and other consulting parties, so long as all terms and conditions as described in the PA are satisfactorily met. The signed PA will be valid for five years from the date of execution, as verified with CBP filing the PA with the ACHP.

Next Steps

After the public comment period on the draft PEIS, CBP will complete a Final PEIS. The Final PEIS will be made available to the public through a Notice of Availability in the **Federal Register**. CBP will then select a programmatic course of action to guide CBP's activities along the Northern Border for the next five to seven years. That decision will be published in the **Federal Register** in a Record of Decision.

Dated: September 14, 2011.

TRENT FRAZIER,
*Acting Executive Director,
Facilities Management and Engineering,
Office of Administration.*

[Published in the Federal Register, September 16, 2011 (76 FR 57751)]



[DOCKET NO. USCBP-2011-0035]

ADVISORY COMMITTEE ON COMMERCIAL OPERATIONS OF CUSTOMS AND BORDER PROTECTION (COAC)

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

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) will meet on October 4, 2011, in El Paso, TX. The meeting will be open to the public. As an alternative to on-site attendance, U.S. Customs and Border Protection (CBP) will also offer a live webcast of the COAC meeting via the Internet.

DATES: COAC will meet on Tuesday, October 4, 2011, from 1 p.m. to 6 p.m. Please note that the meeting may close early if the committee has completed its business.

Registration: If you plan on attending via webcast, please register online at https://apps.cbp.gov/te_registration/?w=60 by close-of-business on September 27, 2011. Please feel free to share this information with interested members of your organizations or associations. If you plan on attending on-site, please register either online at https://apps.cbp.gov/te_registration/?w=57 or by e-mail to tradeevents@dhs.gov by close-of-business on September 27, 2011.

ADDRESSES: The meeting will be held at Radisson Hotel El Paso Airport, in the Venetian 2 Salons, 1770 Airway Boulevard, El Paso, TX 79925. All visitors report to the foyer of Venetian 2 Salons.

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

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the “Agenda” section below.

Comments must be submitted in writing no later than September 27, 2011 and must be identified by USCBP– 2011–0035 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* Tradeevents@dhs.gov. Include the docket number in the subject line of the message.
- *Fax:* 202–325–4290.
- *Mail:* Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 5.2A, Washington, DC 20229.

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

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

There will be three public comment periods held during the meeting on October 4, 2011. On-site speakers are requested to limit their comments to 3 minutes. Contact the individual listed below to register as a speaker. Please note that the public comment period for on-site speakers may end before the time indicated on the schedule that is posted on the CBP web page at the time of the meeting. Comments can also be made electronically anytime during the COAC

meeting webcast, but please note that webcast participants will not be able to provide oral comments. Comments submitted electronically will be read into the record at some time during the meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 5.2A, Washington, DC 20229; telephone 202-344-1440; facsimile 202-325-4290.

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

Agenda

The COAC will meet to review, discuss next steps and formulate recommendations on the following four issues:

- The work of the Global Supply Chain Security: Land Border Security Initiatives Subcommittee.
- The work of the Role of the Broker, a Broker Revision Project.
- The Center of Excellence and Expertise (CEE) Pilot, Account Executive Pilots and Work of the Simplified Entry and Financial Processing Work Group.
- The work of the One U.S. Government at the Border Subcommittee. Prior to the COAC taking action on any of these four issues, members of the public will have an opportunity to provide comments orally or, for comments submitted electronically during the meeting, by reading the comments into the record.

The COAC will receive an update and discuss the following CBP Initiatives and Subcommittee issues:

- Update on the Work of the Air Cargo Security Subcommittee.
- Update on the Work of the Automated Commercial Environment (ACE).
- Update on the Work of the Antidumping/Countervailing Duty Subcommittee.
- Update on the Work of the IPR Enforcement Subcommittee.

Dated: September 14, 2011.

MARIA LUISA O'CONNELL,
Senior Advisor for Trade,
Office of Trade Relations.

[Published in the Federal Register, September 19, 2011 (76 FR 58030)]