

U.S. Customs and Border Protection



U.S. CUSTOMS AND BORDER PROTECTION 2020 TRADE SYMPOSIUM

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

ACTION: Notice of Trade Symposium.

SUMMARY: This document announces that CBP will convene the 2020 Trade Symposium in Anaheim, CA, on Tuesday, March 10, 2020, and Wednesday, March 11, 2020. The 2020 Trade Symposium will feature agency personnel, members of the trade community, and other government agencies in panel discussions on the agency's role in international trade initiatives and programs. Members of the international trade and transportation communities and other interested parties are encouraged to attend.

DATES: Tuesday, March 10, 2020 (opening remarks and general sessions, including the CBP Leadership Town Hall, 8:00 a.m.–5:00 p.m. PDT), and Wednesday, March 11, 2020 (breakout sessions, 8:00 a.m.–5:00 p.m. PDT).

ADDRESSES: The 2020 Trade Symposium will be held at the Anaheim Hilton located at 777 W Convention Way, Anaheim, CA 92802.

Registration: Registration will be open from 12:00 p.m. EST on January 9, 2020, through 4:00 p.m. EST on February 10, 2020. All registrations must be made online at the CBP website <http://www.cbp.gov/trade/stakeholder-engagement/trade-symposium>) and will be confirmed with payment by credit card only. The registration fee is \$210.00 per person. Interested parties are requested to register immediately, as space is limited. Members of the public who are registered to attend and later need to cancel, may do so by sending an email to tradeevents@cbp.dhs.gov. Please include your name and confirmation number with your cancellation request. Cancellation requests made after Friday, February 21, 2020, will not receive a refund.

FOR FURTHER INFORMATION CONTACT: Natalie Thompson, Office of Trade Relations (OTR) at (202) 344-1440, or at

tradeevents@cbp.dhs.gov. The most current 2020 Trade Symposium information can be found at <http://www.cbp.gov/trade/stakeholder-engagement/trade-symposium>.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact OTR at (202) 344-1440, or at *tradeevents@cbp.dhs.gov* as soon as possible.

SUPPLEMENTARY INFORMATION: This document announces that CBP will convene the 2020 Trade Symposium in Anaheim, CA, on Tuesday, March 10, 2020, and Wednesday, March 11, 2020. The format of the 2020 Trade Symposium will consist of general sessions on the first day and breakout sessions on the second day. The 2020 Trade Symposium will feature panels composed of agency personnel, members of the trade community and other government agencies. The panel discussions include United States-Mexico-Canada Agreement (USMCA) collaboration, interagency collaboration, innovation, forced labor, and e-Commerce. In addition, there will be a Binding Rulings Workshop, Partner Government Agency (PGA) speed chat sessions, and one-on-one sessions with personnel from the Centers of Excellence and Expertise. The 2020 Trade Symposium agenda can be found on the CBP website: <http://www.cbp.gov/trade/stakeholder-engagement/trade-symposium>.

Hotel accommodations have been made at the Anaheim Hilton located at 777 W Convention Way, Anaheim, CA 92802. Hotel room block reservation information can be found on the CBP website (<http://www.cbp.gov/trade/stakeholder-engagement/trade-symposium>).

Dated: January 15, 2020.

VALARIE M. NEUHART,
Acting Executive Director,
Office of Trade Relations.

[Published in the Federal Register, January 21, 2020 (85 FR 3397)]



**ACCREDITATION AND APPROVAL OF SAYBOLT LP
(TEXAS CITY, TX) AS A COMMERCIAL GAUGER AND
LABORATORY**

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

ACTION: Notice of accreditation and approval of Saybolt LP (Texas City, TX), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Saybolt LP (Texas City, TX), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of April 3, 2018.

DATES: Saybolt LP (Texas City, TX) was approved and accredited as a commercial gauger and laboratory as of April 3, 2018. The next triennial inspection date will be scheduled for April 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Saybolt LP, 220 Texas Avenue, Texas City, TX 77590, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

Saybolt LP (Texas City, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
5	Metering.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

Saybolt LP (Texas City, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27-02	D 1298	Standard Practice for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.

CBPL No.	ASTM	Title
27-03	D 4006	Standard Test Method for Water in Crude Oil by Distillation.
27-04	D 95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27-05	D 4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27-06	D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27-13	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

<http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Dated: January 7, 2020.

LARRY D. FLUTY,
*Executive Director,
 Laboratories and Scientific
 Services Directorate.*

[Published in the Federal Register, January 22, 2020 (85 FR 3710)]

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING CERTAIN VIDEOSCOPIES

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concern-

ing the country of origin of certain videoscopes (or remote visual inspection equipment). Based upon the facts presented, CBP has concluded that the country of origin of the videoscopes in question is Japan, for purposes of U.S. Government procurement.

DATES: The final determination was issued on January 14, 2020. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within February 21, 2020.

FOR FURTHER INFORMATION CONTACT: Joy Marie Virga, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325-1511.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on January 14, 2020, pursuant to subpart B of part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain videoscopes (IPLEX GT and GX Videoscopes), imported by Olympus Scientific Solutions Technologies Inc. (“OSST”), which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, Headquarters Ruling Letter (“HQ”) H303139, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511-18). In the final determination, CBP concluded that the country of origin of the videoscopes is Japan for purposes of U.S. Government procurement.

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

Dated: January 14, 2020.

Alice A. Kipel,
Executive Director,
Regulations and Rulings, Office of Trade.

HQ H303139

January 14, 2020

OT:RR:CTF:VS H303139 YAG/JMV

CATEGORY: Origin

MR. DANIEL SHAPIRO
OLYMPUS SCIENTIFIC SOLUTIONS AMERICAS
48 WOERD AVENUE
WALTHAM, MA 02453

RE: U.S. Government Procurement; Country of Origin of Videoscopes; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511 *et seq.*); Subpart B, Part 177, CBP Regulations

DEAR MR. SHAPIRO:

This is in response to your correspondence, dated March 12, 2019, requesting a final determination, on behalf of Olympus Scientific Solutions Technologies Inc. (“OSST”), concerning the country of origin of certain videoscopes, pursuant to subpart B of Part 177 of the U.S. Customs and Border Protection (“CBP”) Regulations 177.21 *et seq.*

We note that OSST is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination.

FACTS:

OSST imports the IPLEX GT and GX Videoscope (remote visual inspection equipment), from Japan. This equipment allows for the non-destructive inspection of turbines, heat exchangers, pipes, boiler tubes, and other products. According to OSST’s submission, the videoscopes feature three main components: (1) An 8-inch touch screen or computer control unit (“CCU”); (2) a scope unit with a light source (“scope”); and, (3) a tip adapter. OSST states that the overall manufacturing process involves Olympus Japan, a parent company of OSST, designing the CCU and the scope, and assembling these components into an operational unit in Japan.

The CCU base unit, which streams live images captured by the scope, has a wide video graphics array with a 5-step adjustable LCD backlight, a 100V to 240V AC power supply, 10.8V battery, HDMI video input, and a headset microphone CTIA plug. A third-party supplier manufactures the main components of the CCU in Thailand. The following steps of the CCU manufacturing process are performed in Thailand: printed circuit board (“PCB”) mounting, and assembling the LCD panel to the PCB assembly. The software for the CCU is wholly designed in Japan, but the core of the Japanese software (firmware) is installed in Thailand. In Japan, the latest version of the software and configurations are installed, and the CCU is inspected and tested. Final assembly and packaging of the CCU and scope are completed in Japan and shipped.

The scope includes LED illumination, a 2-stage indicator for high temperature warning, and a handle with a true feel electronic scope tip articulation/fine mode articulation control using the touch screen menu. OSST claims that the scope represents the essence of the videoscope. According to the submission, a third-party Thai supplier assembles the handset of the scope unit by screwing the plastic handset, handset PCB, button and joystick together, and ships these components to Japan. Olympus Japan then connects the handset to the insertion tube, to create the scope unit subassembly.

In addition to the handset, the scope unit subassembly includes the insertion tube and an optics assembly. The insertion tube is made of four layers: A stainless steel cord, a stainless steel braid, a Viton waterproof layer, and a tungsten braid. All four layers are created and assembled in Japan through wire brazing using a microscope, braiding of high durability tungsten, and soldering. At the end of the insertion tube is the optics assembly. Manufacturing of the optics assembly includes the creation and testing of micro lenses, and small parts assembly in a clean room. The optics assembly is essentially a small camera completely manufactured in Japan. The scope unit then undergoes software installation, calibration and product testing. The insertion tube and optics assembly, controlled by the handset, are what enable the videoscope to move around tight spaces and capture images.

According to OSST, once Olympus Japan completes the manufacturing process for the CCU and the scope, it combines both units to make a functional videoscope in Japan by fitting a connector into both the CCU and the scope, centering the cable gasket to assure ingress protection (“IP”) rating and screwing the doors shut to complete the physical mating. OSST states that these steps allow the CCU and scope to communicate without which the scope and CCU as separate units would not have much practical application. Olympus Japan assembles all scope and CCU models together to make 12 different versions, which will then be imported into the United States.

Tip adapters are necessary for the function of the scope but will be separately shipped to the United States due to the number of tip adapter models and variations that may apply. The tip adapters are wholly designed, manufactured and assembled in Japan to accommodate different field, and direction of view and depths of field. In a phone call with this office, OSST likened the tip adapter to an interchangeable lens on a camera. OSST claims that the tip adapter does not change the videoscope’s ability to function, but it does enhance the videoscope’s ability to focus or take clear pictures. Once imported into the United States, the videoscope will then be paired with the tip adapter per customer order by screwing the tip adapter to the scope.¹

You have provided charts and cost figures to show that over 80 percent of the total cost of the combined unit represents the portion of the cost incurred in Japan to develop and produce the CCU and scope units for the IPLEX GT and GX Videoscopes.

ISSUE:

What is the country of origin of the videoscopes for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the

¹ The IPLEX GT and GX Videoscopes operate by attaching the scope (with the light source) to the CCU and then inserting a tip adapter to the end of the scope to enhance focus. While the GT and GX models share the same hardware, the GX has enhanced software features to gain control, dynamic noise reduction, sharpness, saturation display, and note text options.

U.S. Government, pursuant to subpart B of Part 177, 19 CFR 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979 (“TAA”), as amended (19 U.S.C. 2511 *et seq.*).

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

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

See also 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 CFR 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government’s purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. The regulations define a “designated country end product” as:

WTO GPA [World Trade Organization Government Procurement Agreement] country end product, an FTA [Free Trade Agreement] country end product, a least developed country end product, or a Caribbean Basin country end product.

A “WTO GPA country end product” is defined as an article that:

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

See 48 CFR 25.003.

Japan is a WTO GPA country; however, Thailand is not.

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

Texas Instruments v. United States, 681 F.2d 778, 782 (CCPA 1982), the court observed that the substantial transformation issue is a “mixed question of technology and customs law.”

The Court of International Trade has looked at the essential character of an article to determine whether its identity has been substantially transformed through assembly or processing. “The term ‘character’ is defined as ‘one of the essentials of structure, form, materials, or function that together make up and usually distinguish the individual.’” *Uniden America Corporation v. United States*, 24 C.I.T. 1191, 1195 (2000), citing *National Hand Tool Corp. v. United States*, 16 C.I.T. 308, 311 (1992). In *Uniden*, concerning whether the assembly of cordless telephones and the installation of their detachable A/C (alternating current) adapters constituted instances of substantial transformation, the Court of International Trade applied the “essence test” and found that “[t]he essence of the telephone is housed in the base and the handset.” In *Uniroyal, Inc. v. United States*, 3 C.I.T. 220, 225, 542 F. Supp. 1026, 1031, *aff’d*, 702 F.2d 1022 (Fed. Cir. 1983), the court held that imported shoe uppers added to an outer sole in the United States were the “very essence of the finished shoe” and thus the character of the product remained unchanged and did not undergo substantial transformation in the United States.

CBP has applied the Court of International Trade’s analysis in *Uniden* to determine whether other minor components when combined with a larger and a more complex system would lose their separate identities to become part of that larger system. In Headquarters Ruling Letter (“HQ”) H100055 dated May 28, 2010, CBP ruled on the country of origin of a lift unit for an overhead patient lift system. Among the issues we considered was whether a battery charger, when inserted into the hand control unit inside the lift unit, was substantially transformed. Relying on the *Uniden* decision, we noted that the substantial transformation test should be applied to the product as a whole and not to each of the parts. We determined that the lift unit conveyed the essential character to the system and because the detachable hand control and the battery charger were parts of that system, they were substantially transformed when attached to the lift unit. Thus, we held that the country of origin of the hand control unit and battery charger when packaged with the lift unit was Sweden. *See also* HQ H112725, dated October 6, 2010, (inclusion of a battery charger did not alter the essential character of the Adflo™ respiration system which was designed to provide respiratory protection in a welding environment).

While software is often essential to the function of a product, CBP generally does not find the downloading of software to be a substantial transformation. However, CBP may find a substantial transformation when the software is downloaded in the country where it was written and developed. CBP considered a scenario in HQ H241177, dated December 3, 2013, in which a device was manufactured in one country, the software used to permit that device to operate was written in another country, and the installation of that software occurred in a third country. In that case, switches were assembled to completion in Malaysia and then shipped to Singapore, where software developed in the United States was downloaded. It was claimed that the U.S.-origin software enabled the imported switches to interact with other network switches and without this software, the imported devices could not function as Ethernet switches. CBP found that the software downloading performed in

Singapore did not amount to programming. We explained that programming involves writing, testing and implementing code necessary to make a computer function in a certain way. See *Data General v. United States*, 4 C.I.T. 182 (1982); see also “computer program,” Encyclopedia Britannica (2013), (Nov. 26, 2019) <http://www.britannica.com/EBchecked/topic/130654/computer-program>, which explains, in part, that “a program is prepared by first formulating a task and then expressing it in an appropriate computer language, presumably one suited to the application.” While the programming occurred in the United States, the downloading occurred in Singapore; therefore, CBP found that the country where the last substantial transformation occurred was Malaysia, where the major assembly processes were performed. See also HQ H290670, dated January 29, 2019 (finding that fully assembled Ethernet Switches were substantially transformed when U.S.-origin firmware and software were downloaded onto the switches).

When there are multiple manufacturing locations, the country of origin is the country where the last substantial transformation occurs. HQ H203555 dated April 23, 2012, concerned the country of origin of certain oscilloscopes under five distinct manufacturing scenarios. In the various scenarios, the motherboard and the power controller of either Malaysian or Singaporean origin were assembled in Singapore with subassemblies of Singaporean origin into oscilloscopes. CBP found that under the various scenarios, there were three countries under consideration where programming and/or assembly operations took place, the last of which was Singapore. CBP noted that no one country’s operations dominated the manufacturing operations of the oscilloscopes. As a result, while the boards assembled in Malaysia were important to the function of the oscilloscopes, and the U.S. firmware and software were used to program the oscilloscopes in Singapore, the final programming and assembly of the oscilloscopes was in Singapore; hence, Singapore imparted the last substantial transformation, and the country of origin of the oscilloscopes was Singapore.

Based on the information provided in your letter and consistent with the CBP rulings cited above, we find the country of origin of the videoscopes to be Japan. We note that while many important components of the videoscopes are of Thai origin, and many processing operations occur in Thailand (specifically, with respect to the initial assembly of the CCU and the scope handset), the Japanese operations require more skill and precision, and impart the final product with its essential character. Many of the critical operations involved in completing the product, such as developing and installing the software; manufacturing the insertion tube, the optics assembly and the tip adapter; and assembling the components, are performed in Japan. The assembly of the scope in Japan includes assembling the optics, the stainless steel cord, the stainless steel braid, waterproof layer and the tungsten braid into the scope tube, which enable the scope to see and navigate small spaces. The scope imparts the videoscope with its identifying functionality, meaning it is a scope unit with the light source that enables the videoscope to nondestructively see, move, and video small areas of a product such as turbines or pipes. The videoscope’s identifying function is further enhanced by the inclusion of the Japanese originating tip adapter. Additionally, while the CCU is assembled in Thailand, it is the software completely developed and largely installed in Japan that allows the user to control the

scope and view the image the scope captures on the CCU. Finally, the assembly of components in Japan allows the CCU and the scope to communicate.

We note that the software installed in Japan is also completely developed and programmed in Japan and the portion of the costs incurred in Japan to develop and produce the CCU and scope units for the videoscopes represents over 80% of the total cost of the combined unit. Consequently, we find that the imported videoscopes are substantially transformed because of the assembly operations performed in Japan to produce the fully functional and operational videoscopes. Based on the information presented, it is our opinion that the country of origin of videoscopes is Japan.

HOLDING:

Based on the facts provided, the finished videoscopes will be considered a product of Japan for purposes of U.S. Government procurement.

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

Sincerely,

Alice A. KIPPEL,
Executive Director,

Regulations and Rulings, Office of Trade.

[Published in the Federal Register, January 22, 2020 (85 FR 3707)]

19 CFR PART 177

**PROPOSED REVOCATION OF 29 RULING LETTERS,
PROPOSED MODIFICATION OF 22 RULING LETTERS,
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO CLASSIFICATION OF DRINK MIXES**

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

ACTION: Notice of proposed revocation of 29 ruling letters, proposed modification of 22 ruling letters, and proposed revocation of treatment relating to the classification of drink mixes.

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 29 rulings and modify 22 rulings concerning the classification of drink mixes under the Har-

monized 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.

DATE: Comments must be received on or before March 6, 2020.

ADDRESS: 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, 90 K Street, N.E., 10th Floor, Washington, D.C. 20229-1177. Submitted comments may be inspected at the address stated above 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: Tatiana Salnik Matherne, Tariff Classification and Marking Branch: (202) 325-0351.

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 29 rulings and modify 22 rulings pertaining to the classification of drink mixes. Although in this notice CBP is specifically referring to Headquarters Ruling Letter (“HQ”) 963668, dated June 23, 2000 (Attachment A); HQ 964497, dated January 23, 2001 (Attachment B); HQ 967563, dated November 4, 2005 (Attachment C); New York Ruling Letter (“NY”) 805860, dated January 25, 1995 (Attachment D); NY 807382, dated February 28, 1995 (Attachment E); NY 806349, dated January 31, 1995 (Attachment F); NY 807225, dated February 28, 1995 (Attachment G); NY 818773, dated February 22, 1996 (Attachment H); NY A81526, dated April 2, 1996 (Attachment I); NY A86301, dated August 19, 1996 (Attachment J); NY B83306, dated March 25, 1997 (Attachment K); NY B86542, dated June 24, 1997 (Attachment L); NY B86441, dated June 26, 1997 (Attachment M); NY C82414, December 8, 1997 (Attachment N); NY C82415, December 8, 1997 (Attachment O); NY D80530, dated August 7, 1998 (Attachment P); NY D83344, dated October 30, 1998 (Attachment Q); NY D83345, dated October 27, 1998 (Attachment R); NY F89359, dated August 2, 2000 (Attachment S); NY G89465, dated April 30, 2001 (Attachment T); NY H82031, dated June 5, 2001 (Attachment U); NY H85600, dated November 6, 2001 (Attachment V); NY I87369, dated November 19, 2002 (Attachment W); NY L82138, dated February 14, 2005 (Attachment X); NY L88611, dated December 5, 2005 (Attachment Y); NY N015991, dated September 10, 2007 (Attachment Z); NY N019259, dated November 20, 2007 (Attachment AA); NY N042679, dated November 26, 2008 (Attachment BB); NY N045475, dated November 26, 2008 (Attachment CC); NY N073508, dated September 29, 2009 (Attachment DD); NY R01312, dated February 2, 2005 (Attachment EE); NY R01313, dated February 9, 2005 (Attachment FF); NY N158039, dated May 13, 2011 (Attachment GG); NY N251352, dated April 8, 2014 (Attachment HH); NY N235188, dated December 10, 2012 (Attachment II); NY 803800, dated November 9, 1994 (Attachment JJ); NY N238296, dated February 27, 2013 (Attachment KK); NY 870767, dated January 29, 1992 (Attachment LL); NY 883426, dated March 9, 1993 (Attachment MM); NY 863959, dated July 13, 1991 (Attachment NN); NY N015994, dated September 10, 2007 (Attachment OO); HQ 083698, dated June 1, 1989 (Attachment PP); NY 860227, dated February 20, 1991 (Attachment QQ); NY 804357, dated November 22, 1994 (Attachment RR); HQ 951849, dated August 11, 1992 (Attachment SS); NY 869626, dated January 2, 1992 (Attachment TT); NY C82572, dated December 15, 1997 (Attachment UU); NY C89506, dated July 8, 1998 (Attachment VV); NY A87589, dated September 23, 1996 (Attachment WW); NY A89697, dated November 27, 1996

(Attachment XX) and NY B80099, dated December 10, 1996 (Attachment YY), 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 the above-cited rulings, CBP classified the subject drink mixes in various subheadings of heading 1701 and 1702, HTSUS, according to their sugar content. Upon reconsideration, we do not believe that the subject drink mixes have the character of flavoured or coloured sugars of headings 1701 and 1702, HTSUS. As a result, we now consider the subject drink mixes to be properly classified under heading 2106, HTSUS, as other food preparations. Ten of the mentioned rulings are being modified with respect to their classification in this manner, but remain in effect with respect to the NAFTA preference accorded to the merchandise.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke HQ 964497, HQ 967563, NY 805860, NY 807382, NY 806349, , NY A81526, NY B83306, NY B86542, NY D80530, NY D83344, NY D83345, NY F89359, NY H82031, NY H85600, NY L82138, NY N015991, NY N019259, NY N045475, NY N073508, NY R01312, NY N251352, NY N235188, NY 803800, NY N238296, NY 870767, NY 883426, NY 863959, NY N015994 and HQ 083698 and modify HQ 963668, NY 807225, NY N042679, NY 818773, NY B86441, NY G89465, NY L88611, NY A86301, NY C82414, NY C82415, NY I87369, NY R01313, NY N158039, NY 860227, NY 804357, HQ 951849, NY 869626, NY C82572, NY C89506, NY A87589, NY A89697 and NY B80099, as well as 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 H157219 (see Attachment ZZ 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: January 21, 2020

CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachments

ATTACHMENT A

HQ 963668

June 23, 2000

CLA-2 RR:CR:GC 963668K

963698K

CATEGORY: Classification

TARIFF NO.: 1701.91.54; 1701.91.5800;

9906.17.39-9906.17.41; 1702.30.4080;

1702.60.4090; 2106.90.7800;

2106.90.8000; 9906.21.50-9906.21.52;

2106.90.95; 2106.90.9700; 2106.90.9973;

MR. JOHN M. PETERSON

MR. CURTIS W. KNAUSS

NEVILLE, PETERSON & WILLIAMS

COUNSELLORS AT LAW

80 BROAD STREET, 34TH FLOOR

NEW YORK, N.Y. 10004

RE: "KLASS Aguas Frescas" Flavored Powdered Drink Mixes

GENTLEMEN:

In your letters of December 13, 1999 (our case # 963668) and January 7, 2000 (our case # 963698), you requested classification rulings for six powdered flavored drink mixes manufactured in Mexico. The six samples submitted for 963668 appear to be identical to the corresponding samples for 963698, including the names of the mixes contained in 1.2 oz retail packages and the ingredients listed thereon. Each sample lists "sugar" as an ingredient. Otherwise, the sugar (or sweetener) is not described as "sucrose", "dextrose" or "fructose". Your submission of December 13, 1999, for # 963668, indicated that each of the six mixes contained sugar (sucrose). However, in the translated Attachment 6, dated March 27, 1998, submitted with your letter of May 9, 2000, refers to sugar (fructose). In your letter of January 7, 2000 for # 963698, dextrose is indicated as an ingredient for each of the samples. Our response will cover the classification for all three contingencies. This response assumes that the goods are products of Mexico but the response is not determinative as to whether the goods qualify as NAFTA originating goods from Mexico under General Note 12, Harmonized Tariff Schedule of the United States (HTSUS).

FACTS:

"Klass Aguas Frescas" is described as a family of flavored beverage mixes imported in powdered form packaged for retail trade with instructions for the consumer to merely add 1.1 quarts of cold water, add sugar to taste and stir. A description for each of the powdered drinks for # 963668 follows.

"Tamarindo" is stated to contain 87.2244% refined sugar (sucrose), 6.5430% citric acid, 2.0571% maleic acid, 1.3142% tamarind flavor, 1.1428% guar gum 60/70, 0.8000% acidulant/antihumectant, 0.6000% caramel color, 0.1313% tamarind flavor (2), 0.0944% vitamin C, 0.0685% titanium dioxide, 0.0206% food coloring-Yellow No. 5, and 0.0037% food coloring-Red No. 40.

"Jamaica" contains 86.0279% refined sugar (sucrose), 8.6857% citric acid, 2.8571% Jamaica extract, 0.9142% Jamaica flavor, 0.8000% acidulant/

antihumectant, 0.4517% sodium citrate, 0.1611% food coloring-Red No. 40, 0.0944% vitamin C and 0.0025% food color-Blue No.1.

“Horchata” contains 66.9129% refined sugar (sucrose), 15.0000% rice flour, 14.0000% condensed milk substitute (no further description of the condensed milk substitute was provided, but the ingredients listed on the package refers to low fat milk powder), 1.5000% acidulant/antihumectant, 0.7000% guar gum 60/70, 0.40000% Enturbiante (clouding agent), 0.2500% titanium dioxide and 0.0944% vitamin C.

“Guayaba” contains 90.1011% refined sugar (sucrose), 2.700% citric acid, 2.000% maleic acid, 1.8000% guar gum, 1.1428% guayaba flavor, 0.6000% acidulant/antihumectant, 0.4000% “Avena” flour, 0.2857% guayaba flavor (2), 0.2857% “Parchita” flavor, 0.2000% sodium citrate, 0.2000% Enturbiante, 0.1000% guayaba extract, 0.0944% vitamin C, 0.8000% titanium dioxide, 0.0066% food color-Red No. 40, and 0.0037% food color-Yellow No.5.

“Fresa” contains 89.3747% refined sugar (sucrose), 6.2857% citric acid, 1.3428% flavor “Fresa” (strawberry), 0.6600% sodium citrate, 0.6000% acidulant/antihumectant, 0.4400% guar gum 60/70, 0.4000% “Avena” flour, 0.3513% Enturbiante, 0.2752% caramel color, 0.1000% strawberry extract, 0.0944% vitamin C, 0.0449% food coloring-Red No. 40, 0.0300% food coloring-Laca Red No. 40 and 0.0010% food coloring-Blue No. 1.

“Mango” contains 91.0251% refined sugar (sucrose), 2.500% guar gum, 2.000% maleic acid, 0.9428% citric acid, 0.8700% mango flavor, 0.6000% acidulant/antihumectant, 0.6000% sodium citrate, 0.5800% “Duranzo” flavor, 0.3000% Enturbiante, 0.1500% titanium dioxide, 0.1000% mango extract, 0.0944% vitamin C, 0.0800% color-Laca yellow No. 5, 0.0746% caramel color, 0.0471% food color-Yellow No. 5, 0.0229% food color-Laca Yellow No. 6 and 0.0131% food color-Yellow No. 6.

In addition, for # 963668, the translated Attachment 6, dated March 27, 1998, submitted with your letter of May 9, 2000, refers to the mixes as containing sugar (fructose), as follows:

Identification of the Merchandise: A powder consisting of a mix or raw materials; Sugar (fructose) 85% and acidulants, artificial colors and flavors, natural colors, fruit extracts, vitamin C, anticaking agents, stabilizers and other additives 18%. The product is available in 6 flavors; horchata, jamaica, tamarindo, fresa (strawberry), mango, and guayaba and in envelopes of 36 grams and 500 grams each.

The powdered mixes containing fructose are similar to the mixes for sucrose described above and, for all practicable purposes, the only difference in the mixes is the sugar ingredient.

A description for each of the powered drinks for # 963698 follows with dextrose listed as the sugar ingredient.

“Tamarindo” is stated to contain 75.58% sugar (dextrose), 13.0433% citric acid and maleic acid, 3.3734% tamarind flavor, 2.6666% guar gum 60/70, 3.5000% acidulant/antihumectant, 1.4000% caramel color, 0.2200% vitamin C, 0.1600% titanium dioxide, 0.0480% food coloring-Yellow No. 5 and 0.0087% food coloring-Red No. 40.

“Jamaica” contains 81.1580% sugar (dextrose), 13.1733% citric acid/fumaric acid, 2.1333% Jamaica flavor, 1.8667% acidulant/antihumectant, 1.0667% sodium citrate, 0.3760% food coloring-Red No. 40, 0.2200 vitamin C and 0.0060% food color-Blue No.1.

“Horchata” contains 83.0300% sugar (dextrose), 1.4667% rice flour, 4.4000% condensed milk substitute, 3.5000% acidulant/antihumectant, 1.6667% guar gum 60/70, 0.9333% Enturbiente, 0.5833% titanium dioxide and 0.2200% vitamin C.

“Guayaba” contains 79.5927% sugar (dextrose), 7.6767% citric and fumaric acids, 4.2000% guar gum, 2.6667% guayaba flavor, 2.0000% acidulant/antihumectant, 0.9333% “Avena” flour, 0.6666% guayaba flavor (2), 0.6666% “Parchita” flavor, 0.4667% sodium citrate, 0.4667% Enturbiente, 0.2333% guayaba extract, 0.2200% vitamin C, 0.1867% titanium dioxide, 0.0153% food color-Red No. 40 and 0.0087% food color-Yellow No. 5.

“Fresa” contains 79.7393% sugar (dextrose), 9.5333% citric acid/fumaric acid, 3.1333% flavor “Fresa” (strawberry), 1.5400% sodium citrate, 2.0000% acidulant/antihumectant, 1.0267% guar gum 60/70, 0.9333% “Avena” flour, 0.8200% Enturbiente, 0.6420% caramel color, 0.2333% strawberry extract, 0.2201% vitamin C, 0.1067% food coloring-Red No. 40, 0.0700% food coloring-Laca Red No. 40 and 0.0020% food coloring-Blue No. 1.

“Mango” contains 80.3553% sugar (dextrose), 5.8333% guar gum, 4.8067% citric and fumaric acids, 2.2000% mango flavor, 1.6667% acidulant/antihumectant, 1.4000% sodium citrate, 0.7000% Enturbiente, 0.3500% titanium dioxide, 0.2200% vitamin C, 1.8667% color-Laca yellow No. 5, 0.1740% caramel color, 0.1100% food color-Yellow No. 5, 0.0533 food color-Laca Yellow No. 6 and 0.0307% food color-Yellow No. 6.

The sugar content for all of the flavored powdered drink mixes, whether of sucrose, fructose or dextrose, ranges from 79% to 90%.

ISSUE:

Whether the flavored powdered drink mixes as described above are classified in heading 2106, HTSUS, as claimed.

LAW AND ANALYSIS:

The classification of imported merchandise under the HTSUS is governed by the principles set forth in the General Rules of Interpretation (GRI). GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section and chapter notes and, unless otherwise required, according to the remaining GRI's, taken in their appropriate order. Accordingly, we first have to determine whether the articles are classified under GRI 1.

Heading 1701 at the six digit level, 1701.91, provides for cane or beet sugar and chemically pure sucrose, in solid form containing added flavoring or coloring matter.

Heading 1702, HTSUS, provides for other sugars (that is, sugars other than those classified in heading 1701), including chemically pure lactose, maltose, glucose and fructose, in solid form. The heading also provides for sugar syrups, not containing added flavoring or coloring matter. Sugar syrups are not involved in this case. The heading excludes sugar syrups containing added flavoring or coloring matter but does not exclude other sugars containing added flavoring or coloring matter.

Heading 2106 provides for food preparations not elsewhere specified or included. The mixes may be classified in heading 2106 by virtue of GRI 1 provided that they are not elsewhere specified or included in other headings of the tariff. We are satisfied that all of the articles are classified by virtue of GRI 1.

The Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and General Rules of Interpretation of the HTSUS. In *Bausch & Lomb, Inc., v. U.S.*, 21 CIT 166, 957 F. Suppl. 281 (1997), the Court stated that

Although the Explanatory Notes are not dispositive or binding on the Court, they “offer guidance in interpreting [HTSUS] subheadings” *Mita Copystar Amer. V. United States*, 14 Fed Cir. (T) 66... As the Joint Committee on the Omnibus Trade and Competitiveness Act of 1988 stated: The Explanatory Notes constitute the Customs Cooperation Council's official interpretation of the Harmonized System. They 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...[and] are generally indicative of the proper interpretation of the various provisions of the Convention....

The Courts have consistently followed the EN's for guidance in interpreting the HTSUS when the EN's are persuasive and specifically include or exclude an item from a tariff heading as it did in *Bausch & Lomb, supra*, and refused to do so when the EN's are not persuasive. See also, *Lynteq, Inc. v. U.S.*, 10 Fed. Cir. (T) 112 (1992), *North American Processing Co. v. U.S.*, CIT, Slip OP. 98-13 (1998) and *Sabritas, S.A. De C.V and Frito-Lay, Inc., v. U.S.*, CIT, Slip Op. 98-14 (1998).

The EN's for heading 2106, state that “powders which have the character of flavoured or coloured sugars used in the preparation of lemonade and the like fall in heading 17.01 or 17.02 as the case may be”. As noted above, heading 1702, unlike sugar syrups, does not exclude other sugars in solid forms (including powders) containing added flavoring or coloring matter. The EN's for heading 2106 further state that the heading includes “preparations for the manufacture of lemonades or other beverages, consisting, for example of; flavored or coloured syrups, being sugar solutions with natural or artificial substances added to give them the flavor of, for example, certain fruits or plants (raspberry, blackcurrant, lemon, mint, etc), whether or not containing added citric acid and preservatives.” We have consistently held in our rulings that the EN's for heading 2106 are persuasive and specifically excludes from heading 2106 other sugars in solid form containing flavoring and colored matter that are classified in headings 1701 and 1702. See New York Ruling Letters (NYRL) A89697 dated 11/27/96, B86542 dated 6/11/97, D83345 dated 10/27/98, D80530 dated 8/7/98, A86301 dated 8/19/96, and DD870722 dated 2/4/92. See also, Headquarters Ruling Letters 083698 dated 6/1/89, 083940 dated 7/5/89, 084927 dated 10/3/89, 085590 dated 11/29/89, 955641 dated 3/8/94, and 956823 dated 8/8/94. These rulings also contained similar added ingredients as in the Klass Aguas Frescas drink mixes.

With the exception of the “Horchata” drink mixes, all of the other drink mixes described above are classifiable in headings 1701 and 1702.

HOLDING:

“Tamarindo”, “Jamaica”, “Guayaba”, “Fresa”, and “Mango”, Klass Aguas Frescas powdered mix drinks, all of which contain more than 10% cane or beet sucrose (66% to 91%) and added flavoring and coloring matter, put up in

retail trade packages, are classified in subheading 1701.91.54, HTSUS, if within the quantitative limitations of additional U.S. Note 8, Chapter 17, and entered pursuant to its provisions, **but the note excludes products from Mexico.** Such products from Mexico are classified in subheading 1701.91.58, an over the tariff rate quota provision. Subheading 1701.91.58, also provides for special rates of duties (see subheadings 9906.17.39–9906.17.41), for products from Mexico if they qualify as NAFTA originating goods under General Note 12, HTSUS, and in compliance with the applicable regulations.

If the above five drink mixes contain 85% of fructose (rather than sucrose), they are classified in subheading 1702.60.4090, HTSUS, as other fructose sugars and fructose syrups containing in the dry state more than 50% by weight of fructose, not subject to tariff rate quotas and if they qualify as NAFTA originating goods under General Note 12, HTSUS, they are classified under the special rates of duties applicable for Mexico.

If the above five drink mixes contain 75% to 83% of dextrose, they are classified in subheading 1702.30.4080, HTSUS, as other sugars, other glucose and glucose syrups, not containing fructose or containing in the dry state less than 20% by weight of fructose, not subject to tariff rate quotas; and, if they qualify as NAFTA originating goods from Mexico under General Note 12, HTSUS, they are classified under the special rates of duties for subheading 1702.30.4080, HTSUS.

The “Horchata” mix, in retail packages, containing over 10% cane or beet sucrose and containing 14% condensed milk substitute, is classified, if the condensed milk substitute consists of milk solids, as other food preparations not elsewhere specified or included, containing over 10% by dry weight of milk solids and over 10% by weight of cane or beet sugars, in subheading 2106.90.78, HTSUS, subject to the quota limitations of Additional U.S. Note 8, of Chapter 17, **but the note excludes products from Mexico.** Such products from Mexico are classified in 2106.90.8000, HTSUS, an over the tariff rate quota provision. Subheading 2106.90.8000, also provides for special rates of duties (see subheadings 9906.21.50–9906.21.52) for products from Mexico that qualify as NAFTA originating goods under General Note 12, HTSUS. If the articles do not contain over 10% milk solids, they are classified as other food preparations not elsewhere specified or provided for, containing over 10% by dry weight of cane or beet sugars, in subheading 2106.90.95, HTSUS, if within the quantitative limitations of Additional U.S. Note 8 to Chapter 17, **but the note excludes products from Mexico.** Such products from Mexico are classified in subheading 2106.90.97, HTSUS, and over the tariff rate quota provision. Subheading 2106.90.97, also provides for special rates of duties (see subheadings 9906.21.50–9906.21.52) for products from Mexico that qualify as NAFTA originating goods under General Note 12, HTSUS.

The “Horchata” mix in retail packages, as a product of Mexico, containing 83% dextrose or fructose rather than cane or beet sucrose, is classified as other food preparations for the manufacture of beverages, not elsewhere specified or included, in subheading 2106.90.9973, HTSUS, not subject to tariff rate quotas.

Sincerely,

JOHN DURANT,

Director

Commercial Rulings Division

ATTACHMENT B

HQ 964497

January 23, 2001

CLA-2 RR:CR:GC 964497 nel

CATEGORY: Classification

TARIFF NO.: 1701.91.5400, 1701.91.5800

JOSE RODRIGUEZ-EMA, V.P.
DIVERSIFIED FOODS, INC.
3850 N. CAUSEWAY BLVD.
SUITE 1870
NEW ORLEANS, LA 70002

RE: NY D83345; powdered flavored drink mixes from Costa Rica

DEAR MR. RODRIGUEZ-EMA,

This is in reference to your letters of September 7 and 11, 2000, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of various powered flavored drink mixes from Costa Rica.

As requested, we have reconsidered NY D83345 issued to you on October 27, 1998, and affirm that decision.

FACTS:

The merchandise is described as powdered drink mixes, which are imported in the following flavors: cherry, strawberry, fruit punch, lemonade, orange, and grape. No samples were submitted. Product labels from "Fruti Kool" cherry and orange show the product had a net weight of 24 ounces. The merchandise is sold in supermarkets.

These products have been imported from Costa Rica for several years, classified by Customs under chapter 17, HTSUS, which provides for sugars and sugar confectionery, while you believe they should be classified under chapter 21, HTSUS, which provides for miscellaneous edible preparations.

An ingredient breakdown, as provided, for each of the powdered drink mixes is as follows:

Orange: 94.88% sugar, 3.207% citric acid, 1.001% flavor, 0.599% corn starch (modified), 0.250% tricalcium phosphate, 0.036% ascorbic acid, and 0.030% artificial color.

Fruit punch: 95.68% sugar, 2.820% citric acid, 0.252% flavor, 0.252% sodium citrate, 0.597% corn starch (modified), 0.250% tricalcium phosphate, 0.048% ascorbic acid, and 0.100% artificial color.

Strawberry: 96.50% sugar, 2.006% citric acid, 0.304% flavor, 0.304% sodium citrate, 0.300% tricalcium phosphate, 0.045% ascorbic acid, and 0.200% artificial color.

Cherry: 96.63% sugar, 2.001% citric acid, 0.310% flavor, 0.303% sodium citrate, 0.280% tricalcium phosphate, 0.303% salt, 0.048% ascorbic acid, and 0.130% artificial color.

Grape: 96.53% sugar, 2.301% citric acid, 0.402% flavor, 0.317% tricalcium phosphate, 0.351% salt, 0.048% ascorbic acid, and 0.050% artificial color.

Lemonade: 87.182% sugar, 4.895% citric acid, 0.786% flavor, 0.250% corn starch (modified), 1.350% tricalcium phosphate, 0.048% ascorbic acid, 0.001% artificial color, 5.450 corn syrup solid, and 0.038% xanthan gum.

ISSUE:

Whether the flavored powder drink mixes described above are classified in heading 2106, HTSUS, or heading 1701, HTSUS.

LAW & ANALYSIS:

The classification of imported merchandise under the HTSUS is governed by the principles set forth in the General Rules of Interpretation (GRI). GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section and chapter notes and, unless otherwise required, according to the remaining GRIs, taken in their appropriate order. Accordingly, we consider whether the articles are classified under GRI 1.

The following headings are relevant to the classification of these flavored powdered drink mixes:

Heading 1701, HTSUS, at the six digit level, 1701.91, provides for: Cane or beet sugar and chemically pure sucrose, in solid form: Other: Containing added flavoring or coloring matter.

Heading 2106, HTSUS, provides for: Food preparations not elsewhere specified or included.

The mixes may be classified in heading 2106 by virtue of GRI 1 provided that they are not elsewhere specified or included in other headings of the tariff schedule. We are satisfied that the instant merchandise may be classified by virtue of GRI 1.

The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the tariff system at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

The ENs for heading 2106, HTSUS, state that “[p]owders which have the character of flavoured or coloured sugars used for the preparation of lemonade and the like fall in heading 17.01 or 17.02 as the case may be.”

The products in issue all contain at least 87% sugar with various quantities of citric acid, flavor, sodium citrate, modified corn starch, tricalcium phosphate, ascorbic acid, artificial colors, and small quantities of various other ingredients. As stated in HQ 963668 dated June 23, 2000, Customs has consistently held in our rulings that the ENs for heading 2106 are persuasive and specifically excludes from heading 2106, HTSUS, sugars in solid form containing flavoring and colored matter that are classified in headings 1701 and 1702, HTSUS. See NY D80530 dated August 7, 1998, NY A89697 dated November 27, 1996, and NY A86301 dated August 19, 1996. See also HQ 956823 dated August 8, 1994, HQ 085590 dated November 29, 1989, HQ 084927 dated October 3, 1989, HQ 083940 dated July 5, 1989, and HQ 083698 dated June 1, 1989. These rulings all classify products that contain sugar with similar added ingredients to the products in issue.

Therefore, the applicable tariff provision for the powder flavored drink mixes in issue, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 1701.91.5400, HTSUS, which provides for: Cane or beet sugar and chemically pure sucrose in solid form: Other: Containing added flavoring matter or coloring matter: Containing added flavoring matter whether or not containing added coloring: Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17: Described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading 1701.91.5800, HTSUS. In addition, products classified in subheading 1701.91.5800, HTSUS, will be subject to additional duties based on their value as described in subheadings 9904.17.49 to 9904.17.56, HTSUS.

In your letters you provided information from Costa Rican Customs and the Vice-Minister of Foreign Commerce to support your position that these powdered drink mixes should be classified in heading 2106, HTSUS. These documents are instructive on how others may classify like goods, however, U.S. Customs is not bound to abide by another country's rulings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

In keeping with our previous classifications of similar products, Customs believes the powdered drink mixes in issue are classified as flavored sugars under subheadings 1701.91.5400 and 17001.91.5800, HTSUS, depending on quota availability.

HOLDING:

The powdered flavored drink mixes in issue were correctly classified in NY D83345 dated October 27, 1998, and will continue to be classified as flavored sugars under subheadings 1701.91.5400 and 1701.91.5800, HTSUS, depending on quota availability.

Sincerely,
JOHN DURANT,
Director
Commercial Rulings Division

ATTACHMENT C

HQ 967563

November 4, 2005

CLA-2 RR:CTF:TCM 967563ptl

CATEGORY: Classification

TARIFF NO.: 1701.91.48; 1701.91.58

JOHN B. PELLEGRINI, ESQ.
MCGUIRE WOODS LLP
1345 AVENUE OF THE AMERICAS
NEW YORK, NY 10105-0106

RE: Reconsideration of NY R01312 and NY R01313.

DEAR MR. PELLEGRINI:

This is in response to your letter of February 21, 2005, on behalf of Commodity Specialists Company, requesting reconsideration of the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of two rulings that had been issued to them for products which are described as isotonic drink mixes. The rulings also addressed the country of origin marking requirements and whether the mixes qualify as originating goods under the NAFTA. You are not seeking reconsideration of those portions of the rulings.

You have described the products under consideration as being isotonic drink mixes. New York Ruling Letters (NY) R01312, dated February 2, 2005, and NY R01313, dated February 9, 2005, classified nine varieties of the mixes in subheading 1701.91.48, HTSUS, which provides for "Cane or beet sugar and chemically pure sucrose, in solid form: ... Containing added flavoring matter whether or not containing added coloring: Articles containing over 65 percent by dry weight of sugar described in additional U.S. note 2 to chapter 17: Other" when packaged for industrial or food service, and in subheading 1701.91.58, HTSUS, which provides for "Cane or beet sugar and chemically pure sucrose, in solid form: ... Containing added flavoring matter whether or not containing added coloring: Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17: ... Other", when packaged for retail sale. In your request for reconsideration, you contend that the products should be classified in subheading 2106.90.99, HTSUS, which provides for "Food preparations not elsewhere specified or included: ...Other, ... Other: Preparations for the manufacture of beverages: Containing sugar derived from sugar cane and/or sugar beets."

FACTS:

The goods being considered consist of nine varieties of "isotonic" drink mixes. According to information you provided, the mixes contain: 80 – 85 percent sugar; less than 8 percent dextrose; less than 1 percent each of potassium citrate, salt, sodium citrate, potassium phosphate, sodium phosphate calcium phosphate, natural and artificial color, natural and artificial flavor, and modified food starch. The sugar will be cane or beet of United States or Mexican origin. The product flavors classified in NY R01312 include lemonade, lemon-lime, tropical cooler, orange, and cool citrus. The product flavors classified in NY R01313 include mixed berry, fruit punch, cherry and grape. The mixes will be blended in Mexico and imported in 2,400 to 2,700 pound bulk bags. After importation into the United States, the mixes will be repackaged into various sizes for industrial, food service and retail sale.

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 may then be applied in order.

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

The HTSUS subheadings under consideration are as follows:

- 1701** Cane or beet sugar and chemically pure sucrose, in solid form:
 - Other:
 - 1701.91 Containing added flavoring or coloring matter:
 - Containing added flavoring matter whether or not containing added coloring:
 - Articles containing over 65 percent by dry weight of sugar described in additional U.S. note 2 to chapter 17:
 - * * *
 - 1701.91.4800 Other 1/
 - Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17:
 - * * *
 - 1701.91.58 Other 2/
 - 1/ See subheadings 9904.17.17-9904.17.48.
 - 2/ See subheadings 9904.17.49-9904.17.65.
- 2106** Food preparations not elsewhere specified or included:
 - 2106.90 Other:
 - Other:
 - Other:
 - Other:
 - 2106.90.99 Other
 - Preparations for the manufacture of beverages:
 - * * *
 - 2106.90.9972 Containing sugar derived from sugar cane and/or sugar beets

You contend that the drink mixes should be classified in subheading 2106.90.99, HTSUS, which provides for “Food preparations, not elsewhere specified or included, ... Other.” Your reasoning is that the subheadings of Chapter 17 do not include articles that contain “electrolytes” which are intended to help the body maintain a balanced cellular activity during exercise. You state that these “electrolytes” are neither flavoring nor colored matter referred to in the subheading.

The drink mixes under consideration contain between 80% and 85% sugar plus “less than” 8% dextrose. The “electrolytes” are present in a minimal amount of less than 1% each. CBP has previously considered drink mixes which contain sugar and various quantities of additional ingredients such as vitamin C, sodium citrate, guar gum and acids that are in powdered form packaged for retail sale. In determining the classification of such products, CBP has referred to the ENs. The Courts have consistently followed the ENs for guidance in interpreting the HTSUS when the ENs are persuasive and specifically include or exclude an item from a tariff heading as it did in *Bausch & Lomb, supra*, and refused to do so when the EN’s are not persuasive. See also, *Lynteq, Inc. v. U.S.*, 10 Fed. Cir. (T) 112 (1992), *North American Processing Co. v. U.S.*, CIT, Slip OP. 98–13 (1998) and *Sabritas, S.A. De C.V. and Frito-Lay, Inc., v. U.S.*, CIT, Slip Op. 98–14 (1998).

In HQ 983668, dated June 23, 2000, a ruling covering six powdered flavored drink mixes marketed under the name “Klass Aguas Frescas”, Customs stated:

The EN’s [sic] for heading 2106 state that “powders which have the character of flavoured or coloured sugars used in the preparation of lemonade and the like fall in heading 17.01 or 17.02 as the case may be”. As noted above, heading 1702, unlike sugar syrups, does not exclude other sugars in solid forms (including powders) containing added flavoring or coloring matter. The EN’s for heading 2106 further state that the heading includes “preparations for the manufacture of lemonades or other beverages, consisting, for example of; flavored or coloured syrups, being sugar solutions with natural or artificial substances added to give them the flavor of, for example, certain fruits or plants (raspberry, black-currant, lemon, mint, etc), whether or not containing added citric acid and preservatives.” We have consistently held in our rulings that the EN’s for heading 2106 are persuasive and specifically excludes from heading 2106 other sugars in solid form containing flavoring and colored matter that are classified in headings 1701 and 1702. See New York Ruling Letters (NYRL) A89697 dated 11/27/96, B86542 dated 6/11/97, D83345 dated 10/27/98, D80530 dated 8/7/98, A86301 dated 8/19/96, and DD870722 dated 2/4/92. See also, Headquarters Ruling Letters 083698 dated 6/1/89, 083940 dated 7/5/89, 084927 dated 10/3/89, 085590 dated 11/29/89, 955641 dated 3/8/94, and 956823 dated 8/8/94. These rulings also contained similar added ingredients as in the Klass Aguas Frescas drink mixes.

The ruling, HQ 983668, went on to state: “With the exception of the ‘Horchata’ drink mixes, all of the other drink mixes described above are classifiable in headings 1701 and 1702.” The “Horchata” drink mix happens to be the drink mix you have cited in your letter. Because it contained 14% condensed milk substitute that drink mix would be classified in subheading 2106.90.78, HTSUS, if the product contained over 10% by dry weight milk solids. If the product did not contain over 10% by dry weight milk solids, it

would be classified in subheading 2106.90.95, HTSUS. The “Horchata” drink mix was classified in heading 2106, because of the milk ingredients, and not because of the flavoring or other substances.

In HQ 964497, dated January 23, 2001, CBP classified a variety of powdered drink mixes consisting primarily of sugar with such added ingredients as citric acid, tricalcium phosphate, ascorbic acid, sodium citrate, salt, xanthan gum, corn starch and corn syrup solid, artificial flavor and artificial color in heading 1701, HTSUS.

Despite your characterization of the ingredients as “electrolytes” which may aid in hydration and assist consumers in replacing mineral loss, the powder drink mix is still a product with an 80 to 85 percent sugar base, with additional sugar in the form of dextrose, marketed in nine different flavors. The ingredients termed “electrolytes” are not dissimilar enough from ingredients in other drink mixes CBP has considered in the past to warrant a different classification of these products. CBP has consistently classified such products in chapter 17. We are not persuaded that the marketing of the product as “isotonic drink mixes” should result in a different classification.

HOLDING:

For the reasons stated above, the nine isotonic drink mixes classified in NY R01312, dated February 2, 2005, and NY R01313, dated February 9, 2005, are properly classified in subheading 1701.91.48, HTSUS, which provides for “Cane or beet sugar and chemically pure sucrose, in solid form: ... Containing added flavoring matter whether or not containing added coloring: Articles containing over 65 percent by dry weight of sugar described in additional U.S. note 2 to chapter 17: ... Other,” when they are repackaged for industrial and food service sale. The 2005 general duty rate will be 33.9 cents per kilogram plus 5.1 percent *ad valorem*.

When the isotonic drink mixes are repackaged for retail sale, the classification will be in subheading 1701.91.58, HTSUS, which provides for “Cane or beet sugar and chemically pure sucrose, in solid form: ... Containing added flavoring matter whether or not containing added coloring: Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17: Other.” The 2005 general duty rate will be 33.9 cents per kilogram plus 5.1 percent *ad valorem*.

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

NY R01312, dated February 2, 2005 and NY R01313, dated February 9, 2005 are affirmed.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

ATTACHMENT D

NY 805860

January 25, 1995

CLA-2-17:S:N:N7:232 805860

CATEGORY: Classification

TARIFF NO.: 1701.91.5400; 1701.91.5800

MR. JOHN S. RODE
RODE & QUALEY
295 MADISON AVENUE
NEW YORK, N.Y. 10017

RE: The tariff classification of powdered beverage mixes from Canada.

DEAR MR. RODE:

In your letter dated January 6, 1995, on behalf of General Foods USA operating unit of Kraft General Foods, Inc., you requested a tariff classification ruling.

Product labels were included with your request. The subject merchandise consists of Country Time in lemonade and pink lemonade flavors, Kool-Aid in tropical punch, grape, raspberry, cherry and orange flavors and Tang in natural orange flavor. All of the above products are beverage mixes which are stated to contain over 85 percent sugar, with various quantities of acids, flavors, coloring, gums, emulsifiers, preservatives, vitamins, neutralizing agents and stabilizers. A finished product is produced by adding water. The beverage mixes will be imported in containers ranging from 19 ounces net weight to 5 pounds 3 ounces net weight. The beverage mixes will be sold to retail grocery stores and to warehouse clubs.

The applicable tariff provision for the Country Time, Kool-Aid and Tang beverage mixes, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 1701.91.5400 Harmonized Tariff Schedules of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose in solid form: other...containing added flavoring matter whether or not containing added coloring ...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The general rate of duty will be 6 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading 1701.91.5800, HTS, and dutiable at the general rate of 38.9 cents per kilogram plus 5.8 percent ad valorem. In addition, products classified in subheading 1701.91.5800, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.17.49 to 9904.17.56, HTS.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

ATTACHMENT E

NY 807382

February 28, 1995

CLA-2-17:S:N:N7:232 807382

CATEGORY: Classification

TARIFF NO.: 1701.91.5400; 1701.91.5800

MR. JOHN S. RODE
RODE & QUALEY
295 MADISON AVENUE
NEW YORK, NY 10017

RE: The tariff classification of powdered beverage mixes from Canada.

DEAR MR. RODE:

This is a supplement to Ruling No. NY 805860 dated January 25, 1995. The ruling issued to you indicated that products classified in subheading 1701.91.5800 will be subject to additional duties based on their value, as described in subheadings 9904.17.49 to 9904.17.56, HTS. Chapter 99, Subchapter IV, U.S. Note 1 of the Harmonized Tariff Schedule of the United States (HTS) indicates that goods of Canada (except wheat) are not subject to the additional duties of heading 9904, HTS. Therefore, the powdered beverage mixes, if classifiable under subheading 1701.91.5800, are not subject to any additional duties under subheadings 9904.17.49 to 9904.17.56. All other facts stated in the ruling remain unchanged.

This supplement should be included whenever Ruling No. NY 805860 is presented.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

ATTACHMENT F

NY 806349

January 31, 1995

CLA-2-17:S:N:N7:232 806349

CATEGORY: Classification

TARIFF NO.: 1701.91.5400; 1701.91.5800

MR. ROBERT V. TINKHAM
CHICAGO SWEETENERS INCORPORATED
1700 HIGGINS ROAD
SUITE 610
DES PLAINES, ILLINOIS 60018

RE: The tariff classification and status under the North American Free Trade Agreement (NAFTA), of powdered drink mixes from Canada; Article 509

DEAR MR. TINKHAM:

In your letter dated January 20, 1995 you requested a ruling on the status of powdered drink mixes from Canada under the NAFTA.

The subject merchandise is described as powdered drink mixes in the flavors of orange, lemon, cherry, punch and grape. The products are stated to contain between 90 to 96 percent granulated sugar and between 4 to 10 percent citric acid, malic acid, sorbic acid, flavorings and colorings. The sugar component is produced in Canada or the United States. The other ingredients are produced in various other countries. The drink mixes will be produced in Canada and shipped to the U.S. in 2000 pound sacks. After importation, the drink mixes will be packaged for retail sale.

The applicable tariff provision for the powdered drink mixes, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 1701.91.5400 Harmonized Tariff Schedules of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose in solid form: other...containing added flavoring matter whether or not containing added coloring...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The general rate of duty will be 6 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading 1701.91.5800, HTS, and dutiable at the rate of 38.9 cents per kilogram plus 5.8 percent ad valorem. In addition, products classified in subheading 1701.91.5800, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.17.49 to 9904.17.56, HTS.

Each of the non-originating materials used to make the powdered drink mixes has satisfied the changes in tariff classification required under HTSUSA General Note 12(t)/17. The drink mixes will be entitled to a 1.8 percent ad valorem rate of duty under the NAFTA upon compliance with all applicable laws, regulations, and agreements. It is noted that this rate of duty applies only to drink mixes classified under subheading 1701.91.5400, HTS.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

This ruling letter is binding only as to the party to whom it is issued and may be relied on only by that party.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

ATTACHMENT G

NY 807225

February 28, 1995

CLA-2-17:S:N:N7:232 807225

CATEGORY: Classification

TARIFF NO.: 1701.91.4800; 1701.91.5400;

1701.91.5800 2101.20.4800;

2101.20.5400; 2101.20.5800

MR. LORNE H. GOODMAN
CROSBY MOLASSES COMPANY LIMITED
PO BOX 2240
327 ROTHESAY AVENUE
SAINT JOHN, N.B., CANADA E2L 3V4

RE: The tariff classification of various flavored beverage crystals
from Canada.

DEAR MR. GOODMAN:

In your letter dated February 15, 1995 you requested a tariff classification ruling.

The subject merchandise consists of various beverage crystals which will be imported in ten flavors (eight fruit and two tea). The eight fruit flavors are grape, strawberry, peach, orange, lemonade, cherry, kiwi and fruit punch. The two tea flavors are regular and lemon. All of the products contain approximately 94 percent sugar, as well as flavorings, colorings, bufferings and stabilizers, and, in the case of the two tea flavors, 2.7 percent and 2 percent tea powder, respectively. A beverage is produced by adding water to the crystals. The beverage crystals will be packaged in retail packages weighing between 240 and 300 grams, in food service packages for restaurants weighing between 450 and 500 grams and in food service packages for cafeterias in 25 pound cartons.

The applicable subheading for the eight fruit flavored beverage crystals packaged for restaurants and cafeterias will be 1701.91.4800, Harmonized Tariff Schedule of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose, in solid form...other...containing added flavoring matter whether or not containing added coloring...articles containing over 65 percent by dry weight of sugar described in additional U.S. note 2 to chapter 17...other. The rate of duty will be 38.9 cents per kilogram plus 5.8 percent ad valorem.

The applicable subheading for the eight fruit flavored beverage crystals packaged for retail sale, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 1701.91.5400 Harmonized Tariff Schedules of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose, in solid form...other...containing added flavoring matter whether or not containing added coloring...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The general rate of duty will be 6 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the products will be classified in subheading 1701.91.5800, HTS, and dutiable at the rate of 38.9 cents per kilogram plus 5.8 percent ad valorem.

The applicable subheading for the two tea flavored beverage crystals packaged for restaurants and cafeterias will be 2101.20.4800, Harmonized Tariff Schedule of the United States (HTS), which provides for extracts, essences and concentrates, of tea or mate, and preparations with a basis of these extracts, essences or concentrates or with a basis of tea or mate...other...articles containing over 65 percent by dry weight of sugar described in additional U.S. note 2 to chapter 17...other. The rate of duty will be 35 cents per kilogram plus 9.8 percent ad valorem.

The applicable subheading for the two tea flavored beverage crystals packaged for retail sale, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 2101.20.5400 Harmonized Tariff Schedules of the United States (HTS), which provides for extracts, essences and concentrates, of tea or mate, and preparations with a basis of these extracts, essences or concentrates or with a basis of tea or mate...other...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The general rate of duty will be 10 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the products will be classified in subheading 2101.20.5800, HTS, and dutiable at the rate of 35 cents per kilogram plus 9.8 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

ATTACHMENT H

NY 818773

February 22, 1996

CLA-2-17:RR:NC:FC:232 818773

CATEGORY: Classification

TARIFF NO.: 1701.91.5400; 1701.91.5800;
2106.90.9971

MR. ROBERT KARPIUK
SELECT FOOD PROCESSING CORPORATION
2946 WALKER ROAD
WINDSOR, ONTARIO
N8W3R3 CANADA

RE: The tariff classification of drink mixes from Canada.

DEAR MR. KARPIUK:

In your letter received January 29, 1996 you requested a tariff classification ruling.

The subject merchandise is described as various grape flavored drink mixes, which are packaged for retail sale. The drink mixes require the addition of water by the consumer to produce finished beverages. Grape Aid 0 is stated to contain 97.98515 percent sugar, and small quantities of citric acid, purple shade, grape flavor, and ascorbic acid. Grape Aid 51 contains 95.7333 percent sugar, 00.2491 percent aspartame and small quantities of citric acid, purple shade, grape flavor and ascorbic acid. Grape Aid 35 contains 97.6099 percent sugar, 00.0687 percent aspartame and small quantities of citric acid, purple shade, grape flavor and ascorbic acid. Grape Aid 100 contains 19.5592 percent aspartame, 69.8527 percent citric acid and small quantities of purple shade, grape flavor and ascorbic acid.

The applicable subheading for the Grape Aid 0, Grape Aid 51 and Grape Aid 35, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 1701.91.5400 Harmonized Tariff Schedules of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose, in solid form...containing added flavoring matter whether or not containing added coloring...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The general rate of duty will be 6 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading 1701.91.5800, HTS, and dutiable at the rate of 37.9 cents per kilogram plus 5.7 percent ad valorem.

The applicable subheading for the Grape Aid 100 will be 2106.90.9971, HTS, which provides for Food preparations not elsewhere specified or included...other...other...preparations for the manufacture of beverages...containing high-intensity sweeteners (e.g., aspartame and/or saccharin). The general rate of duty will be 8.8 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 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 John Maria at 212-466-5730.

Sincerely,
ROGER J. SILVESTRI
Director,
National Commodity
Specialist Division

ATTACHMENT I

NY A81526

April 2, 1996

CLA-2-17:RR:NC:FC:232 A81526

CATEGORY: Classification

TARIFF NO.: 1701.91.5400; 1701.91.5800

MR. STEPHEN W. MARLOW
TOWER GROUP INTERNATIONAL
205 WEST SERVICE ROAD
CHAMPLAIN, NY 12919

RE: The tariff classification of "Flavour Crystals" from Canada.

DEAR MR. MARLOW:

In your letter dated March 15, 1996, on behalf of Can/US Courier, you requested a tariff classification ruling.

A sample was included with your request. The sample consists of a foil package containing 480 grams. The sample is labelled "Sweetheart", "Flavour Crystals" and "Fruit Punch". The product is mixed with water to produce 4.55 liters of a finished beverage. The subject merchandise is stated to contain 95 percent sugar and tricalcium phosphate, sodium citric, natural and artificial flavors, various acids, and colors.

The applicable subheading for the "Flavour Crystals", if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 1701.91.5400 Harmonized Tariff Schedules of the United States (HTS), which provides for Cane or beet sugar and chemically pure sucrose, in solid form...other: Containing added flavoring matter whether or not containing added coloring...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The general rate of duty will be 6 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading 1701.91.5800, HTS, and dutiable at the rate of 37.9 cents per kilogram plus 5.7 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 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 John Maria at 212-466-5730.

Sincerely,

ROGER J. SILVESTRI

Director,

*National Commodity
Specialist Division*

ATTACHMENT J

NY A86301

August 19, 1996

CLA-2-17:RR:NC:FC:232 A86301

CATEGORY: Classification

TARIFF NO.: 1701.91.5400; 1701.91.5800

MR. JOHN B. PELLEGRINI
ROSS & HARDIES
PARK AVENUE TOWER
65 EAST 55TH STREET
NEW YORK, NEW YORK 10022-3219

RE: The tariff classification and status under the North American Free Trade Agreement (NAFTA), of Lemonade Mixes from Mexico; Article 509

DEAR MR. PELLEGRINI:

In your letter dated July 24, 1996, on behalf of 4C Foods Corp., you requested a ruling on the status of Lemonade Mixes from Mexico under the NAFTA. Your request also asks for the country of origin for marking purposes of the products.

The subject merchandise is stated to contain 64.82 percent sugar, 10.16 percent citric acid, 10.97 percent lemon flavoring, 2.67 percent turmeric, 6.04 percent cloudinol, 1.02 percent sodium citrate and 4.32 percent cellulose gum. The sugar in Mix A will be produced in Mexico, and the sugar in Mix B will be from non-NAFTA countries. The balance of ingredients in both mixes will be from The United States. The lemonade mixes will be blended in Mexico and imported into the United States in bulk to be repackaged for retail sale.

The applicable tariff provision for the Lemonade Mix A will be 1701.91.5800, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for cane or beet sugar and chemically pure sucrose, in solid form...containing added flavoring matter whether or not containing added coloring... articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...other. The general rate of duty will be 37.9 cents per kilogram plus 5.7 percent ad valorem.

The Lemonade Mix A, being wholly obtained or produced entirely in the territory of Mexico and the United States, will meet the requirements of HTSUSA General Note 12(b)(i). Goods of Mexico, classifiable in subheading 1701.91.5800 entered under the terms of general note 12 of the Harmonized Tariff Schedule of the United States, and imported in quantities that fall within the quantitative limits described in note 20 to subchapter 6 of chapter 99, HTS, will be free of duty pursuant to subheading 9906.17.39. If the quantitative limits of note 20 to subchapter 6 of chapter 99 have been reached, and if the product is valued not over 31.5 cents per kilogram, it will be dutiable at the rate of 26.5 cents per kilogram in subheading 9906.17.40, HTS. If valued over 31.5 cents per kilogram, the rate of duty will be 84.2 percent ad valorem, pursuant to subheading 9906.17.41, HTS, upon compliance with all applicable laws, regulations and agreements.

The applicable subheading for the Lemonade Mix B, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 1701.91.5400 Harmonized Tariff Schedules of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose, in

solid form...containing added flavoring matter whether or not containing added coloring...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The general rate of duty will be 6 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading 1701.91.5800, HTS, and dutiable at the rate of 37.9 cents per kilogram plus 5.7 percent ad valorem. In addition, products classified in subheading 1701.91.5800, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.17.49 to 9904.17.56, HTS.

The Lemonade Mix B does not qualify for preferential treatment under the NAFTA because one or more of the non-originating materials used in the production of the good will not undergo the change in tariff classification required by General Note 12(t)/17, HTSUSA.

Your inquiry also requests a ruling on the country of origin marking requirements for an imported article which is processed in a NAFTA country prior to being imported into the U.S. A marked sample was not submitted with your letter for review.

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

The country of origin marking requirements for a “good of a NAFTA country” are also determined in accordance with Annex 311 of the North American Free Trade Agreement (“NAFTA”), as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat 2057) (December 8, 1993) and the appropriate Customs Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, Customs Regulations. The marking requirements of these goods are set forth in Part 134, Customs Regulations.

Section 134.1(b) of the regulations, defines “country of origin” as

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

Section 134.1(j) of the regulations, provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) of the regulations, defines a “good of a NAFTA country” as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules. Section 134.45(a)(2) of the regulations, provides that a “good of a NAFTA country” may be marked with the name of the country of origin in English, French or Spanish.

You state that the imported lemonade mixes are processed in a NAFTA country “Mexico” prior to being imported into the U.S. Since, “Mexico” is

defined under 19 CFR 134.1(g), as a NAFTA country, we must first apply the NAFTA Marking Rules in order to determine whether the imported lemonade mixes is a good of a NAFTA country”, and thus subject to the NAFTA marking requirements.

Part 102 of the regulations, sets forth the “NAFTA Marking Rules” for purposes of determining whether a good is a good of a NAFTA country for marking purposes. Section 102.11 of the regulations, sets forth the required hierarchy for determining country of origin for marking purposes.

Applying the NAFTA Marking Rules set forth in Part 102 of the regulations to the facts of this case, we find that the imported Lemonade Mix A is a good of Mexico for marking purposes, and the Lemonade Mix B is a good of the country producing the sugar, noting Section 102.11(b)(1).

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 CFR Part 181).

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 John Maria at 212-466-5730.

Should you wish to request an administrative review of this ruling, submit a copy of this ruling and all relevant facts and arguments within 30 days of the date of this letter, to the Director, Commercial Rulings Division, Headquarters, U.S. Customs Service, 1301 Constitution Ave., NW, Franklin Court, Washington, DC 20229.

Sincerely,

ROGER J. SILVESTRI

Director,

*National Commodity
Specialist Division*

ATTACHMENT K

NY B83306

March 25, 1997

CLA-2-17:RR:NC:SP:232 B83306

CATEGORY: Classification

TARIFF NO.: 1701.91.5400; 1701.91.5800

MR. ROBERT V. TINKHAM
CHICAGO SWEETENERS INCORPORATED
1700 HIGGINS ROAD
SUITE 610
DES PLAINES, ILLINOIS 60018

RE: The tariff classification and status under the North American Free Trade Agreement (NAFTA), of powdered drink mixes from Mexico; Article 509

DEAR MR. TINKHAM:

In your letter dated March 12, 1997, you requested a ruling on the status of powdered drink mixes from Mexico under the NAFTA.

The subject merchandise is described as powdered drink mixes in the flavors of orange, lemon, cherry, punch and grape. The products are stated to contain between 75 and 90 percent granulated sugar, 0 and 18 percent dry fructose, and 4 and 10 percent citric acid, malic acid, sorbic acid, silicon dioxide, flavorings and colors. The sugar will be from a non-Nafta country such as Australia and sent to the United States for refining. The remaining ingredients may or may not be from a Nafta country. All of the ingredients are sent to Mexico, where they will be blended into the finished drink mixes, packaged in 2,000 pound sacks and shipped to the United States for retail packaging.

The applicable tariff provision for the powdered drink mixes, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 1701.91.5400 Harmonized Tariff Schedules of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose in solid form: other...containing added flavoring matter whether or not containing added coloring...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The general rate of duty will be 6 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading 1701.91.5800, HTS, and dutiable at the rate of 36.9 cents per kilogram plus 5.6 percent ad valorem.

The merchandise does not qualify for preferential treatment under the NAFTA because one or more of the non-originating materials used in the production of the goods will not undergo the change in tariff classification required by General Note 12(t)/17, HTSUSA.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181).

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 John Maria at 212-466-5730.

Should you wish to request an administrative review of this ruling, submit a copy of this ruling and all relevant facts and arguments within 30 days of the date of this letter, to the Director, Commercial Rulings Division, Headquarters, U.S. Customs Service, 1301 Constitution Ave., NW, Franklin Court, Washington, DC 20229.

Sincerely,

GWENN KLEIN KIRSCHNER
*Chief, Special Products
National Commodity
Specialist Division*

ATTACHMENT L

NY B86542

June 24, 1997

CLA-2-17:RR:NC:SP:232 B86542

CATEGORY: Classification

TARIFF NO.: 1701.91.5400; 1701.91.5800

MR. ROMAN C. LASOTA
EMEX CORPORATION
113 WEST SHALLOWSTONE ROAD
GREER, SC 29650

RE: The tariff classification of Drink Mixes from Ireland.

DEAR MR. LASOTA:

In your letter dated June 5, 1997, you requested a tariff classification ruling.

You included descriptive literature and submitted samples with your request. The subject merchandise is a variety of powdered, fruit-flavored drink mixes of slightly differing formulations. All are stated to consist of sugar, citric acid, colors and flavors. Some of the flavors will include cherry, orange, grape, raspberry, lemonade, and limeade. These products will be imported in two pound packages shipped 15 to a case, or in one ton tote bags which will be repackaged for retail sale. It is assumed that the consumer adds water to the mix to produce a beverage.

The applicable subheading for the drink mixes, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 1701.91.5400 Harmonized Tariff Schedules of the United States (HTS), which provides for Cane or beet sugar and chemically pure sucrose, in solid form: Other: Containing added flavoring matter whether or not containing added coloring: Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17: Described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The rate of duty will be 6 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading 1701.91.5800, HTS, and dutiable at the rate of 36.9 cents per kilogram plus 5.6 percent ad valorem. In addition, products classified in subheading 1701.91.5800, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.17.49 to 9904.17.57, HTS.

Additional requirements may be imposed on this product by the Food and Drug Administration. You may contact the FDA at:

Food and Drug Administration
Guidelines and Regulations Branch HFF 314,
200 C Street, S.W. Washington, D.C. 20204

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this 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 John Maria at 212-466-5730.

Sincerely,

GWENN KLEIN KIRSCHNER
Chief, Special Products Branch
National Commodity
Specialist Division

ATTACHMENT M

NY B86441

June 26, 1997

CLA-2-17:RR:NC:SP:232 B86441

CATEGORY: Classification

TARIFF NO.: 1701.91.5400; 1701.91.5800;

2101.20.5400; 2101.20.5800;

2106.90.9971

MR. MICHAEL DAHM
WILLSON INTERNATIONAL INC.
INTERSTATE COMMERCE CENTRE
250 COOPER AVENUE, SUITE 102
TONAWANDA, NEW YORK 14150

RE: The tariff classification of crystal drink mixes and iced tea mixes from Canada.

DEAR MR. DAHM:

In your letter dated June 16, 1997, on behalf of Kingsmill Foods of Toronto, Ontario, you requested a tariff classification ruling.

Samples and information were submitted with your initial request dated May 15, 1997. Additional information was submitted in your fax dated June 24, 1997. The subject merchandise consists of Peach Crystals, Fruit Punch Crystals, Raspberry Crystals, Peach Lite Crystals, Lemon Iced Tea and Raspberry Iced Tea. The Peach, Fruit Punch and Raspberry Crystals contain sugar, color, flavor, acids and small quantities of various other ingredients. The Peach Lite Crystals contain malic acid, flavor, color, aspartame and small quantities of various other ingredients. The Iced Teas contain sugar, tea, flavor and acid. All of the products are packaged for retail sale. The Peach, Fruit Punch and Raspberry are in 454 gram packages. The Peach Lite is in a 25 gram package. The Iced Teas are in 388 gram packages. A finished beverage is produced with the addition of water.

The applicable subheading for the Peach, Fruit Punch and Raspberry Crystals, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be *1701.91.5400* Harmonized Tariff Schedules of the United States (HTS), which provides for Cane or beet sugar and chemically pure sucrose, in solid form: other...containing added flavoring matter whether or not containing added coloring... articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The general rate of duty will be 6 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading *1701.91.5800*, HTS, and dutiable at the rate of 36.9 cents per kilogram plus 5.6 percent ad valorem.

The applicable subheading for the Lemon and Raspberry Iced Teas, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be *2101.20.5400* Harmonized Tariff Schedules of the United States (HTS), which provides for Extracts, essences and concentrates, of tea or mate, and preparations with a basis of these extracts, essences or concentrates or with a basis of tea or mate...other...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to

its provisions. The general rate of duty will be 10 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading *2101.20.5800*, HTS, and dutiable at the rate of 33.2 cents per kilogram plus 9.2 percent ad valorem.

The applicable subheading for the Peach Lite Crystals will be *2106.90.9971*, HTS, which provides for Food preparations not elsewhere specified or included...other...other...other... preparations for the manufacture of beverages: containing high-intensity sweeteners (e.g., apartame and/or saccharin). The general rate of duty will be 8.2 percent ad valorem.

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 John Maria at 212-466-5730.

Sincerely,

GWENN KLEIN KIRSCHNER
Chief, Special Products Branch
National Commodity
Specialist Division

ATTACHMENT N

NY C82414

December 8, 1997

CLA-2-17:RR:NC:SP:232 C82414

CATEGORY: Classification

TARIFF NO.: 1701.91.5400; 1701.91.5800

MR. TIMOTHY C. STANCEU
HOGAN & HARTSON L.L.P.
555 13TH STREET, N.W.
WASHINGTON, D.C. 20004-1109

RE: The tariff classification and status under the North American Free Trade Agreement (NAFTA), of Powdered Instant Beverage Products from Canada; Article 509

DEAR MR. STANCEU:

In your letter dated November 26, 1997, on behalf of Kraft Foods, Inc., you requested a ruling on the status of various powdered instant beverage products from Canada under the NAFTA. Your request also asks for the country of origin for marking purposes and for tariff rate quota allocation purposes.

The subject merchandise will consist of powdered instant beverage products in four flavors: Lemonade, Pink Lemonade, Orange and Tropical Punch. The products will contain sugar refined from sugar cane or sugar beets, fructose, citric acid, ascorbic acid, flavors, colors, and, in some formulations, gums, vitamins and preservatives. The cane or beet sugar and the fructose in all of the products will be of United States origin. The balance of the ingredients may be from the United States, Canada, or non-Nafta countries. The ingredients are blended and packaged in Canada into retail containers. The retail consumer prepares a finished beverage by the addition of water.

The applicable tariff provision for the powdered instant beverage products, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 1701.91.5400 Harmonized Tariff Schedules of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose in solid form: other...containing added flavoring matter whether or not containing added coloring...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The general rate of duty will be 6 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading 1701.91.5800, HTS, and dutiable at the rate of 36.9 cents per kilogram plus 5.6 percent ad valorem.

If all of the ingredients are from the United States and Canada, the powdered instant beverage products, being wholly obtained or produced entirely in the territory of the United States and Canada, will meet the requirements of HTSUSA General Note 12(b)(i), and, if classifiable under subheading 1701.91.5400, HTS, will be entitled to a 0.6 percent ad valorem rate of duty under the NAFTA upon compliance with all applicable laws, regulations, and agreements.

If the ingredients, other than sugar from cane or beet, or fructose, are from non-Nafta countries, each of the non-originating materials used to make the powdered instant beverage products have satisfied the changes in tariff classification required under HTSUSA General Note 12(t)/17. The powdered

instant beverage products, if classified in subheading *1701.91.5400*, HTS, will be entitled to a 0.6 percent ad valorem rate of duty under the NAFTA upon compliance with all applicable laws, regulations, and agreements.

Your inquiry also requests a ruling on the country of origin marking requirements for an imported article which is processed in a NAFTA country prior to being imported into the U.S., and on the country of origin for duty and quota allocation purposes. A marked sample was not submitted with your letter for review.

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

The country of origin marking requirements for a “good of a NAFTA country” are also determined in accordance with Annex 311 of the North American Free Trade Agreement (“NAFTA”), as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat 2057) (December 8, 1993) and the appropriate Customs Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, Customs Regulations. The marking requirements of these goods are set forth in Part 134, Customs Regulations.

Section 134.1(b) of the regulations, defines “country of origin” as the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin within this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin. (Emphasis added).

Section 134.1(j) of the regulations, provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) of the regulations, defines a “good of a NAFTA country” as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules. Section 134.45(a)(2) of the regulations, provides that a “good of a NAFTA country” may be marked with the name of the country of origin in English, French or Spanish.

You state that the imported powdered instant beverage products are processed in a NAFTA country “Canada” prior to being imported into the U.S. Since, “Canada” is defined under 19 CFR 134.1(g), as a NAFTA country, we must first apply the NAFTA Marking Rules in order to determine whether the imported powdered instant beverage products are goods of a NAFTA country”, and thus subject to the NAFTA marking requirements.

Part 102 of the regulations, sets forth the “NAFTA Marking Rules” for purposes of determining whether a good is a good of a NAFTA country for marking purposes. Section 102.11 of the regulations, sets forth the required hierarchy for determining country of origin for marking purposes.

Applying the NAFTA Marking Rules set forth in Part 102 of the regulations to the facts of this case, we find that the imported powdered instant beverage

products are goods of the “United States” for marking purposes, since they satisfy the requirements of Section 102.11(b)(1). Therefore, they are not required to be marked with the country of origin for Customs marking purposes.

Noting Section 102.19(b) of the regulations, the country of origin of the powdered instant beverage products for Customs duty purposes and for the tariff rate quota allocation is “Canada”.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181).

This ruling letter is binding only as to the party to whom it is issued and may be relied on only by that party.

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 John Maria at 212-466-5730.

Should you wish to request an administrative review of this ruling, submit a copy of this ruling and all relevant facts and arguments within 30 days of the date of this letter, to the Director, Commercial Rulings Division, Headquarters, U.S. Customs Service, 1300 Pennsylvania Ave., NW, Washington, DC 20229.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT O

NY C82415

December 8, 1997

CLA-2-17:RR:NC:SP:232 C82415

CATEGORY: Classification

TARIFF NO.: 1701.91.5400; 1701.91.5800

MR. TIMOTHY C. STANCEU
HOGAN & HARTSON L.L.P.
555 13TH STREET, N.W.
WASHINGTON, D.C. 20004-1109

RE: The tariff classification and status under the North American Free Trade Agreement (NAFTA), of Powdered Instant Beverage Products from Canada; Article 509

DEAR MR. STANCEU:

In your letter dated November 26, 1997, on behalf of Kraft Foods, Inc., you requested a ruling on the status of various powdered instant beverage products from Canada under the NAFTA. Your request also asks for the country of origin for marking purposes and for tariff rate quota allocation purposes.

The subject merchandise will consist of powdered instant beverage products in four flavors: Lemonade, Pink Lemonade, Orange and Tropical Punch. The products will contain sugar refined from sugar beets, fructose, citric acid, ascorbic acid, flavors, colors, and, in some formulations, gums, vitamins and preservatives. The beet sugar of all of the products will be produced in Canada. The fructose in all of the products will be of United States origin. The balance of the ingredients may be from the United States, Canada, or non-Nafta countries. The ingredients are blended and packaged in Canada into retail containers. The retail consumer prepares a finished beverage by the addition of water.

The applicable tariff provision for the powdered instant beverage products, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 1701.91.5400 Harmonized Tariff Schedules of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose in solid form: other...containing added flavoring matter whether or not containing added coloring...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The general rate of duty will be 6 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading 1701.91.5800, HTS, and dutiable at the rate of 36.9 cents per kilogram plus 5.6 percent ad valorem.

If all of the ingredients are from the United States and Canada, the powdered instant beverage products, being wholly obtained or produced entirely in the territory of the United States and Canada, will meet the requirements of HTSUSA General Note 12(b)(i), and, if classifiable under subheading 1701.91.5400, HTS, will be entitled to a 0.6 percent ad valorem rate of duty under the NAFTA upon compliance with all applicable laws, regulations, and agreements.

If the ingredients, other than the beet sugar, or fructose, are from non-Nafta countries, each of the non-originating materials used to make the

powdered instant beverage products have satisfied the changes in tariff classification required under HTSUSA General Note 12(t)/17. The powdered instant beverage products, if classified in subheading *1701.91.5400*, HTS, will be entitled to a 0.6 percent ad valorem rate of duty under the NAFTA upon compliance with all applicable laws, regulations, and agreements.

Your inquiry also requests a ruling on the country of origin marking requirements for an imported article which is processed in a NAFTA country prior to being imported into the U.S., and on the country of origin for duty and quota allocation purposes. A marked sample was not submitted with your letter for review.

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

The country of origin marking requirements for a “good of a NAFTA country” are also determined in accordance with Annex 311 of the North American Free Trade Agreement (“NAFTA”), as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat 2057) (December 8, 1993) and the appropriate Customs Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, Customs Regulations. The marking requirements of these goods are set forth in Part 134, Customs Regulations.

Section 134.1(b) of the regulations, defines “country of origin” as the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin within this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin. (Emphasis added).

Section 134.1(j) of the regulations, provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) of the regulations, defines a “good of a NAFTA country” as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules. Section 134.45(a)(2) of the regulations, provides that a “good of a NAFTA country” may be marked with the name of the country of origin in English, French or Spanish.

You state that the imported powdered instant beverage products are processed in a NAFTA country “Canada” prior to being imported into the U.S. Since, “Canada” is defined under 19 CFR 134.1(g), as a NAFTA country, we must first apply the NAFTA Marking Rules in order to determine whether the imported powdered instant beverage products are goods of a NAFTA country”, and thus subject to the NAFTA marking requirements.

Part 102 of the regulations, sets forth the “NAFTA Marking Rules” for purposes of determining whether a good is a good of a NAFTA country for marking purposes. Section 102.11 of the regulations, sets forth the required hierarchy for determining country of origin for marking purposes.

Applying the NAFTA Marking Rules set forth in Part 102 of the regulations to the facts of this case, we find that the imported powdered instant beverage products are goods of “Canada” for marking purposes, since they satisfy the requirements of Section 102.11(b)(1).

Since the powdered instant beverage products are goods of Canada for marking purposes, the country of origin of the powdered instant beverage products for Customs duty purposes and for the tariff rate quota allocation is “Canada”.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181).

This ruling letter is binding only as to the party to whom it is issued and may be relied on only by that party.

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 John Maria at 212-466-5730.

Should you wish to request an administrative review of this ruling, submit a copy of this ruling and all relevant facts and arguments within 30 days of the date of this letter, to the Director, Commercial Rulings Division, Headquarters, U.S. Customs Service, 1300 Pennsylvania Ave., NW, Washington, DC 20229.

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

ATTACHMENT P

NY D80530

August 7, 1998

CLA-2-18:RR:NC:SP:232 D80530

CATEGORY: Classification

TARIFF NO.: 1701.91.5400; 1701.91.5800

MR. PATRICK E. MINES
P. MINES CUSTOMS SERVICES
28 PRINCESS STREET
P.O. BOX 1197
FORT ERIE, ONTARIO L2A 5Y2

RE: The tariff classification and status under the North American Free Trade Agreement (NAFTA), of drink crystals from Canada; Article 509

DEAR MR. MINES:

In your letter dated June 5, 1998, on behalf of Western Basic Ingredients Limited, you requested a ruling on the status of drink crystals from Canada under the NAFTA. Your request also asks for the country of origin for marking purposes of the product.

Samples were included with your request. The subject merchandise consists of drink crystals in four flavors: Pink Lemonade, Cherry, Orange and Grape. The products are stated to contain 95 percent sugar, 3.61 percent acid, 0.56 percent natural and artificial flavors, 0.5 percent gum, 0.3 percent silicone dioxide, and 0.03 percent colors. There are three possible situations for the origin of the ingredients. The sugar is grown in non-NAFTA countries and refined in Canada. The other ingredients are of Canadian or United States origin. The sugar is grown and refined in the United States and the other ingredients are of Canadian or U.S. origin. The sugar is grown in non-NAFTA countries and refined in the United States. The other ingredients are of Canadian and U.S. in origin. It is assumed that the ingredients will be processed in Canada. The drink crystals will be shipped to the United States in 450 gram, 540 gram and 900 gram pouches or tins for sale to the retail consumer.

The applicable tariff provision for the drink crystals, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 1701.91.5400 Harmonized Tariff Schedules of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose in solid form: other...containing added flavoring matter whether or not containing added coloring...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The general rate of duty will be 6 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading 1701.91.5800, HTS, and dutiable at the rate of 35.9 cents per kilogram plus 5.4 percent ad valorem.

If the sugar is grown and refined in the United States, and the other ingredients are from the United States and Canada, the drink crystals, being wholly obtained or produced entirely in the territory of the United States and Canada, will meet the requirements of HTSUSA General Note 12(b)(i), and,

if classifiable under subheading *1701.91.5400*, HTS, will be entitled to a free rate of duty under the NAFTA upon compliance with all applicable laws, regulations, and agreements.

If the sugar is grown in non-NAFTA countries, the drink crystals will not qualify for preferential treatment under the NAFTA because the non-originating sugar used in the production of the good will not undergo the change in tariff classification required by General Note 12(t)/17, HTSUSA.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

This ruling letter is binding only as to the party to whom it is issued and may be relied on only by that party.

Your inquiry also requests a ruling on the country of origin marking requirements for imported articles which are processed in a NAFTA country prior to being imported into the U.S. A marked sample was submitted with your letter for review.

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

The country of origin marking requirements for a “good of a NAFTA country” are also determined in accordance with Annex 311 of the North American Free Trade Agreement (“NAFTA”), as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat 2057) (December 8, 1993) and the appropriate Customs Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, Customs Regulations. The marking requirements of these goods are set forth in Part 134, Customs Regulations.

Section 134.1(b) of the regulations, defines “country of origin” as the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin within this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin. (Emphasis added).

Section 134.1(j) of the regulations, provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) of the regulations, defines a “good of a NAFTA country” as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules. Section 134.45(a)(2) of the regulations, provides that a “good of a NAFTA country” may be marked with the name of the country of origin in English, French or Spanish.

The imported drink crystals are processed in a NAFTA country “Canada” prior to being imported into the U.S. Since, “Canada” is defined under 19 C.F.R. §134.1(g), as a NAFTA country, we must first apply the NAFTA Mark-

ing Rules in order to determine whether the imported drink crystals are goods of a NAFTA country”, and thus subject to the NAFTA marking requirements.

Part 102 of the regulations, sets forth the “NAFTA Marking Rules” for purposes of determining whether a good is a good of a NAFTA country for marking purposes. Section 102.11 of the regulations, sets forth the required hierarchy for determining country of origin for marking purposes.

Applying the NAFTA Marking Rules set forth in Part 102 of the regulations to the situation where the sugar is grown and refined in the United States, we find that the imported drink crystals are goods of the “United States” for marking purposes, since they satisfy the requirements of Section 102.11(b)(1). Therefore, they are not required to be marked with the country of origin for Customs marking purposes.

Noting Section 102.19(b) of the regulations, the country of origin of the drink crystals for Customs duty purposes and for the tariff rate quota allocation is “Canada”.

Applying the NAFTA Marking Rules set forth in Part 102 of the regulations to the situations where the sugar is grown in non-NAFTA countries, the drink crystals are goods of the countries where the sugar is grown, noting Section 102.11(b)(1).

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. Part 181).

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 John Maria at 212-466-5730.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT Q

NY D83344

October 30, 1998

CLA-2-17:RR:NC:SP:232 D83344

CATEGORY: Classification

TARIFF NO.: 1701.91.5400; 1701.91.5800

MR. JOSE RODRIGUEZ-EMA
DIVERSIFIED FOODS, INCORPORATED
P.O. BOX 56278
NEW ORLEANS, LOUISIANA 70156-6278

RE: The tariff classification of Powdered Drink Mixes from Costa Rica.

DEAR MR. RODRIGUEZ-EMA:

In your letter dated October 5, 1998 you requested a tariff classification ruling.

The subject merchandise is described as powdered drink mixes, which will be imported in the following flavors: orange, fruit punch, strawberry, cherry, grape and lemonade. The products all contain at least 75 percent sugar with no less than 12 percent fructose. There are also various quantities of citric acid, flavor, sodium citrate, modified corn starch, tricalcium phosphate, and small quantities of various other ingredients. The submitted product labels show that the drink mixes have a net weight of 19 ounces. The subject merchandise will be sold in supermarkets.

The applicable tariff provision for the powdered drink mixes, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 1701.91.5400 Harmonized Tariff Schedules of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose in solid form: other...containing added flavoring matter whether or not containing added coloring...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The rate of duty will be 6 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading 1701.91.5800, HTS, and dutiable at the rate of 35.9 cents per kilogram plus 5.4 percent ad valorem. In addition, products classified in subheading 1701.91.5800, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.17.49 to 9904.17.56, HTS.

Articles which are classifiable under subheading 1701.91.5400, HTS, which are products of Costa Rica are entitled to duty free treatment under the Caribbean Basin Economic Recovery Act (CBERA) upon compliance with all applicable regulations.

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 John Maria at 212-466-5730.

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

ATTACHMENT R

NY D83345

October 27, 1998

CLA-2-17:RR:NC:SP:232 D83345

CATEGORY: Classification

TARIFF NO.: 1701.91.5400; 1701.91.5800

MR. JOSE RODRIGUEZ-EMA
DIVERSIFIED FOODS, INCORPORATED
P.O. BOX 56278
NEW ORLEANS, LOUISIANA 70156-6278

RE: The tariff classification of Powdered Drink Mixes from Costa Rica.

DEAR MR. RODRIGUEZ-EMA:

In your letter dated October 5, 1998 you requested a tariff classification ruling.

The subject merchandise is described as powdered drink mixes, which will be imported in the following flavors: cherry, strawberry, fruit punch, lemonade, orange and grape. The products all contain at least 87 percent sugar, with various quantities of citric acid, flavor, sodium citrate, modified corn starch, tricalcium phosphate, salt, ascorbic acid, artificial colors, and small quantities of various other ingredients. The submitted product label from the cherry flavored "Tropi Kool" drink mix shows the product has a net weight of 24 ounces. The subject merchandise will be sold in supermarkets.

The applicable tariff provision for the powdered drink mixes, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 1701.91.5400 Harmonized Tariff Schedules of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose in solid form: other...containing added flavoring matter whether or not containing added coloring...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The rate of duty will be 6 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading 1701.91.5800, HTS, and dutiable at the rate of 35.9 cents per kilogram plus 5.4 percent ad valorem. In addition, products classified in subheading 1701.91.5800, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.17.49 to 9904.17.56, HTS.

Articles which are classifiable under subheading 1701.91.5400, HTS, which are products of Costa Rica are entitled to duty free treatment under the Caribbean Basin Economic Recovery Act (CBERA) upon compliance with all applicable regulations.

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 John Maria at 212-466-5730.

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

ATTACHMENT S

NY F89359

August 2, 2000

CLA-2-17:RR:NC:SP:232 F89359

CATEGORY: Classification

TARIFF NO.: 1701.91.5400; 1701.91.5800

MR. WILLIAM J. MARSTON
DAVIES, TURNER & Co.
755 N. ROUTE 83, SUITE 221
BENSENVILLE, IL 60106

RE: The tariff classification of "Tang" from the Philippines

DEAR MR. MARSTON

In your letter dated July 6, 2000, on behalf of original Oriental Foods Delight Inc., of West Chicago, Illinois, you requested a tariff classification ruling.

You submitted descriptive literature and a sample with your request. The merchandise in question is "Tang" powdered beverage mix. The sample submitted was a foil packet containing 250 grams, net, of orange flavor. It will be imported for retail sale. The ultimate consumer will create a finished product by adding water. The product is said to contain sugar, citric acid, orange juice solids, vitamins, flavors, colors, and small quantities of various other ingredients.

The applicable subheading for the "Tang" powdered drink mix, if described in additional U.S. note 3 to chapter 17 and entered pursuant to its provisions, will be 1701.91.5400, Harmonized Tariff Schedule of the United States (HTS), which provides for Cane or beet sugar and chemically pure sucrose, in solid form: Other: Containing added flavoring or coloring matter: Containing added flavoring matter whether or not containing added coloring: Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17: Described in additional U.S. note 8 to this chapter and entered pursuant to its provisions. The rate of duty will be 6 percent ad valorem. If not described in additional U.S. note 3 to chapter 17 and not entered pursuant to its provisions, the applicable subheading will be 1701.91.5800, HTS. The duty rate will be 33.9 cents per kilogram plus 5.1 percent ad valorem. In addition, products classified under subheading 1701.91.5800, HTS, will be subject to additional duties based on their value as described in subheadings 9904.17.49 to 9904.17.56, HTS.

Articles classifiable under subheading 1701.91.5400, HTS, which are products of the Philippines may be entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, check the Customs Web site at www.customs.gov. At the Web site, click on "CEBB" then search for the term "GSP".

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 John Maria at (212) 637-7059.

Sincerely,

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

ATTACHMENT T

NY G89465

April 30, 2001

CLA-2-17:RR:NC:SP:232 G89465

CATEGORY: Classification

TARIFF NO.: 1701.91.5400, 1701.91.5800;
1806.90.5500; 1806.90.5900;
1901.20.6500; 1901.20.7000

MR. SERGIO CURY
CALLTEX LLC
1000 BRICKELL AVENUE, SUITE 450
MIAMI, FL 33131

RE: The tariff classification of Various Edible Mixes from Brazil

DEAR MR. CURY:

In your letter dated April 4, 2001, on behalf of Bretzke Alimentos Ltda, of Jaraguá do Sul, SC, Brazil, you requested a tariff classification ruling.

You submitted descriptive literature, product brochures, and samples with your request. The subject merchandise is four types of food products that will be manufactured in various flavors for retail sale. The first product is "Xuky", which is described as a milkshake powder in five flavors: vanilla, pineapple, strawberry, coconut, and chocolate. The consumer adds milk to produce a beverage. All of the flavors except chocolate are said to contain approximately 97 percent sugar plus small amounts of cornstarch, guar gum, flavors, stabilizers, vitamins, and colors. The chocolate flavor is stated to consist of 83 percent sugar, 15 percent cocoa powder, and small amounts of cornstarch, guar gum, stabilizers, and vitamins.

The second item is "Muky", which is a powder used to produce an instant chocolate drink. It will be imported in 200-gram and 500-gram plastic jars and is said to contain 76.5 percent sugar, 13 percent cocoa powder, 8.5 percent maltodextrin, and small amounts of whey, salt, lecithin, vanilla, caramel flavor, and vitamins.

The third product under consideration is boxes of prepared cake mix in six flavors: coconut, orange, chocolate, "brigadeiro", "party", and corn. The sample was of coconut cake mix, and is stated to consist of 44 percent sugar, 44 percent flour, 5.5 percent hydrogenated vegetable oil, and small amounts of yeast, starch, salt, emulsifiers, flavors, and vanilla. The orange mix is said to contain 45 percent sugar, 44 percent flour, 5.5 percent hydrogenated vegetable oil, and small amounts of yeast, starch, salt, emulsifiers, flavors, and vanilla. The chocolate flavor is described as containing 42 percent sugar, 43 percent flour, 5.5 percent hydrogenated vegetable oil, 3 percent cocoa powder, and small amounts of yeast, salt, starch, emulsifiers, flavors, and vanilla. The "brigadeiro" mix is said to contain 42 percent sugar, 43 percent flour, 5.5 percent hydrogenated vegetable oil, 4 percent "brigadeiro" sprinkles and small amounts of yeast, starch, salt, emulsifiers, flavors, and vanilla. The "party" flavor is said to consist of 43 percent sugar, 45 percent flour, 5.5 percent hydrogenated vegetable oil, and small amounts of yeast, starch, salt, emulsifiers, flavors, and vanilla. The last type, the corn cake mix, is said to contain 38.4 percent sugar, 25.8 percent corn flour, 25.7 percent wheat flour, 5.5 percent hydrogenated vegetable oil, and small amounts of yeast, starch, salt, emulsifiers, flavors, and vanilla.

The last item is called gelatin powder for dessert. This will be imported in 85-gram boxes and will be available in 9 flavors: pineapple, strawberry, peach, cherry orange, raspberry, grape, passion fruit, and lemon. It is described as containing 89.9 percent sugar, 7.7 percent edible jelly powder, and 2.4 percent acid, color, and flavor.

The applicable subheading for the vanilla, pineapple, strawberry, and coconut flavors of “Xuky”, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be *1701.91.5400* Harmonized Tariff Schedules of the United States (HTS), which provides for Cane or beet sugar and chemically pure sucrose, in solid form: Other: Containing added flavoring or coloring matter: Containing added flavoring matter whether or not containing added coloring: Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17: Described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The rate of duty will be 6 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading *1701.91.5800*, HTS, and dutiable at the rate of 33.9 cents per kilo plus 5.1 percent ad valorem. In addition, products classified in subheading *1701.91.5800*, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.17.49 to 9904.17.56, HTS.

The applicable subheading for the chocolate flavor of “Xuky” powder and for the “Muky”, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be *1806.90.5500*, Harmonized Tariff Schedule of the United States (HTS), which provides for Chocolate and other food preparations containing cocoa: Other: Other: Other; Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17: Described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The duty rate will be 3.5 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading *1806.90.5900*, HTS, and dutiable at the rate of 37.2 cents per kilo plus 6 percent ad valorem. In addition, products classified in subheading *1806.90.5900*, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.17.49 to 9904.17.56, HTS.

The applicable subheading for the six flavors of cake mix, if imported in quantities that fall within the limits described in additional U.S. note 3 to chapter 19, will be *1901.20.6500*, Harmonized Tariff Schedule of the United States (HTS), which provides for food preparations of flour, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included: Mixes and doughs for the preparation of bakers’ wares of heading 1905: Other: Other: Other: Mixes and doughs described in additional U.S. note 1 to chapter 19: Described in additional U.S. note 3 to chapter 19 and entered pursuant to its provisions. The duty rate will be 10 percent ad valorem. If the quantitative limits of additional U.S. note 1 to chapter 19 have been reached, the product will be classified in subheading *1901.20.7000*, HTS, and dutiable at the rate of 42.3 cents per kilo plus 8.5 percent ad valorem. In addition, products classified in subheading *1901.20.7000*, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.19.11 to 9904.19.19, HTS

Articles classifiable under subheadings *1701.91.5400*, *1806.90.5500*, and *1901.20.6500*, HTS, which are products of Brazil may be entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, check the Customs Web site at www.customs.gov. At the Web site, click on "CEBB" then search for the term "GSP".

Your inquiry does not provide enough information for us to give a classification ruling on the gelatin powder for dessert. Your request for a classification ruling should include a clarification of the nature of the "edible jelly powder" ingredient. What does this consist of? When this information is available, you may wish to consider resubmission of your request. Your sample will be retained for a period of 30 days. If you decide to resubmit, please mail your request to U.S. Customs, Customs Information Exchange, Room 437, 6 World Trade Center, New York, NY 10048, attn: Binding Rulings Section.

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 John Maria at 212-637-7059.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT U

NY H82031

June 5, 2001

CLA-2-17:RR:NC:SP:232 H82031

CATEGORY: Classification

TARIFF NO.: 1701.91.5400; 1701.91.5800;
1702.30.4080

MR. LARRY COLON
INTER-WORLD CUSTOMS BROKER, INC.
PO BOX 9023568
SAN JUAN, PR 00902-3568

RE: The tariff classification of powdered fruit drinks from Chile

DEAR MR. COLON:

In your letter dated May 2, 2001, on behalf of V. & W. Inc., you requested a tariff classification ruling.

Samples and information were submitted with your initial request dated February 26, 2001. Additional information was submitted in a letter dated May 28, 2001. The subject merchandise is described as powdered fruit or vegetable juices fortified with vitamins, and consists of two types of products "Zuko" and "Zuko Diet." "Zuko" is stated to contain 87.19 percent sugar, 7.42 percent citric acid, and various quantities of body providing agents, flavors, acidity regulators, sweeteners, anti-caking agents, clouding agents, vitamins, and natural and artificial colors. The product will be imported in the following flavors: orange, pineapple, apple, lemon, grapefruit, mandarin, strawberry, mango, passion fruit, peach, apricot, pear, cantaloupe, orange-pineapple, orange-strawberry and grapefruit-strawberry. The merchandise will be packaged in 45 gram sachets and 405 gram bags. A finished beverage is produced by mixing the product with water.

"Zuko Diet" is stated to contain 75.29 percent maltodextrin, 13.49 percent citric acid, and various quantities of body providing agents, acidity regulators, flavors, sweeteners, anti-caking agents, clouding agents, vitamins, and natural and artificial colors. The maltodextrin is stated to have a Dextrose Equivalent (DE) of 20. The product will be imported in the following flavors: orange, pineapple, strawberry, mango, raspberry, peach, apricot and cantaloupe. The merchandise will be packaged in 20 gram pouches. A finished beverage is produced by mixing the product with water.

The applicable tariff provision for the "Zuko" powdered fruit drink, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 1701.91.5400 Harmonized Tariff Schedules of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose in solid form: other...containing added flavoring matter whether or not containing added coloring...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The rate of duty will be 6 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading 1701.91.5800, HTS, and dutiable at the rate of 33.9 cents per kilogram plus 5.1 percent ad valorem. In addition, items classified

under subheading *1701.91.5800*, HTS, will be subject to additional duties based on their value as described in subheadings *9904.17.49* to *9904.17.56*, HTS.

The applicable subheading for the “Diet Zuko” powdered fruit drink will be *1702.30.4080*, Harmonized Tariff Schedule of the United States (HTS), which provides for glucose and glucose syrup, not containing fructose or containing in the dry state less than 20 percent by weight of fructose. The duty rate will be 2.2 cents per kilogram.

Articles classifiable under subheadings *1701.91.5400* and *1702.30.4080*, HTS, which are products of Chile are currently entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP, however, is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, check the Customs Web site at www.customs.gov. At the Web site, click on “CEBB” and then search for the term “GSP”.

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 John Maria at 212-637-7059.

Sincerely,

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

ATTACHMENT V

NY H85600

November 6, 2001

CLA-2-17:RR:NC:SP:232 H85600

CATEGORY: Classification

TARIFF NO.: 1701.91.5400; 1701.91.5800

MR. GUSTAVO BELGRANO
QUEST LOGISTICS, INC.
9999 NW 89 AVE. BAY #3
MEDLEY, FLORIDA 33178

RE: The tariff classification of powdered soft drinks from Columbia

DEAR MR. BELGRANO:

In your letter dated August 3, 2001, on behalf of Incauca Alimentos y Refrescos S.A., you requested a tariff classification ruling.

Samples of the packaging of the merchandise were included with your request. Information was submitted with your initial request dated May 29, 2001. The subject merchandise is called "Twist" and "Jugui". All of the products contain over 89 percent refined sugar, with various quantities of citric acid, sodium citrate, ascorbic acid, calcium citrate, flavors, maltodextrine, gums, colors, etc. The products will be imported in various flavors including tropical fruit, tropical fruit punch, instant passion fruit, instant blueberry, instant lime, and instant orange. The drink mixes will be imported packaged for retail sale in foil packs having a net weight of 110 grams.

The applicable tariff provision for the "Twist" and "Jugui" powdered soft drinks, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be *1701.91.5400* Harmonized Tariff Schedules of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose in solid form: other...containing added flavoring matter whether or not containing added coloring ...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The general rate of duty will be 6 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading *1701.91.5800*, HTS, and dutiable at the general rate of 33.9 cents per kilogram plus 5.1 percent ad valorem. In addition, products classified in subheading *1701.91.5800*, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.17.49 to 9904.17.56, HTS.

Articles classifiable under subheading *1701.91.5400*, HTS, which are products of Columbia are currently entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP, however, is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, check the Customs Web site at www.customs.gov. At the Web site, click on "CEBB" and then search for the term "GSP".

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 John Maria at 646-733-3031.

Sincerely,

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

ATTACHMENT W

NY I87369

November 19, 2002

CLA-2-17-RR:NC:SP:232 I87369

CATEGORY: Classification

TARIFF NO.: 1701.91.4800; 1701.91.5800

MR. WILLIAM F. BESCHLE
FRANKLIN CONNECTIONS
1701 NORTHWESTERN DRIVE
EL PASO, TX 79912

RE: The tariff classification and status under the North American Free Trade Agreement (NAFTA), of a beverage mix from Mexico; Article 509

DEAR MR. BESCHLE:

In your letter dated October 18, 2002 you requested a ruling on the status of a beverage mix from Mexico under the NAFTA. Additional information was submitted in your fax dated November 13, 2002.

The subject merchandise is stated to contain 85.6 percent sugar, 5.7 percent fructose, 6.1 percent citric acid and small quantities ascorbic acid, sodium citrate, lemon # 49.167 SD, cloud #18.020 SD, FD&C yellow #5, sylox 15, and FD&C yellow #5 lake. The sugar is derived from cane or beet and will originate in Mexico or the United States. The balance of the ingredients is from the United States. The ingredients are blended into the beverage mix in Mexico. The product will be packaged in various small containers (cans, jars, pouches) for retail sale, and in larger bulk containers for the food service industry.

The applicable tariff provision for the beverage mix in bulk packaging for the food service industry will be *1701.91.4800*, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for cane or beet sugar and chemically pure sucrose, in solid form...containing added flavoring matter whether or not containing added coloring... articles containing over 65 percent by dry weight of sugar described in additional U.S. note 2 to chapter 17...other. The general rate of duty will be 33.9 cents per kilogram plus 5.1 percent ad valorem.

The beverage mix, being wholly obtained or produced entirely in the territory of Mexico and the United States will meet the requirements of HTSUSA General Note 12(b)(i), and will therefore be entitled to a free rate of duty if entered under the terms of general note 12 of the Harmonized Tariff Schedule of the United States, and imported in quantities that fall within the quantitative limits described in U.S. note 18 to subchapter 6 of chapter 99 HTS pursuant to subheading 9906.17.03. If the quantitative limits of U.S. note 18 to subchapter 6 of chapter 99 have been reached, and if the product is valued not over 31.5 cents per kilogram, it will be dutiable at the rate of 3.8 cents per kilogram in subheading 9906.17.04, HTS. If valued over 31.5 cents per kilogram, the rate of duty will be 12 percent ad valorem, pursuant to subheading 9906.17.05, HTS, upon compliance with all applicable laws, regulations, and agreements.

The applicable tariff provision for the beverage mix in retail packaging will be *1701.91.5800*, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for cane or beet sugar and chemically pure sucrose, in solid form...containing added flavoring matter whether or not con-

taining added coloring... articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...other. The general rate of duty will be 33.9 cents per kilogram plus 5.1 percent ad valorem.

The beverage mix, being wholly obtained or produced entirely in the territory of the United States and Mexico will meet the requirements of HTSUSA General Note 12(b)(i), and will therefore be entitled to a free rate of duty if entered under the terms of general note 12 of the Harmonized Tariff Schedule of the United States, and imported in quantities that fall within the quantitative limits described in U.S. note 20 to subchapter 6 of chapter 99 HTS pursuant to subheading 9906.17.39. If the quantitative limits of U.S. note 20 to subchapter 6 of chapter 99 have been reached, and if the product is valued not over 31.5 cents per kilogram, it will be dutiable at the rate of 3.8 cents per kilogram in subheading 9906.17.40, HTS. If valued over 31.5 cents per kilogram, the rate of duty will be 12 percent ad valorem, pursuant to subheading 9906.17.41, HTS, upon compliance with all applicable laws, regulations, and agreements.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181).

This ruling letter is binding only as to the party to whom it is issued and may be relied on only by that party.

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 John Maria at 646-733-3031.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT X

NY L82138

February 14, 2005

CLA-2-17:RR:NC:SP:232 L82138

CATEGORY: Classification

TARIFF NO.: 1701.91.5400; 1701.91.5800

MR. JOSEPH R. HOFFACKER
BARTHCO TRADE CONSULTANTS
THE NAVY YARD
5101 S. BROAD STREET
PHILADELPHIA, PA 19112-1404

RE: The tariff classification of Powdered Drink Mixes from Brazil

DEAR MR. HOFFACKER:

In your letter dated January 12, 2005, on behalf of Cotia (USA) Ltd. Of New York, New York, you requested a tariff classification ruling.

You submitted descriptive literature and product photographs with your request. The subject merchandise is "Camp" powdered drink mix which will be imported in the following flavors: pineapple, tangerine, mixed fruit, mango, passion fruit, coconut, lemon, orange, strawberry, and grape. The products all contain at least 79 percent sugar, with various quantities of citric acid, flavor, sodium cyclamate, calcium phosphate, salt, ascorbic acid, artificial colors, and small quantities of various other ingredients. The mixes will be imported in foil packets containing 50 grams each. The consumer adds a liter of water to produce a drink. The subject merchandise will be sold in supermarkets.

The applicable tariff provision for the powdered drink mixes, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 1701.91.5400 Harmonized Tariff Schedules of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose in solid form: other...containing added flavoring matter whether or not containing added coloring...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The rate of duty will be 6 percent ad valorem. If the quantitative limits of additional US note 8 to chapter 17 have been reached, the product will be classified in subheading 1701.91.5800, HTS, and dutiable at the rate of 35.9 cents per kilogram plus 5.4 percent ad valorem. In addition, products classified in subheading 1701.91.5800, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.17.49 to 9904.17.56, HTS.

Articles classifiable under subheading 1701.91.5400, HTS, which are products of Brazil, are currently entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP, however, is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, check the Customs Web site at www.customs.gov. At the Web site, click on "CEBB" and then search for the term "T-GSP".

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is

regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at 301-575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 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 John Maria at (646) 733-3031.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

*National Commodity
Specialist Division*

ATTACHMENT Y

NY L88611

December 5, 2005

CLA-2-17:RR:NC:2:228 L88611

CATEGORY: Classification

TARIFF NO.: 1701.91.5400, 1701.91.5800,
1806.90.5500, 1806.90.5900,
2106.90.5830, 2106.90.5850

MRS. SUAREZ YURIEN
BRETZKE ALIMENTOS LTDA.
RUA CARLOS MAY 320
BAIRRO BAEPENDI
JARAGUA DO SUL, SC
CEP 89256-450
BRAZIL

RE: The tariff classification of powder drink and dessert mixes from Brazil.

DEAR MRS. YURIEN:

In your letters dated September 22, 2005 and October 28, 2005, you requested a tariff classification ruling.

Samples, ingredients breakdowns, and production flow charts for several products were submitted with your letters. The samples were examined and disposed of. "Xuky" products are described as milkshake powders in four flavors (vanilla, strawberry, coconut, and chocolate). Each flavor contains 86 or 97 percent sugar, one percent guar gum, and less than one percent each of cornstarch, xanthan gum, caboxymethyl cellulose sodium, flavoring, coloring, vitamins, and folic acid. The chocolate flavor also contains 12 percent cocoa powder. The vanilla, strawberry, and coconut flavored milk shake powders are imported in 450-gram plastic containers. The chocolate flavored Xuky is packed in a 400-gram container. "Muky Light" and "Muky" products are chocolate flavored powder drink mixes containing 76 percent sugar, 9.5 or 12 percent cocoa powder, 9 or 10.5 percent malt dextrin, 2 percent or less artificial flavoring, and less than one percent soy lecithin. Muky also contains less than one percent each of salt, whey, and vitamins and Muky Light contains skim milk, aspartame, and saccharin. Muky is packed in 400-gram plastic containers and Muky Light is put up in 300-gram plastic containers. The Xuky and Muky drink mixes are blended with either cold or warm milk to make the drinks.

The "Bretzke" brand gelatin powders, available in eleven flavors (guarana, passion fruit, blueberry, grape, peach, strawberry, lemon, orange, raspberry, cherry, and pineapple), contain 89 percent sugar, 8.5 percent gelatin powder, 1.2 percent fumaric or adipic acid, and less than one percent each of salt, sodium citrate, flavoring and coloring. The "Bretzke" diet gelatin powders (raspberry, lemon, pineapple, and strawberry) contain 68 percent gelatin, 10-11 percent sorbitol, 7-10 percent sodium citrate, 8.6 percent fumaric or adipic acid, 1.25 percent sodium cyclamate, 0.5-2.6 percent flavoring, and less than one percent each of aspartame, silicon dioxide, and coloring. The powders are put up in plastic pouches containing 12 grams, net weight. The gelatin desserts are prepared by mixing the powders with boiling water, adding cold water, and refrigerating.

The applicable subheading for the vanilla, coconut, pineapple, and strawberry flavors of “Xuky”, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be *1701.91.5400* Harmonized Tariff Schedules of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose, in solid form...other...containing added flavoring or coloring matter...containing added flavoring matter whether or not containing added coloring...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The rate of duty will be 6 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the products will be classified in subheading *1701.91.5800*, HTS, and dutiable at the rate of 33.9 cents per kilo plus 5.1 percent ad valorem. In addition, products classified in subheading *1701.91.5800*, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.17.49 to 9904.17.56, HTS.

The applicable subheading for the chocolate flavored “Xuky” milk shake powder and chocolate flavored “Muky” and “Muky Light” powdered drink mixes, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be *1806.90.5500*, HTS, which provides for chocolate and other food preparations containing cocoa...other...other...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The duty rate will be 3.5 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the products will be classified in subheading *1806.90.5900*, HTS, and dutiable at the rate of 37.2 cents per kilo plus 6 percent ad valorem. In addition, products classified in subheading *1806.90.5900*, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.17.49 to 9904.17.56, HTS.

The applicable subheading for the Bretzke gelatin dessert powders (lemon, orange, pineapple, peach, passion fruit, strawberry, cherry, raspberry, grape, guarana, and blueberry) will be *2106.90.5830*, HTS, which provides for food preparations not elsewhere specified or included...other...of gelatin...put up for retail sale...containing sugar derived from sugar cane or sugar beets. The rate of duty will be 4.8 percent ad valorem.

The applicable subheading for the Bretzke diet gelatin dessert powders (lemon, pineapple, strawberry, raspberry will be *2106.90.5850*, HTS, which provides for food preparations not elsewhere specified or included...other...of gelatin...put up for retail sale...other. The rate of duty will be 4.8 percent ad valorem.

Articles classifiable under subheadings *1701.91.5400*, *1806.90.5500*, *2106.90.5830*, and *2106.90.5850*, HTS, which are products of Brazil may be entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, check the Customs Web site at www.customs.gov. At the Web site, click on “CEBB” then search for the term “GSP”.

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

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at telephone number (301) 575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stanley Hopard at 646-733-3029.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT Z

NY NO15991

September 10, 2007

CLA-2-17:RR:E:NC:SP:232

CATEGORY: Classification

Type: Classification • HTSUS:

1701.91.5400; 1701.91.5800

Ms. NORMA M. SANCHEZ
SUCRS. PEDRO CORTES, INC.
P.O. BOX 363626
SAN JUAN, PR 00936-3626

RE: The tariff classification of “Instant Strawberry” artificial flavor powder from Dominican Republic

DEAR Ms. SANCHEZ:

In your letter dated August 20 2007, you requested a tariff classification ruling.

The subject merchandise is Instant Strawberry artificial flavored powder. The product is said to contain 87.82 percent sugar, 9.0 percent Maltodextrin, 1.93 percent Dicalcium Phosphate and less than 1.0 percent of the following: strawberry flavor, vitamins, citric acid, red food color FDA C#3 and red food color FDA C#40. The powder will be imported in pouches in two sizes, 7 ounces (200 grams) and 14 ounces (400 grams) and 12 or 24 pouches to a carton. The product will be used by consumers as a beverage by dissolving it in cold milk.

The applicable subheading for the “Instant Strawberry” artificial flavor powder, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 1701.91.5400 Harmonized Tariff Schedules of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose in solid form: other...containing added flavoring matter whether or not containing added coloring...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The rate of duty will be 6 percent ad valorem. If the quantitative limits of additional US note 8 to chapter 17 have been reached, the product will be classified in subheading 1701.91.5800, HTS, and dutiable at the rate of 35.9 cents per kilogram plus 5.4 percent ad valorem. In addition, products classified in subheading 1701.91.5800, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.17.49 to 9904.17.56, HTS.

Articles classifiable under subheading 1701.91.5400, HTS, which are products of Dominican Republic, are currently entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP, however, is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse.

To obtain current information on GSP, check our Web site at www.cbp.gov and search for the term “GSP”. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at telephone number (301) 575-0156[®], or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177). A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Frank Troise at 646-733-3031[®].

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT AA

N042679

N019259

November 20, 2007

CLA-2-17:OT:RR:NC:232

CATEGORY: Classification

TARIFF NO.: 1701.91.5400; 1701.91.5800

MR. JAMAL AHMED
FARROW INTERNATIONAL TRADE CONSULTING
5397 EGLINTON AVENUE W., SUITE 220
ETOBICOKE, ONTARIO
M9C 5K6

RE: The tariff classification of apple cider drink mix from Canada

DEAR MR. AHMED:

In your letter dated October 30, 2007, on behalf of your client, Nestle Canada Inc., you requested a tariff classification ruling.

The subject merchandise is described as "Apple Cider" and it is a powdered beverage mix for use with automatic dispensers. The product comes in a 2 pound bag that will be sold to coffeehouses and/or restaurants. The Apple Cider mix is poured into a dispenser where hot water is added and a beverage is produced. The main ingredients for this product are sugar, maltodextrin, apple powder, citric and malic acids, cinnamon and apple flavor and artificial flavor, pectin, silicon dioxide, caramel color, dextrose, tapioca dextrin, modified corn starch and cinnamon. It will be manufactured in Canada.

The applicable tariff provision for the apple cider powdered drink mix, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 1701.91.5400 Harmonized Tariff Schedules of the United States (HTSUS), which provides for cane or beet sugar and chemically pure sucrose in solid form: other...containing added flavoring matter whether or not containing added coloring...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The rate of duty will be 6 percent ad valorem. If the quantitative limits of additional US note 8 to chapter 17 have been reached, the product will be classified in subheading 1701.91.5800, HTS, and dutiable at the rate of 33.9 cents per kilogram plus 5.1 percent ad valorem. In addition, products classified in subheading 1701.91.5800, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.17.49 to 9904.17.65, HTS.

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

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at 301-575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Frank Troise at 646-733-3031.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

*National Commodity
Specialist Division*

ATTACHMENT BB

November 26, 2008
CLA-2-17-RR:E:NC:SP:232
CATEGORY: Classification
TARIFF NO.: 1701.91.5400; 1701.91.5800

MR. FRANCISCO DIEZ
TRANSNATIONAL FOODS INC.
1110 BRICKELL AVENUE
MIAMI, FL 33131

RE: The tariff classification of “powder soft drink mix” from Brazil

DEAR MR. DIEZ:

In your letter dated October 24 2008, you requested a tariff classification ruling. The subject merchandise is “Ice Ade” powder soft drink mix. The powdered mix comes in five varieties packaged for retail sale. The product is imported in a 15-ounce, multi colored plastic canister. The product will be used by consumers as a beverage by dissolving in water.

“Cherry” flavor is said to contain 96.28 percent sugar cane, 1.11 percent citric acid, .79 percent sodium citrate, .73 percent tricalcium phosphate, .73 percent flavor, .19 percent ascorbic acid and .11 percent red dye 40. “Tropical Punch” flavor is said to contain 96.4 percent sugar cane, 1.17 percent citric acid, .80 percent sodium citrate, .82 percent tricalcium phosphate, .50 percent flavor, .19 percent ascorbic acid and .08 percent red dye 40. “Orange” flavor is said to contain 96.3 percent sugar cane, 1.17 percent citric acid, .82 percent sodium citrate, .82 percent tricalcium phosphate, .61 percent flavor, .19 percent ascorbic acid, .0008 percent red dye 40, .0009 percent yellow dye #5 and .04 percent yellow dye #6. “Lemonade” flavor is said to contain 95.7 percent sugar cane, 1.5 percent citric acid, .82 percent sodium citrate, .82 percent tricalcium phosphate, .82 percent flavor, .19 percent ascorbic acid and .001 percent yellow dye #5. “Iced Tea” flavor is said to contain 93.7 percent sugar cane, 1.3 percent citric acid, 1.5 percent fructose, 1.2 percent tea extract, .76 percent sodium citrate, .76 percent tricalcium phosphate and .50 percent flavor.

The applicable subheading for the “Ice Age” powder soft drink in flavors: Cherry, Tropical Punch, Orange, Lemonade and Iced Tea if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 1701.91.5400 Harmonized Tariff Schedules of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose in solid form: other...containing added flavoring matter whether or not containing added coloring...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The rate of duty will be 6 percent ad valorem. If the quantitative limits of additional US note 8 to chapter 17 have been reached, the product will be classified in subheading 1701.91.5800, HTS, and dutiable at the rate of 35.9 cents per kilogram plus 5.4 percent ad valorem. In addition, products classified in subheading 1701.91.5800, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.17.49 to 9904.17.65, HTS.

Articles classifiable under subheading 1701.91.5400, HTS, which are products of Brazil, are currently entitled to duty free treatment under the Gen-

eralized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP, however, is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, check our Web site at www.cbp.gov and search for the term "GSP".

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

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at telephone number (301) 575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Frank Troise at 646-733-3031.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

ATTACHMENT CC

N045475

November 26, 2008

CLA-2-17:OT:RR:NC:232

CATEGORY: Classification

TARIFF NO.: 1701.91.5400; 1701.91.5800

Ms. NINFA DIMORA-MINES
P. MINES CUSTOMS SERVICES
P.O. Box 1197
FORT ERIE, ONTARIO L2A 5Y2
CANADA

RE: The tariff classification of Alpine Spiced Cider Original Apple Flavor Drink Mix from Canada Correction to Customs Ruling N038798

DEAR Ms. DIMORA-MINES:

This ruling is being issued to correct Customs Ruling No. N005483, dated January 22, 2007. A clerical error was found in the ruling letter. A complete corrected ruling follows.

In your letter dated September 18, 2008 you requested a tariff classification ruling. An ingredients breakdown and sample were submitted with your request. The sample was examined and disposed of. Alpine Spiced Cider Original Apple Flavor Drink Mix is a light brown colored powder said to consist of 92.66 percent sugar, 1.58 percent apple flavor #862- .097, 2.70 percent malic acid, 0.52 percent apple flavor #52.682, 0.65 percent caramel color powder, 0.42 percent sodium citrate, 0.35 percent ascorbic acid, 0.33 percent cinnamon flavor and 0.79 percent tricalcium phosphate. After the Alpine Spiced Cider Drink Mix is blended in Canada, the product is put into plastic lined super sacks (totes) and scaled out to 1075 kilograms per super sack. The super sacks (18) are then loaded onto a truck for export shipping to a copackager located in the United States for packaging into a retail pack format. The finished product consists of 10 x 0.74 ounce packages in a retail display carton.

The applicable tariff provision for the Alpine Spiced Cider Original Apple Flavor Drink Mix, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 1701.91.5400 Harmonized Tariff Schedules of the United States (HTSUS), which provides for cane or beet sugar and chemically pure sucrose in solid form: other...containing added flavoring matter whether or not containing added coloring...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The rate of duty will be 6 percent ad valorem. If the quantitative limits of additional US note 8 to chapter 17 have been reached, the product will be classified in subheading 1701.91.5800, HTS, and dutiable at the rate of 33.9 cents per kilogram plus 5.1 percent ad valorem. In addition, products classified in subheading 1701.91.5800, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.17.49 to 9904.17.65, HTS.

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

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at 301-575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Frank Troise at (646) 733-3031.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

ATTACHMENT DD

N073508

September 29, 2009

CLA-2-17:OT:RR:E:NC:232

CATEGORY: Classification

TARIFF NO.: 1701.91.5400; 1701.91.5800

MR. PATRICIO MILET

TODINNO SAC

AV. AVENIDA

CIRCUNVALACION #850 URB. LA CAPITANA

HUACHIPA, LIMA 33

PERU

RE: The tariff classification of “powder soft drink mix” from Peru

DEAR MR. MILET:

In your letter dated August 24, 2009, you requested a classification ruling. The subject merchandise is described as a powder soft drink mix. The powder drink mix is said to contain 95.43 percent sugar, 0.18 percent Aspartame, 0.59 percent sodium citrate, 0.35 percent clouding ingredient, 0.09 percent xanthan gum, 1.11 percent artificial flavors, 0.05 percent yellow 6, 0.48 percent tricalcium phosphate, 1.42 percent fumaric acid, 0.41 percent citric acid and 0.28 percent ascorbic acid. The product is packaged for retail sale and will be used as a beverage by dissolving in water.

The applicable subheading for the “powder drink mix” if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 1701.91.5400 Harmonized Tariff Schedules of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose in solid form: other...containing added flavoring matter whether or not containing added coloring...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The rate of duty will be 6 percent ad valorem. If the quantitative limits of additional US note 8 to chapter 17 have been reached, the product will be classified in subheading 1701.91.5800, HTS, and dutiable at the rate of 33.9 cents per kilogram plus 5.1 percent ad valorem. In addition, products classified in subheading 1701.91.5800, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.17.49 to 9904.17.65, HTS.

Articles classifiable under subheading 1701.91.5400, HTS, which are products of Peru, are currently entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP, however, is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, check our Web site at www.cbp.gov and search for the term “GSP”.

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

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the

Bioterrorism Act can be obtained by calling FDA at telephone number (301) 575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Frank Troise at (646) 733-3031.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

ATTACHMENT EE

NY R01312

February 2, 2005

CLA-2-17:RR:NC:SP:232 R01312

CATEGORY: Classification

TARIFF NO.: 1701.91.4800; 1701.91.5800

MR. DAVID STEWART
COMMODITY SPECIALISTS COMPANY
10515 RAILROAD DRIVE
EL PASO, TX 79924

RE: The tariff classification and status under the North American Free Trade Agreement (NAFTA), of an isotonic drink mix from Mexico; Article 509

DEAR MR. STEWART:

In your letter dated January 14, 2005 you requested a ruling on the status of an isotonic drink mix from Mexico under the NAFTA. Your request also asks for the country of origin for marking purposes.

Additional information was submitted in your fax dated January 19, 2005. The subject merchandise consists of 80 percent to 85 percent sugar, less than 8 percent dextrose, less than 3 percent citric acid, less than 1 percent ascorbic acid, less than 1 percent each of potassium citrate, salt, sodium citrate, potassium phosphate, sodium phosphate, calcium phosphate, less than 1 percent each of color, flavor and modified food starch. The product flavors include: lemonade, lemon-lime, tropical cooler, orange and cool citrus. The sugar will be cane or beet of United States or Mexican origin. The other ingredients will be of NAFTA origin. The ingredients will be blended in Mexico and shipped to the United States in 2,400 pound to 2,700 pound bulk bags. After importation into the United States, the product will be repackaged into various sizes for industrial, food service and retail sale.

The applicable tariff provision for the isotonic drink mix repackaged for industrial and food service use will be 1701.91.4800, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for cane or beet sugar and chemically pure sucrose, in solid form...containing added flavoring matter whether or not containing added coloring... articles containing over 65 percent by dry weight of sugar described in additional U.S. note 2 to chapter 17...other. The general rate of duty will be 33.9 cents per kilogram plus 5.1 percent ad valorem.

The applicable tariff provision for the isotonic drink mix repackaged for retail sale will be 1701.91.5800, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for cane or beet sugar and chemically pure sucrose, in solid form...containing added flavoring matter whether or not containing added coloring... articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...other. The general rate of duty will be 33.9 cents per kilogram plus 5.1 percent ad valorem.

General Note 12(b), HTSUS, sets forth the criteria for determining whether a good is originating under the NAFTA. General Note 12(b), HTSUS, (19 U.S.C. § 1202) states, in pertinent part, that

For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if—

(i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or

(ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or

(iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials; or

(iv) they are produced entirely in the territory of Canada, Mexico and/or the United States but one or more of the nonoriginating materials falling under provisions for “parts” and used in the production of such goods does not undergo a change in tariff classification because—

(A) the goods were imported into the territory of Canada, Mexico and/or the United States in unassembled or disassembled form but were classified as assembled goods pursuant to general rule of interpretation 2(a), or

(B) the tariff headings for such goods provide for and specifically describe both the goods themselves and their parts and is not further divided into subheadings, or the subheadings for such goods provide for and specifically describe both the goods themselves and their parts,

provided that such goods do not fall under chapters 61 through 63, inclusive, of the tariff schedule, and provided further that the regional value content of such goods, determined in accordance with subdivision (c) of this note, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used, and such goods satisfy all other applicable provisions of this note.

Based on the facts provided, the isotonic drink mix described above qualifies for NAFTA preferential treatment, because it will meet the requirements of HTSUSA General Note 12(b)(i). The good will therefore be entitled to a free rate of duty under the NAFTA upon compliance with all applicable laws, regulations, and agreements.

Your inquiry also requests a ruling on the country of origin marking requirements for imported articles, which are processed in a NAFTA country prior to being imported into the U.S. A marked sample was not submitted with your letter for review.

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

The country of origin marking requirements for a “good of a NAFTA country” are also determined in accordance with Annex 311 of the North American Free Trade Agreement (“NAFTA”), as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat 2057) (December 8, 1993) and the appropriate Customs Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, Customs Regulations. The marking requirements of these goods are set forth in Part 134, Customs Regulations.

Section 134.1(b) of the regulations, defines “country of origin” as the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a *substantial transformation* in order to render such other country the “country of origin within this part; *however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.* (Emphasis added).

Section 134.1(j) of the regulations, provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) of the regulations, defines a “good of a NAFTA country” as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules. Section 134.45(a)(2) of the regulations, provides that a “good of a NAFTA country” may be marked with the name of the country of origin in *English, French or Spanish.*

You state that the imported isotonic drink mix is processed in a NAFTA country “Mexico” prior to being imported into the U.S. Since, “Mexico” is defined under 19 CFR 134.1(g), as a NAFTA country, we must first apply the NAFTA Marking Rules in order to determine whether the imported isotonic drink mix is a good of a NAFTA country, and thus subject to the NAFTA marking requirements.

Part 102 of the regulations, sets forth the “NAFTA Marking Rules” for purposes of determining whether a good is a good of a NAFTA country for marking purposes. Section 102.11 of the regulations, sets forth the required hierarchy for determining country of origin for marking purposes.

Applying the NAFTA Marking Rules set forth in Part 102 of the regulations to the facts of this case, we find that, when the sugar originates in Mexico, the imported isotonic drink mix is a good of “Mexico”, and when the sugar originates in the United States, the imported isotonic drink mix is a good of “The United States”, for marking purposes, noting the requirements of Section 102.11 (b)(1). Products of the United States are exempted from the country of origin marking requirements.

Noting Section 102.19(b), if the country of origin for marking purposes is the United States, the country of origin of the isotonic drink mix for Customs duty purposes, in this case, is Mexico.

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at telephone number (301) 575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181).

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 John Maria at 646-733-3031.

Should you wish to request an administrative review of this ruling, submit a copy of this ruling and all relevant facts and arguments within 30 days of the date of this letter, to the Director, Commercial Rulings Division, Bureau of Customs and Border Protection, 1300 Pennsylvania Ave. N.W., Washington, D.C. 20229.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT FF

NY R01313

February 9, 2005

CLA-2-17:RR:NC:SP:232 R01313

CATEGORY: Classification

TARIFF NO.: 1701.91.4800; 1701.91.5800

MR. DAVID STEWART
COMMODITY SPECIALISTS COMPANY
10515 RAILROAD DRIVE
EL PASO, TX 79924

RE: The tariff classification and status under the North American Free Trade Agreement (NAFTA), of an isotonic drink mix from Mexico; Article 509

DEAR MR. STEWART:

In your letter dated January 14, 2005 you requested a ruling on the status of an isotonic drink mix from Mexico under the NAFTA. Your request also asks for the country of origin for marking purposes.

Additional information was submitted in your fax dated January 19, 2005. The subject merchandise consists of 80 percent to 85 percent sugar, less than 8 percent dextrose, less than 3 percent citric acid, less than 1 percent ascorbic acid, less than 1 percent each of potassium citrate, salt, sodium citrate, potassium phosphate, sodium phosphate, calcium phosphate, less than 1 percent each of color, flavor and modified food starch. The product flavors include: mixed berry, fruit punch, cherry and grape. The sugar will be cane or beet of United States or Mexican origin. The other ingredients will be of NAFTA origin. The ingredients will be blended in Mexico and shipped to the United States in 2,400 pound to 2,700 pound bulk bags. After importation into the United States, the product will be repackaged into various sizes for industrial, food service and retail sale.

The applicable tariff provision for the isotonic drink mix repackaged for industrial and food service use will be 1701.91.4800, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for cane or beet sugar and chemically pure sucrose, in solid form...containing added flavoring matter whether or not containing added coloring... articles containing over 65 percent by dry weight of sugar described in additional U.S. note 2 to chapter 17...other. The general rate of duty will be 33.9 cents per kilogram plus 5.1 percent ad valorem.

The applicable tariff provision for the isotonic drink mix repackaged for retail sale will be 1701.91.5800, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for cane or beet sugar and chemically pure sucrose, in solid form...containing added flavoring matter whether or not containing added coloring... articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...other. The general rate of duty will be 33.9 cents per kilogram plus 5.1 percent ad valorem.

General Note 12(b), HTSUS, sets forth the criteria for determining whether a good is originating under the NAFTA. General Note 12(b), HTSUS, (19 U.S.C. § 1202) states, in pertinent part, that

For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if—

(i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or

(ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or

(iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials; or

(iv) they are produced entirely in the territory of Canada, Mexico and/or the United States but one or more of the nonoriginating materials falling under provisions for “parts” and used in the production of such goods does not undergo a change in tariff classification because—

(A) the goods were imported into the territory of Canada, Mexico and/or the United States in unassembled or disassembled form but were classified as assembled goods pursuant to general rule of interpretation 2(a), or

(B) the tariff headings for such goods provide for and specifically describe both the goods themselves and their parts and is not further divided into subheadings, or the subheadings for such goods provide for and specifically describe both the goods themselves and their parts,

provided that such goods do not fall under chapters 61 through 63, inclusive, of the tariff schedule, and provided further that the regional value content of such goods, determined in accordance with subdivision (c) of this note, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used, and such goods satisfy all other applicable provisions of this note.

Based on the facts provided, the isotonic drink mix described above qualifies for NAFTA preferential treatment, because it will meet the requirements of HTSUSA General Note 12(b)(i). The good will therefore be entitled to a free rate of duty under the NAFTA upon compliance with all applicable laws, regulations, and agreements.

Your inquiry also requests a ruling on the country of origin marking requirements for imported articles, which are processed in a NAFTA country prior to being imported into the U.S. A marked sample was not submitted with your letter for review.

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

The country of origin marking requirements for a “good of a NAFTA country” are also determined in accordance with Annex 311 of the North American Free Trade Agreement (“NAFTA”), as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat 2057) (December 8, 1993) and the appropriate Customs Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, Customs Regulations. The marking requirements of these goods are set forth in Part 134, Customs Regulations.

Section 134.1(b) of the regulations, defines “country of origin” as the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a *substantial transformation* in order to render such other country the “country of origin within this part; *however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.* (Emphasis added).

Section 134.1(j) of the regulations, provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) of the regulations, defines a “good of a NAFTA country” as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules. Section 134.45(a)(2) of the regulations, provides that a “good of a NAFTA country” may be marked with the name of the country of origin in *English, French or Spanish.*

You state that the imported isotonic drink mix is processed in a NAFTA country “Mexico” prior to being imported into the U.S. Since, “Mexico” is defined under 19 CFR 134.1(g), as a NAFTA country, we must first apply the NAFTA Marking Rules in order to determine whether the imported isotonic drink mix is a good of a NAFTA country, and thus subject to the NAFTA marking requirements.

Part 102 of the regulations, sets forth the “NAFTA Marking Rules” for purposes of determining whether a good is a good of a NAFTA country for marking purposes. Section 102.11 of the regulations, sets forth the required hierarchy for determining country of origin for marking purposes.

Applying the NAFTA Marking Rules set forth in Part 102 of the regulations to the facts of this case, we find that, when the sugar originates in Mexico, the imported isotonic drink mix is a good of “Mexico”, and when the sugar originates in the United States, the imported isotonic drink mix is a good of “The United States”, for marking purposes, noting the requirements of Section 102.11 (b)(1). Products of the United States are exempted from the country of origin marking requirements.

Noting Section 102.19(b), if the country of origin for marking purposes is the United States, the country of origin of the isotonic drink mix for Customs duty purposes, in this case, is Mexico.

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at telephone number (301) 575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181).

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 John Maria at 646-733-3031.

Should you wish to request an administrative review of this ruling, submit a copy of this ruling and all relevant facts and arguments within 30 days of the date of this letter, to the Director, Commercial Rulings Division, Bureau of Customs and Border Protection, 1300 Pennsylvania Ave. N.W., Washington, D.C. 20229.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT GG

N158039

May 13, 2011

CLA-2-17:OT:RR:NC:2:228

CATEGORY: Classification

TARIFF NO.: 1702.30.4080; 2106.90.9500;

2106.90.9700

Ms. ROSIE LARA
ARIAS LOGISTICS
543 S. AMERICAS AVE.
EL PASO, TX 79907

RE: The tariff classification of drink mixes from Chile

DEAR Ms LARA:

In your letter dated March 31, 2011, on behalf of Corpora Tres Montes, S.A., Santiago, Chile, you requested a tariff classification ruling.

Samples and ingredients breakdowns for three products were submitted with your letter. The samples were forwarded to the U.S. Customs and Border Protection laboratory for analysis. The products are powdered drink mixes, packed for retail sale in pouches containing 20 grams (0.7 ounce), net weight. Zuko brand Tamarindo is said to contain approximately 66 percent dextrose, 15 percent acidulants, 9 percent sucrose, 3 percent gum, 2 percent flavors, and one percent or less, each, aspartame, acesulfame-K, cloud agent, anticaking agent, black tea, colors, and ascorbic acid. Laboratory analysis found this product contained 73.4 percent dextrose and 13 percent sucrose, by dry weight. Zuko Naranja is described as being composed of approximately 56 percent dextrose, 23 percent acidulants, 9 percent sucrose, 5 percent flavors, 3 percent gum, and one percent or less, each, aspartame, acesulfame-K, cloud agent, anticaking agent, ascorbic acid and colors. Laboratory analysis of this product found 70.9 percent dextrose and 10.7 percent sucrose, by dry weight. Zuko Horchata is said to be composed of approximately 69 percent dextrose, 9 percent sucrose, 8 percent rice flour, 5 percent flavors, 4 percent cloud agent, 2 percent gum, and one percent or less, each, of aspartame, acesulfame-K, anticaking agent, ascorbic, acid, and color. Analysis found this drink mix contained 81.4 percent dextrose and 11.9 percent sucrose, by dry weight.

In your letter, you suggested all three products should be classified in subheading 1702.30.4080, Harmonized Tariff Schedule of the United States (HTSUS), the provision for glucose not containing fructose or containing in the dry state less than 20 percent by weight of fructose. We agree with your proposal for the Tamarindo and Naranja products, but do not agree with your suggestion for the Horchata mix. Based on the declared ingredients and the laboratory analysis, this product will be classified elsewhere.

The applicable subheading for the Zuko Tamarindo and Zuko Naranja will be 1702.30.4080, HTSUS, which provides for other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form...glucose and glucose syrup, not containing fructose or containing in the dry state less than 20 percent by weight of fructose...other...other. The rate of duty will be 2.2 cents per kilogram.

The applicable subheading for the Zuko Horchata, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17,

will be 2106.90.9500 HTSUS, which provides for food preparations not elsewhere specified or included...other...other...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17... described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The rate of duty will be 10 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading 2106.90.9700, HTSUS, and dutiable at the rate of 28.8 cents per kilogram plus 8.5 percent ad valorem. In addition, products classified in subheading 2106.90.9700, HTSUS, will be subject to additional duties based on their value, as described in subheadings 9904.17.49 to 9904.17.56, HTSUS.

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

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at 301-575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stanley Hopard at (646) 733-3029.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

ATTACHMENT HH

N251352

April 8, 2014

CLA-2-17:OT:RR:NC:232

CATEGORY: Classification

TARIFF NO.: 1701.91.5400; 1701.91.5800

MR. ENRIQUE SUCH
MONDELEZ INTERNATIONAL
MONTEHIEDRA OFFICE CENTER
9615 LOS ROMEROS AVENUE, SUITE 801
SAN JUAN, PR 00926-7059

RE: The tariff classification and status under the Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA) of a Powdered Drink Mix from Costa Rica

DEAR MR. SUCH:

In your letter dated March 12, 2014, you requested a tariff classification ruling. Ingredient breakdowns were submitted along with your request.

The merchandise in question is a powdered drink mix sold under the brand name, Tang. The powdered drink mix is a product of Costa Rica and it will be imported into the United States for retail sale in the following flavors: Passion Fruit, Orange, Grape, Strawberry, Lemon Iced Tea, and Lemon. The ultimate consumer will create the finished beverage by simply adding water.

Passion Fruit Flavor, Orange Flavor, Grape Flavor, Strawberry Flavor, Lemon Iced Tea Flavor and Lemon Flavor are said to contain the following ingredients (from their respective countries of origin): Sucrose (Costa Rica); Artificial Sweeteners (aspartame-acesulfame) (China); Citric Acid (China, Colombia); Malic Acid (United States); Tricalcium Phosphate (Mexico); Gums-Hydrocolloids (United States, China); Phosphates (Mexico); Stabilizers (Colombia); Flavorings (Mexico, Colombia, United States); Colorings (Colombia, Mexico) and Ascorbic Acid (vitamin C) (China).

In your letter, you suggest a tariff classification of 2106.90.9972, Harmonized Tariff Schedule of the United States (HTSUS), which provides for food preparations not elsewhere specified or included. We disagree. Based on the ingredient composition, they will be classified elsewhere.

The applicable subheading for the Powdered Drink Mix/Tang: Passion Fruit, Orange, Grape, Strawberry, Lemon Iced Tea, and Lemon flavors if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 1701.91.5400 Harmonized Tariff Schedules of the United States (HTSUS), which provides for cane or beet sugar and chemically pure sucrose in solid form: other...containing added flavoring matter whether or not containing added coloring...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The rate of duty will be 6 percent ad valorem. If the quantitative limits of additional US note 8 to chapter 17 have been reached, the product will be classified in subheading 1701.91.5800, HTSUS, and dutiable at the rate of 33.9 cents per kilogram plus 5.1 percent ad valorem. In addition, products classified in subheading 1701.91.5800, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.17.49 to 9904.17.65, HTSUS.

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

General Note 29, HTSUS, sets forth the criteria for determining whether a good is originating under the DR-CAFTA. General Note 29(b), HTSUS, (19 U.S.C. § 1202) states, in pertinent part, that

For the purposes of this note, subject to the provisions of subdivisions (c), (d), (m) and (n) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good under the terms of this note if—

(i) the good is a good wholly obtained or produced entirely in the territory of one or more of the parties to the Agreement;

(ii) the good was produced entirely in the territory of one or more of the parties to the Agreement, and—

(A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (n) of this note; or

(B) the good otherwise satisfies any applicable regional value content or other requirements specified in subdivision (n) of this note;

and the good satisfies all other applicable requirements of this note;
or

(iii) the good was produced entirely in the territory of one or more of the parties to the Agreement exclusively from originating materials.

Based on the facts provided, all of the flavors of the powdered drink mix/Tang, when produced in Costa Rica using the ingredients mentioned above from their respective countries of origin, will qualify for DR-CAFTA preferential treatment because they will meet the requirement of HTSUS General Note 29(b)(ii)(A) and 29(n)/17.1. The goods will therefore be entitled to a free rate of duty under the DR-CAFTA upon compliance with all applicable laws, regulations, and agreements.

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at 301-575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Frank Troise at (646) 733-3031 or by email address: Frank.L.Troise@cbp.dhs.gov.

Sincerely,

GWENN KLEIN KIRSCHNER

Acting Director

National Commodity Specialist Division

ATTACHMENT II

N235188

December 10, 2012

CLA-2-17:OT:RR:NC:232

CATEGORY: Classification

TARIFF NO.: 1701.91.5400; 1701.91.5800

Ms. JULIE VAIR
EXPEDITORS TRADEWIN, LLC
1015 THIRD AVENUE, 12TH FLOOR
SEATTLE, WA 98104

RE: The tariff classification and status under the Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA) of Tang Powdered Drink Mix from Costa Rica

DEAR Ms. VAIR:

In your letter dated November 8, 2012, on behalf of your client, Kraft Foods, you requested a tariff classification ruling. Ingredient breakdowns and samples were submitted along with your request. Samples were examined and disposed of.

The merchandise in question is Tang Powdered Drink Mix. The Tang Powdered Drink Mix is a product of Costa Rica and it will be imported into the United States for retail sale in foil packets containing 1.05 ounces of the following flavors: Passion Fruit, Orange, Grape, Strawberry, Lemon Iced Tea, Lemon, Cranberry-Grape, Grape and Mango (12 packets will be sold in one retail box). Packets will also be sold individually in supermarkets. The ultimate consumer will create the finished beverage by simply adding water.

Tang Passion Fruit Flavor, Orange Flavor, Grape Flavor, Strawberry Flavor, Lemon Iced Tea Flavor and Lemon Flavor are said to contain the following ingredients (from their respective countries of origin): Sucrose (Costa Rica); Artificial Sweeteners (China); Citric Acid (China, Colombia); Malic Acid (United States); Tricalcium Phosphate (Mexico); Gums-Hydrocolloids (United States, China); Phosphates (Mexico); Stabilizers (Colombia); Flavorings (Mexico, Colombia, United States); Colorings (Colombia, Mexico) and Ascorbic Acid (China). Tang Mango Flavor and Cranberry-Grape Flavor are said to contain the following ingredients (from their respective countries of origin): Sucrose (Costa Rica); Artificial Sweeteners (China, United States); Citric Acid (China, Colombia); Malic Acid (Canada); Tannic Acid (Belgium); Gums-Hydrocolloids (United States, China); Sodium Citrate (China, Colombia); Phosphates (Mexico, China); Stabilizers (Colombia); Flavorings (Mexico); Colorings (Colombia, India, Mexico) and Ascorbic Acid (China).

The applicable subheading for the Tang Powdered Drink Mix: Passion Fruit, Orange, Grape, Strawberry, Lemon Iced Tea, Lemon, Cranberry-Grape, Grape and Mango flavors if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 1701.91.5400 Harmonized Tariff Schedules of the United States (HTSUS), which provides for cane or beet sugar and chemically pure sucrose in solid form: other...containing added flavoring matter whether or not containing added coloring...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The rate of duty will be 6 percent ad valorem. If the quantitative limits of additional US note 8 to

chapter 17 have been reached, the product will be classified in subheading 1701.91.5800, HTSUS, and dutiable at the rate of 33.9 cents per kilogram plus 5.1 percent ad valorem. In addition, products classified in subheading 1701.91.5800, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.17.49 to 9904.17.65, HTSUS.

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

General Note 29, HTSUS, sets forth the criteria for determining whether a good is originating under the DR-CAFTA. General Note 29(b), HTSUS, (19 U.S.C. § 1202) states, in pertinent part, that

For the purposes of this note, subject to the provisions of subdivisions (c), (d), (m) and (n) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good under the terms of this note if—

(i) the good is a good wholly obtained or produced entirely in the territory of one or more of the parties to the Agreement;

(ii) the good was produced entirely in the territory of one or more of the parties to the Agreement, and—

(A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (n) of this note; or

(B) the good otherwise satisfies any applicable regional value content or other requirements specified in subdivision (n) of this note; and the good satisfies all other applicable requirements of this note; or

(iii) the good was produced entirely in the territory of one or more of the parties to the Agreement exclusively from originating materials.

Based on the facts provided, all of the Tang Powdered Drink Mix Flavors, when produced in Costa Rica using the ingredients mentioned above from their respective countries of origin, will qualify for DR-CAFTA preferential treatment because they will meet the requirement of HTSUS General Note 29(b)(ii)(A) and 29(n)/17.1. The goods will therefore be entitled to a free rate of duty under the DR-CAFTA upon compliance with all applicable laws, regulations, and agreements.

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at 301-575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Frank Troise at (646) 733-3031.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

ATTACHMENT JJ

NY 803800

November 9, 1994
CLA-2-17:S:N:N7:232 803800
CATEGORY: Classification
TARIFF NO.: 1701.91.4020

MS. GLADYS FLORES
JOSE G. FLORES
P.O. BOX 2695
SAN JUAN, PR 00902-2695

RE: The tariff classification of various flavored Tang Powdered Drinks from Mexico and Colombia.

DEAR MS. FLORES:

In your letter dated October 26, 1994, on behalf of Kraft General Foods, you requested a tariff classification ruling.

The subject merchandise is in powdered form and is stated to be the same product as described in NY ruling 898351 dated June 2, 1994. That product contained sugar, citric acid, flavors, colors and small quantities of various other ingredients. This merchandise will be imported packaged for retail sale in 18 ounce jars of passion fruit, orange and grape flavors, 27 ounce jars of passion fruit, orange, grape, apple and tropical fruit flavors and 40.5 ounce jars of orange flavor only.

The applicable subheading for all flavors and sizes of the powdered drinks will be 1701.91.4020, Harmonized Tariff Schedule of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose, in solid form...other...containing added flavoring matter whether or not containing added coloring...beverage bases...put up for retail sale. The general duty rate from Mexico and Colombia will be 6 percent ad valorem.

Articles classifiable under subheading 1701.91.4020, HTS, which are products of Colombia are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

ATTACHMENT KK

N238296

February 27, 2013

CLA-2-17:OT:RR:NC:232

CATEGORY: Classification

TARIFF NO.: 1701.91.5400; 1701.91.5800

MR. ERNESTO JOCSON
RICHARD G. FLEISCHER CHB
132 WEST 132ND STREET
LOS ANGELES, CA 90061

RE: The tariff classification of strawberry flavored powder drink mix from Colombia

DEAR MR. JOCSON:

In your letter dated February 9, 2013, on behalf of your client, Cordialsa USA, Inc., you requested a tariff classification ruling. Ingredient breakdowns and samples were submitted along with your request. Samples were examined and disposed of.

The subject merchandise is described as a strawberry flavored powder drink mix and is said to contain 84 percent sugar, 11.3 percent bulking agent, 2.8 percent calcium carbonate, 0.6 percent artificial flavor (strawberry), 0.5 percent citric acid, 0.3 percent salt, 0.15 percent thickener, 0.11 percent pyrophosphate ferric, 0.11 percent artificial color (red 40 lake), 0.08 percent barley malt extract, 0.03 percent vitamin A, 0.03 percent vitamin B3, 0.02 percent artificial flavor (ethyl vanillin), 0.006 percent vitamin D3, 0.003 percent vitamin B2, and 0.02 percent vitamin B1. It is intended to be mixed with milk to make a beverage. The strawberry flavored powder drink mix is a product of Colombia. It will be packaged for retail sale in 300 gram plastic containers and 180 gram poly bags.

The applicable subheading for the strawberry flavored powder drink mix will be, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, 1701.91.5400, Harmonized Tariff Schedules of the United States (HTSUS), which provides for cane or beet sugar and chemically pure sucrose in solid form: other...containing added flavoring matter whether or not containing added coloring...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The rate of duty will be 6 percent ad valorem. If the quantitative limits of additional US note 8 to chapter 17 have been reached, the product will be classified in subheading 1701.91.5800, HTSUS, and dutiable at the rate of 33.9 cents per kilogram plus 5.1 percent ad valorem. In addition, products classified in subheading 1701.91.5800, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.17.49 to 9904.17.65, HTSUS.

Articles classifiable under subheading 1701.91.5400, HTSUS, which are products of Colombia, may be entitled to duty-free treatment under the United States - Colombia Trade Promotion Agreement Implementation Act (CO) upon compliance with all applicable regulations. The CO is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from

warehouse. To obtain current information on CO, check our Web site at www.cbp.gov and search for the term “CO”.

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

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at telephone number (301) 575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Frank Troise at (646) 733-3031.

Sincerely,

THOMAS J. RUSSO

Director

National Commodity Specialist Division

ATTACHMENT LL

NY 870767

January 29, 1992

CLA-2-17:S:N:N1:232-870767

CATEGORY: Classification

TARIFF NO.: 1701.91.4000

MR. PATRICK E. MINES
52 QUEEN STREET
P.O. BOX 1197, STATION B
FORT ERIE, ONTARIO
CANADA, L2A 5Y2

RE: The tariff classification of a lemon drink mix from Canada.

DEAR MR. MINES:

In your letter dated January 14, 1992, on behalf of R.W. Patten Distributors, you requested a tariff classification ruling.

A sample was included with your request. The subject merchandise is stated to contain 89 percent sugar, 9 percent anhydrous citric acid and 2 percent of various other ingredients. The product is complete, requiring only the addition of water to make a finished beverage. The merchandise will be imported in one ton tote bags.

The applicable subheading for the lemon drink mix will be 1701.91.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose, in solid form: other...containing added flavoring matter whether or not containing added coloring. The duty rate will be 6 percent ad valorem.

Goods classifiable under subheading 1701.91.4000, HTS, which have originated in the territory of Canada, will be entitled to a 3.6 percent ad valorem rate of duty under the United States-Canada Free Trade Agreement (FTA) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

ATTACHMENT MM

NY 883426

March 9, 1993

CLA-2-17:S:N:N:232-883426

CATEGORY: Classification

TARIFF NO.: 1701.91.4020

MR. ROMAN E. LONGORIA, JR.
INTERNATIONAL CONSULTING
P.O. BOX 578
MCALLEN, TEXAS 78502

RE: The tariff classification of Sahara Brand Jamaica Flavor Beverage Mix from Mexico.

DEAR MR. LONGORIA:

In your letter dated February 25, 1993, on behalf of Industrial Deshidrata-dora, you requested a tariff classification ruling.

A sample was included with the your request. The sample was examined and disposed of. The subject merchandise is a beverage mix, which is stated to contain 91.4 percent sugar, 8.3 percent citric acid, 0.4 percent vitamin mix, 0.1 percent Jamaica flavor, 0.1 percent artificial coloring and 0.03 percent ascorbic acid. The product will be imported packaged for retail sale in a 890 gram cardboard canister.

The applicable subheading for the Sahara Brand Jamaica Flavor Beverage Mix will be 1701.91.4020, Harmonized Tariff Schedule of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose, in solid form: other...containing added flavoring matter whether or not contain-ing added coloring...beverage bases: put up for retail sale. The duty rate will be 6 percent ad valorem. Currently, this merchandise is not subject to any import quotas.

Articles classifiable under subheading 1701.91.4020, HTS, which are prod-ucts of Mexico are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

ATTACHMENT NN

NY 863959

JUL 13 1991

CLA-2-17:S:N:N1:232-863959

CATEGORY: Classification

TARIFF NO.: 1701.91.4000

MR. DAVID M. MURPHY
GRUNFELD, DESIDERIO, LEBOWITZ & SILVERMAN
12 EAST 49TH STREET
NEW YORK, NY 10017

RE: The tariff classification of crystal drink mixes from Canada.

DEAR MR. MURPHY:

In your letter dated May 30, 1991, on behalf of Lantic Sugar Limited, you requested a tariff classification ruling. This letter will be given confidential treatment based on the facts you supplied to support your claim for exemption from disclosure.

Samples were included with this request. The subject merchandise is described as crystal drink mixes requiring only the addition of water to produce the finished beverage product. Artificial Ice Tea Drink Crystals is stated to contain 94 percent sugar, 6 percent citric acid, small quantities of flavor and various other ingredients. This product does not contain any essence or extract of real tea. The Lemon Bar Premix contains 89 percent sugar, 11 percent citric acid, flavors and various other ingredients. Crystal drink mixes will also be imported in a variety of other flavors. Samples of the peach and lemonade were included with your request. All of these mixes will contain between 92 percent and 97 percent sugar, with citric acid, glucose solids, modified starch, different flavors and colors, and small quantities of various other ingredients. All of the above products will be imported in either retail packages or in one metric ton containers to be repackaged for retail sale.

The applicable subheading for the crystal drink mixes will be 1701.91.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose, in solid form: other... containing added flavoring matter whether or not containing added coloring. The duty rate will be 6 percent ad valorem.

Goods classifiable under subheading 1701.91.4000, HTS, which have originated in the territory of Canada, will be entitled to a 4.2 percent ad valorem rate of duty under the United States-Canada Free Trade Agreement (FTA) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

ATTACHMENT OO

N015994

September 10, 2007

CLA-2-17:RR:E:NC:SP:232

CATEGORY: Classification

TARIFF NO.: 1701.99.1090; 1701.99.5090

Ms. NORMA M. SANCHEZ
NUTRI CARIBE, INC.
P.O. BOX 360853
SAN JUAN, PR 00936-0853

RE: The tariff classification of “Instant Strawberry” artificial flavor powder from Dominican Republic

DEAR Ms. SANCHEZ:

In your letter dated August 20 2007, you requested a tariff classification ruling.

The subject merchandise is Instant Strawberry artificial flavored powder. The product is said to contain 87.82 percent sugar, 9.0 percent Maltodextrin, 1.93 percent Dicalcium Phosphate and less than 1.0 percent of the following: strawberry flavor, vitamins, citric acid, red food color FDA C#3 and red food color FDA C#40. The powder will be imported in 50 pound bags to be repacked in Puerto Rico. The final product will be used by consumers as a beverage by dissolving it in cold milk.

The applicable subheading for the “Instant Strawberry” artificial flavor powder, if described in additional U.S. note 5 to chapter 17 and entered pursuant to its provisions, will be 1701.99.1090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Cane or beet sugar and chemically pure sucrose, in solid form: Other: Other..Other. The rate of duty will be 3.6606 cents per kilogram less 0.020668 cents per kilogram for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 3.143854 cents per kilogram. If not described in additional U.S. note 5 to chapter 17 and not entered pursuant to its provisions, the applicable subheading will be 1701.99.5090, HTS. The duty rate will be 35.74 cents per kilogram.

Articles classifiable under subheading 1701.99.1090, HTS, which are products of Dominican Republic, are currently entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP, however, is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse.

To obtain current information on GSP, check our Web site at www.cbp.gov and search for the term “GSP”.

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

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at telephone number (301) 575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Frank Troise at 646-733-3031.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT PP

HQ 083698

June 1, 1989

CLA-2 CO:R:C:G 083698 SS

CATEGORY: Classification

TARIFF NO.: 1701.91.4000, 9904.50.40

MR. CLARK D. BIEN
GENERAL COUNSEL
ARBOR FOODS INCORPORATED
5070 WEST MAPLE ROAD
SUITE 202
WEST BLOOMFIELD, MICHIGAN 48322

RE: Classification of a sugar drink mix base

DEAR MR. BIEN:

This is in response to your letter dated February 1, 1989, addressed to the Customs office in Detroit, requesting a classification ruling for a drink mix base manufactured in Canada, Bahamas, and elsewhere, under the Harmonized Tariff Schedules of the United States (HTSUS).

FACTS:

The merchandise under consideration is a drink base mix which is stated to contain the following ingredients by weight:

	Percent
Sugar	97.615 %
Citric acid	1.952 %
Tricalcium phosphate	0.130 %
Vitamin C	0.098 %
Sodium citrate	0.098 %
Lemon flavor	0.107 %
FD & C Yellow #5	negligible

The product in issue would be imported in standard industrial packings, including 2,000 pound totes and 100 pound bags. The drink mix base is stated to be used in the beverage industry as a base for the production of a variety of flavors of dry drink mixes. The finished drink mixes are produced by adding additional flavorings and colorings. The final product is produced by the addition of water by the consumer.

ISSUE:

Whether a drink base mix containing 97.6 percent sugar mixed with flavoring, coloring and other ingredients is properly classifiable under subheading 2106.90.5000, HTSUS, which provides for other food preparations not elsewhere specified, or under subheading 1701.91.40, HTSUS, which provides for cane or beet sugar, containing added flavoring matter whether or not containing added coloring.

LAW AND ANALYSIS

Classification under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification is determined first in accordance with the terms of the headings and any relative Section or Chapter notes.

The merchandise under consideration is a sugar base drink mix containing added flavoring and coloring matter. Subheading 1701.91.40, HTSUS, provides for cane or beet sugar and chemically pure sucrose in solid form, containing added flavoring matter whether or not containing added coloring. Further, the Explanatory Notes to Chapter 21, which represent the official interpretation of the HTSUS at the international level, provide in section (1) in pertinent part that "... Powders which have the character of flavoured or coloured sugars used for the preparation of lemonade and the like fall in heading 17.01 or 17.02 as the case may be."

In view of the foregoing, the drink base mix under consideration is classifiable under heading 17.01.

HOLDING:

The merchandise in issue, is properly classifiable under subheading 1701.91.40, HTSUS, and subject to zero quota restrictions of 9904.50.40, which provides for articles containing over 65 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the retail consumer in the identical form and package in which imported; all the foregoing articles provided for in subheading 1701.91.40. which provides for cane or beet sugar, containing added flavoring matter whether or not containing added coloring.

It is noted that New York Ruling 825891, dated November 25, 1987, and all other rulings issued by Customs which are inconsistent with the instant ruling are accordingly modified.

Sincerely,

JOHN DURANT,
Director

Commercial Rulings Division

ATTACHMENT QQ

NY 860227

FEB 20 1991

CLA-2-17:S:N:N1:232-860227

CATEGORY: Classification

TARIFF NO.: 1701.91.4000; 2501.00.0000

MR. DAVID M. BLAKE
C. J. TOWER, INC.
128 DEARBORN STREET
BUFFALO, NY 14207-3198

RE: The tariff classification of various flavored powdered drink mixers and margarita salt from Canada.

DEAR MR. BLAKE:

In your letter dated January 31, 1991, on behalf of Cadbury Schweppes, Inc., High Ridge Park, Stamford, CT 06905 you requested a tariff classification ruling.

Your query concerns the classification of seven different flavors of Holland House powdered drink mixers and of Mr. and Mrs. "T" Margarita Salt from Canada. The mixers come in the following flavors: whiskey sour, Tom Collins, pina colada, mai tai, daiquiri, margarita and strawberry margarita. All will be imported in 4.5 ounce cardboard boxes containing eight envelopes of powdered mixer each holding 9/16 of an ounce. All have either sugar alone or sweeteners (sugar, maltodextrin and corn syrup solids) as the predominate ingredient, varying from 83.28 percent to 90.13 percent. Other ingredients consist of dehydrated juices, citric acid, natural and artificial flavors, anti-caking agent, dried egg whites and dried coconut. The margarita salt, which is 99.0087 percent sodium chloride along with less than 0.0013 percent yellow prussate of soda, will be imported in eight ounce plastic tubs. All items are packaged for retail sale.

The applicable subheading for the drink mixers will be 1701.91.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose, in solid form...other...containing added flavoring or coloring matter...containing added flavoring matter whether or not containing added coloring. The duty rate will be 6 percent ad valorem.

The applicable subheading for the margarita salt will be 2501.00.0000, HTS, which provides for salt (including table salt and denatured salt) and pure sodium chloride, whether or not in aqueous solution; sea water. The rate of duty will be free.

Goods classifiable under subheading 1701.91.4000, HTS, which have originated in the territory of Canada, will be entitled to a 4.8 percent rate of duty under the United States-Canada Free Trade Agreement (FTA) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,
JEAN F. MAGUIRE
Area Director
New York Seaport

ATTACHMENT RR

NY 804357

November 22, 1994

CLA-2-17:S:N:N7:232 804357

CATEGORY: Classification

TARIFF NO.: 1701.91.4020; 2101.20.4045

MR. MARTY LANGTRY
TOWER GROUP INTERNATIONAL, INC.
CASTELAZO & ASSOCIATES
5420 W. 104TH STREET
LOS ANGELES, CALIFORNIA 90045-6069

RE: The tariff classification of an instant soft drink mix and an iced tea mix from Chile.

DEAR MR. LANGTRY:

In your letter dated November 14, 1994, on behalf of Corpora Tresmontes of Freire 321, Valparaiso, Chile, you requested a tariff classification ruling.

The instant soft drink mix is stated to contain 90 to 93 percent sugar, 3.5 to 5 percent citric acid, .8 to 1.2 percent flavoring and small quantities of various other ingredients. The iced tea mix will contain 90 to 93 percent sugar, 3 to 5 percent instant tea, 2 to 4 percent citric acid, and small quantities of various other ingredients. Both products will be packaged for retail sale in sachets, jars and canisters.

The applicable subheading for the instant soft drink mix will be 1701.91.4020, Harmonized Tariff Schedule of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose, in solid form: other...containing added flavoring matter whether or not containing added coloring...beverage bases: put up for retail sale. The duty rate will be 6 percent ad valorem.

The applicable subheading for the iced tea mix will be 2101.20.4045, HTS, which provides for extracts, essences and concentrates, of tea or mate, and preparations with a basis of these extracts, essences or concentrates or with a basis of tea or mate...other...other...provided for in subheading 9904.60.60, HTS.

Articles classifiable under subheadings 1701.91.4020 and 2101.20.4045, HTS, which are products of Chile are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations, if the GSP is renewed.

Currently, U.S. Customs is not issuing rulings under the Uruguay Round Tariff Schedule.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

ATTACHMENT SS

HQ 951849

August 11, 1992

CLA-2 CO:R:C:F 951849 LPF

CATEGORY: Classification/Marking

TARIFF NO.: 1701.91.40, 1704.90.20,

2103.90.6062, 2103.90.6063,

2103.90.6070

Ms. TWYLA J. HANES

GRUPO DILCOMER, S.A. DE C.V.

CARRETERA MEXICO-QUERETARO KM. 37.5

CONDOMINIO INDUSTRIAL CUAMATLA BODEGA No. 9

CUAUTITLAN IZCALLI, ESTADO DE MEXICO, MEXICO 54730

RE: Soft and liquid candies in 1704, HTSUSA, as sugar confectionery; powdered drink mixes in 1701, HTSUSA, as cane or beet sugar; powdered dip mixes in 2103, HTSUSA, as mixed condiments and mixed seasonings; picante sauce in 2103, HTSUSA, as sauces and preparations therefor. Country of origin marking exception 19 CFR 134.32(d); ultimate purchaser under 19 CFR 134.1(d).

DEAR Ms. HANES:

This is in response to your letter of May 4, 1992 submitted on behalf of Grupo Dilcomer. Your inquiry requests the proper classification and marking of a variety of food products under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). You submitted samples and ingredient breakdowns with your request for a binding ruling.

FACTS:

The products include soft candies, liquid candies, powdered drink mixes, powdered dip mixes and picante sauces. You state that you intend to send boxes, from Mexico, containing the various products to prospective U.S. companies, hoping they will request that Dilcomer produce similar products. The U.S. companies will package the products under their private label, in English. These samples, labeled in Spanish, are not for sale or resale but only are to be used in demonstrating the quality of your products.

The soft candies, called "Swits", contain sugar, corn syrup, water, comestible vegetable fat, citric acid, maltodextrin, grenadine and artificial colors and flavors. The flavors will include grape, orange, strawberry, pineapple and peach/mango.

The liquid candy brands, "Abejitas" and "Bug Juice", contain sugar, corn syrup, water, maltodextrin, corn starch, citric acid, artificial colors and flavors. The flavors are lime, grape, orange, strawberry and pineapple.

The powdered drink mixes, called "Flavoraid", all contain sugar and citric acid as main ingredients. The drink mixes are semi-sweetened tamarind and Jamaica flavored and unsweetened strawberry, grape, orange and pineapple flavored.

The powdered dip mixes are called "Dip Sabritas." Bacon-cheese flavor contains powdered cheese, corn flour, modified starch, iodized salt, hydrolyzed vegetable proteins, sugar, monosodium glutamate, parsley and artificial liquid essence for seasoning dressings. Green-onion flavor contains dehydrated onion, iodized salt, sugar, hydrolyzed vegetable proteins,

monosodium glutamate and spices. Chile chipotle flavor contains corn flour, powdered chipotle chile pepper, powdered milk, iodized salt, guar gum, powdered dehydrated onion, hydrolyzed vegetable proteins, monosodium glutamate, dehydrated parsley and white pepper.

The liquid picante sauce, called “Sabritas Salsa Picante,” has a salsa chile chipotle flavor. It contains purified water, vinegar, chipotle chile pepper, lime juice, refined sugar, iodized salt, spices and 0.1 percent sodium benzoate as a preservative.

ISSUES:

Whether the food products entering the U.S., sent directly to companies as samples for soliciting business orders, and not for sale or resale, are dutiable pursuant to their applicable HTSUSA subheadings; and whether, when entered in boxes marked with the country of origin, the products are excepted from individual marking under 19 CFR 134.32(d).

LAW AND ANALYSIS:

Classification of food products

The General Rules of Interpretation (GRI's) taken in their appropriate order provide a framework for classification of merchandise under the HTSUSA. The majority of imported 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. The Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI's.

The food products all are classifiable by applying GRI 1, that is, according to the terms of the applicable heading. Heading 1704 provides for sugar confectionery not containing cocoa. The EN's to 1704 indicate that the heading includes, inter alia, caramels and candies. Accordingly, the soft and liquid candies are classifiable in 1704.

Heading 1701 provides for cane or beet sugar in solid form. EN(1) to 2106 explains that powders which have the character of flavored or colored sugars used for the preparation of lemonade and the like, are included in either heading 1701 or 1702. The powdered drink mixes, thus, are classifiable in 1701.

Heading 2103 provides for sauces and preparations therefor; mixed condiments and mixed seasonings. The EN's to 2103 indicate that the heading covers preparations, generally of a highly spiced character, used to flavor certain dishes and made from various ingredients. Accordingly, the liquid picante sauce is classifiable in heading 2103. Additionally, the EN's state that the heading includes mixed condiments and mixed seasonings which contain one or more flavoring or seasoning substances of Chapters other than Chapter 9, such that the mixture no longer has the essential character of a spice within the meaning of Chapter 9. This being the case, the powdered dip mixes also are classifiable in heading 2103.

Country of origin marking

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304) provides that, unless excepted, every article of foreign origin imported into the United

States shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. This statute was enacted so that the ultimate purchaser would know where the imported goods were produced, in the event that such marking would influence the purchaser's decision to buy the merchandise. Part 134, Customs Regulations (19 CFR 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

Included among the exceptions to country of origin marking is 19 U.S.C. 1304 (a)(3)(D), also provided for in section 134.32(d), Customs Regulations (19 CFR 134.32(d)). Pursuant to this provision, Customs may except from individual marking those articles for which the marking of their containers will reasonably indicate the articles' country of origin. This exception may apply if the articles are imported in properly marked containers and if Customs officials at the port of entry are satisfied that the "ultimate purchasers" will receive the articles in their original, unopened and properly marked containers. See HRL 734494, issued February 24, 1992.

The "ultimate purchaser" is defined, generally, as the last person in the United States who receives the article in the form in which it is imported. Section 134.1(d), Customs Regulations (19 CFR 134.1(d)). Based on the information provided, and in light of the fact that the food product samples will not be for sale or resale, it appears the U.S. companies to which the samples will be distributed are the last parties to receive the articles and, therefore, are the ultimate purchasers. Accordingly, 19 CFR 134.32(d) applies, and the food products may be excepted from individual country of origin marking as set forth below.

HOLDING:

Classification

The soft candies ("Swits") and liquid candies ("Abejitas" and "Bug Juice") are classifiable in subheading 1704.90.20 as, "sugar confectionery (including white chocolate), not containing cocoa: Other: Other." The general column one rate of duty is 7 percent ad valorem.

The powdered drink mixes ("Flavoraid") are classifiable in subheading 1701.91.4000 as, "cane or beet sugar and chemically pure sucrose, in solid form: Other: Containing added flavoring or coloring matter: Containing added flavoring matter whether or not containing added coloring." The general column one rate of duty is 6 percent ad valorem.

The powdered dip mixes ("Dip Sabritas"), if containing over 10 percent sugar, are classifiable in subheading 2103.90.6062 as, "sauces and preparations therefor; mixed condiments and mixed seasonings;...Other: Other, Mixed condiments and mixed seasonings: Provided for in subheading 9904.60.60." Presently, subheading 9904.60.60 provides for a quota quantity limit of 76,203 metric tons. If the powdered dip mixes contain less than 10 percent sugar, they are classifiable in subheading 2103.90.6063 as, "sauces and preparations therefor; mixed condiments and mixed seasonings;...Other: Other, Mixed condiments and mixed seasonings: Other." In both cases, the general column one rate of duty is 7.5 percent ad valorem.

The liquid picante sauce ("Sabritas Salsa Picante") are classifiable in subheading 2103.90.6070 as, "sauces and preparations therefor; mixed condi-

ments and mixed seasonings;...Other: Other, Other: Containing cane and/or beet sugar.” The general column one rate of duty is 7.5 percent ad valorem.

It should be noted, however, that products classifiable in any of these subheadings are eligible for duty-free treatment under the Generalized System of Preferences (GSP) provided they meet the requirements of General Note 3(c)(ii), HTSUSA.

Marking

The food products may be excepted from individual country of origin marking pursuant to 19 U.S.C. 1304(a)(3)(D) and 19 CFR 134.32(d), as long as they are imported in a properly marked container and Customs officials at the port of entry are satisfied that the products will be used only in the manner described above and the ultimate purchasers will receive the merchandise in their original, unopened and properly marked containers.

Sincerely,

JOHN DURANT,

Director

Commercial Rulings Division

ATTACHMENT TT

NY 869626

January 2, 1992

CLA-2-17:S:N1:232-869626

CATEGORY: Classification

TARIFF NO.: 1701.91.4000; 1806.90.0060;
2101.20.4060

MR. JOSEPH E. SANDLER
ARENT FOX KINTNER PLOTKIN & KAHN
1050 CONNECTICUT AVENUE, NW
WASHINGTON, DC 20036-5339

RE: The tariff classification of four drink mixes containing sugar from Canada.

DEAR MR. SANDLER:

In your letter dated December 9, 1991, on behalf of Bowes Co., Ltd., 75 Vickers Road, Etobicoke M9B6B6 Ontario, Canada, you requested a tariff classification ruling.

Your query concerns the classification and quota status of four drink mixes containing sugar to be exported from Canada to the United States. The merchandise will be imported in finished form for sale both to retail consumers and to institutional customers such as restaurants, hotels, catering firms and public facilities including hospitals, prisons and similar institutions.

The first item is a powdered drink mix, marketed as flavor crystals, to be imported in several flavors and in two different types and sizes of packaging, both of which are intended for institutional customers. No retail packaging of the product will be imported. The composition of the flavor crystals, by dry weight, for all flavors, is 91.3 percent sugar, 7 percent citric acid, 0.51 percent flavoring, 0.09 percent color, 0.66 percent trisodium citrate, 0.34 percent ascorbic acid and 0.10 percent silicon dioxide. The second item is an iced tea mix consisting of 89 percent sugar, 5 percent dextrose, 2.5 percent acid, 1 percent instant tea and 2.5 percent other ingredient(s). This would be imported in three types of packaging, one of which is designed for retail and institutional customers, the other two being for institutional customers only. The third item is a hot chocolate powder dry mix composed of 51 percent sugar, 37 percent dairy ingredients, 11 percent cocoa and 1 percent other ingredient(s). This too, would be imported in three types of packaging, one of which is designed for both retail and institutional customers, while the other two types are for institutional customers only. Finally, there is an instant chocolate drink powder dry mix, which has two formulations. Formula #1 consists of 84 percent sugar, 8 percent cocoa, 6 percent starch and 2 percent other ingredient(s). Formula #2 consists of 84 percent sugar, 15 percent cocoa and 1 percent other ingredient(s). Both formulations would be imported in three types of packaging, two of which are intended for both retail and institutional customers, while the third is for retail customers only.

The applicable subheading for the flavor crystals will be 1701.91.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose in solid form...other...containing added flavoring matter whether or not containing added coloring. The duty rate will be 6 percent ad valorem.

The applicable subheading for the ice tea mix will be 2101.20.4060, HTS, which provides for extracts, essences and concentrates, of tea or mate, and preparations with a basis of these extracts, essences or concentrates or with a basis of tea or mate...other...other...other ...containing over 10 percent by weight of sugar. The duty rate will be 10 percent ad valorem. This item is also subject to the quota restrictions of subheading 9904.60.60.

The applicable subheading for Formula #1 of the instant chocolate drink powder mix will be 1806.90.0060, HTS, which provides for chocolate and other food preparations containing cocoa...other...subject to quotas established pursuant to section 22 of the Agricultural Adjustment Act, as amended ...provided for in subheading 9904.60.60. The rate of duty will be 7 percent ad valorem.

Goods classifiable under subheading 1701.91.4000, HTS, which have originated in the territory of Canada, will be entitled to a 3.6 percent rate of duty under the United States-Canada Free Trade Agreement (FTA) upon compliance with all applicable regulations. Likewise, goods classifiable under subheading 2101.20.4060, HTS, will be entitled to a 2 percent duty rate, and goods classifiable under subheading 1806.90.0060, HTS, will be entitled to a 4.2 percent duty rate.

Your inquiry does not provide enough information for us to give a classification ruling on the hot chocolate powder dry mix or on Formula #2 of the instant chocolate drink powder mix. Your request for a classification ruling for the hot chocolate powder dry mix should identify the dairy ingredients, their percentages by weight and the percentage by weight of butterfat. Also, indicate the specific sizes of packages that are intended for the retail consumer, as opposed to the institutional consumer, for the style of packaging described as "rigid cardboard, plastic or metal packages with lid". If the same size packaging is sold for both retail and institutional use, will the product labels be identical? For Formula #2 of the instant chocolate drink powder mix, please specify what the 1 percent "other ingredient(s)" consists of.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,
JEAN F. MAGUIRE
Area Director
New York Seaport

ATTACHMENT UU

NY C82572

December 15, 1997

CLA-2-17:RR:NC:FC:232 C82572

CATEGORY: Classification

TARIFF NO.: 1701.91.5800

MR. PATRICK E. MINES
P. MINES CUSTOMS SERVICES
28 PRINCESS STREET
P.O. BOX 1197
FORT ERIE, ONTARIO L2A 5Y2
CANADA

RE: The tariff classification and status under the North American Free Trade Agreement (NAFTA), of drink crystal mixes from Canada; Article 509

DEAR MR. MINES:

In your letter December 5, 1997, on behalf of Western Basic Ingredients Limited, you requested a ruling on the status of various drink crystal mixes from Canada under the NAFTA. Information was submitted with your initial request dated October 14, 1997. Your request also asks for the country of origin for marking purposes of the product.

The subject merchandise is described as drink crystal mixes which will be imported in five flavors: Pink Lemonade Crystals, Apple Crystals, White Lemonade Crystals, Orange Crystals and Orange Mango Crystals. The products contain 93.5 percent to 95 percent sugar and various quantities of citric acid, ascorbic acid, natural and/or artificial flavor and colors. Some of the products also contain cornstarch, silicon dioxide, carboxymethyl cellulose, malic acid, guar gum and a clouding agent. The sugar is produced and refined in Mexico, the balance of the ingredients are from The United States. All of the ingredients are shipped to Canada where they are blended into the finished drink mixes. The product is shipped in bulk form to the United States for final retail packaging. The drink mixes are complete and require only the addition of water by the ultimate retail consumer.

The applicable tariff provision for the drink crystal mixes will be 1701.91.5800, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for cane or beet sugar and chemically pure sucrose, in solid form...containing added flavoring matter whether or not containing added coloring... articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...other. The general rate of duty will be 36.9 cents per kilogram plus 5.6 percent ad valorem. Effective January 1, 1998, the general rate of duty will be 35.9 cents per kilogram plus 5.4 percent ad valorem.

The drink crystal mixes, being wholly obtained or produced entirely in the territory of Mexico, the United States, and Canada will meet the requirements of HTSUSA General Note 12(b)(i), and will therefore be entitled to a free rate of duty if entered under the terms of general note 12 of the Harmonized Tariff Schedule of the United States, and imported in quantities that fall within the quantitative limits described in U.S. note 20 to subchapter 6 of chapter 99 HTS pursuant to subheading 9906.17.39. If the quantitative limits of U.S. note 20 to subchapter 6 of chapter 99 have been reached, and

if the product is valued not over 31.5 cents per kilogram, it will be dutiable at the rate of 22.7 cents per kilogram (19 cents per kilogram effective January 1, 1998) in subheading 9906.17.40, HTS. If valued over 31.5 cents per kilogram, the rate of duty will be 72.2 percent ad valorem, (60.2 percent ad valorem effective January 1, 1998), pursuant to subheading 9906.17.41, HTS, upon compliance with all applicable laws, regulations, and agreements.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181).

This ruling letter is binding only as to the party to whom it is issued and may be relied on only by that party.

Your inquiry also requests a ruling on the country of origin marking requirements for an imported article which is processed in a NAFTA country prior to being imported into the U.S. A marked sample was not submitted with your letter for review.

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

The country of origin marking requirements for a "good of a NAFTA country" are also determined in accordance with Annex 311 of the North American Free Trade Agreement ("NAFTA"), as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat 2057) (December 8, 1993) and the appropriate Customs Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, Customs Regulations. The marking requirements of these goods are set forth in Part 134, Customs Regulations.

Section 134.1(b) of the regulations, defines "country of origin" as the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin within this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin. (Emphasis added).

Section 134.1(j) of the regulations, provides that the "NAFTA Marking Rules" are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) of the regulations, defines a "good of a NAFTA country" as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules. Section 134.45(a)(2) of the regulations, provides that a "good of a NAFTA country" may be marked with the name of the country of origin in English, French or Spanish.

You state that the imported drink crystal mixes are processed in a NAFTA country "Canada" prior to being imported into the U.S. Since, "Canada" is defined under 19 CFR 134.1(g), as a NAFTA country, we must first apply the NAFTA Marking Rules in order to determine whether the imported drink crystal mixes are a good of a NAFTA country", and thus subject to the NAFTA marking requirements.

Part 102 of the regulations, sets forth the “NAFTA Marking Rules” for purposes of determining whether a good is a good of a NAFTA country for marking purposes. Section 102.11 of the regulations, sets forth the required hierarchy for determining country of origin for marking purposes.

Applying the NAFTA Marking Rules set forth in Part 102 of the regulations to the facts of this case, we find that the imported drink crystal mixes are goods of “Mexico” for marking purposes, since they satisfy the requirements of Section 102.11(b)(1).

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 CFR Part 181).

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 John Maria at 212-466-5730.

Should you wish to request an administrative review of this ruling, submit a copy of this ruling and all relevant facts and arguments within 30 days of the date of this letter, to the Director, Commercial Rulings Division, Headquarters, U.S. Customs Service, 1301 Constitution Ave., NW, Franklin Court, Washington, DC 20229.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT VV

NY C89506

July 8, 1998

CLA-2-17:RR:NC:SP:232 C89506

CATEGORY: Classification

TARIFF NO.: 1701.91.5800

MR. ROBERT V. TINKHAM
CHICAGO SWEETENERS INCORPORATED
1700 HIGGINS ROAD, SUITE 610
DES PLAINES, ILLINOIS 60018

RE: The tariff classification and status under the North American Free Trade Agreement (NAFTA), of Powdered Drink Crystals from Mexico; Article 509

DEAR MR. TINKHAM:

In your letter dated June 23, 1998 you requested a ruling on the status of various powdered drink crystals from Mexico under the NAFTA. Your request also asks for the country of origin for marking purposes and for tariff rate quota allocation purposes.

The subject merchandise will consist of powdered drink crystals in five flavors: orange, lemon, cherry, punch and grape. The products will contain 75 percent to 95 percent granulated sugar, 0 percent to 18 percent fructose, 4 percent to 10 percent citric acid, malic acid, sorbic acid, silicon dioxide, flavorings and colors. The granulated sugar and the fructose will be of United States origin. The balance of the ingredients may be from a NAFTA or non-NAFTA country. The ingredients are blended and packaged in Mexico into 2000 pound sacks, and then shipped to the United States for retail packaging. The powdered drink crystals require only the addition of water by the retail consumer.

The applicable tariff provision for the powdered drink crystals will be 1701.91.5800, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for cane or beet sugar and chemically pure sucrose, in solid form...containing added flavoring matter whether or not containing added coloring... articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...other. The general rate of duty will be 35.9 cents per kilogram plus 5.4 percent ad valorem.

If all of the ingredients are from NAFTA countries, the powdered drink crystals, being wholly obtained or produced entirely in the territory of the United States, Canada, and Mexico will meet the requirements of HTSUSA General Note 12(b)(i), and will therefore be entitled to a free rate of duty if entered under the terms of general note 12 of the Harmonized Tariff Schedule of the United States, and imported in quantities that fall within the quantitative limits described in U.S. note 20 to subchapter 6 of chapter 99 HTS pursuant to subheading 9906.17.39. If the quantitative limits of U.S. note 20 to subchapter 6 of chapter 99 have been reached, and if the product is valued not over 31.5 cents per kilogram, it will be dutiable at the rate of 19 cents per kilogram in subheading 9906.17.40, HTS. If valued over 31.5 cents per kilogram, the rate of duty will be 60.2 percent ad valorem, pursuant to subheading 9906.17.41, HTS, upon compliance with all applicable laws, regulations, and agreements.

If the ingredients, other than the granulated sugar, or fructose, are from non-NAFTA countries, each of the non-originating materials used to make the powdered drink crystals have satisfied the changes in tariff classification required under HTSUSA General Note 12(t)/17, and will therefore be entitled to a free rate of duty if entered under the terms of general note 12 of the Harmonized Tariff Schedule of the United States, and imported in quantities that fall within the quantitative limits described in U.S. note 20 to subchapter 6 of chapter 99 HTS pursuant to subheading 9906.17.39. If the quantitative limits of U.S. note 20 to subchapter 6 of chapter 99 have been reached, and if the product is valued not over 31.5 cents per kilogram, it will be dutiable at the rate of 19 cents per kilogram in subheading 9906.17.40, HTS. If valued over 31.5 cents per kilogram, the rate of duty will be 60.2 percent ad valorem, pursuant to subheading 9906.17.41, HTS, upon compliance with all applicable laws, regulations, and agreements.

Your inquiry also requests a ruling on the country of origin marking requirements for an imported article which is processed in a NAFTA country prior to being imported into the U.S., and on the country of origin for duty and quota allocation purposes. A marked sample was not submitted with your letter for review.

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

The country of origin marking requirements for a “good of a NAFTA country” are also determined in accordance with Annex 311 of the North American Free Trade Agreement (“NAFTA”), as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat 2057) (December 8, 1993) and the appropriate Customs Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, Customs Regulations. The marking requirements of these goods are set forth in Part 134, Customs Regulations.

Section 134.1(b) of the regulations, defines “country of origin” as the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin within this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin. (Emphasis added).

Section 134.1(j) of the regulations, provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) of the regulations, defines a “good of a NAFTA country” as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules. Section 134.45(a)(2) of the regulations, provides that a “good of a NAFTA country” may be marked with the name of the country of origin in English, French or Spanish.

You state that the imported powdered drink crystals are processed in a NAFTA country “Mexico” prior to being imported into the U.S. Since, “Mexico” is defined under 19 C.F.R. §134.1(g), as a NAFTA country, we must first apply the NAFTA Marking Rules in order to determine whether the imported powdered drink crystals are goods of a NAFTA country”, and thus subject to the NAFTA marking requirements.

Part 102 of the regulations, sets forth the “NAFTA Marking Rules” for purposes of determining whether a good is a good of a NAFTA country for marking purposes. Section 102.11 of the regulations, sets forth the required hierarchy for determining country of origin for marking purposes.

Applying the NAFTA Marking Rules set forth in Part 102 of the regulations to the facts of this case, we find that the imported powdered drink crystals are goods of the “United States” for marking purposes, since they satisfy the requirements of Section 102.11(b)(1). Therefore, they are not required to be marked with the country of origin for Customs marking purposes.

Noting Section 102.19(b) of the regulations, the country of origin of the powdered drink crystals for Customs duty purposes and for the tariff rate quota allocation is “Mexico”.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181).

This ruling letter is binding only as to the party to whom it is issued and may be relied on only by that party.

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 John Maria at 212-466-5730.

Should you wish to request an administrative review of this ruling, submit a copy of this ruling and all relevant facts and arguments within 30 days of the date of this letter, to the Director, Commercial Rulings Division, Headquarters, U.S. Customs Service, 1300 Pennsylvania Ave., NW, Washington, DC 20229.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

ATTACHMENT WW

NY A87589

September 23, 1996

CLA-2-17:RR:NC:FC:232 A87589

CATEGORY: Classification

TARIFF NO.: 1701.91.5800

MR. ROBERT V. TINKHAM
CHICAGO SWEETENERS INCORPORATED
1700 HIGGINS ROAD
SUITE 610
DES PLAINES, ILLINOIS 60018

RE: The tariff classification and status under the North American Free Trade Agreement (NAFTA), of powdered drink mixes from Canada; Article 509

DEAR MR. TINKHAM:

In your letter dated September 10, 1996 you requested a ruling on the status of various powdered drink mixes from Canada under the NAFTA. Your request also asks for the country of origin for marking purposes of the product.

The subject merchandise is described as orange, lemon, cherry, punch and grape flavored powdered drink mixes. The mixes are stated to contain 75 to 95 percent sugar, 0 to 18 percent fructose, 4 to 10 percent citric acid, malic acid, sorbic acid, silicon dioxide, flavorings and colorings. The sugar is produced in Mexico, the balance of the ingredients are from The United States. All of the ingredients are shipped to Canada where they are blended into the finished drink mixes. The product is packaged in 2000 pound sacks for transport into the United States for final retail packaging. The drink mixes are complete and require only the addition of water by the ultimate retail consumer.

The applicable tariff provision for the powdered drink mixes will be 1701.91.5800, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for cane or beet sugar and chemically pure sucrose, in solid form...containing added flavoring matter whether or not containing added coloring... articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...other. The general rate of duty will be 37.9 cents per kilogram plus 5.7 percent ad valorem.

The powdered drink mixes, being wholly obtained or produced entirely in the territory of Mexico, the United States, and Canada will meet the requirements of HTSUSA General Note 12(b)(i), and will therefore be entitled to a free rate of duty if entered under the terms of general note 12 of the Harmonized Tariff Schedule of the United States, and imported in quantities that fall within the quantitative limits described in U.S. note 20 to subchapter 6 of chapter 99 HTS pursuant to subheading 9906.17.39. If the quantitative limits of U.S. note 20 to subchapter 6 of chapter 99 have been reached, and if the product is valued not over 31.5 cents per kilogram, it will be dutiable at the rate of 26.5 cents per kilogram in subheading 9906.17.40, HTS. If valued over 31.5 cents per kilogram, the rate of duty will be 84.2 percent ad valorem, pursuant to subheading 9906.17.41, HTS, upon compliance with all applicable laws, regulations, and agreements.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181).

This ruling letter is binding only as to the party to whom it is issued and may be relied on only by that party.

Your inquiry also requests a ruling on the country of origin marking requirements for an imported article which is processed in a NAFTA country prior to being imported into the U.S. A marked sample was not submitted with your letter for review.

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

The country of origin marking requirements for a “good of a NAFTA country” are also determined in accordance with Annex 311 of the North American Free Trade Agreement (“NAFTA”), as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat 2057) (December 8, 1993) and the appropriate Customs Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, Customs Regulations. The marking requirements of these goods are set forth in Part 134, Customs Regulations.

Section 134.1(b) of the regulations, defines “country of origin” as the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin within this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin. (Emphasis added).

Section 134.1(j) of the regulations, provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) of the regulations, defines a “good of a NAFTA country” as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules. Section 134.45(a)(2) of the regulations, provides that a “good of a NAFTA country” may be marked with the name of the country of origin in English, French or Spanish.

You state that the imported powdered drink mixes are processed in a NAFTA country “Canada” prior to being imported into the U.S. Since, “Canada” is defined under 19 CFR 134.1(g), as a NAFTA country, we must first apply the NAFTA Marking Rules in order to determine whether the imported powdered drink mixes are a good of a NAFTA country”, and thus subject to the NAFTA marking requirements.

Part 102 of the regulations, sets forth the “NAFTA Marking Rules” for purposes of determining whether a good is a good of a NAFTA country for marking purposes. Section 102.11 of the regulations, sets forth the required hierarchy for determining country of origin for marking purposes.

Applying the NAFTA Marking Rules set forth in Part 102 of the regulations to the facts of this case, we find that the imported powdered drink mixes are goods of “Mexico” for marking purposes, since they satisfy the requirements of Section 102.11(b)(1).

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 CFR Part 181).

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 John Maria at 212-466-5730.

Should you wish to request an administrative review of this ruling, submit a copy of this ruling and all relevant facts and arguments within 30 days of the date of this letter, to the Director, Commercial Rulings Division, Headquarters, U.S. Customs Service, 1301 Constitution Ave., NW, Franklin Court, Washington, DC 20229.

Sincerely,

ROGER J. SILVESTRI

Director,

*National Commodity
Specialist Division*

ATTACHMENT XX

NY A89697

November 27, 1996

CLA-2-17:RR:NC:2:232 A89697

CATEGORY: Classification

TARIFF NO.: 1701.91.5800

MR. BYRON FARETIS
REDPATH SUGARS
5855 GARNER ROAD
NIAGARA FALLS, ONTARIO
CANADA L2E 6S4

RE: The tariff classification and status under the North American Free Trade Agreement (NAFTA), of an Artificially Flavored Drink Mix from Canada; Article 509

DEAR MR. FARETIS:

In your letter dated November 18, 1996 you requested a ruling on the status of an Artificially Flavored Drink Mix from Canada under the NAFTA.

A sample was included with your request. The subject merchandise is stated to contain 95 percent sugar from Mexico, 3 percent citric acid and 2 percent premix from the United States. The premix contains artificial flavors, tricalcium phosphate, ascorbic acid and coloring. The ingredients are blended into a flavored drink mix in Canada, and then shipped to The United States in one metric ton tote bags. After importation, the product is repackaged into retail canisters for sale to the end consumer.

The applicable tariff provision for the artificially flavored drink mixes will be 1701.91.5800, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for cane or beet sugar and chemically pure sucrose, in solid form... containing added flavoring matter whether or not containing added coloring...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...other. The general rate of duty will be 37.9 cents per kilogram plus 5.7 percent ad valorem.

The artificially flavored drink mixes, being wholly obtained or produced entirely in the territory of Mexico, the United States, and Canada will meet the requirements of HTSUSA General Note 12(b)(i), and will therefore be entitled to a free rate of duty if entered under the terms of general note 12 of the Harmonized Tariff Schedule of the United States, and imported in quantities that fall within the quantitative limits for Mexico described in U.S. note 20 to subchapter 6 of chapter 99 HTS pursuant to subheading 9906.17.39. If the quantitative limits of U.S. note 20 to subchapter 6 of chapter 99 have been reached, and if the product is valued not over 31.5 cents per kilogram, it will be dutiable at the rate of 26.5 cents per kilogram in subheading 9906.17.40, HTS. If valued over 31.5 cents per kilogram, the rate of duty will be 84.2 percent ad valorem, pursuant to subheading 9906.17.41, HTS, upon compliance with all applicable laws, regulations, and agreements.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181).

This ruling letter is binding only as to the party to whom it is issued and may be relied on only by that party.

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 John Maria at 212-466-5730.

Sincerely,

ROGER J. SILVESTRI
*Director,
National Commodity
Specialist Division*

ATTACHMENT YY

NY B80099

December 10, 1996

CLA-2-17:RR:NC:2:232 B80099

CATEGORY: Classification

TARIFF NO.: 1701.91.5800; 2101.20.5400;
2101.20.5800

MR. CLARK D. BIEN
TOTAL FOODS CORPORATION
6018 WEST MAPLE ROAD, SUITE 888
WEST BLOOMFIELD, MI 48322

RE: The tariff classification and status under the North American Free Trade Agreement (NAFTA), of an Iced Tea Mix and Fruit Punch Mix from Canada; Article 509

DEAR MR. BIEN:

In your letter dated December 4, 1996 you requested a ruling on the status of an Iced Tea Mix and a Fruit Punch Mix from Canada under the NAFTA.

Samples were included with your request. The iced tea mix is stated to contain 97.08 percent sugar from Mexico, and .33 percent premix (various colors, flavors, etc.), .24 percent instant tea and 2.35 percent citric acid, all of which are from the United States. The subject merchandise will be produced in Canada and shipped to the United States in 2,000 pound bulk bags and 100 pound paper bags. The product will be repackaged for retail sale after importation. The fruit punch mix is stated to contain 96.7647 percent sugar from Mexico, and 3.2353 percent premix for Wyler's Tropical Punch or 2.0941 percent citric acid, .7900 percent maltodextrin, and small quantities of flavors and various other ingredients all from the United States. The fruit punch mix will be produced in Canada and shipped to the United States in 2,000 pound bulk bags and 100 pound paper bags. The product will be repackaged for retail sale after importation.

The applicable subheading for the iced tea mix, if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 17, will be 2101.20.5400 Harmonized Tariff Schedules of the United States (HTS), which provides for extracts, essences and concentrates, of tea or mate, and preparations with a basis of these extracts, essences or concentrates or with a basis of tea or mate...other...other ...articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions. The general rate of duty will be 10 percent ad valorem. If the quantitative limits of additional U.S. note 8 to chapter 17 have been reached, the product will be classified in subheading 2101.20.5800, HTS, and dutiable at the rate of 34.1 cents per kilogram plus 9.5 percent ad valorem.

The iced tea mix, being wholly obtained or produced entirely in the territory of Mexico, Canada and the United States, will meet the requirements of HTSUSA General Note 12(b)(i). Noting 102.19(b) the iced tea mix is a good of Canada for duty purposes, and if classifiable under subheading 2101.20.5400, HTS, will be entitled to a free rate of duty under the NAFTA upon compliance with all applicable laws, regulations, and agreements.

The applicable tariff provision for the fruit punch mix will be 1701.91.5800, Harmonized Tariff Schedule of the United States Annotated (HTSUSA),

which provides for cane or beet sugar and chemically pure sucrose, in solid form... containing added flavoring matter whether or not containing added coloring... articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17...other. The general rate of duty will be 37.9 cents per kilogram plus 5.7 percent ad valorem.

The fruit punch mix, being wholly obtained or produced entirely in the territory of Mexico, the United States, and Canada will meet the requirements of HTSUSA General Note 12(b)(i), and will therefore be entitled to a free rate of duty if entered under the terms of general note 12 of the Harmonized Tariff Schedule of the United States, and imported in quantities that fall within the quantitative limits for Mexico described in U.S. note 20 to subchapter 6 of chapter 99 HTS pursuant to subheading 9906.17.39. If the quantitative limits of U.S. note 20 to subchapter 6 of chapter 99 have been reached, and if the product is valued not over 31.5 cents per kilogram, it will be dutiable at the rate of 26.5 cents per kilogram in subheading 9906.17.40, HTS. If valued over 31.5 cents per kilogram, the rate of duty will be 84.2 percent ad valorem, pursuant to subheading 9906.17.41, HTS, upon compliance with all applicable laws, regulations, and agreements.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181).

This ruling letter is binding only as to the party to whom it is issued and may be relied on only by that party.

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 John Maria at 212-466-5730.

Sincerely,

ROGER J. SILVESTRI

Director,

*National Commodity
Specialist Division*

ATTACHMENT ZZ

HQ H157219
 OT:RR:CTF:FTM H157219 TSM
 CATEGORY: Classification
 TARIFF NO.: 2106.90; 1701; 1702

MR. JOHN M. PETERSON
 MR. CURTIS W. KNAUSS
 NEVILLE PETERSON LLP
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 NEW YORK, N.Y. 10004

RE: Revocation of HQ 964497, HQ 967563, NY 805860, NY 807382, NY 806349, NY A81526, NY B83306, NY B86542, NY D80530, NY D83344, NY D83345, NY F89359, NY H82031, NY H85600, NY L82138, NY N015991, NY N019259, NY N045475, NY N073508, NY R01312, NY N251352, NY N235188, NY 803800, NY N238296, NY 870767, NY 883426, NY 863959, NY N015994 and HQ 083698; Modification of HQ 963668, NY 807225, NY N042679, NY 818773, NY B86441, NY G89465, NY L88611, NY A86301, NY C82414, NY C82415, NY I87369, NY R01313, NY N158039, NY 860227, NY 804357, HQ 951849, NY 869626, NY C82572, NY C89506, NY A87589, NY A89697 and NY B80099; Classification of drink mixes.

DEAR MESSRS. PETERSON AND KNAUSS:

This letter concerns Headquarters Ruling Letter (“HQ”) 963668, which U.S. Customs and Border Protection (“CBP”) issued to you on June 23, 2000, pertaining to the classification of “KLASS Aguas Frescas” Flavored Powdered Drink Mixes, imported packaged for retail sale and containing between 79% and 90% of sucrose, fructose or dextrose, under the Harmonized Tariff Schedule of the United States (“HTSUS”).¹ This letter also concerns the following rulings:

- HQ 964497, dated January 23, 2001 (classifying cherry and orange drink mixes, imported in 24-ounce packages and containing between 87% and 96% sugar, intended for sale in supermarkets);
- HQ 967563, dated November 4, 2005 (classifying drink mixes containing between 80% and 85% sugar, imported in 2,400 to 2,700 pound bulk bags and repackaged into various sizes for industrial, food service and retail sale after importation);
- New York Ruling Letter (“NY”) 805860, dated January 25, 1995 (classifying drink mixes containing over 85% sugar, imported in containers ranging from 19 ounces net weight to 5 pounds 3 ounces net weight and sold to grocery stores and warehouse clubs);
- NY 807382, dated February 28, 1995 (classifying drink mixes containing over 85% sugar, imported in containers ranging from 19 ounces net weight to 5 pounds 3 ounces net weight and sold to grocery stores and warehouse clubs);

¹ We note that HQ 963668 also classified the “Horchata” mix in retail packages, which is not included in this modification.

- NY 806349, dated January 31, 1995 (classifying drink mixes containing between 90% and 96% sugar, imported in 2000 pound drums and packaged into smaller packages for retail sale after importation);
- NY 807225, dated February 28, 1995 (classifying fruit flavored beverage crystals containing 94% sugar, imported in retail packages weighing between 240 and 300 grams, in food service packages for restaurants weighing between 450 and 500 grams and in food service packages for cafeterias in 25 pound cartons);²
- NY 818773, dated February 22, 1996 (classifying various grape flavored drink mixes, containing between 95% and 98% sugar: Grape Aid 0, Grape Aid 51, and Grape Aid 35, which are packaged for retail sale);³
- NY A81526, dated April 2, 1996 (classifying “Flavour Crystals” containing 95% sugar, imported in a foil package containing 480 grams that is mixed with water to produce 4.55 liters of a finished beverage);
- NY A86301, dated August 19, 1996 (classifying a lemonade mix containing 64.82% sugar, imported into the United States in bulk to be repackaged for retail sale);
- NY B83306, dated March 25, 1997 (classifying powdered drink mixes containing between 75% and 95% sugar, imported in 2000 pound bags);
- NY B86542, dated June 24, 1997 (classifying a variety of powdered, fruit-flavored drink mixes containing unspecified amounts of sugar, imported in two pound packages shipped 15 to a case, or in one ton tote bags which will be repackaged for retail sale);
- NY B86441, dated June 26, 1997 (classifying crystal drink mixes containing unspecified amounts of sugar and imported in individual packages);⁴
- NY C82414, December 8, 1997 (classifying powdered instant beverage products in four flavors, containing unspecified amounts of sugar and imported in retail containers);
- NY C82415, December 8, 1997 (classifying powdered instant beverage products in four flavors, containing unspecified amounts of sugar and imported in retail containers);
- NY D80530, dated August 7, 1998 (classifying drink crystals containing 95% sugar, in four flavors that are imported 450 gram, 540 gram and 900 gram pouches, or tins for sale to the retail consumer);

² We note that NY 807225 also classified tea flavored beverage crystals, which are not included in this modification.

³ We note that NY 818773 also classified a fourth beverage mix, Grape Aid 100, which is not included in this modification.

⁴ We note that NY B86441 also classifies “Lemon and Raspberry Iced Teas” in heading 2101, HTSUS, and “Peach Lite Crystals” in heading 2106, HTSUS. These products are not included in this modification.

- NY D83344, dated October 30, 1998 (classifying powdered drink mixes, containing at least 75 percent sugar with no less than 12 percent fructose, imported with a net weight of 19 ounces);
- NY D83345, dated October 27, 1998 (classifying powdered drink mixes containing at least 87% sugar, imported in packages of 24 ounces);
- NY F89359, dated August 2, 2000 (classifying a powdered beverage mix containing an unspecified amount of sugar, imported for retail sale in 250-gram packages);
- NY G89465, dated April 30, 2001 (classifying “Xuky,” a milkshake powder in five flavors: vanilla, pineapple, strawberry and coconut, containing 97% sugar);⁵
- NY H82031, dated June 5, 2001 (classifying two types of powdered fruit or vegetable juices: (1) “Zuko” juice, containing 87.19% sugar and imported in 45 gram sachets and 405 gram bags; and (2) “Zuko Diet” juice, containing 75.29% maltodextrin and imported in 20 gram pouches);⁶
- NY H85600, dated November 6, 2001 (classifying powdered soft drinks containing over 89% sugar, imported packaged for retail sale in foil packs having a net weight of 110 grams);
- NY I87369, dated November 19, 2002 (classifying a beverage mix containing 85.6% sugar, packaged in cans, jars, and pouches for retail sale, and in larger bulk containers for the food service industry);
- NY L82138, dated February 14, 2005 (classifying a powdered drink mix containing 79% sugar and imported in foil packets containing 50 grams each);
- NY L88611, dated December 5, 2005 (classifying “Xuky” products - milkshake powders in four flavors: vanilla, strawberry, coconut and pineapple, containing 86% to 97% sugar and imported in 450-gram plastic containers);⁷
- NY N015991, dated September 10, 2007 (classifying Instant Strawberry artificial flavored powder imported in pouches in two sizes, 7 ounces (200 grams) and 14 ounces (400 grams), and containing 87.82% sugar);
- NY N019259, dated November 20, 2007 (classifying an “Apple Cider” powdered beverage mix, imported in a 2 pound bag and containing an unspecified amount of sugar);
- NY N042679, dated November 26, 2008 (classifying “Ice Ade” powder soft drink mixes, imported in flavors cherry, tropical punch, orange and

⁵ We note that NY G89465 also classified products other than the vanilla, strawberry, pineapple and coconut flavors of the “Xuky” powder. Only the classification of these “Xuky” powder flavors is at issue in this modification.

⁶ We note that the “Zuko Diet” juice, sweetened by maltodextrin, is not subject to any of the sugar quotas.

⁷ We note that NY L88611 also classified chocolate flavored “Xuky” milk shake powder and chocolate flavored “Muky” and “Muky Light” powdered drink mixes, as well “Bretzke” gelatin powders, which are not at issue in this modification.

lemonade, packaged for retail sale in 15-ounce, multi colored plastic canisters, and containing between 93% and 96% sugar depending on the flavor);⁸

- NY N045475, dated November 26, 2008 (classifying powdered drink mixes containing 92.66% sugar, imported into the United States in plastic lined super sacks (totes), scaled out to 1075 kilograms per super sack and packaged in the United States into 0.74 ounce bags for retail);
- NY N073508, dated September 29, 2009 (classifying a “powder soft drink mix” packaged for retail sale and containing 95.43% sugar);
- NY R01312, dated February 2, 2005 (classifying drink mixes containing 80% to 85% sugar and imported in 2,400 pound to 2,700 pound bulk bags);
- NY R01313, dated February 9, 2005 (classifying drink mixes containing 80% to 85% sugar and imported in 2,400 pound to 2,700 pound bulk bags);
- NY N158039, dated May 13, 2011 (classifying drink mixes containing, depending on drink variety, either 56% (“Zuko Naranja”) or 66% (“Zuko Tamarindo”) dextrose, 9% sucrose, 1% or less, each, aspartame and acesulfame-K, and imported packaged for retail sale in pouches containing 20 grams (0.7 ounces) net weight);⁹
- NY N251352, dated April 8, 2014 (classifying drink mixes containing sucrose and artificial sweeteners, and imported packaged for retail sale);
- NY N235188, dated December 10, 2012 (classifying drink mixes containing sucrose and artificial sweeteners, and packaged for retail sale);
- NY N238296, dated February 27, 2013 (classifying drink mixes containing 84% sugar and packaged for retail sale);
- NY N015994, dated September 10, 2007 (classifying drink mixes containing over 87% sugar and 9% maltodextrin, imported in fifty pound bags);
- NY C82572, dated December 15, 1997 (classifying drink mixes containing between 93.5% and 95% sugar, imported in bulk for retail packaging in the United States);
- NY C89506, dated July 8, 1998 (classifying drink mixes (imported in five flavors) containing between 75% and 95% sugar, and between 0% and 18% fructose depending on flavor, and imported in 2,000 pound sacks for retail packaging in the United States);
- NY A87589, dated September 23, 1996 (classifying drink mixes (imported in five flavors) containing between 75% and 95% sugar, and

⁸ We note that NY N042679 also classified a fifth drink variety, Iced Tea flavored “Ice Age” soft drink. This product is not included in this modification.

⁹ We note that NY N158039 also classified a third drink mix variety, “Zuko Horchata,” in heading 2106, HTSUS. This product is not included in this modification.

- between 0% and 18% fructose depending on flavor, and imported in 2,000 pound sacks for retail packaging in the United States);
- NY A89697, dated November 27, 1996 (classifying drink mixes containing 95% sugar and imported in one metric ton bags for retail packaging in the United States);
 - NY B80099, dated December 10, 1996 (classifying drink mixes containing over 96% sugar and 0.79% maltodextrin, imported in 2,000 pound bulk bags and 100 pound paper bags, to be repackaged for retail sale upon importation);¹⁰
 - NY 863959, dated July 13, 1991 (classifying drink mixes containing between 89% and 97% sugar, depending on the flavor, and imported either packaged for retail sale or in one metric ton containers to be repackaged upon importation);
 - NY 883426, dated March 9, 1993 (classifying drink mixes containing 91.4% sugar and packaged for retail sale in 890 gram cardboard canisters);
 - NY 804357, dated November 22, 1994 (classifying drink mixes containing between 90% and 93% sugar and packaged for retail sale in sachets, jars and canisters);¹¹
 - HQ 083698, dated June 1, 1989 (classifying a drink base mix containing 97.61% sugar and imported in industrial packaging such as 2,000 pound totes and 100 pound bags);
 - NY 803800, dated November 9, 1994 (classifying drink mixes containing sugar and imported packaged for retail sale in 18 ounce, 27 ounce or 40.5 ounce jars, depending on flavor);
 - NY 870767, dated January 29, 1992 (classifying drink mixes containing 89% sugar and imported in one ton tote bags);
 - NY 860227, dated February 20, 1991 (classifying drink mixes containing between 83.28% and 90.13% of either sugar alone or sugar with maltodextrin and corn syrup, depending on the drink mix's flavor, all packaged for retail sale);¹²
 - HQ 951849, dated August 11, 1992 (classifying drink mixes either sweetened by sugar or unsweetened, depending on the flavor)¹³ and

¹⁰ We note that NY B80099 also classified an iced tea mix in heading 2101, HTSUS, which is not included in this modification.

¹¹ We note that NY 804357 also classified an iced tea mix in heading 2101, HTSUS, which is not included in this modification.

¹² We note that NY 860227 also classified certain margarita salt in heading 2501, HTSUS, which is not included in this modification.

¹³ We note that HQ 951849 also classified soft candies and liquid candies in heading 1701, HTSUS, powdered dip mixes in heading 2103, HTSUS, and liquid picante sauce in heading 2103, HTSUS. These products are not included in this modification. Moreover, HQ 951849 also addressed certain issues regarding country of origin marking, which are also not at issue in this modification.

- NY 869626, dated January 2, 1992 (classifying drink mixes containing 91.3% sugar and imported in bulk).¹⁴

In these rulings, various types of drink mixes consisting of sugar and other ingredients were classified in heading 1701, HTSUS, as “Cane or beet sugar and chemically pure sucrose, in solid form,” or in heading 1702, HTSUS, as “Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form; sugar syrups not containing added flavoring or coloring matter; artificial honey, whether or not mixed with natural honey; caramel.” We have reconsidered these rulings and now believe that they are incorrect. For the reasons that follow, we hereby revoke HQ 964497, HQ 967563, NY 805860, NY 807382, NY 806349, NY A81526, NY B83306, NY B86542, NY D80530, NY D83344, NY D83345, NY F89359, NY H82031, NY H85600, NY L82138, NY N015991, NY N019259, NY N045475, NY N073508, NY R01312, NY N251352, NY N235188, NY 803800, NY N238296, NY 870767, NY 883426, NY 863959, NY N015994 and HQ 083698, and modify HQ 963668, NY 807225, NY N042679, NY 818773, NY B86441, NY G89465, NY L88611, NY A86301, NY C82414, NY C82415, NY I87369, NY R01313, NY N158039, NY 860227, NY 804357, HQ 951849, NY 869626, NY C82572, NY C89506, NY A87589, NY A89697 and NY B80099.

FACTS:

The subject merchandise consists of various types of drink mixes that are imported in the form of a powder. Water is added post-importation to turn the mixes into beverages. The mixes come in various flavors, such as lemonade, lemon-lime, orange, grape, mixed berry, cherry, and fruit punch, among others, but all have a similar ingredient list. The largest ingredient in these mixes is sugar. The majority of these mixes contain 80% sugar or more; the rest contain between 60% and 80%. Some of the subject mixes contain sucrose, others dextrose, and others fructose.

The mixes also contain a range of other ingredients, such as flavoring, coloring, citric acid, malic acid, pectin, and silicon dioxide, among other things. Given the amount of sugar in these mixes, these other ingredients make up small but varying percentages of the total ingredients. Most of the mixes are imported packaged for retail sale.

In the rulings at issue, CBP classified these mixes according to their sugar content, in either heading 1701, HTSUS, which provides for “Cane or beet sugar and chemically pure sucrose, in solid form,” or in heading 1702, HTSUS, which provides for “Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form; sugar syrups not containing added flavoring or coloring matter; artificial honey, whether or not mixed with natural honey; caramel.”

ISSUE:

Whether beverage mixes whose ingredients consist of sugar and other ingredients should be classified according to their sugar content in either heading 1701, HTSUS, or heading 1702, HTSUS, or in heading 2106, HTSUS, as “Food preparations not elsewhere specified or included.”

¹⁴ We note that NY 869626 also classified an iced tea mix under heading 2101, HTSUS, and an instant chocolate drink powder mix under heading 1806, HTSUS. These products are not included in this modification.

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 2 through 6 may then be applied in order.

The HTSUS headings at issue are as follows:

- 1701 Cane or beet sugar and chemically pure sucrose, in solid form:
* * *
- 1702 Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form; sugar syrups not containing added flavoring or coloring matter; artificial honey, whether or not mixed with natural honey; caramel:
* * *
- 2106 Food preparations not elsewhere specified or included:
- 2106.90 Other:
 Other:
 Other:
 Other:
 Articles containing over 65 percent by dry weight of sugar described in additional U.S. note 2 to chapter 17:
- 2106.90.92 Described in additional U.S. note 7 to chapter 17 and entered pursuant to its provisions
- 2106.90.94 Other
 Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17:
- 2106.90.95 Described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions
- 2106.90.97 Other
- 2106.90.98 Other

Additional U.S. Note 2 to Chapter 17, HTSUS, reads the following:

For the purposes of this schedule, the term “articles containing over 65 percent by dry weight of sugar described in additional U.S. Note 2 to chapter 17” means articles containing over 65 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported.

Additional U.S. Note 3 to Chapter 17, HTSUS, reads the following:

For the purposes of this schedule, the term “articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17” means articles containing over 10 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, except (a) articles not principally of crystalline structure or not in dry amorphous form, the foregoing that are prepared for marketing to the ultimate consumer in the identical form and package in which imported; (b) blended syrups containing sugars derived from sugar cane or sugar beets, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported; (c) articles containing over 65 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported; or (d) cake decorations and similar products to be used in the same condition as imported without any further processing other than the direct application to individual pastries or confections, finely ground or masticated coconut meat or juice thereof mixed with those sugars, and sauces and preparations therefor.

Additional U.S. Note 7 to Chapter 17, HTSUS, reads the following:

The aggregate quantity of articles containing over 65 percent by dry weight of sugars described in additional U.S. note 2 to chapter 17, entered under subheadings 1701.91.44, 1702.90.64, 1704.90.64, 1806.10.24, 1806.10.45, 1806.20.71, 1806.90.45, 1901.20.20, 1901.20.55, 1901.90.52, 2101.12.44, 2101.20.44, 2106.90.74 and 2106.90.92 during the 12-month period from October 1 in any year to the following September 30, inclusive, shall be none and no such articles shall be classifiable therein.

Additional U.S. Note 8 to Chapter 17, HTSUS, reads the following:

The aggregate quantity of articles containing over 10 percent by dry weight of sugars described in additional U.S. note 3 to chapter 17, entered under subheadings 1701.91.54, 1704.90.74, 1806.20.75, 1806.20.95, 1806.90.55, 1901.90.56, 2101.12.54, 2101.20.54, 2106.90.78 and 2106.90.95 during the 12-month period from October 1 in any year to the following September 30, inclusive, shall not exceed 64,709 metric tons (articles the product of Mexico shall not be permitted or included under this quantitative limitation and no such articles shall be classifiable therein).

Additional U.S. Note 2 (b) to Section IV, HTSUS, reads the following:

For the purposes of this section, unless the context otherwise requires, the term “capable of being further processed or mixed with similar or other ingredients” means that the imported product is in such condition or container as to be subject to any additional preparation, treatment or manufacture or to be blended or combined with any additional ingredient, including water or any other liquid, other than processing or mixing with other ingredients performed by the ultimate consumer prior to consumption of the product.

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

While not dispositive or legally binding, the ENs provide a commentary on the scope of each heading of the Harmonized System at the international level. CBP believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The EN to heading 1701, HTSUS, states, in pertinent part, the following:

It should be noted that cane and beet sugar fall in this heading **only** when in the solid form (including powders); such sugar may contain added flavouring or colouring matter.

Sugar syrups of cane or beet sugar, consisting of aqueous solutions of sugars, are classified in **heading 17.02** when not containing added flavouring or colouring matter and otherwise in **heading 21.06**.

The heading further **excludes** preparations in solid form (including granules or powders) which have lost the character of sugar, of a kind used for making beverages (**heading 21.06**).

The heading also includes chemically pure sucrose in solid form, whatever its origin. Sucrose (other than chemically pure sucrose) obtained from sources other than sugar cane or sugar beet is **excluded (heading 17.02)**.

The EN to heading 1702, HTSUS, states, in pertinent part, the following:

This heading covers other sugars in solid form, sugar syrups and also artificial honey and caramel.

(A) OTHER SUGARS

This part covers sugars, other than sugars of heading 17.01 or chemically pure sugars of heading 29.40, in solid form (including powders), whether or not containing added flavouring or colouring matter. The principal sugars of this heading are:...

(6) Malto-dextrins (or dextri-maltoses), obtained by the same process as commercial glucose. They contain maltose and polysaccharides in variable proportions. However, they are less hydrolysed and therefore have a lower reducing sugar content than commercial glucose. The heading covers only such products with a reducing sugar content, expressed as dextrose on the dry substance, exceeding 10 % (but less than 20 %). Those with a reducing sugar content not exceeding 10 % fall in heading 35.05. Malto-dextrins are generally in the form of white powders, but they are also marketed in the form of a syrup (see Part (B)). They are used chiefly in the manufacture of baby food and low-calory dietetic foods, as extenders for flavouring substances or food colouring agents, and in the pharmaceutical industry as carriers.

(7) Maltose (C₁₂H₂₂O₁₁) which is produced industrially from starch by hydrolysis with malt diastase and is produced in the form of a white crystalline powder. It is used in the brewing industry. This heading covers both commercial and chemically pure maltose.

The EN to heading 2106, HTSUS, states, in pertinent part, the following:

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

(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*:

- (1) Powders for table creams, jellies, ice creams or similar preparations, whether or not sweetened.

Powders based on flour, meal, starch, malt extract or goods of headings 04.01 to 04.04, whether or not containing added cocoa, fall in **heading 18.06** or **19.01** according to their cocoa content (see the General Explanatory Note to Chapter 19). The other powders are classified in **heading 18.06** if they contain cocoa. Powders which have the character of flavoured or coloured sugars used for the preparation of lemonade and the like fall in **heading 17.01** or **17.02** as the case may be.

- (2) Flavouring powders for making beverages, whether or not sweetened, with a basis of sodium bicarbonate and glycyrrhizin or liquorice extract (sold as “Cocoa-powder”)...

* * *

- (12) Preparations for the manufacture of lemonades or other beverages, consisting, for example, of:

- flavoured or coloured syrups, being sugar solutions with natural or artificial substances added to give them the flavour of, for example, certain fruits or plants (raspberry, blackcurrant, lemon, mint, etc.), whether or not containing added citric acid and preservatives;....

Such preparations are intended to be consumed as beverages after simple dilution with water or after further treatment. Certain preparations of this kind are intended for adding to other food preparations.

In classifying the subject mixes in either heading 1701, HTSUS, or in heading 1702, HTSUS, CBP relied on the language of EN 21.06, which states, in pertinent part, that “Powders which have the character of flavoured or coloured sugars used for the preparation of lemonade and the like fall in heading 17.01 or 17.02.” Citing this language, we reasoned that the subject drink mixes were excluded from classification in heading 2106, HTSUS, in favor of heading 1701 or 1702, HTSUS.

Upon reconsideration, we now believe that the subject drink mixes do not have the character of sugar of Chapter 17, HTSUS. It is undisputed that they are not pure or raw sugar.¹⁵ In addition, whereas Chapter 17, HTSUS, allows for the addition of coloring and flavoring, the subject drink mixes also contain ingredients that make them more than merely flavored or colored sugars. For example, the drink mixes at issue contain ingredients such as citric acid, malic acid, ascorbic acid, turmeric, cinnamon, condensed milk substitute,

¹⁵ For purposes of this ruling, sugar is defined only as sugar derived from sugar cane or sugar beets, also called sucrose. See Additional U.S. Notes 2 and 3 to Chapter 17, HTSUS.

corn starch, calcium phosphate, potassium phosphate, sodium phosphate, tricalcium phosphate, silicon dioxide, vitamin C, various emulsifiers, preservatives, neutralizing agents, stabilizers and anti-caking agents. As imported, they only require the addition of water to become a complete beverage. As such, they are not mere sweeteners and fall outside the scope of headings 1701 and 1702, HTSUS.

Heading 2106, HTSUS, covers preparations for human consumption. Its exemplars include preparations for the manufacture of lemonades or other beverages, such as those containing sugar solutions with natural or artificial substances added to give them the flavor of certain fruits or plants such as raspberry, blackcurrant, lemon, mint, etc. They may contain citric acid and other ingredients. *See* EN 21.06. Specifically, paragraph 12 to EN 21.06 further describes merchandise that is classified in heading 2106, HTSUS, and includes preparations for the manufacture of lemonades or other beverages. *See* EN 21.06. The subject drink mixes are deliberately mixed preparations for human consumption in that they are intended to be drunk as beverages. Thus, they are similar to the exemplars of heading 2106, HTSUS. As such, they are described by the terms of heading 2106, HTSUS. As a result, we find that the subject merchandise is classified in this heading.

We note that the classification of these drink mixes in heading 2106, HTSUS, is consistent with the practice of the World Customs Organization (“WCO”). *See* Classification Opinion 2106.90/16; Classification Opinion 2106.90/26.

Lastly, we note that several of the rulings at issue in this revocation examined whether their merchandise was eligible for preference under the North American Free Trade Agreement (“NAFTA”). To be eligible for tariff preferences under NAFTA, goods must be “originating goods” within the rules of origin found in General Note 12(b), HTSUS, which provides that “goods originating in the territory of a NAFTA party” are: (i) goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or (ii) goods transformed in the territory of Canada, Mexico and/or the United States. In NY I87369, NY R01313, NY B80099, NY C82572, NY A87589 and NY A89697, the instant merchandise was granted NAFTA preference because it was wholly obtained or produced entirely in one or more of the NAFTA parties. The above analysis modifying and/or revoking NY I87369, NY R01313, NY B80099, NY C82572, NY A87589 and NY A89697 with regard to the classification of the merchandise at issue, does not affect its wholly obtained status. As such, the merchandise at issue in those rulings retains its NAFTA preference. Likewise, in NY A86301, one of the mixes at issue, Lemonade Mix A was found to be wholly originating or produced entirely in one or more NAFTA countries, and received NAFTA preference. The merchandise of NY C82414, NY C82415 and NY C89506 contained cane sugar, beet sugar or fructose that was of United States origin, but the balance of its ingredients may be from the United States, Canada, or non-NAFTA countries. There, CBP found that where the imported merchandise contained ingredients solely from the NAFTA parties, the merchandise qualified for preference as being wholly obtained or produced entirely within the NAFTA countries. We adhere to this analysis. Thus, the Lemonade Mix A that was classified in NY A86301 and the merchandise of NY C82414, NY C82415 and NY C89506 that are made solely with ingredients obtained in the NAFTA parties retain their NAFTA preference.

However, the Lemonade Mix B classified in NY A86301 contained non-originating ingredients. As such, it had to meet the NAFTA tariff-shift rules to qualify for preference. The same was true of certain scenarios of NY C82414, NY C82415 and NY C89506, which used beet sugar and fructose produced in Canada or in the United States, and a variety of other non-originating materials. As such, we reexamine whether this merchandise meets NAFTA's tariff-shift rules given the proposed classification in subheadings 2106.90.97 and 2106.90.98, HTSUS. The relevant tariff shift rule allows for "a change to heading 2106 from any other chapter." See General Note 12(t). The non-originating ingredients in these mixes make the tariff shift. For example, citric acid is classified in heading 2918, HTSUS. See, e.g., NY N145129, dated February 17, 2011; NY N130878, dated November 18, 2010; NY N106199, dated June 4, 2010. Ascorbic acid is classified in heading 2936, HTSUS. See, e.g., NY R02835, dated November 22, 2005; NY M86354, dated September 14, 2006. Furthermore, while flavoring and coloring are classified in different headings based on their composition, they are both classified outside heading 2106, HTSUS. See, e.g., NY N072388, dated October 9, 2009 (classifying butter flavoring in heading 3302, HTSUS); NY H81464, dated May 30, 2001 (classifying pistachio flavoring and coconut flavoring in heading 2008, HTSUS); NY N003346, dated December 13, 2006 (classifying an Easter egg coloring kit in heading 3212, HTSUS); NY N127059, dated October 20, 2010 (classifying various pigments in headings 3202 and 3204, HTSUS). As such, the subject merchandise retains its NAFTA preference despite the proposed change in classification, and we modify NY I87369, NY R01313, NY A86301, NY C82414 and NY C82415, NY B80099, NY C82572, NY A87589, NY A89697 and NY C89506 only with respect to the classification of the merchandise specified therein.

HOLDING:

Under the authority of GRI 1, the subject drink mixes are provided for in heading 2106, HTSUS. Specifically, they are classified as follows:

- (1) Drink mixes containing over 65% sugar, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported, are classified in subheading 2106.90.92, HTSUS, which provides for "Food preparations not elsewhere specified or included: Other: Other: Other: Other: Articles containing over 65 percent by dry weight of sugar described in additional U.S. note 2 to chapter 17: Described in additional U.S. note 7 to chapter 17 and entered pursuant to its provisions." The column one, general rate of duty is 10% *ad valorem*. If the quota described in Additional U.S. Note 7 to Chapter 17, HTSUS, is already filled, the subject mixes are classified in subheading 2106.90.94, HTSUS, which provides for "Food preparations not elsewhere specified or included: Food preparations not elsewhere specified or included: Other: Other: Other: Other: Other: Articles containing over 65 percent by dry weight of sugar described in additional U.S. note 2 to chapter 17: Other." The column one, general rate of duty is 28.8¢/kg + 8.5% *ad valorem*. In addition, if classified in subheading 2106.90.94, HTSUS, the subject drink mixes are subject to additional duties provided for in subheading 9904.17.17-9904.17.48, HTSUS, as appropriate.

- (2) Drink mixes containing over 10% sugar and prepared for marketing to the ultimate consumer in the identical form and package in which imported, as well as drink mixes containing over 10% sugar and below 65% sugar, not prepared for marketing to the ultimate consumer in the identical form and package in which imported, are classified in subheading 2106.90.95, HTSUS, which provides for “Food preparations not elsewhere specified or included: Other: Other: Other: Other: Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17: Described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions.” The column one, general rate of duty is 10% *ad valorem*. If the quota described in Additional U.S. Note 8 to Chapter 17, HTSUS, is already filled, the subject mixes are classified in subheading 2106.90.97, HTSUS, which provides for “Food preparations not elsewhere specified or included: Other: Other: Other: Other: Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17: Other.” The column one, general rate of duty is 28.8¢/kg + 8.5% *ad valorem*. In addition, if classified in subheading 2106.90.97, HTSUS, the subject drink mixes are subject to additional duties provided for in subheading 9904.17.49-9904.17.65, HTSUS, as appropriate.
- (3) If any of the subject drink mixes are found to contain below 10% sugar and/or are sweetened by artificial sweeteners, and otherwise fail to meet the terms of Additional U.S. Notes 2 and 3 to Chapter 17, HTSUS, they should be classified in subheading 2106.90.98, HTSUS, which provides for “Food preparations not elsewhere specified or included: Other: Other: Other: Other: Other: Other.” The column one, general rate of duty is 6.4% *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:

HQ 964497, HQ 967563, NY 805860, NY 807382, NY 806349, NY A81526, NY B83306, NY B86542, NY D80530, NY D83344, NY D83345, NY F89359, NY H82031, NY H85600, NY L82138, NY N015991, NY N019259, NY N045475, NY N073508, NY R01312, NY N251352, NY N235188, NY 803800, NY N238296, NY 870767, NY 883426, NY 863959, NY N015994 and HQ 083698 are REVOKED.

HQ 963668, NY 807225, NY N042679, NY 818773, NY B86441, NY G89465, NY L88611, NY A86301, NY C82414, NY C82415, NY I87369, NY R01313, NY N158039, NY 860227, NY 804357, HQ 951849, NY 869626, NY C82572, NY C89506, NY A87589, NY A89697 and NY B80099 are MODIFIED.

Sincerely,

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177**REVOCAION OR MODIFICATION OF THREE RULING LETTERS AND REVOCAION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF PUMP DISPENSERS FROM CHINA**

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

ACTION: Notice of revocation or modification of three ruling letters, and of revocation of treatment relating to the tariff classification of pump dispensers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking two ruling letters and modifying one ruling letter concerning tariff classification of pump dispensers under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 53, No. 42, on November 20, 2019. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 6, 2020.

FOR FURTHER INFORMATION CONTACT: Dwayne Rawlings, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0092.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public 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 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 53, No. 42, on November 20, 2019, proposing to revoke two ruling letters, and modify one ruling letter, pertaining to the tariff classification of pump dispensers. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In New York Ruling Letters ("NY") N249630 (February 4, 2014), NY 299353 (August 20, 2018), and NY 298787 (August 1, 2018), CBP classified pump dispensers in heading 8424, HTSUS, specifically in subheading 8424.20.10, HTSUS, which provides for "Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders: ... parts thereof: Spray guns and similar appliances: Simple piston pump sprays and powder bellows." CBP has reviewed NY N249630, NY N299353 and NY N298787 and has determined the ruling letter to be in error. It is now CBP's position that the pump dispensers are properly classified, in heading 8424, HTSUS, specifically in subheading 8424.89.90, HTSUS, which provides for "Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders: ... parts thereof: Other appliances: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking two rulings and modifying one ruling, and revoking or modifying any other ruling not specifically identified, to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H305296, set forth as an attachment to this notice. 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: January 21, 2020

GREG CONNOR
for
CRAIG T. CLARK,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H305296

January 21, 2020

CLA-2 OT:RR:CTF:EMAIN H305296 DSR

CATEGORY: Classification

TARIFF NO.: 8424.89.90

TED CONLON, OPERATIONS MANAGER
FOURSTAR GROUP USA, INC.
189 MAIN STREET, SUITE 31
MILFORD, MA 01757-2627

RAJ BUDHRANI
CHF INDUSTRIES, INC.
ONE PARK AVENUE, 9TH FLOOR
NEW YORK, NY 10016

TAMI MOSLEY
SALLY BEAUTY HOLDINGS
3001 COLORADO BLVD.
DENTON, TX 76210

RE: Revocation of NY N249630 and NY N299353; Modification of
NY N298787; Classification of pump dispensers from China

DEAR MR. CONLON, MR. BUDHRANI AND MS. MOSLEY:

In New York Ruling Letters (“NY”) N249630 (February 4, 2014), NY N299353 (August 20, 2018) and NY N298787 (August 1, 2018), U.S. Customs and Border Protection (“CBP”) classified pump dispensers under subheading 8424.20.1000, of the Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids . . . : Spray guns and similar appliances: Simple piston pump sprays and powder bellows.” CBP has reviewed those rulings and determined that the classification provided for the pump dispensers is incorrect and, therefore, those rulings must be revoked or modified for the reasons set forth in this ruling.

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 of the proposed revocations of NY N249630 and NY N299353, and the modification of NY N298787, was published on November 20, 2019, in the Customs Bulletin, Volume 53, No. 42. CBP received no comments in response to the notice.

FACTS:

In NY N249630, the merchandise is described as a Glass Mason Jar Style Hand Soap Pump Dispenser (Item # 61150284) and a Plastic Mason Jar Style Hand Soap Pump Dispenser (Item # 61119598). The liquid soap is dispensed by hand activation of a piston pump mechanism which is attached to the top of, and inserted into the reservoir which holds the liquid soap.

In NY N299353, the merchandise is described as four types of pump dispensers imported with their reservoirs. The dispensers, identified as Items A through D, largely resemble one another in form and function, though their reservoirs are made of different materials. Item A features a reservoir made of ceramic material, Item B has a reservoir made of resin material, Item C’s reservoir is made of glass, while Item D’s reservoir is made of aluminum. The

pump dispensers are designed to dispense the contents of the reservoir when the pump mechanism is manually actuated. The ruling notes that in this respect, the dispensers at issue resemble the soap pump dispensers described in NY N249630, *supra*.

In N298787, the relevant merchandise is identified as Items 3 through 7. Items 3 and 4 are described as plastic bottles with attached plastic pump action heads. Each pump actuator head has three small holes through which the contents of the bottle can be dispensed. Both pump actuators utilize a spring piston to create suction, and when depressed, dispense the contents of the plastic bottle. Items 5, 6 and 7 are plastic bottles that are imported with the pump dispensers already installed. These products are intended to dispense liquids such as shampoo, conditioner, etc. The ruling notes that, in this respect, the items resemble the soap pump dispensers described in NY N249630, *supra*.

ISSUE:

Whether the pump dispensers are classifiable as other mechanical appliances for projecting, dispersing or spraying liquids under subheading 8424.89.90, HTSUS, or as spray guns and similar appliances under subheading 8424.20.10, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is governed by 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. The HTSUS provisions under consideration in this case are as follows:

8424	Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; . . .
	* * *
8424.20	Spray guns and similar appliances:
8424.20.10	Simple piston pump sprays and powder bellows
	* * *
	Other appliances:
	* * *
8424.89.90	Other
* * *	* * *

There is no dispute that the subject items are classified in heading 8424, HTSUS. At issue is the proper 6-digit subheading. GRI 6 states:

For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized Tariff

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, 35128 (Aug. 23, 1989).

The subheading ENs state that subheading 8424.20 covers the appliances described in Part (B) of the EN to heading 84.24. The EN 84.24(B) provides:

Spray guns and similar hand controlled appliances are usually designed for attaching to compressed air or steam lines, and are also connected, either directly or through a conduit, with a reservoir of the material to be projected. They are fitted with triggers or other valves for controlling the flow through the nozzle, which is usually adjustable to give a jet or more or less divergent spray. They are used for spraying paint or distemper, varnishes, oils, plastics, cement, metallic powders, textile dust . . . projecting a powerful jet of compressed air or steam for cleaning stonework in buildings, statuary, etc.. They may also be used for projecting a powerful jet of compressed air or steam for cleaning stonework in buildings, statuary, etc.

This group also includes separately presented hand controlled “anti-smudge” spraying devices for fitting to printing machines, and hand controlled metal spraying pistols operating either on the principle of a blow pipe, or by the combined effect of an electric heating device and a jet of compressed air.

Hand controlled spray guns with self-contained electric motor, incorporating a pump and a container for the material to be sprayed (paint, varnish, etc.), are also covered by the heading.

The HTSUS does not define the term “spray gun.” The common meaning of a term is generally afforded deference when determining its proper interpretation for tariff purposes. *See Toyota Motor Sales (U.S.A.), Inc. v. United States*, 7 C.I.T. 178, 182, 585 F. Supp. 649, 653 (1984), *aff’d*, 753 F.2d 1061 (Fed. Cir. 1985); *Nippon Kogaku (USA), Inc. v. United States*, 69 C.C.P.A. 89, 92, 673 F.2d 380, 382 (1982). Dictionaries and other lexicographic authorities may be utilized to determine a term’s common meaning. *See Mast Indus., Inc. v. United States*, 9 C.I.T. 549 (1985), *aff’d*, 786 F.2d 1144 (Fed. Cir. 1986). The compact Oxford English Dictionary defines spray gun as “a device resembling a gun which is used to spray a liquid such as paint under pressure.” As described in the ENs, spray guns are usually designed for attaching to compressed air or steam lines, are connected with a reservoir with the material to be projected, and are fitted with a trigger or valve to control the flow through the nozzle. x, and do not fall within the description of subheading 8424.20, HTSUS.

Subheading 8424.89.90, HTSUS, provides for other mechanical appliances for projecting or dispersing liquids. We have previously determined that hand-operated pump dispensers that operate in a manner similar to the instant items are classified in subheading 8424.89, HTSUS. *See* HQ H070635 (July 13, 2010); HQ H012731 (March 27, 2008); HQ 956522 (August 29, 1994); HQ 956530 (August 29, 1994). Accordingly, we conclude that the subject pump dispensers hand pump are classified in subheading 8424.89, HTSUS.

HOLDING:

Pursuant to GRIs 1 and 6, the pump dispensers of NY N249630, NY N299353 and NY N298787 are classifiable under subheading 8424.89.90, HTSUS, which covers “Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids . . . : Other appliances: Other.” The column one, general rate of duty is 1.8% *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.

EFFECT ON OTHER RULINGS:

NY N249630 (February 4, 2014), NY N299353 (August 20, 2018) are revoked in accordance with this decision. NY N298787 (August 1, 2018) is modified.

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

Pursuant to U.S. Note 20 to Subchapter III, Chapter 99, HTSUS, products of China classified under subheading 8424.89.90, HTSUS, unless specifically excluded, are subject to an additional 25 percent *ad valorem* rate of duty. At the time of importation, you must report the Chapter 99 subheading, *i.e.*, 9903.88.02, in addition to subheading 8424.89.90, HTSUS, listed above.

The HTSUS is subject to periodic amendment so you should exercise reasonable care in monitoring the status of goods covered by the Note cited above and the applicable Chapter 99 subheading. For background information regarding the trade remedy initiated pursuant to Section 301 of the Trade Act of 1974, you may refer to the relevant parts of the USTR and CBP websites, which are available at <https://ustr.gov/issue-areas/enforcement/section-301-investigations/tariff-actions> and <https://www.cbp.gov/trade/remedies/301-certain-products-china> respectively.

Sincerely,

GREG CONNOR

for

CRAIG T. CLARK,

Director

Commercial and Trade Facilitation Division