

# U.S. Customs and Border Protection

19 CFR PARTS 10, 24, 162, 163, AND 178  
CBP DEC. 14-06

## United States-Panama Trade Promotion Agreement

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

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule interim amendments to the U.S. Customs and Border Protection (CBP) regulations which were published in the **Federal Register** on October 23, 2013, as CBP Dec. 13-17, to implement the preferential tariff treatment and other customs-related provisions of the United States-Panama Trade Promotion Agreement.

**DATES:** Final rule effective June 20, 2014.

### FOR FURTHER INFORMATION CONTACT:

*Textile Operational Aspects:* Diane Liberta, Textile Operations Branch, Office of International Trade, (202) 863-6241.

*Other Operational Aspects:* Katrina Chang, Trade Policy and Programs, Office of International Trade, (202) 863-6532.

*Legal Aspects:* Karen Greene, Regulations and Rulings, Office of International Trade, (202) 325-0041.

### SUPPLEMENTARY INFORMATION:

#### Background

On June 28, 2007, the United States and the Republic of Panama (the “Parties”) signed the United States-Panama Trade Promotion Agreement (“PANTPA” or “Agreement”). On October 21, 2011, the President signed into law the United States-Panama Trade Promotion Agreement Implementation Act (the “Act”), Public Law 112-43, 125 Stat. 497 (19 U.S.C. 3805 note), which approved and made statutory changes to implement the PANTPA. On October 29, 2012, the President signed Proclamation 8894 to implement the PANTPA. The

Proclamation, which was published in the **Federal Register** on November 5, 2012, (77 FR 66507), modified the Harmonized Tariff Schedule of the United States (“HTSUS”) as set forth in Annexes I and II of Publication 4349 of the U.S. International Trade Commission.

On October 23, 2013, CBP published CBP Dec. 13–17 in the **Federal Register** (78 FR 63052) setting forth interim amendments to implement the preferential tariff treatment and other customs-related provisions of the PANTPA and the Act. The majority of the PANTPA implementing regulations set forth in CBP Dec. 13–17 and adopted as final in this document have been included within Subpart S of Part 10 of the CBP regulations (19 CFR Part 10). However, in those cases in which PANTPA implementation is more appropriate in the context of an existing regulatory provision, the PANTPA regulatory text has been incorporated into an existing Part within the CBP regulations. CBP Dec. 13–17 also sets forth a number of cross-references and other consequential changes to existing regulatory provisions to clarify the relationship between those existing provisions and the new PANTPA implementing regulations. Please refer to that document for further background information.

Although the interim regulatory amendments were promulgated without prior public notice and comment procedures and took effect on October 23, 2013, CBP Dec. 13–17 provided for the submission of public comments which would be considered before adoption of the interim regulations as a final rule. The prescribed public comment closed on December 23, 2013. CBP received one comment on CBP Dec. 13–17.

### **Discussion of Comments**

One response was received to the solicitation of comments on the interim rule set forth in CBP Dec. 13–17. The comment is discussed below.

#### *Comment*

One commenter disagreed with the establishment of the PANTPA and suggested that the trade agreement would cause domestic economic issues and could cause social problems as well.

#### *CBP Response*

The PANTPA Implementation Act was enacted by Congress. The commenter’s concerns regarding the economic and social impact of the PANTPA are, accordingly, beyond the scope of this rulemaking which deals with implementing the preferential tariff treatment and other customs-related provisions of the Act. Accordingly, it would be inappropriate for CBP to address the comment.

## Conclusion

After further review of the matter, and in light of the one comment, CBP has determined to adopt as final, with no changes, the interim rule published in the **Federal Register** (78 FR 63052) on October 23, 2013.

## Executive Order 12866

This document is not a regulation subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States and implements an international agreement, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866.

## Regulatory Flexibility Act

CBP Dec. 13–17 was issued as an interim rule rather than a notice of proposed rulemaking because CBP had determined that the interim regulations involve a foreign affairs function of the United States pursuant to § 553(a)(1) of the Administrative Procedure Act (APA). Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply. Accordingly, this final rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

## Paperwork Reduction Act

The collections of information contained in these regulations have previously been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651–0117, which covers many of the free trade agreement requirements that CBP administers, and 1651–0076, which covers general recordkeeping requirements. The collections of information in these regulations are in §§ 10.2003, 10.2004, and 10.2007 of title 19 of the Code of Federal Regulations (19 CFR 10.2003, 10.2004, and 10.2007). This information is required in connection with general recordkeeping requirements (§ 10.2007), as well as claims for preferential tariff treatment under the PANTPA and the Act and will be used by CBP to determine eligibility for tariff preference under the PANTPA and the Act. The likely respondents are business organizations including importers, exporters and manufacturers.

The estimated average annual burden associated with the collection of information in this final rule is 500 hours. Comments concern-

ing the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 90 K Street NE., 10th Floor, Washington, DC 20229-1177. Under the Paperwork Reduction Act, an agency may not conduct or sponsor and a person is not required to respond to a collection of information, unless it displays a valid OMB control number.

### **Signing Authority**

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain CBP revenue functions.

### **List of Subjects**

#### *19 CFR Part 10*

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

#### *19 CFR Part 24*

Accounting, Customs duties and inspection, Financial and accounting procedures, Reporting and recordkeeping requirements, Trade agreements, User fees.

#### *19 CFR Part 162*

Administrative practice and procedure, Customs duties and inspection, Penalties, Trade agreements.

#### *19 CFR Part 163*

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements, Trade agreements.

#### *19 CFR Part 178*

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

## Amendments to the CBP Regulations

Accordingly, the interim rule amending parts 10, 24, 162, 163, and 178 of the CBP regulations (19 CFR parts 10, 24, 162, 163, and 178), which was published at 78 FR 63052 on October 23, 2013, is adopted as a final rule.

R. GIL KERLIKOWSKIE,  
*Commissioner.*

Dated: May 14, 2014.

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

[Published in the Federal Register, May 21, 2014 (79 FR 29077)]



## ACCREDITATION OF SGS NORTH AMERICA, INC., AS A COMMERCIAL LABORATORY

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

**ACTION:** Notice of accreditation of SGS North America, Inc., as a commercial laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that SGS North America, Inc., has been accredited to test petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of October 29, 2013.

**DATES:** *Effective Dates:* The accreditation of SGS North America, Inc., as commercial laboratory became effective on October 29, 2013. The next triennial inspection date will be scheduled for October 2016.

**FOR FURTHER INFORMATION CONTACT:** Approved Gauger and Accredited Laboratories Manager, 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, that SGS North America, Inc., 1201 W. 8th St., Deer Park, TX 77536, has been accredited to test petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12. SGS North America, Inc., 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
27-01 .....	ASTM D-287 .....	Standard test method for API Gravity of crude petroleum products and petroleum products (Hydrometer Method).
27-03 .....	ASTM D-4006...	Standard test method for water in crude oil by distillation.
27-48 .....	ASTM D-4052...	Standard test method for density and relative density of liquids by digital density meter.
27-13 .....	ASTM D-4294...	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27-04 .....	ASTM D-95 .....	Standard test method for water in petroleum products and bituminous materials by distillation.
27-05 .....	ASTM D-4928...	Standard Test Method for Water in crude oils by Coulometric Karl Fischer Titration.
27-11 .....	ASTM D-445 .....	Standard test method for kinematic viscosity of transparent and opaque liquids (and calculations of dynamic viscosity).
27-54 .....	ASTM D-1796...	Standard test method for water and sediment in fuel oils by the centrifuge method (Laboratory procedure).
27-06 .....	ASTM D-473 .....	Standard test method for sediment in crude oils and fuel oils by the extraction method.
27-50 .....	ASTM D-93 .....	Standard test methods for flash point by Penske-Martens Closed Cup Tester.
27-14 .....	ASTM D-2622...	Standard Test Method for Sulfur in Petroleum Products (X-Ray Spectrographic Methods).

CBPL No.	ASTM	Title
27-57 .....	ASTM D-7039...	Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-Ray Fluorescence Spectrometry.

Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquiries regarding the specific test this entity is accredited 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 *cbp.labhq@dhs.gov*.

Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. [http://www.cbp.gov/sites/default/files/documents/gaulist\\_3.pdf](http://www.cbp.gov/sites/default/files/documents/gaulist_3.pdf).

Dated: May 13, 2014.

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

[Published in the Federal Register, May 16, 2014 (79 FR 28533)]

**REVOCATION OF A RULING LETTER AND REVOCATION  
OF TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF *CHENOPODIUM QUINOA* SEEDS**

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

**ACTION:** Notice of revocation of a ruling letter and revocation of treatment relating to the tariff classification of *Chenopodium quinoa* seeds.

**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 a ruling letter concerning the tariff classification of *Chenopodium quinoa* seeds. 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 and Decisions*, Vol. 47, No. 28, on July 3, 2013.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 4, 2014.

**FOR FURTHER INFORMATION CONTACT:** Laurance W. Frierson, Tariff Classification and Marking Branch: (202) 325-0371.

### **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) (“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 U.S. Customs and Border Protection (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 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 section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke Headquarters Rulings Letter (HQ) 087765, dated November 27, 1990, was published on July 3, 2013, in Volume 47, Number 28, of the *Customs Bulletin and Decisions*. No comments were received in response to this notice.

As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to those identified. Any party who has received an interpretive ruling or decision (i.e., a

ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

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

In HQ 087765, CBP determined that *Chenopodium quinoa* seeds were classified in heading 1212, Harmonized Tariff Schedule of the United States (HTSUS). Specifically, CBP classified the seeds in subheading 1212.99.00, HTSUS (1990). Since the issuance of HQ 087765, CBP has reviewed the classification of *Chenopodium quinoa* seeds and has determined that the cited ruling is in error. It is now CBP's position that *Chenopodium quinoa* seeds are properly classified in subheading 1008.50.00, HTSUS, which provides for "Buckwheat, millet and canary seeds; other cereals (including wild rice): Quinoa (*Chenopodium quinoa*)."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking HQ 087765, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in Ruling Letter HQ H223701, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Ruling Letter HQ H223701 will become effective 60 days after publication in the *Customs Bulletin and Decisions*.

Dated: June 4, 2014

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

Attachment

HQ H223701

May 6, 2014

CLA-2 OT:RR:CTF:TCM H223701 LWF

CATEGORY: Classification

TARIFF NO.: 1008.50.00

TODD R. CRAUN, PRESIDENT  
SOUTH AMERICAN ORGANICS  
1416 WOODFORD ROAD  
SUITE 100  
WAYNE, PA 19087

**RE:** Revocation of Headquarters Ruling Letter (HQ) 087765, dated November 27, 1990; Classification of *Chenopodium quinoa* seeds

DEAR MR. CRAUN:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered Headquarters Ruling Letter (HQ) 087765, dated November 17, 1990, concerning the tariff classification of *Chenopodium quinoa* seeds (“quinoa”). In HQ 087765, CBP classified quinoa in subheading 1212.99, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Locust beans, seaweeds and other algae, sugar beet and sugar cane, fresh, chilled, frozen or dried, whether or not ground; fruit stones and kernels and other vegetable products (including unroasted chicory roots of the variety *Cichorium intybus sativum*) of a kind used primarily for human consumption, not elsewhere specified or included: Other.” CBP has reviewed HQ 087765 and finds the ruling to be incorrect. Accordingly, for the reasons set forth below, we are revoking HQ 087765.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke Ruling Letter HQ 087765, dated November 27, 1990, was published on July 3, 2013, in Volume 47, Number 28, of the *Customs Bulletin and Decisions*. No comments were received in response to the Notice.

#### **FACTS:**

The merchandise at issue in HQ 087765 consists of *Chenopodium quinoa* seeds that are washed, dried and packaged in Bolivia for human consumption. Quinoa (*Chenopodium quinoa*) is defined by the Food and Agriculture Organization of the United Nations (FAO) as, a “minor cereal cultivated primarily in Andean countries.”<sup>1</sup> As part of the washing process, the natural outer coating of the seed, commonly referred to as the “saponin,” is physically removed from the quinoa. As imported, the seeds are incapable of germination and cannot be used for sowing. Instead, they are imported into the United State for use as a rice-like product.

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<sup>1</sup> FAO, Definition and Classification of Commodities (Draft) Cereals and Cereal Products, <http://www.fao.org/waicent/faoinfo/economic/faodef/fdef01e.htm#1.12> (last visited Sept. 24, 2012).

**ISSUE:**

Whether the quinoa is classified under heading 1008, HTSUS, as a cereal, or under heading 1212, HTSUS, as a vegetable product of a kind used primarily for human consumption, not elsewhere specified or included?

**LAW AND ANALYSIS:**

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section of chapter notes and, unless other required, according to the remaining GRIs taken in their appropriate order.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HS and are thus useful in ascertaining the proper classification of merchandise. It is CBP's practice to follow, whenever possible, the terms of the ENS when interpreting the HTSUS. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are the following:

1008            Buckwheat, millet and canary seeds; other cereals (including wild rice):

1008.50.00            Quinoa (*Chenopodium quinoa*).

\*       \*       \*       \*       \*

1212            Locust beans, seaweeds and other algae, sugar beet and sugar cane, fresh, chilled, frozen or dried, whether or not ground; fruit stones and kernels and other vegetable products (including unroasted chicory roots of the variety *Cichorium intybus sativum*) of a kind used primarily for human consumption, not elsewhere specified or included:

Other:

1212.99                    Other:

1212.99.91                    Other.

\*       \*       \*       \*       \*

EN 10.08 states, in relevant part:

**(B) OTHER CEREALS**

This group includes certain hybrid grains, e.g., triticale, a cross between wheat and rye.

\* \* \* \* \*

Subheading 1008.50.00, HTSUS, provides for “Buckwheat, millet and canary seeds; other cereals (including wild rice): Quinoa (*Chenopodium quinoa*).” However, GRI 1 states, in relevant part, that “classification shall be determined according to the terms **of the headings**” (emphasis added). Therefore, before the instant merchandise can be classified in subheading 1008.50.00, HTSUS, it must first meet the terms of heading 1008, HTSUS.

The term “other cereals” as used in heading 1008, HTSUS, is not defined in the nomenclature or the ENs. When, as in this instance, a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001) (“To ascertain the common meaning of a term, a court may consult ‘dictionaries, scientific authorities, and other reliable information sources’ and ‘lexicographic and other materials.’” (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271 (Fed. Cir. 1982))).

The Oxford English Dictionary defines “cereal,” in relevant part, as “plants of the family *Graminaceae* or grasses which are cultivated for their seed as human food; commonly comprised under the name *corn* or *grain*. (Sometimes extended to cultivated leguminous plants).”<sup>2</sup> We note however, that the common meaning of “cereal” not only includes “true cereals,” such as crops of the *Poaceae* or *Graminaceae* family, but also describes certain “pseudocereals” that are harvested for their dry grain.<sup>3</sup> The FAO considers the term “pseudocereal” to include crops of quinoa, buckwheat, and amaranth, and similar definitions have been adopted in wide practice by the U.S. Department of Agriculture, U.S. Food and Drug Administration, AACC International, and the International Association for Cereal Science and Technology.<sup>4</sup> Consequently, we conclude that the common meaning of the term “other cereals” includes both true cereals and pseudocereals.

<sup>2</sup> Oxford English Dictionary, <http://www.oed.com> (last visited June 20, 2012).

<sup>3</sup> FAO, Statistics Division, Definition and Classification of Commodities (Draft): Cereals and Cereal Products, <http://www.fao.org/waicent/faoinfo/economic/faodef/fdef01e.htm#1.101> (last visited Sept. 26, 2012).

<sup>4</sup> *Id.*; USDA, National Nutrient Database for Standard Reference, Release 24: Cereal Grains and Pasta, <http://ndb.nal.usda.gov/ndb/foods/list?format=&count=&max=25&sort=&fg=Cereal+Grains+and+Pasta&man=&lfacet=&qlookup=&offset=25> (last visited Sept. 26, 2012); FDA, Draft Guidance: Whole Grain Label Statements, <http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/ucm059088.htm> (last visited Sept. 26, 2012); AACC International, 87th AACC Annual Meeting, Abstract: Technological Behavior of the Pseudocereals Buckwheat, Amaranth, and Quinoa in Wire Cut Cookiemaking, <http://www.aaccnet.org/meetings/Documents/Pre2009Abstracts/2002Abstracts/a02ma430.html> (last visited Sept. 26, 2012); and International Association for Cereal Science and Technology, Whole Grain Definition, [http://www.icc.or.at/webfm\\_send/116](http://www.icc.or.at/webfm_send/116) (last visited Sept. 26, 2012).

With respect to the instant merchandise, the FAO describes quinoa as “a minor cereal” and classifies the food with other “cereals and cereal products.”<sup>5</sup> Similarly, the U.S. Department of Agriculture (USDA) identifies dry quinoa as a “cereal grain,” and the U.S. Food and Drug Administration (FDA) has issued draft guidance for industry and FDA staff concerning whole grain label statements in which it lists quinoa as an example of a “cereal grain.”<sup>6</sup> Based on the foregoing, we find that quinoa is described by the term “other cereals,” as used in heading 1008, HTSUS. Consequently, inasmuch as the instant merchandise is identified by the text of the heading 1008, HTSUS, we find that the quinoa is properly classified in subheading 1008.50.00, HTSUS, which provides for “Buckwheat, millet and canary seeds; other cereals (including wild rice): Quinoa (*Chenopodium quinoa*).”

**HOLDING:**

By application of GRI 1, *Chenopodium quinoa* seeds that are washed, dried and packaged for human consumption under heading 1008, HTSUS, specifically in subheading 1008.50.00, HTSUS, which provides for “Buckwheat, millet and canary seeds; other cereals (including wild rice): Quinoa (*Chenopodium quinoa*).” The column one, general rate of duty is 1.1 percent *ad valorem*.

Duty rates are provided for convenience only 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 <http://www.usitc.gov>.

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

**EFFECT ON OTHER RULINGS:**

HQ 087765, dated November 17, 1990, is hereby REVOKED.

*Sincerely,*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

<sup>5</sup> FAO, *supra* note 1.

<sup>6</sup> USDA, *supra* note 4; FDA, *supra* note 4; USDA, Food Buying Guide for Child Nutrition Programs (2001), [http://www.fns.usda.gov/tn/resources/FBG\\_Section\\_3-GrainsBreads.pdf](http://www.fns.usda.gov/tn/resources/FBG_Section_3-GrainsBreads.pdf).

**PROPOSED MODIFICATION OF RULING LETTERS AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF THE “MI JAM™  
DRUMMER” MODEL 36909**

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

**ACTION:** Notice of proposed modification of ruling letters and proposed revocation of treatment relating to the tariff classification of the “mi Jam™ Drummer,” model 36909.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is proposing to modify three ruling letters relating to the tariff classification of the “mi Jam™ Drummer,” model 36909, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is also proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before July 7, 2014.

**ADDRESSES:** Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St. NE, Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 90 K St. NE, Washington, D.C. 20229 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

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

**SUPPLEMENTARY INFORMATION:**

**Background**

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

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP intends to modify three ruling letters pertaining to the tariff classification of the "mi Jam<sup>TM</sup> Drummer," model 36909. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) R04026, dated June 7, 2006 (Attachment A), NY M83685, dated June 12, 2006 (Attachment B), and NY M85350, dated July 27, 2006 (Attachment C), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY R04026, NY M83685, and NY M85350, CBP determined that the "mi Jam<sup>TM</sup> Drummer," model 36909, at issue was classified under heading 8522, HTSUS, specifically under subheading 8522.90.75, HTSUS, which provides for "Parts and accessories suitable for use

solely or principally with the apparatus of headings 8519 to 8521: Other: Other”. It is now CBP’s position that the subject merchandise is properly classified under heading 9503, HTSUS, specifically under 9503.00.00, HTSUS, which provides in for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof” by application of GRI 1.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY R04026, NY M83685, and NY M85350 and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the subject “mi Jam<sup>TM</sup> Drummer,” model 36909, according to the analysis contained in proposed Headquarters Ruling Letters (HQ) H034739 (Attachment D). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: April 29, 2014

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

Attachments

## [ATTACHMENT A]

NY R04026

June 7, 2006

CLA-2-85:RR:NC:MM:109 R04026

CATEGORY: Classification

TARIFF NO.: 8518.21.0000 8518.30.2000  
8519.99.0060 8522.90.7580

MS. SARAH CAREY  
CUSTOMS COMPLIANCE SPECIALIST  
*BEST BUY CORPORATE CAMPUS*  
*7601 PENN AVENUE SOUTH*  
*RICHFIELD, MN 55423*

RE: The tariff classification of a mi Jam<sup>TM</sup> drummer, a mi Jam<sup>TM</sup> stage mic, a mi Jam<sup>TM</sup> mixer, a mi Jam<sup>TM</sup> guitar, and a mi flower loudspeaker from China

DEAR MS. CAREY:

In your letter dated May 25, 2006, you requested a tariff classification ruling.

The merchandise subject to this ruling is of a mi Jam<sup>TM</sup> drummer (Model 36909), a mi Jam<sup>TM</sup> stage mic (Model 36910), a mi Jam<sup>TM</sup> mixer (Model 36911), a mi Jam<sup>TM</sup> guitar (Model 36912), and a mi flower loudspeaker (Model 36913).

The mi Jam<sup>TM</sup> drummer (Model 36909) consists of two plastic drumstick shaped items that produce up to six different drum sounds when played. The drumsticks are connected via a cord to a small controller, which is used to modify the drum pattern, tempo, and volume of the sounds produced when using the drumsticks. The controller includes an audio out jack for connection with earphones or any other amplifying device, as well as an additional cord with a male connector end for connection with an iPod or any other music-reproducing device. This item draws energy from two AAA batteries, which are not included at the time of importation or at the time of retail sale.

The mi Jam<sup>TM</sup> stage mic (Model 36910) consists of a headset with earphones and microphone. The headset is connected to a small controller used for volume control and includes an audio out jack for connection with an additional set of earphones or other amplifying device. An additional cord with a male connector end connects the controller with an iPod or any other music-reproducing device. The headset can be used with three other mi Jam<sup>TM</sup> items, i.e. drumsticks, mixer, and guitar. This product draws energy from two AAA batteries, which are not included at the time of importation or at the time of retail sale.

The mi Jam<sup>TM</sup> mixer (Model 36911) is a device that allows a person to mix different sounds and beats on top of their favorite music. The device includes an audio out jack for connection with earphones or any other amplifying device, as well as an additional cord with a male connector end for connection with an iPod or any other music-reproducing device. This product draws energy from four AA batteries, which are not included at the time of importation or at the time of retail sale. Although this item is called a mixer, it is actually a player, i.e. karaoke machine.

The mi Jam<sup>TM</sup> guitar (Model 36912) is a plastic guitar shaped item that produces four different styles of soundings using buttons located on the next

of the guitar. A whammy bar is also included to create a vibrato sound. Three buttons on the body of the guitar control the pitch and tempo of the sound produced. The guitar includes an audio out jack for connection with earphones or any other amplifying device, as well as an additional cord with a male connector end for connection with an iPod or any other music-reproducing device. This product draws energy from four AA batteries, which are not included at the time of importation or at the time of retail sale.

The mi flower loudspeaker (Model 36913) is a plastic item in the shape of a potted flower plant with a built-in loudspeaker. It produces sound when plugged into an iPod or any other music-reproducing device. The flower produces LED light patterns on its petals, sound effects, and animated images on an LCD display based on the beat of the music being played through the loudspeaker. It also includes a clock function. This product draws energy from four AAA and three AG13 batteries, which are not included at the time of importation or at the time of retail sale. The loudspeaker imparts the essential character of this item.

The applicable subheading for the mi Jam™ drummer (Model 36909) will be 8522.90.7580, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 to 8521: Other: Other: Other: Other.” The rate of duty will be 2 percent ad valorem.

The applicable subheading for the mi Jam™ stage mic (Model 36910) will be 8518.30.2000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers: Other.” The rate of duty will be 4.9 percent ad valorem.

The applicable subheading for the mi Jam™ mixer (Model 36911) will be 8519.99.0060, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Turntables, record players, cassette players and other sound reproducing apparatus, not incorporating a sound recording device: Other sound reproducing apparatus; Other ... Other. The rate of duty will be free.

The applicable subheading for the mi Jam™ guitar (Model 36912) will be 8522.90.7580, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 to 8521: Other: Other: Other: Other.” The rate of duty will be 2 percent ad valorem.

The applicable subheading for the mi flower loudspeaker (Model 36913) will be 8518.21.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Loudspeakers, whether or not mounted in their enclosures: Other: Other.” The rate of duty will be 4.9 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is

imported. If you have any questions regarding the ruling, contact National Import Specialist Linda M. Hackett at 646-733-3015.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

NY M83685

June 12, 2006

CLA-2-85:RR:NC:MM:109 M83685

CATEGORY: Classification

TARIFF NO.: 4202.99.9000 8518.21.0000  
8518.30.2000 8519.99.0060 8522.90.7580

MR. JEFF TOOLEY

ALBA WHEELS UP INTERNATIONAL, INC.

11222 LA CIENEGA BLVD, SUITE 678

INGLEWOOD, CA 90324

RE: The tariff classification of a mi Jam™ drummer, a mi Jam™ stage mic, a mi Jam™ mixer, a mi Jam™ guitar, a mi flower loudspeaker, and a mi Lites flashing iPod® nano cover (Model 36917) from China

DEAR Ms. CAREY:

In your letter dated May 25, 2006, you requested a tariff classification ruling.

The merchandise subject to this ruling is of a mi Jam™ drummer (Model 36909), a mi Jam™ stage mic (Model 36910), a mi Jam™ mixer (Model 36911), a mi Jam™ guitar (Model 36912), a mi flower loudspeaker (Model 36913), and a mi Lites flashing iPod® nano cover (Model 36917). Samples of each of these items were furnished for classification purposes and are being returned as per your request.

The mi Jam™ drummer (Model 36909) consists of two plastic drumstick shaped items that produce up to six different drum sounds, i.e. snare drum, tom tom, floor tom, hi-hat cymbal, cymbal and bass drum, and six different types of drum patterns as background beats. It is compatible with any music device with an audio out jack and is connectible to Mac/PC for recording and podcasting. It features volume and tempo controls and an audio out jack to connect to earphones or an amplifier. You suggested Harmonized Tariff Schedule (HTS) subheading 9503.50.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Toy musical instruments and apparatus and parts and accessories thereof.” However, this item is not considered a toy designed to provide frivolous amusement for a child, but rather an accessory suitable for use solely or principally with the apparatus of headings 8519 to 8521, which is classifiable under subheading 8522.90.7580.

The mi Jam™ stage mic (Model 36910) consists of a headset with earphones and microphone. The headset can be used with three other mi Jam™ items, i.e. drumsticks, mixer, and guitar. It is compatible with any music device with audio out jack and is connectible to Mac/PC for recording and podcasting. It features a volume control and an audio out jack to connect to earphones or an amplifier. This product draws energy from two AAA batteries, which are not included at the time of importation. You suggested Harmonized Tariff Schedule (HTS) subheading 9503.50.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Toy musical instruments and apparatus and parts and accessories thereof.” However, this item is not considered a toy designed to provide frivolous amusement

fora child, but rather a fully functioning microphone and loudspeaker set, which is classifiable under subheading 8518.30.2000.

The mi Jam™ mixer (Model 36911) is a device that allows a person to mix different sounds and beats on top of their favorite music. It is compatible with any music device with audio out jack and is connectible to Mac/PCC for recording and podcasting. It features a tempo and volume control, an audio out jack for connection with earphones or an amplifier, and a light up mi Jam logo. This product draws energy from four AA batteries, which are not included at the time of importation. You suggested Harmonized Tariff Schedule (HTS) subheading 9503.50.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Toy musical instruments and apparatus and parts and accessories thereof.” However, this item is not considered a toy designed to provide frivolous amusement for a child, but rather a fully functioning player, i.e. karaoke machine, which is classifiable under subheading 8519.99.0060.

The mi Jam™ guitar (Model 36912) is a plastic guitar shaped item that produces four different styles of rhythms, i.e. heavy metal, rock, blues, base, using the buttons located on the neck of the guitar. Three buttons on the body of the guitar control the pitch and tempo of the sound produced. A whammy bar is also included to create a vibrato sound. It is compatible with any music device with audio out jack and connectible to earphones, an amplifier, and a Mac/PC for recording and podcasting. This product draws energy from four AA batteries, which are not included at the time of importation. You suggested Harmonized Tariff Schedule (HTS) subheading 9503.50.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Toy musical instruments and apparatus and parts and accessories thereof.” However, this item is not considered a toy designed to provide frivolous amusement for a child, but rather an accessory suitable for use solely or principally with the apparatus of headings 8519 to 8521, which is classifiable under subheading 8522.90.7580.

The mi flower loudspeaker (Model 36913) is a plastic item in the shape of a potted flower plant with a built-in loudspeaker. It plugs into a music player enabling a person to listen to the music through the loudspeaker. The flower produces LED light patterns on its petals, sound effects, and animated images on an LCD display based on the beat of the music being played. It also has moving leaves and includes a clock function. This product draws energy from four AAA and three AG13 batteries, which are not included at the time of importation. You suggested Harmonized Tariff Schedule (HTS) subheading 9503.49.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Toys representing animals or non-human creatures (for example, robots and monsters) and parts and accessories thereof: Other.” However, this item is not considered a toy designed to provide frivolous amusement for a child, but rather an item whose essential character is imparted by the loudspeaker, which is classifiable under subheading 8518.21.0000.

The mi Lites flashing iPod® nano cover (Model 36917) is a hard plastic protective cover for an iPod music player. An opening at the bottom of the protective cover enables an iPod to be placed inside of it. The nano case is designed and used to provide storage and protection of an iPod. The iPod

cover has four individual flash programs that produce a strobe-like effect lighting up the front of the cover in a on and off fashion when this feature is activated. Activation of the strobe-like effect occurs when the button on either side of the cover is pressed. This product draws energy from four LR44 AG13 button cell batteries. An examination of the item, which is packaged, ready for retail sale, in a blister pack revealed that the batteries were contained within the case. You suggested classification in subheading 8522.90.7580, HTSUS, which provides for "Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 to 8521: Other: Other: Other: Other." However, this item is not considered a part or an accessory for an apparatus of headings 8519 to 8521, but rather a protective case. Heading 4202, HTSUS, is the most specific provision for containers and cases designed to contain an iPod. Heading 8522, HTSUS, is less specific.

The applicable subheading for the mi Jam™ drummer (Model 36909) will be 8522.90.7580, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 to 8521: Other: Other: Other: Other." The rate of duty will be 2 percent ad valorem.

The applicable subheading for the mi Jam™ stage mic (Model 36910) will be 8518.30.2000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers: Other." The rate of duty will be 4.9 percent ad valorem.

The applicable subheading for the mi Jam™ mixer (Model 36911) will be 8519.99.0060, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Turntables, record players, cassette players and other sound reproducing apparatus, not incorporating a sound recording device: Other sound reproducing apparatus; Other ... Other. The rate of duty will be free.

The applicable subheading for the mi Jam™ guitar (Model 36912) will be 8522.90.7580, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 to 8521: Other: Other: Other: Other." The rate of duty will be 2 percent ad valorem.

The applicable subheading for the mi flower loudspeaker (Model 36913) will be 8518.21.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Loudspeakers, whether or not mounted in their enclosures: Other: Other." The rate of duty will be 4.9 percent ad valorem.

The applicable subheading for the mi Lites flashing iPod® nano cover (Model 36917) will be 4202.99.9000, HTSUS, which provides, in part, "For other containers and cases, other, other, other." The rate of duty will be 20 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is

imported. If you have any questions regarding the ruling, contact National Import Specialist Linda M. Hackett at 646-733-3015.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT C]

NY M85350

July 27, 2006

CLA-2-85:RR:NC:MM:109 M85350

CATEGORY: Classification

TARIFF NO.: 4202.99.9000 8518.21.0000

8518.30.2000 8519.99.0060 8522.90.7580

MR. JEFF TOOLEY

ALBA WHEELS UP INTERNATIONAL, INC.

11222 LA CIENEGA BLVD, SUITE 678

INGLEWOOD, CA 90324

This ruling corrects the salutation from within New York Ruling NY M83685, all other text remains the same and is repeated below.

RE: The tariff classification of a mi Jam™ drummer, a mi Jam™ stage mic, a mi Jam™ mixer, a mi Jam™ guitar, a mi flower loudspeaker, and a mi Lites flashing iPod® nano cover (Model 36917) from China

DEAR MR. TOOLEY:

In your letter dated May 25, 2006, you requested a tariff classification ruling.

The merchandise subject to this ruling is of a mi Jam™ drummer (Model 36909), a mi Jam™ stage mic (Model 36910), a mi Jam™ mixer (Model 36911), a mi Jam™ guitar (Model 36912), a mi flower loudspeaker (Model 36913), and a mi Lites flashing iPod® nano cover (Model 36917). Samples of each of these items were furnished for classification purposes and are being returned as per your request.

The mi Jam™ drummer (Model 36909) consists of two plastic drumstick shaped items that produce up to six different drum sounds, i.e. snare drum, tom tom, floor tom, hi-hat cymbal, cymbal and bass drum, and six different types of drum patterns as background beats. It is compatible with any music device with an audio out jack and is connectible to Mac/PC for recording and podcasting. It features volume and tempo controls and an audio out jack to connect to earphones or an amplifier. You suggested Harmonized Tariff Schedule (HTS) subheading 9503.50.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Toy musical instruments and apparatus and parts and accessories thereof.” However, this item is not considered a toy designed to provide frivolous amusement for a child, but rather an accessory suitable for use solely or principally with the apparatus of headings 8519 to 8521, which is classifiable under subheading 8522.90.7580.

The mi Jam™ stage mic (Model 36910) consists of a headset with earphones and microphone. The headset can be used with three other mi Jam™ items, i.e. drumsticks, mixer, and guitar. It is compatible with any music device with audio out jack and is connectible to Mac/PC for recording and podcasting. It features a volume control and an audio out jack to connect to earphones or an amplifier. This product draws energy from two AAA batteries, which are not included at the time of importation. You suggested Harmonized Tariff Schedule (HTS) subheading 9503.50.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Toy musical instruments and apparatus and parts and accessories thereof.” However,

this item is not considered a toy designed to provide frivolous amusement for a child, but rather a fully functioning microphone and loudspeaker set, which is classifiable under subheading 8518.30.2000.

The mi Jam™ mixer (Model 36911) is a device that allows a person to mix different sounds and beats on top of their favorite music. It is compatible with any music device with audio out jack and is connectible to Mac/PCC for recording and podcasting. It features a tempo and volume control, an audio out jack for connection with earphones or an amplifier, and a light up mi Jam logo. This product draws energy from four AA batteries, which are not included at the time of importation. You suggested Harmonized Tariff Schedule (HTS) subheading 9503.50.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Toy musical instruments and apparatus and parts and accessories thereof.” However, this item is not considered a toy designed to provide frivolous amusement for a child, but rather a fully functioning player, i.e. karaoke machine, which is classifiable under subheading 8519.99.0060.

The mi Jam™ guitar (Model 36912) is a plastic guitar shaped item that produces four different styles of rhythms, i.e. heavy metal, rock, blues, base, using the buttons located on the neck of the guitar. Three buttons on the body of the guitar control the pitch and tempo of the sound produced. A whammy bar is also included to create a vibrato sound. It is compatible with any music device with audio out jack and connectible to earphones, an amplifier, and a Mac/PC for recording and podcasting. This product draws energy from four AA batteries, which are not included at the time of importation. You suggested Harmonized Tariff Schedule (HTS) subheading 9503.50.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Toy musical instruments and apparatus and parts and accessories thereof.” However, this item is not considered a toy designed to provide frivolous amusement for a child, but rather an accessory suitable for use solely or principally with the apparatus of headings 8519 to 8521, which is classifiable under subheading 8522.90.7580.

The mi flower loudspeaker (Model 36913) is a plastic item in the shape of a potted flower plant with a built-in loudspeaker. It plugs into a music player enabling a person to listen to the music through the loudspeaker. The flower produces LED light patterns on its petals, sound effects, and animated images on an LCD display based on the beat of the music being played. It also has moving leaves and includes a clock function. This product draws energy from four AAA and three AG13 batteries, which are not included at the time of importation. You suggested Harmonized Tariff Schedule (HTS) subheading 9503.49.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Toys representing animals or non-human creatures (for example, robots and monsters) and parts and accessories thereof: Other.” However, this item is not considered a toy designed to provide frivolous amusement for a child, but rather an item whose essential character is imparted by the loudspeaker, which is classifiable under subheading 8518.21.0000.

The mi Lites flashing iPod® nano cover (Model 36917) is a hard plastic protective cover for an iPod music player. An opening at the bottom of the protective cover enables an iPod to be placed inside of it. The nano case is designed and used to provide storage and protection of an iPod. The iPod

cover has four individual flash programs that produce a strobe-like effect lighting up the front of the cover in a on and off fashion when this feature is activated. Activation of the strobe-like effect occurs when the button on either side of the cover is pressed. This product draws energy from four LR44 AG13 button cell batteries. An examination of the item, which is packaged, ready for retail sale, in a blister pack revealed that the batteries were contained within the case. You suggested classification in subheading 8522.90.7580, HTSUS, which provides for “Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 to 8521: Other: Other: Other: Other.” However, this item is not considered a part or an accessory for an apparatus of headings 8519 to 8521, but rather a protective case. Heading 4202, HTSUS, is the most specific provision for containers and cases designed to contain an iPod. Heading 8522, HTSUS, is less specific.

The applicable subheading for the mi Jam™ drummer (Model 36909) will be 8522.90.7580, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 to 8521: Other: Other: Other: Other.” The rate of duty will be 2 percent ad valorem.

The applicable subheading for the mi Jam™ stage mic (Model 36910) will be 8518.30.2000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers: Other.” The rate of duty will be 4.9 percent ad valorem.

The applicable subheading for the mi Jam™ mixer (Model 36911) will be 8519.99.0060, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Turntables, record players, cassette players and other sound reproducing apparatus, not incorporating a sound recording device: Other sound reproducing apparatus; Other ... Other. The rate of duty will be free.

The applicable subheading for the mi Jam™ guitar (Model 36912) will be 8522.90.7580, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 to 8521: Other: Other: Other: Other.” The rate of duty will be 2 percent ad valorem.

The applicable subheading for the mi flower loudspeaker (Model 36913) will be 8518.21.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Loudspeakers, whether or not mounted in their enclosures: Other: Other.” The rate of duty will be 4.9 percent ad valorem.

The applicable subheading for the mi Lites flashing iPod® nano cover (Model 36917) will be 4202.99.9000, HTSUS, which provides, in part, “For other containers and cases, other, other, other.” The rate of duty will be 20 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is

imported. If you have any questions regarding the ruling, contact National Import Specialist Linda M. Hackett at 646-733-3015.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT D]

HQ H034739  
CLA-2 OT:RR:CTF:TCM H034739 AMM  
CATEGORY: Classification  
TARIFF NO.:

MR. JEFF TOOLEY  
ALBA WHEELS UP INTERNATIONAL, INC.  
1122 LA CIENEGA BLVD., SUITE 678  
INGLEWOOD, CA 90324  
MS. SARAH CAREY  
CUSTOMS COMPLIANCE SPECIALIST  
BEST BUY CORPORATE CAMPUS  
7601 PENN AVENUE  
SOUTH RICHFIELD, MN 55423

RE: Modification of New York Ruling Letters R04026, M83685, and M85350;  
Classification of the Model 36909 “mi Jam™ drummer.”

DEAR MR. TOOLEY AND MS. CAREY,

This is in reference to New York Ruling Letter (NY) R04026, dated June 7, 2006, NY M83685, dated June 12, 2006, and NY M85350, dated July 27, 2006, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of the Model 36909 “mi Jam™ drummer.” In those rulings, Customs and Border Protection (CBP) classified the article under heading 8522, HTSUS, which provides for “Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 to 8521”. We have reviewed these three rulings and found them to be incorrect. For the reasons set forth below, we intend to modify these rulings.

**FACTS:**

In each of the three rulings at issue, NY M85350, NY M83685, and NY R04026, CBP considered the classification of the Model 36909 “mi Jam™ drummer.” CBP described the merchandise as follows:

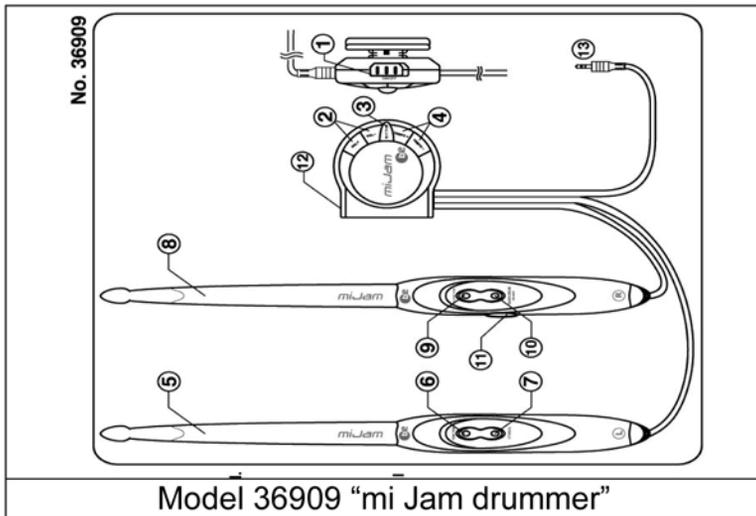
The mi Jam™ drummer (Model 36909) consists of two plastic drumstick shaped items that produce up to six different drum sounds when played. The drumsticks are connected via a cord to a small controller, which is used to modify the drum pattern, tempo, and volume of the sounds produced when using the drumsticks. The controller includes an audio out jack for connection with earphones or any other amplifying device, as well as an additional cord with a male connector end for connection with an iPod or any other music-reproducing device. This item draws energy from two AAA batteries, which are not included at the time of importation or at the time of retail sale.

See NY R04026.

A picture of the article, taken from the instruction manual available on the manufacturer’s website,<sup>1</sup> is included below:

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<sup>1</sup> See <[http://www.b2stuf.com/main/image/manual/036909-V11\\_DrummerIM.pdf](http://www.b2stuf.com/main/image/manual/036909-V11_DrummerIM.pdf)>.

**ISSUE:**

What is the proper classification under the HTSUS for the Model 36909 "mi Jam™ drummer?"

**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 GRI may then be applied.

The 2014 HTSUS heading under consideration are:

- |            |   |
|------------|---|
| 8519       | Sound recording or reproducing apparatus:   |
|            | Other apparatus:  |
| 8519.81    | Using magnetic, optical or semiconductor media:   |
|            | Sound reproducing only:   |
| 8519.81.30 | Other:  |
| -----      |   |
| 8522       | Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 to 8521: |
| 8522.90    | Other:  |

## Other:

8522.90.75

Other

-----  
 9207 Musical instruments, the sound of which is produced, or must be amplified, electrically (for example, organs, guitars, accordions):

9207.90.00 Other  
 -----

9503.00.00 Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof

Additional U.S. Rule of Interpretation 1, HTSUS, states, in pertinent part: In the absence of special language or context which otherwise requires—

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

\* \* \*

Note 1 to Section XVI (which covers Chapter 85), HTSUS, states, in pertinent part: "This section does not cover: ... (p) Articles of Chapter 95; ...".

Note 1 to Chapter 92, HTSUS, states, in pertinent part: "This chapter does not cover: ... (c) Toy instruments or apparatus (heading 9503); ...".

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The General EN to Chapter 92 states, in pertinent part:

[T]his Chapter also excludes:

\* \* \*

(b) Musical instruments which can be clearly recognised as toys because of the character of the material used, their rougher finish, the lack of musical qualities or by any other characteristics (Chapter 95). Examples include certain mouth organs, violins, accordions, trumpets, drums, musical boxes.

\* \* \*

The EN to Heading 95.03 states, in pertinent part:  
 This heading covers:

## (D) Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults).[.]

\*                    \*                    \*

This group includes: All toys not included in (A) to (C). Many of the toys are mechanically or electrically operated.

\*                    \*                    \*

These include:

\*                    \*                    \*

(xii) Toy musical instruments (pianos, trumpets, drums, gramophones, mouth organs, accordions, xylophones, musical boxes, etc.).

\*                    \*                    \*

In the three rulings at issue, CBP classified the “mi Jam™ drummer” under heading 8522, HTSUS, which provides for “Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 to 8521”.

Note 1(p) to Section XVI, HTSUS, excludes articles of Chapter 95, HTSUS, from classification in Chapter 85, HTSUS. Also, Note 2(c) to Chapter 92, HTSUS, excludes goods of heading 9503, HTSUS, from classification in Chapter 92, HTSUS. Therefore, it is appropriate to first consider whether the “mi Jam™ drummer” is properly classified under heading 9503, HTSUS.

In *Minnetonka Brands v. United States*, 110 F. Supp. 2d 1020 (Ct. Int’l. Trade 2000), the Court of International Trade (CIT) held that “an object is a toy only if it is designed and used for amusement, diversion or play, rather than practicality.” *Id.* at 1026. The court found its interpretation to be consistent with the holding in a prior and often cited case, *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28 (1977), which addressed the definition and treatment of the term “toy.” In *Ideal Toy*, the Customs Court held that “when amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose is incidental to the amusement.” *Id.* at 33. CBP has repeatedly adhered to this standard as set forth in *Ideal Toy*. See Headquarters Ruling Letter (HQ) HQ 965734, dated September 5, 2002; HQ 088494, dated April 19, 1991; and HQ 088694, dated July 10, 1991.

The *Minnetonka* court concluded that heading 9503, HTSUS, is a “principal use” provision within the meaning of Additional U.S. Rule of Interpretation 1(a), HTSUS. *Id.* at 1026. Therefore, classification under the heading is controlled by the principal use of goods of that class or kind to which the imported goods belong in the United States at or immediately prior to the date of the importation. In determining whether the principal use of a product is for amusement, and thereby classified as a toy, CBP considers a variety of factors including general physical characteristics, the expectation of the ultimate purchaser, channels of trade, and the environment of sale

(accompanying accessories, manner of advertisement and display). See HQ 966721, dated April 14, 2004. See also *Minnetonka*, 110 F. Supp. 2d at 1027, citing *United States v. Carborundum Co.*, 63 C.C.P.A. 98, 536 F.2d 373 (1976).

The “mi Jam<sup>TM</sup> drummer” has two functional modes, called “standalone” and “interactive.”<sup>2</sup> In standalone mode, the user can simulate drum sounds, such as a snare drum, tom toms, bass drum, hi-hat, and cymbal, by swinging the drumsticks and pressing the assorted buttons on the handles. The user has the option of playing along with pre-programmed background beats. In interactive mode, the user plugs the article into an MP3 device, such as an iPod®. The music contained on the MP3 device replaces the pre-programmed background beats, and the user is then able to play along with their favorite music. In either standalone or interactive mode, the user can attach the article to a personal computer and record the sounds they have made.

According to the manufacturer’s website, the article is available in the United States at stores such as Toys “R” Us, Target, Best Buy, KB Toys, Linens ‘N Things, and Fingerhut.<sup>3</sup> These stores sell toys, gifts, and other items. The article’s instruction manual says it is for “ages 8 and up.”<sup>4</sup>

The “mi Jam<sup>TM</sup> drummer” consists of two plastic drumsticks attached by wire to a controller. The controller is designed to attach to an external speaker, earphones, MP3 device, and personal computer. The article is not designed to be used in the same manner as traditional drumsticks, which create sound when striking another surface. Instead, electronic sounds are created in response to the motion of the drumsticks. The article is not a unit that develops one’s musical skills, it is an electronic toy designed to provide amusement by allowing one to create their own music.

In NY M86122, dated August 29, 2006, CBP considered the “Blue Man Group Percussion Tubes.” This item was an electronic plastic interactive drum toy that consisted of 8 motion sensor percussion tubes, 5 different percussion instruments, 10 pre-programmed songs, drum sticks, and a built in speaker. The user could also connect the article to an MP3 player and play along with their favorite music. CBP classified this article a toy musical instrument under heading 9503, HTSUS.

In NY L85012, dated June 20, 2005, CBP considered the “Wireless Air Stix.” This item was a battery-powered toy musical hand-held light stick, with a built-in speaker, and buttons which simulate drum sounds when pressed. CBP classified this article as a toy musical instrument under heading 9503, HTSUS.

In HQ W967583, dated March 9, 2007, CBP reconsidered the classification of the DD-9 drum set. The DD-9 drum set was an electronic percussion drum with four touch sensitive drum pads and one built-in speaker. This item was marketed to children, and had the capability to produce special effect sounds for a monkey, horse, cat, dog, and others. The importer proposed that the DD-9 drum set was properly classified under heading 9503, HTSUS, as a toy musical instrument. However, CBP instead classified the article under heading 9207, HTSUS, as a musical instrument. CBP found that the DD-9 drum set had top sound quality, that the article was not flimsy, and contained some sophisticated electronic components. See HQ W967583.

<sup>2</sup> See <[http://www.b2stuf.com/main/product\\_detail\\_drumsticks.htm](http://www.b2stuf.com/main/product_detail_drumsticks.htm)>.

<sup>3</sup> See <<http://www.b2stuf.com/main/wheretobuy.htm?id=wheretobuy>>.

<sup>4</sup> See <[http://www.b2stuf.com/main/image/manual/036909-V11\\_DrummerIM.pdf](http://www.b2stuf.com/main/image/manual/036909-V11_DrummerIM.pdf)>.

The “mi Jam™ drummer” is more like the products considered in NY M86122 and NY L85012, and is unlike the DD-9 product considered in HQ W967583. It is a somewhat flimsy plastic article, which can be used to simulate the sounds that a real drum kit would make. According to an independent review of b2’s product line,<sup>5</sup> the “mi Jam™ drummer” is “awkward to hold” and “it is not completely flawless because it does not follow the direct commands of a real drum set. Also, the timing is off.” It is marketed to children ages 8 to 18, and sold in stores that traditionally sell toys and gifts. In terms of the *Ideal Toy* test, the utility purpose of the “mi Jam™ drummer” is incidental to its amusement value. Its principal use, within the meaning of Additional U.S. Rule of Interpretation 1(a), HTSUS, and *Minnetonka*, is use as a toy musical instrument. The article is properly classified under heading 9503, HTSUS, specifically under 9503.00.00, HTSUS, which provides in pertinent part for: “[O]ther toys; ...”. See also General EN(b) to Heading 92.07; EN(D)(xii) to Heading 95.03.

Furthermore, because the article is properly classified under heading 9503, HTSUS, Note 1(p) to Section XVI, HTSUS, operates to preclude classification under headings 8519 and 8522, HTSUS, and Note 1(c) to Chapter 92, HTSUS, operates to preclude classification under heading 9207, HTSUS.

#### **HOLDING:**

By application of GRI 1, the Model 36909 “mi Jam™ drummer” is classified under heading 9503, HTSUS, specifically under 9503.00.00, HTSUS, which provides in for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof.” The column one, general rate of duty is free.

Duty rates are provided for convenience only 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](http://www.usitc.gov).

#### **EFFECT ON OTHER RULINGS:**

NY R04026, dated June 7, 2006, NY M83685, dated June 12, 2006, and NY M85350, dated July 27, 2006, are hereby MODIFIED in accordance with the above analysis.

*Sincerely,*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

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<sup>5</sup> See “More Reviews: B2’s MiJam Product Line,” *Unsigned Music Magazine*, Issue 23, 2006, available at <[http://www.b2stuf.com/main/image/Unsigned Music Magazine 2006 Issue 23.pdf](http://www.b2stuf.com/main/image/Unsigned%20Music%20Magazine%202006%20Issue%2023.pdf)>.

**PROPOSED REVOCATION OF A RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE EXPORTATION OF IMPORTED DUTY-PAID YACHTS  
SAILED FROM THE UNITED STATES TO THE BAHAMAS  
FOR TRANSPORT BACK TO THE UNITED STATES ON  
FOREIGN CARGO VESSELS**

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

**ACTION:** Notice of proposed revocation of a ruling letter and revocation of treatment relating to the exportation of imported duty-paid yachts sailed from the United States to the Bahamas for transport back to the United States on foreign cargo vessels.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to revoke Headquarters Ruling Letter H175416, dated January 6, 2012, relating to the exportation of imported duty-paid yachts sailed from the United States to the Bahamas for transport back to the United States on foreign cargo vessels. CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed action.

**DATES:** Comments must be received on or before July 7, 2014.

**ADDRESSES:** Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, NE, 10<sup>th</sup> Floor, Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 90 K Street, NE, Washington, D.C. 20002 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:** Gail Kan, Entry Process and Duty Refunds Branch: (202) 325–0346.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

On December 8, 1993 Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L.

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(1)), this notice advises interested parties that CBP is proposing to revoke a ruling letter pertaining to the exportation of imported duty-paid yachts sailed from the United States to the Bahamas for transport back to the United States on foreign cargo vessels. Although in this notice CBP is specifically referring to Headquarters Ruling Letter H175416 (Attachment A), dated January 6, 2012, this notice covers any rulings on this exportation scenario that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the exportation scenario subject to this notice should advise CBP during this notice period.

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

In Headquarters Ruling Letter H175416, CBP determined that an exportation occurred when imported duty-paid yachts sailed from a

U.S. port of entry to the Bahamas, for the sole purpose of transporting the yachts to a different U.S. port of entry on foreign flagged cargo vessels. Pursuant to 19 U.S.C. § 1625(c)(1), CBP proposes to revoke Headquarters Ruling Letter H175416, and revoke or modify any other ruling not specifically identified, in order to reflect the proper determination that the sailing of imported duty-paid yachts from a U.S. port of entry to the Bahamas, for the sole purpose of transporting the yachts to a different U.S. port of entry on foreign flagged cargo vessels, does not constitute an exportation. *See* Attachment B, proposed Headquarters Ruling Letter H213415. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: April 29, 2014

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

Attachments

[ATTACHMENT A]

HQ H175416

JAN 6 2012

OT:RR:CTF:VS H175416 CK

CATEGORY: Special Programs

PORT DIRECTOR  
U.S. CUSTOMS AND BORDER PROTECTION  
49 PAVILION AVENUE  
PROVIDENCE, RHODE ISLAND 02905  
ATTN: IMPORT SPECIALIST DIVISION

RE: Internal advice; Bona Fide Export

DEAR SIR:

This is in response to a ruling request, submitted on July 12, 2011, on behalf of Ferretti Group of America, LLC, asking whether a previously imported and entered foreign yacht which is sailed to the Bahamas from the U.S. and then transported back to the U.S. must be entered upon its return.

Initially, we note that this cannot be considered a “prospective ruling” as defined in 19 C.F.R. 177.1. The facts presented are those of transactions that have occurred, and are currently ongoing in the form of a protest with the Port of Providence, Rhode Island. In addition, no actual documents have been submitted evidencing any of the statements that have been put forward.

However, as there are questions as to whether the Port was correct in its actions, we will address as internal advice per 19 C.F.R. § 177.11 the limited question of whether an export has occurred.

**FACTS:**

Ferretti Group of America, LLC (“Ferretti”) imports Italian-made yachts into the U.S. The yachts are imported as cargo, and do not arrive under their own power. Upon importation into the U.S. a consumption entry is filed and duty is paid. Depending on sales and inventory needs, Ferretti moves the yachts between South Florida and Newport. The yachts are not sailed from Florida to Newport because doing so would make them “used” and decrease their value, so the yachts are ferried as cargo on another vessel. Only a U.S. coastwise-qualified vessel may transport the yachts between two U.S. ports, and Ferretti does not find this transportation cost effective. Instead, Ferretti sails the yachts from Miami to Freeport, Bahamas, on their own bottom where they are placed on a foreign-flagged vessel and transported to Newport, Rhode Island. To illustrate, a yacht may be imported into Port Everglades, Florida, where an entry is filed, so the yacht may be shown at the Miami Boat Show. If the yacht does not sell in Florida, it is presented for sale in Rhode Island. In order to move the yacht from Florida to Rhode Island, the yacht is sailed to the Bahamas and there laded as cargo on a Bahamian cargo ship which then carries the yacht to and unloads the yacht in Rhode Island. It is this arrival in Rhode Island that is at issue here.

In response to a request from this office, Ferretti supplied some additional information. Ferretti stated that it does not clear the yacht upon its departure from U.S. waters; the yachts have no registry or documentation and no export information is filed with the Department of Commerce. Upon its arrival aboard the Bahamian cargo ship, CBP directed Ferretti to enter the yacht under 8903.92.00, (Harmonized Tariff Schedule of the United States),

as a yacht or pleasure vessel, brought into the U.S. for sale. Ferretti complied, paid the duty and protested that entry. Ferretti wrote this office because they do not believe the yachts are exported when they sail to the Bahamas and need not be entered upon their arrival in Rhode Island.

#### ISSUE:

Is there an exportation when a previously imported duty-paid foreign yacht sails from a U.S. port to the Bahamas, where it is loaded on a commercial vessel and transported back to the U.S.?

#### LAW AND ANALYSIS:

The CBP regulations at 19 C.F.R. § 191.2(m) define “exportation” as the severance of goods from the mass of goods belonging to this country, with the intention of uniting them with the mass of goods belonging to some foreign country. . . .

The United States Customs Court, relying on the leading case on export, *Swan & Finch Co. v. United States*, (190 U.S. 143, 145 (1903)), among other cases, has explained what “exportation” means:

‘Exportation’ has been defined by the U.S. Supreme Court as ‘(1) a severance of goods from the mass of things belonging to (the country of exportation) with (2) an intention of uniting them to the mass of things belonging to some foreign country.’ *Swan & Finch Co. v. United States*, 190 U.S. 143, 145 (1903). Both the element of severance as well as the element of intent must not only exist but coincide in order to constitute an act of exportation. *Moore Drv Goods Co. v. United States*, 11 Ct. Cust. App. 449, T.D. 39531 (1923); *United States v. National Sugar Refining Co.*, 39 CCPA 96, C.A.D. 470 (1951); *Nassau Distributing Co. v. United States*, 29 Cust. Ct. 151, C.D. 1459 (1952). The ‘severance of goods from the mass of things belonging to (the country of exportation)’ has been construed by our appellate court as meaning that the goods in question have been physically carried out of the country of exportation. *See, -. National Sugar Refining Co.*, 39 CCPA at 101.

(*United States v. National Sugar Refining Company*, 488 F. Supp. 907, 908 (Cust. Ct. 1980). It is self-evident that when the yacht sails from Florida and arrives in the Bahamas it has been severed from the mass of things belonging to the U.S., i.e., has been “physically carried out of the country of exportation” per *National Sugar*, and united with the mass of things belonging to the Bahamas. The next question is whether the good must be united to the mass of things belonging to the foreign country permanently or may be united for a moment in time. Both the courts and CBP have spoken to this issue and have concluded that when done for a bona fide commercial purpose, even a temporary uniting with the mass of things belonging to another country is sufficient to constitute an exportation.

Articles shipped abroad for repairs or alterations with the intention of returning them to the U.S. does not negate the fact that they were exported and indeed, would be subject to duty upon return to the U.S. In *Page & Jones v. United States*, 26 CCPA 124 (1938), a steam engine removed from a British vessel and shipped from Alabama to England for repairs then returned for reinstallation in the vessel, was held to be fully dutiable despite the fact that there was never an intention to enter the engine into the commerce of

England. The repairs constituted the merging or uniting of the merchandise with the commerce of England, constituting a physical removal from the U.S. along with an intent to join the commerce of the foreign country. Consequently, the steam engine was exported from Alabama and imported upon its return from England. We find the facts in the case of Ferrati's yacht analogous to those in *Page & Jones* in that the yacht, like the steam engine, was not intended to be joined to the commerce of the Bahamas. Nonetheless, the steam engine was found to have been exported, as was the yacht at issue here.

The court in *Page & Jones*, (id. at 130), discussed the case of Agency Canadian *Car & Foundry Co. v. United States*, (10 Ct. Cust. Appls. 172), in which munitions were shipped from Canada to the U.S. with the intention of making projectiles from the munitions for shipment to Canada. The plaintiff claimed that it never intended to mingle the munitions with the mass of things in the U.S. and therefore the munitions were not imported; if the munitions were not imported into the U.S., then they were not exported from Canada. The court held the controlling factor was what was done, not mental intentions. The court stated, "... if we hold that the materials in this case were not imported [and of course, not exported] because there was no intention to mingle them with the trade and commerce of the country inasmuch as it [i]s the purpose to export them after being made up into articles ready for use, then all other merchandise coming into the country from abroad and intended for exportation after manufacture must likewise be held not to be imported, and any such ruling as that would in effect render inoperative not only the tariff provisions for drawback but also those for bonded manufacturing warehouses." 19.: Thus, the joining together with the mass of things belonging to a foreign country need not be intended to be permanent and there is no requirement for the good to enter into the commerce of the foreign country for there to be an exportation.

The one condition to this conclusion is that the temporary severance from the mass of things belonging to the U.S. and the uniting to the mass of things to the foreign country must not have been done for other than valid commercial purposes. In HRL 212451 (February 13, 1981), CBP stated that the primary question as to whether an export had occurred in that case where sugar was sold to a Canadian customer who repackaged and returned the sugar to the U.S. was that of intent, and that "united with the mass belonging to a foreign country" occurs when any bona fide commercial purpose is proven. In contrast in that case, CBP found that merely storing sugar in a warehouse "would not constitute a bona fide commercial purpose."

To further explicitly state again that an exportation does not require a permanent joining of goods to a foreign commerce, but can mean a temporary "joining" done for a commercially valid purpose, see, HRL 223701 (May 28, 1992). That case involved a claim for drawback on imported duty-paid medical tablets, where the tablets were shipped abroad, repackaged and returned to the U.S. Upon their return to the U.S., the claimant paid duties on the value of the returned merchandise and on the cost of the packaging. Upon review of the protest, it was determined that the claim for drawback should have been granted since the merchandise was shipped abroad for a valid commercial purpose (packaging) independent of obtaining drawback. Duties

were paid upon the initial importation into the U.S. and subsequently, again, upon their return after packaging. There was no evidence that the merchandise was shipped abroad “with the intention of returning it to the United States with a design to circumvent provisions of restriction or limitation in the tariff laws or to secure a benefit accruing to imported merchandise” as proscribed in 19 CFR 101.1(k). See also, HRL 229644 (December 17, 2002). This is in contrast to Customs Service Decision (C.S.D. 82–155), where CBP ruled that an exportation did not occur when the owner of an imported truck sent the trucks to Canada for disassembly and re-entry into the U.S. In that case, the duty on the original importation was 25 percent and the duty on the disassembled truck would have been less than 5 percent. The sole purpose of shipping the truck abroad was to obtain drawback and to take advantage of the difference in duty.

That there was an exportation in this case is further supported by the fact that an importation has occurred when the yacht is unladen in Newport, Rhode Island. If it is determined that there is an importation, then, by definition there must have been a previous exportation.

The date of importation for Customs purposes is defined in 19 C.F.R. 101.1 as, “[i]n the case of merchandise imported by vessel ... the date on which the vessel arrives within the limits of a port in the United States with intent then and there to unlade such merchandise” In this case Ferretti and the port both acknowledge that the yacht is carried as “cargo” aboard a commercial cargo ship, arrives within the Newport Port limits and is unladen as “cargo” in Newport. Accordingly, the yacht’s date of importation is the date this arrival with the intention to unlade occurs. Furthermore, Ferretti filed an entry at the port of Providence, Rhode Island, seeking release of the yacht from CBP custody, evidencing its intent that the yacht be unladen and entered into the commerce of the U.S. Thus, based on CBP regulations, Ferretti’s and the port’s actions, the yacht is imported when the Bahamian vessel, upon which it is loaded arrives within Newport’ port limits and the yacht is unloaded as cargo. Consequently, if the yacht is imported at Newport, as is the case here, then the yacht must have been exported when it left Florida.

In applying the case law discussed above, and following the CBP treatment of such goods, for exportation purposes, it is clear that the export need not be of a permanent nature, but must be done for a bona fide commercial purpose, and cannot be done for purposes of circumventing provision of restrictions or limitations in the tariff laws or to secure a benefit accruing to imported merchandise. In this case, the subject yachts are sailed on their own bottom from Florida to the Bahamas and loaded on a commercial carrier for importation to the U.S. The purpose of the export to the Bahamas is not to gain a tariff advantage as the yachts are subject to duties again in their same condition when they arrive in Newport. Further, the reason for the export to the Bahamas is to not put wear on the yacht engines by sailing under their own power to Newport also not to incur the cost of using a coastwise-qualified vessel to transport the yacht between two coastwise points. The yachts are “exported” for purposes of 19 C.F.R. 101.2.

#### **HOLDING:**

U.S. duty-paid yachts that sail from a U.S. port to the Bahamas, where they are loaded on a commercial vessel to be transported back to the U.S. are exported for purposes of 19 C.F.R. 101.2 when they are so loaded in the

Bahamas. The yachts are imported when they are subsequently unloaded in Newport Rhode Island and entry is required.

*Sincerely,*

MONIKA R. BRENNER

*Chief*

*Valuation and Special Programs Branch*

## [ATTACHMENT B]

HQ H213415

ENT 1

OT:RR:CTF:ER H213415 GKG

LEONARD L. ROSENBERG  
SANDLER, TRAVIS & ROSENBERG  
1000 NW 57TH COURT  
SUITE 600  
MIAMI, FL 33126-2022

RE: Ferretti Group of America, LLC: Request for Reconsideration of Headquarters Ruling Letter H175416 (January 6, 2012)

DEAR MR. ROSENBERG:

This is in response to your March 26 and April 10, 2012 letters on behalf of your client, Ferretti Group of America, LLC (“Ferretti”). We will treat your March 26, 2012 letter as a request for this office to reconsider our decision in Headquarters Ruling Letter HQ H175416, dated January 6, 2012. In HQ H175416, we advised the Port of Providence that a previously imported duty-paid yacht, which is sailed from Miami, Florida to the Bahamas and subsequently transported back to the United States as cargo on a foreign-flagged vessel, is exported for purposes of 19 C.F.R. § 101.1 and must be reimported upon unloading in Newport, Rhode Island. Our reconsideration of this decision follows.

**FACTS:**

Ferretti imports Italian-made yachts into the United States. The yachts are imported as cargo, and do not arrive under their own power. Upon importation into the United States, a consumption entry is filed and duty is paid. The yachts are not imported pursuant to 19 C.F.R. § 4.94a and will not be documented until they are sold to retail buyers in the United States. Depending on sales and inventory needs, Ferretti moves the yachts between South Florida and Newport, Rhode Island. The yachts are not sailed from Florida to Newport because doing so would make them “used” and decrease their value. Instead, Ferretti sails the yachts from Florida to the Bahamas, on their own bottom, and obtains temporary cruising permits from Bahamian customs. The yachts are then placed on foreign-flagged vessels for transport to Newport, Rhode Island as cargo. To illustrate, a yacht may be shown at the Miami Boat Show. If the yacht does not sell in Miami, it is presented for sale in Rhode Island. In order to move the yacht from Miami to Rhode Island, the yacht is sailed to Freeport, Bahamas and laden as cargo onto a foreign-flagged cargo vessel. The vessel then carries the yacht to Rhode Island and unloads the yacht upon arrival at the port.

At issue in this reconsideration are three imported, duty-paid yachts. According to Ferretti, the yachts were initially entered for consumption at Port of Everglades under the following entry numbers: xxx-xxx7996-2, dated September 25, 2009; xxx-xxx9233-8, dated October 21, 2009; and xxx-xxx4271-1, dated January 30, 2010. At the time of entry, the yachts were classified under subheading 8903.92.0065, Harmonized Tariff Schedule of the United States (“HTSUS”), and duties paid accordingly. Based on affidavits submitted by Ferretti, the yachts sailed from Miami, Florida, on their own bottoms, and arrived at Freeport, Bahamas in May 2010. The affidavits state

that upon arriving in the Bahamas, the Bahamian customs authority issued temporary cruising permits for the three yachts. Thereafter, the yachts were moored until laden onto a foreign-flagged vessel owned and operated by the carrier company, Dockwise Yacht Transport, LLC (“DYT”), for carriage to Newport, Rhode Island. Ferretti and DYT entered into the carriage contracts for transporting the yachts on April 16, 2010. Finally, Ferretti clarified that it does not clear the yachts upon their departure from U.S. waters; the yachts have no registry or documentation and no export information is filed with the Department of Commerce. Upon their arrival at Newport, Rhode Island, the Port of Providence required Ferretti to enter the three yachts as merchandise, on June 1, 2010, under entry numbers xxx-xxx3805-6, xxx-xxx3807-2 and xxx-xxx3806-4. Moreover, the Port of Providence directed Ferretti to enter the yachts under HTSUS subheading 8903.92.00, as yachts or pleasure vessels brought into the United States for sale. Ferretti complied and filed the three entries at issue in this reconsideration. U.S. Customs and Border Protection (“CBP”) liquidated entry xxx-xxx3805-6 on March 11, 2011, and entries xxx-xxx3807-2 and xxx-xxx3806-4 on June 3, 2011.

After filing the entries, Ferretti, through counsel, submitted a binding ruling request, pursuant to 19 C.F.R. § 177.1, with this office on July 12, 2011. Subsequently, Ferretti filed Protest 0502-11-100075 (“importer protest”) with the Port of Providence on September 7, 2011, to contest all three entries and requested further review. In its attached memorandum in support of further review, Ferretti notes that it had filed a binding ruling request with Headquarters that was applicable to the entries under protest. A copy of the July 12, 2011, ruling request was attached to the Protest’s application for further review. Finally, on December 16, 2011, the surety for Ferretti’s entries filed Protest 0502-11-100086 (“surety protest”), which also challenged CBP’s duty assessment. The demand for payment against the surety’s bond was mailed on June 21, 2011. We note that the facts and arguments contained in the two protests and Ferretti’s July 12, 2011 binding ruling request are identical.

On January 6, 2012, we issued Headquarters Ruling Letter H175416, in response to Ferretti’s July 12, 2011 ruling request. Ferretti filed a request to reconsider the ruling on February 17, 2012. We denied the initial request for reconsideration on procedural grounds on March 15, 2012. Thereafter, on March 26, 2012, Ferretti submitted the letter currently before us, which we consider to be a request for reconsideration. To date, Ferretti’s protests remain suspended pending this reconsideration.

**ISSUE:**

- (1) Whether imported, duty-paid yachts sailing from Miami, Florida to the Bahamas are exported pursuant to 19 C.F.R. § 101.1 and, therefore, subject to reimportation upon unloading at Newport, Rhode Island.
- (2) Whether the movement of yachts violates U.S. coastwise laws.

## LAW AND ANALYSIS:

1. Whether imported, duty-paid yachts sailing from Miami, Florida to the Bahamas are exported pursuant to 19 C.F.R. § 101.1 and, therefore, subject to reimportation upon unloading at Newport, Rhode Island.

Ferretti's primary argument for reconsideration asserts that the previously imported, duty-paid yachts were not exported when they sailed to the Bahamas from Florida. Therefore, Ferretti believes that the yachts do not require reimportation upon their arrival in Rhode Island. Generally, imported duty-paid merchandise is subject to duty liability and entry only if the goods are first exported and then subsequently reimported into the Customs territory of the United States. *See* 19 C.F.R. § 141.2 (stating that "[d]utiable merchandise imported and afterwards exported...is liable to duty on every subsequent importation..."). To explain, only those goods that are imported into the customs territory of the United States are subject to duty. *See* HQ 114291 (May 7, 1998) (finding that in accordance with General Note 1 of the Harmonized Tariff Schedule of the United States, only those goods that are imported into the customs territory of the United States are subject to duty); *see also* General Note 1, HTSUS (stating that "[a]ll goods provided for in the HTSUS and imported into the customs territory of the United States from outside thereof...are subject to duty or exempt therefrom as prescribed in general notes 3 through 29, inclusive"). Moreover, CBP "entry requirements pertain only to merchandise which has been imported." HQ 114291 (May 7, 1998); *see also* 19 C.F.R. § 141.4(a) (stating "[a]ll merchandise imported into the United States is required to be entered, unless specifically excepted"). If imported duty-paid goods are removed from the customs territory of the United States but not exported, however, then upon their return, no importation is required. *See* HQ 114291 (May 7, 1998) (finding that "[i]f an article leaves the United States but is not deemed to be exported, then there is no importation upon its return to the United States); HQ 225339 (January 10, 1995) (holding that U.S. origin and imported duty-paid oil spill equipment used outside of U.S. customs territory are not imported upon their return if no exportation occurred); *see also* *Page & Jones v. United States*, 26 C.C.P.A. 124, 129 (1938) (citing *Fairbanks Morse & Co. v. United States*, 69 Treas. Dec. 319, and *Van Camp Sea Food Co. (Inc.) v. United States*, 56 Treas. Dec. 415) (noting that American engines returned from foreign jurisdictions were not imported because the goods were never exported). Consequently, absent an exportation event, duties are not applicable and entry is not required for imported duty-paid merchandise returned to the United States.

Imported duty-paid yachts, in particular, require an exportation before duties are owed upon reimportation. CBP has consistently stated the following in its rulings:

Duty on [a] vessel is collectable when it is first imported. The determination of whether or not a yacht is dutiable when it has previously been subject to Customs entry and payment of duty is dependent on whether it has been exported from the United States after its first importation. If it has been exported, it is again dutiable as an importation under items 8903.91.00 or 8903.92.00, HTSUS.

HQ 111731 (February 19, 1992). *Accord* HQ 114301 (March 25, 1998); HQ 110970 (July 17, 1990); HQ 103386 (September 27, 1978); HQ 103359 (April 11, 1978). Based on all of the above, we will consider whether the sailing of the yachts at issue to the Bahamas for carriage back to the United States constitutes an exportation. If an exportation occurred, then the yachts must be reimported upon unloading in Newport, Rhode Island.

Exportation is defined in 19 C.F.R. § 101.1 as "...a severance of goods from the mass of things belonging to this country with the intention of uniting them to the mass of things belonging to some foreign country." *See also Swan and Finch Co. v. United States*, 190 U.S. 143, 145 (1903) (explaining that "[a]s the legal notion of emigrating is a going abroad with an intention of not returning, so that of exportation is a severance of goods from the mass of things belonging to this country with an intention of uniting them to the mass of things belonging to some foreign country or other") (internal citations omitted). Based on this definition, an exportation is established by a two-pronged analysis: 1) that the goods were severed from the mass of things belonging to this country, and 2) that there was an intent to unite the goods to the mass of things belonging to some foreign country. The first prong is construed to mean that "the goods in question have been physically carried out of the country of exportation." *National Sugar Refining Co. v. United States*, 488 F. Supp. 907, 908 (Cust. Ct. 1980) (citing to *United States v. National Sugar Refining Co.*, 39 C.C.P.A. 96, 101 (1951)), *aff'd*, 666 F.2d 566 (C.C.P.A. 1981). In the case before us, the yachts physically sailed from the United States and arrived in the Bahamas, where Bahamian customs authorities issued temporary cruising permits for the yachts. Therefore, the evidence demonstrates that the yachts physically left the United States and the severance requirement for exportation is satisfied.

Less clear, however, is whether Ferretti intended to unite the yachts to the mass of things belonging to the Bahamas. Absent such intent, the yachts would not be exported even if severed from the mass of things belonging to the United States. Generally, the controlling factor in this analysis is the intention of the parties at the time of shipment. *Nassau Distributing Co., Inc. v. United States*, 29 Cust. Ct. 151, 153 (1952) (internal citations omitted). Thus, "so long as an immediate bona fide purpose to seek a foreign market coincides with a bona fide act of shipment later changes in either the intent or destination have no effect upon the original character of the act as an exportation." *Id.* at 154 (quoting *United States v. National Sugar Refining Co.*, 39 C.C.P.A. 96, 100 (1951)). Alternatively, a situation may arise where the intent to unite the goods with the mass of things belonging to a foreign country does not exist at the time of shipment but nevertheless results in an exportation due to subsequent events. Specifically, merchandise which, after its initial shipment, is intended to be or in fact is diverted into the commerce of an intermediate country, becomes an export of that intermediate country. *Bethlehem Steel Corp. v. United States*, 551 F. Supp. 1148, 1149 (Ct. Int'l Trade 1982) (citations omitted) (finding that imported, duty-paid merchandise moving between two U.S. ports by means of transshipment through Canada was exported because the merchandise was offered for sale in

Canada). The contingency of diversion sufficient to negate the original intent at the time of shipment, however, must have a realistic basis in fact and not be mere conjecture. *Id.* (internal quotations omitted) (citing *Hugo Stinnis Steel & Metals Co. v. United States*, 80 Cust. Ct. 175, 192 (1978), *aff'd*, 599 F.2d 1037 (1979)). To summarize, in order to unite goods to the mass of things belonging to another country for purposes of exportation, there must be an intended bona fide purpose to seek a foreign market or an actual diversion of the merchandise into the commerce of an intermediate country.

In Ferretti's case, the question presented is not whether the requisite intent existed at the time of shipment or developed after. Rather, the question is whether the intended act qualifies as a bona fide purpose to seek a foreign market and/or an actual diversion of the merchandise into the commerce of an intermediate country, sufficient to unite the goods with the mass of things belonging to some foreign country. To illustrate what acts are sufficient to unite merchandise with the mass of things belonging to a foreign country for purposes of exportation, and what acts are insufficient, it is useful to compare case scenarios involving exportation of merchandise to foreign warehouses. In *D. & B. Import Corp. v. United States*, 5 Cust. Ct. 108, 109 (1940), Cuban rum was sold and shipped to a buyer in Bermuda. The rum was stored in a bonded warehouse and never withdrawn for consumption in Bermuda. *Id.* Subsequently, the rum was sold and shipped to a buyer in the United States. *Id.* The Customs Court determined that the rum became an export of Bermuda because "merchandise in a bonded warehouse in a foreign country must be considered as having entered the commerce of that country when it could have been withdrawn at any time for consumption there." *Id.* at 118. Similarly, in HQ 214285 (July 22, 1982), a company shipped unsold watches manufactured in the United States to a bonded warehouse in Canada for storage pending actual sale to different markets in the western hemisphere, including the United States. CBP determined that the transaction qualified as an exportation because the company's immediate bona fide purpose for sending the watches to storage in Canada was not to return them to the United States, but rather to seek foreign markets for the eventual sale of the goods. *Id.* Finally, in HQ 223701 (May 28, 1992), CBP determined that imported duty-paid tablets shipped to Canada for packaging qualified as an exportation even when the packaged tablets returned to the United States. In finding that an exportation occurred, CBP noted that the merchandise was shipped abroad for use in a legitimate commercial purpose independent of securing a benefit accruing to the imported merchandise, *i.e.* drawback. HQ 223701. *See also* 19 C.F.R. § 101.1 (stating under the definition of *Exportation*: "The shipment of merchandise abroad with the intention of returning it to the United States with a design to circumvent provisions of restriction or limitation in the tariff laws or to secure a benefit accruing to imported merchandise is not an exportation").

The case scenarios above identify a unifying theme for acts that qualify as a bona fide purpose to seek a foreign market and/or an actual diversion of the merchandise into the commerce of an intermediate country. Specifically, if the intended or actual act introduces the merchandise into the foreign country for consumption, sale or use, then there is a sufficient uniting of the goods with the mass of things belonging to the foreign country to qualify as an

exportation. *Cf.* HQ 224402 (May 27, 1993) (noting that the terms “export” and “exportation” embodies the idea of introducing merchandise into a foreign country for sale, consumption or use). This is true even if the uniting is temporary and the goods are ultimately returned to the United States. Moreover, the term “use,” in the context of exportation, typically involves using the merchandise by means of manufacture, manipulation, or repair. *See* HQ 225549 (December 7, 1994) (holding that shipping merchandise to a foreign country with an intention of using that merchandise, as by manufacture, manipulation, or repair, is strong evidence of an intent to unite the merchandise to the mass of things belonging to the foreign country). In comparison, acts that do not involve introducing the merchandise into the foreign country for consumption, sale or use have not qualified as a bona fide purpose to seek a foreign market and/or an actual diversion of the merchandise into the commerce of an intermediate country. *Compare* HQ 111731 (February 19, 1992) (stating that “[m]erely removing a yacht from U.S. territorial waters on a temporary foreign pleasure cruise with the intent to return it to the United States thereafter would not constitute an exportation”), *and* HQ 225339 (January 10, 1995) (noting that oil spill equipment owned and operated by a non-profit organization to recover spilled oil in U.S. territorial waters is not exported because no evidence existed that the equipment entered the commerce of any foreign countries or sought a foreign market), *with* *HH U.S. v. Coastwise Steamship & Barge Co.*, 9 Ct. Cust. 216, 217–18 (1919) (finding that a marine steam engine manufactured in the United States and salvaged from a wrecked American vessel was exported because a firm in Canada purchased the engine to make repairs before returning it to the United States), *and* HQ 229644 (December 17, 2002) (holding that needles and sutures shipped to a foreign country and returned to the United States qualified as an exportation because while abroad, the needles and sutures were assembled and processed into one unit).

With regard to the yachts at issue in this case, there is no indication that the yachts underwent any manufacturing process, manipulation or repair in the Bahamas. Neither did Ferretti sell or attempt to sell the yachts to buyers in the Bahamas or to foreign buyers from the Bahamas. Rather, upon arriving in Freeport, the yachts were moored under the authority of Bahamian temporary cruising permits until laden onto the transport vessel for return to the United States. Moreover, it is notable that Ferretti contracted to transport the yachts back to the United States in April 2010, which is before they sailed for the Bahamas in May 2010. This fact supports Ferretti’s assertion that it always intended to return the yachts to the United States. Based on the above, the only act at issue is Ferretti’s engagement of transportation services to carry the yachts from the Bahamas back to the United States. Such transportation of goods, we find, does not introduce the merchandise into the foreign country for consumption, sale or use. Without an intended or actual introduction of the yachts into the Bahamas for consumption, sale or use, the yachts are not united to the mass of things belonging to the Bahamas. Therefore, the yachts are not exported when they sailed to the Bahamas for carriage back to the United States and upon their return, are not reimported or subject to entry as merchandise. Please note that in order to support the determination that an exportation did not occur, Ferretti must

demonstrate to the satisfaction of the Port of Providence that the yachts returning to the customs territory of the United States at Newport, Rhode Island are the same imported, duty-paid yachts that departed Florida for the Bahamas. *See* HQ 225339 (January 10, 1995) (holding that in order to confirm that an exportation did not take place, documentation will be required to verify exactly which equipment and supplies left the customs territory of the United States and that this is the same equipment and supplies returned to the United States).

2. Whether the movement of yachts violates U.S. coastwise laws.

In addition to the exportation issue, we would like to clarify that the factual scenario presented in this case does not violate U.S. coastwise laws. Generally, the coastwise laws prohibit the transportation of merchandise, between points in the United States embraced within the coastwise laws, in any vessel other than a vessel built in, documented under the laws of, and owned by citizens of the United States. Such a vessel, after it has obtained a coastwise endorsement from the U.S. Coast Guard, is said to be “coastwise qualified.” The coastwise laws generally apply to points in the territorial sea, which is defined as the belt, three nautical miles wide, seaward of the territorial sea baseline, and to points located in internal waters, landward of the territorial sea baseline.

The coastwise law applicable to the transportation of merchandise is the Jones Act, 46 U.S.C. § 55102, (recodified pursuant to P.L. 109–304, October 6, 2006), which provides:

(a) Definition. In this section, the term “merchandise” includes--

(1) merchandise owned by the United States Government, a State, or a subdivision of a State; and  
(2) valueless material.

(b) Requirements. Except as otherwise provided in this chapter or chapter 121 of this title [46 U.S.C. §§ 55101 *et seq.* or 12101 *et seq.*], a vessel may not provide any part of the transportation of merchandise by water, or by land and water, between points in the United States to which the coastwise laws apply, either directly or via a foreign port, unless the vessel--

(1) is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade; and  
(2) has been issued a certificate of documentation with a coastwise endorsement under chapter 121 [46 U.S.C. §§ 12101 *et seq.*] or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement...

CBP regulations at 19 C.F.R. § 4.80 promulgated pursuant to the aforementioned statute, provide, in pertinent part:

19 C.F.R. § 4.80 Vessels entitled to engage in coastwise trade.

(a) No vessel shall transport, either directly or by way of a foreign port, any passenger or merchandise between points in the United States embraced within the coastwise laws, including points within a harbor, or merchandise for any part of the transportation between such points, unless it is:

(1) Owned by a citizen and is so documented under the laws of the United States as to permit it to engage in the coastwise trade;

(2) Owned by a citizen, is exempt from documentation, and is entitled to or, except for its tonnage, would be entitled to be documented with a coastwise endorsement.

(3) Owned by a partnership or association in which at least a 75 percent

interest is owned by such a citizen, is exempt from documentation and is entitled to or, except for its tonnage, or citizenship of its owner, or both, would be entitled to be documented for the coastwise trade. The term “citizen” for vessel documentation purposes, whether for an individual, partnership, or corporation owner, is defined in 46 C.F.R. 67.3...

As we stated in CSD 85–9, dated November 21, 1984, a vessel transported on another vessel is merchandise for purposes of 46 U.S.C. 883, the predecessor statute to 46 U.S.C. § 55102. Therefore, the subject yachts are “merchandise” as contemplated by 46 U.S.C. § 55102 for that portion of their journey from the Bahamas to Newport, Rhode Island. However, the yachts sailed under their own power from Miami to the Bahamas. Accordingly, they do not qualify as “merchandise” for the purposes 46 U.S.C. § 55102 for that portion of their journey between Florida and the Bahamas.

In HQ 110280 (Aug. 24, 1989), CBP addressed the applicability of coastwise law pertaining to the transportation of merchandise, then 46 U.S.C. App. 883, since recodified as 46 U.S.C. § 55102, to the transportation of yachts from Florida to the West Coast of the United States. In that matter, the yachts were to be loaded as on-deck cargo on a non-coastwise-qualified vessel in Florida and transported to Vancouver, Canada. At Vancouver, the yacht owners were to take delivery and the yachts would proceed under their own power to their respective home ports in California and Washington. We held that the proposed transportation did not violate the coastwise merchandise statute. CBP reasoned that because the transported vessel was not considered to have been “transported” between coastwise points, it was transported only from a coastwise point to a non-coastwise point and proceeded under its own power for the remainder of the movement.

Similarly, in the present matter, the yachts proceeded under their own power from a coastwise point (Miami, Florida) to a non-coastwise point (the Bahamas). There, they were laden onto a non-coastwise-qualified vessel for transportation from a non-coastwise point (the Bahamas) to a coastwise point (Newport, Rhode Island). Accordingly, the transportation of the subject yachts as described in this case, did not violate 46 U.S.C. § 55102.

#### **HOLDING:**

After reviewing the reconsideration request, we find that imported duty-paid yachts sailed from the United States to the Bahamas, for the sole purpose of being transported back to the United States on a commercial vessel, are not exported pursuant to 19 C.F.R. § 101.1. Headquarters Ruling Letter H175416, dated January 6, 2012, is hereby revoked.

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

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE COUNTRY OF ORIGIN MARKING OF CHILDREN'S TOY BLOCKS

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

**ACTION:** Notice of revocation of one ruling letter and revocation of treatment relating to the country of origin marking of children's toy blocks.

**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 one ruling concerning the country of origin marking of children's toy blocks. CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed modification was published on February 27, 2013, in the Customs Bulletin, Volume 47, Number 10. No comments were received in response to this notice.

**DATES:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 4, 2014.

**FOR FURTHER INFORMATION CONTACT:** Robert Shervette, Office of International Trade, Tariff Classification and Marking Branch, at (202) 325–0274.

### 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”), become effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying

out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice was published on February 27, 2013, in the Customs Bulletin, Volume 47, Number 10, proposing to revoke one ruling letter pertaining to the country of origin marking of children's toy blocks. Although in the proposed notice, CBP is specifically referring to the revocation of New York Ruling Letter ("NY") N132564, dated December 15, 2010, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice period.

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

In NY N132564, CBP ruled that, pursuant to 19 CFR 134.46, the packaging in which imported children's toy blocks are sold to the ultimate purchasers is required to be marked with the country of origin on the back of the box in proximity of the address listed for the importer's European headquarters. Upon our review of this ruling, we have determined that the merchandise does not need to be marked with the country of origin on the back of the box.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N132564 and revoking or modifying any other ruling not specifically identified to reflect the proper country of origin marking of the subject merchandise according to the analysis contained in Headquarters Ruling Letter ("HQ") H147197, set forth as an attachment to this document.

Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: April 25, 2014

IEVA K. O'ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H147197

April 25, 2014

CLA-2 OT:RR:CTF:TCM H147197 RES

CATEGORY: Marking

MR. JOHN PETERSON  
NEVILLE PETERSON LLP  
17 STATE STREET – 19TH FLOOR  
NEW YORK, NY 10004

RE: Reconsideration of New York Ruling Letter N132564, dated December 24, 2010; Country of Origin Marking of Certain Imported Toy Building Blocks.

DEAR MR. PETERSON:

This is in response to your letter dated January 26, 2011, on behalf of your client Mega Brands Inc., (“Mega”), requesting that U.S. Customs and Border Protection (“CBP”) reconsider New York Ruling Letter (“NY”) N132564, dated December 24, 2010. In NY N132564, CBP ruled that the imported Toy Building Blocks required special country of origin marking pursuant to 19 CFR § 134.46. CBP has determined that NY N132564 is incorrect.

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 action was published on February 27, 2013, in Volume 47, Number 10, of the *Customs Bulletin*. CBP did not receive any comments during the notice period.

**FACTS:**

Mega Brands imports “Mega Bloks” Children Block Toys (“toy blocks”) from Canada into the United States. The toy blocks are manufactured in Canada and China. These articles are plastic building blocks and other small toys that are assembled by a child.

Mega Brands requested a ruling on the proper country of origin marking for the toy blocks. The toy blocks are packaged in two different cardboard box containers, which are sold at retail in their imported form. Both boxes have pictures of the blocks and small toys in different scenes on the front. Printed on both boxes at the top left corner in a big red and blue cartoon font are the words “MEGA BLOKS.” One box has a small description printed in English and several other languages of the toys contained inside, e.g. “2-in-1 Station to Truck \* Estracion 2 en 1 para camion . . . ,” and printed in a cartoon-like font are the words “play n go.” On the front of the other box, at about left-of-center, the phrase “Collect them all!” is printed in English and several other languages. Both boxes have printed across the bottom of the front, in about a 1.5 inch wide strip section, set off with a white background and with black lettering, the following: the “MEGA” trademark; the words “Mega Brands Inc.” with the company’s Canadian address listed under the company name; and written in English and several other languages the phrase “COMPONENTS MADE IN CANADA AND CHINA.”

On the back of one box, are the phrases: “©2010, MEGA Brands Inc. ® & ™ MEGA Brands Inc. EN This toy conforms to: ASTM F963–08 U.S., Canadian Hazardous Products Act CEN Standards E.N. 71. Products and colors may vary”; “Keep this information.”; “Most models can be built one at a time.”; “Do not give packaging materials to a child.”; “51 Pieces.”; and “Proof of pur-

chase.” All of these phrases are written in English and several other languages. In addition, the phrase “Keep this information” (in English and several other languages) is enclosed in a rectangular box with thin black borders and has the letters “CE”<sup>1</sup> in a large stylized font next to the words “MEGA Brands Europe NV” with the Belgium address of Mega Brands underneath it. Lastly, there is the barcode and the symbols for recycling printed on the back of the box. These phrases and symbols cover the entire back of one box.

On the back of the second box, are the phrases: “©2009, MEGA Brands Inc. ® & ™ MEGA Brands Inc. EN This toy conforms to: ASTM F963–08 U.S., Canadian Hazardous Products Act CEN Standards E.N. 71. Products and colors may vary”; “Keep this information.”; and “Most models can be built one at a time.” In addition, the phrase “Keep this information” (in English and several other languages) is enclosed in a rectangular box with thin black borders and has the letters “CE” in a large stylized font next to the words “MEGA Brands Europe NV” with the Belgium address of Mega Brands underneath it. There are no barcodes or recycling symbols on the back of the box. The phrases and symbols cover one quarter of the back of the box in the top left corner.

In NY N132564, the findings in regard to the adequacy of the country of origin markings were described as follows:

While you describe in detail the purpose of the CE mark in Europe, its purpose and function would not be apparent to a consumer in the U.S. The references to Europe and Belgium are preceded by the phrase “Keep this information.” A U.S. consumer would not conclude the stated purpose and function of the foreign references based on this wording. The CE mark with MEGA Brand’s Belgium address and the reference to Europe may mislead or deceive the ultimate purchaser in the United States as to the actual country of origin of the item. Therefore, we find that the special marking requirements of 19 CFR 134.46 are triggered.

## ISSUE:

(1) What are the country of origin marking requirements for the imported children’s toy blocks?

## LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. § 1304 (2011)), 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 its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States, the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. § 1304 was “that the *ultimate purchaser* should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so

<sup>1</sup> “CE” means “Conformité Européenne”, and certifies that a product has met EU health, safety, and environmental requirements, which ensure consumer safety. Manufacturers in the European Union (EU) and abroad must meet CE marking requirements where applicable in order to market their products in Europe. See <http://export.gov/cemark/index.asp> (last visited February 2, 2012).

that at the time of purchase the *ultimate purchaser* may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will.” *United States v. Friedlander & Co.*, 27 C.C.P.A. 297 at 302; C.A.D. 104 (1940) (emphases added).

Part 134, U.S. Customs and Border Protection (CBP) Regulations (19 C.F.R. § 134 (2011)) implements the country of origin marking requirements and exceptions of 19 U.S.C. § 1304. Section 134.1(b) defines “country of origin” as:

[T]he country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of [the marking regulations]...

Section 134.46 states in pertinent part:

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

Mega Brands asserts that the toy building blocks packaging has adequate and proper country of origin marking to inform the ultimate purchaser of the origin of the articles. Mega Brands states that the presence of the Belgium address of its European headquarters does not trigger § 134.46, because it is not displayed in a manner confusing to a reasonable consumer trying to discern the country of origin of the toy blocks.

Pursuant to § 134.46, country of origin markings are required to be in close proximity of the name of any foreign country or locality other than the country or locality in which an article was manufactured if the words or phrases relating to the foreign country or locality are misleading or deceiving the ultimate purchaser as to the actual country of origin of the article.

In the case of the toy blocks at issue here, because there is a Belgium address relating to Mega Brands’ European headquarters and the “CE” symbol, on the back of the boxes, the issue is whether this printed information may mislead or deceive an ultimate purchaser of the toy blocks articles as to where the toy blocks were actually manufactured, which is in Canada and China.

Upon examination of the country of origin markings on the front of the boxes and the way the Belgian address and CE symbol are printed on the back of the boxes, CBP concludes that a reasonable ultimate purchaser would not be misled or deceived as to the toy blocks’ provenance of manufacture and production.

The first thing an ultimate purchaser would observe when shopping at a toy store for the Mega Brands toy blocks is the front of the box, because the front is what stores display facing out to customers. The country of origin marking on the front of the boxes is clearly displayed in black capital letters that is a block font on a white background and is set off from the rest of the

front of the box which is decorated in a light blue and with images of the toys inside. An ultimate purchaser would easily discern from examining the front of the box that the toy blocks are manufactured in Canada and China.

Given the prominent marking on the front, the Belgian address on the back of the box, would not reasonably mislead or deceive an ultimate purchaser as to where the toy blocks are manufactured.

In regard to the “CE” symbol, there is nothing about this symbol that would indicate to an ultimate purchaser that it has anything to do with the country of origin of the toy blocks. Even if an ultimate purchaser did not know what the “CE” symbol meant, they reasonably would not assume that it had anything to do with the country of origin of the toy blocks. If anything, the size and the unconventional font of the “CE” symbol gives the impression that it is just that, a symbol relating to something about the toy blocks but not something related to the provenance of the manufacturing of the contents of the boxes. Even the phrase “Keep this Information” does not in any way infer or hint at any type of country of origin for the toy blocks inside the box. Rather, the common sense meaning of this phrase is to retain the address of the Mega Brands headquarters for informational purposes and, if one is familiar with the meaning of “CE”, to note that it conforms with the European health, safety, and environmental requirements.

Therefore, pursuant to § 134.46, because we do not find that the presence of the corporate address and the “CE” symbol on the back of the box may be misleading or deceiving, no additional country of origin marking is required on the back of the box.

**HOLDING:**

Pursuant to 19 U.S.C. § 1304, the containers the MEGA BLOKS Children’s Block Toys are packaged in are properly marked with the country of origin.

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

**EFFECTS ON OTHER RULINGS:**

NY N132564, dated December 14, 2010, is hereby REVOKED.

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

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**AGENCY INFORMATION COLLECTION ACTIVITIES:**

**Record of Vessel Foreign Repair or Equipment Purchase**

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

**ACTION:** 60-Day notice and request for comments; extension of an existing collection of information.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Record of Vessel Foreign Repair or Equipment Purchase (CBP Form 226). CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

**DATES:** Written comments should be received on or before July 15, 2014 to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

**Title:** Record of Vessel Foreign Repair or Equipment Purchase.

**OMB Number:** 1651-0027.

**Form Number:** CBP Form 226.

**Abstract:** 19 U.S.C. 1466(a) provides for a 50 percent *ad valorem* duty assessed on a vessel master or owner for any repairs, purchases, or expenses incurred in a foreign country by a commercial vessel registered in the United States. CBP Form 226, Record of Vessel Foreign Repair or Equipment Purchase, is used by the master or owner of a vessel to declare and file entry on equipment, repairs, parts, or materials purchased for the vessel in a foreign country. This information enables CBP to assess duties on these foreign repairs, parts, or materials. CBP Form 226 is provided for by 19 CFR 4.7 and 4.14 and is accessible at: <http://www.cbp.gov/sites/default/files/documents/CBP%20Form%20226.pdf>.

**Current Actions:** This submission is being made to extend the expiration date with no change to the burden hours or to the information collected on Form 226.

**Type of Review:** Extension (without change).

**Affected Public:** Businesses.

**Estimated Number of Respondents:** 100.

**Estimated Number of Responses per Respondent:** 11.

**Estimated Number of Total Annual Responses:** 1,100.

**Estimated Time per Response:** 45 minutes.

**Estimated Total Annual Burden Hours:** 825.

Dated: May 12, 2014.

TRACEY DENNING,  
*Agency Clearance Officer,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, May 16, 2014 (79 FR 28533)]

## AGENCY INFORMATION COLLECTION ACTIVITIES:

### NAFTA Regulations and Certificate of Origin

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

**ACTION:** 60-Day notice and request for comments; extension of an existing collection of information.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: NAFTA Regulations and Certificate of Origin. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

**DATES:** Written comments should be received on or before July 15, 2014 to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, at 202-325-0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

**Title:** NAFTA Regulations and Certificate of Origin.

**OMB Number:** 1651-0098.

**Form Number:** CBP Forms 434, 446, and 447.

**Abstract:** On December 17, 1992, the U.S., Mexico and Canada entered into an agreement, “The North American Free Trade Agreement” (NAFTA). The provisions of NAFTA were adopted by the U.S. with the enactment of the North American Free Trade Agreement Implementation Act of 1993 (PL. 103–182).

CBP Form 434, *North American Free Trade Certificate of Origin*, is used to certify that a good being exported either from the United States into Canada or Mexico or from Canada or Mexico into the United States qualifies as an originating good for purposes of preferential tariff treatment under NAFTA. This form is completed by exporters and/or producers and furnished to CBP upon request. CBP Form 434 is provided for by 19 CFR 181.11 and is accessible at: <http://www.cbp.gov/sites/default/files/documents/CBP%20Form%20434.pdf>.

CBP Form 446, *NAFTA Verification of Origin Questionnaire*, is a questionnaire that CBP personnel use to gather sufficient information from exporters and/or producers to determine whether goods imported into the United States qualify as originating goods for the purposes of preferential tariff treatment under NAFTA. CBP Form 446 is provided for by 19 CFR 181.72 and is accessible at: <http://www.cbp.gov/sites/default/files/documents/CBP%20Form%20446.pdf>.

CBP Form 447, *North American Free Trade Agreement Motor Vehicle Averaging Election*, is used to gather information required by 19 CFR 181 Appendix, Section 11, (2) “Information Required When Producer Chooses to Average for Motor Vehicles”. This form is provided to CBP when a manufacturer chooses to average motor vehicles for the purpose of obtaining NAFTA preference. CBP Form 447 is accessible at: <http://www.cbp.gov/sites/default/files/documents/CBP%20Form%20447.pdf>

**Current Actions:** This submission is being made to extend the expiration date for CBP Forms 434, 446, and 447.

**Type of Review:** Extension (without change).

**Affected Public:** Businesses

### **Form 434, NAFTA Certificate of Origin**

**Estimated Number of Respondents:** 40,000.

**Estimated Number of Responses per Respondent:** 3.

**Estimated Time per Response:** 15 minutes.

**Estimated Total Annual Burden Hours:** 30,000.

### **Form 446, NAFTA Questionnaire**

**Estimated Number of Respondents:** 400.

**Estimated Number of Responses per Respondent:** 1.

**Estimated Time per Response:** 45 minutes.

**Estimated Total Annual Burden Hours:** 300.

**Form 447, NAFTA Motor Vehicle Averaging Election**

**Estimated Number of Respondents:** 11.

**Estimated Number of Responses per Respondent:** 1.28.

**Estimated Time per Response:** 1 hour.

**Estimated Total Annual Burden Hours:** 14.

Dated: May 12, 2014.

TRACEY DENNING,  
*Agency Clearance Officer,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, May 16, 2014 (79 FR 28532)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:**

**Generic Clearance for the Collection of Qualitative  
Feedback on Agency Service Delivery**

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

**ACTION:** 60-Day Notice and request for comments; extension of an existing collection of information.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies.

**DATES:** Written comments should be received on or before July 21, 2014 to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, at 202-325-0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

**Title:** Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

**OMB Number:** 1651-0136.

**Abstract:** The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

**Current Actions:** This submission is being made to extend the expiration date with no change to the burden hours.

**Type of Review:** Extension (without change).

**Affected Public:** Individuals and businesses.

**Estimated Number of Respondents:** 60,000.

**Annual Frequency of Response:** 1.

**Estimated Time per Response:** 13 minutes.

**Estimated Total Annual Burden Hours:** 13,000 hours.

Dated: May 14, 2014.

TRACEY DENNING,  
*Agency Clearance Officer,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, May 20, 2014 (79 FR 28937)]

## AGENCY INFORMATION COLLECTION ACTIVITIES:

### Report of Diversion

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

**ACTION:** 60-Day Notice and request for comments; extension of an existing collection of information.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Bud-

get (OMB) for review and approval in accordance with the Paperwork Reduction Act: Report of Diversion (CBP Form 26). CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

**DATES:** Written comments should be received on or before July 21, 2014 to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, at 202-325-0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

**Title:** Report of Diversion.

**OMB Number:** 1651-0025.

**Form Number:** CBP Form 26.

**Abstract:** CBP Form 26, *Report of Diversion*, is used to track vessels traveling coastwise from U.S. ports to other U.S. ports when a change occurs in scheduled itineraries. This form is

initiated by the vessel owner or agent to notify and request approval by CBP for a vessel to divert while traveling coastwise from a U.S. port to another U.S. port, or a vessel traveling to a foreign port having to divert to a U.S. port when a change occurs in the vessel itinerary. CBP Form 26 collects information such as the name and nationality of the vessel, the expected port and date of arrival, and information about any related penalty cases, if applicable. This information collection is authorized by the Jones Act (46 U.S.C. App. 883) and is provided for 19 CFR 4.91. CBP Form 26 is accessible at [http://www.cbp.gov/sites/default/files/documents/CBP%20Form%2026\\_0.pdf](http://www.cbp.gov/sites/default/files/documents/CBP%20Form%2026_0.pdf).

**Current Actions:** This submission is being made to extend the expiration date with no change to the burden hours or to the information collected on Form 26.

**Type of Review:** Extension (without change).

**Affected Public:** Businesses.

**Estimated Number of Respondents:** 1,400.

**Estimated Number of Annual Responses per Respondent:** 2.

**Estimated Number of Total Annual Responses:** 2,800.

**Estimated Time per Response:** 5 minutes.

**Estimated Total Annual Burden Hours:** 233.

Dated: May 19, 2014.

TRACEY DENNING,  
*Agency Clearance Officer,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, May 22, 2014 (79 FR 29452)]

