

U.S. Customs and Border Protection



REVOCATION OF ONE RULING LETTER AND MODIFICATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF ELECTRIC FLATIRON FOR HAIR

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

ACTION: Notice of revocation of one ruling letter, and modification of two ruling letters and revocation of treatment relating to tariff classification of electric flatiron for hair.

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 revoking one ruling letter, and modifying two ruling letters relating to the tariff classification of electric flatiron for hair, under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in *Customs Bulletin and Decisions*, Vol. 49, No. 32, on August 12, 2015. No timely comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 11, 2016.

FOR FURTHER INFORMATION CONTACT: George Aduhene, Tariff Classification and Marking Branch: (202) 325–0184.

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, Stat. 2057), notice proposing to revoke NY N060719, dated June 5, 2009, and to modify NY N025515, dated April 23, 2008, NY N060721, dated June 5, 2009 and any treatment accorded to substantially identical transactions was published in the *Customs Bulletin and Decisions*, Vol. 49, No. 32, on August 12, 2015. No timely comments were received in response to this notice.

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

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

In NY N025515, CBP determined that a cosmetic hair gel cartridge imported together with a flatiron, was classified in subheading 8516.40.4000, HTSUSA, which provides for, “Electric flatirons: Other.”

In NY N060719, the merchandise was described as “Convertible, HAI-2, Nustik, Twig and Nano XT” hair irons, which are used to flatten/straighten hair. The irons were electrically heated and operated on 110 volts of alternating current. CBP determined that the merchandise was classified in subheading 8516.40.4000, HTSUSA.

In NY N060721, CBP described the merchandise as the “Tong, DraStik, and Digistik” hair irons, which are used to flatten/straighten hair. The “DraStik” and “Digistik” have flat heating plates, while the “Tong” had crescent-shaped plates that allowed for creating semi-circular shapes in hair. The irons were electrically heated and operate on 110 volts of alternating current. CBP also determined that the merchandise was classified in subheading 8516.40.4000, HTSUSA. It is now CBP’s position that the merchandise in NY N025515 (the cosmetic hair gel cartridge), N060719, and N060721 (the “DraStik” and “Digistik” hair irons) are classified in subheading 8516.32.0040, HTSUSA.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N060719, and modifying N025515 and N060721, and revoking or modifying any other ruling not specifically identified, in order to reflect the proper classification of electric flatirons for hair in subheading 8516.32.0040, HTSUS, according to the analysis contained in Headquarters Ruling Letter (“HQ”) H157778, set forth as an attachment this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: September 17, 2015

JACINTO JUAREZ
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H157778

September 17, 2015

CLA-2 OT:RR:CTF:TCM H157778 GA

CATEGORY: Classification

TARIFF NO.: 8516.32.0040 HTSUS

MR. STEVE NOWIK
PANALPINA, INC.
800 E. DEVON AVENUE
ELK GROVE VILLAGE, IL 60007

MR. RUSSELL BRUCE THORNBURG
RUSSELL BRUCE THORNBURG, CHB
11256 CANDLEBERRY COURT
SAN DIEGO, CA 92128

RE: Modification of NY N025515, NY N060721 and Revocation of NY N060719: Classification of electric iron for hair

DEAR MR. NOWIK:

This letter concerns New York Ruling Letter (NY) N025515, dated April 23, 2008, issued to you on behalf of your client Wahl Clipper. That ruling involved the tariff classification of a gel conditioning replacement cartridge when imported separately, and when imported packaged together with an electric iron for hair. In that ruling, U.S. Customs and Border Protection (CBP) classified the gel and iron packaged together in subheading 8516.40.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for, “Electric flatirons: Other.” We have reviewed NY N025515 and find the portion of that that relates to the classification of the gel imported together with the iron to be in error. In addition, in NY N060721 and NY N060719 similar electric iron products for hair were classified in subheading 8516.40.4000, HTSUS. For the reasons set forth below, we hereby modify NY N025515 and N060721, and revoke N060719.

On August 12, 2015, 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 in the *Customs Bulletin* Vol. 49, No. 32 on August 12, 2015. No timely comments were received in response to this notice.

FACTS:

In NY N025515, the merchandise was described as a cosmetic hair gel cartridge, imported together with a flatiron.

In NY N060719, the merchandise was described as a “Convertible, HAI-2, Nustik, Twig and Nano XT” hair irons, which are used to flatten/straighten hair. The irons were electrically heated and operated on 110 volts of alternating current.

In NY N060721, CBP described the merchandise as the “Tong, DraStik, and Digistik” hair irons, which are used to flatten/straighten hair. The “DraStik” and “Digistik” have flat heating plates, while the “Tong” had crescent-shaped plates that allowed for creating semi-circular shapes in hair. The irons were electrically heated and operate on 110 volts of alternating current.

ISSUE:

Whether electric irons used for hairdressing are flatirons within the meaning of subheading 8516.40, HTSUS?

LAW AND ANALYSIS:

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

The HTSUS provisions under considerations are as follows:

8516	Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electro-thermic hair dressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof:
8516.32.00	Other hairdressing apparatus
8516.40	Electric flatirons
8516.40.20	Travel type
8516.40.40	Other

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, 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).

Explanatory Note 85.16 provides, in relevant part, as follows:

(C) ELECTRO-THERMIC HAIR-DRESSING APPARATUS AND HAND DRYERS

These include:

- (1) Hair dryers, including drying hoods and those with a pistol grip and built-in fan
- (2) Hair curlers and electrical permanent waving apparatus
- (3) Curling tong heaters
- (4) Hand dryers

(D) ELECTRIC SMOOTHING IRONS

This group covers smoothing irons of all kinds, whether for domestic use or for tailors, dressmakers, etc., including cordless irons. These cordless irons consist of an iron incorporating heating element and a stand which can be connected to the mains. The iron makes contact with the current only when placed in this stand. This group also includes electric steam

smoothing irons whether they incorporate a water container or are designated to be connected to a steam pipe.

The above explanatory note's reference to tailors and dressmakers in connection with irons indicates that the flatirons of subheading 8416.40 are irons used for pressing cloth. By contrast, the instant merchandise is in the nature of hair dressing apparatus, of the kind described in subheading 8516.32 and Explanatory Note C to heading 8516.

Therefore, the subject product is properly classified under subheading 8516.32.00, HTSUS, rather than subheading 8516.40, HTSUS.

HOLDING:

By application of GRI 1, we find the subject flatirons are classified in subheading 8516.32.00, HTSUS, which provides for "Other hairdressing apparatus." The column one, general rate of duty is 3.9 percent *ad valorem*.

Duty rates are provided for your convenience and 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.

EFFECT ON OTHER RULINGS:

NY N025515, dated April 23, 2008, and NY N060721, dated June 5, 2009 are MODIFIED and NY N060719, dated June 5, 2009 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*.

JACINTO JUAREZ

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



GENERAL NOTICE
19 CFR PART 177

**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF A SNOWMAN GIFT BAG
FROM CHINA**

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

ACTION: Notice of proposed revocation of a ruling letter and treatment concerning the tariff classification of a snowman gift bag from China.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises inter-

ested parties that U.S. Customs and Border Protection (CBP) intends to revoke a ruling letter relating to the tariff classification of a snowman gift bag from China under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATES: Comments must be received on or before December 11, 2015.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Office of International Trade, Attention: Trade and Commercial Regulations Branch, 90 K Street, 10th Floor, N.E., Washington, D.C. 20229-1177. Submitted comments may be inspected at U.S. Customs and Border Protection, 90 K Street, 10th Floor, N.E., Washington, D.C. 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: Dwayne S. Rawlings, Tariff Classification and Marking Branch, (202) 325-0092.

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 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the tariff classification of a snowman gift bag from China (hereinafter “gift bag”). Although in this notice, CBP is specifically referring to the revocation of NY N050455, dated February 3, 2009 (Attachment A), this notice covers any rulings on this merchandise 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., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY N050455, CBP classified a gift bag in heading 4819, HTSUS, specifically subheading 4819.20.00, HTSUS, which provides for “Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; ...: Folding cartons, boxes and cases, of non-corrugated paper or paperboard.” It is now CBP’s position that the article is properly classified in subheading 4819.40.00, HTSUS, which provides for “Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; ...: Other sacks and bags, including cones.” Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY N050455 and any other ruling not specifically identified, in order to reflect the proper analysis contained in proposed HQ H058795, set forth in Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: October 5, 2015

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

Attachments

[ATTACHMENT A]

N050455

February 3, 2009

CLA-2-48:OT:RR:NC:N2:234

CATEGORY: Classification

TARIFF NO.: 4819.20.0040

Ms. SANDY WIECKOWSKI
EXPEDITORS TRADEWIN, LLC
11101 METRO AIRPORT CENTER DRIVE
BLDG. M2, SUITE 110
ROMULUS, MI 48174

RE: The tariff classification of a snowman gift bag from China. Correction to Ruling Number N029484

DEAR Ms. WIECKOWSKI:

This replaces Ruling Number N029484, dated June 25, 2008, which contained a clerical error. A complete corrected ruling follows.

In your letter dated May 9, 2008, on behalf of Hallmark Cards, Inc., you requested a tariff classification ruling. The sample which you submitted is being retained by this office.

A sample of a snowman gift bag (SKU#199XGB3139) was submitted. It is a novelty gift bag that consists of a paper bag sandwiched between two die-cut paperboard pieces in the shape of a snowman head and face. The top hat of the snowman has sections die-cut from the paperboard to form handles. This item according to your letter will be marketed and sold at retail as a gift bag. The bag is marked with country of origin China. The paper bag measures approximately 5 1/2" long by 2 15/16" wide by 5 15/16" high and the die-cut snowman measures approximately 6" long by 10 1/8" high. The paperboard snow man gives the "gift bag" its essential character.

The applicable subheading for the "gift bag" will be 4819.20.0040, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like: Other folding cartons, boxes and cases, of non-corrugated paper or paperboard: Other. The rate of duty will be free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on 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 Patricia Wilson at 646-733-3037.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H058795
CLA-2 OT:RR:CTF:TCM H058795 DSR
CATEGORY: Classification
TARIFF NO.: 4819.40.00

Ms. SANDY WIECKOWSKI, MANAGER
EXPEDITORS TRADEWIN, LLC
11101 METRO AIRPORT CENTER DRIVE
BUILDING M-2, SUITE 110
ROMULUS, MI 48174

RE: Revocation of New York Ruling Letter N050455; classification of a snowman gift bag from China

DEAR Ms. WIECKOWSKI,

This is in response to your March 2, 2009, request for reconsideration, made on behalf of Hallmark Cards, Inc., of New York Ruling Letter (NY) N050455, dated February 3, 2009, which pertains to the classification of a snowman gift bag from China, under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed the ruling and find it to be incorrect.

FACTS:

The item is a novelty gift bag that consists of a paper bag sandwiched between two die-cut paperboard pieces shaped as identical snowmen heads and faces, with hats. The paper bag is attached to the paperboard pieces. The hats of the snowmen form handles. The paper bag acts as a means to bring the two paperboard cutouts together so as to make them easier to store or display. The item will be marketed and sold at retail as a gift bag. It is marked with country of origin China. The item measures approximately 5 1/2" long by 2 15/16" wide by 5 15/16" high, and the die-cut snowmen measure approximately 6" long by 10 1/8" high.

In NY N050455, Customs and Border Protection (CBP) classified the item under subheading 4819.20.00, HTSUS, which provides for "Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers ...: Folding cartons, boxes and cases, of non-corrugated paper or paperboard."

In your request for reconsideration, you assert that the gift bag is properly classified under subheading 4819.50.40, HTSUS, which provides for "Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers ...: Other packing containers, including record sleeves: Other."

ISSUE:

Whether the gift bag is properly classified under (1) subheading 4819.20.00, HTSUS, which covers folding cartons, boxes and cases, of non-corrugated paper or paperboard; (2) subheading 4819.40.00, HTSUS, which covers other sacks and bags, including cones; or (3) subheading 4819.50.40, HTSUS, which covers other packing containers, including record sleeves, other.

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 based on GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's 2 through 6 may then be applied in order.

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

The 2015 HTSUS provisions at issue are as follows:

- 4819 Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like:
 * * *
- 4819.20.00 Folding cartons, boxes and cases, of non-corrugated paper or paperboard:
 * * *
- 4819.40.00 Other sacks and bags, including cones:
 * * *
- 4819.50 Other packing containers, including record sleeves:
 * * *
- 4819.50.40 Other.
* * *

There is no dispute that the item is classified under heading 4819, HTSUS. The issue is the proper classification at the 8-digit subheading level. As a result, GRI 6 applies. GRI 6 states:

For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, mutatis mutandis, to the above rules on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires. The EN's for heading 48.19 provide the following concerning the boxes, cartons, and bags of the heading: "This group covers containers of various kinds and sizes generally used for the packing, transport, storage or sale of merchandise, whether or not also having a decorative value." (*See the Harmonized Commodity Description and Coding System*, Vol. 2, p.685-86.)

In your reconsideration request, you assert that the gift bag does not meet the definition of a "box" put forth by *Webster's Third New International Dictionary*, which you state defines a box as a rigid, typically rectangular

receptacle with a lid or cover in which something non-liquid is kept for storage or shipping. Relying upon that definition, you assert that because the gift bag does not possess a lid or cover and has handles, it should not be classified as a folding box under subheading 4819.20, HTSUS.

We agree that the instant gift bag is not an item contemplated by subheading 4819.20.00, HTSUS, but for different reasons. The reliance upon the definition put forth by *Webster's Third New International Dictionary* is unnecessary. EN 48.19 specifically defines *folding* cartons and boxes, in relevant part, as “containers assembled or intended to be assembled by means of glue, staples, etc., on one side only, the construction of the container itself providing the means of forming the other sides, although, where appropriate, additional means of fastening, such as adhesive tape or staples may be used to secure the bottom or lid.” There is no indication in the language of heading 4819, HTSUS, nor in EN 48.19, that a box classifiable under subheading 4819.20.00, HTSUS, must contain a lid and cannot possess die-cut handles. See HQ 557462, dated September 13, 1994 (CBP classified an open-ended, laminated gift box and a laminated, foldable pyramid box with a cord handle, under subheading 4819.20.00, HTSUS); NY F82117, dated January 18, 2000 (individually packaged folding cartons of non-corrugated paperboard that, when assembled, possessed tapered closures at the top and protruding handles, classified in subheading 4819.20.00, HTSUS). Further, and most importantly, the characteristic of the gift bag that provides its shape and form is the paper bag, and no assembly is needed in order to form the paper bag.

Subheading 4819.40.00 covers other sacks and bags, including cones. The terms “sacks” and “bags” are not defined in the tariff. If a tariff term is not defined in either the HTSUS or its legislative history, then “the term’s correct meaning is its common meaning.” *Mita Copystar America v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod America Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *C.J. Tower & Sons v. United States*, 69 C.C.P.A. 128, 673 F.2d 1268, 1271 (1982); *Simod* at 1576. For instance, a “bag” is defined by the *Oxford English Dictionary* as “A receptacle made of some flexible material closed in on all sides except at the top (where also it generally can be closed); a pouch, a small sack.” <http://www.oed.com> (last visited June 25, 2015); see also www.merriam-webster.com/dictionary/bag (last visited June 26, 2015) (“a container made of thin material (such as paper, plastic, or cloth) that opens at the top and is used for holding or carrying things”). The gift bag at issue is a flexible paper container used for packing purposes by consumers who purchase them at retail to package and carry gifts. As such, it squarely meets the definition of a “bag” classified in subheading 4819.40.00, HTSUS.

Subheading 4819.50, HTSUS, covers other packing containers, including record sleeves. Examples of such items are provided within the text of subheadings 4819.50.20, 4819.50.30 and 4819.50.40, HTSUS, to wit: sanitary food and beverage containers, record sleeves, fiber drums, cans, tubes and

similar containers, and rigid boxes and cartons. The subject gift bag is clearly not one of those types of merchandise and subheading 4819.50, HTSUS, is not the proper classification for the gift bag.

You have also asked whether this product is subject to antidumping duties or countervailing duties (AD/CVD). Written decisions regarding the scope of AD/CVD orders are issued by the Import Administration in the Department of Commerce and are separate from tariff classification and origin rulings issued by Customs and Border Protection. You can contact them at <http://www.trade.gov/ia/> (click on “Contact Us”). For your information, you can view a list of current AD/CVD cases at the United States International Trade Commission website at <http://www.usitc.gov> (click on “Antidumping and countervailing duty investigations”), and you can search AD/CVD deposit and liquidation messages using the AD/CVD Search tool at <http://www.cbp.gov> (click on “Import” and “AD/CVD”).

HOLDING:

By application of GRI 1 (and GRI 6), the gift bag is classified under subheading 4819.40.00, HTSUS, which provides for “Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like: Other sacks and bags, including cones.” The column one general rate of duty is “Free.”

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

EFFECT ON OTHER RULINGS:

New York Ruling Letter N050455, dated February 3, 2009, is hereby REVOKED.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

GENERAL NOTICE
19 CFR PART 177

**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF WORKED GLASS
BALLS FROM GERMANY**

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

ACTION: Notice of proposed revocation of a ruling letter and treatment concerning the tariff classification of worked glass balls from Germany.

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) intends to revoke a ruling letter relating to the tariff classification of worked glass balls from Germany under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATES: Comments must be received on or before December 11, 2015.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Office of International Trade, Attention: Trade and Commercial Regulations Branch, 90 K Street, 10th Floor, N.E., Washington, D.C. 20229–1177. Submitted comments may be inspected at U.S. Customs and Border Protection, 90 K Street, 10th Floor, N.E., Washington, D.C. 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: Dwayne S. Rawlings, Tariff Classification and Marking Branch, (202) 325–0092.

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 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the tariff classification of worked glass balls from Germany (hereinafter “glass balls”). Although in this notice, CBP is specifically referring to the revocation of NY M87022, dated October 20, 2006 (Attachment A), this notice covers any rulings on this merchandise 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., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY M87022, CBP classified glass balls in heading 7017, HTSUS, specifically subheading 7017.90.50, HTSUS, which provides for “Laboratory, hygienic or pharmaceutical glassware, whether or not graduated or calibrated: Other: Other.” It is now CBP’s position that the article is properly classified in subheading 7020.00.60, HTSUS, which provides for “Other articles of glass: Other.” Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY M87022 and any other ruling not specifically identified, in order to reflect the proper analysis contained in proposed HQ H006326, set forth in Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: October 5, 2015

ALLYSON MATTANAH
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY M87022

October 20, 2006

CLA-2-70:RR:NC1:126: M87022

CATEGORY: Classification

TARIFF NO.: 7017.90.5000

MR. DAVID HAMBLETON
VIRGINIA INDUSTRIES, INC.
1022 ELM STREET
ROCKY HILL, CONNECTICUT 06067

RE: The tariff classification of a laboratory/hygienic/pharmaceutical glass article from Germany

DEAR MR. HAMBLETON:

In your letter, dated September 20, 2006, you requested a tariff classification ruling, on behalf of Hartford Technologies, regarding a glass part of the flow regulator section of an infusion pump.

A sample of the flow regulator incorporating the part at issue was submitted with your ruling request.

The product is a worked glass ball. The glass is worked to conform to a specific size and specific tolerance. It is worked to a point that would allow it to be incorporated into the flow regulator of an infusion pump. The infusion pump will be part of a system designed for the intravenous administration of drugs to patients.

The worked glass ball is less than a quarter of an inch in diameter. Its function is to control the flow of liquid through intravenous tubes.

In your letter you suggest that this product should be classified in subheading 9018.90.8000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for instruments and appliances used in medical, surgical, dental or veterinary sciences...parts and accessories thereof: other instruments and appliances and parts and accessories thereof: other: other. However, the goods of heading 7017 (laboratory, hygienic or pharmaceutical glassware) are excluded from classification in Chapter 90 by Note 1(e) of that chapter. Since this item is a laboratory/hygienic/pharmaceutical glass article classifiable in heading 7017, it cannot be classified in subheading 9018.90.8000, HTSUS.

The applicable subheading for the worked glass ball – that will be used as a part of the flow regulator section of an infusion pump within an intravenous system – will be 7017.90.5000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for laboratory, hygienic or pharmaceutical glassware: other: other. The rate of duty will be 6.7 percent ad valorem.

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

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

If you have any questions regarding the ruling, contact National Import Specialist Jacob Bunin at 646-733-3027.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

CLA-2 OT:RR:CTF:TCM H006326 DSR
 CATEGORY: Classification
 TARIFF NO.: 9018.90.80

DAVID HAMBLETON, ESQ.
 HARTFORD TECHNOLOGIES, INC.
 1022 ELM STREET
 ROCKY HILL, CT 06067

RE: Reconsideration of NY M87022; classification of worked glass balls from Germany

DEAR MR. HAMBLETON:

This is in response to your letter, dated December 2, 2006, requesting reconsideration of New York Ruling Letter (NY) M87022, dated October 20, 2006. NY M87022 pertains to the tariff classification under the 2006 Harmonized Tariff Schedule of the United States (HTSUS) of worked glass balls used within the flow regulator section of an infusion pump. The ruling classified the product in subheading 7017.90.50, HTSUS, which provides for “Laboratory, hygienic or pharmaceutical glassware, whether or not graduated or calibrated: Other: Other.” The corresponding column one, general rate of duty was 6.7% *ad valorem*.

We have reviewed the tariff classification of the merchandise and have determined that the cited ruling is incorrect. Therefore, NY M87022 is revoked for the reasons set forth in this ruling.

FACTS:

The product under review is a glass ball. It will be used within the flow regulator of section of an infusion pump, and the infusion pump will be part of a system designed for the intravenous administration of drugs to patients. The ball is molded from molten glass in an injection-fed mold and is then ground to the required size and diameter tolerance in two or three grinding operations and barrel-cleaned. A brochure submitted by Hartford Technologies describes the merchandise as “precision glass balls,” used in medical, bearings, imaging, and dispensing applications, and manufactured to tight tolerances. The diameter and diameter tolerance for the intravenous pump applications are .187” (4.798 mm) and plus or minus .001” (.0254 mm), respectively, as specified by the customer. This particular size is .036 mm larger than the nearest size established in the specifications portion of the brochure.

ISSUE:

Whether the subject glass ball is classified as (1) an unworked glass ball under heading 7002, HTSUS; (2) laboratory, hygienic or pharmaceutical glassware under heading 7017, HTSUS; (3) an other article of glass under heading 7020, HTSUS; or (4) a part of instruments and appliances used in the medical, surgical, dental or veterinary sciences under heading 9018, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff

schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. In addition, in interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

The HTSUS provisions under consideration in this case are as follows:

7002 Glass balls (other than microspheres of heading 7018), rods, tubes, unworked:
* * *

7002.10 Balls

7002.10.10 Not over 6 mm in diameter.
* * * *

7017 Laboratory, hygienic or pharmaceutical glassware, whether or not graduated or calibrated:
* * *

7017.90 Other:
* * *

7017.90.50 Other.
* * * *

7020.00 Other articles of glass:
* * *

7020.00.60 Other.
* * * *

9018 Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof:
* * *

9018.90 Other instruments and appliances and parts and accessories thereof:
* * *

Other:
* * *

Electro-medical instruments and appliances and parts and accessories thereof:
* * *

Other:
* * *

9018.90.80 Other.
* * * *

Heading 7002, HTSUS, is an *eo nomine* provision that covers certain unworked glass balls. There is no dispute that the subject article is a “glass

ball.” However, the heading, by its text, requires that such a glass ball be “unworked” in order for it to be covered by that heading. The tariff term “worked” is not explicitly defined in Chapter 70, HTSUS. “When a tariff term is not defined in either the HTSUS or its legislative history, the term’s correct meaning is presumed to be its common meaning in the absence of evidence to the contrary.” *Timber Prods. Co. v. United States*, 515 F.3d 1213, 1219 (Fed. Cir. 2008). In discerning this common meaning, dictionaries, encyclopedias, scientific authorities, and other reliable information sources may be consulted to construe the meaning of a statute’s words. See *Len-Ron Mfg. Co. v. United States*, 334 F.3d 1304, 1309 (Fed. Cir. 2003). The Court of International Trade has determined that the common meaning of “work” under the HTSUS is “to form, fashion, or shape an existing product.” *Winter-Wolff, Inc. v. United States*, 22 C.I.T. 70, 78–79 (1998); see also HQ W968361, dated July 14, 2008. An existing product is one that “already exists as a commercial product.” *Winter-Wolff* at 79. Thus, as a threshold, for an article to be considered “worked,” the “working” process a glass article is subjected to would have to be performed on an existing commercial product.

In addition, Note 2(a) to Chapter 70 explains that with regard to headings 7003, 7004, and 7005, HTSUS, glass that has undergone any process before annealing is not considered “worked.” See HQ 960274, dated October 9, 1997 (stating that polishing or rounding operations listed in heading 70.06 must be limited to those that occur after the annealing stage). Although Note 2(a), to Chapter 70 is not directly applicable to heading 7002, HTSUS, it is useful in providing insights into processes, which, after a glass-ceramic article is subjected to, would be considered “worked.” See HQ W968361, dated July 14, 2008. EN 70.06 provides some examples of processes that, if applied after annealing on an existing commercial product, would be considered “worked” for classification purposes. These processes include, but are not limited to, glass that is bent, curved, worked edges (ground, polished, rounded, notched, chamfered, beveled, profiled, etc.), perforated, fluted, and surface-worked glass (sand-blasted, rendered dull by treatment with emery or acid, frosted, engraved, etc.). However, not every process that an article is subjected to and that occurs after annealing would automatically cause the article to be considered “worked.” The appearance of an article can be evidence of further working, but is not dispositive. The actual test for whether an article has been “worked” requires a factual inquiry into its manufacture and any subsequent processing prior to importation. See HQ W968361, *supra*.

Here, the glass ball is formed from a larger ball (an existing commercial product) that is subjected to two or three grinding operations to precise size specifications and tolerances, and then cleaned. We find that the grinding operations equate to “working” as contemplated by Chapter 70, HTS, and the instant glass ball is therefore excluded from heading 7002, HTSUS.¹

¹ Even if the glass ball were to be considered “unworked,” heading 7002, HTSUS, also excludes glass balls made into finished articles or parts of finished articles recognizable as such. Articles such as those are classified under the appropriate heading, e.g., heading 7011, 7017 or 7018, HTSUS, or Chapter 90, HTSUS. *But see* General Note 1(d) to Chapter 70, HTSUS (Chapter 70, HTSUS, does not cover articles of Chapter 90). Also, if worked, but not

Regarding Chapter 90, HTSUS, the requester asserts that the glass ball is properly classified under heading 9018, HTSUS, as “part of an instrument or appliance used in medical science.” The requester notes that that the heading covers “a very wide range of instruments and appliances which, in the vast majority of cases, are used only in professional practice (e.g., by doctors, surgeons, dentists, veterinary surgeons, midwives), either to make a diagnosis, to prevent an illness or to operate, etc.” EN 90.18. Infusion pumps have been held by CBP as classifiable under heading 9018, HTSUS. See HQ 962361, dated September 28, 1999, and HQ 958098, dated December 1, 1995. The subject glass ball is used in one such infusion pump and Note 2 to Chapter 90, HTSUS, states, in pertinent part, the following:

Subject to [Note 1 to Chapter 90], parts and accessories for machines, apparatus, instruments or articles of this chapter are to be classified according to the following rules:

...

(b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind; ...

The courts have considered the nature of “parts” under the HTSUS and two distinct though not inconsistent tests have resulted. See *Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States*, 110 F.3d 774 (Fed. Cir. 1997). The first test, articulated in *United States v. Willoughby Camera Stores*, 21 C.C.P.A. 322 (1933), requires a determination of whether the imported item is “an integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article.” *Bauerhin*, 110 F.3d at 778 (quoting *Willoughby Camera*, 21 C.C.P.A. 322 at 324). The second test, set forth in *United States v. Pompeo*, 43 C.C.P.A. 9 (1955), states that “an imported item dedicated solely for use with another article is a ‘part’ of that article within the meaning of the HTSUS.” *Id.* at 779 (citing *Pompeo*, 43 C.C.P.A. 9 at 13). Under either line of cases, an imported item is not a part if it is “a separate and distinct commercial entity.” *Id.* Additionally, we note that the EN to heading 70.02 states, in pertinent part, that “[t]he heading excludes balls, rod and tubing made into finished articles or parts of finished articles recognizable as such; these are classified under the appropriate heading (e.g., heading 70.11, 70.17 or 70.18, or Chapter 90). If worked, but not recognizable as being intended for a particular purpose, they fall in heading 70.20.” [Emphasis added]. Here, the subject glass ball is worked to a very specific size and to within a precise tolerance, as required by its ultimate consumer for the particular pump for which it will be used. However, the fact that a particular customer requires a particular size of glass ball for its merchandise does not make that purpose recognizable from that size. In other words, it is not readily apparent for what purpose it is used recognizable as being intended for a particular purpose, the glass ball may be covered by the residual provision heading 7020, HTSUS, as an “other” article of glass, as explained *infra*.

amongst the many applications for glass balls. Further, while the subject glass ball is used to regulate the flow of liquid within an infusion pump, the pump would still function to cause liquid to flow whether or not the glass ball were present.

Lastly, heading 7017 covers laboratory, hygienic or pharmaceutical glassware, whether or not graduated or calibrated. EN 70.17 explains: “This heading covers glass articles of a kind in general use in laboratories (research, pharmaceutical, industrial, etc.) including special bottles (gas washing, reagent, Woulf’s, etc.), ...” Some examples given include special bottles, special tubes, stirrers, flasks, certain dishes, cylinders, dialysers, condensers, specialized funnels, pipettes, stop-cocks, etc. As discussed in HQ 967268, November 5, 2004, laboratory glassware is that which is used for a variety of scientific purposes, including testing, checking, holding, and production of materials regularly used within a laboratory. Better stated, laboratory glassware is used for furthering scientific processes within a laboratory setting, while the instant merchandise is instead used within a medical device that is designed for the intravenous administration of drugs to patients. Therefore, it is not laboratory glassware within the meaning of heading 7017, HTSUS.

Further, EN 70.17 explains that the expression “hygienic or pharmaceutical glassware’ refers to articles of general use not requiring the services of a practitioner. The heading therefore covers, *inter alia*, irrigators, nozzles (for syringes, enemas, etc.), urinals, bed pans, chamber pots, spittoons, cupping-glasses, breast relievers ... eye-baths, inhalers and tongue depressors. Spools and reels for winding surgical catgut are also included.” In HQ H005541, dated July 5, 2007, CBP noted that the expression “hygienic or pharmaceutical glassware” refers to articles of general use not requiring the services of a practitioner. The subject glass ball does not resemble, in form or function, any of the exemplars put forth in EN 70.17. It is a specialized component that is incorporated into the flow regulator of a section of an infusion pump and it controls the flow of solution by being pressed against a tube in the regulator. As such, we find that the glass ball is not “hygienic or pharmaceutical glassware” covered by heading 7017, HTSUS.

Therefore, we find that heading 7020, HTSUS, describes the merchandise as an article of glass, as it is not properly classifiable under some other heading. See *Pomeroy Collection, Inc. v. United States*, 26 C.I.T. 624, 631 (2002); see also EN 70.20; HQ 967268, dated November 5, 2004, where glass tubes specially made for hospital and laboratory waste drains were classified in heading 7020, HTSUS.

HOLDING:

By application of GRI 1, the subject worked glass ball is classifiable under heading 7020, HTSUS. Specifically, it is classifiable under subheading 7020.00.60, HTSUS, which provides for “Other articles of glass: Other.” The column one, general rate of duty is 5% *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided at www.usitc.gov/tata/hts.

EFFECT ON OTHER RULINGS:

NY M87022, dated October 20, 2006, is hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



**GENERAL NOTICE
19 CFR PART 177**

**MODIFICATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF UNWROUGHT GOLD FLAKES AND
NUGGETS**

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

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to the classification of unwrought gold flakes and nuggets.

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 modifying a ruling concerning the classification of unwrought gold flakes and nuggets under the Harmonized Tariff Schedule of the United States (“HTSUS”), and revoking any treatment accorded to substantially similar transactions. Notice of the proposed modification of the ruling and revocation of treatment was published on September 2, 2015, in Volume 49, No. 35, of the CUSTOMS BULLETIN. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 11, 2016.

FOR FURTHER INFORMATION CONTACT: Anthony L. Shurn, Tariff Classification and Marking Branch (202) 325–0218.

SUPPLEMENTARY INFORMATION:**Background**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the CUSTOMS BULLETIN Volume 49, No. 35, on September 2, 2015, proposing to modify CBP Ruling Letter NY N024842, dated April 1, 2008. No comments were received in response to this notice.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. §1625(c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the 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 final decision.

In NY N024842, CBP ruled that the unwrought gold flakes and nuggets are to be classified under HTSUS subheading 7108.12.5050, which under the Harmonized Tariff Schedule of the United States provided for “Gold (including gold plated with platinum) unwrought or in semimanufactured forms, or in powder form: Nonmonetary: Other unwrought forms: Other... Other.” The referenced ruling is incorrect because as unwrought gold in the form of flakes and nuggets, the subject articles are more specifically gold bullion of HTSUS subheading 7108.12.10. Thus, the more general classification of “Other” does not apply in this case.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY N024842 and modifying or revoking, as necessary, any other ruling not specifically identified, to reflect the proper classification of the unwrought gold in the form of flakes and nuggets pursuant to the analysis set forth in Proposed Headquarters Ruling Letter HQ H244570 (Attached). Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

Dated: October 7, 2015

GREG CONNOR
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H244570

October 7, 2015

CLA-2 OT:RR:CTF:TCM H244570 ALS

CATEGORY: Classification

TARIFF NO.: 7108.12.10

MR. JOHANNES C. VAN YPEREN
AZEL LAND DEVELOPMENT CO, INC.
P.O. BOX 1000
MORAVIAN FALLS, NC 28654

RE: Modification of CBP Ruling NY N024842 (April 1, 2008) regarding the tariff classification of Unwrought Gold Flakes and Nuggets

DEAR MR. VAN YPEREN:

In a letter to U.S. Customs and Border Protection (CBP) dated March 10, 2008, you requested a tariff classification ruling under the Harmonized Tariff Schedule of HTSUS for unwrought gold powder, flakes, and nuggets.

In CBP Ruling NY N024842 (April 1, 2008), CBP classified unwrought gold flakes and nuggets under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 7108.12.50, which provides for “Gold (including gold plated with platinum) unwrought or in semimanufactured forms, or in powder form: Nonmonetary: Other unwrought forms: Other....” We have reviewed NY N024842 and find the ruling to be in error with respect to the classification of unwrought gold flakes and unwrought gold nuggets.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057)), a notice was published in the Customs Bulletin, Volume 49, No. 35, on September 2, 2015, proposing to modify NY N024842, and any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

For the reasons set forth below, we hereby modify NY N024842 only with respect to the classification of unwrought gold flakes and unwrought gold nuggets. The classification of unwrought gold powder in NY N024842 is not at issue here and remains in effect as of this ruling.

FACTS:

The articles at issue are unwrought gold flakes and nuggets. NY N024842 states, in pertinent part, the following:

The product to be imported consists of alluvial gold in the form of flakes, powder or nuggets. This gold has been obtained from river beds. You state that gold found in placer deposits is between 92 and 95 percent pure. This gold will be further refined upon importation into the United States... The applicable subheading for the gold flakes and nuggets will be 7108.12.5050, HTSUS, which provides for gold (including gold plated with platinum) unwrought or in semimanufactured forms, or in powder form, nonmonetary, other unwrought forms, other, other.

As noted above, the other article classified in that case, unwrought gold powder, is not at issue here. Thus, NY N024842 remains in effect with regard to unwrought gold powder.

ISSUE:

Are the unwrought gold flakes and nuggets classified as gold bullion of HTSUS subheading 7108.12.10 or more generally as another form of unwrought gold of HTSUS subheading 7108.12.50?

LAW AND ANALYSIS:

Classification under the HTSUS is determined in accordance with the General Rules of Interpretation (“GRI”) and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation (“ARI”). GRI 1 provides that the classification of goods shall be “determined according to the terms of the headings and any relative section or chapter notes.” In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, GRIs 2 through 6 may be applied in order. The HTSUS subheadings at issue are the following **in bold** :

7108	Gold (including gold plated with platinum) unwrought or in semi-manufactured forms, or in powder form: Nonmonetary:
7108.12	Other unwrought forms:
7108.12.10	Bullion and dore
7108.12.50	Other

Subheading Note 1 to HTSUS Chapter 71 states “[f]or the purposes of subheadings 7106.10, 7108.11, 7110.11, 7110.21, 7110.31 and 7110.41, the expressions “powder” and “in powder form” mean products of which 90 percent or more by weight passes through a sieve having a mesh aperture of 0.5 mm.”

Additional U.S. Note 1(a) to HTSUS Chapter 71 states the following:

1. For the purposes of subchapter II, unless the context otherwise requires:
 - (a) The term “unwrought” refers to metals, whether or not refined, in the form of ingots, blocks, lumps, billets, cakes, slabs, pigs, cathodes, anodes, briquettes, cubes, sticks, grains, sponge, pellets, shot and similar manufactured primary forms, but does not cover rolled, forged, drawn or extruded products, tubular products or cast or sintered forms which have been machined or processed otherwise than by simple trimming, scalping or descaling;

It has been factually established in NY N024842 that the subject gold flakes and nuggets are not gold powder as defined under subheading note 1 to HTSUS Chapter 71. The gold flakes and nuggets meet the definition of “unwrought” in that they are not machined or processed beyond the trimming, scalping, or descaling process. “Alluvial” as an adjective of “alluvium” refers to the fact that the flakes or nuggets are the product of deposits formed from flowing water such as rivers. *See, e.g.*, Definition of “Alluvium,” <http://dictionary.reference.com/browse/alluvium> (2015); Definition of “Alluvial,” <http://www.merriam-webster.com/dictionary/alluvial> (2015).

As unwrought gold, the flakes and nuggets are nonmonetary in nature. “Monetary gold” is generally defined as gold that is owned by government

authorities. *See, e.g.*, Definition of “Monetary Gold,” <http://financial-dictionary.thefreedictionary.com/Monetary+Gold> (2015); <http://www.likeforex.com/glossary/w/monetary-gold-30302> (2015). Conversely, “non-monetary gold” is generally defined as a commodity that is traded on the open market and not held for reserve by any government authority. *See, e.g.*, <http://stats.oecd.org/glossary/detail.asp?ID=1817> (2015); <http://www.likeforex.com/glossary/w/non-monetary-gold-126937> (2015). The gold flakes and nuggets at issue are being traded on the open market and are not owned by any government authority.

We have previously examined the meaning of the term “bullion” in a tariff classification context. In CBP Ruling HQ H051895 (November 19, 2009), we classified silver grain under HTSUS subheading 7106.91.10, which provides in relevant part for: “Silver ... unwrought ...: Other: Unwrought: Bullion and dore.” In doing so, we determined the following:

The term “bullion” is not defined in the tariff or in the legal notes. When a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. *See 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.” *Id.* (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271, 69 Cust. Ct. 128 (Cust. Ct. 1982); *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989)). **In *Jarell-Ash Co. v. United States*, 60 Cust. Ct. 65 (Cust. Ct. 1968)**, the U.S. Customs Court considered the classification of, among other items, silver grain described as “extremely small, irregularly shaped pieces of ... silver, which have no uniform longitudinal or latitudinal measurement.” The provision under consideration was paragraph 1638 of the Tariff Act of 1930, which exempted from duty “Bullion, gold or silver.” *Id.* n.2. **The Court consulted several dictionary definitions before concluding that the common meaning of the term “bullion” is “uncoined gold or silver in the mass considered as so much metal without regard to any value imparted to it by its form.” *Id.* at 67. The Court further noted that “[n]ormally bullion is in the form of ingots, bars, plates and the like ... [b]ut it may also consist of other forms or shapes so long as the form or shape does not impart value to the mass.” *Id.*** Silver grain constitutes silver in the mass, *i.e.*, it has no value imparted to it by its form. (**Emphasis added.**)

As with the silver grain in HQ H051895, the unwrought gold flakes and nuggets at issue here are not “in the form of ingots, bars, plates and the like” to quote *Jarell-Ash*, but are “uncoined gold... in the mass considered as so much metal without regard to any value imparted to it by its form.” *See Jarell-Ash Company v. United States, supra*. Thus, as gold in unwrought form that is nonmonetary and meets the definition of “bullion” as legally established in *Jarell-Ash* and HQ H051895, the subject unwrought gold flakes and unwrought gold nuggets are properly classified under HTSUS subheading 7108.12.10 as “Gold (including gold plated with platinum) unwrought or in semimanufactured forms, or in powder form: Nonmonetary: Other un-

wrought forms: Bullion and dore....” *See also* CBP Ruling NY N164118 (May 13, 2011).

HOLDING:

The unwrought gold flakes and unwrought gold nuggets are properly classified under HTSUS subheading 7108.12.10 as “Gold (including gold plated with platinum) unwrought or in semimanufactured forms, or in powder form: Nonmonetary: Other unwrought forms: Bullion and dore....” The general column one rate of duty, for merchandise classified under this subheading is Free.

Duty rates are provided for your convenience and 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*.

EFFECT ON OTHER RULINGS:

CBP Ruling NY N024842 (April 1, 2008) is hereby MODIFIED only with respect to the tariff classification of Unwrought Gold Flakes and Unwrought Gold Nuggets.

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

Sincerely,

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF THREE RULING LETTERS,
MODIFICATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF LUO HAN GUO POWDER
AND LIQUID PRODUCTS**

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

ACTION: Notice of proposed revocation of three ruling letters, modification of one ruling letter, and revocation of treatment relating to the tariff classification of luo han guo powder and liquid products

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) intends to revoke three ruling letters and modify one ruling letter, all of which concern tariff classification of luo han guo products under the Har-

monized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends 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 December 11, 2015.

ADDRESSES: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229-1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Nicholai C. Diamond, Tariff Classification and Marking Branch, at (202) 325-0292.

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 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, this notice advises

interested parties that CBP is proposing to revoke three ruling letters and modify one ruling letter, all of which pertain to the tariff classification of various *luo han guo* powder and liquid products. Although in this notice, CBP is specifically referring to Headquarters Ruling Letter (“HQ”) W967214, dated April 4, 2006 (Attachment A), New York Ruling Letter (“NY”) K84522, dated April 9, 2004 (Attachment B), HQ H106785, dated October 14, 2010 (Attachment C), and NY N046672, dated January 7, 2009 (Attachment D), 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 five identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In NY K84522, CBP classified a *luo han guo* powder comprised 80 percent of mogrosides in subheading 3824.90.91, HTSUS (2004), which provided for “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other.”¹ CBP affirmed that ruling in HQ W967214. In HQ H106785, CBP classified a *luo han guo* liquid comprised 55.90 percent mogrosides in subheading 1302.19.91, HTSUS, which provides for “Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products: Vegetable saps and extracts: Other: Other.” In NY N046672, CBP classified a *luo han guo* liquid comprised 80 percent of mogrosides in subheading 3824.90.92, HTSUS. It is now CBP’s position that the *luo han guo* powder of HQ W967214 and NY

¹ In accordance with 2007 revisions to the HTSUS, subheading 3824.90.91, HTSUS, has been replaced by subheading 3824.90.92, HTSUS. Subheading 3824.90.92, HTSUS, contains language identical to that of former subheading 3824.90.91, HTSUS.

K84522 and the *luo han guo* liquid of NY N046672 are properly classified, by operation of GRI 1, in heading 2938, HTSUS, specifically in subheading 2938.90.00, HTSUS, which provides for “Glycosides, natural or reproduced by synthesis, and their salts, ethers, esters and other derivatives: Other.” It is also our position that the *luo han guo* liquid of HQ H106785 is properly classified, by operation of GRI 1, in heading 3824, HTSUS, specifically in subheading 3824.90.92, HTSUS, which provides for “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke HQ W967214, NY K84522, and NY N046672, modify HQ H106785, and revoke any other ruling not specifically identified to reflect the tariff classification of the subject merchandise according to the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H249896, set forth as Attachment E to this notice. 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: October 8, 2015

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ W967214

April 4, 2006

CLA-2 RR:CTF:TCM 967214 KBR

CATEGORY: Classification

TARIFF NO.: 3824.90.9190

ANDREW L. RUBMAN, ND
BIOVITTORIA
27 STONY CORNER LANE
SOUTHBURY, CT 06488

RE: Reconsideration of NY K84522; Lo Han Guo Powder

DEAR MR. RUBMAN:

This is in reference to your letter of June 8, 2004, requesting reconsideration of New York Ruling Letter (NY) K84522, issued to you by the Customs and Border Protection (“CBP”) National Commodity Specialist Division, on April 9, 2004, concerning the classification of lo han guo powder, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reviewed NY K84522 and have determined that the classification provided is correct.

FACTS:

NY K84522 concerns lo han guo powder imported from China. Lo han guo (*Siraitia Grosvenori*) is a fruit, member of the *Curcubitaceae* gourd family. The fruit is round and green and turns brown when it is dried. The dried powder created from the fruit has a sweet taste which comes primarily from mogrosides, a group of terpene glycosides. The powder is used as a sweetener in foods and as an herb in “traditional medicines” and teas.

A process for making the lo han guo powder was patented in 1995. The process is used to remove undesired flavors created by the drying process. The patented process entails picking the fruit before it is ripe and completing the ripening process during storage. The peel and seeds are removed and the fruit is mashed or pressed to become the basis for a concentrated fruit juice or puree. The pulp solids are removed from the juice to less than 2%. The juice is acidified to a pH of less than 5.3 (preferably 3.8 to 4.2) by using a selected acid including citric acid, malic acid, lactic acids, tartaric acid, acetic acid, phosphoric acid, sulfuric acid, hydrochloric acid or a mixture thereof. Acidified juice is lighter in color, less bitter, and does not gel when it is concentrated.

The juice is homogenized in a high speed mixer to reduce the particle size to less than 850 microns. Next, solvents are used to remove volatile and undesirable components which produce sulfurous or vegetable-like odors and off-flavors such as at least 80% of the sulfur containing amino acids. The process reduces the amino-nitrogen compounds of the juice, which include sulfur-containing amino acids, peptides and proteins by at least 70% while reducing the mogroside or other sweet terpene glycosides content by no more than 20%.

Off-flavor materials and precursors are removed from the juice by use of an ion exchange resin, such as a cation exchange resin. The ion exchange resin removes sulfur-containing amino acids quicker than it removes mogrosides. Therefore, the time the ion exchange resin is used is limited to maximize the

removal of sulfur-containing compounds but minimize the removal of mogrosides. The resulting ion exchange resin adsorbent, fining agent, precipitate material is removed from the juice by filtration or centrifugation. At least 50% of the methylene chloride extractable volatiles fractions are removed from the juice.

The juice is treated with pectinase to remove substantially all the pectin in the juice. Also used to remove off-flavor materials and precursors are adsorbing and/or fining agents such as activated charcoal, bentonite, bleaching earth, kaolin, perlite, diatomaceous earth, cellulose, cyclodextrin polymer, and insoluble polyamide (*e.g.* nylon). The juice may also be treated with precipitating agents such as gelatin, tannin/gelatin, sparkolloid, and water colloidal solutions of silicic acid (silica). An evaporator or concentrating equipment is used to remove certain volatiles from the juice and to concentrate it to from 15 degree Brix to 65 degree Brix (“Brix” is essentially equal to the percent of solid content). The concentrated juice is heated to deactivate enzymes and pasteurize the juice. The solution is mechanically dried and packed in mylar-aluminum bags in 5 kg amounts.

In NY K84522, it was determined that the lo han guo powder was classifiable under subheading 3824.90.9150, HTSUSA (now subheading 3824.90.9190, HTSUSA), as “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other: Other.” You believe the lo han guo powder should be classified as an extract under heading 1302, HTSUSA.

ISSUE:

Whether the lo han guo powder is classified as an extract of heading 1302, HTSUSA, or as a chemical product of heading 3824 HTSUSA?

LAW AND ANALYSIS:

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

In interpreting the headings and subheadings, CBP looks to the Harmonized Commodity Description and Coding System Explanatory Notes (EN). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUS. It is CBP’s practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUSA provisions under consideration are as follows:

1302	Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products:
------	--

Vegetable saps and extracts:

1302.19	Other:
1302.19.90	Other:
1302.19.9040	Other
3824	Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:
3824.90	Other:
	Other:
	Other:
3824.90.91	Other:
3824.90.9190	Other

EN 13.02 states, in pertinent part, the following:

(A) Vegetable saps and extracts.

The heading covers saps and extracts (vegetable products usually obtained by natural exudation or by incision, or extracted by solvents), **provided** that they are not specified or included in more specific headings of the Nomenclature (see list of exclusions at the end of Part (A) of this Explanatory Note).

These saps and extracts differ from the essential oils, resinoids and extracted oleoresins of heading 33.01, in that, apart from volatile odoriferous constituents, they contain a far higher proportion of other plant substances (e.g., chlorophyll, tannins, bitter principles, carbohydrates and other extractive matter).

The saps and extracts classified here include:

- (1) **Opium**, the dried sap of the unripe capsules of the poppy (*Papaver somniferum*) obtained by incision of, or by extraction from, the stems or seed pods. It is generally in the form of balls or cakes of varying size and shape. However, concentrates of poppy straw containing not less than 50% by weight of alkaloids are **excluded** from this heading (see Note 1(f) to this Chapter).
- (4) **Pyrethrum extract**, obtained mainly from the flowers of various pyrethrum varieties (e.g., *Chrysanthemum cinerariaefolium*) by extraction with an organic solvent such as normal hexane or "petroleum ether".
- (11) **Quassia amara** extract, obtained from the wood of the shrub of the same name (*Simaroubaceae* family), which grows in South America.
- (18) **Papaw juice**, whether or not dried, but not purified as papain enzyme. (The agglomerated latex globules can still be observed on microscopic examination.) Papain is **excluded** (heading **35.07**).
- (20) **Cashew nutshell extract**. The polymers of cashew nutshell liquid extract are, however, **excluded** (generally heading **39.11**).

Examples of **excluded** preparations are:

- (iv) **Intermediate products for the manufacture of insecticides**, consisting of pyrethrum extracts diluted by addition of mineral oil in such quantities that the pyrethrins content is less than 2 %, or with other substances such as synergists (e.g., piperonyl butoxide) added (**heading 38.08**).

Heading 1302, HTSUSA, describes vegetable extracts. The ENs provide that vegetable products are usually obtained by natural exudation or by incision, or extracted by solvents. Furthermore, the ENs distinguish products of heading 1302, HTSUS from products of heading 3301, HTSUS, by the amount of plant material they contain. Research into the extracts described by the ENs, however, reveals a variety of extraction and refining techniques. For instance, in HQ 963848 (April 20, 2002), CBP took note of the EN that allows pyrethrum products containing over 2% pyrethrum to remain classified in heading 1302, HTSUS, in classifying a 50% pyrethrum product in heading 1302, HTSUS. We did so even though the original extracted oleoresin had been further purified removing much of the variety of material in the pyrethrum plant and thereby concentrating the pyrethrum content.

However, there is a limit on the degree and extent of purification that can occur for the product to remain in heading 1302. *See* HQ 967972 (March 2, 2006). For instance, EN 13.02, explicitly excludes certain refined extracts of opium, quassia amara, papaw juice, and cashew nut shell liquid, once the refining process concentrates a certain group of chemical compounds to a particular point. Hence poppy straw concentrates containing more than 50% alkaloids are excluded from heading 1302. Likewise, quassin, a chemical compound extracted and refined from the quassia amara shrub is classified in Chapter 29. Papain enzyme, once purified from the extraction process of papaw juice, is classified as an enzyme of Chapter 37. And polymers extracted and refined from cashew nut shell liquid are classified in Chapter 39 as polymers.

CBP found that when a product reaches a certain level of purity it is no longer considered an extract, stating that “substances obtained from a plant are not considered “vegetable extracts” if they only contain one ingredient divorced from the composition of the vegetable source.” HQ 966566 (October 21, 2003). Further, CBP determined that extensive processing can exclude a product from heading 1302. In HQ 959099 (May 1, 1998), CBP stated that “[t]he products in this case are the result of far more than simple processing. They go through several extractions, refining processes, and even centrifugation.... In other words, the products cannot be classified in heading 1302 as extracts or mixtures of extracts. They are formulated products far advanced from the extracts which would be classified in chapter 13.” Specifically, CBP determined that the use of a “cation resin isolation”, similar to the process used for creating the lo han guo powder, excludes a product from classification as a vegetable extract in heading 1302. *See* HQ 966448 (July 9, 2004). In this case, the lo han guo powder is over 80% mogroside and undergoes extensive processing using methods described above such as a cation exchange resin and centrifugation. Therefore, the lo han guo powder is a relatively pure extensively processed chemical product and cannot be classified as an extract.

Therefore, we find the lo han guo powder is classified in heading 3824, specifically in subheading 3824.90.9190, HTSUSA, as “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other: Other.”

HOLDING:

The lo han guo powder is classified in heading 3824, specifically in subheading 3824.90.9190, HTSUSA, as “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other: Other.” The 2006 column one, general rate of duty rate is 5% *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov/tata/hts.

EFFECT ON OTHER RULINGS:

NY K84522, dated April 9, 2004, is **AFFIRMED**.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT B]

NY K84522

April 9, 2004

CLA-2-29:RR:NC:2:239 K84522

CATEGORY: Classification

TARIFF NO.: 3824.90.9150

MR. ANDREW L RUBMAN:
BIOVITTORIA
900 MAIN STREET SOUTH
BUILDING 1, SUITE 200
SOUTHURY, CT 06488

RE: The tariff classification of Lo Han Guo Powder from China.

DEAR MR. RUBMAN:

In your letter dated March 18, 2004, you requested a tariff classification ruling for Lo Han Guo Powder.

You indicate in your letter that the subject product is “[s]imply a powder produced by drying a hot water decoction of a Chinese fruit.” However, the flow chart supplied by the manufacturer shows that, following separation from the fruit pulp, the “[l]iquid is passed through the resin column to remove suspended particulate and then evaporated.” As evidenced by the Product Specification Sheet, this chromatographic processing results in the finished product having a total mogroside content of (80%. Accordingly, it is our determination that the removal of various plant components from the basic extract (i.e., the liquid separated from the fruit pulp, produced by the extraction process of decoction), through the use of chromatography, excludes the finished product from classification, as a vegetable extract, under heading 1302, HTS.

The applicable subheading will be 3824.90.9150, Harmonized Tariff Schedule of the United States (HTS), which provides for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included: other. The rate of duty will be 5 percent ad valorem. This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Andrew Stone at 646-733-3032.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT C]

HQ H106785

October 14, 2010

CLA-2- OT:RR:CTF:TCM H106785 CKG

CATEGORY: Classification

TARIFF NO.: 1302.19.91

AREA PORT DIRECTOR
UNITED STATES CUSTOMS AND BORDER PROTECTION
301 EAST OCEAN BOULEVARD
LONG BEACH, CA 90802

RE: Application for Further Review of Protest No: 2704–09–101238; Classification of Lo Han Guo Extract and Goji Liquid Extract

DEAR PORT DIRECTOR:

This is in reference to the Application for Further Review (“AFR”) of Protest No. 2704–09–101238, timely filed on April 27, 2009 by counsel on behalf of Arizona Production and Packaging (“Arizona”). The AFR concerns the classification of Lo Han Guo Extract and Goji Liquid Extract under the Harmonized Tariff Schedule of the United States (HTSUS).

FACTS:

The protest at issue involves 8 entries of Lo Han Guo Extract or Goji Liquid Extract, entered between February 13, 2008 and June 28, 2008 under subheading 2009.80.6035, HTSUS, as “Fruit juices (including grape must) and vegetable juices, not fortified with vitamins or minerals, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter: Juice of any other single fruit or vegetable: Fruit juice: Other: Berry Juice: Other.” The merchandise was rate-advanced by a Notice of Action dated December 4, 2008 and liquidated between December 29, 2008 and March 6, 2009 under subheading 3824.90.9290, HTSUS, which provides for “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other.” The importer filed its protest on April 27, 2009, claiming that the correct classification for the Lo Han Guo and Goji juice extracts is under subheading 1302.19.9140, HTSUSA, which provides for “Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products: Vegetable saps and extracts: Other: Other: Other.”

ISSUE:

Whether the Lo Han Guo Extract and the Goji Liquid Extract are classified as extracts of heading 1302, HTSUSA, or as chemical products of heading 3824 HTSUSA?

LAW AND ANALYSIS:

Initially, we note that the matter protested is protestable under 19 U.S.C. §1514(a)(2) as a decision on classification and duty assessment. The protest was timely filed within 180 days of liquidation for entries made on or after

December 18, 2004. (Miscellaneous Trade and Technical Corrections Act of 2004, Pub.L. 108-429, § 2103(2)(B) (codified as amended at 19 U.S.C. § 1514(c)(3) (2006)).

Further Review of Protest No. 2704-09-101238 is properly accorded to Protestant pursuant to 19 C.F.R. § 174.24(a) because the decision against which the protest was filed is alleged to be inconsistent with a ruling of the Commissioner of Customs or with a decision made with respect to the same or substantially similar merchandise. Specifically, the Protestant refers to Headquarters Ruling Letters (HQ) W968370 and W967653, dated July 31, 2008, and New York Ruling Letters (NY) N037866, dated October 3, 2008, and NY L87065, dated September 12, 2005.

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

The 2008 HTSUS provisions under consideration are as follows:

1302 Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products:

* * *

Vegetable saps and extracts:

* * *

1302.19 Other:

* * *

1302.19.91 Other...

* * *

3824 Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:

* * * * *

3824.90 Other:

* * *

Other:

* * *

Other:

* * *

Other:

* * *

3824.90.92

Other...

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), 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 follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 13.02 states, in pertinent part, the following:

Vegetable saps and extracts.

The heading covers saps and extracts (vegetable products usually obtained by natural exudation or by incision, or extracted by solvents), **provided** that they are not specified or included in more specific headings of the Nomenclature (see list of exclusions at the end of Part (A) of this Explanatory Note).

These saps and extracts differ from the essential oils, resinoids and extracted oleoresins of heading 33.01, in that, apart from volatile odoriferous constituents, they contain a far higher proportion of other plant substances (e.g., chlorophyll, tannins, bitter principles, carbohydrates and other extractive matter).

The saps and extracts classified here include:

(1) **Opium**, the dried sap of the unripe capsules of the poppy (*Papaver somniferum*) obtained by incision of, or by extraction from, the stems or seed pods. It is generally in the form of balls or cakes of varying size and shape. However, concentrates of poppy straw containing not less than 50% by weight of alkaloids are **excluded** from this heading (see Note 1(f) to this Chapter).

* * *

(4) **Pyrethrum extract**, obtained mainly from the flowers of various pyrethrum varieties (e.g., *Chrysanthemum cinerariaefolium*) by extraction with an organic solvent such as normal hexane or "petroleum ether".

* * *

(11) **Quassia amara extract**, obtained from the wood of the shrub of the same name (*Simaroubaceae* family), which grows in South America...

* * *

(18) **Papaw juice**, whether or not dried, but not purified as papain enzyme. (The agglomerated latex globules can still be observed on microscopic examination.) Papain is **excluded (heading 35.07)**.

* * *

(20) **Cashew nutshell extract**. The polymers of cashew nutshell liquid extract are, however, **excluded** (generally **heading 39.11**).

Additionally, examples of excluded preparations are provided:

(iv) **Intermediate products for the manufacture of insecticides**, consisting of pyrethrum extracts diluted by addition of mineral oil in such quantities that the pyrethrins content is less than 2 %, or with other substances such as synergists (e.g., piperonyl butoxide) added (**heading 38.08**).

* * * * *

The relevant portion of heading 3824, HTSUS, referring to chemical products and preparations, can only be used to classify a mixture of natural products as such if the product is not provided for in another heading of the HTSUS. Therefore, if we find that the merchandise is described by the terms of heading 1302, HTSUS, then heading 3824, HTSUS, cannot be considered.

Heading 1302, HTSUS, describes vegetable extracts. The ENs provide that vegetable products are usually obtained by natural exudation or by incision, or extracted by solvents. Furthermore, the ENs distinguish products of heading 1302, HTSUS, from products of heading 3301, HTSUS (essential oils and resinoids), by the amount of plant material they contain.

CBP has found that when a product reaches a certain level of purity it is no longer considered an extract, stating that “substances obtained from a plant are not considered “vegetable extracts” if they only contain one ingredient divorced from the composition of the vegetable source.” *HQ 966566* (October 21, 2003). Further, CBP has determined that extensive processing can exclude a product from heading 1302. In *HQ 959099* (May 1, 1998), CBP stated that “[t]he products in this case are the result of far more than simple processing. They go through several extractions, refining processes, and even centrifugation.... In other words, the products cannot be classified in heading 1302 as extracts or mixtures of extracts. They are formulated products far advanced from the extracts which would be classified in chapter 13.”

In *HQ W967214* (April 4, 2006), we determined that a lo han guo powder was over 80% mogroside after undergoing an extensive patented process involving concentration, acidification, homogenization, and use of solvents and an ion exchange resin to remove volatile and off-flavor compounds while minimizing the removal of mogrosides, then additional filtration and centrifugation of precipitate material, treatment with pectinase to remove most of the pectin in the juice, further concentration or evaporation to remove additional volatile compounds, and finally, heating the concentrated juice to deactivate enzymes and pasteurize the juice. The lo han guo powder of *HQ W967214* was found to be a relatively pure, extensively processed chemical product and could not be classified as an extract.

Similarly, CBP determined that the use of a “cation resin isolation”, similar to the process used for creating the lo han guo powder at issue in *HQ W967214*, excludes a product from classification as a vegetable extract in heading 1302. See *HQ 966448* (July 9, 2004).

In the AFR, counsel argues that the instant subject products are basic fruit extracts unrelated to the types of products found in *HQ W967214* or in the similar rulings cited above. According to counsel, the products subject to the actions taken by the port undergo relatively limited processing to produce an extract of the fruit itself. The manufacturing flowcharts submitted (which we note are identical) show that both the Lo Han Guo and the Goji Liquid Extracts are obtained by washing with water, extraction with ethanol and

water, decompressing the extracted liquid below 60° Centigrade, centrifugation, additional decompression below 60° Centigrade, spray drying, breaking and passing through an 80 mesh. Counsel provides a slightly different narrative which describes the process as squeezing the fruit, filtration, ethanol solvent extraction, sterilizing and packing.

A final description of the methods applied to obtain the instant product and the composition of the imported product was provided by counsel for the protestant after consultation with the supplier, which confirmed that “[t]he extract is obtained through the production process shown in the flow chart. Mogrosides and dietary fibers are not added to this product.” The products are solvent-obtained extracts, not further subjected to extraordinary processing to isolate a single compound or family of compounds. Additionally, it appears that they are raw materials for various other manufactured products. There is no additional substance added to these products to give them the characteristics of a finished food preparation, medicament, etc.” Heading 1302, Explanatory Note (A), p. II-1302-3 noted.

As mentioned above, the relevant portion of heading 3824, HTSUS, referring to chemical products and preparations, can only be used to classify a mixture of natural products as such if the product is not provided for in another heading of the HTSUS. Therefore, since we find that the merchandise is described by the terms of heading 1302, we can no longer consider heading 3824. The Lo Han Guo Extract and the Goji Liquid Extract are classified in heading 1302, HTSUS.

HOLDING:

By application of GRI 1, the Lo Han Guo Extract and the Goji Liquid Extract are classified in heading 1302, specifically in subheading 1302.19.9140, HTSUSA, as “Vegetable saps and extracts: Other: Other: Other.” The 2008 column one, general rate of duty rate is free.

You are instructed to ALLOW the protest in full.

In accordance with Sections IV and VI of the CBP *Protest/Petition Processing Handbook* (HB 3500-08A, December 2007, pp. 24 and 26), you are to mail this decision, together with the CBP Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry or entries in accordance with the decision must be accomplished prior to mailing the decision.

Sixty days from the date of the decision, the Office International Trade, Regulations and Rulings, will make the decision available to CBP personnel, and to the public on the CBP Home Page on the World Wide Web at www.cbp.gov, by means of the Freedom of Information Act, and other methods of public distribution.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT D]

N046672

January 7, 2009

CLA-2-38:OT:RR:E:NC:2:239

CATEGORY: Classification

TARIFF NO.: 3824.90.9290

MR. JONATHAN ANDREW SELZER
HERBASWAY LABORATORIES
101 NORTH PLAINS INDUSTRIAL RD.
WALLINGFORD, CT 06492

RE: The tariff classification Lo Han Fruit Extract 80% Mogrosides from China

DEAR MR. SELZER:

In your letter dated December 10, 2008, you requested a tariff classification ruling for Lo Han Fruit Extract 80% Mogroside which you have stated is an ingredient used to manufacture a liquid dietary supplement. The product is an alcohol/water extract of lo han fruit that has been subsequently dried to remove all traces of alcohol.

In your inquiry you suggest classification in heading 1302 which provides for vegetable sap and extracts obtained by natural exudation or by incision, or extracted by solvents. Lo han fruit extract is an extensively processed, relatively pure product far advanced from the simple processing of extracts classified in heading 1302.

The applicable subheading will be 3824.90.9290, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other: Other. The rate of duty will be 5 percent ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on 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 Richard Dunkel at 646-733-3032.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT E]

HQ H249896
 CLA-2 OT:RR:CTF:TCM H249896 NCD
 CATEGORY: Classification
 TARIFF NO.: 2938.90.0000; 3824.90.9290

ANDREW L. RUBMAN, ND
 BIOVITTORIA
 27 STONY CORNER LANE
 SOUTHURBY, CT 06488

RE: Revocation of HQ W967214, NY N046672, and NY K84522 and Modification of HQ H106785; Classification of luohanguo powder and liquid products

DEAR MR. RUBMAN:

This letter is in reference to Headquarters Ruling Letter (“HQ”) W967214, issued to you on April 4, 2006, and New York Ruling Letter (“NY”) K84522, issued to you on April 9, 2004, both of which involve the tariff classification of a luohanguo powder under the Harmonized Tariff Schedule of the United States (“HTSUS”). In both rulings, U.S. Customs and Border Protection (“CBP”) classified the subject powder in subheading 3824.90.91, HTSUS, which provides for “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other.”¹ We have reviewed these rulings and determined that they are incorrect.

We have also reviewed NY N046672, dated January 7, 2009, and HQ H106785, dated October 14, 2010, both of which involve luohanguo liquids. Upon reviewing these rulings, we have determined that the former is incorrect and that the latter is incorrect with respect to the luohanguo liquid at issue in that ruling. Therefore, for the reasons set forth below, we hereby revoke HQ W967214, NY K84522, and NY N046672, and modify HQ H106785.

FACTS:

At issue in all four rulings under reconsideration are products derived from the fruit of the luohanguo plant. In HQ W967214 and NY K84522, this product was in the form of a dry powder, which, as we noted in HQ W967214, is provided a sweet taste by its constituent mogrosides, a group of terpeneglycosides. In NY K84522, CBP stated as follows with regard to the luohanguo powder:

You indicate in your letter that the subject product is “[s]imply a powder produced by drying a hot water decoction of a Chinese fruit.” However, the flow chart supplied by the manufacturer shows that, following separation from the fruit pulp, the “[l]iquid is passed through the resin column to remove suspended particulate and then evaporated.” As evidenced by the

¹ We note that subheading 3824.90.91 of the HTSUS was re-designated subheading 3824.90.92 as part of the 2007 amendments to the HTSUS. Because the two subheadings are identical in language, we consider whether the instant products are classifiable in subheading 3824.90.92, HTSUS.

Product Specification Sheet, this chromatographic processing results in the finished product having a total mogroside content of $\geq 80\%$.

Based on this, CBP classified the product in subheading 3824.90.92, HT-SUS, which provides for "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other." We affirmed this determination in HQ W967214, in which we provided the following additional description of the product:

A process for making the luo han guo powder was patented in 1995. The process is used to remove undesired flavors created by the drying process. The patented process entails picking the fruit before it is ripe and completing the ripening process during storage. The peel and seeds are removed and the fruit is mashed or pressed to become the basis for a concentrated fruit juice or puree. The pulp solids are removed from the juice to less than 2%. The juice is acidified to a pH of less than 5.3 (preferably 3.8 to 4.2) by using a selected acid including citric acid, malic acid, lactic acids, tartaric acid, acetic acid, phosphoric acid, sulfuric acid, hydrochloric acid or a mixture thereof. Acidified juice is lighter in color, less bitter, and does not gel when it is concentrated.

The juice is homogenized in a high speed mixer to reduce the particle size to less than 850 microns. Next, solvents are used to remove volatile and undesirable components which produce sulfurous or vegetable-like odors and off-flavors such as at least 80% of the sulfur containing amino acids. The process reduces the amino-nitrogen compounds of the juice, which include sulfur-containing amino acids, peptides and proteins by at least 70% while reducing the mogroside or other sweet terpene glycosides content by no more than 20%.

Off-flavor materials and precursors are removed from the juice by use of an ion exchange resin, such as a cation exchange resin. The ion exchange resin removes sulfur-containing amino acids quicker than it removes mogrosides. Therefore, the time the ion exchange resin is used is limited to maximize the removal of sulfur-containing compounds but minimize the removal of mogrosides. The resulting ion exchange resin adsorbent, fining agent, precipitate material is removed from the juice by filtration or centrifugation. At least 50% of the methylene chloride extractable volatiles fractions are removed from the juice.

The juice is treated with pectinase to remove substantially all the pectin in the juice. Also used to remove off-flavor materials and precursors are adsorbing and/or fining agents such as activated charcoal, bentonite, bleaching earth, kaolin, perlite, diatomaceous earth, cellulose, cyclodextrin polymer, and insoluble polyamide (e.g. nylon). The juice may also be treated with precipitating agents such as gelatin, tannin/gelatin, sparkoloid, and water colloidal solutions of silicic acid (silica). An evaporator or concentrating equipment is used to remove certain volatiles from the juice and to concentrate it to from 15 degree Brix to 65 degree Brix ("Brix" is essentially equal to the percent of solid content). The concentrated juice is heated to deactivate enzymes and pasteurize the juice. The solution is mechanically dried and packed in mylar-aluminum bags in 5 kg amounts.

In contrast to HQ W967214 and NY K84522, the products at issue in HQ H106785 and NY N046672 are in liquid form. In HQ H106785, we noted as follows with regard to the subject product:

The manufacturing flowcharts submitted (which we note are identical) show that both the Luo han guo and the Goji Liquid Extracts are obtained by washing with water, extraction with ethanol and water, decompressing the extracted liquid below 60° Centigrade, centrifugation, additional decompression below 60° Centigrade, spray drying, breaking and passing through an 80 mesh. Counsel provides a slightly different narrative which describes the process as squeezing the fruit, filtration, ethanol solvent extraction, sterilizing and packing.

A final description of the methods applied to obtain the instant product and the composition of the imported product was provided by counsel for the protestant after consultation with the supplier, which confirmed that “[t]he extract is obtained through the production process shown in the flow chart. Mogrosides and dietary fibers are not added to this product.”

We additionally note that, according to a product specification sheet submitted by the protestant in HQ H106785, the luo han guo liquid at issue in that case is comprised 55.90 percent of mogrosides, 18.4 percent of fructose, 10.6 percent of glucose, 8.9 percent of sucrose, 3.37 percent of moisture, 2.38 percent of protein, and 0.45 percent of ash. The chemical composition of the goji liquid at issue was not reported. We classified both of the subject products in subheading 1302.19.91, HTSUS, which provides for “Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products: Vegetable saps and extracts: Other: Other.”

Finally, NY N046672 involved a luo han guo liquid comprised 80 percent of mogroside which, according to the inquirer, is derived from the luo han guo fruit through alcohol/water extraction and subsequently dried to remove all traces of the alcohol. CBP noted in that case that the product had been extensively processed and, on this basis, classified the product in that case in subheading 3824.90.92, HTSUS.

ISSUE:

Whether the subject luo han guo products are classified as extracts in heading 1302, HTSUS, as glycosides in heading 2938, HTSUS, or as other chemical mixtures in heading 3824, HTSUS?

LAW AND ANALYSIS:

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise 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 neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

1302 Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products:

Vegetable saps and extracts:

1302.19 Other:

1302.19.91 Other

2938 Glycosides, natural or reproduced by synthesis, and their salts, ethers, esters and other derivatives:

2938.90.00 Other

3824 Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:

3824.90 Other:

Other:

Other:

Other:

3824.90.92 Other

At the outset, we note that the subject products can only be classified in heading 3824, HTSUS, if they are not classifiable in heading 2938, or more specifically classifiable in heading 1302. *See* Chapter 29, Note 1, HTSUS (“Except where the context otherwise requires, the headings of this chapter apply only to...separate chemically defined organic compounds.”); Chapter 38, Note 1, HTSUS (“This chapter does not cover...separate chemically defined elements or compounds.”); *see also Cargill, Inc. v. United States*, 318 F. Supp. 2d 1279, 1278–88 (Ct. Int’l. Trade 2004) (characterizing heading 3824 as a basket provision). Moreover, the subject products can only be classified in heading 1302, HTSUS, if they are not classifiable in heading 2938. *See* Chapter 13, Note 2, HTSUS (“The heading does not apply to... Camphor, glycyrrhizin or other products of heading 2914 or 2938.”). Consequently, we first consider whether the subject products are classifiable in heading 2938; if they are not, we will consider heading 1302 before finally considering heading 3824.

Heading 2938 describes glycosides and their derivatives. As referenced above, Note 1 to Chapter 29 provides, in relevant part, as follows:

Except where the context otherwise requires, the headings of this chapter apply only to:

(a) Separate chemically defined organic compounds, whether or not containing impurities;

...

(c) The products of headings 2936 to 2939 or the sugar ethers, sugar acetals and sugar esters, and their salts, of heading 2940, or the products of heading 2941, whether or not chemically defined...

With regard to “chemically defined” and “impurities” as referenced in Note 1(a) to Chapter 29, the EN to Chapter 29 states as follows:

A separate chemically defined compound is a substance which consists of one molecular species (e.g., covalent or ionic) whose composition is defined by a constant ratio of elements and can be represented by a definitive structural diagram. In a crystal lattice, the molecular species corresponds to the repeating unit cell.

...

The term “impurities” applies exclusively to substances whose presence in the single chemical compound results solely and directly from the manufacturing process (including purification). These substances may result from any of the factors involved in the process and are principally the following:

- (a) Unconverted starting materials.
- (b) Impurities present in the starting materials.
- (c) Reagents used in the manufacturing process (including purification).
- (d) By-products.

EN 29.38 states, in pertinent part, as follows:

This heading also covers **natural mixtures** of glycosides and of their derivatives (e.g., a natural mixture of digitalis glycosides containing purpurea glycosides A and B, digitoxin, gitoxin, gitaloxin, etc.); but deliberate intermixtures or preparations are **excluded**.

Per Note 1(a) and the EN to Chapter 29, a substance is classifiable within heading 29 where it is comprised almost entirely by a single molecular structure, so long as any structural deviations, i.e., impurities, are the result of processing. *See Degussa Corp. v. United States*, 508 F.3d 1044, 1047–48 (Fed. Cir. 2007) (discussing the scope of, and applying, identical language concerning chemical impurities in the EN to Chapter 28); Richard J. Lewis, Sr., *Hawley’s Condensed Chemical Dictionary* 324 (15th ed. 2007) [hereinafter *Hawley’s*] (similarly defining compound as “a homogeneous entity where the elements have definite proportions by weight and are represented by a chemical formula”). Note 1(c) and EN 29.38 establish an even broader degree of permissible chemical heterogeneity in specific relation to glycoside prod-

ucts, insofar as they set the scope of heading 2938 to include mixtures consisting of multiple, varying glycosidic structures in addition to any incidental impurities.²

Notwithstanding this allowance for impurities, it is CBP's position that there do exist limits to the proportional weights of permissible impurities in a Chapter 29 product. Specifically, any impurities cannot be so prevalent so as to marginalize the product's chemical identity and render it a chemical mixture classifiable elsewhere. *Compare* HQ 967971, dated March 2, 2006 (classifying extract with 80 percent silymarin content in heading 2932 on the grounds that remaining 20 percent content, comprised of starting material and solvent, constituted permissible impurities) *with* HQ 966448, dated July 9, 2004 (excluding extracts containing between 6 percent and 30 percent alkaloids as well as maltodextrin and ash from heading 2939); *see also* HQ W968424, dated December 19, 2006 (excluding from a product containing "proanthocyanidin, in concentrations of 76 percent or greater to the exclusion of other constituents" from Chapter 29); *see* Hawley's, *supra*, at 685 (defining impurity as "[t]he presence of one substance in another, often in such low concentration that it cannot be measured quantitatively by ordinary analytical methods...").

Here, each of the instant products contains varying amounts of mogrosides, which comprise a group of chemical compounds within the broader glycoside family. Our research indicates that mogrosides *in toto* encompass several different individual chemical compounds, most commonly mogrosides I-V, each of which bears a unique molecular make-up. *See* Dr. Subhuti Dharmananda, *Luo Han Guo: Sweet Fruit Used as Sugar Substitute and Medicinal Herb*, Institute for Traditional Medicine, Jan. 2004, <http://www.itmonline.org/arts/luohanguo.htm>. Our research further indicates that while mogroside V is typically the largest component by weight in *luo han guo* extracts, these extracts generally contain other mogroside compounds, albeit in much smaller amounts. *Id.* Even when mixed together, however, these individual mogroside compounds remain classifiable in heading 2938, HT-SUS, by operation of Chapter 29, Note 1(c).

In HQ W967214, NY K84522, and NY N046672, unspecified mogrosides account for 80 percent of the respective subject products' chemical compositions, with the remaining 20 percent constituent matter comprised of various undefined materials. Assuming they lack glycosidic content, these 20 percent remainder portions qualify as impurities if they result from processing such as purification. According to CBP's analyses of the manufacturing flowcharts you submitted, the powder at issue in HQ W967214 and NY K84522 is subjected to filtration, centrifugation, and column chromatographic procedures designed to remove certain materials from the substance. Specifically, we noted in HQ W967214 that the ion exchange resin used in the chromatographic procedure enables disposal of unwanted sulfur-containing compounds, and that, additionally, 50 percent of the unwanted methylene chloride extractable volatiles fractions and various off-flavor materials are removed. As a result, the remaining 20 percent constituent matter can be

² While Note 1(c) does not specifically carve out an allowance for impurities, one can be read in by implication, as the note would otherwise be rendered *de facto* inoperable. *See* Hawley's, *supra*, at 685 ("It is impossible to prepare an ideally pure substance").

characterized as either unconverted starting materials or impurities in the starting materials. Likewise, CBP concluded in NY N046672 that the luohan guo liquid at issue has been extensively processed; hence, the remaining materials left unaffected by this processing can be considered impurities. Consequently, both the luohan guo powder of HQ W967214 and NY K84522 and the luohan guo liquid of NY N046672 are classifiable in heading 2938, HTSUS, as glycosides not chemically defined containing impurities from the starting material.

In HQ H106785, by contrast, the subject luohan guo liquid contains only 55.90 percent mogrosides as its most predominant chemical constituent, although an additional 37.9 percent of the liquid is comprised by glucose, fructose and sucrose. The presence of a sugar may in some cases be indicative of glycoside content, as the latter by definition includes the former as a constituent part, but it is not necessarily dispositive of such. Hawley's, *supra*, at 616 (defining glycosides as "acetals derived from a combination of various hydroxyl compounds with various sugars"). In HQ H106785, it is unclear whether the constituent sugars are incorporated into glycosides. In addition, the mixture contains other non-glycosidic substances. Therefore, the presence of glycosides combined with other materials renders the liquid a heterogeneous mixture rather than a mixture of glycosides for classification purposes. As such, it is excluded from Chapter 29 and must be classified elsewhere.

We accordingly consider whether the liquid is classifiable in heading 1302, HTSUS, which covers vegetable extracts. EN 13.02 provides, in relevant part, as follows:

The heading covers saps and extracts (vegetable products usually obtained by natural exudation or by incision, or extracted by solvents)...

The saps and extracts classified here include:

- (1) **Opium**, the dried sap of the unripe capsules of the poppy (*Papaver somniferum*) obtained by incision of, or by extraction from, the stems or seed pods. It is generally in the form of balls or cakes of varying size and shape. However, concentrates of poppy straw containing not less than 50% are **excluded** from this heading...
- (11) **Quassia amara** extract, obtained from the wood of the shrub of the same name (*Simaroubaceae* family), which grows in South America.

Quassin, the principal bitter extract of the wood of the *Quassia amara*, is a heterocyclic compound of **heading 29.32** ...

- (18) **Papaw juice**, whether or not dried, but not purified as papain enzyme. (The agglomerated latex globules can still be observed on microscopic examination.). Papain is **excluded (heading 35.07)**...
- (20) **Cashew nutshell extract**. The polymers of cashew nutshell liquid extract are, however, **excluded (generally heading 39.11)**...

The vegetable saps and extracts of this heading are generally raw materials for various manufactured products...

It is our long-standing position that, consistent with EN 13.02, heading 1302 applies to products that have been created through standard extraction

methods, but not to those that have subsequently been enriched, purified, or otherwise refined so as to increase the contents of certain desirable compounds. See HQ H106785, dated October 14, 2010 (“CBP has determined that extensive processing can exclude a product from 1302.”); HQ 959099, dated May 1, 1998 (“As pointed out in the ENs to heading 1302, what is covered in the heading are vegetable products obtained by natural exudation or by incision or by solvent extraction.”). In HQ H195716, dated February 19, 2015, we provided the following justification for this position:

CBP’s position is supported by the text of EN 13.02. For example, opium is the dried sap of the unripe capsules of the poppy (*Papaver somniferum*), obtained by incision of or extraction from the stems or seed pods. Opium contains about 10% morphine. However, concentrate of poppy straw is a different product. A procedure for obtaining concentrate of poppy straw was first patented in 1935, and describes a process of drying the stems and pods of the poppy plant, treating them with sodium bisulphite, concentrating the aqueous solution into a paste by application of a vacuum, treating the paste with alcohol, and then precipitating the morphine base by treating the solution with ammonium sulphate and benzene, to yield a product with over 50% morphine. EN(1) to 13.02 (and Note 1(f) to Chapter 13, HTSUS) excludes concentrates of poppy straw containing not less than 50% by weight of alkaloids. In another example, quassia amara extract obtained from the bark of the *Quassia amara* shrub. The extract is used in herbal medicine, and contains numerous compounds including both beta-carbonile and cantin-6 alkaloids as well as, primarily, the bitter compounds known as quassinoids. Quassin (2,12-dimethoxypicrasa-2,12-diene-1,11,16-trione, CAS No. 76-78-8) however, is a specific chemical compound contained in the *Quassia amara* shrub. A patented procedure for obtaining quassin describes a process which percolates first the gum or residue of the wood chips of the *Quassia amara* shrub in ethanol and evaporates the solvent, then dissolves the residue in water and washes it with hexane. The hexane fraction is discarded, and sodium chloride is added to the aqueous fraction. A residue is extracted using ethyl acetate and the crystallized into quassin and neoquassin. This process yields a crystal composed of 39% quassin. This chemical is one of the most bitter substances found in nature, and is used mainly as a food additive. EN(11) to 13.02 excludes quassin from classification under the heading, and directs it to be classified under heading 29.32. In these examples, EN 13.02 excludes products extracted from plants which undergo extensive further processing. See EN(1), (11), (18), and (20) to 13.02.

See also HQ H061203, dated August 12, 2010 (“There appears to be a limit on the degree and extent of purification that can occur for the product to remain in heading 1302. For instance, EN 13.02, explicitly excludes certain refined extracts of opium, quassia amara, papaw juice, and cashew nut shell liquid, once the refining process concentrates a certain group of chemical compounds to a particular point. Hence, poppy straw concentrates containing more than 50% alkaloids are excluded from heading 1302. Likewise, quassin, a chemical compound extracted and refined from the quassia amara shrub is classified in

Chapter 29. Papain enzyme, once purified from the extraction process of papaw juice, is classified as an enzyme of Chapter [35]. And polymers extracted and refined from cashew nut shell liquid are classified in Chapter 39 as polymers.”); HQ H237599, dated May 27, 2015; and HQ W968424, dated December 19, 2006.

Accordingly, we have consistently ruled that products in which certain chemical compounds have deliberately been targeted and enriched cannot be classified in heading 1302. In HQ H195716, for example, we held that silymarin powders subjected to concentration measures for the purpose of increasing their relative flavonolignan contents were not described by heading 1302. We have also excluded from heading 1302 a pine bark extract that had been processed extensively following initial water extraction so as to increase its proanthocyanidin content, a red cabbage extract that had been concentrated and standardized so as to leave only the desired coloring matter, and a grape product that had undergone processes “designed to specifically target the polyphenol compounds in the grape pomace source material,” among other products. *See* HQ W968424; HQ H023701, dated May 29, 2009; and HQ H056377, dated August 9, 2010; *see also* HQ H061203, dated August 12, 2010 (“It is thus the opinion of this office that phenolic compounds are targeted and further concentrated in the extraction and purification process, resulting in a relatively pure chemical product that can no longer be considered a simple extract of heading 1302, HTSUS.”); and HQ H965030, dated May 20, 2002 (“Substances obtained from a plant are not considered ‘vegetable extracts’ if they only contain one ingredient divorced from the composition of the vegetable source.”).

The luo han guo liquid of HQ H106785 is initially extracted with water and ethanol, but is subsequently subjected to additional processes such as centrifugation and decompression. These steps, which are methods of concentrating desired chemical compounds, yield a product that contains 55.90 percent mogrosides among other naturally-occurring materials. *See* Hawley’s at 254. Additionally, our review of patents for the processing of luo han guo plants indicates that a chemical composition in which mogrosides account for as much as 55.90 percent of the constituent content is virtually unattainable but for the application of post-extraction enrichment. U.S. Patent No. 8,449,933 (filed June 30, 2004) (describing process of involving microfiltration of luo han guo fruit juice that yields product containing at most 25 percent mogrosides); U.S. Patent No. 5,411,755 (filed Jan. 26, 1994) (describing process involving fractionalization of Cucurbitaceae fruit juice that yields product containing at most 15 percent mogrosides); U.S. Patent No. 2,425,721 (filed June 30, 2004) (demonstrating use of column separation to increase mogroside content in extracts from 35 percent to 60 to 87 percent). In light of this, we conclude that the luo han guo liquid of HQ H106785 has been deliberately enriched with mogrosides through the use of post-extraction processing. Consequently, like the products of HQ H195716, HQ W968424, HQ H023701, and HQ H056377, the instant liquid cannot be classified in heading 1302.

Having excluded the remaining luo han guo liquid from headings 2938 and 1302, we now consider whether it is classifiable under heading 3824. Heading

3824 provides for “chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included.” General Note 1 to Chapter 38 provides, in relevant part, that “[t]his Chapter...does not cover chemically defined elements or compounds (usually classified in Chapter 28 or 29...” Additionally, EN 38.24 states, in pertinent part, as follows:

(B) CHEMICAL PRODUCTS AND CHEMICAL OR OTHER PREPARATIONS

With only three exceptions... this heading does not apply to separate chemically defined elements or compounds.

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

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

Consistent with General Note 1 to Chapter 38 and the EN 38.24, it is CBP’s practice to classify products in heading 3824 where they lack the chemical purity to qualify as a product of Chapter 29, yet have been so purified so as to fall outside the scope of heading 1302. *See* HQ H061203; HQ 959099, dated May 1, 1998. As in our previous cases, the *luo han guo* liquid of HQ H106785, as a purified chemical product or preparation lacking chemical definition, is classifiable in heading 3824.

HOLDING:

Under the authority of GRI 1, the *luo han guo* powder of HQ 967214 and NY K84522 and the *luo han guo* liquid of NY N046672 are classified in heading 2938, HTSUS, specifically in subheading 2938.90.0000, HTSUSA, which provides for “Glycosides, natural or reproduced by synthesis, and their salts, ethers, esters and other derivatives: Other.” The 2015 column one general rate of duty rate is 3.7% ad valorem.

By application of GRI 1, the *luo han guo* liquid of HQ H106785 is classified in heading 3824, HTSUS, specifically in subheading 3824.90.9290, HTSUSA, which provides for “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other.” The 2015 column one general rate of duty is 5.0% ad valorem.

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

EFFECT ON OTHER RULINGS:

Headquarters Ruling Letter 967214, dated April 4, 2006, and New York Ruling Letters K84522, dated April 9, 2004, and NY N046672, dated January 7, 2009, are hereby REVOKED in accordance with the above analysis. Headquarters Ruling Letter H106785, dated October 14, 2010, is MODIFIED as

set forth above in regards to classification of the luo han guo liquid, but the classification of the Goji liquid extract in that case remains in effect.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

CC: Port Director, Port of Los Angeles
U.S. Customs and Border Protection
301 East Ocean Boulevard
Long Beach, CA 90802

Jonathan Andrew Selzer
HerbaSway Laboratories
101 North Plains Industrial Rd.
Wallingford, CT 06492



**U.S. CUSTOMS AND BORDER PROTECTION 2015 EAST
COAST TRADE SYMPOSIUM: “TRANSFORMING GLOBAL
TRADE”**

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

ACTION: Notice of Trade Symposium.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) will convene the 2015 East Coast Trade Symposium in Baltimore, Maryland, on Wednesday, November 4, 2015, and Thursday, November 5, 2015. The 2015 East Coast Trade Symposium will feature panel discussions involving agency personnel, members of the trade community, and other government agencies, on the agency’s role in international trade initiatives and programs. Members of the international trade and transportation communities and other interested parties are encouraged to attend.

DATES: Wednesday, November 4, 2015, (opening remarks and general sessions, 8:00 a.m.–4:15 p.m. EST) and Thursday, November 5, 2015 (general session, break-out sessions and closing remarks, 8:00 a.m.–4:15 p.m. EST).

ADDRESSES: The CBP 2015 East Coast Trade Symposium will be held at the Baltimore Marriott Waterfront Hotel located at 700 Aliceanna Street, Baltimore, MD 21202.

FOR FURTHER INFORMATION CONTACT: Office of Trade Relations at (202) 344-1440, or at *tradeevents@dhs.gov*. To obtain the latest information on the Trade Symposium and to register online, visit the CBP Web site at *http://www.cbp.gov/trade/stakeholder-engagement/trade-symposium*. Requests for special needs should be sent to the Office of Trade Relations at *tradeevents@dhs.gov*.

SUPPLEMENTARY INFORMATION: Earlier this year CBP held a Trade Symposium on the West Coast in Tacoma, WA. This document announces that CBP will convene the 2015 East Coast Trade Symposium on Wednesday, November 4, 2015, and Thursday, November 5, 2015 in Baltimore, Maryland. The theme for the 2015 East Coast Trade Symposium will be “Transforming Global Trade.” The format of the 2015 East Coast Trade Symposium will be held with general sessions on the first day, and a general session and breakout sessions on the second day. Discussions will be held regarding CBP’s role in international trade initiatives and partnerships.

The agenda for the 2015 East Coast Trade Symposium can be found on the CBP Web site (*http://www.cbp.gov*). Registration is now open. The registration fee is \$157.00 per person. Interested parties are requested to register immediately, as space is limited. All registrations must be made online at the CBP Web site (*http://www.cbp.gov/trade/stakeholder-engagement/trade-symposium*) and will be confirmed with payment by credit card only.

Hotel accommodations will be announced at a later date on the CBP Web site (*http://www.cbp.gov*).

Dated: October 14, 2015.

MARIA LUISA BOYCE,
*Senior Advisor for Private Sector
Engagement, Executive Director,
Office of Trade Relations, Office of the
Commissioner, U.S. Customs and Border
Protection.*

**AUTOMATED COMMERCIAL ENVIRONMENT (ACE)
EXPORT MANIFEST FOR VESSEL CARGO TEST;
CORRECTION**

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

ACTION: General notice; correction.

SUMMARY: U.S. Customs and Border Protection (CBP) published in the **Federal Register** on August 20, 2015, a document announcing plans to conduct the Automated Commercial Environment (ACE) Export Manifest for Vessel Cargo Test, a National Customs Automation Program (NCAP) test concerning ACE export manifest capability. The notice misstated the technical capability requirements for submitting data to CBP. This document corrects this error.

FOR FURTHER INFORMATION CONTACT: Vincent C. Huang, Cargo and Conveyance Security, Office of Field Operations, U.S. Customs & Border Protection, via email at *cbpvessellexportmanifest@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

U.S. Customs and Border Protection (CBP) published in the **Federal Register** on August 20, 2015 (80 FR 50644), a notice announcing plans to conduct the Automated Commercial Environment (ACE) Export Manifest for Vessel Cargo Test, a National Customs Automation Program (NCAP) test concerning ACE export manifest capability. The notice misstated the technical capability requirements for submitting data to CBP. The correct requirements are set forth below.

The August 20, 2015 notice stated that prospective ACE Export Manifest for Vessel Cargo Test participants must have the technical capability to electronically submit data to CBP and receive response message sets via Cargo-IMP, AIR CAMIR, XML, or Unified XML, and must successfully complete certification testing with their client representative. However, the correct acceptable message sets are Ocean CAMIR, ANSI X12, or Unified XML. Prospective ACE Export Manifest for Vessel Cargo Test participants must have the technical capability to electronically submit data to CBP and receive response message sets via Ocean CAMIR, ANSI X12, or Unified XML, and must successfully complete certification testing with their client representative.

Correction

In notice document FR Doc. 2015– 20614 published on August 20, 2015 (80 FR 50644), make the following correction on page 50647,

third column, second full paragraph, third sentence in the “*Eligibility Requirements*” section:

Remove “Cargo-IMP, AIR CAMIR, XML, or Unified XML,” and add in its place, “Ocean CAMIR, ANSI X12, or Unified XML.” The revised sentence reads as follows: “Prospective ACE Export Manifest for Vessel Cargo Test participants must have the technical capability to electronically submit data to CBP and receive response message sets via Ocean CAMIR, ANSI X12, or Unified XML, and must successfully complete certification testing with their client representative.”

Dated: October 14, 2015.

JOANNE ROMAN STUMP,
Acting Director,
Regulations and Disclosure Law Division,
U.S. Customs and Border Protection.

[Published in the Federal Register, October 20, 2015 (80 FR 63575)]

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**MODIFICATION OF NATIONAL CUSTOMS AUTOMATION
PROGRAM (NCAP) TEST CONCERNING AUTOMATED
COMMERCIAL ENVIRONMENT (ACE) ENTRY SUMMARY,
ACCOUNTS AND REVENUE (ESAR) TEST OF AUTOMATED
ENTRY SUMMARY TYPES 51 AND 52 AND CERTAIN
MODES OF TRANSPORTATION**

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

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection’s (CBP’s) plan to modify the National Customs Automation Program (NCAP) test concerning the Entry Summary, Accounts and Revenue (ESAR) test program in the Automated Commercial Environment (ACE) to allow importers and brokers to file electronically entry summary data for entry types 51 and 52, in addition to entry types 01, 03, and 11 that are already available for electronic filing, for merchandise arriving by truck, rail, vessel, and air, as well as arriving by mail, pedestrian, and passenger (hand-carried).

DATES: The ACE ESAR test modifications set forth in this document will begin on or about November 20, 2015. This test will continue until concluded by way of a document published in the **Federal Register**. Public comments are invited and will be accepted for the duration of the test.

ADDRESSES: Comments concerning this notice and any aspect of this test may be submitted at any time during the test via email to Josephine Baiamonte, Director, Business Transformation, ACE Business Office, Office of International Trade at *josephine.baiamonte@cbp.dhs.gov*. In the subject line of your email message, please use, “*Comment on Expansion of Automated Entry Summary for Entry Types 51 and 52.*”

FOR FURTHER INFORMATION CONTACT: For technical questions related to the Automated Commercial Environment (ACE) or Automated Broker Interface (ABI) transmissions, contact your assigned client representative. Interested parties without an assigned client representative should direct their questions to Steven Zaccaro at *steven.j.zaccaro@cbp.dhs.gov* with the subject line heading “*Expansion of Automated Entry Summary for Entry Types 51 and 52-Request to Participate.*”

SUPPLEMENTARY INFORMATION:

I. Background

The National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization (Customs Modernization Act), in the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057 (19 U.S.C. 1411). Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for processing commercial trade data which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for U.S. Customs and Border Protection (CBP) and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP’s business functions and the information technology that supports those functions.

CBP’s modernization efforts are accomplished through phased releases of ACE component functionality designed to replace specific legacy ACS functions. Each release will begin with a test and, if the test is successful, will end with the mandatory use of the new ACE feature, thus retiring the legacy ACS function. Each release builds on previous releases and sets forth the foundation for subsequent releases.

For the convenience of the public, a chronological listing of **Federal Register** publications detailing ACE test developments is set forth

below in Section XIV, entitled, “Development of ACE Prototypes.” The procedures and criteria related to participation in the prior ACE test pilots remain in effect unless otherwise explicitly changed by this or subsequent notices published in the **Federal Register**.

II. Authorization for the Test

The Customs Modernization Act provides the Commissioner of CBP with authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. The ACE ESAR Test, as modified in this notice, is authorized pursuant to § 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)), which provides for the testing of NCAP programs or procedures. See Treasury Decision (T.D.) 95–21, 60 FR 14211 (March 16, 1995).

III. Modifications of ACE ESAR Test

On October 18, 2007, CBP published a General Notice in the **Federal Register** (72 FR 59105) announcing CBP’s plan to conduct a new test concerning ACE entry summary, accounts and revenue capabilities, that provided for enhanced account management functions for ACE Portal Accounts and expanding the universe of ACE account types. That test notice is commonly referred to as ESAR I. As stated in that notice, ACE is now the lead system for CBP-required master data elements (*e.g.*, company name, address, and point of contact) as well as related reference files (*e.g.*, country code, port code, manufacturer ID, and gold currency exchange rate and conversion calculator).

This notice announces that CBP will modify the ESAR test in order to allow brokers and importers, who are also ACE participants, to file electronically, for air, ocean, rail, and truck modes of transportation, as well as for mail, pedestrian, and passenger (hand-carried) modes of transportation, the ACE entry summary for entry type 51 (*i.e.*, merchandise imported by the Defense Contract Management Command (DCMAO NY) Military Only), and for entry type 52 (*i.e.*, Government—Dutiable (other than DCMAO NY)), in addition to entry types 01, 03, and 11.

IV. Eligibility Requirements

Importer and broker volunteers who wish to participate in this test must have an ACE Portal Account (*see* notices referenced below relating to the establishment of ACE Portal Accounts). ABI volunteers wishing to participate in this test must:

- (1) Use statement or single pay for payment processing; and
- (2) Use a software package that has completed ABI certification testing for ACE.

Test participants must meet all the eligibility criteria described in this document in order to participate in the test program.

V. Test Participation Selection Criteria

The ACE ESAR test is open to all importers and customs brokers filing ACE Entry Summaries for cargo transported by the air, ocean, rail, and truck modes of transportation as well as by the mail, pedestrian, and passenger (hand-carried) modes of transportation. Any party seeking to participate in this test must provide CBP, as part of its request to participate, its filer code and the port(s) at which it is interested in filing ACE entry summary data. ACE entry summary data may be submitted at all ports of entry for entry types 51 and 52 as of November 20, 2015, and for authorized entry types, *i.e.*, entry types 01, 03, 11, which are already available for electronic filing.

Applicants will be notified by a CBP client representative if they have been selected to participate in this test.

VI. Filing Capabilities and Requirements

The filing capabilities and functionalities for the ACE ESAR tests that were set forth in previous **Federal Register** notices (*i.e.*, 78 FR 69434 (November 19, 2013), 76 FR 37136 (June 24, 2011), 74 FR 69129 (December 30, 2009), 74 FR 9826 (March 6, 2009), 73 FR 50337 (August 26, 2008), and 72 FR 59105 (October 18, 2008)) continue to apply and are now expanded to include ACE-participating importers and customs brokers filing entry summaries for type 51 and 52 entries, for cargo conveyances arriving by any mode of transportation, including by the air, ocean, rail, and truck modes of transportation. In lieu of filing the entry in ACE Cargo Release test participants may file an ACE Entry Summary certified for release.

VII. Test Duration

This ACE Entry Summary, Accounts and Revenue test, as modified, will begin on or about November 20, 2015. This test will conclude by way of a document published in the **Federal Register**.

VIII. Comments

All interested parties are invited to comment on any aspect of this test at any time. CBP requests comments and feedback on all aspects of this test, including the design, conduct and implementation of the test, in order to determine whether to modify, alter, expand, limit, continue, end, or fully implement this program.

IX. Waiver of Regulations Under This Test

For purposes of this test, any provision in title 19 of the Code of Federal Regulations including, but not limited to, the provisions found in parts 141, 142, 143, and 149 thereof relating to entry sum-

mary filing and processing that are inconsistent with the requirements set forth in this notice are waived for the duration of the test. *See* 19 CFR 101.9(b). This document does not waive any recordkeeping requirements found in part 163 of title 19 of the Code of Federal Regulations (19 CFR part 163) and the Appendix to part 163 (commonly known as the “(a)(1)(A) list”).

X. Previous Notices

All requirements, terms and conditions, and aspects of the ACE test discussed in previous notices are hereby incorporated by reference into this notice and continue to be applicable, unless changed by this notice.

XI. Paperwork Reduction Act

The collection of information contained in this ACE Entry Summary, Accounts and Revenue test has been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) and assigned OMB control number 1651– 0022. 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 control number assigned by OMB.

XII. Confidentiality

All data submitted and entered into ACE is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential, except to the extent as otherwise provided by law. As stated in previous notices, participation in this or any of the previous ACE tests is not confidential and upon a written Freedom of Information Act (FOIA) request, a name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

XIII. Misconduct Under the Test

A test participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, or discontinuance from participation in this test for any of the following:

- (1) Failure to follow the terms and conditions of this test;
- (2) Failure to exercise reasonable care in the execution of participant obligations;
- (3) Failure to abide by applicable laws and regulations that have not been waived; or
- (4) Failure to deposit duties or fees in a timely manner.

If the Director, Business Transformation, ACE Business Office (ABO), Office of International Trade, finds that there is a basis for

discontinuance of test participation privileges, the test participant will be provided a written notice proposing the discontinuance with a description of the facts or conduct warranting the action. The test participant will be offered the opportunity to appeal the Director's decision in writing within 10 calendar days of receipt of the written notice. The appeal must be submitted to Acting Executive Director, ABO, Office of International Trade, by emailing *Deborah.Augustin@cbp.dhs.gov*.

The Acting Executive Director will issue a decision in writing on the proposed action within 30 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the proposed notice becomes the final decision of the Agency as of the date that the appeal period expires. A proposed discontinuance of a test participant's privileges will not take effect unless the appeal process under this paragraph has been concluded with a written decision adverse to the test participant.

In the case of willfulness or those in which public health, interest, or safety so requires, the Director, Business Transformation, ABO, Office of International Trade, may immediately discontinue the test participant's privileges upon written notice to the test participant. The notice will contain a description of the facts or conduct warranting the immediate action. The test participant will be offered the opportunity to appeal the Director's decision within 10 calendar days of receipt of the written notice providing for immediate discontinuance. The appeal must be submitted to Acting Executive Director, ABO, Office of International Trade, by emailing *Deborah.Augustin@cbp.dhs.gov*. The immediate discontinuance will remain in effect during the appeal period. The Executive Director will issue a decision in writing on the discontinuance within 15 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

XIV. Development of ACE Prototypes

A chronological listing of **Federal Register** publications detailing ACE test developments is set forth below.

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004); 70 FR 5199 (February 1, 2005).
- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).

- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).
- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).
- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).
- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).
- Post-Entry Amendment (PEA) Processing Test: 76 FR 37136 (June 24, 2011).
- ACE Announcement of a New Start Date for the National Customs Automation Program Test of Automated Manifest Capabilities for Ocean and Rail Carriers: 76 FR 42721 (July 19, 2011).
- ACE Simplified Entry: 76 FR 69755 (November 9, 2011).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS): 77 FR 20835 (April 6, 2012).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Simplified Entry: Modification of Participant Selection Criteria and Application Process: 77 FR 48527 (August 14, 2012).
- Modification of NCAP Test Regarding Reconciliation for Filing Certain Post-Importation Preferential Tariff Treatment Claims under Certain FTAs: 78 FR 27984 (May 13, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE): 78 FR 44142 (July 23, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment

(ACE) Document Image System (DIS) and Simplified Entry (SE); Correction: 78 FR 53466 (August 29, 2013).

- Modification of NCAP Test Concerning Automated Commercial Environment (ACE) Cargo Release (formerly known as Simplified Entry): 78 FR 66039 (November 4, 2013).
- Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the ESAR IV Test: Modifications and Clarifications: 78 FR 69434 (November 19, 2013).
- National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Environmental Protection Agency and the Food Safety and Inspection Service Using the Partner Government Agency Message Set Through the Automated Commercial Environment (ACE): 78 FR 75931 (December 13, 2013).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Ocean and Rail Carriers: 79 FR 6210 (February 3, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release to Allow Importers and Brokers to Certify From ACE Entry Summary: 79 FR 24744 (May 1, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Truck Carriers: 79 FR 25142 (May 2, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System: 79 FR 36083 (June 25, 2014).
- Announcement of eBond Test: 79 FR 70881 (November 28, 2014).
- eBond Test Modifications and Clarifications: Continuous Bond Executed Prior to or Outside the eBond Test May Be Converted to an eBond by the Surety and Principal, Termination of an eBond by Filing Identification Number, and Email Address Correction: 80 FR 899 (January 7, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE)

Document Image System Relating to Animal and Plant Health Inspection Service (APHIS) Document Submissions: 80 FR 5126 (January 30, 2015).

- Modification of National Customs Automation Program (NCAP) Test Concerning the use of Partner Government Agency Message Set through the Automated Commercial Environment (ACE) for the Submission of Certain Data Required by the Environmental Protection Agency (EPA): 80 FR 6098 (February 4, 2015).
- Announcement of Modification of ACE Cargo Release Test to Permit the Combined Filing of Cargo Release and Importer Security Filing (ISF) Data: 80 FR 7487 (February 10, 2015).
- Modification of NCAP Test Concerning ACE Cargo Release for Type 03 Entries and Advanced Capabilities for Truck Carriers: 80 FR 16414 (March 27, 2015).
- Automated Commercial Environment (ACE) Export Manifest for Air Cargo Test; 80 FR 39790 (July 10, 2015).
- National Customs Automation Program (NCAP) Concerning Remote Location Filing Entry Procedures in the Automated Commercial Environment (ACE) and the Use of the Document Image System for the Submission of Invoices and the Use of eBonds for the Transmission of Single Transaction Bonds: 80 FR 40079 (July 13, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Partner Government Agency (PGA) Message Set Regarding Types of Transportation Modes and Certain Data Required by the National Highway Traffic Safety Administration (NHTSA): 80 FR 47938 (August 10, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Food and Drug Administration (FDA) Using the Partner Government Agency (PGA) Message Set Through the Automated Commercial Environment (ACE): 80 FR 52051 (August 27, 2015).
- Automated Commercial Environment (ACE) Export Manifest for Rail Cargo Test: 80 FR 54305 (September 7, 2015).

Dated: October 15, 2015.

CYNTHIA F. WHITTENBURG,
*Acting Assistant Commissioner,
Office of International Trade.*

[Published in the Federal Register, October 21, 2015 (80 FR 63815)]

**MODIFICATION OF NATIONAL CUSTOMS AUTOMATION
PROGRAM (NCAP) TEST CONCERNING AUTOMATED
COMMERCIAL ENVIRONMENT (ACE) CARGO RELEASE
FOR ENTRY TYPE 52 AND CERTAIN OTHER MODES OF
TRANSPORTATION**

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

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection's (CBP's) plan to modify the National Customs Automation Program (NCAP) test concerning Cargo Release in the Automated Commercial Environment (ACE) to allow importers and brokers to file electronically entry type 52, in addition to entry types 01, 03, and 11 that are already available for electronic filing, for merchandise arriving by truck, rail, vessel, and air, as well as arriving by mail, pedestrian, and passenger (hand-carried).

DATES: The ACE Cargo Release test modifications set forth in this document will begin on or about November 19, 2015. This test will continue until concluded by way of a document published in the **Federal Register**. Public comments are invited and will be accepted for the duration of the test.

ADDRESSES: Comments concerning this notice and any aspect of this test may be submitted at any time during the test via email to Josephine Baiamonte, Director, Business Transformation, ACE Business Office, Office of International Trade, at *josephine.baiamonte@cbp.dhs.gov*. In the subject line of your email, please use, "*Comment on Expansion of Automated Entry Type 52 for ACE Cargo Release.*"

FOR FURTHER INFORMATION CONTACT: For technical questions related to the Automated Commercial Environment (ACE) or Automated Broker Interface (ABI) transmissions, contact your assigned client representative. Interested parties without an assigned client representative should direct their questions to Steven Zaccaro at *steven.j.zaccaro@cbp.dhs.gov* with the subject

heading “*Automated Entry Type 52 for ACE Cargo Release—Request to Participate.*”

SUPPLEMENTARY INFORMATION:

I. Background

The National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization (Customs Modernization Act) in the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057 (19 U.S.C. 1411). Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for processing commercial trade data which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for U.S. Customs and Border Protection (CBP) and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP’s business functions and the information technology that supports those functions.

CBP’s modernization efforts are accomplished through phased releases of ACE component functionality designed to replace specific legacy ACS functions. Each release will begin with a test and, if the test is successful, will end with the mandatory use of the new ACE feature, thus retiring the legacy ACS function. Each release builds on previous releases and sets the foundation for subsequent releases.

For the convenience of the public, a chronological listing of **Federal Register** publications detailing ACE test developments is set forth below in Section XVI, entitled, “Development of ACE Prototypes.” The procedures and criteria applicable to participation in the ACE Cargo Release test and prior ACE tests remain in effect except as explicitly changed by this notice or subsequent notices published in the **Federal Register**.

II. Authorization for Modification of the ACE Cargo Release Test

The Customs Modernization Act provides the Commissioner of CBP with authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. The ACE Cargo Release Test, as modified in this notice, is authorized pursuant to § 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)), which provides for the testing of NCAP programs or proce-

dures. See Treasury Decision (T.D.) 95–21, 60 FR 14211 (March 16, 1995).

III. ACE Cargo Release Test

On November 9, 2011, CBP published in the **Federal Register** (76 FR 69755) a notice announcing an NCAP test concerning ACE Simplified Entry to simplify the entry process for type “01” (consumption) and type “11” (informal) commercial entries by reducing the number of data elements required to obtain release for cargo imported by air. In a general notice titled “Modification of National Customs Automation Program Test Concerning Automated Commercial Environment (ACE) Cargo Release,” published in the **Federal Register** (78 FR 66039) on November 4, 2013, CBP modified the ACE Simplified Entry Test and renamed it the ACE Cargo Release Test. The ACE Cargo Release Test provided additional capabilities to test participants and expanded eligibility by eliminating the Customs-Trade Partnership Against Terrorism (C-TPAT) status requirement for importer self-filers and customs brokers. On February 3, 2014, CBP published a notice in the **Federal Register** (79 FR 6210) announcing modification of the ACE Cargo Release Test to include the ocean and rail modes of transportation. CBP further modified the ACE Cargo Release Test in a notice published in the **Federal Register** on May 2, 2014 (79 FR 25142) to expand the enhanced functionality under the test to include cargo imported by truck. On February 10, 2015, CBP published a notice in the **Federal Register** (80 FR 7487) to modify the name of one data element (*i.e.*, consignee number) and allow authorized importer and customs brokers to submit the ACE Cargo Release entry and Importer Security Filing (ISF) in a combined transmission to CBP. On March 27, 2015, CBP published a notice in the **Federal Register** (80 FR 16414) modifying the ACE Cargo Release Test to include type 03 entries (for merchandise subject to antidumping or countervailing duties) for all modes of transportation and to file, for cargo transported in the truck mode, entries for split shipments or partial shipments, and entry on cargo that has been moved in-bond from the U.S. port of unloading.

IV. Modifications of ACE Cargo Release Test

This notice announces that CBP will modify the ACE Cargo Release test in order to allow brokers and importers, who are also ACE participants, to file electronically, for air, ocean, rail, and truck modes of transportation as well as for mail, pedestrian, and passenger (hand-carried) modes of transportation, a simplified entry for the release of cargo for entry type 52 (*i.e.*, Government—Dutiable (other than the Defense Contract Management Command (DCMAO))), in addition to filing a simplified entry for the release of cargo for entry types 01, 03, and 11.

V. Eligibility Requirements

To be eligible to apply for this test, the applicant must: (1) Be a self-filing importer or broker who has the ability to file ACE Cargo Release, the corresponding entry summary in ACE, and to file ACE Entry Summary certified for cargo release; or (2) have shown the intent to file ACE Cargo Release, the corresponding entry summary in ACE, and to file ACE Entry Summary certified for cargo release.

Parties seeking to participate in this test must use a software package that has completed Automated Broker Interface (ABI) certification testing for ACE and offers the ACE Cargo Release (SE) message set prior to transmitting data under the test. For a complete discussion on procedures for obtaining an ACE Portal Account, please see the General Notice, 73 FR 50337 (August 26, 2008). Any importers not self-filing must ensure its broker has the capability to file entry summaries in ACE.

VI. Test Participation Selection Criteria

The ACE Cargo Release test is open to all importers and customs brokers filing ACE Entry Summaries for cargo transported by air, ocean, rail, and truck modes of transportation, as well as by mail, pedestrian, and passenger (hand-carried) modes of transportation. If the volume of eligible applicants exceeds CBP's administrative capabilities, CBP will reserve the right to select importer and exporter participants based upon entry filing volume, diversity of clients or of industries represented, while giving consideration to the order in which CBP received the requests to participate.

Any party seeking to participate in this test must provide CBP, as part of its request to participate, its filer code and the port(s) at which it is interested in filing ACE Cargo Release transaction data. ACE Cargo Release data may be submitted at all ports of entry for entry type 52 as of November 19, 2015, and for authorized entry types, *i.e.*, entry types 01, 03, 11, which are already available for electronic filing.

Applicants will be notified by a CBP client representative if they have been selected to participate in this test.

VII. Filing Capabilities and Requirements

The filing capabilities and functionalities for the ACE Cargo Release tests that are set forth in the above-mentioned **Federal Register** notices (*i.e.*, 76 FR 69755, 78 FR 66039, 79 FR 6210, 79 FR 25142, 80 FR 7487, and 80 FR 16414) continue to apply and are now expanded to include ACE-participating importers and customs brokers filing type 52 entries, to allow automated filing and processing

for cargo conveyed by any mode of transportation, including by the air, ocean, rail, and truck modes of transportation. The ACE Cargo Release filing capabilities serve to assist the importer in completion of entry as required by the provisions of 19 U.S.C. 1484(a)(1)(B). Participants in this test who file ACE Cargo Release data must also file the corresponding entry summary in ACE. Alternatively, test participants may file an ACE Entry Summary certified for release in lieu of an ACE Cargo Release.

VIII. Functionality

Upon receipt of the ACE Cargo Release data, CBP will process the submission and will subsequently transmit its cargo release decision to the importer or entry filer. If a subsequent submission is submitted to CBP, CBP's decision regarding the original submission will no longer be controlling. The merchandise will then be considered to be entered upon its arrival in the port of entry with the intent to unlade, as provided by current 19 CFR 141.68(e).

IX. Test Duration

This modified ACE Cargo Release test will begin on or about November 19, 2015. This test will conclude by way of a document published in the **Federal Register**.

X. Comments

All interested parties are invited to comment on any aspect of this test at any time. CBP requests comments and feedback on all aspects of this test, including the design, conduct and implementation of the test, in order to determine whether to modify, alter, expand, limit, continue, end, or fully implement this program.

XI. Waiver of Regulations Under This Test

For purposes of this test, any provision in title 19 of the Code of Federal Regulations including, but not limited to, the provisions found in parts 18, 141, 142, and 143 thereof relating to entry filing and processing that are inconsistent with the requirements set forth in this notice are waived for the duration of the test. See 19 CFR 101.9(b). This document does not waive any recordkeeping requirements found in part 163 of title 19 of the Code of Federal Regulations (19 CFR part 163) and the Appendix to part 163 (commonly known as the "(a)(1)(A) list").

XII. Previous Notices

All requirements, terms and conditions, and aspects of the ACE test discussed in previous notices are hereby incorporated by reference into this notice and continue to be applicable, unless changed by this notice.

XIII. Paperwork Reduction Act

The collection of information for the ACE Cargo Release Test and ISF have been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507). The OMB information collection number for the ACE Cargo Release Test is 1651-0024 and the OMB information collection number for ISF is 1651-0001. 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 control number assigned by OMB.

XIV. Confidentiality

All data submitted and entered into ACE is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential, except to the extent as otherwise provided by law. As stated in previous notices, participation in this or any of the previous ACE tests is not confidential and upon a written Freedom of Information Act (FOIA) request, a name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

XV. Misconduct Under the Test

A test participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, or discontinuance from participation in this test for any of the following:

- (1) Failure to follow the terms and conditions of this test;
- (2) Failure to exercise reasonable care in the execution of participant obligations;
- (3) Failure to abide by applicable laws and regulations that have not been waived; or
- (4) Failure to deposit duties or fees in a timely manner.

If the Director, Business Transformation, ACE Business Office (ABO), Office of International Trade, finds that there is a basis for discontinuance of test participation privileges, the test participant will be provided a written notice proposing the discontinuance with a description of the facts or conduct warranting the action. The test participant will be offered the opportunity to appeal the Director's

decision in writing within 10 calendar days of receipt of the written notice. The appeal must be submitted to Acting Executive Director, ABO, Office of International Trade, by emailing *Deborah.Augustin@cbp.dhs.gov*.

The Acting Executive Director will issue a decision in writing on the proposed action within 30 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the proposed notice becomes the final decision of the Agency as of the date that the appeal period expires. A proposed discontinuance of a test participant's privileges will not take effect unless the appeal process under this paragraph has been concluded with a written decision adverse to the test participant.

In the case of willfulness or those in which public health, interest, or safety so requires, the Director, Business Transformation, ABO, Office of International Trade, may immediately discontinue the test participant's privileges upon written notice to the test participant. The notice will contain a description of the facts or conduct warranting the immediate action. The test participant will be offered the opportunity to appeal the Director's decision within 10 calendar days of receipt of the written notice providing for immediate discontinuance. The appeal must be submitted to Acting Executive Director, ABO, Office of International Trade, by emailing *Deborah.Augustin@cbp.dhs.gov*. The immediate discontinuance will remain in effect during the appeal period. The Executive Director will issue a decision in writing on the discontinuance within 15 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

XVI. Development of ACE Prototypes

A chronological listing of **Federal Register** publications detailing ACE test developments is set forth below.

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004); 70 FR 5199 (February 1, 2005).
- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).
- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).
- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).

- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).
- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).
- Post-Entry Amendment (PEA) Processing Test: 76 FR 37136 (June 24, 2011).
- ACE Announcement of a New Start Date for the National Customs Automation Program Test of Automated Manifest Capabilities for Ocean and Rail Carriers: 76 FR 42721 (July 19, 2011).
- ACE Simplified Entry: 76 FR 69755 (November 9, 2011).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS): 77 FR 20835 (April 6, 2012).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Simplified Entry: Modification of Participant Selection Criteria and Application Process: 77 FR 48527 (August 14, 2012).
- Modification of NCAP Test Regarding Reconciliation for Filing Certain Post-Importation Preferential Tariff Treatment Claims under Certain FTAs: 78 FR 27984 (May 13, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE): 78 FR 44142 (July 23, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE); Correction: 78 FR 53466 (August 29, 2013).
- Modification of NCAP Test Concerning Automated Commercial Environment (ACE) Cargo Release (formerly known as Simplified Entry): 78 FR 66039 (November 4, 2013).

- Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the ESAR IV Test: Modifications and Clarifications: 78 FR 69434 (November 19, 2013).
- National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Environmental Protection Agency and the Food Safety and Inspection Service Using the Partner Government Agency Message Set Through the Automated Commercial Environment (ACE): 78 FR 75931 (December 13, 2013).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Ocean and Rail Carriers: 79 FR 6210 (February 3, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release to Allow Importers and Brokers to Certify From ACE Entry Summary: 79 FR 24744 (May 1, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Truck Carriers: 79 FR 25142 (May 2, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System: 79 FR 36083 (June 25, 2014).
- Announcement of eBond Test: 79 FR 70881 (November 28, 2014).
- eBond Test Modifications and Clarifications: Continuous Bond Executed Prior to or Outside the eBond Test May Be Converted to an eBond by the Surety and Principal, Termination of an eBond by Filing Identification Number, and Email Address Correction: 80 FR 899 (January 7, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System Relating to Animal and Plant Health Inspection Service (APHIS) Document Submissions: 80 FR 5126 (January 30, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the use of Partner Government Agency Message Set through the Automated Commercial Environment (ACE) for the Submission of Certain Data Required by the Environmental Protection Agency (EPA): 80 FR 6098 (February 4, 2015).

- Announcement of Modification of ACE Cargo Release Test to Permit the Combined Filing of Cargo Release and Importer Security Filing (ISF) Data: 80 FR 7487 (February 10, 2015).
- Modification of NCAP Test Concerning ACE Cargo Release for Type 03 Entries and Advanced Capabilities for Truck Carriers: 80 FR 16414 (March 27, 2015).
- Automated Commercial Environment (ACE) Export Manifest for Air Cargo Test; 80 FR 39790 (July 10, 2015).
- National Customs Automation Program (NCAP) Concerning Remote Location Filing Entry Procedures in the Automated Commercial Environment (ACE) and the Use of the Document Image System for the Submission of Invoices and the Use of eBonds for the Transmission of Single Transaction Bonds: 80 FR 40079 (July 13, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Partner Government Agency (PGA) Message Set Regarding Types of Transportation Modes and Certain Data Required by the National Highway Traffic Safety Administration (NHTSA): 80 FR 47938 (August 10, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Food and Drug Administration (FDA) Using the Partner Government Agency (PGA) Message Set Through the Automated Commercial Environment (ACE): 80 FR 52051 (August 27, 2015).
- Automated Commercial Environment (ACE) Export Manifest for Rail Cargo Test: 80 FR 54305 (September 7, 2015).

Dated: October 15, 2015.

CYNTHIA F. WHITTENBURG,
*Acting Assistant Commissioner,
Office of International Trade.*

[Published in the Federal Register, October 20, 2015 (80 FR 63576)]

**ANNOUNCEMENT OF THE MODIFICATION OF THE
NATIONAL CUSTOMS AUTOMATION PROGRAM TEST
CONCERNING THE AUTOMATED COMMERCIAL
ENVIRONMENT PORTAL ACCOUNT TO ESTABLISH THE
EXPORTER PORTAL ACCOUNT**

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

ACTION: General notice.

SUMMARY: This document announces U.S. Custom and Border Protection's (CBP's) plan to modify the National Customs Automation Program (NCAP) test concerning Automated Commercial Environment (ACE) Portal Accounts to establish the ACE Exporter Portal Account, which includes access to Export Reports and the ability to file Electronic Export Information (EEI) through AESDirect. This notice invites public comment concerning any aspect of the planned modification, describes the eligibility and documentation requirements for applying for or requesting an ACE Exporter Portal Account, and outlines the development and evaluation methodology for the modification.

DATES: Except as stated below, the modification of the ACE Portal Account Test described in this notice is effective October 21, 2015. The testing of the AESDirect functionality described in this notice will begin no earlier than October 1, 2015. This modified test will continue until concluded by way of announcement in the **Federal Register**. Comments concerning this notice and any aspect of the announced modification may be submitted during the test period to the address set forth below.

ADDRESSES: Comments concerning this notice and any aspect of the modified ACE Portal Account Test may be submitted at any time during the testing period via email to Josephine Baiamonte, ACE Business Office (ABO), Office of International Trade at josephine.baiamonte@cbp.dhs.gov. In the subject line of your email, please indicate, "*Comment on Exporter Portal Account FRN*".

FOR FURTHER INFORMATION CONTACT: For technical questions related to the application or request for an ACE Portal Account contact the ACE Account Service Desk by calling 1-866-530-4172, selecting option 1, then option 2, or by emailing ACE.Support@cbp.dhs.gov for assistance.

SUPPLEMENTARY INFORMATION:

I. Automated Commercial Environment (ACE)

A. The National Customs Automation Program

The National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization in the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057, 2170, December 8, 1993 (Customs Modernization Act). *See* 19 U.S.C. 1411. Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of ACE, the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for CBP and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP’s business functions and the information technology that supports those functions. CBP’s modernization efforts are accomplished through phased releases of ACE component functionality designed to replace specific legacy ACS functions and add new functionality. Each release will begin with a test and, if the test is successful, will end with implementation of the functionality through the promulgation of regulations governing the new ACE feature and the retirement of the legacy ACS function.

For the convenience of the public, a chronological listing of **Federal Register** publications detailing ACE test developments is set forth below in Section X, entitled, “Development of ACE Prototypes.” The procedures and criteria applicable to participation in the ACE Portal Account Test remain in effect unless otherwise explicitly changed by this notice.

B. ACE Portal Accounts

On May 1, 2002, the former U.S. Customs Service, now CBP, published a General Notice in the **Federal Register** (67 FR 21800) announcing a plan to conduct a NCAP test of the first phase of ACE. The test was described as the first step toward the full electronic processing of commercial importations with a focus on defining and establishing an importer’s account structure. That General Notice announced that importers and authorized parties would be allowed to access their customs data via an Internet-based Portal Account. The notice also set forth eligibility criteria for companies interested in establishing ACE Portal Accounts.

Subsequent General Notices expanded the types of ACE Portal Accounts. On February 4, 2004, CBP published a General Notice in the **Federal Register** (69 FR 5360) that established ACE Truck Carrier Accounts. On September 8, 2004, CBP published a General Notice in the **Federal Register** (69 FR 54302) inviting customs brokers to participate in the ACE Portal Test generally and informing interested parties that once they had been notified by CBP that their request to participate in the ACE Portal Account Test had been accepted, they would be asked to sign and submit a Terms and Conditions document. CBP subsequently contacted those participants and asked them to also sign and submit an ACE Power of Attorney form and an Additional Account/ Account Owner Information form. Most recently, on October 18, 2007, CBP published a General Notice in the **Federal Register** (72 FR 59105) announcing the expansion of the ACE portal account types to include the following types: Carriers (all modes: air, rail, sea); Cartman; Lighterman; Driver/ Crew; Facility Operator; Filer; Foreign Trade Zone (FTZ) Operator; Service Provider; and Surety.

C. Terms and Conditions for Access to the ACE Portal

On May 16, 2007, CBP published a General Notice in the **Federal Register** (72 FR 27632) announcing a revision of the terms and conditions that must be followed as a condition for access to the ACE Portal. The terms and conditions in that Notice supersede and replace the Terms and Conditions document previously signed and submitted to CBP by ACE Portal Account Owners. The principal changes to the ACE Terms and Conditions included a revised definition of “Account Owner” to permit either an individual or a legal entity to serve in this capacity, new requirements relating to providing notice to CBP when there has been a material change in the status of the Account and/or Account Owner, and explanatory provisions as to how the information from a particular account may be accessed through the ACE Portal when that account is transferred to a new owner.

On July 7, 2008, CBP published a General Notice in the **Federal Register** (73 FR 38464) which revised the terms and conditions set forth in the May 16, 2007 Notice regarding the period of Portal inactivity which will result in termination of access to the ACE Portal. The July 7, 2008 Notice provided that if forty-five (45) consecutive days elapse without an Account Owner, Proxy Account Owner, or an Account User accessing the ACE Portal, access to the Portal will be terminated. The time period for allowable Portal inactivity was previously ninety (90) days.

D. ACE Non-Portal Accounts

CBP has also permitted certain parties to participate in ACE without establishing ACE Portal Accounts, *i.e.*, “Non-Portal Accounts.” On

October 24, 2005, CBP published a General Notice in the **Federal Register** (70 FR 61466) announcing that CBP would no longer require importers to establish ACE Portal Accounts in order to deposit estimated duties and fees as a part of Periodic Monthly Statement (PMS). CBP decided it would only require importers to establish a Non-Portal Account to participate in PMS. On March 29, 2006, CBP published another General Notice in the **Federal Register** (71 FR 15756) announcing that truck carriers who do not have ACE Portal Accounts may use third parties to transmit truck manifest information on their behalf electronically in the ACE Truck Manifest system via Electronic Data Interface (EDI) messaging. Truck carriers who elect to use this transmission method will not have access to operating data and will not receive status messages on ACE transactions, nor will they have access to integrated Account data from multiple system sources.

II. Automated Export System (AES)

AES is the electronic method for the U.S. Principal Party in Interest (USPPI) or its authorized agent to file export commodity and transportation information, known as Electronic Export Information (EEI), directly with CBP and the Census Bureau. EEI is the electronic equivalent to the Shipper's Export Declaration (SED), a paper form previously used by exporters to report export information.¹ The purpose of AES is to be the central point through which CBP collects and maintains export data and related records to facilitate CBP's law enforcement and border security missions. CBP uses EEI to further its mission of ensuring the safety and security of cargo and preventing smuggling, expediting legitimate international trade and enforcing export and other applicable U.S. laws.² The Census Bureau uses EEI to compile and publish export trade statistics.

On April 5, 2014, AES was re-engineered and incorporated into ACE. General information and a list of AES certified software vendors is available on the following Web site: <http://www.cbp.gov/trade/aes>. That Web site also has information regarding the AES Trade Interface Requirements (AESTIR) and the American National Standards Institute standard known as ANSI X.12, which contain the

¹ The SED became obsolete in 2008 with the implementation of the Department of Commerce Foreign Trade Regulations (FTR) and has been superseded by the EEI filed in the AES. See 15 CFR 30.1. See also 19 CFR 192.14 regarding required EEI.

² Section 343(a) of the Trade Act of 2002, as amended (Trade Act) (19 U.S.C. 2071 note) requires CBP to promulgate regulations providing for mandatory transmission of electronic cargo information by way of a CBP-approved electronic data interchange (EDI) system before the cargo is brought into or departs from the United States by any mode of commercial transportation (*i.e.*, sea, air, rail, or truck). 19 CFR 192.14 implements the requirements of the Trade Act with regard to cargo departing the United States. It requires the USPPI or its authorized agent to file any required EEI for the cargo.

formatting requirements for the electronic transmission of commodity and transportation export data to CBP via AES. Additional information regarding AES is available under the “Getting Started” section of the Web site address provided above.

AES offers several options for transmitting export commodity and transportation data, which includes the choice of using software developed by the user, software purchased from a vendor, a Value Added Network (VAN) electronic mailbox, the facilities of a port authority or service center, or AESDirect, a free internet application supported by the Census Bureau. AESDirect came on-line in October 1999 and allows USPPIs or their authorized agents to file EEI free of charge using a variety of electronic transmission methods, the most popular of which is a web-based portal through which users may file any required EEI. AESDirect also provides USPPIs or their authorized agents with access to export reports that compile the data from EEI filings associated with a user account.

III. Authorization for Modification of the ACE Portal Account Test

The Customs Modernization Act authorizes the Commissioner of CBP to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. The ACE Portal Account Test, as modified in this notice, is authorized pursuant to § 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)), which provides for the testing of NCAP programs or procedures. *See* Treasury Decision (T.D.) 95–21.

IV. Modification of the ACE Portal Account Test

This notice announces CBP’s plan to modify the ACE Portal Account Test to establish limited export functionality within the ACE Portal Account. Features of this new portal account type, as well as the eligibility and documentation requirements for applying for an ACE Exporter Portal Account, are described below.

A. Exporter Portal Accounts

1. Exporter Portal Account Functionality

The ACE Exporter Portal Account provides exporters a new “exporter view” to the ACE Portal that permits exporters to access the export data associated with an Employer Identification Number (EIN), *i.e.*, Export Reports. The Exporter Portal Account provides access to an Export Reports workspace that contains approximately 120 data objects, which mirror the data previously available to exporters upon request from the Census Bureau. The workspace will

contain three standard reports that will provide transaction data for account users. Users will be able to modify and save these reports to create custom queries as well as build and save new reports using any desired combination of data objects available based on data elements in each report.

Beginning no earlier than October 1, 2015, the ACE Exporter Account Portal will enable USPPIs or their authorized agents to transmit EEI by selecting the “Submit AESDirect Filings” link in the exporter view. Selecting this link will direct USPPIs or their authorized agents to a Web page prompting users to accept the Terms and Conditions governing the use of ACE AESDirect. After accepting these Terms and Conditions, USPPIs or their authorized agents will gain access to the AESDirect portal in ACE that will allow them to file their required EEI.

ACE AESDirect is intended to replace the legacy AESDirect operated by the Census Bureau and provide online internet filing and upload capabilities to facilitate the transmission of EEI. During the testing period of the ACE AESDirect portal, USPPIs or their authorized agents may continue to use legacy AESDirect for filing EEI. Once ACE AESDirect is fully operational, the Census Bureau plans to discontinue the legacy AESDirect filing application. AESDirect filing functionality through the ACE Exporter Account Portal will initially be available to certain USPPIs that have been selected by the Census Bureau. After this brief initial phase, CBP will announce the public availability of this functionality on its Web site at *http://www.cbp.gov/trade/automated*.

2. Overview of Exporter Portal Account Creation

The owner of an ACE Exporter Portal Account will have the ability to create and maintain through the ACE Portal information regarding the name, address, and contact information for the corporate and individual account owner for the exporter account. Exporters will use the existing account structure established for the use of importers within the ACE portal.

New ACE users without an existing portal account will be required to apply for an ACE Exporter Portal Account, as explained in Section B.1 below. An application to establish an ACE Exporter Portal Account by new ACE users will initiate the approval process which requires the account owner to provide additional information required to complete the process. Before a new ACE user can establish an Exporter Portal Account, the Census Bureau must vet and approve prospective users.

Existing ACE Portal Account owners should follow instructions in Section B.2 below. Current ACE account holders must request an exporter account view within their existing portal account to access these functions. An existing ACE user who requests an ACE Exporter Portal Account will be asked to provide corporate and contact information to complete the process.

The account owner for new and existing ACE portal accounts may register additional EINs for subsidiary business units. To do so, the account owner must first register the principal EIN and then add subsidiary EINs to the account. A company operating under a single EIN will be designated as the account owner upon registration. If a subsidiary EIN is added to the account that has not yet been verified by CBP, the Census Bureau must vet and approve the newly added EIN before the subsidiary can access the Exporter Portal Account.

ACE test participants must agree to the “Terms and Conditions for Account Access of the Automated Commercial Environment (ACE) Portal.” See 72 FR 27632 (May 16, 2007) and 73 FR 38464 (July 7, 2008). New ACE users will be prompted to accept these Terms and Conditions during the application process. Upon completion of the application process, the applicant will receive an email message and be prompted to log in with the exporter’s username and password which will create the ACE Exporter Portal Account. Once an account is created, the exporter will be provided with “exporter view” from the exporter home page.

B. Establishing an Exporter Portal Account

1. New ACE Portal Account Owner

Parties who do not have an ACE Portal Account may apply for an Exporter Portal Account according to the instructions on the following Web site: <http://www.cbp.gov/trade/automated/getting-started/using-ace-secure-data-portal>. Applicants will be required to complete an on-line application and provide “Corporate Information” and “ACE Account Owner” information listed below. The vetting process will begin once all steps have been completed and applications will be handled in the order in which they are received.

Corporate Information

1. EIN Number (SSN not allowed)
2. Company Name
3. DUNS Number (optional)
4. End of Fiscal Year (month and day)
5. Mailing Address (P.O. box not allowed)

ACE Account Owner

6. Name

7. Date of Birth

8. Email Address

9. Telephone Number

10. Fax Number (optional)

11. Address (if the Account Owner's Address differs from the Corporate Address provided above)

Once the ACE Exporter Portal Account application has been completed, the applicant will receive an email message to confirm submission of the application and direct the applicant how to log on to ACE to complete the account setup process and access the ACE Exporter Portal Account.³ Applicants who have not received an email message within 24 hours should contact the ACE Account Service Desk by calling 1-866-530-4172, selecting option 1, then option 2, or by emailing *ACE.Support@cbp.dhs.gov* for assistance.

2. Existing ACE Portal Account Owners

Parties that have an existing ACE Portal Account may request an Exporter Portal Account through their established ACE portal account. For these accounts, the account owner may establish access to the Exporter Portal Account functionality according to the instructions on the following Web site: *http://www.cbp.gov/trade/automated/getting-started/using-ace-secure-data-portal*. In order to request Exporter Portal Account access the account owner will be asked to provide the following information:

Corporate Information

1. Exporter Company Name

2. EIN Number (SSN not allowed)

3. DUNS Number (optional)

4. Other Company Names (optional)

5. Mailing Address (P.O. box not allowed)

6. Company Telephone (optional)

7. Web site Address (optional)

³ Establishing an ACE Exporter Portal Account does not automatically provide access to the ACE Portal Account features for importers. Applicants wishing to establish an ACE Portal Account should submit an application by clicking on the "Apply for an Account" link located under the ACE Secure Data Portal sidebar on the following Web site: *http://www.cbp.gov/trade/automated*.

Contact Information

1. Name
2. Date of Birth (optional)
3. Address (optional)
4. Email Address (optional)
5. Telephone Number (optional)
6. Fax Number (optional)

Once the existing ACE Account Owner completes the process, the Exporter Portal Account will be created and the account owner will be able to access the Exporter Portal Account functionality.

V. Test Duration

Except as stated below, the modification of the ACE Portal Account Test announced in this notice is effective on October 21, 2015. The testing of the AESDirect functionality announced in this notice will begin no earlier than October 1, 2015. This modified test will continue until concluded by way of announcement in the **Federal Register**. At the conclusion of the testing of the modification, an evaluation will be conducted and the results of that evaluation will be published in the **Federal Register** and the *Customs Bulletin* as required by section 101.9(b)(2) of the CBP regulations (19 CFR 101.9(b)(2)).

VI. Comments

All interested parties are invited to comment on any aspect of this ACE Portal Account Test, as modified by this notice, for the duration of the modified test. CBP requests comments and feedback on all aspects of this modification, including the design, conduct and implementation of the modification, in order to determine whether to modify, alter, expand, limit, continue, end, or fully implement this modification.

VII. Paperwork Reduction Act

The ACE Exporter Portal Account application has been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) and assigned OMB control number 1651– 0105. The information collection conducted under AES, including AESDirect, has been previously approved by OMB in accordance with the requirements of the Paperwork Reduction Act and assigned OMB control number 0607–0152. 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 control number assigned by OMB.

VIII. Confidentiality

All data submitted and entered into ACE is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential, except to the extent as otherwise provided by law. EEI is also subject to the confidentiality provisions of 15 CFR 30.60. As stated in previous notices, participation in the ACE Portal Account Test or any of the previous ACE tests is not confidential and upon a written Freedom of Information Act (FOIA) request, a name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

IX. Misconduct Under the Test

A test participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, or discontinuance from participation in the ACE Portal Account Test, as modified by this notice, for any of the following:

- (1) Failure to follow the terms and conditions of this test;
- (2) Failure to exercise reasonable care in the execution of participant obligations;
- (3) Failure to abide by applicable laws and regulations that have not been waived; or
- (4) Failure to deposit duties, taxes or fees in a timely manner.

If the Director, Business Transformation Division, ACE Business Office (ABO), Office of International Trade, finds that there is a basis for discontinuance of test participation privileges, the test participant will be provided a written notice proposing the discontinuance with a description of the facts or conduct warranting the action. The test participant will be offered the opportunity to appeal the Director's decision in writing within 10 calendar days of receipt of the written notice. The appeal must be submitted to the Executive Director, ABO, Office of International Trade, by emailing *Deborah.Augustin@cbp.dhs.gov*.

The Executive Director will issue a decision in writing on the proposed action within 30 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the proposed notice becomes the final decision of the Agency as of the date that the appeal period expires. A proposed discontinuance of a test participant's privileges will not take effect unless the appeal process under this paragraph has been concluded with a written decision adverse to the test participant.

In the case of willfulness or those in which public health, interest, or safety so requires, the Director, Business Transformation Division, ABO, Office of International Trade, may immediately discontinue the test participant's privileges upon written notice to the test partici-

pant. The notice will contain a description of the facts or conduct warranting the immediate action. The test participant will be offered the opportunity to appeal the Director's decision within 10 calendar days of receipt of the written notice providing for immediate discontinuance. The appeal must be submitted to the Executive Director, ABO, Office of International Trade, by emailing *Deborah.Augustin@cbp.dhs.gov*. The immediate discontinuance will remain in effect during the appeal period. The Executive Director will issue a decision in writing on the discontinuance within 15 working days after receiving a timely filed appeal from the test participant. If no timely appeal is received, the notice becomes the final decision of the Agency as of the date that the appeal period expires.

X. Development of ACE Prototypes

A chronological listing of **Federal Register** publications detailing ACE test developments is set forth below.

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004); 70 FR 5199 (February 1, 2005).
- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).
- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).
- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).
- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).
- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).
- Post-Entry Amendment (PEA) Processing Test: 76 FR 37136 (June 24, 2011).

- ACE Announcement of a New Start Date for the National Customs Automation Program Test of Automated Manifest Capabilities for Ocean and Rail Carriers: 76 FR 42721 (July 19, 2011).
- ACE Simplified Entry: 76 FR 69755 (November 9, 2011).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS): 77 FR 20835 (April 6, 2012).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Simplified Entry: Modification of Participant Selection Criteria and Application Process: 77 FR 48527 (August 14, 2012).
- Modification of NCAP Test Regarding Reconciliation for Filing Certain Post-Importation Preferential Tariff Treatment Claims under Certain FTAs: 78 FR 27984 (May 13, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE): 78 FR 44142 (July 23, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE); Correction: 78 FR 53466 (August 29, 2013).
- Modification of NCAP Test Concerning Automated Commercial Environment (ACE) Cargo Release (formerly known as Simplified Entry): 78 FR 66039 (November 4, 2013).
- Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the ESAR IV Test: Modifications and Clarifications: 78 FR 69434 (November 19, 2013).
- National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Environmental Protection Agency and the Food Safety and Inspection Service Using the Partner Government Agency Message Set Through the Automated Commercial Environment (ACE): 78 FR 75931 (December 13, 2013).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Ocean and Rail Carriers: 79 FR 6210 (February 3, 2014).

- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release to Allow Importers and Brokers to Certify From ACE Entry Summary: 79 FR 24744 (May 1, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Truck Carriers: 79 FR 25142 (May 2, 2014).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System: 79 FR 36083 (June 25, 2014).
- Announcement of eBond Test: 79 FR 70881 (November 28, 2014).
- eBond Test Modifications and Clarifications: Continuous Bond Executed Prior to or Outside the eBond Test May Be Converted to an eBond by the Surety and Principal, Termination of an eBond by Filing Identification Number, and Email Address Correction: 80 FR 899 (January 7, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Document Image System Relating to Animal and Plant Health Inspection Service (APHIS) Document Submissions: 80 FR 5126 (January 30, 2015).
- Modification of National Customs Automation Program (NCAP) Test Concerning the use of Partner Government Agency Message Set through the Automated Commercial Environment (ACE) for the Submission of Certain Data Required by the Environmental Protection Agency (EPA): 80 FR 6098 (February 4, 2015).
- Announcement of Modification of ACE Cargo Release Test to Permit the Combined Filing of Cargo Release and Importer Security Filing (ISF) Data: 80 FR 7487 (February 10, 2015).
- Modification of NCAP Test Concerning ACE Cargo Release for Type 03 Entries and Advanced Capabilities for Truck Carriers: 80 FR 16414 (March 27, 2015).
- Automated Commercial Environment (ACE) Export Manifest for Air Cargo Test: 80 FR 39790 (July 10, 2015).
- National Customs Automation Program (NCAP) Concerning Remote Location Filing Entry Procedures in the Automated Commercial Environment (ACE) and the Use of the Document Image

System for the Submission of Invoices and the Use of eBonds for the Transmission of Single Transaction Bonds: 80 FR 40079 (July 13, 2015).

- Modification of National Customs Automation Program (NCAP) Test Concerning the Automated Commercial Environment (ACE) Partner Government Agency (PGA) Message Set Regarding Types of Transportation Modes and Certain Data Required by the National Highway Traffic Safety Administration (NHTSA): 80 FR 47938 (August 10, 2015).
- Automated Commercial Environment (ACE) Export Manifest for Rail Cargo Test: 80 FR 54305 (September 7, 2015).

Dated: October 15, 2015.

CYNTHIA F. WHITTENBURG,
*Acting Assistant Commissioner,
Office of International Trade.*

[Published in the Federal Register, October 21, 2015 (80 FR 63815)]

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING CERTAIN BILLIARDS TABLES

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of certain billiards tables. Based upon the facts presented, CBP has concluded in the final determination that the United States is the country of origin of the billiards tables for purposes of U.S. Government procurement.

DATES: The final determination was issued on October 15, 2015. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination no later than November 20, 2015.

FOR FURTHER INFORMATION CONTACT: Grace A. Kim, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202) 325-7941.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on October 15, 2015 pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177,

subpart B), CBP issued a final determination concerning the country of origin of certain billiards tables, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H268491, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concluded that, based upon the facts presented, the assembly and installation processes performed in the United States, using imported components, substantially transform the imported components into billiards tables. Therefore, the country of origin of the billiards tables is the United States for purposes of U.S. Government procurement.

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

Dated: October 15, 2015.

HAROLD M. SINGER,
*Acting Executive Director,
Regulations and Rulings,
Office of International Trade.*

HQ H268491

October 15, 2015
OT:RR:CTF:VS H268491 GaK
CATEGORY: OriginJEREMY ROSS PAGE
PAGE FURA, P.C.
311 WEST SUPERIOR, SUITE 306
CHICAGO, IL 60654RE: U.S. Government Procurement; Country of Origin of Billiards Tables;
Substantial Transformation

DEAR MR. PAGE:

This is in response to your letter, dated August 12, 2015, requesting a final determination on behalf of The Brunswick Corporation (“Company”), pursuant to subpart B of part 177 of the U.S. Customs and Border Protection (“CBP”) Regulations (19 CFR part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (“TAA”), as amended (19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of the Company’s four billiards tables. We note that as a U.S. manufacturer, the Company is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination. Diagrams of the tables were submitted with your request.

FACTS:

There are four families of billiards tables at issue: Centurion (“Table A”), Metro (“Table B”), Gold Crown V (“Table C”), and Black Wolf II (“Table D”) (collectively “tables”). The tables are designed and developed in the U.S. and each table is produced in the U.S. from components and subassemblies sourced from various countries, including the U.S. Due to the size and weight of each table, the Company ships the individual components to the U.S. customers’ location and assembles the tables on-site. The assembly and installation of the tables must be performed by certified Company installers who are employed and extensively trained by licensed U.S.-based Company dealers.

The assembly of Table A consists of the following: 1) assembly of base frame and legs, 2) slate assembly, 3) attachment of billiard cloth to slate, 4) assembly of rail and apron, and 5) assembly of the gully return system¹ (if ordered by the customer). Each process must be performed in sequential order, except for the gully return system which is interspersed throughout the process. There are approximately 65 steps and 72 parts, including fasteners (*e.g.*, nuts, bolts, screws, and staples), wax or hard putty and glue. First, the table legs and stretcher are assembled and the base frame is constructed on top of the legs so that a balanced and leveled foundation is created. The next step is the installation of the slate, where the installers must level the base frame

¹ Ball return system.

and shim three slate pieces to ensure a completely flat surface before attaching the slate to the base frame. After the slate pieces are attached to the table base, the slate joints are filled with wax or hard putty and lightly sanded to ensure a completely smooth surface. Once the slate surface is cleaned and leveled, the installers cut and glue strips of cloth to the slate pockets and stretch the billiard cloth over the slate and attach it to the slate with a contact adhesive. Table A uses a framed slate, which is backed with particle board allowing the billiard cloth to be stapled to it. The billiard cloth installation is said to be complex and essential to ensure that the table performs as designed. The cloth installation consists of 22 steps of stretching it from different directions and attaching it to the slate frame. The failure to properly level the table and base frame, seal the slate joints, screw holes and/or attach the billiard cloth properly will prevent the balls from running true during play. After the billiard cloth is properly attached, the rails and aprons are installed and the bed spot² is affixed to the cloth. If the customer ordered the gullies, they are installed at this stage. The assembly of Table A requires an average of 8 man hours and two certified installers (4 hours per installer). An additional 45 minutes is required for leveling the table after assembly. The installation cost combined with the value of U.S. components, amounts to 43.3% of the total cost. Other components are sourced from Brazil, Vietnam, Indonesia, and Taiwan.³

Table B has a different design than Table A and is higher in quality. The assembly of Table B is the same as Table A, except that step 4 involves the attachment of rail cloth, and the billiard cloth is also not pre-installed on the rail cushions prior to delivery. There are approximately 71 steps and 82 parts. After the billiard cloth is attached to the slate, the installers must wrap the rail cushions in billiard cloth. The loose billiard cloth is draped over each of the six rails and a wooden feather strip (same length of the rail) is pounded into place to affix the billiard cloth to the rail and excess cloth is trimmed. After the six rails are wrapped, the rails and apron are installed on the table and the bed spot is affixed. The assembly of Table B requires the same time as assembly of Table A, but an additional 2 hours to wrap all six rails. The installation cost combined with the value of U.S. components, amounts to 35.3% of the total cost. Other components are sourced from Brazil, Indonesia and Taiwan.⁴

Table C is very similar to Table B, but due to the different design and materials, the assembly process is claimed to be more complex and costly. Specifically, the assembly of the rails and pocket castings requires shimming and alignment to ensure a quality fit. The assembly of the apron is also more complex due to Table C's higher fit and finish, and inclusion of corner castings

² Bed spot is the self-adhesive sticker that indicates where the balls are to be racked.

³ Pocket set Centurion/Century (U.S.), 8'1" home framed 3 piece slate set (Brazil), rails 8'H Centurion black (Vietnam), Centurion legs 8' black (Vietnam), Centurion leg stretcher 8' black (Vietnam), Centurion aprons 8' black (Vietnam), B/F 8'H Centurion PW (Indonesia), main hardware Centurion 2013 (Taiwan), and Centurion rail and apron corners (Taiwan).

⁴ 8'1" home framed 3 piece slate set (Brazil), rails 8'H Metro black (Indonesia), castings & ext Metro (Taiwan), main hardware Metro (Taiwan), levelers/ brackets Metro (Indonesia), pkg bridge tri racks Metro (U.S.), aprons 8H Metro black carb PHII (Indonesia), leg set Metro black carb (Indonesia), Metro B/F 8'H carb (Indonesia), and drop pockets GCIV, GCV, Metro (U.S.).

and a ball storage box. There are approximately 77 steps and 91 parts. The assembly of Table C requires the same amount of time to assemble as Table B. The installation cost combined with the value of U.S. components, amounts to 28.7% of the total cost. Other components are sourced from Brazil, Indonesia, and Taiwan.⁵

The assembly of Table D is similar to Table A, with the exception of delineation of the rail and apron assembly process. There are approximately 60 steps and 71 parts. While Table D is similar to the other tables in this request, Table D is unique because it requires the complete assembly of both legs. The assembly of Table D requires an average of 8 man hours and two certified installers. Since the rails are pre-wrapped, only an additional 45 minutes are required to level the table. The installation cost combined with the value of U.S. components, amounts to 49.4% of the total cost. Other components are sourced from Brazil, Indonesia, Vietnam, and Taiwan.⁶

ISSUE:

What is the country of origin of the four billiards tables for purposes of U.S. government procurement?

LAW AND ANALYSIS:

Pursuant to subpart B of part 177, 19 CFR

177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

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

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

See also, 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. government procurement, CBP applies the provisions of subpart B of part 177 consistent with the Federal Acquisition Regulations. *See* 19 CFR 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government’s purchase of products to U.S.-made or designated

⁵ 9’1” pro framed 3 piece slate set (Brazil); drop pockets GCIV, GCV, Metro (U.S.); quick set foot plates (U.S.); GC IV 9’ base frame new (Brazil); rail Gold Crown V 9’ mahogany/nickel (Indonesia); main hard ware GC V (Taiwan); storage box GC V trim nickel (Taiwan); main castings GC V nickel (Taiwan); leg set 9’ GCVMAH carb (Brazil); stretcher 9’ GCVMAH carb (Brazil); aprons GCV 9’ mahogany/nickel carb (Brazil).

⁶ 8’1” home framed 3 piece slate set (Brazil), drop pocket set (U.S.), Black Wolf II hardware and feet (Indonesia), B/F 8H BRL/GEN carb (Vietnam), PKT APR 8H Black Wolf carb (Vietnam), leg posts Black Wolf carb (Vietnam), leg panels 8’H Black Wolf carb (Vietnam), Black Wolf corners silver 2012 (Taiwan), rails Black Wolf II 8’ (Brazil).

country end products for acquisitions subject to the TAA. See 48 CFR 25.403(c)(1). The Federal Acquisition Regulations define “U.S.-made end product” as:

. . . an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

48 CFR 25.003.

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

In *Carlson Furniture Industries v. United States*, 65 Cust. Ct. 474 (1970), the U.S. Customs Court ruled that U.S. operations on imported chair parts constituted a substantial transformation, resulting in the creation of a new article of commerce. After importation, the importer assembled, fitted, and glued the wooden parts together, inserted steel pins into the key joints, cut the legs to length and leveled them, and in some instances, upholstered the chairs and fitted the legs with glides and casters. The court determined that the importer had to perform additional work on the imported chair parts and add materials to create a functional article of commerce. The court found that the operations were substantial in nature, and more than the mere assembly of the parts together.

In Headquarters Ruling Letter (“HQ”) W563456, dated July 31, 2006, CBP held that certain office chairs assembled in the U.S. were products of the U.S. for purposes of U.S. government procurement. The office chairs were assembled from over 70 U.S. and foreign components. In finding that the imported parts were substantially transformed in the U.S., CBP stated that the assembly processes that occurred in the U.S. were complex and meaningful, required the assembly of a large number of components, and rendered a new and distinct article of commerce that possessed a new name, character, and use. CBP noted that the U.S.-origin seat and back frame assemblies, which were made with the importer’s trademark fabric, together with the tilt assembly, were of U.S. origin and gave the chair its unique design profile and essential character. In HQ 561258, dated April 15, 1999, CBP determined that the assembly of numerous imported workstation components with the U.S.-origin work surface into finished workstations constituted a substantial transformation. CBP held that the imported components lost their identity as leg brackets, drawer units, panels etc. when they were assembled together to form a workstation. In HQ H083693, dated March 23, 2010, CBP held that a certain wood chest assembled in the U.S. was a product of the U.S. for purposes of U.S. government procurement. The wood chest was assembled from over twenty U.S. and foreign components in a twenty-step process which took approximately forty-one minutes. CBP held that the components used to

manufacture the wood chest, when combined with a U.S. origin laminate top, were substantially transformed as a result of the assembly operations performed in the U.S.

In the instant case, the tables' components range from 71 to 91 which can only be assembled by two skilled installers, operating under the control and training of the Company and its authorized network of dealers. The assembly of the components requires the installers to maintain proper leveling throughout, while building different parts of the billiards table, which is essential to the ball running true during play. We find that the assembly processes that occur in the U.S. are complex and meaningful, require the assembly of a large number of components, and render a new and distinct article of commerce that possesses a new name, character, and use. Therefore, we find that the imported components lose their individual identities and become an integral part of the billiards tables as a result of the U.S. assembly operations and combination with U.S. components; and that the components acquire a different name, character, and use as a result of the assembly operations performed in the U.S. While not dispositive, we note, in addition, that the engineering, design, and development of the tables occur in the U.S. Accordingly, the assembled billiards tables will be considered products of the U.S. for purposes of U.S. Government procurement.

HOLDING

Based on the facts of this case, we find that the country of origin of all four billiards tables is the U.S. for purposes of U.S. Government procurement. Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

HAROLD M. SINGER,
*Acting Executive Director Regulations and
Rulings,
Office of International Trade*

[Published in the Federal Register, October 21, 2015 (80 FR 63812)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Petroleum Refineries in Foreign Trade Sub-Zones

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: Petroleum Refineries in Foreign Trade Sub-zones. CBP is proposing that this information collection be extended with no change to the burden hours or Information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before December 18, 2015 to be assured of consideration.

ADDRESSES: Written comments may be mailed 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). 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 cost burden to respondents or record keepers from the collection of information (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: Petroleum Refineries in Foreign Trade Sub-zones

OMB Number: 1651–0063

Abstract: The Foreign Trade Zones Act, 19 U.S.C. 81c(d) contains specific provisions for petroleum refinery sub-zones. It permits refiners and U.S. Customs and Border Protection (CBP) to assess the relative value of such products at the end of the manufacturing period during which these products were produced when the actual quantities of these products resulting from the refining process can be measured with certainty.

19 CFR 146.4(d) provides that the operator of the refinery sub-zone is required to retain all records relating to the above mentioned activities for five years after the merchandise is removed from the sub-zone. Further, the records shall be readily available for CBP review at the sub-zone.

Instructions on compliance with these record keeping provisions are available in the Foreign Trade Zone Manual which is accessible at: <http://www.cbp.gov/document/guides/foreign-trade-zones-manual>.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Total Annual Responses: 81.

Estimated Time per Response: 1000 hours.

Estimated Total Annual Burden Hours: 81,000.

Dated: October 14, 2015.

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

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