

U.S. Customs Service

General Notices

TREASURY ADVISORY COMMITTEE ON COMMERCIAL OPERATIONS OF THE U.S. CUSTOMS SERVICE

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date, time, and location for the quarterly meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service (COAC), and the provisional agenda for consideration by the Committee.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Friday, January 25, 2002, starting at 8:45 a.m., 740 15th Street, Suite 700, Washington, DC. The duration of the meeting will be approximately four hours.

FOR FURTHER INFORMATION, CONTACT: Gordana S. Earp, Deputy Director, Tariff and Trade Affairs (Enforcement), Office of the Under Secretary (Enforcement), Telephone: (202) 622-0336.

At this meeting, the Advisory Committee is expected to pursue the following agenda. The agenda may be modified prior to the meeting.

Agenda:

- 1) Report on the work of the COAC sub-committee on Border Security and COAC recommendations
- 2) Status of proposed re-design of the Office of Rules & Regulations
- 3) Merchandise Processing Fee
- 4) Review of issues and priorities for 2002

SUPPLEMENTARY INFORMATION: The meeting is open to the public; however, participation in the Committee's deliberations is limited to Committee members, Customs and Treasury Department staff, and persons invited to attend the meeting for special presentations. A person other than an Advisory Committee member who wishes to attend the meeting should contact Theresa Manning at (202) 622-0220 or Helen Belt at (202) 622-0230.

Dated: January 4, 2002.

TIMOTHY E. SKUD,
*Acting Deputy Assistant Secretary,
Regulatory, Tariff, and Trade.*

[Published in the Federal Register, January 10, 2002 (67 FR 1405)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, January 9, 2002.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

DOUGLAS M. BROWNING,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*

MODIFICATION OF RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
DECORATIVE STEEL CONTAINERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to the tariff classification of decorative steel containers.

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 is modifying a ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of decorative steel containers and revoking any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed modification of a ruling letter and revocation of treatment relating to tariff classification was published on November 28, 2001, in Vol. 35, No. 48, of the CUSTOMS BULLETIN. No comments were received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 22, 2002.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, Commercial Rulings Division, (202) 927-2391.

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 Customs 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 Customs 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 Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on November 28, 2001, in the CUSTOMS BULLETIN, Vol. 35, No. 48, proposing to modify a ruling letter, NY F86857 dated May 26, 2000, and revoke the tariff treatment pertaining to the tariff classification of steel containers. No comments were received in response to this notice.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer’s failure to have advised the Customs Service 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 their agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying NY F86857 dated May 26, 2000, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the

analysis set forth in Headquarters Ruling Letter (HQ) 964477. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking its treatment previously accorded by the Customs Service to substantially identical transactions. HQ 964477, modifying NY F86857, and revoking its treatment relating to tariff classification, is set forth as the "Attachment" to this document.

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

Dated: January 4, 2002.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, January 4, 2002.
CLA-2 RR:CR:GC 964477 KBR
Category: Classification
Tariff No. 7323.99.90

RICK MOSLEY
KUEHNE & NAGEL, INC.
*101 Wrangler Drive
Suite 201
Coppell, TX 75019*

Re: Reconsideration of NY F86857; Decorative Steel Containers.

DEAR MR. MOSLEY:

This is in reference to your letter dated August 14, 2000, on behalf of Tuesday Morning Partners, Ltd., in which you requested reconsideration of New York Ruling Letter (NY) F86857, issued to you by the Customs National Commodity Specialist Division, on May 26, 2000, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of, among other items, certain decorative steel containers. We have reviewed the prior ruling and have determined that the classification provided is incorrect.

Pursuant to sections 625(c)(1), 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), a notice was published on November 28, 2001, in Vol. 35, No. 48 of the CUSTOMS BULLETIN, proposing to modify NY F86857. No comments were received in response to this notice. This ruling modifies NY F86857 by providing the correct classification for the decorative steel containers.

Facts:

In NY F86857 the subject articles were described as follows. The products involved are two styles of 'gold'-toned decorative steel containers. Style VV911729XQ (M110053) is 6 inches in diameter and 3 inches high. The side walls are cutouts of leaves and it has a wire mesh bottom with three ball-shaped legs attached to the bottom.

Style VV911729Q (S110017) is 4 inches in diameter and 3¼ inches high. The side walls are cutouts of trees, holly, reindeer and snowmen. It has a solid metal bottom with three ball-shaped legs attached to the bottom. You submitted for our examination, samples which match sample S110017 in design but are in medium and large sizes.

In NY F86857 it was determined that style M110053 was a household article of iron or steel, not coated or plated with precious metal, classifiable under subheading 7323.99.9060, HTSUS. Style S110017 was found to be a non-electrical lamp or lighting fitting classifiable under subheading 9405.50.4000, HTSUS. We have reviewed that ruling and determined that the classification of style S110017 is incorrect. This ruling sets forth the correct classification.

Issue:

What is the proper classification under the HTSUS of the subject decorative steel containers?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS 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, Customs 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 Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

7323	Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel; Other:
7323.99	Other: Not coated or plated with precious metal:
7323.99.90	Other
8306	Bells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal; and base metal parts thereof: Statuettes and other ornaments, and parts thereof:
8306.29.00	Other
9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
9405.50	Non-electrical lamps and lighting fittings: Other:
9405.50.40	Other

Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that in the absence of context to the contrary, a tariff classification controlled by use, other than actual use, is to be determined by the principal use in the United States at, or immediately prior to, the date of importation, of goods of the same class or kind of merchandise.

In *E.C. Lineiro v. United States*, 37 CCPA 10, CAD 411 (1949), the court states that “a designation by use may be established, although the word ‘use’ or ‘used’ does not appear in the language of the statute.” As such, it is the use of the class or kind of merchandise to which the imported article belongs, which must be determined, not the “alleged” use of the instant merchandise.

The court in *E. M. Chemicals v. United States*, 20 C.I.T. 382, 923 F. Supp. 202 (1996 Ct. Intl. Trade) explained the application of these types of HTSUS provisions thus:

When applying a “principal use” provision, the Court must ascertain the class or kind of goods which are involved and decide whether the subject merchandise is a member of that class. *See supra* Additional U.S. Rule of Interpretation 1 to the HTSUS. In determining the class or kind of goods, the Court examines factors which may include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4)

the environment of the sale (e.g., the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *United States v. Carborundum Co.*, 63 C.C.P.A. 98, 102, 536 F.2d 373, 377, cert. denied, 429 U.S. 979, 50 L. Ed. 2d 587, 97 S. Ct. 490 (1976); see also *Lenox Coll.[v. United States]*, 20 C.I.T., Slip Op. 96-30, at page 5.

In your submission dated August 14, 2000, you state that the decorative steel containers are intended to be used "as festive candleholders during the Christmas holiday season." You state that the articles are composed of lightweight, low cost metal of nominal value and small bulk. You also state that they possess no utilitarian value and are used only as festive holiday decorations "to contain or support other decorative articles or add to their decorative effect." This indicates that you believe the containers may be used to hold articles other than just candles. We agree. Although the articles are capable of use as candleholders, as a class or kind of merchandise, the containers may be used in the same manner as other household containers, such as bowls, platters or serving dishes. The form of these articles does not belong to the class or kind of goods that includes lamps and lighting fittings. Therefore, we find that they are not candleholders classifiable under subheading 9405.50.40, HTSUS.

You then argue that if the decorative steel containers are not classifiable as candleholders, they should be classified as statuettes and other ornaments under heading 8306, HTSUS. The EN for 83.06 states:

This group comprises a wide range of ornaments of base metal (whether or not incorporating subsidiary non-metallic parts) of a kind designed essentially for decoration, e.g., in homes, offices, assembly rooms, places of religious worship, gardens.

It should be noted that the group does not include articles of more specific headings of the Nomenclature, even if those articles are suited by their nature or finish as ornaments.

The group covers articles which have no utility value but are wholly ornamental, and articles whose only usefulness is to contain or support other decorative articles or to add to their decorative effect, for example:

* * * * *

(3) Table-bowls, vases, pots, jardinières (including those of cloisonné enamel).

The group also includes, in the circumstances explained below, certain goods of the two following categories even though they have a utility value:

(A) Household or domestic articles whether they are potentially covered by specific headings for such goods (i.e., headings 73.23, 74.18 and 76.16) or by the "other articles" headings (e.g., in the case of articles of nickel and tin in particular). These household or domestic articles are generally designed essentially to serve useful purposes, and any decoration is usually secondary so as not to impair the usefulness. If, therefore, such decorated articles serve a useful purpose no less efficiently than their plainer counterparts, they are classified as domestic goods rather than in this group. On the other hand, if the usefulness of the article is clearly subordinate to its ornamental or fancy character, it should be classified in this group, for example, trays so heavily embossed that their usefulness is virtually nullified; ornaments incorporating a purely incidental tray or container usable as a trinket dish or ash-tray; and miniatures having no genuine utility value (miniature kitchen utensils).

Examination of the samples indicates that they are inexpensively made. The side walls are crudely cut out and the designs are hard to distinguish. A user is not likely to use them alone as a decorative article without placing another decorative article in it. The decorations on the articles do not impair or nullify the articles' usefulness as a container. These containers may easily be used to serve breads, candies, or other items. Mere attractiveness and minor decorations do not convert a useful item into an ornamental article. The instant containers are not so decorated that their use would be less efficient than a plainer container. Further, we see no reason to distinguish one style from the other for classification purposes, as was done in NY F86857. Both styles (M110053 and S110017) are decorative steel containers whose usefulness is not subordinate to its ornamentation.

You cite HQ 955112 (February 14, 1994), where a silver-plated candelabra attached to a table bowl used to hold flowers as a table centerpiece was found to be classified under subheading 8306.21.00, HTSUS, which provides for statuettes and other ornaments and parts thereof, plated with precious metal. We do not find that case to be similar to the subject containers. In that case, the article was a combined article, both a candelabra and a

bowl, having a much more decorative effect. The bowl seemed to have only one use, as a decorative flower holder. The ruling stated that the "article's usefulness is subordinate to its decorative effect". In the instant case, the containers have multiple uses. There is no candelabra attached to accentuate any decorativeness the container might have. Unlike the article described in HQ 955112, it is more useful than decorative. Therefore, we find that both styles of steel containers are classifiable under subheading 7323.99.90, HTSUS, as table, kitchen or other household articles, of iron or steel, not coated or plated with precious metal, other.

Holding:

In accordance with the above discussion, the decorative steel containers, Style VV911729XQ (M110053) and Style VV911729Q (S110017), are classified in subheading 7323.99.90, HTSUS, as table, kitchen or other household articles, of iron or steel, not coated or plated with precious metal, other.

Effect on Other Ruling:

NY F86857, dated May 26, 2000, is MODIFIED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO THE CLASSIFICATION OF TEXTILE
DRAWSTRING POUCHES FOR GLASSES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of a ruling letter and treatment relating to the classification of textile drawstring pouches for glasses.

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 is revoking a ruling letter relating to the classification of textile drawstring pouches for glasses. Similarly, Customs also is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocation was published on December 5, 2001, in Vol. 35, No. 49, of the CUSTOMS BULLETIN. No comments were received in response to the notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 25, 2002.

FOR FURTHER INFORMATION CONTACT: Shari Suzuki, Textile Branch, (202) 927-2339.

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 Customs 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 Customs 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 Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, a notice was published on December 5, 2001, in the CUSTOMS BULLETIN , Vol. 35, No. 49, proposing to revoke Headquarters Ruling Letter (HQ) 954403, dated November 16, 1993. No comments were received in response to the notice of proposed action.

As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on merchandise subject to this notice, should have advised the Customs Service 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, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions that is contrary to the position set forth in this notice. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer’s reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking HQ 954403, dated November 16, 1993, and any other rulings not specifically identified, that is contrary to the position set forth in this notice, to reflect the proper classification of the merchandise pursuant to the analysis set

forth in Headquarters Ruling Letter HQ 963558 as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions that is contrary to the position set forth in this notice.

In accordance with 19 U.S.C. 1625 (c) this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: January 7, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, January 7, 2002.
CLA-2 RR:CR:TE 963558 SS
Category: Classification
Tariff No. 4202.32.9550

MR. SCOTT E. ROSENOW, ESQUIRE
STEIN SHOSTAK SHOSTAK & O'HARA
1620 L Street, N.W.
Washington, DC 20036

Re: Revocation of Headquarters Ruling Letter 954403; Drawstring Pouch for Sunglasses; Subheading 4202.32.9550, HTSUSA; Not Heading 6307, HTSUSA.

DEAR MR. ROSENOW:

On November 16, 1993, Customs issued Headquarters Ruling Letter (HQ) 954403 to you on behalf of your client, Brandon International, regarding the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a polyester drawstring pouch used as a container for sunglasses. This letter is to inform you that upon review of HQ 954403, it has been determined that the classification decision in HQ 954403 should be revoked.

HQ 954403, has been cited in several recent Headquarters Ruling Letters as being inconsistent with Customs position taken on merchandise classified in heading 6307, HTSUSA. See HQ 962551, dated June 16, 1999, and HQ 963575, dated October 12, 1999. This letter is to inform you that after review of the ruling, it has been determined that the classification of the textile drawstring pouch in HQ 954403 under subheading 6307.90.9986, HTSUSA, is incorrect. As such, HQ 954403 is revoked pursuant to the analysis which follows below.

Pursuant to section 625(c)(1), 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), a notice was published on December 5, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 49, proposing to revoke HQ 954403 and any treatment pertaining to the classification of textile drawstring pouches for glasses. No comments were received in response to this notice.

Facts:

The drawstring pouch was described in HQ 954403 as follows:

The sample is a 3½ by 7 inch drawstring pouch made of an ultra-fine polyester material. The pouch will be distributed to purchasers of sunglasses for the purpose of providing a container with a drawstring closure to secure the glasses inside.

Issue:

What is the proper classification of the polyester drawstring pouch for sunglasses?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. 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 EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings.

The competing provisions at issue in this case are heading 4202, HTSUSA, and heading 6307, HTSUSA. Heading 4202, HTSUSA, provides for, among other things, spectacle cases and similar containers. The EN state that subheading 4202.32, HTSUSA, covers articles of a kind normally carried in the pocket or in the handbag and includes spectacle cases, note cases (bill folds), wallets, purses, key cases, cigarette cases, cigar cases, pipe cases and tobacco pouches. Heading 6307, HTSUSA, provides for, among other things, other made up articles, and is a basket provision for articles not more specifically provided for elsewhere in the tariff.

Drawstring pouches have been classified under both heading 4202, HTSUSA, and heading 6307, HTSUSA, depending upon their construction and the purpose(s) for which they are designed. HQ 960135, dated July 11, 1997. Where a textile drawstring pouch is considered specially designed to hold an article and of adequate construction to be used repeatedly (rather than discarded), it is classifiable under heading 4202, HTSUSA. HQ 962551, dated June 16, 1999, and HQ 959524, dated November 4, 1996. If it is the kind of article to be carried in the pocket or handbag, with an outer surface of textile materials, it is classifiable under subheading 4202.32, HTSUSA. HQ 962551, dated June 16, 1999, and HQ 959524, dated November 4, 1996. Pouches classified outside heading 4202, HTSUSA, are generally those considered not specially designed to contain a particular article and not adequately constructed to sustain repeated use. HQ 960135, dated July 11, 1997.

More specifically, in the case of pouches or drawstring bags for glasses, Customs has been consistent in its determinations that such merchandise, when adequately constructed for repeated use is properly classified in heading 4202, HTSUSA. See HQ 964443, dated May 14, 2001, HQ 962551, dated June 16, 1999; HQ 960135, dated July 11, 1997; and HQ 959524; dated November 4, 1996. The instant drawstring pouch is adequately constructed for repeated use. Furthermore, the pouch is specially designed to suit the needs of the glasses it will carry. The dimensions of the pouch are more than adequate to snugly accommodate eyeglasses regardless of the absence of internal fittings or compartments. Additionally, the ultra-fine polyester fabric construction imparts a special feature to the subject merchandise in that it makes an ideal cleaning cloth for glasses. See HQ 960135, dated July 11, 1997, and HQ 959524, dated November 4, 1996. Thus, the instant drawstring bag is properly classified under heading 4202, HTSUSA.

In your submission, you cited a series of Customs rulings which you believe support your claim that the subject merchandise is classified under heading 6307, HTSUSA. We note that those rulings concern generic pouches (i.e., jewelry pouches, gift bags, etc.) which were determined to be of non-durable or insubstantial construction. They are distinguishable from the instant textile drawstring bag which is a substantially constructed pouch made of highly durable fabric specifically designed for glasses. In HQ 962551, Customs clarified that the durability and substantial nature of drawstring pouches are determinative factors to the classification of textile drawstring pouches. We note that even in HQ 954403, the instant drawstring pouch was described as adequately constructed for repeated use. Thus, Customs was incorrect in stating that the substantial nature of the drawstring pouch did not alter the conclusion. The substantiality of the drawstring pouch combined with its specially designed nature renders the article within the ambit of heading 4202, HTSUSA. Accordingly, the subject merchandise is properly classified in subheading 4202.32.9550, HTSUSA.

Holding:

HQ 954403, dated November 16, 1993, is hereby revoked.

The polyester drawstring pouch for sunglasses is properly classified in subheading 4202.32.9550, HTSUSA, which provides for, among other things, articles of a kind normally carried in the pocket or handbag; with outer surface of sheeting or plastic or of textile materials: other: other, of man-made fibers. The applicable rate of duty is 18.3 percent *ad valorem* and the textile category code is 670.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office. The Status Report on Current Import Quota (Restraint Levels) is also available on the Customs Electronic Bulletin Board (CEBB) which can be found on the U.S. Customs Service Website at www.customs.treas.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

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

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF PORTABLE PROPANE GAS CAMPING STOVE AND HEATERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letters and treatment relating to tariff classification of a portable propane gas camping stove and heaters.

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 is revoking two ruling letters pertaining to the tariff classification of merchandise under the Harmonized Tariff Schedule of the United States ("HTSUS"). One ruling letter pertains to the classification of a portable propane gas camping stove; the second ruling letter pertains to the classification of natural gas heaters and propane heaters. Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published in the CUSTOMS BULLETIN on November 28, 2001. The only comment received in response to the notice is discussed in the attached rulings.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 25, 2002.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 927-2388.

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 Customs 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 Customs 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 Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the CUSTOMS BULLETIN on November 28, 2001, proposing to revoke DD 815332, pertaining to the tariff classification of a portable propane gas camping stove, and to modify NY 803374, pertaining to the tariff classification of propane heaters. The only comment received in response to the notice is discussed in the attached rulings, HQ 964976 and HQ 965297. The issue raised in the comment, i.e., portability, has caused us to make an additional change to NY 803374 which results in the revocation of that ruling, rather than its modification.

As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but which 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 Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel ap-

plying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's failure to advise Customs 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.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking DD 815332, NY 803374, and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 964976 and HQ 965297. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. HQ 964976 and HQ 965297 are set forth as Attachments A and B, respectively, to this document.

In accordance with 19 U.S.C. 1625(c), these rulings will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: January 8, 2002.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, January 8, 2002.

CLA-2 RR:CR:GC 964976 GOB
Category: Classification
Tariff No. 7321.11.10

DOUGLAS SHEWRING
AMERICAN LEISURE PRODUCTS COMPANY
*P.O. Box 53
Newport, RI 02840*

Re: Revocation of DD 815332; Portable Propane Gas Camping Stove.

DEAR MR. SHEWRING:

This letter is with respect to DD 815332 issued to you November 1, 1995, by the Port Director of Customs, San Diego, with respect to the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of a portable propane gas camping stove. We have reviewed the classification set forth in DD 815332 and have determined that it is incorrect. This ruling sets forth the correct classification.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed

modification of DD 815332, as described below, was published in the CUSTOMS BULLETIN on November 28, 2001.

One comment was received in response to the notice. The commenter expressed “no comment on the propriety of the proposal to consider liquid propane to be a gas fuel for purposes of classification in HTSUS heading 7321” but stated that the proposed rulings “fail to articulate sufficient explanation for classification of the subject articles as ‘portable.’” “With respect to the comment, we note that the portability of the propane gas camping stove is not at issue here. We note additionally that the good at issue here clearly appears to be portable.

Facts:

The article at issue was described in DD 815332 as follows:

*** an enameled steel portable propane gas camping or cooking stove with a brass gas valve and stainless steel burner. Additionally, it has pouring lips and carry handles (on each side). It is packed in a nylon carrying bag (stove folds away) with carry clasp and handles *** the article utilizes an 11-pound disposable propane bottle (not included at time of importation).

In DD 815332, Customs classified the portable propane gas camping stove in subheading 7321.12.00, HTSUS, as: “Stoves, ranges, grates, cookers *** and similar nonelectric domestic appliances, and parts thereof, of iron or steel: Cooking appliances and plate warmers: *** For liquid fuel.”

Issue:

What is the classification under the HTSUS of the portable propane gas camping stove?

Law and Analysis:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (“EN’s”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN’s 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.

The HTSUS provisions under consideration are as follows:

7321	Stoves, ranges, grates, cookers, (including those with subsidiary boilers for central heating), barbeques, braziers, gas rings, plate warmers and similar nonelectric domestic appliances, and parts thereof, of iron or steel:
	Cooking appliances and plate warmers:
7321.11	For gas fuel or for both gas and other fuels:
7321.11.10	Portable
*	*
*	*
*	*
*	*
*	*
*	*
7321.12.00	For liquid fuel.

EN 73.21 provides that that heading includes camping stoves. The crucial issue in this classification matter is whether the subject article is a cooking appliance “for gas fuel or for both gas and other fuels” (subheading 7321.11.10, HTSUS) or “for liquid fuel” (subheading 7321.12.00, HTSUS).

The article is described as a portable propane gas camping stove. That description would seem to indicate that the article is a cooking appliance for gas fuel. We have examined the definitions of “propane” in various resources.

The *Van Nostrand Reinhold Encyclopedia of Chemistry* (4th ed., 1984) defines “propane” in pertinent part as follows: “*** colorless gas [technical specifications omitted] *** The content of propane in natural gas varies with the source of the natural gas, but on average is about 6%. Propane is also obtainable from petroleum sources. Liquefied pro-

pane is marketed as a fuel for outlying areas where other fuels may not be readily available and for portable cook stoves * * * Propane and other liquefied gases are clean and appropriate for most heating purposes * * *

Hawley's Condensed Chemical Dictionary (12th ed., 1993) defines "propane" in pertinent part as follows: "* * * Properties: Colorless gas, natural-gas odor * * * an asphyxiant gas * * * Derivation: From petroleum and natural gas."

The Random House Dictionary of the English Language (unabridged ed., 1973) defines propane as follows: "a colorless, flammable gas [symbol omitted] of the alkane series, occurring in petroleum and natural gas: used chiefly as a fuel and in organic synthesis. Also called dimethylmethane."

We conclude from these authorities that propane is a gas, and not a liquid.

The HTSUS classifies propane in subheading 2711.12.00, HTSUS, as: "Petroleum gases and other gaseous hydrocarbons: Liquefied: * * * Propane." We interpret that classification to the effect that propane is a liquefied *gas*. EN 27.11 provides in pertinent part: "This heading covers **crude** gaseous hydrocarbons obtained as natural gases or from petroleum, or produced chemically. **Methane** and **propane** are, however, included even when pure. These hydrocarbons are gaseous at a temperature of 15 degrees C and under a pressure of 1,013 millibars (101.3 kPa). They may be presented under pressure as liquids in metal containers and are often treated, as a safety measure, by the addition of small quantities of highly odiferous substances to indicate leaks. They include, in particular, the following gases, whether or not liquefied: (1) Methane and propane, whether or not pure * * *" [Emphasis in original.] We interpret that language of the EN to the effect that propane is a gas.

Accordingly, we find that the article at issue, described as a portable propane gas camping stove, is a cooking appliance for gas fuel. Therefore, it is classified in subheading 7321.11.10, HTSUS.

This determination is consistent with the following rulings: HQ 950297 dated December 31, 1991, where Customs classified a catalytic safety heater which uses liquid propane gas in subheading 7321.81.50, HTSUS; and NY 838467 dated March 28, 1989, where Customs classified a table top gas grill fueled by low pressure liquefied petroleum gas in subheading 7321.11.10, HTSUS.

Holding:

The portable propane gas camping stove is classified in subheading 7321.11.10, HTSUS, as: "Stoves, ranges, grates, cookers * * * and similar nonelectric domestic appliances, and parts thereof, of iron or steel: Cooking appliances and plate warmers: For gas fuel or for both gas and other fuels: Portable."

Effect on Other Rulings:

DD 815332 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, January 8, 2002.
CLA-2 RR:CR:GC 965297 GOB
Category: Classification
Tariff No. 7321.81.10 and 7321.81.50

STACI ROBINSON
LEP PROFIT INTERNATIONAL, INC.
16038 Vickery
Suite 2000
Houston, TX 77032

Re: Revocation of NY 803374; Heaters.

DEAR MS. ROBINSON:

This letter is with respect to NY 803374 issued to you on November 9, 1994, on behalf of the Dearborn Company, Inc., by the Customs Area Director, New York Seaport, with respect to the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of propane heaters (model nos. DIR18LP and DIR30LP). We have reviewed the classifications of the propane heaters set forth in NY 803374 and have determined that it is incorrect. This ruling sets forth the correct classification.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY 803374, as described below, was published in the CUSTOMS BULLETIN on November 28, 2001.

One comment was received in response to the notice. The commenter expressed "no comment on the propriety of the proposal to consider liquid propane to be a gas fuel for purposes of classification in HTSUS heading 7321" but stated that the proposed rulings "fail to articulate sufficient explanation for classification of the subject articles as 'portable.'" We will address the portability issue in the LAW AND ANALYSIS section of this ruling.

Facts:

The articles at issue were described in NY 803374 as follows:

The merchandise is the Dearborn Infrared Heater, model numbers DIR18N, DIR30N, DIR18LP, and DIR30LP. All models are vent-free, steel heaters that can be floor or wall mounted. The heater is available in two sizes, 18,000 Btu and 30,000 Btu. Models DIR18N and DIR30N are fueled by natural gas. Models DIR18LP and DIR30LP are fueled by liquid propane.

In NY 803374, Customs classified the natural gas heaters in subheading 7321.81.10, HTSUS, as: "Stoves, ranges, grates, cookers * * * and similar nonelectric domestic appliances, and parts thereof, of iron or steel: * * * Other appliances: * * * For gas fuel or for both gas and other fuels: Portable." In the same ruling, Customs classified the propane heaters in subheading 7321.82.10, HTSUS, as: "Stoves, ranges, grates, cookers * * * and similar nonelectric domestic appliances, and parts thereof, of iron or steel: * * * Other appliances: * * * For liquid fuel: Portable."

Issue:

What is the classification under the HTSUS of the subject heaters?

Law and Analysis:

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

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's 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.

The HTSUS provisions under consideration are as follows:

7321	Stoves, ranges, grates, cookers, (including those with subsidiary boilers for central heating), barbeques, braziers, gas rings, plate warmers and similar nonelectric domestic appliances, and parts thereof, of iron or steel:
	Other appliances:
7321.81	For gas fuel or for both gas and other fuels:
7321.81.10	Portable
7321.81.50	Other
*	* * * * *
7321.82	For liquid fuel:
7321.82.10	Portable
7321.82.50	Other

The natural gas heaters are not portable as they must be connected to a gas source. Accordingly, we find that they are classified in subheading 7321.81.50, HTSUS.

With respect to the liquid propane heaters, the crucial issue is whether the subject articles are appliances "for gas fuel or for both gas and other fuels" (subheading 7321.81, HTSUS) or "for liquid fuel" (subheading 7321.82, HTSUS). We have examined the definitions of "propane" in various resources.

The *Van Nostrand Reinhold Encyclopedia of Chemistry* (4th ed., 1984) defines "propane" in pertinent part as follows: "* * * colorless gas [technical specifications omitted] * * * The content of propane in natural gas varies with the source of the natural gas, but on average is about 6%. Propane is also obtainable from petroleum sources. Liquefied propane is marketed as a fuel for outlying areas where other fuels may not be readily available and for portable cook stoves * * * Propane and other liquefied gases are clean and appropriate for most heating purposes * * *"

Hawley's Condensed Chemical Dictionary (12th ed., 1993) defines "propane" in pertinent part as follows: "* * * Properties: Colorless gas, natural-gas odor * * * an asphyxiant gas * * * Derivation: From petroleum and natural gas."

The Random House Dictionary of the English Language (unabridged ed., 1973) defines propane as follows: "a colorless, flammable gas [symbol omitted] of the alkane series, occurring in petroleum and natural gas: used chiefly as a fuel and in organic synthesis. Also called dimethylmethane."

We conclude from these authorities that propane is a gas, and not a liquid.

The HTSUS classifies propane in subheading 2711.12.00, HTSUS, as: "Petroleum gases and other gaseous hydrocarbons: Liquefied: * * * Propane." We interpret that classification to the effect that propane is a liquefied *gas*.

EN 27.11 provides in pertinent part: "This heading covers **crude** gaseous hydrocarbons obtained as natural gases or from petroleum, or produced chemically. **Methane** and **propane** are, however, included even when pure. These hydrocarbons are gaseous at a temperature of 15 degrees C and under a pressure of 1,013 millibars (101.3 kPa). They may be presented under pressure as liquids in metal containers and are often treated, as a safety measure, by the addition of small quantities of highly odiferous substances to indicate leaks. They include, in particular, the following gases, whether or not liquefied: (1) Methane and propane, whether or not pure * * *" [Emphasis in original.] We interpret this language of the EN to the effect that propane is a gas.

Accordingly, we find that the propane heaters are appliances for gas fuel.

This determination is consistent with the following rulings: HQ 950297 dated December 31, 1991, where Customs classified a catalytic safety heater which uses liquid propane gas in subheading 7321.81.50, HTSUS; and NY 838467 dated March 28, 1989, where Customs classified a table top gas grill fueled by low pressure liquefied petroleum gas in subheading 7321.11.10, HTSUS.

We are unable to determine from the available information if the liquid propane heaters are portable. We find that they are portable if they are not intended to be permanently affixed to the floor or wall when in use. They are not portable if they are permanently affixed. See *United Import Sales, Inc. v. United States*, 66 Cust. Ct. 355 (1971).

Therefore, the liquid propane heaters are classified in subheading 7321.81.10, HTSUS, if they are not permanently affixed. They are classified in subheading 7321.81.50, HTSUS, if they are permanently affixed.

Holdings:

The natural gas heaters are classified in subheading 7321.81.50, HTSUS, as: "Stoves, ranges, grates, cookers * * * and similar nonelectric domestic appliances, and parts thereof, of iron or steel: * * * Other appliances: For gas fuel or for both gas and other fuels: * * * Other."

If the propane heaters are not permanently affixed to the floor or wall, they are classified in subheading 7321.81.10, HTSUS, as: "Stoves, ranges, grates, cookers * * * and similar nonelectric domestic appliances, and parts thereof, of iron or steel: * * * Other appliances: For gas fuel or for both gas and other fuels: Portable." If they are permanently affixed, they are classified in subheading 7321.81.50, HTSUS, as: "Stoves, ranges, grates, cookers * * * and similar nonelectric domestic appliances, and parts thereof, of iron or steel: * * * Other appliances: For gas fuel or for both gas and other fuels: * * * Other."

Effect on Other Rulings:

NY 803374 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO TARIFF CLASSIFICATION OF A
GLASS PLATE ON A SNOWMAN FIGURINE BASE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to tariff classification of a glass plate on a snowman figurine base

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (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 intends to revoke one ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of a glass plate on a snowman figurine base. Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before February 22, 2002.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Deborah Stern, General Classification Branch, (202) 927-1638.

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 Customs 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 Customs 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 Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends revoke one ruling letter pertaining to the tariff classification of glass plate on a snowman figurine base. Although in this notice Customs is specifically referring to one ruling (NY G89939), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs 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 im-

porter or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY G89939, dated April 13, 2001 (Attachment A), a “Snowman Table Server” which is comprised of a clear glass plate on top of a decorated snowman figurine base was classified as a set put up for retail sale having the essential character of a decorative glass plate, and classified in subheading 7013.99.50, HTSUS, as: “Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018), other glassware, other * * *: * * * valued over \$0.30 but not over \$3.00 each.” Rather, the merchandise is a composite good comprised in part of agglomerated stone with plastic resin, classifiable under heading 6810, HTSUS, and in part of glass with worked edges, classifiable under heading 7006, HTSUS. Because the size, as well as the decorative and commercial appeal of the snowman component exceeds the utilitarian value of the glass component, the essential character is represented by the agglomerated stone snowman. It is now Customs position that the glass plate on a snowman figurine base is classified in subheading 6810.99.00, HTSUS, as: “Articles of cement, or concrete or of artificial stone, whether or not reinforced: other articles: other.”

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke the ruling cited above and any other ruling not specifically identified in order to reflect the proper classification of the glass plate on a snowman figurine base pursuant to the analysis set forth in proposed HQ 965125 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: January 9, 2002.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, April 13, 2001.
CLA-2-70:RR:NC:2:226 G89939
Category: Classification
Tariff No. 7013.99.5000

MS. JEANETTE CLERY
ABC DISTRIBUTING, INC.
P.O. Box 611210
North Miami, FL 33261-1210

Re: The tariff classification of a decorative glass article from China.

DEAR MS. CLERY:

In your letter dated March 30, 2001, you requested a tariff classification ruling regarding a "Snowman Table Server".

The subject article is a ten-inch diameter glass plate on a nine and one-half inch tall "polyresin" snowman figurine base. The sample you submitted only included the snowman and not the glass plate. Your sample will be returned to you as requested.

The essential character of this item is represented by the large decorative glass plate. The product is a general-purpose decorative article that can be used to hold numerous household items.

You indicated in your letter that the unit value of the glass plate will be \$0.40.

The applicable subheading for the decorative glass article on a snowman base will be 7013.99.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes * * *: other glassware: other: other: valued over \$0.30 but not over \$3.00 each. The rate of duty will be 30 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 212-637-7074.

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

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC: 965125 DBS
Category: Classification
Tariff No. 6810.99.00

MR. ROLANDO E. PORTAL
ABC DISTRIBUTING, INC.
6301 East 10th Avenue
Hialeah, FL 33013

Re: NY G89939 revoked; glass plate on a snowman figurine base.

DEAR MR. PORTAL:

This is in reference to your letter of June 19, 2001, requesting reconsideration of NY Ruling Letter G89939. In G89939, issued to you April 13, 2001, the Director, National Commodity Specialist Division, New York, classified a "Snowman Table Server" from China in subheading 7013.99.50, Harmonized Tariff Schedule of the United States (HTSUS), which provides for decorative glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes. We have reconsidered the classification of this article and now believe NY G89939 is incorrect.

Facts:

A color advertisement of the article and a sample were submitted. The subject article is comprised of a glass slab with worked edges, measuring approximately 25.0 cm in diameter, sitting atop an agglomerated stone figurine of a snowman with a bird on its shoulder. The Customs laboratory determined that the figurine was composed of approximately 43% plastic resin and 57% calcium carbonate (Lab Report # NO20011393). A submission by the importer confirmed that the calcium carbonate was derived from real stone. The figurine base measures approximately 24.0 cm high and 18.0 cm at its widest. The head of the bird and the raised arm of the snowman are slightly flattened and protective pads are placed on them to accommodate the glass piece.

The New York Customs office determined that the subject article was a set put up for retail sale, and as such was classified under subheading 7013.99.50, HTSUS, providing for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes, other than that of heading 7010 or 7018, valued between \$0.30 and \$3. You contend that the subject article is a composite good and should be classified under subheading 7013.99.80, HTSUS, providing for glassware valued between \$3 and \$5. The essential character of the article was not challenged.

Issue:

What is the proper classification of the Snowman Table Server?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that 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 understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

- 6810** Articles of cement, or concrete or of artificial stone, whether or not reinforced:

 - Other articles:
 - 6810.99.00 Other

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7006.00		Glass of heading 7003, 7004, 7005, bent, edge-worked, engraved, drilled, enameled or otherwise worked, but not framed or fitted with other materials:				
		Other:				
7006.00.40		Other				
*	*	*	*	*	*	*
7013		Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):				
		Other glassware:				
7013.99		Other:				
		Other:				
		Other				
7013.99.50		Valued over \$0.30 but not over \$3 each				
*	*	*	*	*	*	*
		Valued over \$3 each:				
		Cut or engraved:				
7013.99.60		Valued over \$3 but not over \$5 each				

In NY G89939, dated April 13, 2001, the Director, National Commodity Specialist Division, New York, classified the snowman table server according to the standards used to classify glass articles on metal stands. We have reconsidered that ruling and now believe that applying those standards to the subject snowman table server was misplaced. Glass articles with metal stands are not analogous to the subject good. With glass articles with metal stands, the glass is usually the larger component, has greater consumer appeal and is more important to the function of the article. See Informed Compliance Publication on *Decorative Glassware*, issued August, 2001; see also *Lamps, Lighting and Candle Holders*, issued March 1998 and *New Decisions on Candle Holders v. Decorative Glass Articles*, issued February, 2000. With respect specifically to table/kitchen glassware with metal racks, stands or bases, articles are classified by the glass component because the glass makes up the body of the article. See Informed Compliance Publication on *Table and Kitchen Glassware*, issued March, 2000. None of these is true of the snowman table server.

Here, the snowman base exceeds the glass component in size, weight and bulk. The snowman base provides the consumer appeal; the item is in fact advertised to “add wintry charm.” The decorative nature of the merchandise outweighs the utilitarian value provided by the glass because the primary purpose of purchasing such an item is for decoration. As such, the snowman makes up the body of the article. Accordingly, the glass component is not classifiable as being of a kind of glassware of heading 7013, HTSUS, as originally classified. Rather, it is worked glass of a kind classifiable in heading 7006, HTSUS.

EN 70.06 states, in pertinent part, that the heading includes: “Glass with worked edges (ground, polished, rounded, notched, chamfered, beveled, profiled, etc.), thus acquiring the character of articles such as slabs for table tops. * * *” Chapter Note 3 to Chapter 70 states that “The products referred to in heading 7006 remain classified in that heading whether or not they have the character of articles. The glass component of the subject item is a flat slab of glass, round in shape, with ground and slightly rounded edges. Imported with the base, it has the character of a small table-top. Thus, the glass component is clearly an article of heading 7006, HTSUS.

Further, it is noted that the EN also states that glass plates for articles of furniture are classified with the articles of furniture if imported at the same time, whether or not assembled, and are intended for incorporation therein. However, the subject article as a whole is not furniture. The ENs to Chapter 94, the chapter for furniture, define “furniture” to mean “any ‘movable’ articles * * * which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose * * *.” This table server was not designed to be placed on the floor or ground, but rather on a raised surface (i.e., a table, counter, etc.). Nor is its purpose mainly utilitarian. The main purpose of the snowman table server is decorative, its utility is secondary. Therefore, the glass, though having the character of a table-top, is not furniture.

The snowman component is made of calcium carbonate, derived from stone, and reinforced with plastic resin. This material, known as agglomerated stone or artificial stone, is provided for in heading 6810, HTSUS. EN 68.10 states that the heading includes, *inter alia*, goods such as statues, statuettes and animal figurines, and ornamental goods. The

snowman component is an article of heading 6810, HTSUS, which provides for articles of cement, concrete and artificial stone, whether or not reinforced.

The good is described in part only by heading 6810 and 7006, HTSUS. Thus it is properly classified according to GRI 3(b). EN (IX) to GRI 3(b) states that, "composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, **provided** these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts." We are satisfied that the snowman table server satisfies the requirements of a composite good that is in part agglomerated stone of heading 6810, HTSUS, and in part a piece of glass with worked edges of heading 7006, HTSUS. Although not attached to the glass, the snowman base would not normally be offered for sale separately, as its arm is raised to hold up the glass slab, and protective pads secure the glass to the snowman base. Similarly, the glass slab is cut to size to complement the snowman base.

As the item is a composite good, we must now determine which component imparts the essential character. EN VIII to GRI 3(b) explains that "[t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods."

As discussed above, the bulk, weight and decorative nature of the snowman base exceeds the utility provided by the glass component. The snowman base provides the article with its essential character. Accordingly, the snowman table server is classifiable under heading 6810, HTSUS, as other articles of artificial stone, whether or not reinforced.

Holding:

The Snowman Table Server is classified in subheading 6810.99.00, HTSUS, which provides for, "articles of cement, of concrete or of artificial stone, whether or not reinforced: other articles: other."

Effect on Other Rulings:

NY G89939 is revoked.

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