

# Bureau of Customs and Border Protection

(CBP Decision 04-04)

## RECORDATION OF TRADE NAME: "YOUPAL"

**AGENCY:** Customs and Border Protection (CBP).

**ACTION:** Notice of final action.

**SUMMARY:** This document gives notice that "YOUPAL" has been recorded by CBP as a trade name for Youpal International Inc., an Arkansas corporation organized under the laws of the State of Arkansas, 6900 Cantrell Road, E6, Little Rock Arkansas 72207.

The application for trade name recordation was properly submitted to CBP and published in the Federal Register. As no public comments in opposition to the recordation of this trade name were received by CBP within the 60-day comment period, the trade name is duly recorded with CBP and will remain in force as long as this trade name is used by this corporation, unless other action is required.

**EFFECTIVE DATE:** January 28, 2004.

**FOR FURTHER INFORMATION CONTACT:** Gwendolyn Savoy, Paralegal Specialist, Intellectual Property Rights Branch, Office of Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229; (202) 572-8710.

## SUPPLEMENTARY INFORMATION:

Trade names adopted by business entities may be recorded with Customs and Border Protection (CBP) to afford the particular business entity with increased commercial protection. CBP procedures for recording trade names are provided at § 133.11 *et seq.*, of the Customs Regulations (19 CFR 133.11 *et seq.*). Pursuant to these regulatory procedures, Youpal International Inc., an Arkansas corporation organized under the laws of the State of Arkansas, 6900

Cantrell Road, E6, Little Rock Arkansas 72207, applied to CBP for protection of its trade name "YOUPAL".

On Monday, October 20, 2003, CBP published a notice of application for the recordation of the trade name "YOUPAL" in the **Federal Register** (68 FR 59946). The notice advised that before final action would be taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. The closing day for the comment period was December 19, 2003.

As of the end of the comment period, December 19, 2003, no comments were received. Accordingly, as provided by § 133.14 of the Customs Regulations, "YOUPAL" is recorded with CBP as the trade name used by Youpal International Inc. and will remain in force as long as this trade name is used by this corporation, unless other action is required.

Dated: January 16, 2004

GEORGE FREDERICK MCCRAY, Esq.,  
*Chief,*  
*Intellectual Property Rights Branch.*

[Published in the Federal Register, January 28, 2004 (69 FR 4171)]

(CBP Dec. 04-05)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR JANUARY, 2004

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in CBP Decision 04-01 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): January 19, 2004

Norway krone:

January 29, 2004 .....	\$0.141383
January 30, 2004 .....	.142529
January 31, 2004 .....	.142529

FOREIGN CURRENCIES—Variances from quarterly rates for January  
2004 (continued):

South Africa rand:

January 12, 2004 .....	\$0.144279
January 13, 2004 .....	.144509
January 14, 2004 .....	.140845
January 15, 2004 .....	.137174
January 16, 2004 .....	.136893
January 17, 2004 .....	.136893
January 18, 2004 .....	.136893
January 19, 2004 .....	.136893
January 20, 2004 .....	.140548
January 21, 2004 .....	.140054
January 22, 2004 .....	.140944
January 23, 2004 .....	.139704
January 24, 2004 .....	.139704
January 25, 2004 .....	.139704
January 26, 2004 .....	.139032
January 27, 2004 .....	.141243
January 28, 2004 .....	.144509
January 29, 2004 .....	.141373
January 30, 2004 .....	.141443
January 31, 2004 .....	.141443

Dated: February 2, 2004

RICHARD B. LAMAN,  
*Chief,*  
*Customs Information Exchange.*

(CBP Dec. 04–06)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR  
JANUARY, 2004

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): January 19, 2004

European Union euro:

January 1, 2004 .....	\$1.259700
January 2, 2004 .....	1.259200
January 3, 2004 .....	1.259200
January 4, 2004 .....	1.259200
January 5, 2004 .....	1.267900

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly  
list for January 2004 (continued):

European Union euro: (continued):

January 6, 2004 .....	1.277300
January 7, 2004 .....	1.266500
January 8, 2004 .....	1.277200
January 9, 2004 .....	1.285300
January 10, 2004 .....	1.285300
January 11, 2004 .....	1.285300
January 12, 2004 .....	1.280200
January 13, 2004 .....	1.273500
January 14, 2004 .....	1.272600
January 15, 2004 .....	1.258800
January 16, 2004 .....	1.239500
January 17, 2004 .....	1.239500
January 18, 2004 .....	1.239500
January 19, 2004 .....	1.239500
January 20, 2004 .....	1.258400
January 21, 2004 .....	1.261700
January 22, 2004 .....	1.271700
January 23, 2004 .....	1.261000
January 24, 2004 .....	1.261000
January 25, 2004 .....	1.261000
January 26, 2004 .....	1.255200
January 27, 2004 .....	1.264300
January 28, 2004 .....	1.262000
January 29, 2004 .....	1.238900
January 30, 2004 .....	1.245200
January 31, 2004 .....	1.245200

South Korea won:

January 1, 2004 .....	\$0.000839
January 2, 2004 .....	.000837
January 3, 2004 .....	.000837
January 4, 2004 .....	.000837
January 5, 2004 .....	.000839
January 6, 2004 .....	.000843
January 7, 2004 .....	.000842
January 8, 2004 .....	.000846
January 9, 2004 .....	.000846
January 10, 2004 .....	.000846
January 11, 2004 .....	.000846
January 12, 2004 .....	.000851
January 13, 2004 .....	.000847
January 14, 2004 .....	.000847
January 15, 2004 .....	.000842
January 16, 2004 .....	.000843
January 17, 2004 .....	.000843
January 18, 2004 .....	.000843
January 19, 2004 .....	.000843
January 20, 2004 .....	.000840
January 21, 2004 .....	.000841
January 22, 2004 .....	.000841
January 23, 2004 .....	.000844

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly  
list for January 2004 (continued):

South Korea won: (continued):

January 24, 2004 .....	.000844
January 25, 2004 .....	.000844
January 26, 2004 .....	.000847
January 27, 2004 .....	.000847
January 28, 2004 .....	.000853
January 29, 2004 .....	.000853
January 30, 2004 .....	.000852
January 31, 2004 .....	.000852

Taiwan N.T. dollar:

January 1, 2004 .....	\$0.029420
January 2, 2004 .....	.029429
January 3, 2004 .....	.029429
January 4, 2004 .....	.029429
January 5, 2004 .....	.029499
January 6, 2004 .....	.029586
January 7, 2004 .....	.029568
January 8, 2004 .....	.029586
January 9, 2004 .....	.029630
January 10, 2004 .....	.029630
January 11, 2004 .....	.029630
January 12, 2004 .....	.029691
January 13, 2004 .....	.029709
January 14, 2004 .....	.029691
January 15, 2004 .....	.029700
January 16, 2004 .....	.029691
January 17, 2004 .....	.029691
January 18, 2004 .....	.029691
January 19, 2004 .....	.029691
January 20, 2004 .....	.029691
January 21, 2004 .....	.029691
January 22, 2004 .....	.029727
January 23, 2004 .....	.029735
January 24, 2004 .....	.029735
January 25, 2004 .....	.029735
January 26, 2004 .....	.029647
January 27, 2004 .....	.029842
January 28, 2004 .....	.030003
January 29, 2004 .....	.029976
January 30, 2004 .....	.029949
January 31, 2004 .....	.029949

Dated: February 2, 2004

RICHARD B. LAMAN,  
*Chief,*  
*Customs Information Exchange.*

*General Notices*

**COPYRIGHT, TRADEMARK, AND  
TRADE NAME RECORDATIONS**

**(No. 12 2003)**

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

SUMMARY: The copyrights, trademarks, and trade names recorded with U.S. Customs and Border Protection during the month of December 2003. The last notice was published in the CUSTOMS BULLETIN on December 31, 2003.

Corrections or updates may be sent to Department of Homeland Security, U.S. Customs and Border Protection, Office of Regulations and Rulings, IPR Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: George Frederick McCray, Esq., Chief, Intellectual Property Rights Branch, (202) 572-8710.

Dated: January 22, 2004.

GEORGE FREDERICK MCCRAY, ESQ.,  
*Chief,*  
*Intellectual Property Rights Branch.*

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMM OR MSK	OWNER NAME	RES
COP0300153	20031216	20231216	POCKET MONSTERS SAPPHIRE	NINTENDO OF AMERICA, INC. AND	N
SUBTOTAL RECORDATION TYPE 1					
TKM0300932	20031204	20060305	BRAUN (STYLIZED)	BRAUN GMBH	N
TKM0300933	20031205	20090928	HARLEY-DAVIDSON	H-D MICHIGAN INC.	N
TKM0300934	20031205	20120609	HARLEY-DAVIDSON MOTOR CYCLES & EAGLE BAR & SHIELD	H-D MICHIGAN INC.	N
TKM0300935	20031205	20130609	HARLEY-DAVIDSON	H-D MICHIGAN INC.	N
TKM0300936	20031205	20130720	IMAGE	LEONARD AUTOMATICS INC.	N
TKM0300937	20031205	20131130	DOG LIKENESS (DESIGN)	WOLVERINE WORLD WIDE INC.	N
TKM0300938	20031205	20130727	DOG LIKENESS (DESIGN)	WOLVERINE WORLD WIDE INC.	N
TKM0300939	20031205	20130309	TILEX	THE CLOROX COMPANY	N
TKM0300940	20031205	20131211	BABY	AMALEP, INC.	N
TKM0300941	20031205	20121001	CLASSIC IN DESIGN	EXECUTIVE MARKETING INC.	N
TKM0300942	20031209	20121203	YOUTHFUL ESSENCE	GUTHY-RENKER CORPORATION	N
TKM0300943	20031209	20130107	WINSOR PILATES AND DESIGN	GUTHY-RENKER CORPORATION	N
TKM0300944	20031209	20130429	WINSOR PILATES	GUTHY-RENKER CORPORATION	N
TKM0300945	20031209	20130902	SABRITAS	RECOT, INC.	N
TKM0300946	20031209	20130719	ANTAEUS	CHANEL, INC.	N
TKM0300947	20031210	20120414	DESIGN	WINSFORD CORPORATION	N
TKM0300948	20031210	20130817	PLANET HOLLYWOOD (SERVICE MARK)	PLANET HOLLYWOOD (REGION IV)	N
TKM0300949	20031210	20121026	NINTENDO	NINTENDO OF AMERICA INC.	N
TKM0300950	20031210	20131026	U.S. OPEN POLO CHAMPIONSHIP AND DESIGN	UNITED STATES POLO ASSOCIATION	N
TKM0300951	20031210	20130727	DESIGN	UNITED STATES POLO ASSOCIATION	N
TKM0300952	20031210	20130720	UNITED STATES POLO ASSOCIATION AND DESIGN	UNITED STATES POLO ASSOCIATION	N
TKM0300953	20031210	20100619	USPA GOLD CUP	UNITED STATES POLO ASSOCIATION	N
TKM0300954	20031210	20090418	UNITED STATES OPEN CHAMPIONSHIP	UNITED STATES POLO ASSOCIATION	N
TKM0300955	20031210	20090214	U.S. HANDICAP	UNITED STATES POLO ASSOCIATION	N
TKM0300956	20031210	20120921	CORUM	MONTRES CORUM SA	N
TKM0300957	20031211	20130320	HOPSTEINER	S.S. STEINER, INC. INC.	N
TKM0300958	20031211	20121015	MACROSS	HARMONY GOLD USA, INC.	N
TKM0300959	20031211	20130108	MCDONALD'S	MCDONALD'S CORPORATION	N
TKM0300960	20031211	20130226	FRANZISERUB	ZERO ZONE, INC.	N
TKM0300961	20031211	20130824	RUBIN'S WAX	SEVEN TOWNS LTD.	N
TKM0300962	20031211	20090905	PETITE SOPHISTICATE (STYLIZED)	RETAIL BRAND ALLIANCE, INC.	N
TKM0300963	20031211	20130718	BEETLE SOFTS	THE UNITED STATES PLAYING CARD	N
TKM0300964	20031212	20130729	BOEN FREE	RELKOP	N
TKM0300965	20031212	20130906	RELASKOP	RELKOP TECHNOLOGY VERTIBESGES. M.	N
TKM0300966	20031212	20130424	LEPTOR	PETZOLD PHARMACEUTICALS	N
TKM0300967	20031212	20130325	COACH	COACH SERVICES, INC.	N
TKM0300968	20031212	20121117	AUTO METER COMPETITION INSTRUMENTS & DESIGN	AUTO METER PRODUCTS, INC.	N
TKM0300969	20031216	20120421	AUTO METER	AUTO METER PRODUCTS, INC.	N
TKM0300970	20031216	20120903	EMILY (& DESIGN)	COSMIC DEBRIS, ETC., INC.	N
TKM0300971	20031216	20121203	EMILYSTRANGE	COSMIC DEBRIS, ETC., INC.	N
TKM0300972	20031216	20121203	EMILYSTRANGE	DECKERS OUTDOOR CORPORATION	N
TKM0300973	20031216	20131116	ESSENTIALS	KNIGHT TEXTILE CORPORATION	N
TKM0300974	20031230	20070519	ESSENTIALS	PFIZER, INC.	N
TKM0300975	20031230	20080824	PFIZER	PFIZER, INC.	N
TKM0300976	20031230	20080824	PFIZER	PFIZER, INC.	N

**Automated Commercial Environment (ACE): Applications to Establish Truck Carrier Accounts for Participation in a National Customs Automation Program (NCAP) Test**

**AGENCY:** Customs and Border Protection, DHS.

**ACTION:** General notice.

**SUMMARY:** This document announces that the Bureau of Customs and Border Protection (CBP) is accepting applications to establish Truck Carrier Accounts for a National Customs Automation Program (NCAP) test for the Automated Commercial Environment (ACE). Truck carriers who open Truck Carrier Accounts will eventually have the ability to file truck manifest information electronically via the ACE Secure Data Portal and/or via electronic data interchange (EDI) messaging. These Truck Carrier Account-holders will also have access to operational data, receive status messages on ACE Accounts, have access to integrated Account data from multiple system sources, manage and disseminate information in an efficient and secure manner, and obtain release of their cargo, crew, conveyances, and equipment via the ACE Portal or electronic data interchange (EDI) messaging.

This notice sets forth eligibility and application requirements for truck carriers to establish ACE Accounts, and opens the application period for submitting applications.

Any truck carriers interested in participating in testing of electronic truck manifest functionality will be required to have a Truck Carrier Account and, therefore, are encouraged to apply to establish an ACE Account. Further information on participating in testing of the automated electronic truck manifest functionality will be the subject of a subsequent **Federal Register** notice.

**DATES:** Applications to establish ACE Truck Carrier Accounts will be accepted starting on February 4, 2004 and will remain open until further notice. Further information on participation in testing of the automated electronic truck manifest functionality will be set forth in a subsequent **Federal Register** notice.

**ADDRESSES:** Applications to establish ACE Truck Carrier Accounts should be submitted to Mr. Thomas Fitzpatrick via email at [Thomas.Fitzpatrick@dhs.gov](mailto:Thomas.Fitzpatrick@dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** For information regarding the submission of applications to establish ACE truck carrier Accounts: Mr. Thomas Fitzpatrick, via email at [Thomas.Fitzpatrick@dhs.gov](mailto:Thomas.Fitzpatrick@dhs.gov), or by telephone at (202) 927-0543.

**SUPPLEMENTARY INFORMATION:****Background**

The Customs and Border Protection Modernization Program has been created to improve efficiency, increase effectiveness, and reduce costs for the Bureau of Customs and Border Protection (CBP) and all of its communities of interest. The ability to meet these objectives depends heavily on successfully modernizing CBP business functions and the information technology that supports those functions.

The initial thrust of the Customs and Border Protection Modernization Program focuses on trade compliance and the development of ACE. Development of ACE will consist of many releases. Each release, while individually achieving critical business needs, also will set forth the foundation for the subsequent releases. This component, part of the third ACE release (see also 67 FR 21800 (May 1, 2002) and 67 FR 41572 (June 18, 2002)), involves establishing ACE Accounts and giving truck carriers who plan to participate in automated electronic truck manifest testing access to the ACE Secure Data Portal (hereinafter, "ACE Portal").

Truck carriers who establish Truck Carrier Accounts will be the first truck carriers to transmit electronic manifest information in ACE in accordance with section 343 of the Trade Act of 2002 (see 68 FR 68140, December 5, 2003). Initially, account-holders will only have access to static data and basic Account profile information necessary to establish an Account. Eventually, participants will derive the following benefits:

- (a) access to operational data through the ACE Portal;
- (b) electronic interaction with CBP;
- (c) receipt of status messages concerning their Account;
- (d) access to integrated Account data from multiple system sources;
- (e) ability to manage and disseminate information in an efficient and secure manner; and
- (f) ability to electronically transmit the truck manifest and obtain release of their cargo, crew, conveyances, and equipment via the ACE Portal or electronic data interchange (EDI) messaging.

The authority for testing NCAP programs is set forth in 19 CFR 101.9(b), which enables the Commissioner of CBP to conduct limited test programs or procedures designed to evaluate planned components of the NCAP.

**Eligibility Criteria for Truck Carriers**

To be eligible to become an ACE Account with access to the ACE Portal for subsequent participation in testing of the electronic truck

manifest functionality, the truck carrier must simply have the capability of connecting to the Internet.

### **Account Application Process**

The term "application", as used throughout this notice, is defined as a statement of intent from the truck carrier to establish an ACE Account and participate in the testing of electronic truck manifest functionality. Any truck carrier wishing to establish an ACE Account with access to the ACE Portal must submit an application, via e-mail, to the address specified in the ADDRESSES caption, above. Each truck carrier must include the following information when submitting its application to become an ACE Account:

1. Carrier Name;
2. Standard Carrier Alpha Code(s) (SCAC);
3. Statement certifying capability of connecting to the Internet;  
and
4. Name, address, and email of point of contact to receive further information.

Any truck carrier providing incomplete information, or otherwise not meeting participation requirements will be notified and given the opportunity to resubmit its application.

Subsequent to receiving a complete application, CBP will contact a carrier for additional information in order to update the Account profile. Truck Carrier Account-holders will be required to acknowledge a continuing obligation to provide CBP with any updates or changes to the information originally submitted. All data submitted and entered into the carrier ACE Portal is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential.

Upon the issuance of a subsequent notice in the **Federal Register** that will provide more information on participation in the NCAP test of electronic truck manifest functionality, CBP will deploy an initial group of Truck Carrier Account-holders for participation in the NCAP test.

While CBP will accept applications to establish ACE Truck Carrier Accounts until further notice, qualifying applications for Truck Carrier Accounts not initially approved will be held by CBP pending further expansion of the NCAP test of electronic truck manifest functionality. CBP will notify truck carriers of the status of their application.

Once approved as a Truck Carrier Account-holder, each participant must designate one person as the ACE Portal Account Owner for the information entered into the participant's ACE Portal account. The Account Owner will be responsible for safeguarding the ACE Portal account information, controlling all disclosures of that

information to authorized persons, authorizing user access to the ACE Portal account, and ensuring that access by authorized persons to the ACE Portal information is strictly controlled. The participant will also need to identify a point of contact for the testing of communications and software. **Truck Carrier Account-holders are further reminded that participation in the automated electronic truck manifest functionality test is not confidential. Lists of approved participants will be made available to the public.**

### Test Evaluation Criteria

To ensure adequate feedback, participants are required to take part in an evaluation of this test. CBP also invites all interested parties to comment on the design, conduct and implementation of the test at any time. The final results will be published in the **Federal Register** and the CBP Bulletin as required by § 101.9(b) of the Customs Regulations.

The following evaluation methods and criteria have been suggested:

1. Baseline measurements to be established through data analysis;
2. Questionnaires from both trade participants and CBP addressing such issues as:
  - Workload impact (workload shifts/volume, cycle times, etc.);
  - Cost savings (staff, interest, reduction in mailing costs, etc.);
  - Policy and procedure accommodation;
  - Trade compliance impact;
  - Problem resolution;
  - System efficiency;
  - Operational efficiency;
  - Other issues identified by the participant group.

DATED: January 30, 2004

JAYSON P. AHERN,  
*Assistant Commissioner,*  
*Office of Field Operations.*

[Published in the Federal Register, February 4, 2004 (69 FR 5360)]

**Automated Commercial Environment (ACE): Announcement of a National Customs Automation Program Test of Periodic Monthly Payment Statement Process and Establishment of Broker Accounts in the ACE Secure Data Portal**

**AGENCY:** Customs and Border Protection, DHS.

**ACTION:** General notice.

**SUMMARY:** This document announces the Bureau of Customs and Border Protection's (CBP) plan to conduct a National Customs Automation Program test concerning periodic monthly deposit of estimated duties and fees. This notice provides a description of the test process, outlines the development and evaluation methodology to be used, sets forth eligibility requirements for participation, invites public comment on any aspect of the planned test, and opens the application period for participation.

This notice invites participation of the initial forty-one ACE Importer Accounts, and establishes a process by which their designated brokers can participate in filing entries and making payments related to the Periodic Monthly Statement.

**DATES:** The test will commence no earlier than April 14, 2004. Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period. CBP must receive all statements affirming intent to participate from the initial forty-one ACE Importer Accounts, the list of designated brokers, and the designated broker applications, as set forth in this notice, by April 5, 2004, unless under exceptional circumstances, and with CBP approval, an extension is granted. CBP will process additional Importer Account applications as CBP expands the universe of participation for this test.

Expansion of this test to allow future applicants to participate may be delayed due to funding and technological constraints. Future phases of ACE may also be tested; however, the eligibility criteria may differ from the criteria listed in this notice. Acceptance into this test does not guarantee eligibility for, or acceptance into, future technical tests.

**ADDRESSES:** Comments concerning program and policy issues should be submitted to Mr. Robert B. Hamilton, Office of Finance, via email at [Robert.b.hamilton@dhs.gov](mailto:Robert.b.hamilton@dhs.gov). All statements affirming intent to participate in the test by the initial forty-one Importer Accounts, and new applications to establish ACE Importer and Broker Accounts should be submitted to Mr. Michael Maricich via email at [Michael.maricich@dhs.gov](mailto:Michael.maricich@dhs.gov).

**FOR FURTHER INFORMATION CONTACT:**

For questions regarding these Importer or Broker Accounts: Mr. Michael Maricich via email at [Michael.maricich@dhs.gov](mailto:Michael.maricich@dhs.gov), or by telephone at (703) 668-2406;

For questions regarding Periodic Monthly Statement payments: Mr. Robert Hamilton via email at [Robert.b.hamilton@dhs.gov](mailto:Robert.b.hamilton@dhs.gov), or by telephone at (317) 298-1107.

**SUPPLEMENTARY INFORMATION:****Background**

This document announces the Bureau of Customs and Border Protection's (CBP) plan to conduct a National Customs Automation Program (NCAP) test, under which test participants will be allowed to deposit estimated duties and fees on a monthly basis, based on a Periodic Monthly Statement issued by CBP. Participating importers and their designated brokers will be allowed to deposit estimated duties and fees no later than the 15th calendar day of the month following the month in which the goods are either entered or released, whichever comes first. (See Section 383 of the Trade Act of 2002, Public Law No. 107-210, dated August 6, 2002, which amends Section 505(a) of the Tariff Act of 1930 (19 U.S.C. 1505(a)).

The authority for testing NCAP programs is set forth in 19 CFR 101.9(b), which enables the Commissioner of CBP to conduct limited test programs or procedures designed to evaluate planned components of the NCAP.

**Development of ACE**

The initial phase of the Customs and Border Protection Modernization Program (see North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2170 (December 8, 1993)) focuses on Trade Compliance and the development of ACE through NCAP. The purposes of ACE, successor to the Automated Commercial System (ACS), are to streamline business processes, to facilitate growth in trade, and to foster participation in global commerce, while ensuring compliance with U.S. laws and regulations. Development of ACE will consist of many releases. Each release, while individually achieving critical business needs, also will set forth the foundation for the subsequent releases.

The previous release of ACE involved testing the ability of importers and authorized parties to access their CBP data via the ACE Secured Data Portal (hereinafter, "ACE Portal"), with a focus on defining and establishing the Importer Account structure. (See, **Federal Register** notice published May 1, 2002 (67 FR 21800)). This test is the next step toward the full electronic processing of commercial im-

portations in ACE, with a focus on identifying authorized importers and brokers to participate in the Periodic Monthly Statement process.

The benefits to participants in this test include having access to operational data through the ACE Portal, the capability of being able to interact electronically with CBP, and the capability of making payments of duties and fees on a periodic monthly basis.

### **Eligibility Criteria**

The eligibility criteria for importer participation in the previous release of ACE, as set forth in the May 1, 2002, **Federal Register** notice (67 FR 21800), included the first two provisions listed below. For this test, importers and their designated brokers must satisfy two additional requirements. To be eligible for participation in this test, importers and their designated brokers must:

1. Participate in the Customs Trade Partnership Against Terrorism (C-TPAT) program; C-TPAT is a joint government-business initiative to build cooperative relationships that strengthen overall supply chain and border security. For further information, please refer to the CBP Web site at <http://www.cbp.gov>.
2. Have the ability to connect to the Internet;
3. Have the ability to make periodic payment via ACH Credit or ACH Debit; and
4. Have the ability to file entry/entry summary via ABI (Automated Broker Interface).

### **Description of the Test**

Participants in the Periodic Monthly Statement test are required to schedule entries for monthly payment. A Periodic Monthly Statement will list Periodic Daily Statements that have been designated for monthly payment. The Periodic Monthly Statement can be created on a port basis by the importer or broker, as is the case with existing daily statements in ACS. The Periodic Monthly Statement can be created on a national basis by an ABI filer. If an importer chooses to file the Periodic Monthly Statement on a national basis, it must use its filer code and schedule and pay the monthly statements. The Periodic Monthly Statement will be routed under existing CBP procedures. Brokers will only view / receive information that they have filed on an importer's behalf. ACE will not route a Periodic Monthly Statement to a broker through ABI that lists information filed by another broker.

CBP will allow all entries currently eligible for placement on a daily statement to be placed on a Periodic Daily Statement, with the exception of reconciliation entries, NAFTA duty deferral entries, entries requiring the payment of excise taxes, and entries containing Census errors.

Entries for monthly payment will be processed as follows:

- a. As entries are filed with CBP, the importer or its designated broker schedules them for monthly payment;
- b. Those entries scheduled for monthly payment appear on the Preliminary Periodic Daily Statement;
- c. The importer or its designated broker processes entry summary presentation transactions for Periodic Daily Statements within 10 working-days of the date of entry;
- d. After summary information has been filed, the scheduled entries appear on the Final Periodic Daily Statement;
- e. Entries appearing on the Final Periodic Daily Statements and scheduled for monthly payment appear on the Preliminary Periodic Monthly Statement. CBP will generate the Preliminary Periodic Monthly Statement on the 11th calendar day of the month following the month in which the merchandise is either entered or released, whichever comes first, unless the importer or designated broker selects an earlier date;
- f. On the 15th of that month, for ACH Debit participants, CBP transmits the debit authorizations compiled in the Preliminary Periodic Monthly Statement from the Final Periodic Daily Statements to the financial institution, and the Preliminary Periodic Monthly Statement is marked as paid. The Final Periodic Monthly Statement indicating receipt of payment is generated by CBP, and is transmitted to the importer or its designated broker. ACH Debit participants must ensure that the money amount identified on the Preliminary Monthly Statement is, in fact, available in their bank account by the 15th of the month following the month in which the merchandise is either entered or released, whichever comes first.
- g. ACH Credit participants must ensure that CBP receives payment no later than the 15th of that month. CBP must receive the settlement for the credit, and then the Preliminary Periodic Monthly Statement is marked as paid. The Final Periodic Monthly Statement indicating receipt of payment is generated by CBP, and is transmitted to the importer or its designated broker. For ACH Credit participants, if the 15th falls on a weekend or holiday, CBP must receive the settlement for the credit by the business day directly preceding such weekend or holiday.
- h. For both ACH Credit and ACH Debit participants, CBP will generate the Final Periodic Monthly Statement on the night that payment is processed.

Participants should note that if they voluntarily remove an entry from a Periodic Daily Statement **before** expiration of the 10-working-day period after release, that entry may be placed on another Periodic Daily Statement falling within the same 10-working-day period. If, however, participants remove an entry from a Periodic Daily Statement or a Preliminary Monthly Statement **after** expiration of the 10-working-day period after release, then that entry must

be paid individually, and the entry will automatically be the subject of a claim for liquidated damages for late payment of estimated duties.

### **Initial ACE Importer Accounts**

This test will be conducted in a phased approach, with primary deployment scheduled for no earlier than April 14, 2004. The initial release of the Web-based account revenue functionality will involve the forty-one initial ACE Importer Accounts and their designated brokers. The forty-one initial ACE Importer Accounts were created based on applications submitted in response to the **Federal Register** notices of May 1, 2002 (67 FR 21800) and/or June 18, 2002 (67 FR 41572). Any of those initial applicants interested in participating in this test must submit, via email, a statement affirming their "intent to participate" and a list of any designated brokers who will be authorized to act on their behalf, no later than 60 days from date of publication of this notice in the **Federal Register**, unless under exceptional circumstances, and with CBP approval, an extension is granted.

### **ACE Broker Account Application Process**

The term "application", as used throughout this notice, is defined as a statement of intent to participate in the Periodic Monthly Statement process. Designated brokers wishing to participate in this test and make Periodic Monthly Statement payment on behalf of participating importers must first establish an individual ACE Broker Account. Designated brokers must submit an application to establish an ACE Broker Account, via email, by no later than 60 days from date of publication of this notice in the **Federal Register**, unless under exceptional circumstances, and with CBP approval, an extension is granted. Each broker application for participation in this test must include the following information:

1. Broker Name;
2. Names of the initial forty-one importers participating in the test by whom they have been or will be designated as the authorized broker;
3. Unique Identification Number (EIN, SSN);
4. Filer Code;
5. Statement certifying participation in C-TPAT;
6. Statement certifying capability of connecting to the Internet;
7. Statement certifying capability of making periodic payment via ACH Credit or ACH Debit; and
8. Statement certifying capability of filing entry/entry summary via ABI.

### **Expansion of Participation**

Participation in the periodic monthly payment process will be expanded in the future as funding allows. CBP will accept, hold, or reject additional Importer Account and Broker Account applications throughout the duration of the test. CBP will provide notice of expansion to the applicants as appropriate. New applicants interested in participating in this test must submit an application, per the **Federal Register** notice of May 1, 2002 (67 FR 21800), Application Process section, to CBP, and will be notified of the status of their application (i.e., whether CBP has accepted their application for participation upon an initial expansion, or, is holding their application pending a further expansion of the test). CBP will notify any applicant not meeting the eligibility criteria or providing an incomplete application, and allow such applicant an opportunity to resubmit its application.

### **Other Responsibilities of Applicants**

Upon accepting an applicant for participation in the Periodic Monthly Statement test, CBP may request additional information. Participants accept a continuing obligation to provide CBP with any updates or changes to the information originally submitted. All data submitted and entered into the ACE Portal is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential. CBP will provide participants with additional information about the content of the test.

All participants are required to provide a bond rider covering the periodic payment of estimated duties. The language of the bond rider shall read as follows:

“By this rider to the Customs Form 301 No. \_\_\_\_\_, executed on \_\_\_\_\_ by \_\_\_\_\_ as principal(s), importer nos. \_\_\_\_\_, and \_\_\_\_\_, as surety, code no. \_\_\_\_\_, which is effective on \_\_\_\_\_, the principal(s) and surety agree that this bond covers all periodic payments of estimated duties and fees no later than the 15th day of the month following the month in which the merchandise is entered or released, whichever comes first, as provided in 19 USC 1505(a), and all conditions set out in section 113.62, Customs Regulations, are applicable thereto.”

Each participant must designate one person as the ACE Portal Account Owner for the information entered into the participant's ACE Portal account. The Account Owner will be responsible for safeguarding the ACE Portal account information, controlling disclosures of that information to authorized persons, authorizing user access to the ACE Portal account, and ensuring that access by authorized persons to the ACE Portal account information is strictly

controlled. The participant will need to identify a point of contact for the testing of communications and software. **Participants are further reminded that participation in this test is not confidential. Lists of approved participants will be made available to the public.**

### **Suspension of Regulations**

During the testing of the Periodic Monthly Statement process, CBP will suspend provisions in Parts 24, 141, 142, and 143 of the Customs Regulations (Title 19 Code of Federal Regulations) pertaining to financial, accounting, entry procedures, and deposit of estimated duties and fees. Absent any alternate procedure set forth in the above description of the test, the current regulations apply.

### **Misconduct under the Test**

If a test participant fails to follow the terms and conditions of this test, fails to exercise reasonable care in the execution of participant obligations, fails to abide by applicable laws and regulations, fails to deposit duties or fees in a timely manner, misuses the ACE Portal, engages in any unauthorized disclosure or access to the ACE Portal, or engages in any activity which interferes with the successful evaluation of the new technology, the participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, and/or suspension from this test.

Suspensions for misconduct will be administered by the Executive Director, Trade Compliance and Facilitation. A notice proposing suspension will be provided in writing to the participant. Such notice will apprise the participant of the facts or conduct warranting suspension and will inform the participant of the date that the suspension will begin. Any decision proposing suspension of a participant may be appealed in writing to the Assistant Commissioner, Office of Field Operations within 15 calendar days of the notification date. Should the participant appeal the notice of proposed suspension, the participant must address the facts or conduct charges contained in the notice and state how compliance will be achieved. In cases of non-payment, late payment, willful misconduct or where public health interests or safety is concerned, the suspension may be effective immediately.

### **Test Evaluation Criteria**

To ensure adequate feedback, participants are required to participate in an evaluation of this test. CBP also invites all interested parties to comment on the design, conduct and implementation of the test at any time during the test period. CBP will publish the final results in the **Federal Register** and the CBP Bulletin as required by § 101.9(b) of the Customs Regulations.

The following evaluation methods and criteria have been suggested:

1. Baseline measurements to be established through data analysis;
2. Questionnaires from both trade participants and CBP addressing such issues as:
  - Workload impact (workload shifts/volume, cycle times, etc.);
  - Cost savings (staff, interest, reduction in mailing costs, etc.);
  - Policy and procedure accommodation;
  - Trade compliance impact;
  - Problem resolution;
  - System efficiency;
  - Operational efficiency;
  - Other issues identified by the participant group.

DATED: January 30, 2004

JAYSON P. AHERN,  
*Assistant Commissioner,  
Office of Field Operations.*

[Published in the Federal Register, February 4, 2004 (69 FR 5362)]

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### **EXTENSION OF GENERAL PROGRAM TEST REGARDING POST ENTRY AMENDMENT PROCESSING**

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

**ACTION:** General notice.

**SUMMARY:** This document announces that the general program test regarding post entry amendment processing is being extended for a one year period. The test will continue to operate in accordance with the notice published in the **Federal Register** on November 28, 2000, as modified by the notice published in the **Federal Register** on February 20, 2003.

**DATES:** The test allowing post entry amendment to entry summaries is extended to December 31, 2004.

**FOR FURTHER INFORMATION CONTACT:** Don Yando, Chief, Entry and Drawback Branch, Office of Field Operations, 202-927-1082 or Debbie Scott, Entry and Drawback Branch, OFO, 202-927-1962.

**SUPPLEMENTARY INFORMATION:****BACKGROUND**

The Bureau of Customs and Border Protection (CBP) announced and described the post entry amendment processing test in a general notice document published in the **Federal Register** (65 FR 70872) on November 28, 2000. That notice announced that the test would commence no earlier than December 28, 2000, and run for approximately one year. On January 7, 2002, CBP published a general notice in the **Federal Register** (67 FR 768) extending the test for a one year period to December 21, 2002. CBP published another general notice in the **Federal Register** (68 FR 8329) on February 20, 2003, extending the test for an additional year to December 31, 2003.

This document announces that the test is being extended to December 31, 2004. The test allows importers to amend entry summaries (not informal entries) prior to liquidation by filing with CBP either an individual amendment letter upon discovery of an error or a quarterly tracking report covering any errors that occurred during the quarter. The November 28, 2000, general notice described how to file post entry amendments for revenue related errors and non-revenue related errors and the consequences of misconduct by importers during the test. It also provided that there are no application procedures or eligibility requirements. To participate in the test, an importer need only follow the procedure for making a post entry amendment set forth in the November 28, 2000, general notice.

Comments received in response to the previously published general notices have been reviewed and CBP continues to evaluate the test. Changes to the test based on the comments and the evaluation will be announced in the **Federal Register** in due course. The test may be further extended if warranted. Additional information on the post entry amendment procedures can be found under "import", then "cargo summary" at <http://www.cbp.gov>.

Dated: February 3, 2004

JAYSON P. AHERN,  
*Assistant Commissioner,*  
*Office of Field Operations.*

[Published in the Federal Register, February 6, 2004 (69 FR 5860)]

Notice of Cancellation of Customs Broker National Permit

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

ACTION: General notice

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SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker national permit is canceled without prejudice.

<u>Name</u>	<u>Permit #</u>	<u>Issuing Port</u>
Savino del Bene USA Inc.	99-00536	Headquarters
Welco International Services	99-00294	Headquarters
Savino del Bene New York Inc.	99-00346	Headquarters
ADESA Importation Services Inc.	99-00428	Headquarters

DATED: January 14, 2004

JAYSON P. AHERN,  
*Assistant Commissioner,  
 Office of Field Operations.*

[Published in the Federal Register, January 27, 2004 (69 FR 3936)]

Notice of Cancellation of Customs Broker License

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

ACTION: General notice

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SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license are canceled without prejudice.

<u>Name</u>	<u>License #</u>	<u>Issuing Port</u>
Rialto, Inc.	11784	Seattle
ADESA Importation Services, Inc.	21103	Detroit
International Service Group, Inc.	5488	San Francisco
Savino del Bene USA (California), Inc.	10157	San Francisco
Savino del Bene (Texas), Inc.	15919	Houston
Savino del Bene International Freight Forwarders, Inc.	17397	Boston
Savino del Bene (Florida), Inc.	20581	Miami
Durad T. Gruelle	7891	Chicago

<b><u>Name</u></b>	<b><u>License #</u></b>	<b><u>Issuing Port</u></b>
Durad T. Gruelle	7863	New York
Arthur Spiegel	5463	Champlain

DATED: January 14, 2004

JAYSON P. AHERN,  
*Assistant Commissioner,*  
*Office of Field Operations.*

[Published in the Federal Register, January 27, 2004 (69 FR 3936)]

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**Cancellation of Customs Broker License Due to Death of the License Holder**

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security

ACTION: General Notice

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SUMMARY: Notice is hereby given that, pursuant to Title 19 of the Code of Federal Regulations at section 111.51(a), the following individual Customs broker license and any and all permits have been cancelled due to the death of the broker:

<b><u>Name</u></b>	<b><u>License #</u></b>	<b><u>Port Name</u></b>
George Parisian	10423	Champlain
Antonio Villarreal	06624	Laredo
Amy E. Rowan	15085	Miami
Louis Irizarry	03797	New York

DATED: January 14, 2004

JAYSON P. AHERN,  
*Assistant Commissioner,*  
*Office of Field Operations.*

[Published in the Federal Register, January 27, 2004 (69 FR 3936)]

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**Notice of Cancellation of Customs Broker Permit**

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

ACTION: General notice

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SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR

111.51), the following Customs broker local permits are canceled without prejudice.

<u>Name</u>	<u>Permit #</u>	<u>Issuing Port</u>
Peter J. Michalczyk	065	Great Falls
Albert J. Marino	52-03-ATL	Miami
AIT Customs Brokerage, Inc.	20508	Philadelphia
Holland Customs Brokers, Inc.	01-17-007	Atlanta
DHL Airways Inc.	F11	Miami
International Cargo Exchange Logistics, Inc.	17-02	Atlanta
George William Rueff, Inc.	19-03-407	Mobile
GPS Customhouse Brokerage, Inc.	53-03-W22	Houston
Terry W. Barnes	96-20-003	New Orleans
Rialto, Inc.	079	Seattle
Malu Maria Perez	FQ8	Miami
Global Transportation Services, Inc.	52-2002-015-H41	Miami
USF Worldwide	M34	Miami
Savino del Bene USA (California), Inc.	10157	San Francisco
Savino del Bene (Texas), Inc.	97-008	Houston
Savino del Bene International Freight Forwarders, Inc.	04-0144	Boston
Savino del Bene (Florida), Inc.	5201AS7	Miami

DATED: January 14, 2004

JAYSON P. AHERN,  
*Assistant Commissioner,  
 Office of Field Operations.*

[Published in the Federal Register, January 27, 2004 (69 FR 3935)]

DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS.

*Washington, DC, February 4, 2004,*

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,  
*Acting Assistant Commissioner,  
Office of Regulations and Rulings.*

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**PROPOSED REVOCATION OF ONE RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
COUNTRY OF ORIGIN MARKING OF FLAT FLEXIBLE  
MAGNETS**

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

**ACTION:** Notice of proposed revocation of one country of origin marking ruling letter and revocation of treatment relating to the country of origin marking of flat flexible magnets.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), this notice advises interested parties that Customs and Border Protection (CBP) intends to revoke one ruling letter relating to the country of origin marking of flat flexible magnets. CBP also proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

**DATE:** Comments must be received on or before March 19, 2004.

**ADDRESS:** Written comments are to be addressed to Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be reviewed at Customs and Border Protection, 799 9th Street N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

**FOR FURTHER INFORMATION CONTACT:** Shari Suzuki, Special Classification and Marking Branch: (202) 572-8818.

**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, this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the country of origin marking of flat flexible magnets. Although in this notice, CBP is specifically referring to the revocation of Headquarters Ruling Letter (HQ) 562537, dated December 12, 2002 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically 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, Customs intends to revoke any treatment previously accorded by CBP 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, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical merchandise 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 HQ 562537, CBP ruled that imported sheets and rolls of “magnetized rubber material” were substantially transformed into new and different articles of U.S. origin when further processed in the U.S. by cutting and printing operations. CBP believed that the sheeting was not a finished object but rather a raw material with a variety of potential applications. Subsequent to the issuance of the ruling, Customs was contacted by a domestic producer of flat flexible magnet material in sheets and rolls who provided additional information regarding the nature of the imported merchandise, the processes performed on the imported merchandise and the nature of the resulting product.

After reviewing the ruling and additional information, CBP has determined that the cited ruling is in error as it pertains to the country of origin marking. The imported flat flexible magnet material in sheets and rolls are not raw materials with a wide variety of uses. The use of the flat flexible magnet is pre-determined by the character of the imported flat flexible magnet sheeting. The application of printed advertising material to the surface of the imported magnetic sheeting does not change the character or use of the flat flexible magnetic sheeting. The imported article already has its final character and is dedicated to its specific use as a magnet at the time of import and the operations performed in the United States are merely finishing operations which do not confer origin. Accordingly, the articles must be properly marked to indicate the country of origin to the ultimate purchaser.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke HQ 562537 and to revoke or modify any other ruling not specifically identified, to reflect the proper country of origin marking according to the analysis contained in proposed Headquarters Ruling Letter (HQ) 562803, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

**DATED:** January 29, 2004

Craig Walker for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

Attachments

**[ATTACHMENT A]**

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 562537  
December 12, 2002  
MAR-05 RR:CR:SM 562537 KKV  
CATEGORY: Marking

**WILLIAM A. ZEITLER, ESQ.**  
**DAVID M. SCHWARTZ, ESQ.**  
**THOMPSON COBURN, LLP**  
**1909 K Street, N.W. Suite 600**  
**Washington, D.C. 20006-1167**

**RE: Country of origin marking requirements applicable to flexible magnets manufactured in the U.S. from imported magnetized rubber material; 19 CFR 134.45**

**DEAR MR. ZEITLER AND MR. SCHWARTZ:**

This is in response to your letter dated September 19, 2002 (and additional submissions dated October 3, 2002 and November 19, 2002), on behalf of Magnet LLC, which requests a binding ruling regarding the country of origin marking requirements applicable to flexible magnets manufactured in the U.S. from magnetized rubber material imported from China. Samples of the imported magnetized rubber material and finished magnets were submitted for our examination.

**FACTS:**

We are informed that Magnet LLC is a U.S. producer and importer of promotional products such as key chains, flat flexible magnets, pens, and desk accessories. You indicate that Magnet LLC plans to import flat sheets and/or rolls of magnetized rubber material from China into the U.S. for further processing into flexible magnets. The finished magnets will be custom-made to the specifications of its customers to advertise and display specific customer products, services, trademarks, trade names and logos.

Subsequent to importation into the U.S., the flat sheets/rolls of magnetized rubber material are subject to a variety of processing operations that include designing, cutting, shaping, silk screening and printing, which result in the creation of promotional magnets.

**LAW & ANALYSIS :**

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. 1304 was "that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser

may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will.” *United States v. Friedlaender & Co.*, 27 C.C.P.A. 297, 302 (1940). Part 134 of the Customs Regulations implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

“Country of origin” is defined in section 134.1(b), Customs Regulations, as

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

Part 134, Customs Regulations (19 CFR Part 134), implements the requirements and exceptions of 19 U.S.C. 1304. Section 134.35, Customs Regulations (19 CFR 134.35), implementing the principle of *U.S. v. Gibson-Thomsen Co., Inc.*, 27 C.C.P.A. 267 (C.A.D. 98), provides that an article used in the U.S. in manufacture which results in an article having a name, character, or use differing from that of the imported article will be considered substantially transformed, and therefore the manufacturer or processor in the U.S. who converts or combines the imported article into the different article will be considered the ultimate purchaser of the imported article within the contemplation of 19 U.S.C. 1304(a).

The well-established test for determining whether a substantial transformation has occurred is derived from language enunciated by the court in *Anheuser-Busch Brewing Association v. United States*, 207 U.S. 556, 562 (1908), which defined the term “manufacture” as follows:

Manufacture implies a change, but every change is not manufacture and yet every change in an article is the result of treatment, labor and manipulation. But something more is necessary, as set forth and illustrated in *Hartranft v. Wiegmann*, 121 U.S. 609. There must be transformation; a new and different article must emerge, having a distinctive name, character or use.

Simply stated, a substantial transformation occurs “when an article emerges from a process with a new name, character, or use different from that possessed by the article prior to processing.” See *Texas Instruments, Inc. v. United States*, 69 CCPA 152, 681 F.2d 778 (1982) (cited with approval in *Torrington Co. v. United States*, 764 F.2d 1563, 1568 (1985)).

Customs has issued several rulings involving promotional or personalized material. In Headquarters Ruling Letter (HRL) 731779, dated December 9, 1988, Customs considered whether wooden pens in the shape of baseball bats, hockey sticks, and rulers, imported from Taiwan were substantially transformed in the U.S. when they were imprinted with advertising information. Customs found that both before and after the printing, the essence of the article was a finished writing implement with an unusual shape and that the printing did not materially alter the name, character, or use of the imported articles. Based on these considerations, Customs found that the printing was merely a minor processing and that the pens

would have to be marked with the foreign country of origin. Similarly, in HRL 734152, dated August 26, 1991, Customs found that the printing of U.S.-origin balloons in Canada did not materially alter the name, character, or use of the balloons, and therefore the balloons were not substantially transformed into products of Canada.

In HRL 734062, dated April 22, 1991, Customs held that blank keys imported from Mexico were not substantially transformed in the U.S. when the keys were cut to customers' specifications. It was found that the process "of grinding teeth into the imported key blanks by using key cutting machines only constitutes a minor change to the key blanks and the creation of the teeth does not determine the essential character of the finished key." Customs concluded that the key blanks were not substantially transformed and accordingly, the key blanks were required to be individually marked with their country of origin. Likewise, in HRL 561493, dated March 9, 2000, Customs held that metal identification tags (i.e., "dog tags") were not substantially transformed in the U.S. when embossed with personalized customer information and sold at retail.

However, unlike the cases referenced above, the processing at issue in the instant case involves more than the mere personalization of an essentially completed article. The magnetized sheeting imported into the U.S. in rolls/sheets is not a finished object but a raw material with a variety of potential applications, and can be used in point-of-purchase displays, visual aids, retail signage, bin markers, menus, message boards, lining for shower cubicles and for directing air flows on vents.

In general, Customs has held that cutting or shaping materials to defined shapes or patterns suitable for use in making finished articles, as opposed to mere cutting to length or width which does not render the article suitable for a particular use, constitutes a substantial transformation. See HRL 557462, dated September 13, 1994 (decorative paper that was shaped, creased, folded, cut to length and glued was held to be substantially transformed); HRL 555702, dated January 7, 1991 (steel plates dedicated to use in the final article by cutting, folding, binding, scraping, etc., considered substantially transformed components); HRL 553574, dated August 15, 1985 (aluminum strip cut to length, punched and/or drilled with holes and notched which gave the strip specific shape or pattern was substantially transformed); and HRL 555265, dated July 3, 1989 (Cutting rolls of aluminum strip into lengths and crowning the cut strips resulted in a new and different article of commerce which had limited uses, e.g., venetian blind slats, surveyor stakes, and lattice fences. Prior to these operations, the aluminum strip was a raw material which possessed nothing in its character which indicated any of these uses.)

Similarly, in this case, we find that the imported magnetized sheeting is substantially transformed into a new and different article by the processing operations performed in the U.S. Cutting and shaping the imported rolls of sheeting to specific sizes, and silk-screening/printing the shapes with personalized information and graphics transforms a product with a number of potential uses to a specific use as a flexible promotional magnet. The magnetized

sheeting imported into the U.S. in jumbo rolls/sheets, possesses little or nothing in its character to indicate its ultimate shape or use. Its essential character as promotional material is permanently determined only after the U.S. processing. Therefore, the completed magnets are products of the U.S. and not subject to the marking requirements of 19 U.S.C. 1304. Accordingly, neither the individual magnets nor the containers in which they are sold must be marked with the country of origin of the imported material. However, the outermost containers in which the sheets/rolls of magnetic material are imported must be marked to indicate the Chinese origin of the material.

**HOLDING:**

Based on the facts provided, imported flat sheets/rolls of magnetized rubber material are substantially transformed into new and different articles of U.S. origin when further processed in the U.S. by designing, cutting, shaping, silk-screening and printing operations into flexible promotional magnets.

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

MYLES B. HARMON,  
*Acting Director,  
Commercial Rulings Division.*

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 562803  
MAR-05 RR:CR:SM 562803 SS  
CATEGORY: Marking

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THOMPSON COBURN, LLP  
1909 K Street, NW, Suite 600  
Washington, D.C. 20006-1167

RE: Revocation of HQ 562537 (December 12, 2002); Country of origin marking requirements applicable to flexible magnets manufactured in the U.S. from imported flat flexible magnet material in sheets and rolls

DEAR MR. ZEITLER AND MR. SCHWARTZ:

This is in reference to Headquarters Ruling Letter ("HQ") 562537, issued to you on behalf of Magnet LLC on December 12, 2002, regarding the country of origin marking requirements applicable to flexible magnets.

In HQ 562537, Customs found that imported sheets and rolls of "magnetized rubber material" were substantially transformed into new and different articles of U.S. origin when further processed in the U.S. by cutting and printing operations.

Subsequent to the issuance of the ruling, Customs was contacted by a domestic producer of flat flexible magnet material. The domestic producer claims that Customs relied on inaccurate depictions of the imported merchandise, the processes performed on the imported merchandise and the resulting product. The domestic producer provided additional information regarding the production of flat flexible magnets to support its claims.

We have had an opportunity to review the previous ruling and additional information and now believe the ruling to be incorrect for the reasons explained below. This ruling also provides the correct marking determination for the flexible magnets.

**FACTS:**

The flexible magnets were described in HQ 562537 as follows:

We are informed that Magnet LLC is a U.S. producer and importer of promotional products such as key chains, flat flexible magnets, pens, and desk accessories. You indicate that Magnet LLC plans to import flat sheets and/or rolls of magnetized rubber material from China into the U.S. for further processing into flexible magnets. The finished magnets will be custom-made to the specifications of its customers to advertise and display specific customer products, services, trademarks, trade names and logos.

Subsequent to importation into the U.S., the flat sheets/rolls of magnetized rubber material are subject to a variety of processing operations that include designing, cutting, shaping, silk screening and printing, which result in the creation of promotional magnets.

The flat flexible magnets, whether or not in sheet or roll form, are thermo-plastic bonded, permanent ferrite magnets with a multi-pole magnetic arrangement designed to grip metallic surfaces. Flat flexible magnets are magnetic materials that are consolidated in polymeric binders by blending and then formed by calendaring.

Flat flexible magnets are made by a process that begins with ferric oxide and yields sheets or rolls of flexible magnets. The manufacturing process begins with the preparation of strontium ferrite by milling iron oxide and strontium carbonate to desired particle size and combining the milled ingredients. This slurry is fired in kilns to produce strontium ferrite.

The strontium ferrite is ground to a prescribed uniform particle size to create a fine magnetic ferrite powder. The precise composition and quality of the powder is one determinant of the uniformity and strength of a flexible magnet. The powder is combined with a binder of rubber, plastic and/or other components into a blended material of uniform composition. The composition of the binder is another critical factor in determining the characteristics of the magnet ultimately produced. It affects the magnet's ultimate attractive power, mechanical characteristics, compatibility with adhesives, resistance to chemical attack and ability to meet child safety requirements. The binder utilized in the instant flat flexible magnets is suitable for magnets used in advertising applications.

After blending, the resulting magnetic material is ground into a particulate. The magnetic particulate is fed into a calendar where it is pressed between two large steel rolls in a heated, temperature-controlled environment, so as to produce a magnetic sheeting of uniform thickness and surface finish. The flat flexible magnet material is wound up on a roll as it exits the calendar. The operating conditions of the calendar are significant determi-

nants of the quality and functionality of the flat magnet produced. The roll of flat flexible magnet material is taken from the calendar to a line where it is magnetized by passing it through magnetic rolls that orient the ferrite particles in the magnet.

At the conclusion of these processes, the finished product is flat flexible magnet material in sheets or rolls. Its magnetic properties are set and the product will adhere to metal objects. The sheets or rolls can be cut into smaller shapes or used in sheet form (for example, advertising applied to the side of a commercial motor vehicle). The flat flexible magnet material can be printed and laminated but it is used by the ultimate consumer because of its magnetic property.

ISSUE:

Whether the flat flexible magnet material imported in rolls or sheets are substantially transformed by printing and cutting operations performed in the United States?

LAW & ANALYSIS:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. 1304 was "that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will." *United States v. Friedlaender & Co.*, 27 C.C.P.A. 297, 302 (1940).

Part 134, Customs Regulations (19 CFR Part 134), implements the requirements and exceptions of 19 U.S.C. 1304. "Country of origin" is defined in 19 C.F.R. 134.1(b) as follows:

"Country of origin" means the country of manufacture, production or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within the meaning of this part.

As stated in the previous ruling, a substantial transformation occurs "when an article emerges from a process with a new name, character, or use different from that possessed by the article prior to processing." The question in this case is whether the flat flexible magnet material imported in rolls and sheets is substantially transformed by the printing and cutting operations that occur in the United States.

In HQ 562537 we stated that the sheets and rolls of flat flexible magnet material were substantially transformed because we believed that the sheeting was not a finished object but rather a raw material with a variety of potential applications. We indicated that the sheeting possessed little or nothing in its character to indicate its ultimate shape or use. We also indicated that the flat flexible magnets' essential character as promotional material was permanently determined only after the U.S. processing.

However, we now find that the imported flat flexible magnet material in sheets and rolls are not raw materials with a wide variety of uses as was claimed. The composition and manufacturing process create a specific type of magnet differentiated from other types of magnets. The selection of the magnetic ferrite powder and binders serve to pre-determine the performance characteristics and applications of the resulting magnet. Thus, the use of the flat flexible magnet is pre-determined by the character of the imported flat flexible magnet sheeting. Furthermore, using flat flexible magnets as refrigerator magnets is the same as many of the other uses mentioned in the previous ruling (e.g., point of purchase displays, visual aids, retail signage, bin markers, menus and message boards). The only difference is what is printed on the magnet. Flat flexible magnets are used in these applications because they are magnetic and can be applied and removed repeatedly without damage to the articles on which they are placed and because they have a flat surface on which information or designs can be displayed.

The processes performed in the U.S. are not as many or as character-altering as originally believed. "Silk screening" and "printing" are not two processes but rather the single process of silk-screen printing. Furthermore "cutting and shaping" are also a single operation in which flat flexible magnet material is cut into smaller flat flexible magnets such as business card flexible magnets. Additionally we note that typically it is the customer who "designs" the final product by providing the information it wants printed on the magnet and the size or shape of the magnet. Thus, there are only two processes which are performed on the imported flat flexible magnet material—cutting and printing. These modest finishing operations are in stark contrast to the complex manufacturing operations performed in producing the sheets of flat flexible magnets. Those manufacturing operations establish the essential character and fundamental use of the product which remain unchanged after the essentially decorative processing.

There is no material change in the name<sup>1</sup>, essential character or use of the imported articles that results from printing them with promotional material and cutting them to make smaller flat flexible magnets. Both the imported article and the finished article are capable of use as magnets. The imported article already has its final character and is dedicated to its specific use as a magnet at the time of import. The operations performed in the United States are merely finishing operations which do not confer origin.

The previous ruling cited to rulings which support the view that cutting or shaping materials to defined shapes or patterns suitable for use in making finished articles, as opposed to mere cutting to length or width which does not render the article suitable for a particular use, constitutes a substantial transformation. The rationale was that prior to the cutting or shaping operations, the imported material was a raw material which possessed nothing in its character which indicated anything regarding its final use. However, we now find those rulings to be inapplicable.

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<sup>1</sup>The request referred to the imported material as "magnetized rubber material" to suggest a change in the name of the product. However, the domestic producer states that such terminology is not used in the trade. The imported product is flat flexible magnet in sheet form. Flexible magnet in sheet form is already a "flat flexible magnet." Regardless of the size or length of the sheet or whether the sheet is in a roll, the imported material is flat flexible magnet. The imported product is not transformed into flat flexible magnet because that is the original form in which the product is imported.

In each of the cited rulings, the imported material was a raw, multi-use material which was not dedicated to a particular use. Multiple and substantial manufacturing operations were carried out on the material. The manufacturing operations not only changed the form or shape of the material into a newly recognizable product but also changed the material's character. The finished items (gift bag, components for a high-density hydraulic baler, venetian blind slats) were clearly distinguishable from the material from which they were made (decorative paper, steel plates, aluminum strip). Furthermore, the cutting and shaping of the metal sheets or strips transformed the material into identifiable components used in making finished goods. In contrast, the imported flexible magnet material in sheets and rolls are not raw materials. The flat flexible magnet material is at an advanced stage of manufacture. It is committed to a single use, as a magnet, at the time of import.

Furthermore, the simple cutting process differs dramatically from the complex shaping processes described in the cited rulings. The cutting performed in the instant case merely serves to make smaller magnets out of larger magnet sheeting. The process typically involves nothing more than stamping smaller rectangular shapes (e.g., business card-sized magnets) out of large rectangular sheets. Customs has held that cutting sheets of trading cards into individual cards does not effect a substantial transformation of imported card stock. HQ 560155, dated April 10, 1997. The cutting process does not affect the magnet's essential nature and use as a magnet.

Additionally, the printing of advertising information on the magnets does not constitute a substantial transformation. The printing does not materially alter the name, character or use of the imported articles. At the time of importation, the articles have magnetic properties. The use of the articles is as magnets. After the printing of the advertising information, they remain articles properly referred to as magnets. The fact that the magnets may also be used for advertising purposes does not materially change their underlying use as magnets. The printing does not transform the imported article so that it is no longer the essence of the final product. Both before and after the printing, the essence of the article in question is a finished magnet. Based on these considerations, we find that printing is merely a minor manufacturing process which leaves the identity of the imported articles intact.

As imported, the flexible magnetic sheeting fully evidences its ultimate use by consumers as magnets. Although the size of the resulting magnets may not be fully established on importation, their thickness and maximum length and breadth, the degree to which they are flexible, their magnetic characteristics, and such properties as tensile strength, child safety, and resistance to heat or chemicals all have been fixed prior to that time.

In *Superior Wire v. United States*, 867 F.2d. 1409 (Fed.Cir. 1989) the Court of Appeals for the Federal Circuit affirmed the Court of International Trade holding that the drawing of wire rod into wire does not substantially transform wire rod into a new product for the purpose of determining the country of origin. The CAFC stated:

The Court of International Trade considered the "transformation of wire rod to be minor rather than substantial." . . . The court found there was no significant change in use or character, but there was a change in name, . . . and concluded that "wire rod and wire may be viewed as different stages of the same product." . . .

Although noting that “the wire emerges stronger and rounder after” drawing the wire rod, the court found “its strength characteristic . . . is . . . metallurgically predetermined . . . through the fabrication of the wire rod.” . . . The court explained that “the chemical content of the rod and the cooling processes used in its manufacture . . . determine the properties that the wire will have after drawing.” . . . There was evidence of record to show that the rod producer determines the tensile strength of the drawn wire by the chemistry of the steel, particularly by the mix of carbon and manganese in the molten steel rods, and that the properties desired in the drawn wire dictate the selection of the scrap grade.

867 F.2d. at 1414 (citations omitted). It concluded that there was “ample evidence from which the Court of International Trade could determine that there is no change in use between the wire rod and the wire. The end use of the wire is generally known before the rolling stage and the specifications are frequently determined by reference to the end product for which the drawn wire will be used.”

Similar to the wire, the key characteristic of the flat flexible magnets processed in the United States is predetermined by the nature of the imported flexible magnetic sheeting. The chemical/metallurgical composition, resistance to heat or chemicals, thickness, consistency or dimension, resistance to tearing, and, most importantly, the magnetic properties, have been predetermined and are not and cannot be altered by the finishing processes performed in the United States. There is no change in use between the flexible magnetic sheeting and the flat flexible magnets sold by the distributors/printers. Both are magnets and are used as such.

In *Anheuser-Busch Brewing Association v. United States*, 207 U.S. 556 (1908), the issue was whether the operations performed on hand cut corks in order to make them suitable for use in bottling beer constituted “manufacture” in the United States. The operations included sorting, branding with a brewer’s name and logo, removing dust and bugs, and coating in order to prevent a cork taste from migrating to the beer. The Appellant argued that the corks were not suitable for use to bottle beer until these processes were performed. The Court held that, “A cork put through the claimants process is still a cork.” *Id.* at 562. The corks did not become articles of U.S. manufacture “by reason of the special treatment to which they had been subjected, making them better or necessary for their purpose.” *Id.* at 563. Similarly, the imported flat flexible magnets are still flat flexible magnets after being put through the cutting and printing processes. They retain their essential characteristic. Printing a magnet with advertising information is no more a substantial transformation than branding a cork with a brewer’s name and logo.

We note that the processing in the United States will not result in a change of tariff classification. Both the imported product and the finished good are classified under subheading 8505.19.0040, HTSUSA, as flexible permanent magnets. Although a change in tariff classification is not required in order for there to be a substantial transformation, we find the fact that there is no change in tariff classification to be persuasive in this case.

Customs has held that similar promotional items processed and printed in the United States were not substantially transformed. See HQ 735401, dated April 5, 1994, HQ 734053, dated September 20, 1991, and HQ 734202, dated November 12, 1991. Customs stated that the recipient of items given

away by businesses for promotional or advertising purposes is considered the ultimate purchaser under the Customs Regulations and that the finished items must be marked permanently, legibly and conspicuously, to indicate their country of origin to the recipient. Accordingly, the final recipient of the magnets, rather than either the U.S. company that prints the magnets or the companies that distribute them to the final recipient, is the ultimate purchaser.

**HOLDING:**

Based on the facts provided, imported flat flexible magnet material in sheets and rolls are not substantially transformed into new and different articles of U.S. origin when further processed in the U.S. by printing and cutting operations to form flexible promotional magnets. Accordingly, the flat flexible magnets must be properly marked to indicate the country of origin to the person who receives them as a promotional item.

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

MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

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**PROPOSED MODIFICATION OF A RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO TARIFF  
CLASSIFICATION OF CERTAIN WOVEN PLACE MATS**

**AGENCY:** Bureau of Customs & Border Protection; Department of Homeland Security.

**ACTION:** Notice of proposed modification of a tariff classification ruling letter and revocation of treatment relating to the classification of certain woven place mats.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs & Border Protection (CBP) intends to modify one ruling letter relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of certain woven place mats. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

**DATE:** Comments must be received on or before March 19, 2004.

**ADDRESS:** Written comments are to be addressed to Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at Customs and

Border Protection, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

**FOR FURTHER INFORMATION CONTACT:** Brian Barulich, Textiles Branch: (202) 572-8883.

**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, this notice advises interested parties that CBP intends to modify a ruling letter relating to the tariff classification of certain woven place mats. Although in this notice CBP is specifically referring to the modification of HQ 965233, dated May 21, 2002 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones 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 sub-

stantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved with substantially identical merchandise should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical merchandise 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 HQ 965233, CBP classified a round woven place mat in sub-heading 4601.99.0500, HTSUSA, which provides for "Plaits and similar products of plaiting materials, whether or not assembled into strips; plaiting materials, plaits and similar products of plaiting materials, bound together in parallel strands or woven, in sheet form, whether or not being finished articles (for example, mats, matting, screens): Other: Other: Plaits and similar products of plaiting materials, whether or not assembled into strips." Based on our analysis of the scope of subheadings 4601.99.0500 and 4601.99.9000, HTSUSA, the Legal Notes, and the Explanatory Notes, we find that the place mat of the type subject to this notice, should be classified in sub-heading 4601.99.9000, HTSUSA, which provides for "Plaits and similar products of plaiting materials, whether or not assembled into strips; plaiting materials, plaits and similar products of plaiting materials, bound together in parallel strands or woven, in sheet form, whether or not being finished articles (for example, mats, matting, screens): Other: Other: Other."

Pursuant to 19 U.S.C. 1625 (c)(1), CBP intends to modify HQ 965233 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 966386 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise.

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

**DATED:** February 4, 2004

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

Attachments

**[ATTACHMENT A]**

**DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 965233  
May 21, 2002  
CLA-2 RR:CR:TE 965233 ttd  
CATEGORY: Classification  
TARIFF NO: 4601.99.0500**

**Ms. LISA RAGAN  
LISA RAGAN CUSTOMS BROKERAGE  
795 Terrell Mill Rd., Suite 207  
College Park, GA 30349**

**RE: Modification of New York Ruling Letter E88353, dated November 16, 1999**

**DEAR Ms. RAGAN:**

This is in response to your letter, dated June 1, 2001, filed on behalf of Fashion Industries, requesting reconsideration, in part, of New York Ruling Letter (NY) E88353, dated November 16, 1999, regarding classification of a round woven place mat under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Your letter, which was originally submitted to the Customs National Commodity Specialist Division in New York, was referred to this office for reply. We note that a new sample representative of the original, but blue in color, was submitted and considered for this reconsideration. After review of NY E88353, Customs has determined that the classification of the round woven place mat in subheading 6302.59.0020, HTSUSA, was incorrect. For the reasons that follow, this ruling modifies, in part, NY E88353.

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. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY E88353 was published on April 17, 2002, in the Customs Bulletin, Volume 36, Number 16. As explained in the notice, the period within which to submit comments on this proposal was until May 17, 2002. No comments were received in response to this notice.

**FACTS:**

In NY E88353, the round place mat under consideration was classified in subheading 6302.59.0020, HTSUSA, which provides for other table linen of other textile materials. The article at issue is a round, woven paper place mat (placemat). The circular mat is blue in color, about 15 inches in diameter and is constructed of woven paper strips having a width of approximately 1 millimeter (mm). The strips of paper have been folded longitudinally before being woven into the mat.

Your submission of June 1, 2001, suggested classification of the subject merchandise in heading 4818, HTSUSA, as household articles of paper, including tablecloths and table napkins.

**ISSUE:**

Whether the subject merchandise is classifiable in heading 6302, HTSUSA, which provides for, inter alia, table linen; heading 4818, HTSUSA, which provides for, inter alia, various household articles made of paper; or heading 4601, HTSUSA, which provides for, inter alia, plaits and similar products of plaiting materials.

**LAW AND ANALYSIS:**

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be “determined according to the terms of the headings and any relative section or chapter notes.” 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 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 (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

Heading 6302, HTSUSA, provides for, inter alia, table linen. The EN state that the heading includes “[t]able linen, e.g., table cloths, table mats and runners, tray cloths, table centers, serviettes, tea napkins, sachets for serviettes, doilies, drip mats” (emphasis added). The EN also state that these articles are usually made of cotton or flax, but sometimes also of hemp, ramie or man-made fibres, etc. Accordingly, to be classifiable as table linen in heading 6302, HTSUSA, the woven paper placemat at issue must be constructed of paper yarn within Section XI, HTSUSA, which covers textiles and textile articles. Pursuant to Section XI, the classification of paper yarns is governed by heading 5308, HTSUSA, which expressly provides for, inter alia, paper yarn. The EN to heading 5308 explain that paper yarn is obtained by twisting or rolling lengthwise strips of moist paper. See e.g., HQ 957758, dated June 23, 1995 (wherein Customs found a paper handbag to be made of paper yarn). The EN further state that the heading does not cover paper simply folded one or more times lengthwise.

In NY E88353, when the merchandise at issue was initially examined, Customs believed that the subject placemat was made of paper yarn, and therefore classifiable in heading 6302, HTSUSA, as table linen. After further review, we find that the subject placemat, unlike the handbag at issue in HQ 957758, is not constructed of paper yarn. The placemat under consideration is constructed of paper strips

folded longitudinally and woven into the shape of the placemat. The instant strips of paper are neither twisted nor rolled. As the subject paper strips have been folded longitudinally and not twisted or rolled prior to being woven, the placemat is not made of paper yarn in the manner defined by heading 5308, HTSUSA. Accordingly, the subject item is not properly classifiable in heading 6302, HTSUSA, as table linen.

Heading 4818, HTSUSA, provides, inter alia, for various household articles made of paper, including tablecloths and table napkins. Note 1(ij) to Chapter 48, HTSUSA, provides that articles of Chapter 46 (manufactures of plaiting material) are not covered in Chapter 48. Note 1 of Chapter 46, HTSUSA, defines “plaiting materials” as materials in a state or form suitable for plaiting, interlacing or similar processes, including strips of paper.

Although made of paper, the placemat under consideration is more accurately described as made of woven paper strips, having an approximate width of 1 mm. These strips of paper have been folded longitudinally before being woven into the circular placemat. Accordingly, the subject paper strips are “plaiting materials” as defined by the Note 1 of Chapter 46. Therefore, based on Note 1(ij) to Chapter 48, HTSUSA, the subject placemat is excluded from Chapter 48 and not properly classifiable in heading 4818, HTSUSA, as household articles of paper, including tablecloths and table napkins.

Heading 4601, HTSUSA, provides for plaits and similar products of plaiting materials, whether or not assembled into strips, plaiting materials, plaits and similar products of plaiting materials, bound together in parallel strands or woven, in sheet form, whether or not being finished articles (for example, mats, matting, screens). The EN to heading 4601 provide in pertinent part that goods covered under heading 4601, HTSUSA, including mats, are “either formed of strands woven together, generally in the manner of warp and weft fabrics, or they may be made of parallel strands placed side by side and maintained in position in the form of sheets by transverse binding threads or strands holding the successive parallel strands.” Thus, the language indicates that the mats covered in heading 4601, HTSUSA, may be woven with a generally warp and weft-like orientation. See HQ 961103, dated September 24, 2001.

In HQ 082996, dated August 22, 1989, Customs ruled that a plaited paper handbag, constructed of strips of paper woven together in a warp and weft manner, was properly classified in heading 4602, HTSUSA, as an other article made up from goods of heading 4601. Moreover, in HQ 087352, dated January 14, 1991, Customs classified a placemat of woven abaca strips in heading 4601, HTSUSA, as matting. See also HQ 084801, dated September 7, 1989.

The strips of paper composing the placemat at issue, like the paper strips in HQ 082996, are plaiting materials as defined in Note 1 of Chapter 46, HTSUSA, as they are suitable for weaving or plaiting the shape of the subject placemat. Moreover, the placemat under consideration, like the placemat in HQ 084801, is a mat as contem-

plated by heading 4601, HTSUSA. The subject placemat is also woven with a basic warp and weft-like orientation as described in the EN to heading 4601. Accordingly, the subject placemat is a product of plaiting materials properly classifiable in heading 4601, HTSUSA.

As the subject woven paper placemat is made of plaited paper strips, it is classifiable under subheading 4601.99.0500, HTSUSA, which provides for plaiting materials, . . . bound together in parallel strands or woven, in sheet form, whether or not being finished articles (for example, mats, matting, screens) . . . other.

**HOLDING:**

Based on the foregoing, the subject merchandise is classified in subheading 4601.99.0500, HTSUSA, which provides for "Plaits and similar products of plaiting materials, whether or not assembled into strips; plaiting materials, plaits and similar products of plaiting materials, bound together in parallel strands or woven, in sheet form, whether or not being finished articles (for example, mats, matting, screens): Other: Other: Plaits and similar products of plaiting materials, whether or not assembled into strips." The applicable rate of duty is 2.7 percent ad valorem. Articles within this subheading, regardless of origin, are not subject to quota or visa requirements.

NY E88353 is hereby modified, in part. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

JOHN DURANT,  
*Director,*  
*Commercial Rulings Division.*

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 966386  
CLA-2: RR:CR:TE: 966386 BTB  
CATEGORY: Classification  
TARIFF NO.: 4601.99.9000

MS. LISA RAGAN  
LISA RAGAN CUSTOMS BROKERAGE  
795 Terrell Mill Road  
Suite 207  
College Park, GA 30349

RE: Modification of HQ 965233; certain woven place mats

DEAR MS. RAGAN:

This is in reference to Headquarters Ruling Letter (HQ) 965233, dated May 21, 2002, issued to you by this office regarding the classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a round woven place mat ("place mat").

HQ 965233 was issued in response to your June 1, 2001, letter requesting reconsideration, in part, of New York Ruling Letter (NY) E88353, dated November 16, 1999, that classified the place mat in subheading 6302.59.0020, HTSUSA. In HQ 965233, we modified NY E88353, in part, and ruled that the place mat was classifiable in subheading 4601.99.0500, HTSUSA. We have reconsidered HQ 965233 and determined that the classification of the place mat at the 8-digit subheading level is not correct. This ruling sets forth the correct classification.

**FACTS:**

The place mat at issue is circular in shape and measures approximately 15 inches in diameter. The place mat is made of paper strips which have been folded lengthwise prior to being woven. We note that the ruling in HQ 965233 was not based on the original white place mat sample submitted for NY E88353, but on a sample that was representative of the original in all respects besides color (the sample used in HQ 965233 was blue).

In HQ 965233, Customs classified the place mat in subheading 4601.99.0500, HTSUSA, which provides for "Plaits and similar products of plaiting materials, whether or not assembled into strips; plaiting materials, plaits and similar products of plaiting materials, bound together in parallel strands or woven, in sheet form, whether or not being finished articles (for example, mats, matting, screens): Other: Other: Plaits and similar products of plaiting materials, whether or not assembled into strips."

**ISSUE:**

Whether the merchandise is properly classified in subheading 4601.99.0500, HTSUSA, as "Plaits and similar products of plaiting materials, whether or not assembled into strips" or in subheading 4601.99.9000, HTSUSA, as "Other."

**LAW AND ANALYSIS:**

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes." 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 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 (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

Heading 4601, HTSUSA, provides for "Plaits and similar products of plaiting materials, whether or not assembled into strips; plaiting materials, plaits and similar products of plaiting materials, bound together in parallel strands or woven, in sheet form, whether or not being finished articles (for example, mats, matting, screens)."

At the 8-digit level, subheading 4601.99.05, HTSUSA, provides for “Plaits, and similar products of plaiting materials, whether or not assembled into strips” and subheading 4601.99.90, HTSUSA, provides for “Other.” Part A of the EN for heading 4601 covers the first part of the heading, i.e., before the semicolon. It reads, in pertinent part, as follows:

(A) **Plaits and similar products of plaiting materials, whether or not assembled into strips.**

This group covers:

- (1) **Plaits.** These consist of strands of plaiting material, without warp or weft, interlaced either by hand or machine in a general longitudinal direction. By varying the nature, colour, thickness and number of strands, and the manner of interlacing, different decorative effects may be obtained.

Plaits of this kind may be joined side by side and assembled into wider strips by sewing, etc.

- (2) **Products similar to plaits** in the sense that they have the same or similar uses, and that, though they are made by a process other than plaiting, they are also formed in longitudinal thong-like forms, strips, etc., from plaiting materials. They include:

- (a) Products made from two or more strands by twisting together, joining together or otherwise assembling. . . .

Part B of the EN for heading 4601, which corresponds to “Other” merchandise of subheading 4601.99.90, HTSUSA, covers the second part of the heading, i.e., after the semicolon. It reads, in relevant part:

(B) **Plaiting materials, plaits and similar products of plaiting materials, bound together in parallel strands or woven, in sheet form, whether or not being finished articles (for example, mats, matting, screens).**

The goods of this group are obtained either directly from plaiting materials . . . or from the plaits or similar products of plaiting materials described in Part (A) above.

Those obtained directly from plaiting materials are either formed of strands woven together, generally in the manner of warp and weft fabrics, or made of parallel strands placed side by side and maintained in position in the form of sheets by transverse binding threads or strands holding the successive parallel strands.

The place mat under review does not answer to the above descriptions of “Plaits” or “Products similar to plaits” in Part A of the EN. Rather than being a narrow, thong-like object without a warp or weft, it is a round sheet composed of woven strips. It falls squarely within the description given in Part B of the EN for heading 4601, which corresponds to “Other” merchandise of subheading 4601.99.9000, HTSUSA.

HOLDING:

Based on the foregoing, the subject merchandise is classified in subheading 4601.99.9000, HTSUSA, which provides for “Plaits and similar products

of plaiting materials, whether or not assembled into strips; plaiting materials, plaits and similar products of plaiting materials, bound together in parallel strands or woven, in sheet form, whether or not being finished articles (for example, mats, matting, screens): Other: Other: Other." The applicable duty rate is 3.3 percent ad valorem. Articles within this subheading, regardless of origin, are not subject to quota or visa requirements.

HQ 965233 is hereby modified.

MYLES B. HARMON,  
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