

# Bureau of Customs and Border Protection

## *General Notices*

### **Record of Decision for Customs and Border Protection's Office of Border Patrol Operation Rio Grande in the Office of Border Patrol McAllen Sector, Texas**

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

**ACTION:** Record of Decision General Notice.

**SUMMARY:** This Record of Decision (ROD) document announces the final decision regarding the Environmental Impact Statement (EIS) for the Office of Border Patrol's Operation Rio Grande regarding potential environmental impacts resulting from Customs and Border Protection's (CBP), Office of Border Patrol (OBP), deployment of the lighting, roads, fences, mowing and boat ramp construction on the United States and Mexican border in the McAllen Sector of the OBP. The final EIS for Operation Rio Grande was made available for public review and was filed for public review with the U.S. Environmental Protection Agency, which published it in the Federal Register on June 17, 2004. This ROD will be incorporated into the final EIS after publication. The Operation Rio Grande has five project actions covered by this EIS: lighting installation (permanent and portable), road improvement, fencing construction, boat ramp construction, and mowing. These actions are intended to reduce the influx of illegal entrants and contraband into the McAllen Sector, increase arrest of those not deterred; increase safety for operations by OBP agents; decrease response time; and decrease the risk from drowning as victims attempt to cross the river and/or irrigation canals. Since September 11, 2001, terrorist activities have also become a major focus of the OBP. This EIS was prompted by a lawsuit brought by the Defenders of Wildlife because of the potential impact that OBP activities may have on the habitat of two endangered species in the area, the ocelot (*Leopardus pardalis*) and jaguarundi (*Hepailurus yagouaroundi*) cats. The adjustments to lighting and other construction and mowing activities are incorporated into this ROD and were agreed to by the OBP and the Defenders of Wildlife in the settlement agreement for Defenders of Wildlife v. Meissner. The final EIS reflects this agreement and states that no significant im-

pacts occur to geology, soils, climate, or air quality. Short-term disturbances may occur to water resources. Aquatic systems could be impacted; however, the effects will decrease over time. The socioeconomic impacts would primarily be beneficial. Lastly, some immediate and direct impacts to wildlife from construction activities would occur. Smaller and less mobile wildlife such as amphibians, reptiles, and small mammals may be adversely impacted by heavy machinery. The increased noise and activity levels during constructions could temporarily disturb breeding behavior of some wildlife inhabiting the areas adjacent to the project; however, little permanent damage to the populations of such organisms would result. The proposed lighting improvements could potentially impact migration, dispersal, and foraging activities of nocturnal species. Two endangered species, the ocelot and jaguarundi, could potentially be impacted by the proposed project. These species are largely nocturnal, and it is expected they would avoid illuminated areas. Extensive coordination with the U.S. Fish and Wildlife Service was conducted to determine the position and direction of the proposed lighting structures to minimize the illumination to brush and other types of screening cover for these animals. Proposed mitigation measures such as road closures and habitat construction would increase the amount of habitat for these species. Reducing illegal immigrant traffic in the McAllen Sector would further reduce impacts to the habitat. Some, as yet, unidentified cultural resource sites may be impacted but mitigation will be provided through an initial assessment of the site, its anticipated severity, and proposals for the appropriate mitigation will be coordinated with the State Historic Preservation Officer.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Customs and Border Protection, Suite 3.4-D, 1300 Pennsylvania Avenue, NW, Washington DC 20229, Attn: Mr. Kevin Feeney. Mr. Feeney is also available at (202) 344-2336 or at [Kevin.Feeney@dhs.gov](mailto:Kevin.Feeney@dhs.gov). No public comment period is required for the ROD.

## **RECORD OF DECISION**

### OPERATION RIO GRANDE

#### STARR, HIDALGO, AND CAMERON COUNTIES, TEXAS

I have reviewed the final Environmental Impact Statement (EIS) for Operation Rio Grande, as well as correspondence received in response to coordination and public review of the draft EIS.

Operation Rio Grande is a strategy initiated in August 1997 by the Office of Border Patrol (OBP, formerly the U.S. Border Patrol (BP)), a Federal law enforcement branch of the Bureau of Customs and Border Protection (CBP, which includes functions transferred from the former Immigration and Naturalization Service (INS)), to aid in

reducing illegal immigration and drug trafficking along the Rio Grande corridor of the McAllen Sector of the OBP. The purpose of the proposed project is to facilitate OBP missions to reduce or eliminate illegal drug activity and illegal entry along the southwestern border of the United States and to reduce the flow of illegal immigrants into the United States.

A draft Environmental Assessment (EA) for Operation Rio Grande was circulated for review and comment to Federal, State, and local agencies and to organizations, public groups, and the local public known to have an interest in the project in September 1998. Comments received on the draft EA were addressed, and the EA became final in August 1999. However, the final EA was never distributed, because the Defenders of Wildlife filed a lawsuit in August 1999 (*Defenders of Wildlife v. Meissner* D.D.C. case no. 1:99CV02262) against the former INS and BP challenging Operation Rio Grande. This case was settled on September 8, 2000. Pursuant to the settlement agreement, OBP prepared an EIS that analyzed the potential beneficial and adverse impacts of Operation Rio Grande in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended.

Five project actions were covered by the EIS: lighting installation, road improvement, fencing construction, boat ramp construction, and mowing. These actions are intended to reduce the influx of illegal immigration and drugs into the McAllen Sector, especially into towns; increase arrests of those not deterred; increase safety for operations by OBP agents; decrease response time; and decrease the risk from drowning as illegal entrants attempt to cross the river and/or irrigation canals. In light of the September 11, 2001, terrorist activities, securing the U.S. borders against illegal entry has become an increased focus of the OBP. The proposed project actions presented in the EIS are anticipated to significantly aid in securing the U.S. border against illegal entry of any kind.

Two types of lighting are addressed in the final EIS: permanent and portable. All portable lighting is currently in place; no more portable lighting is proposed in the final EIS. All proposed lighting is the permanent type. Proposed lighting locations were determined by the OBP agents in each McAllen Sector Station based on their knowledge of traffic in their station and on the site-specific needs of each station to deter or direct traffic in that station. Lighting acts as a deterrent to illegal immigration and smuggling, and as an aid to the OBP agents in capturing illegal entrants or smugglers after they have entered the United States. It also provides protection to illegal entrants from criminals on the United States side of the Rio Grande.

Road improvement (adding caliché to the road surface) is necessary to allow the present and incoming agents to effectively perform the functions required of them. Additionally, upgrading the most crucial

roads to all-weather roads would lead to a reduction in the number of roads needed. All road improvements addressed in the final EIS are on existing roads; no new construction is planned. Caliché is the most benign all-weather topping available, and its use is proposed for Operation Rio Grande road improvements.

Border fences are located mostly in urbanized areas near the land Ports of Entry and are an effective deterrent to illegal drug and immigrant trafficking. Fencing also facilitates enforcement actions by hindering escape. Fencing has proved to be an effective measure for controlling the border.

The McAllen Sector currently has a fleet of 18 boats and none will be added to this fleet specifically because of Operation Rio Grande. The boats are used for surveillance, observation, and information gathering and, therefore, are operated as inconspicuously as possible. The boats are not used for pursuit since they are on international waters. Boat ramps are utilized along the Rio Grande and other large surface-water bodies by OBP agents and other law enforcement officers to deter and/or apprehend those involved in illegal activities. These illegal activities include drug smuggling and transport of illegal immigrants by boat, as well as persons involved in smuggling or trying to enter the United States illegally by wading or swimming.

Currently, under a Memorandum of Understanding between the U.S. International Boundary and Water Commission (USIBWC) and U.S. Fish and Wildlife Service (FWS), the USIBWC mows certain areas between the USIBWC levee and the Rio Grande once a year between July and October. Despite the annual mowing, some of the herbaceous vegetation grows tall enough to hinder the efforts of the OBP to apprehend illegal entrants and drug traffickers. Increased mowing would make it easier and safer for OBP agents to apprehend these persons.

The application of Operation Rio Grande dictates that a viable alternative be one that meets the purpose and need to develop a border security system that also meets the mission of the OBP. Two alternatives, the No-Action Alternative and the Preferred Alternative, were carried forward throughout the final EIS since all other alternatives (more lighting with larger coverage area, including some in National Wildlife Refuges and inside the USIBWC flood control levee; different placement and aiming of the lighting; additional boat ramps; different boat ramp locations; additional mowings; extensive fencing) were eliminated from consideration through a dynamic application of the intent of the NEPA process using interagency coordination and cooperation (final EIS, Section 2.3). Two public meetings for Operation Rio Grande were held in April 2001. The purpose of the meetings was to get public input on what issues and alternatives should be addressed in the EIS. The public's view, and concerns were

used in the preparation of the EIS. One or more copies of the draft EIS (DEIS) were sent to State and Federal resource agencies, and the general public on February 20, 2003, requesting comments by April 14, 2003. However, a public notice soliciting comments on the DEIS was not published in the Federal Register until March 21, 2003, and the comment period was extended by letter and newspaper notice until May 5, 2003. Those comments are included in the final EIS in Appendix D.

The purpose of the actions, as noted in Section 1.2 of the final EIS, is to increase the efficiency and safety of the OBP agents and the safety of U.S. citizens and illegal entrants in the McAllen Sector while the OBP agents fulfill their obligations under U.S. laws and directives. It was noted in the final EIS that the number of OBP agents is not determined by Operation Rio Grande, although the method in which they are used is. The recommended plan is a mix of various actions to provide the optimum multitiered approach to achieve the purpose of Operation Rio Grande.

Under the No-Action Alternative, the actions proposed in the final EIS would not occur and present practices would continue. The No-Action Alternative would not increase or decrease the number of OBP agents in the sector but would tend to concentrate them along the river. Because of a Congressional Mandate (final EIS, Section 2.1), there will be an increase in the number of OBP agents in all areas of the country, with a concomitant increase in the number of vehicles.

The following actions comprise the recommended plan for Operation Rio Grande at the six OBP stations in the McAllen Sector:

Rio Grande City Station: (3.5 miles of permanent lighting and 6 boat ramps); McAllen Station (4 miles of permanent lighting, 6.4 miles of road improvement, and 2 boat ramps); Mercedes Station (11.1 miles of permanent lighting, 30 miles of road improvement, and 3 boat ramps); Harlingen Station (1.7 miles of permanent lighting (43 portable lights along 4.6 miles currently exist), 16 miles of road improvement, and 3 boat ramps); Brownsville Station (19 miles of road improvement, 5 boat ramps, 3.8 miles of fencing, and mowing (79 portable lights over a 13-mile distance and 30 permanent light poles along 1.5 miles currently exist)); and Port Isabel Station (16 miles of road improvement, 4 boat ramps, and 1.6 miles of fencing (64 portable lights along 11 miles currently exist)). The Harlingen, Brownsville, and Port Isabel Stations currently have portable lighting and the Brownsville Station currently has permanent lighting, as agreed to under the settlement of the lawsuit noted above. No new lighting is proposed for the Brownsville and Port Isabel Stations and only permanent lighting is proposed for the Harlingen Station.

The current permanent/portable lighting at these three stations, however, was addressed in the final EIS.

The proposed project is not expected to produce any significant long-term or cumulative adverse impacts on the human or natural environment, as defined in the Council of Environmental Quality Regulations (40 CFR 1508.27). As noted in detail in the final EIS, essentially no impacts, beneficial or adverse, to the physiography, geology, soils, climate, water resources, aquatic systems, wildlife, cultural resources, aesthetics, noise, or air quality of the area are anticipated and there were no indications of hazardous wastes. There will be some local, beneficial impacts to vegetation from reduced trampling of vegetation and littering by illegal entrants and drug traffickers and from road closures. The proposed lighting improvements could potentially have minor, local adverse impacts on migration, dispersal, and foraging activities of nocturnal species. Two endangered species could potentially be impacted by the proposed project, the ocelot (*Leopardus pardalis*) and jaguarundi (*Hepailurus yagouaroundi*). These species are largely nocturnal and it is expected they would avoid illuminated areas. Extensive coordination with the FWS was conducted to determine the position and direction of the proposed lighting structures to minimize the illumination to brush and other types of screening cover. Proposed mitigation measures, such as road closures and habitat construction, would increase the amount of habitat for these species. Reducing illegal immigrant traffic in the McAllen Sector would further reduce impacts to the habitat. Therefore, both the final EIS and the FWS Biological Opinion conclude that no significant adverse impacts will accrue to these species.

The only significant impacts would be socioeconomic. The socioeconomic impacts would be long-term and beneficial, both nationally and locally, primarily from the long-term reduction of flow of illegal drugs into the United States and the concomitant effects upon the Nation's health and economy, drug-related crimes, community cohesion, property values, and traditional family values. Residents of the border towns would benefit from increased security, a reduction in illegal drug-smuggling activities and the number of violent crimes, less damage to and loss of personal property, and less financial burden for entitlement programs. This would be accompanied by the concomitant benefits of reduced enforcement and insurance costs. Minor short-term local employment may be generated during the construction phase of the proposed action.

I have reviewed and evaluated the documents concerning the proposed actions, views of other interested agencies and parties, and the various practical means to avoid or minimize environmental im-



pacts. Based on these considerations, I conclude that all practical means to avoid or minimize environmental impacts have been incorporated into the preferred plan. I find the preferred plan to be economically justified, in compliance with environmental statutes, and in the public interest.

Date: April 15, 2005

ROBERT C. BONNER,  
*Commissioner;*  
*Bureau of Customs and Border Protection.*

[Published in the Federal Register, May 12, 2005 (70 FR 25104)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:  
ARRIVAL AND DEPARTURE RECORD (I-94)**

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

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Arrival and Departure Record (I-94). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (70 FR 10108) on March 2, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before June 13, 2005.

**ADDRESSES:** Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:**

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Title:** Arrival and Departure Record

**OMB Number:** 1651-0111

**Form Number:** I-94, I-94W and I-94T

**Abstract:** These forms are used to deliver to the CBP Officers at the port of arrival lists or manifests of persons on board arriving and departing vessels and aircrafts. These forms are completed by the master or commanding officer, or authorized agent, owner, or consignee of the vessel or aircraft.

**Current Actions:** There are no changes to the information collection. This submission is being submitted to extend the expiration date.

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

**Affected Public:** Individuals

**Estimated Number of Respondents:** 18,124,380

**Estimated Time Per Respondent:** 24 hours

**Estimated Total Annual Burden Hours:** 1,352,209

**Estimated Total Annualized Cost on the Public:** \$120,958,321



If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: May 3, 2005

TRACEY DENNING,  
*Agency Clearance Officer,  
Information Services Branch.*

[Published in the Federal Register, May 12, 2005 (70 FR 25103)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:  
ESTABLISHMENT OF A BONDED WAREHOUSE:  
BONDED WAREHOUSE REGULATIONS**

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

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Establishment of a Bonded Warehouse: Bonded Warehouse Regulations. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (70 FR 10108-10109) on March 2, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before June 13, 2005.

**ADDRESSES:** Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:**

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Title:** Establishment of a Bonded Warehouse (Bonded Warehouse Regulations)

**OMB Number:** 1651-0041

**Form Number:** N/A

**Abstract:** 19 CFR Section 19 sets forth requirements for bonded warehouses. This includes applications needed to establish a bonded warehouse; to receive free materials the warehouse; and to make alterations, suspensions, relocation or discontinuance of a bonded warehouse.

**Current Actions:** There are no changes to the information collection. This submission is being submitted to extend the expiration date.

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

**Affected Public:** Businesses, Institutions

**Estimated Number of Respondents:** 198

**Estimated Time Per Respondent:** 24 hours

**Estimated Total Annual Burden Hours:** 4,910

**Estimated Total Annualized Cost on the Public:** \$108,020

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: May 3, 2005

TRACEY DENNING,  
*Agency Clearance Officer,*  
*Information Services Branch.*

[Published in the Federal Register, May 12, 2005 (70 FR 25103)]

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

*Washington, DC, May 4, 2005,*

The following documents for 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 for MICHAEL T. SCHMITZ,  
*Assistant Commissioner,  
Office of Regulations and Rulings.*

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**19 CFR PART 177**

**REVOCATION OF RULING LETTERS AND TREATMENT  
RELATING TO THE TARIFF CLASSIFICATION OF  
PROTAMINE SULFATE**

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

**ACTION:** Notice of revocation of tariff classification ruling letters and treatment relating to the classification of protamine sulfate.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (“CBP”) is revoking two rulings concerning the tariff classification of protamine sulfate, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed revocation of one of the rulings was published on March 2, 2005, in Volume 39, Number 10, of the *Customs Bulletin*. One comment was received in response to this notice. That comment agreed with the proposal and identified another ruling on the same merchandise suitable for revocation that was not retrieved in a search on the Customs Rulings Online Search System (CROSS).

**EFFECTIVE DATE:** Merchandise entered or withdrawn from warehouse for consumption on or after July 24, 2005.

**FOR FURTHER INFORMATION CONTACT:** Allyson Mattanah,  
General Classification Branch, (202) 572-8784.

**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, CBP published a notice in the March 2, 2005, *Customs Bulletin*, Volume 39, Number 10, proposing to revoke New York Ruling Letter (NY) K81624, dated December 23, 2003, and to revoke any treatment accorded to substantially identical merchandise. One comment was received in response to this notice that supported the proposed revocation. The comment identified NY E89213, dated November 2, 1999, which also classified protamine sulfate, the same merchandise, in subheading 3504.00.50, HTSUS, as "Peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed: Other." Accordingly, this notice also covers the revocation of NY E89213.

In NY K81624 and in NY E89213, the merchandise was classified in subheading 3504.00.50, HTSUS, which provides for "Peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed: Other."

It is now CBP's position that this substance was not correctly classified in NY K81624 or in NY E89213 because it is specifically provided for in subheading 3001.20.00, HTSUS, the provision for:

“Glands and other organs for organotherapeutic uses, dried, whether or not powdered; extracts of glands or other organs or of their secretions for organotherapeutic uses; heparin and its salts; other human or animal substances prepared for therapeutic or prophylactic uses, not elsewhere specified or included: Extracts of glands or of other organs or their secretions.”

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, have been 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 involving the same or similar merchandise, or the importer’s or CBP’s previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer’s reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

CBP, pursuant to section 625(c)(1), is revoking NY K81624, NY E89213, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letters (HQ) 967368 and 967663, respectively, set forth as attachments “A” and “B” to this notice. Additionally, pursuant to section 625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 2, 2005

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

Attachments

## Attachment A

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 967368  
May 2, 2005  
CLA-2 RR:CR:GC 967368AM  
CATEGORY: Classification  
TARIFF NO.: 3001.20.0000

MS. RACHELLE SMITH  
NIPPON EXPRESS USA, INC.  
CHICAGO AIR CARGO BRANCH  
95 N. Division St.  
 Bensenville, IL 60106

Re: Revocation of NY K81624; Protamine Sulfate (CAS 9009-65-8), imported in bulk form

DEAR MS. SMITH:

This is in reference to New York Ruling Letter (NY) K81624, dated December 23, 2003, regarding the classification of Protamine Sulfate, pursuant to the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). In that ruling, we classified the substance in subheading 3504.00.50, HTSUS, the provision for "Peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed: Other." We have reviewed the ruling and find it to be incorrect. This ruling sets forth the correct classification.

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 and Border Protection ("CBP") published a notice in the March 2, 2005, *Customs Bulletin*, Volume 39, Number 10, proposing to revoke New York Ruling Letter (NY) K81624, dated December 23, 2003, and to revoke any treatment accorded to substantially identical merchandise. One comment was received in response to this notice that supported the proposed revocation. The comment identified NY E89213, dated November 2, 1999, which also classified protamine sulfate, the same merchandise, in subheading 3504.00.50, HTSUS. Accordingly, NY E89213 is concurrently revoked in HQ 967663.

**FACTS:**

Protamine Sulfate is a polypeptide with specific amino acid sequences, extracted and isolated from salmon milt obtained from the testes of the fish. It is used in Insulin preparations for the treatment of Diabetes and as a Heparin antagonist in the treatment of clotting disorders. NY K81624 states that the subject product will be imported in 1 kg and 10 kg sealed polyethylene bags. The 1 kg bags will, in turn, be packed in sealed polyethylene bottles with screw-down caps, while the 10 kg bags will, in turn, be packed in sealed tin cans with tin caps.

**ISSUE:**

Whether Protamine Sulfate is an extract of a gland for organotherapeutic use, under heading 3001, HTSUS, or a protein substance, not elsewhere specified or included under heading 3504, HTSUS.



**LAW AND ANALYSIS:**

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

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

The HTSUS provisions under consideration are:

3001:	Glands and other organs for organotherapeutic uses, dried, whether or not powdered; extracts of glands or other organs or of their secretions for organotherapeutic uses; heparin and its salts; other human or animal substances prepared for therapeutic or prophylactic uses, not elsewhere specified or included:
3001.20.00	Extracts of glands or other organs or of their secretions . . . . .
* * * * *	
3504	Peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed:
3504.00.50	Other

The pertinent Explanatory Notes to heading 3001, read as follows:

This heading covers :

- (A) **Glands and other organs of animal origin for organo-therapeutic uses** (e.g., the brain, spinal cord, liver, kidneys, spleen, pancreas, mammary glands, testes, ovaries), dried, whether or not powdered.
- (B) **Extracts of glands or other organs or of their secretions for organo-therapeutic uses**, obtained by solvent extraction, precipitation, coagulation or by any other process. These extracts may be in solid, semi-solid or liquid form, or in solution or suspension in any media necessary for their preservation.

The EN to heading 3504 states, in pertinent part, that:

This heading covers:

\* \* \* \* \*

- (B) **Other protein substances and their derivatives**, not covered by a more specific heading in the Nomenclature, including in particular:
- (1) **Glutelins and prolamins** . . . .
  - (2) **Globulins**, . . . .
  - (3) **Glycinin**, . . . .
  - (4) **Keratins** . . . .
  - (5) **Nucleoproteids**, . . . .
  - (6) **Protein isolates** . . . .

“Webster’s Third New International Dictionary, unabridged (1968) defines the term ‘organotherapeutic’ as ‘of, relating to, or used in organotherapy’. The term ‘organotherapy’ is defined as ‘a treatment of disease by the administration of animal organs or of their extracts.’ Other dictionaries contain similar definitions.” (HQ 957738, dated July 19, 1996). Protamine Sulfate is derived from the testes of fish. This gland is included in EN 30.01 as one of the glands from which extracts of that heading may be derived. Protamine Sulfate is used in the medical treatment of diabetes and clotting disorders. Hence, it is described by the terms of heading 3001, HTSUS, as a glandular extract for organo-therapeutic uses. As such, it is precluded from classification in heading 3504, HTSUS, because it is specified elsewhere.

**HOLDING:**

Protamine Sulfate is classified in subheading 3001.20.0000, HTSUSA (Annotated), the provision for “Glands and other organs for organotherapeutic uses, dried, whether or not powdered; extracts of glands or other organs or of their secretions for organotherapeutic uses; heparin and its salts; other human or animal substances prepared for therapeutic or prophylactic uses, not elsewhere specified or included: Extracts of glands or of other organs or their secretions.” The 2005 column 1, “General” duty rate is free.

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

**EFFECT ON OTHER RULINGS:**

NY K81624, dated December 23, 2003, is revoked.

Robert F. Altneu for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

## Attachment B

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 967663 May 2, 2005  
CLA-2 RR:CR:GC 967663AM  
CATEGORY: Classification  
TARIFF NO.: 3001.20.0000

MR. JOSEPH J. CHIVINI  
AUSTIN CHEMICAL COMPANY  
1565 Barclay Boulevard  
Buffalo Grove, IL 60089

Re: Revocation of NY E89213; Protamine Sulfate (CAS 9009-65-8), imported in bulk form

DEAR MR. CHIVINI:

This is in reference to New York Ruling Letter (NY) E89213, dated November 2, 1999, regarding the classification of Protamine Sulfate, pursuant to the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). In that ruling, we classified the substance in subheading 3504.00.50, HTSUS, the provision for "Peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed: Other." We have reviewed the ruling and find it to be incorrect. This ruling sets forth the correct classification.

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 and Border Protection ("CBP") published a notice in the March 2, 2005, *Customs Bulletin*, Volume 39, Number 10, proposing to revoke New York Ruling Letter (NY) K81624, dated December 23, 2003, and to revoke any treatment accorded to substantially identical merchandise. One comment was received in response to this notice that supported the proposed revocation. The comment identified NY E89213, dated November 2, 1999, issued to you, which also classified Protamine Sulfate, the same merchandise, in subheading 3504.00.50, HTSUS.

**FACTS:**

Protamine Sulfate is a polypeptide with specific amino acid sequences, extracted and isolated from salmon milt obtained from the testes of the fish. It is used in Insulin preparations for the treatment of Diabetes and as a Heparin antagonist in the treatment of clotting disorders.

**ISSUE:**

Whether Protamine Sulfate is an extract of a gland for organotherapeutic use, under heading 3001, HTSUS, or a protein substance, not elsewhere specified or included under heading 3504, HTSUS.

**LAW AND ANALYSIS:**

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

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

The HTSUS provisions under consideration are:

3001: Glands and other organs for organotherapeutic uses, dried, whether or not powdered; extracts of glands or other organs or of their secretions for organotherapeutic uses; heparin and its salts; other human or animal substances prepared for therapeutic or prophylactic uses, not elsewhere specified or included:

3001.20.00 Extracts of glands or other organs or of their secretions . . . . .

\* \* \* \* \*

3504 Peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed:

3504.00.50 Other

The pertinent Explanatory Notes to heading 3001, read as follows:

This heading covers :

- (A) **Glands and other organs of animal origin for organo-therapeutic uses** (e.g., the brain, spinal cord, liver, kidneys, spleen, pancreas, mammary glands, testes, ovaries), dried, whether or not powdered.
- (B) **Extracts of glands or other organs or of their secretions for organo-therapeutic uses**, obtained by solvent extraction, precipitation, coagulation or by any other process. These extracts may be in solid, semi-solid or liquid form, or in solution or suspension in any media necessary for their preservation.

The EN to heading 3504 states, in pertinent part, that:

This heading covers:

\* \* \* \* \*

- (B) **Other protein substances and their derivatives**, not covered by a more specific heading in the Nomenclature, including in particular:
  - (1) **Glutelins and prolamins** . . . .
  - (2) **Globulins**, . . . .

- (3) **Glycinin**, . . . .
- (4) **Keratins** . . . .
- (5) **Nucleoproteids**, . . . .
- (6) **Protein isolates** . . . .

“Webster’s Third New International Dictionary, unabridged (1968) defines the term ‘organotherapeutic’ as ‘of, relating to, or used in organotherapy’. The term ‘organotherapy’ is defined as ‘a treatment of disease by the administration of animal organs or of their extracts.’ Other dictionaries contain similar definitions.” (HQ 957738, dated July 19, 1996). Protamine Sulfate is derived from the testes of fish. This gland is included in EN 30.01 as one of the glands from which extracts of that heading may be derived. Protamine Sulfate is used in the medical treatment of diabetes and clotting disorders. Hence, it is described by the terms of heading 3001, HTSUS, as a glandular extract for organo-therapeutic uses. As such, it is precluded from classification in heading 3504, HTSUS, because it is specified elsewhere.

**HOLDING:**

Protamine Sulfate is classified in subheading 3001.20.0000, HTSUSA (Annotated), the provision for “Glands and other organs for organotherapeutic uses, dried, whether or not powdered; extracts of glands or other organs or of their secretions for organotherapeutic uses; heparin and its salts; other human or animal substances prepared for therapeutic or prophylactic uses, not elsewhere specified or included: Extracts of glands or of other organs or their secretions.” The 2005 column 1, “General” duty rate is free.

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

**EFFECT ON OTHER RULINGS:**

NY E89213, dated November 2, 1999, is revoked in accordance with this ruling.

Robert F. Altneu for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*



**19 CFR PART 177**

**PROPOSED MODIFICATION OF RULING LETTER AND  
TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF TERTIARYBUTYLAMINE**

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

**ACTION:** Notice of proposed modification of tariff classification ruling letter and treatment relating to the classification of Tertiarybutylamine.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) intends to modify a ruling concerning the tariff classification of Tertiarybutylamine, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATE:** Comments must be received on or before June 24, 2005.

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

**FOR FURTHER INFORMATION CONTACT:** Allyson Mattanah, General Classification Branch, (202) 572-8784.

**SUPPLEMENTARY INFORMATION:**

Background

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

statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP intends to modify a ruling pertaining to the tariff classification of Tertiarybutylamine. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) C83908, dated March 25, 1998, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP 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 Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY C83908, the merchandise was classified in subheading 2921.19.60, HTSUS, the provision for "Amine-function compounds:Acyclic monoamines and their derivatives; salts thereof: Other: Other."

CBP, pursuant to 19 U.S.C. 1625(c)(1), intends to modify NY C83908, set forth as Attachment A to this document, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 967662, which is 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



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

Dated: May 2, 2005

Robert F. Altneu for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

Attachments

Attachment A

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
**NY C83908**  
March 25, 1998  
CLA-2-29:RR:NC:2:239 C83908  
CATEGORY: Classification  
TARIFF NO.: 2942.00.5000, 2921.19.6000

MR. JIM REYNOLDS  
JOHN A. STEER CO.  
28 S. Second Street  
Philadelphia, PA 19106

RE: The tariff classification of Trimethylamine Alane (CAS 16842-00-5), Dimethylethylamine Alane (CAS 124330-23-0), Dimethylethylaluminum Hydride Trimethylamine Adduct, Diethylaluminum Hydride Trimethylamine Adduct (CAS 12079-02-6), and Tertiarybutylamine (CAS 75-64-9) from England.

DEAR MR. REYNOLDS:

In your letter dated January 27, 1998, on behalf of your client Epichem, Inc., you requested a tariff classification ruling for the above chemicals.

The applicable subheading for Trimethylamine Alane (Chemical Name - N,N-Dimethylmethaneamine) Trihydro Aluminum), Dimethylethylamine Alane (Chemical Name - Dimethylethylamine) Trihydroaluminum), Dimethylethylaluminum Hydride Trimethylamine Adduct (Chemical Name - Dimethylaluminumhydride Trimethylamine Adduct), and Diethylaluminum Hydride Trimethylamine Adduct (Chemical Name - Diethylhydro (Trimethylamine) Aluminum) will be 2942.00.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for other organic compounds: other. The rate of duty will be 3.7 percent ad valorem.

The applicable subheading for Tertiarybutylamine will be 2921.19.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for amine-function compounds: other. The rate of duty will be 6.8 percent ad valorem.

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

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

ported. If you have any questions regarding the ruling, contact National Import Specialist Thomas Brady at 212-466-5747.

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

Attachment B

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 967662  
CLA-2 RR:CR:GC 967662 AM  
**CATEGORY:** CLASSIFICATION  
**TARIFF NO.:** 2921.19.1000

MR. JIM REYNOLDS  
JOHN A. STEER CO.  
28 S. Second Street  
Philadelphia, PA 19106

Re: Tertiarybutylamine (CAS 75-64-9) from England; Modification of NY C83908

DEAR MR. REYNOLDS:

This is regarding New York Ruling Letter (NY) C83908, issued to you on March 25, 1998, classifying Tertiarybutylamine (CAS 75-64-9) under the Harmonized Tariff Schedule of the United States (HTSUS), in subheading 2921.19.60, the provision for "Amine-function compounds:Acyclic monoamines and their derivatives; salts thereof: Other: Other." We have reviewed NY C83908 and have determined that it must be modified in order to correct and clarify the classification of the named product.

**FACTS:**

Tertiarybutylamine ("TBA") (CAS #75-64-9) is an acyclic monoamine consisting of one amine group with a single butyl, C4H9, in the tertiary isomeric form, bonded to it.

**ISSUE:**

Is TBA classified as a monobutyl monoamine under the HTSUS?

**LAW AND ANALYSIS:**

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the sub-

headings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

The HTSUS provisions under consideration are the following:

2921	Amine-function compounds:
	Acyclic monoamines and their derivatives; salts thereof:
2921.19	Other:
2921.19.10	Mono- and triethylamines; mono-, di-, and tri(propyl- and butyl-) monoamines; salts of any of the foregoing.....
* * * * *	
	Other:
2921.19.60	Other .....

TBA can only be classified in subheading 2921.19.60, HTSUS, as an other acyclic monoamine, if it is not classifiable as a monobutyl monoamine, in subheading 2921.19.10, HTSUS.

Products that consist of a single amine (NH3) group and one (mono), two (di) or three (tri) "butyl" groups are classified within subheading 2921.19.10, HTSUS. TBA consists of a single butyl, in the tertiary isomeric position, attached to a single amine. Hence, it is *eo nomine* a monobutyl monoamine.

There is no evidence that isomeric positioning excludes TBA from classification in subheading 2921.19.10, HTSUS. In fact, in subheading 2905.14, HTSUS, the direct analogue of TBA, tertiarybutyl alcohol, is specifically included as an "other butanol" in subheading 2905.14.10, HTSUS. The situation is analogous in the subheading structure of subheading 2921.19, HTSUS. The isomer of the butylamine is specifically included as a particular butylamine in subheading 2921.19.10, HTSUS.

**HOLDING:**

By application of GRIs 1 and 6, TBA (CAS #75-64-9) is classified under subheading 2921.19.1000, HTSUSA (annotated) the provision for "Amine-function compounds: Acyclic monoamines and their derivatives; salts thereof: Other: Mono- and triethylamines; mono-, di-, and tri(propyl- and butyl-) monoamines; salts of any of the foregoing."

**EFFECT ON OTHER RULINGS**

NY C83908, dated March 25, 1998, is modified as to the classification of TBA.

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

## 19 CFR PART 177

REVOCATION OF RULING LETTER AND TREATMENT  
RELATING TO THE TARIFF CLASSIFICATION OF  
TUNGSTEN CARBIDE RODS

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

ACTION: Notice of revocation of tariff classification ruling letter and revocation of treatment relating to the tariff classification of tungsten carbide rods.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that the Bureau of Customs and Border Protection (CBP) is revoking a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of tungsten carbide rods. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published on December 15, 2004, in the CUSTOMS BULLETIN, Volume 38, Number 51. One comment was received in opposition to this action; additionally, the original ruling recipient submitted information clarifying the original ruling request.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 24, 2005.

FOR FURTHER INFORMATION CONTACT: David Salkeld, General Classification Branch, (202) 572-8781.

SUPPLEMENTARY INFORMATION:

**BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are **informed compliance** and **shared responsibility**. These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and re-

lated 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, CBP published a notice in the December 15, 2004 CUSTOMS BULLETIN, Volume 38, No. 51, proposing to revoke New York Ruling Letter (NY) 897163, dated April 29, 1994, and to revoke any treatment previously accorded to substantially identical transactions, regarding the tariff classification of tungsten carbide rods. One comment was received in opposition to this action; additionally, the original ruling recipient submitted information clarifying the original ruling request. These comments will be addressed in the attached ruling.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY 897163, CBP classified tungsten carbide rods under subheading 8113.00.0000, HTSUSA, which provides for "Cermets and articles thereof, including waste and scrap."

Based on our analysis of the scope of the terms of headings 8113 and 8209, HTSUS, the Legal Notes, and the Harmonized Description and Coding System Explanatory Notes, we now believe the rods are classified under subheading 8209.00.0030, which provides for, "Plates, sticks, tips and the like for tools, unmounted, of cermets: Of sintered metal carbides."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY 897163 and modifying or revoking, as appropriate, any other ruling not specifi-

cally identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 967405, attached. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment it previously accorded to substantially identical transactions.

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

DATED: May 2, 2005

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
**HQ 967405**  
May 2, 2005  
**CLA-2 RR:CR:GC 967405 DSS**  
**CATEGORY:** Classification  
**TARIFF NO.:** 8209.00.0030

MR. WILLIAM J. MALONEY  
RODE & QUALEY  
295 Madison Avenue  
New York, NY 10017

**RE:** Tungsten carbide rods from Japan; NY 897163 Revoked

DEAR MR. MALONEY:

This letter is pursuant to the Bureau of Customs and Border Protection's (CBP's) reconsideration of New York Ruling Letter (NY) 897163, dated April 29, 1994, which was issued to you on behalf of Tulon, Inc. by the Director, National Commodity Specialist Division, New York, with respect to the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of certain tungsten carbide rods. After review of NY 897163, CBP has determined that the classification of the rods under sub-heading 8113.00.0000, HTSUSA, is incorrect.

Pursuant to section 625 (c), Tariff Act of 1930 (19 USC 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY 897163 was published in the December 15, 2004, CUSTOMS BULLETIN, Volume 38, Number 51. One comment opposing the proposal was received in response to the notice. We also received more information regarding the original classifi-

cation request, which was the basis for NY 897163. The concerns raised by the commenter are addressed herein.

**FACTS:**

In NY 897163, we classified what were termed “ceramic composite rods” (rods) under heading 8113, HTSUS, as cermets. We described the rods as follows:

The products consist of sintered ceramic-metal composites (cermets) in the form of rods approximately 1 1/2” in length with round cross-sections of approximately 1/8” diameter. They are further described as follows:

1. Exhibit A - carbide grade HTI10 - comprised of 93% tungsten carbide, 6% cobalt and 1% tantalum carbide
2. Exhibit B - carbide grade MF10 - comprised of 92% tungsten carbide and 8% cobalt
3. Exhibit C - carbide grade UF20 - comprised of 88% tungsten carbide and 12% cobalt

Cermets contain both a ceramic constituent (resistant to heat and with a high melting point) and a metallic constituent. Manufacturing processes used in the production of these products, and also their physical and chemical properties, are related both to their ceramic and metallic constituents, hence their name cermets. . . .

Based upon this language it is apparent that the instant rods are tungsten carbide rods. Based upon their description, these rods fall under heading 8209, HTSUSA, as plates, sticks, tips and the like for tools, unmounted, of cermets.

**ISSUE:**

Whether the instant tungsten carbide rods are classified under heading 8209, HTSUS.

**LAW AND ANALYSIS:**

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

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the System. CBP believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUSA provisions under consideration are as follows:



8113.00.0000 Cermets and articles thereof, including waste and scrap.

\* \* \* \*

8209.00.00 Plates, sticks, tips and the like for tools, unmounted, of cermets:

8209.00.0030 Of sintered metal carbides.

In response to the proposed revocation letter, counsel for the importer, Tulon, submitted a copy of the original ruling request, in which the importer states that the imported rods would be further manufactured in the United States or Mexico into twist drills. The original ruling request sought classification of the rods under heading 8113, HTSUS, as articles of cermets. The importer did not believe that the rods fell under heading 8209, HTSUS, as plates, sticks, tips and the like for tools, of cermets, because the instant rods were manufactured into twist drills and were not suitable for further processing into the class or kind of products "added to pre-existing tools for purposes of rendering them suitable for working hard materials" classified under heading 8209, HTSUS.

Section XV, Note 4, HTSUS, defines the term "cermets" as products containing a microscopic heterogeneous combination of a metallic component and a ceramic component. The term includes sintered metal carbides (metal carbides sintered with a metal). As we stated in HQ 951642, dated May 1, 1992:

The tungsten carbide used in certain cutting tools is made by sintering a mixture of tungsten carbide powder and powdered cobalt. The resulting mixture maximizes the wear resistance and strength necessary to resist the shock involved in cutting tool and rock drilling applications. . . .

Sintered tungsten metal carbide articles such as the instant articles do not fall under heading 8101, HTSUSA, as articles of tungsten. Indeed, there is not a question whether the rods are properly considered cermets under the HTSUSA. The issue is whether they are classified under heading 8113, as articles of cermets, or as plates, sticks, tips, and the like for tools, unmounted, of cermets, under heading 8209.

Relevant ENs state that heading 8113 covers cermets, whether unwrought or in the form of articles not elsewhere specified in the Nomenclature. The referenced EN specifically excludes from heading 8113 plates, sticks, tips and the like, of cermets with a basis of metal carbides agglomerated by sintering (heading 8209). The issue, then, is whether the tungsten carbide rods are goods of heading 8209. EN 82.09 states:

The products of this heading are usually in the form of plates, sticks, tips, rods, pellets, rings, etc. . . . [I]n view of their special properties these plates, tips, etc. are welded, brazed or clamped onto lathe tools, milling tools, drills, dies, or other high-speed cutting tools used for working metal or other hard materials. They fall in [heading 8209] whether sharpened or not, or otherwise prepared, but not if already mounted on tools; in the latter case they fall in the headings for tools, particularly heading 8207 (emphasis added).

In a comment received in opposition to the proposed ruling from an importer of similar articles, the commenter contends that these (and similar)

articles are classified under subheading 8113.00.00, HTSUS, as articles of cermets. The commenter contends that the rods are not sufficiently processed to be considered in “the nature of tools,” as defined in the General Notes to Chapter 82, and, as a consequence, cannot be classified under heading 8209, HTSUS. The commenter also contends that heading 8209, HTSUS, covers cermets that are meant to be added to the interchangeable tools of heading 8207, HTSUS, as inserts rather than manufactured into the interchangeable tools of heading 8207, HTSUS, as are the rods of NY 897163. The commenter further argues that there are certain rods that would fall under heading 8209, HTSUS. These rods would include: inserts or finished pre-formed blanks, heads or tips, in the shape of rods, that are designed to be brazed onto pre-determined cutting tools; and items in a fairly advanced state of manufacture, which can be further manufactured into pre-formed carbide blanks. The commenter argues those types of rods fall under heading 8209, HTSUS, because they are in the nature of cutting tools as they have the essential shape of a finished cutting tool or insert, and require little further manufacturing. Rods to be used in the manufacture of one-piece interchangeable tools of heading 8207, HTSUS, would not fall under heading 8209, HTSUS.

We believe that the instant rods fall under heading 8209, HTSUS. Heading 8209, HTSUS, states that articles of that heading will be cermets to be used for tools, and will be in the shape of plates, sticks, tips or similar forms, which includes rods. The tungsten carbide rods at issue are clearly described by the terms of the heading and by EN 82.09. CBP’s position on classifying tungsten carbide rods or blank inserts under subheading 8209.00.00, HTSUS, has been both long-standing and consistent. *See* HQ 084271, dated August 8, 1989; HQ 965414, dated July 30, 2002; and NY 807394, dated March 2, 1995.

Heading 8209, HTSUS, encompasses both unmounted inserts made of cermets and rods that will be manufactured into inserts or interchangeable tools because all of these articles meet the terms of the heading: they are like plates, sticks and tips, they are used for tools, and they are made of cermets. The heading text makes no distinction between rods to be attached to tools or tool holders or those made into interchangeable tools of heading 8207, HTSUS.

GRI 1 states that the headings, together with applicable section and chapter notes, constitute the first tier of legal authority for classifying goods under the HTSUS. Heading 8209 is a “use” provision. Classification, for use provisions, is based on whether the principal use in the United States at or immediately prior to, the date of importation, of goods of that class or kind to which the instant rods belong can be shown to be for tools. Principal use in this context is that use which exceeds any other single use of the good.

Among the criteria sanctioned by the courts in deciding principal use cases are: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels, class or kind of trade in which the merchandise moves; (4) the environment of the sale, i.e., the manner in which the merchandise is advertised and displayed; (5) the use, if any, in the same manner as merchandise which defines the class; (6) the economic practicality of so using the import; and, finally, (7) the recogni-

tion in the trade of this use. *See, e.g., Automatic Plastic Molding, Inc. v. United States*, Slip Op. 02-120 (Ct. Int'l Trade, decided October 5, 2002), 2002 Ct. Intl. Trade LEXIS 119; 24 *Int'l Trade Rep.* (BNA) 2121.

The available information on (1) the physical characteristics of the instant rods show that they are designed for use in tooling applications. Rods such as these are manufactured to precise metallurgical specifications, including chemical composition, grain size, rupture strength, hardness, etc., specifically for tooling applications. *See Metals Handbook*, Vol. 1, pp. 659-80 (Eighth ed. 1961), published by the American Society of Metals, for a similar discussion of tool steel metallurgy. Indeed, in the submitted evidence, rods such as these are advertised for later use in tooling applications, such as cutting and drilling, which evidences both (3) the channels in which the merchandise moves, and (4) the environment of the sale. This information further shows that the instant rods are used for tooling applications.

With regard to the fifth criteria, prior cases have classified similar rods under heading 8209, HTSUS. *See* HQ 807394, dated March 2, 1995; HQ 084271, dated August 8, 1989; HQ 951928, dated June 17, 1992; and NY J81908, dated April 3, 2003. The principal use of the rods at issue was as tools, albeit as tool inserts. In this case, the information submitted by the original requestor indicates that the rods will be manufactured into twist drills. However, as stated above, that distinction is not relevant in this instance, for these particular goods. Rather, the rulings show that the class or kind of rods to which the instant rods belong is principally used for tools.

Based on the foregoing analysis, the instant tungsten carbide rods are classified under subheading 8209.00.0030, HTSUSA.

**HOLDING:**

The instant merchandise is provided for in heading 8209, HTSUSA. It is classified under subheading 8209.00.0030, HTSUSA, as "Plates, sticks, tips and the like for tools, unmounted, of cermets: Of sintered metal carbides." The 2005 column one, general rate of duty is 4.6 percent ad valorem.

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

**EFFECT ON OTHER RULINGS:**

NY 897163 is REVOKED. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

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

**19 CFR PART 177****PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF PORCELAIN TABLE-/KITCHENWARE FOR COMMERCIAL USE**

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

**ACTION:** Notice of proposed revocation of three ruling letters and treatment relating to the tariff classification of porcelain table-/kitchenware for commercial use under the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”).

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) intends to revoke three rulings concerning the tariff classification of porcelain table-/kitchenware for commercial use and to revoke any treatment CBP has previously accorded to substantially identical transactions. Comments are invited on the correctness of the intended action.

**DATE:** Comments must be received on or before June 24, 2005.

**ADDRESS:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229. Submitted comments may be inspected at U.S. 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 Joseph Clark at (202) 572–8768.

**FOR FURTHER INFORMATION CONTACT:** Andrew M. Langreich, General Classification Branch: (202) 572–8776.

**SUPPLEMENTARY INFORMATION:**

## Background

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as

amended, and related laws. Two new concepts that emerge from the law are **“informed compliance”** and **“shared responsibility.”** These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and 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 New York Ruling Letters (“NY”) K88482, K88488 and K88494, all dated August 30, 2004. In these rulings, merchandise described as porcelain table and kitchen articles was classified under subheadings 6911.10.8000, 6911.10.5200 and 6911.10.4500, HTSUSA, which provide for various types of porcelain table-/kitchenware for household use. In reaching these conclusions, we reasoned, notwithstanding the provision within subheading 6911.10.1000, HTSUSA, for porcelain table/kitchenware articles . . . “hotel or restaurant ware and other ware not household ware,” that the articles were classified as porcelain articles for household use. NYs K88482, K88488 and K88494 are set forth as “Attachment A,” “Attachment B” and “Attachment C,” respectively, to this document.

Although in this notice CBP is specifically referring to three rulings, this notice covers any rulings on similar merchandise that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases; no further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, other than the referenced rulings (see above), should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice

period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

Pursuant to 19 U.S.C. §1625(c)(1), CBP intends to revoke NYs K88482, K88488 and K88494 as they pertain to the classification of various porcelain table/kitchenware for household use, and any other ruling not specifically identified, to reflect the proper classification of the merchandise under subheading 6911.10.1000, HTSUSA, which provides for tableware, kitchenware, other household articles and toilet articles, of porcelain or china: tableware and kitchenware: hotel or restaurant ware and other ware not household ware, pursuant to the analysis set forth in proposed HQ 967535 (see "Attachment D" to this document).

Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

**Dated:** May 10, 2005

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

#### Attachments

  

#### Attachment A

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
NY K88482  
August 30, 2004  
CLA-2-69:RR:NC1:126:K88482  
CATEGORY: Classification  
TARIFF NO.: 6911.10.8010

MS. TABITHA STEWART  
AMERICAN AIRLINES  
4333 Amon Carter Blvd.  
Mail Drop 5223  
Ft. Worth, Texas 76155

RE: The tariff classification of porcelain table/kitchen articles from China

DEAR MS. STEWART:

In your letter, received August 10, 2004, you requested a tariff classification ruling regarding table/kitchen articles from China.

The products include various table/kitchen articles — Style numbers 73-PL-88, 73PL069, 73DI092, 73D1087 and 73RA38.

You stated that each of these articles is made of porcelain.

Samples were submitted with your ruling request.

You stated that the products will not be imported packed together for retail sale as a set.

The applicable subheading for the porcelain table/kitchen articles will be 6911.10.8010, Harmonized Tariff Schedule of the United States (HTS), which provides for tableware, kitchenware, other household articles and toilet articles, of porcelain or china: tableware and kitchenware: other: other: other: other: The rate of duty will be 20.8 percent ad valorem.

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

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

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

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

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Attachment B

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
NY K88488  
August 30, 2004  
CLA-2-69:RR:NC1:126:K88488  
CATEGORY: Classification  
TARIFF NO.: 6911.10.8010; 6911.10.5200; 6911.10.4500

MS. TABITHA STEWART  
AMERICAN AIRLINES  
4333 Amon Carter Blvd.  
Mail Drop 5223  
Ft. Worth, Texas 76155

RE: The tariff classification of porcelain table/kitchen articles from China

DEAR MS. STEWART:

In your letter, received August 10, 2004, you requested a tariff classification ruling regarding table/kitchen articles from China.

The products include various table/kitchen articles — Style numbers 73-PL-87, 73PL083, 73PL068, 73-PL-86 and Kingway.

You stated that each of these articles is made of porcelain.

Samples were submitted with your ruling request.

You stated that the products will not be imported packed together for retail sale as a set.

Your letter states that the Kingway product is a mug.

Information submitted with your ruling request indicates that Style 73-PL-86 is a plate not over 22.9 cm in maximum diameter, valued over \$8.50 per dozen but not over \$31 per dozen.



The applicable subheading for Styles 73-PL-87, 73PL083 and 73PL068 will be 6911.10.8010, Harmonized Tariff Schedule of the United States (HTS), which provides for tableware, kitchenware, other household articles and toilet articles, of porcelain or china: tableware and kitchenware: other: other: other: The rate of duty will be 20.8 percent ad valorem.

The applicable subheading for Style 73-PL-86 will be 6911.10.5200, HTS, which provides for tableware, kitchenware, other household articles and toilet articles, of porcelain or china: tableware and kitchenware: other: other: other . . . plates not over 22.9 cm in maximum diameter and valued over \$8.50 but not over \$31 per dozen. The rate of duty will be 8 percent ad valorem.

The applicable subheading for the Kingway mug will be 6911.10.4500, HTS, which provides for tableware, kitchenware, other household articles and toilet articles, of porcelain or china: tableware and kitchenware: other: other: other: mugs and other steins. The rate of duty will be 14 percent ad valorem.

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

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

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

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

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Attachment C

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
NY K88494  
August 30, 2004  
CLA-2-69:RR:NC1:126:K88494  
CATEGORY: Classification  
TARIFF NO.: 6911.10.8010

MS. TABITHA STEWART  
AMERICAN AIRLINES  
4333 Amon Carter Blvd.  
Mail Drop 5223  
Ft. Worth, Texas 76155

RE: The tariff classification of porcelain table/kitchen articles from China

DEAR MS. STEWART:

In your letter, received August 10, 2004, you requested a tariff classification ruling regarding table/kitchen articles from China.

The products include various plates, dishes and bowls — Style numbers 73-PL-92, 73DI102, 73BO121, 73BO128 and 73BO111.

You stated that each of these articles is made of porcelain.

Samples were submitted with your ruling request.

You stated that the products will not be imported packed together for retail sale as a set.

The applicable subheading for the porcelain table/kitchen articles will be 6911.10.8010, Harmonized Tariff Schedule of the United States (HTS), which provides for tableware, kitchenware, other household articles and toilet articles, of porcelain or china: tableware and kitchenware: other: other: other: other: The rate of duty will be 20.8 percent ad valorem.

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

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

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

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

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Attachment D

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
**HQ 967535**  
CLA-2 RR:CR:GC 967535 AML  
**CATEGORY:** Classification  
**TARIFF NO.:** 6911.10.1000

MS. TABITHA STEWART  
AMERICAN AIRLINES  
4333 Amon Carter Blvd.  
Mail Drop 5223  
Ft. Worth, Texas 76155

RE: Porcelain table-/kitchenware not for household use; New York Ruling Letters ("NY") K88482, K88488 and K88494 revoked

DEAR MS. STEWART:

This is in regard to New York Ruling Letters ("NY") K88482, K88488 and K88494, all dated August 30, 2004, which were issued to you concerning the tariff classification of porcelain table/kitchenware for commercial use under the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"). The referenced rulings classified the articles under subheadings 6911.10.45, 6911.10.52 and 6911.10.80, HTSUS, which provide for various types of porcelain table/kitchenware for household use. We revisited the classification decisions made in NYs K88482, K88488 and K88494 and determined that they are incorrect. This letter sets forth the proper classification of the porcelain table/kitchenware for commercial use.

**FACTS:**

We described the articles in NY K88482 as follows:

The products include various table/kitchen articles — Style numbers 73-PL-88, 73PL069, 73DI092, 73D1087 and 73RA38 made of porcelain and are not imported packed together for retail sale as a set.

We described the articles in NY K88488 as follows:

The products include various table/kitchen articles — Style numbers 73-PL-87, 73PL083, 73PL068, 73-PL-86 and Kingway, made of porcelain and are not imported packed together for retail sale as a set. We noted that the Kingway product is a mug and that Style 73-PL-86 is a plate not over 22.9 cm in maximum diameter, valued over \$8.50 per dozen but not over \$31 per dozen.

We described the articles in NY K88494 as follows:

The products include various plates, dishes and bowls — Style numbers 73-PL-92, 73DI102, 73BO121, 73BO128 and 73BO111 made of porcelain and not imported packed together for retail sale as a set.

The merchandise is sourced by Wessco, a California concern that (according to its website) specializes in providing such goods to major airlines. The subject table/kitchenware is used for meal service in the front (first class) cabin of aircraft. The name of the airline and the model number for each piece appears on the bottom of the articles.

**ISSUE:**

What is the proper tariff classification of the porcelain table-/kitchenware for commercial use?

**LAW AND ANALYSIS:**

Classification of imported merchandise is accomplished pursuant to the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”). Classification under the HTSUSA is guided by the General Rules of Interpretation of the Harmonized System (“GRIs”). GRI 1, HTSUSA, states in part that “for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes[.]”

The HTSUS provisions under consideration are as follows:

6911	Tableware, kitchenware, other household articles and toilet articles, of porcelain or china:
6911.10	Tableware and kitchenware:
6911.10.10	Hotel or restaurant ware and other ware not household ware.
	Other:
	Other:
	Other:
	* * *
6911.10.45	Mugs and other steins
	* * *

6911.10.52                      Cups valued over \$8 but not over \$29 per dozen; saucers valued over \$5.25 but not over \$18.75 per dozen; soups, oatmeals and cereals valued over \$9.30 but not over \$33 per dozen; plates not over 22.9 cm in maximum diameter and valued over \$8.50 but not over \$31 per dozen; plates over 22.9 but not over 27.9 cm in maximum diameter and valued over \$11.50 but not over \$41 per dozen; platters or chop dishes valued over \$40 but not over \$143 per dozen; sugars valued over \$23 but not over \$85 per dozen; creamers valued over \$20 but not over \$75 per dozen; and beverage servers valued over \$50 but not over \$180 per dozen

\* \* \*

6911.10.80                      Other.

United States Customs and Border Protection ("CBP") has previously determined the distinction between porcelain table-/kitchenware for household use and those (in the parlance of the tariff) "not for household" (commercial) use. The distinction was initially made in Headquarters Ruling Letter ("HQ") 082780, dated December 18, 1989, which, under the auspices of the Tariff Schedules of the United States ("TSUS"), differentiated, based upon "chief use" (the TSUS predecessor to "principal use" in the HTSUS; see below), between hotel ware and household ware, *i.e.*, porcelain dishes for private use in or commercially outside of the household. After discussing the nature and use of the articles, CBP concluded that:

In the case where restaurants and hotels special order household china in modified patterns more suitable for commercial uses, as described in situation (2) above such modification alone will not provide the imports with a utility different from the class. However, when such modifications include the hotel or restaurant logo or name, it is obvious that such china is in a class chiefly for hotel purposes.

Thus, household china which has been special ordered and modified for hotel and restaurant use by incorporating the hotel/restaurant logo or name in the design, is no longer in the class of china for household use, but belongs to the class of china that is chiefly used for hotels and restaurants. HQ 082780 at page 5.

CBP reached a similar conclusion in HQ 959745, dated July 20, 1998. At issue was the classification of ceramic dinnerware for use in the rental and private catering industries. The merchandise was imported from a supplier that sold "tableware designed exclusively for institutional use and sold expressly and exclusively to institutional buyers such as restaurants, hotels, airlines, nursing homes and hospitals." CBP referred to HQ 082870 with approval, noting that:

On a case-by-case basis, decisions under the Tariff Schedules of the United States (TSUS) - the HTSUS predecessor tariff - are deemed instructive in interpreting HTSUS provisions, provided the nomenclature remains unchanged and no dissimilar interpretation is required by the text of the HTSUS. See H. Rep. No. 100-576, 100th Cong., 2d Sess. 548,

550 (1988), a conference report to the Omnibus Trade & Competitiveness Act of 1988, Pub. L. No. 100-418. The nomenclature of the TSUS and the HTSUS are identical. Both provisions distinguish between “hotel or restaurant ware and other ware not household ware” and “household” ware. As the language of the two nomenclatures is identical, and the issue is essentially the same, we must consider HQ 082780, dated December 18, 1989, which was based on the TSUS. The only difference between the TSUS and the HTSUS in heading 6911 is the standard of use. “Principal use” replaced the prior standard of “chief use.”

The principal use criteria of the HTSUS are set forth in Additional U.S. Rule of Interpretation 1(a), which provides that:

In the absence of special language or context which otherwise requires— (a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

After applying the principal use criteria set forth in Additional U.S. Rule of Interpretation 1(a) to the HTSUS and the *Carborundum* factors (see generally *U.S. v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), *cert. denied*, 429 U.S. 979 (1977)) (they include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use), CBP concluded that the chinaware in question was of the class or kind principally used for other than household use, classifiable under subheading 6911.10.10, HTSUS. In discussing the determination made in HQ 082780 above, CBP noted that:

It is the use of the chinaware and not the physical composition that is critical for classification purposes. For example, in HQ 082780, Customs held that if a plate was emblazoned with a logo or crest of the hotel or restaurant, it was found to be hotel ware regardless of the fact that without the logo, crest or symbol the chinaware would be classified as household chinaware. HQ 959745 at page 6.

We are cognizant of the distinction between hotels, restaurants and commercial aircraft; however, we consider the meal service provided in first and business class of the major airlines to be similar to that received in a hotel or restaurant. Distinctive porcelain table- or kitchenware is used to serve meals and create ambiance or a sense of luxury. Thus, we find porcelain table- and kitchen ware intended for exclusive use on commercial airlines to be *ejusdem generis* with the articles classified as porcelain table- or kitchenware not for household use under subheading 6911.10.10, HTSUS. The Court of International Trade (“CIT”) has stated that the canon of construction *ejusdem generis*, which means literally, of the same class or kind, teaches that “where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” *Nissho-Iwai American Corp. v. United States (Nissho)*, 10 CIT 154, 156 (1986). The CIT further stated that “[a]s applicable to customs classification cases, *ejusdem generis* requires that the im-

ported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms." *Nissho*, p. 157. The porcelain dishes for use on aircraft, manufactured with the name and model numbers for a specific airline, are substantially similar to those used in restaurants or hotels. The information presented establishes that the articles are not intended for household use but rather are intended for exclusive use in front cabin food service on a commercial airline.

**HOLDING:**

The porcelain table-/kitchenware for use on commercial aircraft are classified under subheading 6911.10.1000, HTSUSA, which provides for tableware, kitchenware, other household articles and toilet articles, of porcelain or china: tableware and kitchenware: hotel or restaurant ware and other ware not household ware. The general, column one rate of duty is 25% percent *ad valorem* per dozen pieces.

**EFFECT ON OTHER RULINGS:**

NYs K88482, K88488 and K88494 are revoked.

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

cc: National Commodity Specialist Division  
NIS Bunin