

Bureau of Customs and Border Protection

CBP Decisions

RE-ACCREDITATION AND RE-APPROVAL OF INTERTEK USA AS A COMMERCIAL GAUGER AND LABORATORY

[CBP Dec. 07-60]

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

ACTION: Notice of re-approval of Intertek USA of Carteret, New Jersey, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, Intertek USA, 1000 Port Carteret Drive, Carteret, New Jersey 07008, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the U. S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or gauger services this entity is accredited or approved to perform may be directed to the U. S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.

DATES: The re-approval of Intertek USA as a commercial gauger and laboratory became effective on May 9, 2007. The next triennial inspection date will be scheduled for May 2010.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breau, Laboratories and Scientific Services, U. S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: July 16, 2007

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

[Published in the Federal Register, July 23, 2007 (72 FR 40163)]

**RE-APPROVAL OF INSPECTORATE AMERICA
AS A COMMERCIAL GAUGER**

[CBP Dec. 07-61]

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

ACTION: Notice of re-approval of Inspectorate America of Baton Rouge, Louisiana, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Inspectorate America, 8367 Paris Avenue, Baton Rouge, Louisiana 70814, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity for gauger services should request and receive written assurances from the entity that it is approved by the U. S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger services this entity is approved to perform may be directed to the U. S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.

DATES: The re-approval of Inspectorate America as a commercial gauger became effective on May 2, 2005. The next triennial inspection date will be scheduled for May 2008.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breau, Laboratories and Scientific Services, U. S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: July 16, 2007

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

[Published in the Federal Register, July 23, 2007 (72 FR 40163)]

19 CFR PART 173**[CBP Dec. 07-62]****TECHNICAL CORRECTION: VOLUNTARY RELIQUIDATION
OF DEEMED LIQUIDATED ENTRIES****AGENCY:** Customs and Border Protection, Homeland Security.**ACTION:** Final rule.

SUMMARY: This document amends title 19 of the Code of Federal Regulations by making technical corrections to § 173.3, which provides for voluntary reliquidations. These technical corrections conform § 173.3 to 19 U.S.C. 1501, as amended by section 2107 of the Miscellaneous Trade and Technical Corrections Act of 2004, which permits Customs and Border Protection to voluntarily reliquidate entries that are deemed liquidated by operation of law.

EFFECTIVE DATE: July 25, 2007.

FURTHER INFORMATION CONTACT: Richard B. Wallio, Office of International Trade, Customs and Border Protection, Tel. (202) 344-2556.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

This document makes technical corrections to § 173.3 of title 19 of the Code of Federal Regulations (19 CFR 173.3) to conform to changes to that section's underlying statutory authority.

Section 173.3 concerns the voluntarily reliquidation of entries and provides that within 90 days from the date notice of the original liquidation is given to the importer, consignee, or agent, the port director may reliquidate on his own initiative a liquidation or reliquidation to correct errors in appraisement, classification, or any other element entering into the liquidation or reliquidation.

Section 501 of the Tariff Act of 1930, as amended (19 U.S.C. 1501), provides the statutory authority for voluntary reliquidations and states that Customs and Border Protection (CBP) may reliquidate an entry within 90 days from the date on which notice of the original liquidation is given or transmitted to the importer, his consignee or agent. Section 1501 was amended by section 2107 of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108-429, 118 Stat. 2598) to include "deemed liquidations" of 19 U.S.C. 1504 as among the types of liquidations CBP is authorized to voluntarily reliquidate. The date of original liquidation of an entry that liquidated by operation of law is the date of deemed liquidation.

This document makes technical corrections to § 173.3 to conform to the broadened scope of 19 U.S.C. 1501, as amended, which authorizes CBP to voluntarily reliquidate entries that have been deemed liquidated by operation of law pursuant to 19 U.S.C. 1504. Examples of types of entries which may be deemed liquidated by operation of law are countervailing duty (CVD), antidumping (AD), or drawback entries.

**INAPPLICABILITY OF PUBLIC NOTICE AND COMMENT
REQUIREMENT AND DELAYED EFFECTIVE
DATE REQUIREMENT**

Because the technical corrections to 19 CFR 173.3 set forth in this document merely conform to the statutory amendments to 19 U.S.C. 1501 effected by section 2107 of the Miscellaneous Trade and Technical Corrections Act of 2004, pursuant to 5 U.S.C. 553(b)(B), CBP finds that good cause exists for dispensing with notice and public procedure as unnecessary. For this same reason, pursuant to 5 U.S.C. 553(d)(3), CBP finds that good cause exists for dispensing with the requirement for a delayed effective date.

THE REGULATORY FLEXIBILITY ACT

Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

EXECUTIVE ORDER 12866

These amendments do not meet the criteria for a “significant regulatory action” as specified in E.O. 12866.

SIGNING AUTHORITY

This document is being issued in accordance with 19 CFR 0.1(a)(1).

LIST OF SUBJECTS

19 CFR PART 173

Administrative practice and procedure, Customs duties and inspection.

AMENDMENT TO THE REGULATIONS

For the reasons stated above, part 173 of title 19 of the Code of Federal Regulations is amended as set forth below.

PART 173—ADMINISTRATIVE REVIEW IN GENERAL

1. The authority citation for part 173 continues to read as follows:
Authority: 19 U.S.C. 66, 1501, 1520, 1624.

* * * * *

2. In § 173.3, paragraph (a) is amended by revising the first sentence to read as follows:

§ 173.3 Voluntary reliquidation.

(a) Authority to reliquidate. Within 90 days from the date notice of deemed liquidation or notice of the original liquidation is given to the importer, consignee, or agent, the port director may reliquidate on his own initiative a liquidation or a reliquidation to correct errors in appraisement, classification, or any other element entering into the liquidation or reliquidation, including errors based on misconstruction of applicable law. * * *

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Dated: July 20, 2007

DEBORAH J. SPERO,
*Acting Commissioner,
 Customs and Border Protection.*

[Published in the Federal Register, July 25, 2007 (72 FR 40737)]

General Notices

AGENCY INFORMATION COLLECTION ACTIVITIES: Application for Exportation of Articles Under Special Bond

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

ACTION: Proposed collection; comments requested.

SUMMARY: U.S. 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: Application for Exportation of Articles Under Special Bond. 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** (72 FR 15892) on April 3, 2007, allowing for a 60-day comment period. This notice allows for an addi-

tional 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 August 27, 2007.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/Customs and Border Protection, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION:

U.S. 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 (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: Application for Exportation of Articles under Special Bond

OMB Number: 1651-0004

Form Number: Form CBP-3495

Abstract: This collection of information is used by importers for articles entered into the United States temporarily. These articles are free of duty under bond, and are exported within one year from the date of importation.

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

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 1500

Estimated Time Per Respondent: 8 minutes

Estimated Total Annual Burden Hours: 2,000

Estimated Total Annualized Cost on the Public: N/A

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

Dated: July 19, 2007

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

[Published in the Federal Register, (72 FR 41341)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:
Transportation Entry and Manifest of Goods Subject
to CBP Inspection and Permit**

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

ACTION: Proposed collection; comments requested.

SUMMARY: U.S. 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: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a 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** (72 FR 15893) on April 3, 2007, 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 August 27, 2007.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/Customs and Border Protection, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION:

U.S. 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 (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: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit

OMB Number: 1651-0003

Form Number: Form CBP-7512 and 7512-A

Abstract: This collection involves the movement of imported merchandise from the port of importation to another CBP port prior to release of the merchandise.

Current Actions: This submission is being submitted to extend the expiration date with a change in the burden hours.

Type of Review: Extension (with change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 50,000

Estimated Time Per Respondent: 23 hours

Estimated Total Annual Burden Hours: 1,162,000 hours

Estimated Total Annualized Cost on the Public: N/A

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

Dated: July 19, 2007

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

[Published in the Federal Register, (72 FR 41340)]

Docket No. USCBP-2007-0070

Notice of Meeting of The Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (COAC)

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

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection and Related Homeland Security Functions (popularly known as "COAC") will meet on August 16, 2007 in Washington, DC. The meeting will be open to the public.

DATE: COAC will meet Thursday, August 16th from 9:00 a.m. to 1:00 p.m. Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held at the Ronald Reagan Building in the Rotunda Ballroom, 1300 Pennsylvania Avenue, NW., Washington, DC 20004. Written material and comments should reach the contact person listed below by August 6th. Requests to have a copy of your material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by August 9, 2007. Comments must be identified by USCBP-2007-0070 and may be submitted by one of the following methods:

• **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

• **E-mail:** traderelations@dhs.gov. Include the docket number in the subject line of the message.

• **Fax:** 202-344-2064.

• **Mail:** Ms. Wanda Tate, Office of International Affairs and Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, Room 8.5C, Washington, DC 20229.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at www.regulations.gov, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the COAC, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of International Affairs and Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Ave., NW., Room 8.5C, Washington, DC 20229; traderelations@dhs.gov; telephone 202-344-1440; facsimile 202-344-2064.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C., app.), DHS hereby announces the meeting of the Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection and Related Homeland Security Functions (COAC). COAC is tasked with providing advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within DHS or the Department of the Treasury.

The third meeting of the tenth term of COAC will be held at the date, time and location specified above. A tentative agenda for the meeting is set forth below.

Tentative Agenda

1. International Container Security Standards.
2. Post-Incident Business Resumption.
3. Advance Data Elements.
4. Secure Freight Initiative/Supply Chain Security.
5. Office of International Trade.
6. Intellectual Property Rights.
7. ACE Program.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished.

Participation in COAC deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations.

All visitors to the Ronald Reagan Building will have to go through a security checkpoint to be admitted to the building. Since seating is limited, all persons attending this meeting should provide notice, preferably by close of business Monday, August 13, 2007, to Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, Washington, DC 20229, telephone 202-344-1440; facsimile 202-344-2064.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate as soon as possible.

Dated: July 23, 2007

MICHAEL C. MULLEN,
*Assistant Commissioner,
Office of International Affairs and Trade Relations,
U.S. Customs and Border Protection.*

[Published in the Federal Register, (72 FR 41342)]

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**DATES AND DRAFT AGENDA OF THE FORTIETH SESSION
OF THE HARMONIZED SYSTEM COMMITTEE OF THE
WORLD CUSTOMS ORGANIZATION**

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security, and U.S. International Trade Commission.

ACTION: Publication of the dates and draft agenda for the thirty-ninth session of the Harmonized System Committee of the World Customs Organization.

SUMMARY: This notice sets forth the dates and draft agenda for the next session of the Harmonized System Committee of the World Customs Organization.

DATE: July 20, 2007

FOR FURTHER INFORMATION CONTACT: Joan A. Jackson, Staff Assistant, Tariff Classification and Marking Branch, U.S. Customs and Border Protection (202-572-8831), or David Beck, Director, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission (202-205-2592).

SUPPLEMENTARY INFORMATION:**BACKGROUND**

The United States is a contracting party to the International Convention on the Harmonized Commodity Description and Coding System ("Harmonized System Convention"). The Harmonized Commodity Description and Coding System ("Harmonized System"), an international nomenclature system, forms the core of the U.S. tariff, the Harmonized Tariff Schedule of the United States. The Harmonized System Convention is under the jurisdiction of the World Customs Organization (established as the Customs Cooperation Council).

Article 6 of the Harmonized System Convention establishes a Harmonized System Committee ("HSC"). The HSC is composed of representatives from each of the contracting parties to the Harmonized System Convention. The HSC's responsibilities include issuing classification decisions on the interpretation of the Harmonized System. Those decisions may take the form of published tariff classification opinions concerning the classification of an article under the Harmonized System or amendments to the Explanatory Notes to the Harmonized System. The HSC also considers amendments to the legal text of the Harmonized System. The HSC meets twice a year in Brussels, Belgium. The next session of the HSC will be the fortieth and it will be held from September 24, 2007 to October 5, 2007.

In accordance with section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), the Department of Homeland Security, represented by U.S. Customs and Border Protection, the Department of Commerce, represented by the Census Bureau, and the U.S. International Trade Commission ("ITC"), jointly represent the U.S. government at the sessions of the HSC. The Customs and Border Protection representative serves as the head of the delegation at the sessions of the HSC.

Set forth below is the draft agenda for the next session of the HSC. Copies of available agenda-item documents may be obtained from either Customs and Border Protection or the ITC. Comments on agenda items may be directed to the above-listed individuals.

GAIL A. HAMILL,
Chief,

Tariff Classification and Marking Branch.

Attachment



WORLD CUSTOMS ORGANIZATION
 ORGANISATION MONDIALE DES DOUANES
 Established in 1952 as the Customs Co-operation Council
 Créée en 1952 sous le nom de Conseil de coopération douanière

HARMONIZED SYSTEM
 COMMITTEE
 -
 40th Session
 -

NC1179E1c

O. Eng.

Brussels, 17 July 2007.

DRAFT AGENDA FOR THE 40TH SESSION
 OF THE HARMONIZED SYSTEM COMMITTEE

From : Monday, 24 September 2007 (11.00 a.m.)
To : Friday, 5 October 2007

N.B. : Thursday, 20 September 2007 (10.00 a.m.) to Friday, 21 September 2007 :
 Pre-sessional Working Party (to examine the questions under Agenda Item V)

Monday, 24 September 2007 (9.30 a.m. – 10.30 a.m.) : Adoption of the Report of the
 35th Session of the Review Sub-Committee

I. ADOPTION OF THE AGENDA

- | | |
|--------------------------|-----------|
| 1. Draft Agenda | NC1179E1c |
| 2. Draft Timetable | NC1180B1a |

II. REPORT BY THE SECRETARIAT

- | | |
|---|------------------------|
| 1. Position regarding Contracting Parties to the HS Convention and
related matters | NC1182E1a |
| 2. Report on the last meetings of the Policy Commission
(57 th Session) and the Council (109 th /110 th Sessions) | NC1183E1a |
| 3. Approval of decisions taken by the Harmonized System
Committee at its 39 th Session | NGO131E1a
NC1181E1a |
| 4. Capacity building activities of the Nomenclature and
Classification Sub-Directorate | NC1184E1a |
| 5. Co-operation with other international organisations | NC1185E1a |
| 6. New information provided on the WCO Web site | NC1186E1a |

NC1179E1c	
7.	Annual survey to determine the percentage of national revenue represented by Customs duties NC1187E1a
8.	Survey on Free Trade Agreements NC1188E1a
9.	Possible invitation of non-WCO Members to become HS Contracting Parties NC1167E1a (HSC/39)
10.	Other
III. <u>GENERAL QUESTIONS</u>	
1.	Updating of the Table establishing a correlation between the Harmonized System and selected international Conventions NC1189E1a
2.	Possible amendment of Article 8 of the HS Convention with a view to removing the Council from its purely administrative role with regard to HS reservations, and to making the fast-track procedure the default reservation procedure NC1228E1a
IV. <u>REPORT OF THE REVIEW SUB-COMMITTEE</u>	
1.	Report of the 35 th Session of the Review Sub-Committee NR0691E1b
2.	Matters for decision NC1190E1a
3.	Classification of methanol or ethanol mixtures with gasoline NC1217E1a
4.	Scope of heading 17.01 NC1218E1a
5.	Possible amendment of the Explanatory Note to heading 90.21 .. NC1221E1a
V. <u>REPORT OF THE PRESESSIONAL WORKING PARTY</u>	
1.	Amendments to the Compendium of Classification Opinions to reflect the classification of a set consisting of bottles containing spices, in a metal rack in subheading 2103.90 NC1191E1a Annex A
2.	Amendments to the Compendium of Classification Opinions to reflect the classification of Beta grape water in subheading 2202.90 NC1191E1a Annex B
3.	Amendments to the Compendium of Classification Opinions to reflect the classification of a set consisting of bottles containing oil and vinegar, in a metal rack in subheading 2209.00 NC1191E1a Annex C

		NC1179E1c
4.	Amendments to the Compendium of Classification Opinions to reflect the classification of certain sodium chloride solutions in subheading 3307.90	NC1191E1a Annex D
5.	Amendments to the Compendium of Classification Opinions to reflect the classification of certain nonwovens in subheading 5603.12 or 5603.13	NC1191E1a Annex E
6.	Amendments to the Explanatory Note to heading 85.19	NC1191E1a Annex F

VI. FURTHER STUDIES

1.	Classification of frozen chicken cuts with addition of salt (Reservations by Japan and US)	NC1192E1a
2.	Classification of pegfilgrastim (INN) (Reservation by Switzerland)	NC1193E1a
3.	Classification of separately presented outdoor units of compression-type split-system air conditioning machines (Reservation by India)	NC1194E1a
4.	Classification of certain power modules, used in electrical converters (Reservation by the US)	NC1195E1a
5.	Classification of vehicles by the name "Jacobsen® Model 1100 and 1110 Haulers" (Reservation by the US)	NC1223E1a
6.	Classification of products containing more than 99.2 % of sodium sulphate and more than 98.5 % of sodium sulphate, respectively (Reservation by Russia)	NC1224E1a
7.	Study on the application of the set rule	NC1196E1a
8.	Classification of milk proteins	NC1197E1a NC1232E1a
9.	Possible amendment of the Explanatory Notes or of the legal provisions to clarify the distinction between headings 21.06 and 38.24	NC1146E1a NC1174E1a (HSC/39) NC1198E1a
10.	Scope of headings 22.06 and 22.08	NC1145E1a NC1171E1a (HSC/39) NC1214E1a
11.	Classification of disomotide (INN) and oremotide (INN)	NC1199E1a

NC1179E1c		
12.	Possible amendment of the Explanatory Notes to Chapter 29	NC1200E1a
13.	Possible amendment of Chapter 30	NC1201E1a
14.	Possible amendment of the Subheading Explanatory Note to subheading 4101.20	NC1202E1a
15.	Classification of lamp posts (Request from Madagascar)	NC1153E1a (HSC/39) NC1227E1a

VII. NEW QUESTIONS

1.	Classification of canola oil flavoured with chilli pepper and black pepper (Request from Norway)	NC1203E1a
2.	Possible amendment of the Explanatory Note to heading 22.02 ..	NC1204E1a
3.	Possible amendment of the Explanatory Note to heading 25.01 ..	NC1205E1a
4.	Possible amendment of the Subheading Explanatory Note to subheading 4412.10	NC1206E1a
5.	Classification of a warming blanket	NC1168E1a (HSC/39)
6.	Possible amendment of the General Explanatory Note to Chapter 84	NC1207E1a
7.	Possible amendment of the Explanatory Note to heading 84.15 (Proposal by Brazil)	NC1170E1a (HSC/39)
8.	Possible amendment to the Explanatory Notes to headings 84.72 and 85.09	NC1208E1a
9.	Possible amendment of the Explanatory Notes to headings 85.08 and 85.09	NC1209E1a
10.	Possible amendment to the Explanatory Note to heading 85.41 ..	NC1210E1a
11.	Deleted	
12.	Possible amendment of the Explanatory Notes to heading 90.25 and 90.27	NC1169E1b (HSC/39)
13.	Possible amendment of the Explanatory Note to heading 95.04 ..	NC1212E1a
14.	Possible amendment of the Explanatory Note to heading 95.06 (Proposal by the US)	NC1215E1a
15.	Classification of an APC power distribution unit (model AP 9554)	NC1216E1a

	NC1179E1c
16. Classification of INN products (List 96)	NC1219E1a
17. Classification of emulsifiers containing calcium salts	NC1220E1a
18. Possible amendments of the Explanatory Note to heading 76.15 and of the text of heading 73.23 (Proposal by South Africa)	NC1222E1a
19. Possible amendment of the Explanatory Note to heading 57.02 (Proposal by the EC)	NC1225E1a
20. Possible amendment of the Explanatory Note to heading 33.01 (Proposal by Canada)	NC1226E1a
21. Possible amendment of heading 85.17 (Proposal by the EC)	NC1211E1a
22. Classification of polyurethane foam in aerosol containers	NC1229E1a
23. Possible amendment of the Explanatory Notes to headings 29.27 and 61.12	NC1230E1a
24. Classification of dried tea flowers	NC1231E1a

VIII. ADDITIONAL LISTIX. OTHER BUSINESS

1. List of questions which might be examined at a future session	NC1213E1a
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X. DATES OF NEXT SESSIONS

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, July 25, 2007

The following documents of U.S. 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,
*Executive Director,
Regulations and Rulings,
Office of International Trade.*

**MODIFICATION OF RULING LETTERS AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF CERTAIN CHRISTMAS GARLANDS**

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

ACTION: Notice of modification of two tariff classification ruling letters and revocation of treatment relating to the classification of certain Christmas garlands.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is modifying two ruling letters relating to the tariff classification of a certain “Christmas Banner Garland” and a certain “Christmas Basket Garland” under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice proposing these actions and inviting comments on their correctness was published in the *Customs Bulletin*, Volume 41, Number 22, on May 23, 2007. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after (60 DAYS FROM PUBLICATION DATE).

FOR FURTHER INFORMATION CONTACT: Herminio M. Castro, Tariff Classification and Marking Branch: (202) 572–8749

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, a notice proposing to modify New York Ruling Letter ("NY") K88100 and NY K88101 was published in the *Customs Bulletin*, Volume 41, No. 22, on May 23, 2007. No comments were received in response to the notice. As stated in the proposed notice, this modification will cover any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice period.

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

In NY K88100, CBP determined that the subject “Christmas Banner Garland,” was classifiable under subheading 6702.90.6500, HTSUS. Similarly, in NY K88101, CBP determined that the subject “Christmas Basket Garland,” which resembles a sprig, was classifiable under subheading 6702.90.6500, HTSUS. Based upon our analysis of festive articles of heading 9505, HTSUS, we have determined that although NY K88100 and NY K88101 correctly classified the subject merchandise under subheading 6702.90.6500, HTSUS, their reasoning needs to be modified.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY K88100, NY K88101 and any other ruling not specifically identified, to reflect the proper classification of the “Christmas Banner Garland” and the “Christmas Basket Garland” according to the analyses contained in Headquarters Ruling Letter (“HQ”) W967854, set forth as Attachment A to this document, and HQ W967855, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

DATED: July 19, 2007

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ W967854
July 19, 2007
CLA-2 OT:RR:CTF:TCM W967854 HMC
CATEGORY: Classification
TARIFF NO.: 6702.90.6500

MS. PAMELA JOHNSON
STARBUCKS COFFEE COMPANY
TAX & CUSTOMS DEPARTMENT
2401 Utah Ave., South
Seattle, WA 98134

RE: Christmas Banner Garland; Reconsideration of New York Ruling K88100; Modified

DEAR MS. JOHNSON:

This is in response to your letter, dated July 21, 2005, on behalf of Starbucks Coffee Company, concerning your request for reconsideration of

New York Ruling (“NY”) K88100, dated August 5, 2004, issued by Customs and Border Protection (“CBP”), which classified a garland, identified as the “Christmas Banner Garland,” under subheading 6702.90.6500 of the Harmonized Tariff Schedule of the United States (“HTSUS”). For the reasons set forth below, we hereby modify NY K88100.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY K88100 was published in the *Customs Bulletin*, Volume 41, Number 22, on May 23, 2007. CBP received no comments during the notice and comment period that closed on June 22, 2007.

FACTS:

On July 21, 2004, Starbucks Coffee Company (“Starbucks”) requested CBP provide a classification ruling for the “Christmas Banner Garland” (“garland”), SKU 186983. The garland is described as composed of artificial “poinsettia” leaves made of white paper. The paper leaves are attached to wire stems that have been wrapped with white paper. The poinsettia beads are made of Styrofoam and coated with red colored lacquer. The leaves and beads are bound together with white paper to form the “poinsettia flower.” The flowers are attached together to form the garland that measures 27” x 3” x 11 1/2”.

In NY K88100, dated August 5, 2004, in response to Starbucks’ original ruling request of July 21, 2004, CBP provided the classification of the garland. NY K88100 held that the applicable heading for the articles under consideration was heading 6702, HTSUS, which provides for “Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit.”

Starbucks contends that the garland is classifiable under subheading 9505.10.50, HTSUS. A telephone conference was conducted with Starbucks’ representatives and members of my staff on October 27, 2006, to discuss this matter.

ISSUE:

Whether the Starbucks’ “Christmas Banner Garland” made of artificial paper leaves should be classified in heading 9505, HTSUS, as a festive article or in heading 6702, HTSUS, as an article made of artificial flowers, foliage or fruit.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

6702 Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit:

* * *

6702.90	Of other materials:	*	*	*
	Other	*	*	*
6702.90.65	Other.	*	*	*
9505	Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof:	*	*	*
9505.10	Articles for Christmas festivities and parts and accessories thereof:	*	*	*
	Other	*	*	*
9505.10.50	Other.	*	*	*

In NY K88100, CBP determined that the garland was not a festive article and classified it as “other artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: of other materials” of subheading 6702.90.6500, HTSUS. NY K88100 found that classification under heading 9505, as a festive article was not applicable to the subject merchandise because it was not used to decorate the home. Starbucks believes that NY K88100, dated August 5, 2004, is not correct. Instead, Starbucks contends that the garland should be classified as other articles of Christmas festivities and parts and accessories thereof of subheading 9505.10.5020, HTSUS. Starbucks is of the view that the garland satisfies the criteria used to classify merchandise as festive articles. The chapter notes to Chapter 95, HTSUS, do not exclude artificial flowers and foliage. Similarly, the chapter notes to Chapter 67, HTSUS, do not exclude festive articles.¹

¹Note 1(e) to Chapter 67, HTSUS, does not specifically exclude festive articles from Chapter 67, HTSUS. It states that “1. [t]his chapter does not cover: (e) [t]oys, sports equipment, or carnival articles (chapter 95); . . .” Also, Note 3 to Chapter 67, HTSUS, states that “Heading 6702 does not cover: (b) Artificial flowers, foliage or fruit of pottery, stone, metal, wood or other materials, obtained in one piece by molding, forging, carving, stamping or other process, or consisting of parts assembled otherwise than by binding, gluing, fitting into one another or similar methods.” Inasmuch as the subject merchandise is artificial flowers or foliage consisting of parts assembled by binding, gluing, fitting into one another or similar methods, it is not excluded from heading 6702, HTSUS.

We are thus left with the question as to whether the garland in question is classifiable in heading 9505, HTSUS, as a festive article or in heading 6702, HTSUS, as an article made of artificial flowers, foliage or fruit. If the article in question is prima facie classifiable in headings 9505 and 6702, we believe that GRI 3 must be consulted. We must therefore first determine whether the subject garland qualifies as a festive article of heading 9505, HTSUS.

In *Midwest of Cannon Falls, Inc. v. United States*, 20 C.I.T. 123 (Ct. Int'l Trade, 1996), *aff'd in part, rev'd in part*, 122 F.3d 1423 (Fed. Cir. 1997) (hereinafter *Midwest*), the Court addressed the scope of heading 9505, HTSUS, specifically the class or kind of merchandise termed "festive articles," and provided guidelines for classification of such goods in the heading.

Previously, CBP has noted that several items composed of artificial foliage satisfy the *Midwest* guidelines and are recognized as festive articles for the Christmas holiday. These items include evergreen branches, poinsettia, pine cone, pine needle leaves, holly leaves, laurel leaves, holly berries or mistletoe, which are incorporated into a wreath, centerpiece, candle ring, garland, swag or sprig. See HQ 967237, dated September 9, 2004; See also, NY I89773, dated January 27, 2003.

When examining the garland, as a whole, it must be evident that the merchandise is associated or used with the particular festival of Christmas. Furthermore, in HQ 950999, dated April 16, 1992, garlands with artificial foliage were classified in 9505.10.40, HTSUS, as festive articles for Christmas festivities. The following is the language from HQ 950999 wherein CBP explained which types of garlands, wreaths, etc. would be classifiable in 9505.10, HTSUS, as festive articles for Christmas festivities.

Those artificial foliage items which qualify as Christmas articles of sub-heading 9505.10 include wreaths, garlands, candle rings, centerpieces—complete articles—made up of foliage commonly and traditionally associated with Christmas [i.e., artificial poinsettias, pine cones, pine needle leaves, evergreen branches, holly berries, holly leaves, laurel leaves, or mistletoe (singly or combination thereof)]. (This largely restates Customs position under the TSUS). These articles can be further decorated with plastic sleighs, miniature Santas, glass balls, ribbon, etc. Stylized/modern versions of Christmas wreaths, garlands, etc. (i.e., those articles decorated with neon poinsettias, mauve glass balls, etc.) also qualify as festive.

We must determine nevertheless whether the Starbucks decorative article under consideration can be classified as a festive article in heading 9505, HTSUS, in light of the *Midwest* decisions. In making this determination, we must analyze whether the decoration under consideration fits the criteria for festive articles that are classified in heading 9505, HTSUS. The Court of International Trade in *Midwest* was aided by the criteria established in the case *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), cert. denied, 429 U.S. 979 (hereinafter "*Carborundum*"). Those criteria include the general physical characteristics of the article, the expectation of the ultimate purchasers, the channels, class or kind of trade in which the item moves, the environment of the sale (accompanying accessories and the manner in which the item is advertised and displayed), the use in the same manner as merchandise which defines the class, the economic practicality of so using the import, and recognition within the trade of

this use. In considering the *Midwest* standards, we believe that the garland is not classifiable in heading 9505, HTSUS.

It is our view that the garland under consideration in this instance is not immediately recognizable as a Christmas decoration. Although Starbucks has presented evidence to show that it was intended for use as a decoration in its stores during Christmas time, we believe that based on its appearance, the garland does not seem to be exclusively associated with Christmas celebrations. In other words, in our judgment, there seems to be no reason why it could not be used as a decoration at another time of the year. The garland that is under consideration in this instance is not the customary garland that is typically exhibited as Christmas decorations. It is not made of tinsel nor does it have the usual customary Christmas colors of red and green. Although it is made of white paper and is supposed to resemble poinsettia leaves and flowers, we do not believe that most people would be able to discern that the white paper leaves are supposed to be artificial poinsettia leaves and flowers that are connected with the Christmas celebration. While the garland is certainly used by Starbucks as a decoration during the Christmas holiday, if it was set apart from other Christmas decorations, we do not think that it would immediately stand out as an item that would only be seen at Christmas time. Rather, in our judgment, the garland could be easily used to decorate an area during other celebratory occasions besides the Christmas holidays. Thus, we believe that it would not be aberrant to display the garland as a decoration at times during the year other than Christmas.

Starbucks claims that the garland was used in its stores as a decoration only during the Christmas holiday season and that it had no other use. Starbucks further claims that the chapter notes and ENs to heading 9505, HTSUS, do not exclude articles from the heading if they are not primarily for use in the home. To support this point, Starbucks submitted a copy of instructions that were issued to its stores from a Holiday 2004 Workbook concerning the display of the holiday decorations. These instructions indicate that all stores will receive the Starbucks holiday trim to create a festive atmosphere with a unified theme. The holiday trim will be used from holiday setup through December 25, and on December 26, it will be removed. The instructions further explained that the holiday decorations will be removed and SKU'd for sale, but that the holiday trim is not to be sold prior to December 26.

Although we recognize that, on a case-by-case basis, an article displayed outside the house may be found to be a festive article, such consideration is unnecessary in this case. We disagree with Starbucks's contention that the subject garland was intended as a decoration only during the Christmas holiday season and that it had no other use. As stated above, in this instance, the fact that the subject merchandise is used during the Christmas holidays did not make it a festive article of heading 9505, HTSUS. We note that the garland was offered for sale to consumers after the Christmas holiday. Thus, it is not unreasonable to conclude that consumers other than Starbucks could buy the garland and subject it to a different use. The garland, we therefore believe, is not closely associated with the Christmas holiday as it may be equally used and displayed on occasions other than the Christmas holidays. Accordingly, we find that the garland in this case is not classified as a festive article in heading 9505, HTSUS, but instead in heading 6702, HTSUS, which provides for: "Artificial flowers, foliage and fruit

and parts thereof: articles made of artificial flowers, foliage or fruit.”² The ENs to heading 6702, HTSUS, which provides for artificial foliage, support the classification of the subject garland as an article made of artificial flowers, foliage or fruit.³

HOLDING:

By application of GRI 1, the “Christmas Banner Garland” is classified in heading 6702, HTSUS. It is specifically provided for in subheading 6702.90.6500, HTSUS, which provides for: “Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: Of other materials: Other: other.” The column one duty rate is 17 percent. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY K88100, dated August 5, 2004, is modified with respect to its legal analysis. The classification of the item described therein is unchanged. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

²See HQ W968134, dated March 13, 2007, for a similar finding on other articles imported into the U.S., which were the subject of a protest by Starbucks.

³The Harmonized Commodity Description and Coding System Explanatory Notes (EN's) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the EN's provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the Harmonized System. CBP believes the EN's should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989). The EN to heading 6702, HTSUS, which states, in pertinent part:

This heading covers:

- (1) Artificial flowers, foliage and fruit in forms resembling the natural products, made by assembling various parts (by binding, glueing, assembling by fitting into one another or similar methods). This category also includes conventional representations of flowers, foliage or fruit made up in the manner of artificial flowers, etc.
- (2) Parts of artificial flowers, foliage or fruit (e.g., pistils, stamens, ovaries, petals, calyces, leaves and stems).
- (3) Articles made of artificial flowers, foliage or fruit (e.g., bouquets, garlands, wreaths, plants), and other articles, for use as trimmings or as ornaments, made by assembling artificial flowers, foliage or fruit.

* * *

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ W967855
July 19, 2007
CLA-2 OT:RR:CTF:TCM W967855 HMC
CATEGORY: Classification
TARIFF NO.: 6702.90.6500

MS. PAMELA JOHNSON
STARBUCKS COFFEE COMPANY
TAX & CUSTOMS DEPARTMENT
2401 Utah Ave., South
Seattle, WA 98134

RE: Christmas Basket Garland; Sprig; Reconsideration of New York Ruling K88101; Modified

DEAR MS. JOHNSON:

This is in response to your letter, dated July 21, 2005, on behalf of Starbucks Coffee Company, concerning your request for reconsideration of New York Ruling ("NY") K88101, dated August 5, 2004, issued by Customs and Border Protection ("CBP"), which classified a sprig, identified as the "Christmas Basket Garland" under subheading 6702.90.6500 of the Harmonized Tariff Schedule of the United States ("HTSUS"). For the reasons set forth below, we hereby modify NY K88101.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY K88101 was published in the *Customs Bulletin*, Volume 41, Number 22, on May 23, 2007. CBP received no comments during the notice and comment period that closed on June 22, 2007.

FACTS:

On July 21, 2004, Starbucks Coffee Company ("Starbucks") requested CBP provide a classification ruling for a sprig identified as the "Christmas Basket Garland," SKU 186985, ("sprig"). The sprig is composed of "poinsettia" leaves made of white paper. The paper leaves are attached to wire stems that have been wrapped with white paper. The poinsettia sprig beads are made of Styrofoam and coated with red colored lacquer. The wire stems are bound together with white paper to form an artificial flower. They are attached together to form a sprig that measures 10.25" x 6" x 2". The artificial poinsettia sprig is adorned with a red ribbon. The sprig can be hooked onto a basket. There is no dispute that the paper leaves impart the essential character to the poinsettia sprig.

In NY K88101, dated August 5, 2004, in response to Starbucks' original ruling request of July 21, 2004, CBP provided the classification of the sprig. NY K88101 held that the applicable heading for the articles under consideration was heading 6702, HTSUS, which provide for "Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit."

Starbucks contends that the sprig is classifiable under subheading 9505.10.50, HTSUS. A telephone conference was conducted with Starbucks'

representatives and members of my staff on October 27, 2006, to discuss this matter. We note that CBP recently issued protest decision HQ W968134, dated March 13, 2007, in which it classified identical merchandise under subheading 6702.90.65, HTSUS, as “[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: of other materials: other: other.”

ISSUE:

Whether the Starbucks’ sprig, made of artificial paper leaves should be classified in heading 9505, HTSUS, as a festive article or in heading 6702, HTSUS, as an article made of artificial flowers, foliage or fruit.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

6702	Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit:	*	*	*
6702.90	Of other materials:	*	*	*
	Other	*	*	*
6702.90.65	Other.	*	*	*
9505	Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof:	*	*	*
9505.10	Articles for Christmas festivities and parts and accessories thereof:	*	*	*
	Other	*	*	*
9505.10.50	Other.	*	*	*

In NY K88101, CBP determined that the sprig was not a festive article and classified it as “other artificial flowers, foliage and fruit and parts

thereof; articles made of artificial flowers, foliage or fruit: of other materials” of subheading 6702.90.6500, HTSUS. NY K88101 found that classification under heading 9505, as a festive article was not applicable to the subject merchandise because it was not a complete article for decorative purposes like wreaths and swags and because it was not used to decorate the home. Starbucks believes that NY K88101, dated August 5, 2004, is not correct. Instead, Starbucks contends that the sprig should be classified as other articles of Christmas festivities and parts and accessories thereof of subheading 9505.10.5020, HTSUS. Starbucks is of the view that the sprig is a complete article and satisfies the criteria used to classify merchandise as festive articles. The chapter notes to Chapter 95, HTSUS, do not exclude artificial flowers and foliage. Similarly, the chapter notes to Chapter 67, HTSUS, do not exclude festive articles.⁴

We are thus left with the question as to whether the sprig in question is classifiable in heading 9505, HTSUS, as a festive article or in heading 6702, HTSUS, as an article made of artificial flowers, foliage or fruit. If the article in question is prima facie classifiable in headings 9505 and 6702, we believe that GRI 3 must be consulted. We must therefore first determine whether the subject sprig qualifies as a festive article of heading 9505, HTSUS.

In *Midwest of Cannon Falls, Inc. v. United States*, 20 C.I.T. 123 (Ct. Int’l Trade, 1996), *aff’d in part, rev’d in part*, 122 F.3d 1423 (Fed. Cir. 1997) (hereinafter *Midwest*), the Court addressed the scope of heading 9505, HTSUS, specifically the class or kind of merchandise termed “festive articles,” and provided guidelines for classification of such goods in the heading.

Previously, CBP has noted that several items composed of artificial foliage satisfy the *Midwest* guidelines and are recognized as festive articles for the Christmas holiday. These items include evergreen branches, poinsettia, pine cone, pine needle leaves, holly leaves, laurel leaves, holly berries or mistletoe, which are incorporated into a wreath, centerpiece, candle ring, garland, swag or sprig. See HQ 967237, dated September 9, 2004; See also, NY I89773, dated January 27, 2003.

When examining the sprig, as a whole, it must be evident that the merchandise is associated or used with the particular festival of Christmas. Furthermore, in HQ 950999, dated April 16, 1992, garlands with artificial foliage were classified in 9505.10.40, HTSUS, as festive articles for Christmas festivities. The following is the language from HQ 950999 wherein CBP explained which types of garlands, wreaths, etc. would be classifiable in 9505.10, HTSUS, as festive articles for Christmas festivities.

Those artificial foliage items which qualify as Christmas articles of subheading 9505.10 include wreaths, garlands, candle rings, centerpieces—complete articles—made up of foliage commonly and traditionally associated with Christmas [i.e., artificial poinsettias, pine cones, pine needle

⁴Note 1(e) to Chapter 67, HTSUS, does not specifically exclude festive articles from Chapter 67, HTSUS. It states that “1. [t]his chapter does not cover: (e) [t]oys, sports equipment, or carnival articles (chapter 95); . . .” Also, Note 3 to Chapter 67, HTSUS, states that “Heading 6702 does not cover: (b) Artificial flowers, foliage or fruit of pottery, stone, metal, wood or other materials, obtained in one piece by molding, forging, carving, stamping or other process, or consisting of parts assembled otherwise than by binding, gluing, fitting into one another or similar methods.” Inasmuch as the subject merchandise is artificial flowers or foliage consisting of parts assembled by binding, gluing, fitting into one another or similar methods, it is not excluded from heading 6702, HTSUS.

leaves, evergreen branches, holly berries, holly leaves, laurel leaves, or mistletoe (singly or combination thereof)]. (This largely restates Customs position under the TSUS). These articles can be further decorated with plastic sleighs, miniature Santas, glass balls, ribbon, etc. Stylized/modern versions of Christmas wreaths, garlands, etc. (i.e., those articles decorated with neon poinsettias, mauve glass balls, etc.) also qualify as festive.

We must determine nevertheless whether the Starbucks decorative article under consideration can be classified as a festive article in heading 9505, HTSUS, in light of the *Midwest* decisions. In making this determination, we must analyze whether the decoration under consideration fits the criteria for festive articles that are classified in heading 9505, HTSUS. The Court of International Trade in *Midwest* was aided by the criteria established in the case *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), *cert. denied*, 429 U.S. 979 (hereinafter "*Carborundum*"). Those criteria include the general physical characteristics of the article, the expectation of the ultimate purchasers, the channels, class or kind of trade in which the item moves, the environment of the sale (accompanying accessories and the manner in which the item is advertised and displayed), the use in the same manner as merchandise which defines the class, the economic practicality of so using the import, and recognition within the trade of this use. In considering the *Midwest* standards, we believe that the sprig is not classifiable in heading 9505, HTSUS.

As stated in HQ W968134, dated March 13, 2007, it is our view that the sprig under consideration in this instance is not immediately recognizable as a Christmas decoration. Although Starbucks has presented evidence to show that it was intended for use as a decoration in its stores during Christmas time, we believe that based on its appearance, the sprig does not seem to be exclusively associated with Christmas celebrations. In other words, in our judgment, there seems to be no reason why it could not be used as a decoration at another time of the year. The sprig that is under consideration in this instance is not the customary sprig that is typically exhibited as Christmas decorations. It is not made of tinsel nor does it have the usual customary Christmas colors of red and green. Although it is made of white paper and is supposed to resemble poinsettia leaves and flowers, we do not believe that most people would be able to discern that the white paper leaves are supposed to be artificial poinsettia leaves and flowers that are connected with the Christmas celebration. While the sprig is certainly used by Starbucks as a decoration during the Christmas holiday, if it was set apart from other Christmas decorations, we do not think that it would immediately stand out as an item that would only be seen at Christmas time. Rather, in our judgment, the sprig could be easily used to decorate an area during other celebratory occasions besides the Christmas holidays. Thus, we believe that it would not be aberrant to display the sprig as a decoration at times during the year other than Christmas.

Starbucks claims that the sprig was used in its stores as a decoration only during the Christmas holiday season and that it had no other use. Starbucks further claims that the chapter notes and ENs to heading 9505, HTSUS, do not exclude articles from the heading if they are not primarily for use in the home. To support this point, Starbucks submitted a copy of instructions that were issued to its stores from a Holiday 2004 Workbook concerning the display of the holiday decorations. These instructions indicate

that all stores will receive the Starbucks holiday trim to create a festive atmosphere with a unified theme. The holiday trim will be used from holiday setup through December 25, and on December 26, it will be removed. The instructions further explained that the holiday decorations will be removed and SKU'd for sale, but that the holiday trim is not to be sold prior to December 26.

Although we recognize that, on a case-by-case basis, an article displayed outside the house may be found to be a festive article and that sprigs may be considered complete articles, such considerations are unnecessary in this case. We disagree with Starbucks's contention that the subject sprig was intended as a decoration only during the Christmas holiday season and that it had no other use. As stated above, in this instance, the fact that the subject merchandise is used during the Christmas holidays did not make it a festive article of heading 9505, HTSUS. We note that the sprig was offered for sale to consumers after the Christmas holiday. Thus, it is not unreasonable to conclude that consumers other than Starbucks could buy the sprig and subject it to a different use. The sprig, we therefore believe, is not closely associated with the Christmas holiday as it may be equally used and displayed on occasions other than the Christmas holidays. Accordingly, we find that the sprig in this case is not classified as a festive article in heading 9505, HTSUS, but instead in heading 6702, HTSUS, which provides for: "Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit."⁵ The ENs to heading 6702, HTSUS, which provides for artificial foliage, support the classification of the subject sprig as articles made of artificial flowers, foliage or fruit.⁶

HOLDING:

By application of GRI 1, the sprig, identified as the "Christmas Basket Garland" is classified in heading 6702, HTSUS. It is specifically provided for in subheading 6702.90.6500, HTSUS, which provides for: "Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage

⁵ For a similar finding see HQ W968134, dated March 13, 2007, a protest decision involving the same merchandise considered in this case.

⁶ The Harmonized Commodity Description and Coding System Explanatory Notes (EN's) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the EN's provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the Harmonized System. CBP believes the EN's should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989). The EN to heading 6702, HTSUS, which states, in pertinent part:

This heading covers:

- (1) Artificial flowers, foliage and fruit in forms resembling the natural products, made by assembling various parts (by binding, glueing, assembling by fitting into one another or similar methods). This category also includes conventional representations of flowers, foliage or fruit made up in the manner of artificial flowers, etc.
- (2) Parts of artificial flowers, foliage or fruit (e.g., pistils, stamens, ovaries, petals, calyces, leaves and stems).
- (3) Articles made of artificial flowers, foliage or fruit (e.g., bouquets, garlands, wreaths, plants), and other articles, for use as trimmings or as ornaments, made by assembling artificial flowers, foliage or fruit.

* * *

or fruit: Of other materials: Other: other.” The column one duty rate is 17 percent. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY K88101, dated August 5, 2004, is modified with respect to its legal analysis. The classification of the item described therein is unchanged. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

