

U.S. Customs and Border Protection

CBP Decisions

CBP Dec. 08-30

Container Seals on Maritime Cargo

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

ACTION: General notice.

SUMMARY: This document brings attention to the existing statutory requirement by which all maritime containers in transit to the United States are required to be sealed with a seal meeting the ISO/PAS 17712 standard and specifies the date on which the requirement shall take effect.

EFFECTIVE DATE: October 15, 2008.

FOR FURTHER INFORMATION CONTACT:

Leslie Fleming Luczkowski, Cargo and Conveyance Security, Office of Field Operations, (202) 344-1927.

SUPPLEMENTARY INFORMATION

Background

Pursuant to 6 U.S.C. 944, as amended by Section 1701 of Title XVII (“Maritime Cargo”) of the Implementing Recommendations of the 911 Commission Act of 2007 (911 Act), the Secretary of Homeland Security is authorized to establish by regulation minimum standards and procedures for securing containers in transit to the United States. The 911 Act provides that if the Department of Homeland Security (DHS) does not issue an interim final rule for establishing such minimum standards and procedures by April 1, 2008, effective no later than October 15, 2008, all containers in transit to the United States shall be required to be sealed with a seal meeting the International Organization for Standardization Publicly Available Specification 17712 (ISO/PAS 17712) standard for sealing containers. As DHS has not issued regulations establishing minimum standards and procedures for securing such containers at this time, pursuant to 6 U.S.C. 944, all maritime containers in transit to the

U.S. by vessel shall be required to be sealed with a seal meeting the ISO/PAS 17712 standard for sealing containers no later than October 15, 2008.

As 6 U.S.C. 944 imposes a self-executing legal requirement, DHS is not required to issue regulations for this requirement to be implemented. This document does not impose additional requirements beyond those found in 6 U.S.C. 944. This document simply serves to bring attention to the existing statutory requirement that all maritime containers in transit to the United States by vessel are required to be sealed with a seal meeting the ISO/PAS 17712 standard and specifies the date on which the requirement takes effect.

The ISO/PAS 17712 Standard

Generally, ISO/PAS 17712 requires that container freight seals meet or exceed certain standards for strength and durability so as to prevent accidental breakage, early deterioration (due to weather conditions, chemical action, etc.) or undetectable tampering under normal usage. ISO/PAS 17712 also requires that each seal be clearly and legibly marked with a unique identification number.

Copies of ISO/PAS 17712 may be purchased from the International Organization for Standardization, 1, rue de Varembé, CH-1211 Geneva 20, Switzerland or the American National Standards Institute, 25 West 43rd Street, New York, NY 10036.

Containers Subject to the 6 U.S.C. 944 Sealing Requirement

All loaded containers, including foreign cargo remaining on board (FROB), arriving by vessel at a port of entry in the United States on or after October 15, 2008, are required to be sealed with a seal meeting the ISO/PAS 17712 standard.

U.S. Customs and Border Protection (CBP) recognizes that there are types of containers that cannot be readily secured by use of a container freight seal meeting the ISO/PAS 17712 standard. These include tanks, non-standard containers (such as open top containers), or containers that simply cannot accommodate a seal meeting the ISO/PAS 17712 standard (such as custom built containers). These types of containers are not subject to the statutory requirement.

Enforcement of the 6 U.S.C. 944 Sealing Requirement

CBP will consider 6 U.S.C. 944 to be violated if a loaded container that is subject to the sealing requirements arrives by vessel at a port of entry in the United States on or after October 15, 2008, either (i) with no seal or (ii) with a seal that does not meet the ISO/PAS 17712 standard. These violations derive from a failure to properly seal the container.

CBP may assess a civil penalty against the party responsible for the violation of 6 U.S.C. 944 under 19 U.S.C. 1595a(b) for the at-

tempted introduction of merchandise into the United States contrary to law.

CBP will phase in penalty assessments for violation of the container sealing requirements.

Trade Act Requirements

CBP also takes this opportunity to remind vessel carriers that pursuant to 19 CFR 4.7(b)(2) and 4.7a(c)(4)(xiv)), they must transmit all seal numbers to CBP 24 hours before cargo is laden aboard a vessel at a foreign port via the Vessel Automated Manifest System (AMS).

Dated: August 4, 2008

THOMAS S. WINKOWSKI,
*Assistant Commissioner,
Office of Field Operations.*

[Published in the Federal Register, August 7, 2008 (73 FR 46029)]

Docket No. USCBP-2006-0037

EXPANSION OF GLOBAL ENTRY PILOT PROGRAM

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

ACTION: General notice.

SUMMARY: Customs and Border Protection (CBP) is currently conducting a pilot international registered traveler program, referred to as Global Entry, at three airports. This document announces the expansion of the pilot to four additional airports and to additional terminals at one of the airports at which Global Entry is currently operational.

EFFECTIVE DATES: The pilot will be expanded to include the additional locations on or after August 1, 2008. The exact starting date for each airport location will be announced on the CBP website at www.cbp.gov. The pilot will continue for a minimum of six months. Applications are currently being accepted and will be accepted for the duration of the pilot. Comments concerning this notice and all aspects of the announced pilot may also be submitted throughout the duration of the pilot.

FOR FURTHER INFORMATION CONTACT: Fiorella Michelucci, Office of Field Operations, (202) 344-2564.

SUPPLEMENTARY INFORMATION:**Background**

In a General Notice published in the **Federal Register** (73 FR 19861) on April 11, 2008, CBP announced a pilot international registered traveler program, then referred to as International Registered Traveler (IRT), scheduled to commence operations at three initial airports on June 10, 2008. In a notice published in the **Federal Register** (73 FR 30416) on May 27, 2008, CPB announced that the program is now known as Global Entry and that the starting date had been moved to June 6, 2008. The pilot began operations as scheduled at three initial airport locations: John F. Kennedy International Airport, Jamaica, New York (JFK); the George Bush Intercontinental Airport, Houston, Texas (IAH); and the Washington Dulles International Airport, Sterling, Virginia (IAD).

The Global Entry pilot program allows for the expedited clearance of pre-approved, low-risk travelers into the United States. Among other things, the April 11, 2008 notice contained a description of the program, the eligibility criteria and the application and selection process. The April 11, 2008 notice further stated that the pilot would begin operation at a limited number of additional airports to be announced by a future notice published in the **Federal Register**. This notice announces these additional airports and the dates on which operation is expected to begin.

All aspects of the program as described in the April 11 notice are still in effect except for the changes set forth in this notice. Applications to participate are currently being accepted and will be accepted for the duration of the pilot. Comments will be accepted throughout the duration of the pilot to the addresses provided in the April 11, 2008 notice.

NEW AIRPORTS AND DATES OF OPERATION

The Global Entry pilot will begin on or after August 1, 2008, at the following airports: Los Angeles International Airport, Los Angeles, California (LAX); Hartsfield-Jackson Atlanta International Airport, Atlanta, Georgia (ATL); Chicago O'Hare International Airport, Chicago, Illinois (ORD); and Miami International Airport, Miami, Florida (MIA). Additionally, although the Global Entry pilot is currently operational at Terminal 4 of John F. Kennedy International Airport, Jamaica, New York (JFK), it will become operational at the remaining terminals of that airport as well, also on or after August 1, 2008. The exact dates of the expansion of the Global Entry pilot to the individual airports will be announced at www.cbp.gov.

DATED: August 8, 2008

THOMAS S. WINKOWSKI,
*Assistant Commissioner,
Office of Field Operations.*

[Published in the Federal Register, August 13, 2008 (73 FR 47204)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Harbor Maintenance Fee

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

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0055

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: Harbor Maintenance Fee. 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** (73 FR 33839) on June 13, 2008, 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 [Insert date 30 days from the date this notice is published in the **Federal Register**].

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 the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, 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: Harbor Maintenance Fee

OMB Number: 1651–0055

Form Number: Forms 349 and 350

Abstract: This collection of information will be used to verify that the amount of Harbor Maintenance Fee paid is accurate and current for each individual, importer, exporter, shipper, or cruise line.

Current Actions: There are no changes to the information collection except that respondents may submit their HMF information and payments electronically using Pay.gov. This submission is being made to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 1,300

Estimated Number of Responses: 5,200

Estimated Time Per Response: 30 minutes

Estimated Total Annual Burden Hours: 2,816

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: August 7, 2008

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

[Published in the Federal Register, August 15, 2008 (73 FR ?????)]

GENERAL NOTICE

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 7 2008)

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

SUMMARY: Presented herein are the copyrights, trademarks, and trade names recorded with U.S. Customs and Border Protection during the month of July 2008. The last notice was published in the CUSTOMS BULLETIN on July 23, 2008.

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

FOR FURTHER INFORMATION CONTACT: Delois Johnson, Paralegal, Intellectual Property Rights Branch, (202) 572-8710.

Dated: August 11, 2008

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

CBP IPR RECORDATION - JULY 2008

| Recordation No. | Effective Date | Expiration Date | Name of Cop/Tm/Tm | Owner Name | GM Restrictive |
|-----------------|----------------|-----------------|-----------------------------------|--|----------------|
| TMK 08-00532 | 7/14/2008 | 2/8/2015 | REVLIMID | CELGENE CORPORATION | No |
| TMK 08-00533 | 7/14/2008 | 11/14/2016 | THALOMID AND DESIGN | CELGENE CORPORATION | No |
| TMK 08-00531 | 7/14/2008 | 4/27/2009 | THALOMID | CELGENE CORPORATION | No |
| TMK 08-00530 | 7/14/2008 | 5/9/2018 | RAYMOND WEIL | SEVILLE WATCH CORPORATION | No |
| TMK 08-00529 | 7/14/2008 | 4/27/2013 | GRANDTREK | SUMITOMO RUBBER INDUSTRIES, LTD. | No |
| TMK 08-00515 | 7/14/2008 | 6/28/2010 | 3M | 3M COMPANY | No |
| TMK 08-00525 | 7/14/2008 | 3/25/2015 | COAST | THE DIAL CORPORATION | No |
| TMK 08-00524 | 7/14/2008 | 11/6/2017 | HITACHI LOGO | KABUSHIKI KAISHA HITACHI SEISAKUSHO D/B/A HITACHI, LTD. | No |
| TMK 08-00523 | 7/14/2008 | 11/6/2017 | HITACHI | KABUSHIKI KAISHA HITACHI SEISAKUSHO D/B/A HITACHI, LTD. | No |
| TMK 08-00514 | 7/14/2008 | 5/29/2014 | CRAYOLA | CRAYOLA PROPERTIES, INC. | No |
| TMK 08-00526 | 7/14/2008 | 10/4/2013 | DESIGN ONLY | CRAYOLA PROPERTIES, INC. | No |
| TMK 08-00527 | 7/14/2008 | 10/1/2015 | DESIGN ONLY | CRAYOLA PROPERTIES, INC. | No |
| TMK 08-00520 | 7/14/2008 | 7/1/2012 | SILLY PUTTY | CRAYOLA PROPERTIES, INC. | No |
| TMK 08-00528 | 7/14/2008 | 10/30/2017 | COLOR EXPLOSION | CRAYOLA PROPERTIES, INC. | No |
| TMK 08-00521 | 7/14/2008 | 11/16/2016 | PUREX | DIAL BRANDS, INC. | No |
| TMK 08-00522 | 7/14/2008 | 4/13/2014 | CC CC CC CC | COACH, INC. | No |
| TMK 08-00512 | 7/14/2008 | 6/17/2017 | INTELLIMOUSE | MICROSOFT CORPORATION | No |
| TMK 08-00513 | 7/14/2008 | 9/18/2017 | ZUNE | MICROSOFT CORPORATION | No |
| TMK 08-00510 | 7/14/2008 | 6/10/2018 | BB | TEXAS INSTRUMENTS TUCSON CORPORATION | No |
| COP 08-00040 | 7/14/2008 | 7/14/2028 | "PEACOCK GARDEN" DESIGN | TAR-HONG MELAMINE USA, INC. (EMPLOYER FOR HIRE OF LIN-CHI LIU) | No |
| TMK 08-00517 | 7/14/2008 | 4/16/2016 | GRASPIC | SUMITOMO RUBBER INDUSTRIES, LTD. | No |
| TMK 08-00511 | 7/14/2008 | 1/17/2016 | BEIJING 2008 & DESIGN | UNITED STATES OLYMPIC COMMITTEE | No |
| TMK 08-00518 | 7/14/2008 | 2/7/2016 | COTTON NATURAL STRETCH AND DESIGN | COTTON INCORPORATED | No |
| TMK 08-00519 | 7/14/2008 | 3/12/2012 | TOSHIBA | KABUSHIKI KAISHA TOSHIBA, TRADING AS TOSHIBA CORPORATION | No |
| TMK 08-00535 | 7/16/2008 | 9/30/2013 | HOME FREE | PATRICIA ANN BLYLEVEN | No |
| TMK 08-00534 | 7/16/2008 | 7/19/2014 | KAMAYAN | CONCENTRATED FOODLINE CORP. | No |
| TMK 08-00536 | 7/17/2008 | 9/3/2015 | ACCUSHARP | FORTUNE PRODUCTS INC | No |
| TMK 08-00537 | 7/17/2008 | 9/16/2017 | FLEXEEL | COILHOSE PNEUMATICS COMPANY | No |

CBP IPR RECORDATION - JULY 2008

| TMK ID | 7/11/2008 | 9/16/2013 | BEIJING 2008 | UNITED STATES OLYMPIC COMMITTEE | No |
|--------------|-----------|------------|---------------------------------|---|-----|
| TMK 08-00516 | 7/11/2008 | 9/16/2013 | BEIJING 2008 | UNITED STATES OLYMPIC COMMITTEE | No |
| TMK 08-00555 | 7/21/2008 | 12/4/2017 | CHRISTIAN AUDIGIER | CHRISTIAN AUDIGIER | No |
| TMK 08-00556 | 7/21/2008 | 5/20/2018 | T-TIMER | PACIFIC BIOSCIENCE LABORATORIES, INC. | No |
| TMK 08-00557 | 7/21/2008 | 12/18/2017 | ROADSTER | DR. ING. H.C.F. PORSCHÉ AKTIENGESELLSCHAFT | No |
| TMK 08-00558 | 7/21/2008 | 11/13/2017 | ROADSTER | DR. ING. H.C.F. PORSCHÉ AKTIENGESELLSCHAFT | No |
| TMK 98-00620 | 7/21/2008 | 12/23/2017 | ALPURA AND COW DEVICE | GAMADEROS PRODUCTORES DE LECHE | No |
| TMK 98-00575 | 7/21/2008 | 5/3/2018 | BAFFLER | COBRA GOLF INCORPORATED | No |
| TMK 98-00114 | 7/21/2008 | 4/5/2018 | BOSTON COLLEGE | THE TRUSTEES OF BOSTON COLLEGE | Yes |
| TMK 98-00116 | 7/21/2008 | 6/7/2018 | BOSTON COLLEGE EAGLES | THE TRUSTEES OF BOSTON COLLEGE | Yes |
| TMK 98-00117 | 7/21/2008 | 4/5/2018 | B.C. EAGLES | THE TRUSTEES OF BOSTON COLLEGE | Yes |
| TMK 99-00478 | 7/21/2008 | 7/2/2018 | HARVEYS | BEAM GLOBAL UK LIMITED | No |
| TMK 08-00559 | 7/21/2008 | 5/13/2018 | H2O MOP | THANE INTERNATIONAL, INC. | No |
| TMK 08-00560 | 7/21/2008 | 2/13/2011 | DESIGN (AIR CLEANER COVER) | S & S CYCLE, INC. | No |
| TMK 08-00561 | 7/21/2008 | 6/3/2018 | RELEANA | MILLENNIUM MEDICAL SPA, LLC | No |
| TMK 08-00591 | 7/21/2008 | 6/16/2018 | MANOVALVE | APPLIED PRECISION INC. | No |
| TMK 01-00582 | 7/21/2008 | 9/20/2018 | DIFLUCAN | Pfizer Inc. | No |
| TMK 03-00252 | 7/21/2008 | 1/4/2013 | HUBLOT AND DESIGN | HUBLOT SA, GENEVE | No |
| TMK 08-00562 | 7/21/2008 | 11/11/2013 | POWER PLATE & DESIGN | POWER PLATE NORTH AMERICA, INC. | No |
| TMK 08-00563 | 7/21/2008 | 4/22/2018 | COBRA | TITAN POWER INDUSTRIES, LLC | No |
| TMK 08-00564 | 7/21/2008 | 11/6/2017 | GLOBAL GODDESS | GLOBAL GODDESS BEAUTY, INC. | No |
| TMK 04-00752 | 7/21/2008 | 6/20/2010 | MISCELLANEOUS DESIGN (BLUE BOX) | TIFFANY (NJ) LLC. | No |
| TMK 04-00684 | 7/21/2008 | 2/22/2013 | TIFFANY | TIFFANY (NJ) LLC. | No |
| TMK 04-00585 | 7/21/2008 | 2/22/2013 | TIFFANY & CO. | TIFFANY (NJ) LLC. | No |
| TMK 05-00664 | 7/21/2008 | 12/24/2011 | T & CO. | TIFFANY (NJ) LLC. | No |
| TMK 05-00428 | 7/21/2008 | 6/1/2013 | TIFFANY & CO. | TIFFANY (NJ) LLC. | No |
| TMK 05-00952 | 7/21/2008 | 7/14/2018 | PROFORCE | PROTEAM, INC. | No |
| TMK 88-00343 | 7/21/2008 | 3/21/2018 | VHS | VICTOR COMPANY OF JAPAN | No |
| TMK 88-00629 | 7/21/2008 | 4/3/2018 | RAMON ALLONES (STYLIZED) | GENERAL CIGAR CO. INC. | No |
| TMK 08-00552 | 7/21/2008 | 10/30/2017 | OLEVIA | SYNTAX-BRILLIAN CORPORATION | No |
| TMK 08-00550 | 7/21/2008 | 6/26/2011 | S.T.E.P.S. | CORPORATION DELAWARE | No |
| TMK 08-00551 | 7/21/2008 | 4/14/2012 | ARROW | CELENE CORPORATION | No |
| TMK 08-00549 | 7/21/2008 | 4/22/2018 | M W AND DESIGN | CLUETT PEABODY RESOURCES CORPORATION | No |
| TMK 08-00548 | 7/21/2008 | 11/5/2011 | SEA RAY | YH FOREVER INC | No |
| TMK 08-00545 | 7/21/2008 | 5/27/2017 | PURE & NATURAL | BRUNSWICK CORPORATION | No |
| TMK 08-00546 | 7/21/2008 | 6/17/2018 | VOSS | DIAL BRANDS, INC. | No |
| | | | | VOSS OF NORWAY ASA | No |

CBP IPR RECORDATION - JULY 2008

| | | | | | |
|--------------|-----------|------------|--|------------------------------------|----|
| TMK 08-00547 | 7/21/2008 | 1/4/2015 | M.D. FORMULATIONS | MD FORMULATIONS, INC. | No |
| TMK 08-00543 | 7/21/2008 | 9/28/2014 | SCHUMACHER | SCHUMACHER ELECTRIC CORPORATION | No |
| TMK 08-00542 | 7/21/2008 | 12/11/2017 | DRAPER | DRAPER, INC. | No |
| TMK 08-00544 | 7/21/2008 | 1/28/2016 | RENUZZI | DIAL BRANDS, INC. | No |
| TMK 08-00538 | 7/21/2008 | 2/2/2010 | RIGHT GUARD | THE DIAL CORPORATION | No |
| TMK 08-00540 | 7/21/2008 | 3/4/2018 | WELDBEND | WELDBEND CORPORATION | No |
| TMK 08-00539 | 7/21/2008 | 8/12/2017 | AMERICAN EAGLE OUTFITTERS | RETAIL ROYALTY COMPANY CORPORATION | No |
| TMK 08-00541 | 7/21/2008 | 3/10/2018 | ARMANI | GA. MODEFINE S.A. | No |
| TMK 08-00554 | 7/21/2008 | 6/17/2018 | CFC | M&B ENTERPRISES OF ARIZONA, INC | No |
| TMK 08-00553 | 7/21/2008 | 5/13/2017 | BALI-SONG IN THE MIDDLE OF A BUTTERFLY | BENCHMADE KNIFE COMPANY, INC. | No |

Total Records: 73
Date as of: 8/1/2008

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

Washington, DC, August 13, 2008

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.*

**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE CLASSIFICATION OF
A ROTARY CUTTING BLADE**

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

ACTION: Revocation of a classification ruling letter and revocation of treatment relating to the classification of a rotary cutting blade.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that the Bureau of Customs and Border Protection (CBP) is revoking a ruling letter relating to the classification of a rotary cutting blade. CBP is also modifying or revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on April 30, 2008, in Volume 42, Number 19, of the Customs Bulletin. CBP received no comments in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 27, 2008.

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Tariff Classification and Marking Branch: (202) 572-8713.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke one ruling letter pertaining to the tariff classification of a rotary cutting blade was published in the April 30, 2008, Customs Bulletin, Volume 42, Number 19. No comments were received in response to the notice.

As stated in the proposed notice, this revocation 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., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise 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 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 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 Headquarters Ruling Letter (HQ) 085831, dated November 13, 1989, a rotary cutting blade was classified in subheading 8211.94.50, HTSUS, which provides for “Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof: Other: Blades: Other.” Since the issuance of that ruling, CBP has reviewed the classification of the rotary cutting blade and has determined that the cited ruling is in error.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ 085831 and is revoking or modifying any other ruling not specifically identified, to reflect the classification of the rotary cutting blade according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H012692, set forth as an attachment 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. Before taking this action, we will give consideration to any written comments timely received.

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

DATED: August 6, 2008

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

Attachment



DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H012692
August 6, 2008
CLA-2 OT:RR:CTF:TCM H012692 KSH
CATEGORY: Classification
TARIFF NO.: 8205.59.5560

HORST F. BIERNATH
BIMEX, INCORPORATED
3617 Shallowford Road
Atlanta, GA 30340-1073

RE: Revocation of HQ 085831; Rotary Cutting Blade.

DEAR MR. BIERNATH:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered Headquarters Ruling Letter (HQ) 085831, issued to you on November 13, 1989, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a rotary cutting blade. The cutting blade was classified under heading 8211, HTSUS, which provides for "Knives with cutting blades, serrated or not, other than knives of heading 8208, and blades and other base metal parts thereof." We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes HQ 085831.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published on April 30, 2008, in Volume 42, Number 19, of the Customs Bulletin. CBP received no comments in response to the notice. However, upon further review of the proposed ruling, CBP has determined that inasmuch as the

blade is made of steel, the correct subheading should be 8205.59.55, HTSUS, rather than 8205.59.80, HTSUS.

FACTS:

The product at issue is a circular steel cutting blade. It is a rotary cutting portion of a hand-held device used on quilting and sewing applications to cut fabric. After importation the steel blade will be assembled in a plastic housing with handle. It will be packaged together with a plastic two-piece adjustable guide arm and steel wing nut in a cardboard backed blister pack.

ISSUE:

Whether the rotary cutting blade is classified as an other hand tool of heading 8205, HTSUS, heading 8208 as a cutting blade for a machine or mechanical appliance or in heading 8211, HTSUS, as blade for knives.

LAW AND ANALYSIS:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is Customs and Border Protections' (CBP) practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 8205, HTSUS, provides for: "Handtools (including glass cutters) not elsewhere specified or included; blow torches and similar self-contained torches; vises, clamps and the like, other than accessories for and parts of machine tools; anvils; portable forges; hand- or pedal-operated grinding wheels with frameworks; base metal parts thereof."

EN 82.05, HTSUS, states as follows:

This heading covers all hand tools not included in other headings of this Chapter or elsewhere in the Nomenclature . . . , together with certain other tools or appliances specifically mentioned in the title.

It includes a large number of hand tools (including some with simple hand-operated mechanisms such as cranks, ratchets or gearing). This group of tools includes:

* * * *

(E) Other hand tools (including glaziers' diamonds).

This group includes:

(1) A number of household articles, including some with cutting blades but **not including** mechanical types (see the Explanatory Note to **heading 82.10**), having the character of tools and accordingly not proper to heading 73.23, such as:

Flat irons (gas, paraffin (kerosene), charcoal, etc., types, but not electric irons which fall in **heading 85.16**), curling irons; bottle openers, cork

screws, simple can openers (including keys); nut-crackers; cherry stoners (spring type); button hooks; shoe horns; “steels” and other knife sharpeners of metal; pastry cutters and jagers; graters for cheese, etc.; “lightning” mincers (with cutting wheels); cheese slicers, vegetable slicers; waffling irons; cream or egg whisks, egg slicers; butter curlers; ice picks; vegetable mashers; larding needles; pokers, tongs, rakers and cover lifts for stoves or fire places.

* * *

(7) Miscellaneous hand tools such as farriers’ paring knives, toeing knives, hoof pickers and hoof cutters, cold chisels and punches; riveters’ drifts, snaps and punches; non-plier type nail lifters, case openers and pin punches; tyre levers; cobblers’ awls (without eyes); upholsterers’ or bookbinders’ punches; soldering irons and branding irons; metal scrapers; non-plier type saw sets; mitre boxes; cheese samplers and the like; earth rammers; grinding wheel dressers; strapping appliances for crates, etc., **other than** those of **heading 84.22** (see the relevant Explanatory Note); spring operated “pistols” for stapling packages, paper-board, etc.; cartridge operated riveting, wall-plugging, etc., tools; glass blowers’ pipes; mouth blow pipes; oil cans and oilers (including those with pump or screw mechanisms), grease guns.

Heading 8208, HTSUS, provides for “Knives and cutting blades, for machines or for mechanical appliances.” The EN to heading 8208, HTSUS, states in relevant part:

This heading applies to **unmounted** knives or cutting blades, rectangular, circular or of other shapes, for machines or for mechanical appliances. It **does not**, however, **cover** cutting blades or knives for the hand tools of **headings 82.01 to 82.05** (e.g., plane irons).

The instant rotary cutting blade is not for use with machines or mechanical appliances. As such, it cannot be classified in heading 8208, HTSUS.

Heading 8211, HTSUS, provides for “Knives with cutting blades, serrated or not (including paring knives), other than knives of heading 8208, and blades therefor.

The EN to heading 8211, HTSUS, states that:

This heading covers knives with cutting blades, serrated or not, with the exception of those included in heading 82.08, and of certain tools and tableware sometimes called “knives” but covered implicitly or explicitly by other headings of this Chapter (for example, hay knives of **heading 82.01**, and other articles listed in the exclusions at the end of this Explanatory Note).

The heading covers :

(1) **Non-folding table knives. . .**

(2) **Non-folding knives for kitchen, trade or other uses**, generally of a less decorative appearance than the preceding type. This category includes, inter alia :

Butchers’ knives; knives for bookbinders or papermakers; tanners’, furriers’, saddlers’ or cobblers’ knives, with or without handles; beekeepers’ uncapping knives; gardeners’ pruning knives, etc.; hunting knives, sheath knives; oyster knives; fruit peeling knives.

(3) **Folding knives . . .**

(4) Knives with several interchangeable blades . . .

The heading also covers blades for the manufacture of the knives listed above which may be in the form of crude or machined blanks, polished or completely finished blades. Handles of base metal for the knives of this heading are also included.

Explicit in the terms of the headings as well as the Explanatory Notes to heading 8211, HTSUS, is that blades of this heading are for the manufacture of knives included in the heading. The types of knives covered by heading 8211, HTSUS, are listed in the EN to the heading.

Neither the legal text nor the ENs to heading 8211, HTSUS, specifically mention rotary cutting blades of this kind. Classification is therefore dependent upon the canon of construction known as *ejusdem generis* which literally means “of the same class or kind.” *Ejusdem generis* 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). “As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Id.* at 157.

The subject rotary cutting blades do not possess the same essential characteristics as the blades incorporated into the knives named in the legal text to heading 8211, HTSUS, and the exemplars in the EN to heading 8211, HTSUS. The types of knives listed in the EN to heading 8211, HTSUS, all feature a straight edge blade. None of the blades utilized in the aforementioned knives are rotary or circular. Heading 8205, HTSUS, captures all other handtools not otherwise specified or included and their parts. This is a blade used in a hand held device by home sewers and quilters. EN 8205 (E) mentions small household handtools with rotary blades. We find that heading 8205, HTSUS, captures the instant merchandise.

HOLDING:

By application of GRI 1, the circular steel cutting blade is classified in heading 8205, HTSUS. It is provided for in subheading 8205.59.5500, HTSUS, which provides for: “Handtools (including glass cutters) not elsewhere specified or included; blow torches and similar self-contained torches; vises, clamps and the like, other than accessories for and parts of machine tools; anvils; portable forges; hand- or pedal-operated grinding wheels with frameworks; base metal parts thereof: Other handtools (including glass cutters) and parts thereof: Other: Other: Other: Of iron or steel: Other, Other (including parts).” The column one, general rate of duty is 5.3% *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the world wide web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

HQ 085831, dated November 13, 1989, is REVOKED.

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

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

**REVOCAION OF THREE RULING LETTERS AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF “MARBITS”**

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

ACTION: Notice of revocation of three tariff classification ruling letters and revocation of treatment relating to the classification of “marbits.”

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking three ruling letters relating to the tariff classification of the extruded marshmallow products known as “marbits” 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 of the proposed action was published in the Customs Bulletin, Vol. 42, No. 27, on June 25, 2008. 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 October 27, 2008.

FOR FURTHER INFORMATION CONTACT: Richard Mojica, Tariff Classification and Marking Branch, at (202) 572–8789.

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 in-

formation 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 was published in the Customs Bulletin, Vol. 42, No. 27, on June 25, 2008, proposing to revoke three ruling letters pertaining to the tariff classification of marbits. No comments were received in response to the notice. As stated in the proposed notice, this revocation covers New York Ruling Letter (NY) N009017, dated June 5, 2007 (Attachment A), NY H86740, dated February 21, 2002 (Attachment B), and NY J80284, dated February 3, 2003 (Attachment C), as well as 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 intends to revoke 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 N009017, NY H86740 and NY J80284, CBP classified marbits under heading 2106, HTSUS, which provides for: "Food preparations not elsewhere specified or included." CBP has determined that the tariff classification set forth in those rulings is incorrect. It is now CBP's position that marbits are correctly classified under subheading 1704.90.3590, HTSUS, which provides for: "Sugar confectionery (including white chocolate), not containing cocoa: Other: Confections or sweetmeats ready for consumption: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N009017, dated June 5, 2007, NY J80284, dated February 3, 2003, NY H86740, dated February 21, 2002, and any other ruling not specifically identified, to reflect the proper classification of the marbits according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H014783 (Attachment D), HQ H027857 (Attachment E), and HQ H027858 (Attachment F). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

DATED: August 8, 2008

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

Attachments

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H014783
August 8, 2008
CLA-2 OT: RR: CTF: TCM H014783 RM
CATEGORY: Classification
TARIFF NO.: 1704.90.3590

JOHN PETERSON, ESQ.
NEVILLE PETERSON, LLP
COUNSELORS AT LAW
17 State Street, 19th Floor
New York, NY 10004

RE: Revocation of New York Ruling Letter N009017, dated June 5, 2007;
Classification of Marbits

DEAR MR. PETERSON:

This letter is in response to your request of July 25, 2007, for reconsideration of New York Ruling Letter (NY) N009017, issued to you on behalf of your client, General Mills, Inc., on June 5, 2007. In that ruling, noting the product's imported condition and use, U.S. Customs and Border Protection (CBP) classified the subject "marbits" under heading 2106, Harmonized Tariff Schedule of the United States (HTSUS), as food preparations not elsewhere specified or included. It is your contention that the proper classification for marbits is under heading 1704, HTSUS, as sugar confectionery. We have reviewed NY N009017 and found it to be in error.

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 was published on June 25, 2008, in the Customs Bulletin, Volume 42, No. 27. No comments were received in response to this notice.

FACTS:

"Marbits" are extruded marshmallow products used as toppings in breakfast cereals. They are imported into the U.S. in bulk. The samples provided are in the form of dry, brittle, multi-colored pieces shaped like hearts, half-moons, hats, and other objects. Each is approximately ½-inch wide and ¼-inch thick. A CBP laboratory analysis found the samples contained 66.2 percent sucrose and 14.8 percent glucose on a dry weight basis.

ISSUE:

What is the proper tariff classification of the marbits under the HTSUS?

LAW AND ANALYSIS:

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

- 1704 Sugar confectionery (including white chocolate), not containing cocoa:
- 1704.90 Other:
- Confections or sweetmeats ready for consumption:
- Other:
- 1704.90.35 Other . . .
- 1704.90.3590 Other . . .
- 2106 Food preparations not elsewhere specified or included:
- 2106.90 Other:
- Other:
- Other:
- Other:
- Articles containing over 65 percent by dry weight of sugar described in additional U.S. note 2 to chapter 17:
- 2106.90.94 Other 2/

In your submission, you argue that marbits are classifiable in heading 1704, HTSUS, as sugar confectionery. You contend that the product is “ready for consumption to be used as candy toppings in retail-packed cereal,” a use analogous to the marshmallow products used as toppings which have traditionally been classified in heading 1704, HTSUS. Moreover, you state that heading 1704, HTSUS, is not a “use provision,” but an *eo nomine* provision for confectionery, and that the marbits fit within the common meaning of the term. Finally, you assert that the goods in question are more specifically described in heading 1704, HTSUS, than in heading 2106, HTSUS, and therefore, the former should prevail in accordance with GRI 3(a).

CBP previously classified the marbits in heading 2106, HTSUS, as food preparations not elsewhere specified or included. By the terms of this heading, the marbits can only be classified here if they are not provided for elsewhere in the tariff.

The main issue to be resolved is whether the merchandise is a sugar confectionery of heading 1704, HTSUS. The HTSUS does not contain a statu-

tory definition for the term “confectionery.” However, CBP has adopted the meaning of the term given by the Court of International Trade (CIT) in Leaf Brands, Inc. v. United States, (“Leaf Brands”) 70 Cust. Ct. 66 (1973).¹ The Court defined “confectionery” as the “many kinds of sweet-tasting articles which are eaten as such for their taste and flavor without further preparation and which are usually sold in confectionery outlets.”² *Id.* at 71. Further, the Court found that whether an article is confectionery is determined by its chief use as a confection, which may be evidenced by its character and design and the manner in which it is sold (i.e., through candy brokers, in confectionery outlets), rather than by its shape and texture.³ *Id.* at 72. Following Leaf Brands, CBP has consistently taken the position that a confection is a product that, in its condition as imported, is ready for consumption at retail as a confectionery and is marketed as such; it is not an ingredient of another food product. See, for example, HQ 086101, dated February 27, 1990 (peanut flavored chips), HQ 085206, dated February 23, 1990 (white chocolate in 5 kg blocks), HQ 955580, dated July 30, 2002, and HQ 965211, dated August 1, 2002 (chocolate fish).

Contrary to your assertion that heading 1704, HTSUS, is an *eo nomine* provision for confectionery and is not a use provision, CBP has consistently found that heading 1704, HTSUS, is a “principal use” provision. The Leaf Brands court affirmed this understanding when it construed the terms of the heading in accordance with General Interpretative Rule 10(e)(i), TSUS (now, U.S. Additional Rule of Interpretation 1(a)). U.S. Additional Rule of Interpretation 1(a) provides for classification of goods governed by principal use and states:

In the absence of special language or context which otherwise requires — 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.

Generally, the courts have provided several factors which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: (1) general physical characteristics, (2) expectation of the ultimate purchaser, (3) channels of trade, (4) environment of sale (accompanying accessories, manner of advertisement and display), (5) use in the same manner as merchandise which defines the class, (6) economic practicality of so using the import, and (7) recognition in

¹This case was decided under the Tariff Schedules of the United States (TSUS). Decisions by the courts interpreting the TSUS are not deemed dispositive under the HTSUS. However, on a case-by-case basis, prior decisions should be considered instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS. See House Conference Report No. 100–576, dated April 20, 1998, on the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100–418). In this instance, we consider Leaf Brands v. United States, 70 Cust. Ct. 66 (1973), to be instructive.

²The Leaf Brands court relied on dictionaries and past interpretations of the terms “candy” and “confectionery” by the courts.

³The concept of “chief use,” which stemmed from General Interpretative Rule 10(e)(i), TSUS, has been superseded by the concept of “principal use” contained in Additional U.S. Rule of Interpretation 1(a), HTSUS.

the trade of this use. See *Lennox Collections v. United States*, 20 CIT 194, 196 (1996). See also *United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976). In *Leaf Brands*, the court considered the physical characteristics, channels of trade and environment of sale, and the actual use of the product at issue.

In this instance, it is undisputed that marbits are small marshmallows (they are composed of the standard ingredients of marshmallows, specifically, sugar, water, corn syrup, dextrose, corn starch, gelatin, artificial flavoring, and sodium hexamet, and have a similar consistency). Further, they are recognized and used as marshmallows (e.g., they are advertised on the box of a popular cereal as “marshmallow bits”). Moreover, in the condition as imported, they are ready for consumption without further preparation, as marshmallows. That they are packaged with cereal after they are imported is of no moment, as they are goods of the kind usually sold in confectionery outlets.

CBP has previously established that marshmallows meet the definition of confectionery of heading 1704, HTSUS, because they are eaten for their sweet taste without further preparation and are usually sold at confectionery outlets. See, e.g., NY 817105, dated December 8, 1995, NY M84135, dated July 3, 2006, and NY M86169, dated September 27, 2006. Because marbits are marshmallows, we find that they belong to the same class or kind as the goods classified as confectioneries. Indeed, marbits are analogous to the mini marshmallows used as toppings for hot chocolate mixes, which CBP has classified as confectioneries of heading 1704, HTSUS. See HQ N010617, dated June 1, 2007, NYM86167, dated September 27, 2006, NY M85240, dated July 26, 2006, and NY M84135, dated July 3, 2006. Accordingly, marbits are classified in subheading 1704.90.9590, HTSUS. We note that, contrary to your suggestion, the marbits are not classified in subheading 1704.90.3550, HTSUS, because they are not imported “put up for retail sale” but are imported in bulk.

Based on the foregoing, we now find that the merchandise does not meet the terms of heading 2106, HTSUS, because it is “elsewhere included” in the tariff — in heading 1704, HTSUS, as sugar confectionery.

HOLDING:

By application of GRI 1, the marbits are correctly classified under heading 1704, HTSUS, in subheading 1704.90.3590, as “Sugar confectionery (including white chocolate), not containing cocoa: Other: Confections or sweetmeats ready for consumption: Other: Other: Other.” The 2007 column one, general rate of duty is 5.6 percent *ad valorem*.

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at 301-575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

Duty rates are provided for convenience only 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/.

EFFECT ON OTHER RULINGS:

NY N009017, dated June 5, 2007, is hereby revoked.

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

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H027857
August 8, 2008
CLA-2 OT: RR: CTF: TCM H027857 RM
CATEGORY: Classification
TARIFF NO.: 1704.90.3590

MR. CLARK D. BIEN
GREAT LAKES INGREDIENTS, LLC
2037 Geddes Avenue
Ann Arbor, MI 48104

RE: Revocation of New York Ruling Letter J80284, dated February 3, 2003; Classification of Marbits

DEAR MR. BIEN:

This is in reference to New York Ruling Letter (NY) J80284, issued to you on behalf of Great Lakes Ingredients, LLC, on February 3, 2003. In that ruling, U.S. Customs and Border Protection (CBP) determined that the subject "marbits" were classified under subheading 2106.90.9400, Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY J80284 and determined that the tariff classification of the marbits is incorrect.

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 was published on June 25, 2008, in the Customs Bulletin, Volume 42, No. 27. No comments were received in response to this notice.

FACTS:

In NY J80284, CBP described the marbits at issue as:

[A]n extruded marshmallow product, imported in bulk containers, and used as an ingredient in breakfast cereals. The samples were in the form of dry, brittle, multi-colored pieces approximately 1/2 inch wide and 3/16 inch thick, shaped like the head of Mickey Mouse. The products are said to be composed of 70 percent sugar, 11 percent corn starch, 9 percent corn syrup, 7 percent dextrose, 2 percent gelatin, and 1 percent flavor, color, and sodium hexamet.

ISSUE:

What is the proper tariff classification of the marbits under the HTSUS?

LAW AND ANALYSIS:

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

- 1704 Sugar confectionery (including white chocolate), not containing cocoa:
- 1704.90 Other:
- Confections or sweetmeats ready for consumption:
- Other:
- 1704.90.35 Other . . .
- 1704.90.3590 Other . . .
- 2106 Food preparations not elsewhere specified or included:
- 2106.90 Other:
- Other:
- Other:
- Other:
- Articles containing over 65 percent by dry weight of sugar described in additional U.S. note 2 to chapter 17:
- 2106.90.94 Other 2/

CBP previously classified the marbits in heading 2106, HTSUS, as food preparations not elsewhere specified or included. For the reasons set forth below, we now find that the merchandise does not meet the terms of the heading because it is “elsewhere specified or included” as sugar confectionery of heading 1704, HTSUS.

Heading 1704, HTSUS, provides for sugar confectionery. The HTSUS does not contain a statutory definition for the term “confectionery.” However, CBP has adopted the meaning of the term given by the Court of International Trade (CIT) in *Leaf Brands, Inc. v. United States*, (“*Leaf Brands*”) 70 Cust. Ct. 66 (1973).⁴ The Court defined “confectionery” as the “many kinds of

⁴This case was decided under the Tariff Schedules of the United States (TSUS). Decisions by the courts interpreting the TSUS are not deemed dispositive under the HTSUS. However, on a case-by-case basis, prior decisions should be considered instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS. See House Conference Report No. 100-576, dated April 20, 1998, on the Omnibus

sweet-tasting articles which are eaten as such for their taste and flavor without further preparation and which are usually sold in confectionery outlets.”⁵ *Id.* at 71. Further, the Court found that whether an article is confectionery is determined by its chief use as a confection, which may be evidenced by its character and design and the manner in which it is sold (i.e., through candy brokers, in confectionery outlets), rather than by its shape and texture.⁶ *Id.* at 72. Following Leaf Brands, CBP has consistently taken the position that a confection is a product that, in its condition as imported, is ready for consumption at retail as a confectionery and is marketed as such; it is not an ingredient of another food product. See, for example, HQ 086101, dated February 27, 1990 (peanut flavored chips), HQ 085206, dated February 23, 1990 (white chocolate in 5 kg blocks), HQ 955580, dated July 30, 2002, and HQ 965211, dated August 1, 2002 (chocolate fish).

In this instance, it is undisputed that marbits are small marshmallows (they are composed of the standard ingredients of marshmallows, specifically, sugar, water, corn syrup, dextrose, corn starch, gelatin, artificial flavoring, and sodium hexamet, and have a similar consistency). Moreover, in their condition as imported, they are ready for consumption without further preparation, as marshmallows, and are goods of the kind usually sold in confectionery outlets.

CBP has previously established that marshmallows meet the definition of confectionery because they are eaten for their sweet taste without further preparation and are usually sold at confectionery outlets. See, e.g., NY 817105, dated December 8, 1995, NY M84135, dated July 3, 2006, and NY M86169, dated September 27, 2006. Because marbits are marshmallows, we find that they belong to the same class or kind as the goods classified as confectioneries. Indeed, marbits are analogous to the mini marshmallows used as toppings for hot chocolate mixes which CBP has classified as confectioneries of heading 1704, HTSUS. See HQ N010617, dated June 1, 2007, NYM86167, dated September 27, 2006, NY M85240, dated July 26, 2006, and NY M84135, dated July 3, 2006.

HOLDING:

By application of GRI 1, marbits are correctly classified under heading 1704, HTSUS, in subheading 1704.90.3590, as “Sugar confectionery (including white chocolate), not containing cocoa: Other: Confections or sweetmeats ready for consumption: Other: Other: Other.” The 2008 column one, general rate of duty is 5.6 percent *ad valorem*.

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at 301–575–0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

Trade and Competitiveness Act of 1988 (P.L. 100–418). In this instance, we consider Leaf Brands v. United States, 70 Cust. Ct. 66 (1973), to be instructive.

⁵The Leaf Brands court relied on dictionaries and past interpretations of the terms “candy” and “confectionery” by the courts.

⁶The concept of “chief use,” which stemmed from General Interpretative Rule 10(e)(i), TSUS, has been superseded by the concept of “principal use” contained in Additional U.S. Rule of Interpretation 1(a), HTSUS.

Duty rates are provided for convenience only 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/.

EFFECT ON OTHER RULINGS:

NY J80284, dated February 3, 2003, is hereby revoked.

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

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H027858
August 8, 2008
CLA-2 OT: RR: CTF: TCM H027858 RM
CATEGORY: Classification
TARIFF NO.: 1704.90.3590

MS. ANN WAYMOUTH
KELLOGG COMPANY
325 Porter Street
Battle Creek, MI 49014

RE: Revocation of New York Ruling Letter H86740, dated February 21, 2002; Classification of Marbits

DEAR MS. WAYMOUTH:

This is in reference to New York Ruling Letter (NY) H86740, issued to you on behalf of the Kellogg Company on February 21, 2002. In that ruling, U.S. Customs and Border Protection (CBP) determined that the subject “marbits” were classified under heading 2106, Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY H86740 and found it to be incorrect.

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 was published on June 25, 2008, in the Customs Bulletin, Volume 42, No. 27. No comments were received in response to this notice.

FACTS:

In NY H86740, CBP described the subject marbits as:

[C]ylindrical-shaped, dried marshmallow pieces measuring approximately 3/8 inch tall and 1/4 inch in diameter. They consist of sugar (over 10 but less than 65 percent, by dry weight), corn syrup, cornstarch, dextrose, gelatin, vanilla flavor, and sodium hexamet. The marbits are used as an ingredient in the production of a retail-packed cereal product.

ISSUE:

What is the proper tariff classification of the marbits under the HTSUS?

LAW AND ANALYSIS:

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

- 1704 Sugar confectionery (including white chocolate), not containing cocoa:
- 1704.90 Other:
- Confections or sweetmeats ready for consumption:
- Other:
- 1704.90.35 Other . . .
- 1704.90.3590 Other . . .
- 2106 Food preparations not elsewhere specified or included:
- 2106.90 Other:

CBP previously classified the marbits in heading 2106, HTSUS, as food preparations not elsewhere specified or included. For the reasons set forth below, we now find that the merchandise does not meet the terms of the heading because it is “elsewhere specified or included” as sugar confectionery of heading 1704, HTSUS.

Heading 1704, HTSUS, provides for sugar confectionery. The HTSUS does not contain a statutory definition for the term “confectionery.” However, CBP has adopted the meaning of the term given by the Court of International Trade (CIT) in *Leaf Brands, Inc. v. United States*, (“*Leaf Brands*”) 70 Cust. Ct. 66 (1973).⁷ The Court defined “confectionery” as the “many kinds of sweet-tasting articles which are eaten as such for their taste and flavor without further preparation and which are usually sold in confectionery outlets.”⁸ *Id.* at 71. Further, the Court found that whether an article is confectionery is determined by its chief use as a confection, which may be evidenced by its character and design and the manner in which it is sold (i.e., through candy brokers, in confectionery outlets), rather than by its shape and texture.⁹ *Id.* at 72. Following *Leaf Brands*, CBP has consistently taken

⁷This case was decided under the Tariff Schedules of the United States (TSUS). Decisions by the courts interpreting the TSUS are not deemed dispositive under the HTSUS. However, on a case-by-case basis, prior decisions should be considered instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS. See House Conference Report No. 100-576, dated April 20, 1998, on the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418). In this instance, we consider *Leaf Brands v. United States*, 70 Cust. Ct. 66 (1973), to be instructive.

⁸The *Leaf Brands* court relied on dictionaries and past interpretations of the terms “candy” and “confectionery” by the courts.

⁹The concept of “chief use,” which stemmed from General Interpretative Rule 10(e)(i),

the position that a confection is a product that, in its condition as imported, is ready for consumption at retail as a confectionery and is marketed as such; it is not an ingredient of another food product. See, for example, HQ 086101, dated February 27, 1990 (peanut flavored chips), HQ 085206, dated February 23, 1990 (white chocolate in 5 kg blocks), HQ 955580, dated July 30, 2002, and HQ 965211, dated August 1, 2002 (chocolate fish).

In this instance, it is undisputed that marbits are small marshmallows (they are composed of the standard ingredients of marshmallows, specifically, sugar, water, corn syrup, dextrose, corn starch, gelatin, artificial flavoring, and sodium hexamet, and have a similar consistency). Moreover, in their condition as imported, they are ready for consumption without further preparation, as marshmallows, and are goods of the kind usually sold in confectionery outlets.

CBP has previously established that marshmallows meet the definition of confectionery because they are eaten for their sweet taste without further preparation and are usually sold at confectionery outlets. See, e.g., NY 817105, dated December 8, 1995, NY M84135, dated July 3, 2006, and NY M86169, dated September 27, 2006. Because marbits are marshmallows, we find that they belong to the same class or kind as the goods classified as confectioneries. Indeed, marbits are analogous to the mini marshmallows used as toppings for hot chocolate mixes which CBP has classified as confectioneries of heading 1704, HTSUS. See HQ N010617, dated June 1, 2007, NYM86167, dated September 27, 2006, NY M85240, dated July 26, 2006, and NY M84135, dated July 3, 2006.

HOLDING:

By application of GRI 1, marbits are correctly classified under heading 1704, HTSUS, in subheading 1704.90.3590, as: "Sugar confectionery (including white chocolate), not containing cocoa: Other: Confections or sweetmeats ready for consumption: Other: Other: Other." The 2008 column one, general rate of duty is 5.6 percent *ad valorem*.

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at 301-575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

Duty rates are provided for convenience only 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/.

EFFECT ON OTHER RULINGS:

NY H86740, dated February 21, 2002, is hereby revoked.

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

TSUS, has been superseded by the concept of "principal use" contained in Additional U.S. Rule of Interpretation 1(a), HTSUS.

GENERAL NOTICE**19 CFR PART 177****PROPOSED REVOCATION OF ONE RULING LETTER,
PROPOSED MODIFICATION OF ONE RULING LETTER
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE CLASSIFICATION OF A CERTAIN
SATELLITE RADIO “BOOMBOX” AND CERTAIN OTHER
SATELLITE RADIO RECEIVER DOCKING STATIONS**

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

ACTION: Notice of proposed revocation of one ruling letter, proposed modification of one ruling letter, and proposed revocation of treatment relating to the classification of a certain satellite radio “boombox” and certain other satellite radio receiver docking stations.

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 one ruling letter and modify one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a certain satellite radio boombox and satellite radio receiver docking stations. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before September 27, 2008.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial 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, Trade and Commercial Regulations Branch, at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Tariff Classification and Marking Branch, at (202) 572–8828.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke one ruling letter and modify one ruling letter relating to the tariff classification of a certain satellite radio boombox and satellite radio receiver docking stations. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) M80558, dated March 28, 2006 (Attachment A), and the modification of NY J89049, dated November 4, 2003 (Attachment B), 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 ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise 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 with substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its

agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY M80558 CBP, using a GRI 1 analysis, classified a certain satellite radio boombox with loudspeakers and an antenna in subheading 8543.89.9795 (incorrectly stated in NY M80558 as subheading 8543.89.9695), HTSUSA, which provides for: “Electrical machines and apparatus, having individual functions, not specified or included elsewhere . . . : Other machines and apparatus: Other: Other: Other: Other.” Based on our recent review of NY M80558, we have determined that the classification set forth for the satellite radio boombox in NY M80558 is incorrect. It is now CBP’s position that the subject boombox is properly classified in subheading 8518.22.00, HTSUS, which provides for, *inter alia*: “[L]oudspeakers, whether or not mounted in their enclosures; . . . : Loudspeakers, whether or not mounted in their enclosures: Multiple loudspeakers, mounted in the same enclosure,” pursuant to a GRI 3(b) analysis.

In NY J89049 CBP, using a GRI 1 analysis, classified a certain satellite radio receiver docking stations with an antenna and power adapter in subheading 8543.89.9695, HTSUSA (2003 HTSUSA), which provided for: “Electrical machines and apparatus, having individual functions, not specified or included elsewhere . . . : Other machines and apparatus: Other: Other: Other: Other: Other.” Based on our recent review of NY J89049, we have determined that the classification set forth for the docking stations in NY J89049 is incorrect. It is now CBP’s position that the subject docking stations are properly classified in subheading 8529.10.90, HTSUS, which provides for: “Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528: Antennas and antenna reflectors of all kinds; . . . : Other: Other,” pursuant to a GRI 3(b) analysis.

Pursuant to 19 U.S.C. §1625(c)(1), CBP intends to revoke NY M80558 and to modify NY J89049 and any other ruling not specifically 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 proposed Headquarters Ruling Letters (HQ) H003733 (Attachment C) and HQ H008626 (Attachment D). Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

DATED: August 8, 2008

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,
NY M80558
March 28, 2006
CLA-2-85:RR:NC:N1:112 M80558
CATEGORY: Classification
TARIFF NO.: 8543.89.9695

NANCY A. FISCHER
PILSBURY, WINTHROP, SHAW, PITTMAN, LLP
2300 N Street NW
Washington, DC 20037-1128

RE: The tariff classification of a radio docking station from China

DEAR MS. FISCHER,

In your letter dated February 27, 2006 you requested a tariff classification ruling on behalf of XM Satellite Radio, Inc..

The item concerned is the PAL/Rocky Convertible BoomBox. It is a battery- or cord-operated, waterproof, portable boombox-shaped docking station for an XM PAL or Rocky satellite radio receiver. Features included are an antenna, volume control, speakers, a headphone jack and an infrared remote control.

The purpose of the BoomBox is to amplify, clarify and enlarge the sound of a satellite radio reception.

You proposed that the PAL/Rocky Convertible BoomBox be classified in subheading 8529.90.8600 of the Harmonized Tariff Schedule of the United States (HTSUS) which provides for "Parts suitable for use solely or principally with [Reception apparatus for . . . radiobroadcasting – heading 8527 of the HTSUS]: Other: Other parts of heading (sic) . . . 8527 . . . : Other".

The PAL/Rocky Convertible BoomBox is not a "part" of an XM Satellite PAL or Rocky radio receiver because these receivers do not need the PAL/Rocky Convertible BoomBox to operate. Heading 8529 of the HTSUS only encompasses "parts" of radio receivers, therefore the PAL/Rocky Convertible BoomBox is not classifiable under that heading.

You cite past Customs and Border Protection Ruling letters NY L87329 (iPod docking station) and NY R02054 (DS-A1 remote interactive dock [for an iPod]) as examples of items similar to the PAL/Rocky Convertible BoomBox in classification terms; however, both items were classified under heading 8522 of the HTSUS that provides for "Parts and accessories (emphasis added) . . .". The classified items in both Ruling letters were considered "accessories", not "parts".

The applicable classification subheading for the PAL/Rocky Convertible BoomBox will be 8543.89.9695, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Electrical machines and apparatus, having individual functions, not specified or included elsewhere . . . : Other machines and apparatus: Other: Other: Other: Other: Other". The rate of duty will be 2.6%.

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 Richard Laman at 646-733-3017.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
NY J89049
November 4, 2003
CLA-2-85: RR: NC: 1:108 J89049
CATEGORY: Classification
TARIFF NO.: 8527.90.9590,
8525.10.7045, 8543.89.9695

MR. PATRICK E. MOFFETT
AUDIOVOX CORPORATION
150 Marcus Blvd.
Hauppauge, NY 11788

RE: The tariff classification of XM satellite radio devices from Korea.

DEAR MR. MOFFETT:

In your letter dated October 16, 2003 you requested a tariff classification ruling.

Your request denotes four electronic devices used in conjunction with XM satellite radio broadcasts. You have requested a ruling covering each individual device. They are denoted as follows:

- SIR-PNP1 is a receiver/tuner that receives a transmitted satellite radiobroadcast signal and converts it to an analog signal. It does not have any amplification capability. It is designed to primarily receive the broadcast signal through the ether without any line connection. It further transmits that signal to the radio broadcast receiver within the automobile.

- SIR-CK1 is a FM transmitter that transmits the analog radiobroadcast signal through 4 FM frequencies (88.1, 88.3, 88.5 and 88.7) directly to the radiobroadcast receiver in the automobile.

- SIR-CK2 is a docking station designed for use with the SIR-PNP1. It employs a power adapter; a roof mounted antenna, mounting bracket and an RCA cable. The device provides power for the SIR-PNP1 as well as receiving the analog signal from it through interconnecting pins. It further transmits that signal through the RCA cable directly to the radiobroadcast receiver. It can only transmit via the cable.

- SIR-HK1 is a docking station for the SIR-PNP1. It employs an AC power adapter, antenna and RCA cable. This device provides power for the SIR-PNP1, receives the signal from through interconnecting pins and transmits that signal via the RCA cable to the radiobroadcast receiver within the automobile.

-

The applicable subheading for the SIR-PNP1 will be 8527.90.9590, Harmonized Tariff Schedule of the United States (HTS), which provides for Other reception apparatus: Other: Other: Other. The rate of duty will be 6 percent ad valorem.

The applicable subheading for the SIR-CK1 will be 8525.10.7045, HTS, which provides for Transmission apparatus for radiotelephony, radiotelegraphy, radiobroadcasting or television, whether or not incorporating reception apparatus or sound or recording or reproducing apparatus; television cameras; still image video cameras or other camera recorders; digital cameras: Transmission apparatus: Other: For radiobroadcasting . . . Transmitters capable of transmitting on frequencies: Exceeding 30MHz but not exceeding 400MHz. The rate of duty will be 3 percent ad valorem.

The applicable subheading for the SIR-CK2 and the SIR-HK1 will be 8543.89.9695, HTS, which provides for Electrical machines and apparatus, . . . not specified or included elsewhere in chapter 85, HTS. The rate of duty will be 2.6 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 Michael Contino at 646-733-3014.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H003733
CLA-2 OT:RR:CTF:TCM H003733 HkP
CATEGORY: Classification
TARIFF NO.: 8518.22.00

NANCY A. FISCHER, ESQ.
ADA LOO, ESQ.
PILLSBURY WINTHROP SHAW PITTMAN LLP
2300 N Street, NW
Washington, D.C. 20037-1128

RE: Revocation of NY M80558; XM PAL/Rocky Boombox

DEAR MS. FISCHER AND MS. LOO:

This is in response to your letter of November 20, 2006, in which you requested reconsideration of New York Ruling Letter (“NY”) M80558, issued to you on March 28, 2006, on behalf of your client, XM Radio Satellite, Inc. (“XM”). At issue in that ruling was the classification of the PAL/Rocky Convertible Boombox™ (“Boombox”) under the Harmonized Tariff Schedule of the United States (“HTSUS”). In NY M80558, CBP classified the docking stations under heading 8543, HTSUS, as electrical machines and apparatus,

having individual functions, not specified or included elsewhere in Chapter 85. For the reasons set forth below, we hereby revoke NY M80558.

FACTS:

The merchandise at issue, in its imported condition, consists of a package for retail sale containing the Boombox and an associated wireless remote control unit. The Boombox is a portable, waterproof device with the following features:

1. A docking station specifically designed to cradle an XM PAL or Rocky receiver.
2. A satellite radio antenna for receiving satellite radio transmissions from the ether.
3. Two loudspeakers, audio amplification capability and volume control.
4. A headphone jack for connecting headphone speakers.
5. A power source (batteries or an attached power cord).

The Boombox is imported packaged together with a wireless remote control (collectively, the “Boombox kit”). The XM PAL or Rocky receiver is not imported with the Boombox.

You have told us that the Boombox’s antenna receives radio waves broadcast over the ether by XM’s satellites and terrestrial repeaters and converts those radio waves into a small electric current, that is, a radiofrequency (“RF”) signal. When a receiver is inserted into the Boombox the RF signal produced by the antenna passes to the receiver through the antenna module located inside the receiver. That signal is then selected, amplified, detected and recorded and ultimately heard through the speakers as XM programming.

U.S. Customs and Border Protection (“CBP”) previously classified the Boombox as “other” electrical machines and apparatus not specified or included elsewhere, in subheading 8543.89.9695,¹⁰ HTSUSA. We note that pursuant to the 2007 changes to the HTSUS, the goods of subheading 8543.89.96, HTSUS, have been transferred to subheading 8543.70.96, HTSUS, among other subheadings. It is your belief that the proper classification of this merchandise is under heading 8529, HTSUS, as a part suitable for use solely or principally with satellite radio receivers. In addition, you state that the Boombox with wireless remote is a set for classification purposes and that the Boombox imparts the essential character of the set.

ISSUE:

What is the correct classification of the Boombox under the HTSUS?

LAW AND ANALYSIS:

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

¹⁰We note that subheading 8543.89.9695, HTSUSA, does not exist in the 2006 version of the tariff; the article description provided in NY M80558 corresponds to subheading 8543.89.9795, HTSUSA (2006).

The 2008 HTSUS provisions under consideration are as follows:

- 8504** Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof:
- 8504.40 Static converters:
- 8504.40.95 Other
- 8518** Microphones and stands therefore; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof:
Loudspeakers, whether or not mounted in their enclosures:
- 8518.22.00 Multiple loudspeakers, mounted in the same enclosure
- 8529** Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528:
- 8529.10 Antennas and antenna reflectors of all kinds; parts suitable for use therewith:
- 8529.10.90 Other
- 8543** Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
- 8543.70 Other machines and apparatus:
- Other:
- Other:
- 8543.70.96 Other

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, Fed. Reg. 35127 (Aug. 23, 1989).

As an initial matter, we note that the Boombox is a composite good consisting of loudspeakers, classified under heading 8518, an antenna, classified under heading 8529, and a power supply, classified under heading 8504, HTSUS. Therefore, it cannot be classified according to GRI 1. GRI 3(b) directs that composite goods consisting of different materials shall be classified as if they consisted of the material or component which gives them their essential character. EN (VIII) to GRI 3(b) explains that the factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods. After examining the Boombox, we find that its essential character is imparted by the loudspeakers by virtue of

their bulk, quantity, weight and value in relation to the other components. As such, it is classified under heading 8518, HTSUS.

With regard to our previous classification of your merchandise in heading 8543, HTSUS, we note that because the Boombox is provided for in heading 8518, HTSUS, it cannot be classified under heading 8543. By the terms of heading 8543, HTSUS, electrical machines and apparatus that are provided for elsewhere in Chapter 85 are precluded from classification in heading 8543.

You contend that the Boombox qualifies as a part suitable for use with the XM PAL and Rocky satellite radio receivers because it is directly related to the satellite receivers and is dedicated solely for use with these receivers. CBP previously found that the Boombox was an accessory rather than a part because the receivers do not need the Boombox to operate. In doing so, you claim that CBP failed to apply relevant court precedents when classifying the merchandise at issue.

The courts have considered the nature of “parts” under the HTSUS and two distinct though not inconsistent tests have resulted. (See Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States, (“Bauerhin”) 110 F.3d 774 (“We conclude that these cases are not inconsistent and must be read together.” At 779)). The first, articulated in United States v. Willoughby Camera Stores, (“Willoughby Camera”) 21 C.C.P.A. 322 (1933) requires a determination of whether the imported item is “an integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article.” At 324. The second test of whether an article is a part is applied to imported articles dedicated to a specific use and “must be determined from the nature of the article as it is applied to that use.” United States v. Pompeo, (“Pompeo”) 43 C.C.P.A. 9, 14 (1955). Explaining further and using the reasoning in United States v. Carl Zeiss, Inc., 24 C.C.P.A. (Customs) 145, T.D. 48624, (concerning the classification of view finders for cameras) as an example, the court in Pompeo noted that, “[t]he court did not consider whether the involved finders were parts of cameras *in vacuo*, but whether they were parts of cameras when they were applied to their intended use on the cameras.”

We do not dispute that the subject merchandise is dedicated solely for use with XM satellite receivers. However, after applying the test in Pompeo to this merchandise, we do not agree with your contention that the Boombox is a “part” of the satellite receivers. This is because whether or not the Boombox is applied to its specific use, the receivers still function as receivers. Instead, we find that the Boombox is an “accessory”, as that term is defined in Rollerblade, Inc., v. United States, 116 F. Supp. 2d 1247, (citations omitted) (Ct. Int’l Trade 2000) because it is “of or to another thing” (internal quotation marks omitted), at 1253, *cited with approval* in Rollerblade, Inc., v. United States, 282 F.3d 1349, 1351 (Cir. 2002). As heading 8529, HTSUS, does not provide for accessories, classification of the Boombox under that heading is precluded.

Finally, you argue that the Boombox kit should be classified under one HTSUS item. We agree. We find that the subject articles imported together are a set for classification purposes under GRI 3(b), which states that goods put up in sets for retail sale shall be classified as if they consisted of the material or component which gives them their essential character. The items are classifiable in different headings (the Boombox in heading 8518 and the remote controller in heading 8543), are “put up together” to enable a user to

operate the Boombox by remote control, and are offered for sale directly to users without repacking. Consequently, the items may not be classified separately under their respective classifications. Furthermore, CBP finds that the item which imparts the essential character of this set is the Boombox. It is the dominant component, by use and cost in relation to the other constituent components of the set. It is also the reason why a consumer would purchase the set.

HOLDING:

By application of GRI 3(b), the Boombox kit is classified under heading 8518, HTSUS. It is specifically provided for in subheading 8518.22.00, HTSUS, which provides for: "Microphones and stands therefore; loudspeakers, whether or not mounted in their enclosures; . . . : Loudspeakers, whether or not mounted in their enclosures: Multiple loudspeakers, mounted in the same enclosure. The column one, general rate of duty is 4.9% *ad valorem*."

EFFECT ON OTHER RULINGS:

NY M80558 is hereby revoked.

MYLES B. HARMON,
Director,

Commercial and Trade Facilitation Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H008626
CLA-2 OT:RR:CTF:TCM H008626 HkP
CATEGORY: Classification
TARIFF NO.: 8529.10.90

MR. PATRICK E. MOFFETT
AUDIOVOX CORPORATION
150 Marcus Blvd.
Hauppauge, NY 11788

RE: XM satellite radio devices from Korea; Modification of NY J89049

DEAR MR. MOFFETT:

This is in reference to New York Ruling Letter ("NY") J89049, issued to you on November 4, 2003, concerning the classification of certain XM satellite radio devices, the SIR-CK2 and SIR-HK1 docking stations, under the Harmonized Tariff Schedule of the United States ("HTSUS"). In that ruling, CBP classified the docking stations under heading 8543, HTSUS, as electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85. We have determined that the tariff classification of these items is incorrect. The tariff classifications of the other items described in NY J89049 are not affected. For the reasons set forth below, we are modifying NY J89049.

FACTS:

In NY J89049 the merchandise at issue was described as follows:

SIR-CK2 is a docking station designed for use with the SIR-PNP1. It employs a power adapter, a roof mounted antenna, mounting bracket and an RCA cable. The device provides power for the SIR-PNP1 as well as receiving the analog signal from it through interconnecting pins. It further transmits that signal through the RCA cable directly to the radiobroadcast receiver. It can only transmit via the cable.

SIR-HK1 is a docking station for the SIR-PNP1. It employs an AC power adapter, antenna and RCA cable. This device provides power for the SIR-PNP1, receives the signal from through interconnecting pins and transmits that signal via the RCA cable to the radiobroadcast receiver within the automobile.

U.S. Customs and Border Protection (“CBP”) previously classified these docking stations in subheading 8543.89.9695, HTSUSA. We note that pursuant to the 2007 changes to the HTSUS, the goods of subheading 8543.89.96 have been transferred to subheading 8543.70.96, HTSUS, among other subheadings.

ISSUE:

What is the correct classification of the XM docking stations under the HTSUS?

LAW AND ANALYSIS:

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

The 2008 HTSUS provisions under consideration are as follows:

| | |
|-------------|---|
| 8504 | Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof: |
| 8504.40 | Static converters: |
| 8504.40.95 | Other |
| 8529 | Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528: |
| 8529.10 | Antennas and antenna reflectors of all kinds; parts suitable for use therewith: |
| 8529.10.90 | Other |
| 8543 | Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: |
| 8543.70 | Other machines and apparatus: |
| | Other: |
| | Other: |
| 8543.70.96 | Other |

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, Fed. Reg. 35127 (Aug. 23, 1989).

The docking stations are composite goods consisting of an antenna, classified under heading 8529, HTSUS, and a power supply, classified under heading 8504, HTSUS. Therefore, they cannot be classified according to GRI 1. GRI 3(b) directs, in relevant part, that composite goods made up of different components shall be classified as if they consisted of the component which gives them their essential character. EN (VIII) to GRI 3(b) explains that the factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods. After considering the docking stations at issue, we find that their essential character is imparted by their antennas by virtue of their value and role in relation to the power supply.

Based on the foregoing, we find that the docking stations are classified as antennas under heading 8529, HTSUS. Further, we find that the docking stations are precluded from classification under heading 8543, HTSUS, by the terms of that heading because they are provided for elsewhere in Chapter 85 of the tariff.

HOLDING:

By application of GRI 3(b), we find that the docking stations identified as SIR-CK2 and SIR-HK1 are classified under heading 8529, HTSUS. They are specifically provided for in subheading 8529.10.90, HTSUS, which provides for: “Parts suitable for use solely or principally with the apparatus of heading 8525 to 8528: Antennas and antenna reflectors of all kinds, parts suitable for use therewith: Other.”

EFFECT ON OTHER RULINGS:

NY J89049, dated November 4, 2003, is hereby modified with respect to the classification of the SIR-CK2 and SIR-HK1 docking stations. The classification of the other items described therein is unchanged.

MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

PROPOSED REVOCATION AND MODIFICATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF FRONT LOAD WASHING, DRYING AND WASHER/DRYER COMBINATION MACHINES

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

ACTION: Proposed revocation and modification of two classification ruling letters and revocation of treatment relating to the classification of front load washing, drying and washer/dryer combination machines.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that the Bureau of Customs and Border Protection (CBP) is proposing to revoke one ruling letter and modify one ruling letter relating to the classification of front load washing, drying and washer/dryer combination machines. CBP is also proposing to revoke any treatment previously accorded by it to substantially identical merchandise.

DATE: Comments must be received on or before September 27, 2008.

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

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Tariff Classification and Marking Branch: (202) 572-8713.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade

community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke one ruling letter and modify one ruling letter pertaining to the classification of washing, drying, and washer/dryer combination machines. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) M85545, dated August 24, 2006 (Attachment A) and the revocation of NY M85993, dated August 28, 2006, (Attachment B) 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 ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In NY M85545 and NY M85993, front load washing machines were classified in subheading 8450.11.0080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Household- or laundry-type washing machines, including machines which both wash and dry; parts thereof: Machines, each of a dry linen capacity not exceeding 10kg: Fully automatic machines . . . Other: Other." In NY M85993, a front load washer/dryer combination machine was also classified in subheading 8450.11.0080, HTSUS. In NY M85545 and M85993, front load dryers were classified in sub-

heading 8451.21.0090, HTSUS, which provides for “Machinery (other than machines of heading 8450) for washing, cleaning . . . drying . . . textile yarns, fabrics or made up textile articles . . . : Drying machines: Each of a dry linen capacity not exceeding 10 kg . . . Other.” Since the issuance of those rulings, CBP has reviewed the classification of the washing, drying and washer/dryer combination machines and has determined that the cited rulings are in error.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke M85993, modify NY M85545 and revoke or modify any other ruling not specifically identified, to reflect the correct classification of the washing, drying and washer/dryer combination machines according to the analysis contained in proposed Headquarters Ruling Letters (HQ) H007662 and HQ H015049, set forth as Attachments C and D to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

DATED: August 12, 2008

Ieva K. O’Rourke for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
NY M85545
August 24, 2006
CLA-2-84:RR:NC:1:104 M85545
CATEGORY: Classification
TARIFF NO.: 8450.11.0080; 8451.21.0090

MS. RITA WENZEL
LG ELECTRONICS U.S.A., INC.
1000 Sylvan Avenue
Englewood cliffs, NJ 07632

RE: The tariff classification of washers, dryers, and a washer/dryer from Korea

DEAR MS. WENZEL:

In your letter, dated July 23, 2006, you requested a tariff classification ruling.

Literature has been provided for front loading washer models WM2077CW and WM2277H, front loading dryer models DLE2514W and

DLE3777W, and front loading washer/dryer model WM3431H.

Both front loading washer models WM2077CW and WM2277H have a capacity of 3.72 cu. ft. and a dry linen capacity of less than 10.1 kg. Front loading dryer model DLE2514W has a capacity of 7.0 cu. ft. and a dry linen capacity of less than 10.1 kg. Front loading dryer model DLE3777W has a capacity of 7.3 cu. ft. and a dry linen capacity of less than 10.1 kg. Front loading washer/dryer model WM3431H has a capacity of 2.44 cu. ft. and a dry linen capacity of 8.8 lb maximum. This model utilizes a ventless condensing drying system.

The applicable subheading for the front load washing machine models and the front loading washer/dryer model described above will be 8450.11.0080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for household- or laundry-type washing machines, including machines which both wash and dry; machines, each of a dry linen capacity not exceeding 10 kg; fully automatic machines. The rate of duty will be 1.4 percent.

The applicable subheading for the front loading dryer models described above will be 8451.21.0090, HTSUS, which provides for machinery (other than machines of heading 8450) for washing, cleaning, drying . . . textile yarns, fabrics or made up textile articles . . . : drying machines: each of a dry linen capacity not exceeding 10 kg. The rate of duty will be 3.4 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Patricia O'Donnell at 646-733-3011.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
NY M85993
August 28, 2006
CLA-2-84:RR:NC:1:104 M85993
CATEGORY: Classification
TARIFF NO.: 8450.11.0080; 8451.21.0090

MS. RITA WENZEL
LG ELECTRONICS U.S.A., INC.
1000 Sylvan Avenue
Englewood cliffs, NJ 07632

RE: The tariff classification of washers, dryers, and a washer/dryer from Korea

DEAR MS. WENZEL:

In your letter, dated August 16, 2006, you requested a tariff classification ruling.

Literature has been provided for front loading washer models WM2688H and WM0642HW, front loading dryer models DLE0442W, DLE8377, and DLE5977, and front loading washer/dryer model WM3677HW.

Front loading washer model WM2688H has a capacity of 4.0 cu. ft. and a dry linen capacity of less than 10.1 kg. Front loading washer model WM0642HW has a capacity of 3.83 cu. ft. and a dry linen capacity of less than 10.1 kg. Front loading dryer models DLE0442W, DLE8377, and DLE5977 have a capacity of 7.3 cu. ft. and a dry linen capacity of less than 10.1 kg. Front loading washer/dryer model WM3677HW has a capacity of 3.72 cu. ft. and a dry linen capacity of less than 10.1 kg. This model utilizes a ventless condensing drying system.

The applicable subheading for the front load washing machine models and the front loading washer/dryer model described above will be 8450.11.0080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for household- or laundry-type washing machines, including machines which both wash and dry: machines, each of a dry linen capacity not exceeding 10 kg: fully automatic machines. The rate of duty will be 1.4 percent.

The applicable subheading for the front loading dryer models described above will be 8451.21.0090, HTSUS, which provides for machinery (other than machines of heading 8450) for washing, cleaning, drying . . . textile yarns, fabrics or made up textile articles . . . : drying machines: each of a dry linen capacity not exceeding 10 kg. The rate of duty will be 3.4 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Patricia O'Donnell at 646-733-3011.

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

[ATTACHMENT C]

HQ H007662
CLA-2: OT:RR:CTF:TCM H007662 KSH
CATEGORY: Classification
TARIFF NO.: 8450.20.0090; 8451.29.0090

MS. LYNNE GILLESPIE
LG ELECTRONICS, USA, INC.
1000 Sylvan Avenue
Englewood Cliffs, NJ 07632

RE: Modification of NY M85545 dated August 24, 2006; Classification of washers and dryers

DEAR MS. GILLESPIE:

This is in reply to your letters dated August 31, 2006 and January 2, 2007, in which you have requested reconsideration of New York Ruling Letter (NY) M85545, dated August 24, 2006. In NY M85545, two front load washing machines, model numbers WM2077CW and WM2277H, and a front load washer/dryer, model number WM3431H, were classified in subheading 8450.11.0080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Household- or laundry-type washing machines, including machines which both wash and dry; parts thereof: Machines, each of a dry linen capacity not exceeding 10kg: Fully automatic machines . . . Other: Other." Two front load dryers, model numbers DLE2514W and DLE3777W, were classified in subheading 8451.21.0090, HTSUS, which provides for "Machinery (other than machines of heading 8450) for washing, cleaning . . . drying . . . textile yarns, fabrics or made up textile articles . . . : Drying machines: each of a dry linen capacity not exceeding 10 kg . . . Other."

In your request for reconsideration with respect to washer model numbers WM2077CW and WM2277H and dryer model number DLE3777W, you have provided additional information regarding the performance of the washers and dryer as measured by the International Electrochemical Association (IEC) standards 60456 and 61126. In accordance with your request for reconsideration of NY M85545, CBP has reviewed the classification of these items and has determined that the cited ruling is in error with respect to washer models WM2077CW and WM2277H and dryer model number DLE3777W. NY M85545 remains correct with respect to washer/dryer combination model WM3431H and dryer model number DLE2514W.

FACTS:

The merchandise at issue consists of front load washing machines, identified as model numbers WM2077CW and WM2277H and a front load dryer, identified as model number DLE3777W. Model numbers WM2077CW and

WM2277H measure 27 inches by 39 inches by 29.75 inches and have a tub volume of 3.72 cubic feet. Submitted performance testing of the model number WM2077CW in accordance with the IEC standard 60456 indicates that the performance ratio¹¹ of a 9.0 kg load of linen averages .83% while 10.1 kg load of linens averages .85%. Submitted performance testing of model number WM2277H in accordance with the IEC standard 60456 indicates that the performance ratio of a 9.0 kg load of linen averages .86% while 10.1 kg load of linens averages .88%.

Model number DLE3777W measures 27 inches by 39 inches by 29 15/16 inches and has a tub volume of 7.3 cubic feet. Submitted performance testing of model number DLE3777W in accordance with the IEC standard 61126 indicates that the drying time¹² of a 9.0 kg load of linen averages 69 minutes while 10.5 kg load of linens averages 72 minutes.

ISSUE:

Whether the washing machines are classified in subheading 8450.11.0080, HTSUS, as machines of a dry linen capacity not exceeding 10kg or in subheading 8450.20.0090, HTSUS, as machines of a dry linen capacity exceeding 10kg.

Whether the drying machine is classified in subheading 8451.21.0090, HTSUS, as machines of a dry linen capacity not exceeding 10 kg or in subheading 8451.29.0090, HTSUS, as an other drying machine.

LAW AND ANALYSIS:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. It is Customs and Border Protection (CBP) practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

¹¹The performance ratio is determined by dividing the average sum of the soiling values (typical soil removal performance) for each of the four soiling types (carbon black/mineral oil, blood, chocolate and milk and red wine) for the washing machine under test and the reference washing machine.

¹²The drying time is determined by multiplying the measured program time by the nominal initial moisture content less the nominal final moisture content multiplied by the rated capacity divided by the actual moisture content less the actual final moisture content of the test load multiplied by the conditioned mass of the test load for the dryer under test and the reference dryer.

Heading 8450, HTSUSA, provides in relevant part:

8450: Household- or laundry-type washing machines, including machines which both wash and dry; parts thereof:

Machines, each of a dry linen capacity not exceeding 10 kg:

- 8450.11.00 Fully automatic machines
- 8540.12.00 Other machines with built-in centrifugal dryer
- 8450.19.00 Other
- 8450.20.00 Machines, each of a dry linen capacity exceeding 10 kg

Heading 8451, HTSUSA, provides in relevant part:

8451: Machinery (other than machines of heading 8450) for washing, cleaning, wringing, drying, ironing, pressing (including fusing presses), bleaching, dyeing, dressing, finishing, coating or impregnating textile yarns, fabrics or made up textile articles and machines for applying the paste to the base fabric or other support used in the manufacture of floor coverings such as linoleum; machines for reeling, unreeling, folding, cutting or pinking textile fabrics; parts thereof:

Drying machines:

- 8451.21.00 Each of a dry linen capacity not exceeding 10 kg
- 8451.21.0010 Coin operated
- 8451.21.90 Other
- 8451.29.00 Other
- 8451.29.0020 For drying made up articles
- 8451.29.0090 Other

The term “dry linen capacity” is neither defined in the HTSUS nor the EN’s. Where not defined in a legal note under the HTSUS or clearly described in the ENs, tariff terms are construed in accordance with their common and commercial meanings which are presumed to be the same. Nippon Kogaku (USA), Inc. v. United States, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. C.J. Tower & Sons v. United States, 69 CCPA 128, 673 F.2d 1268 (1982).

The International Electrochemical Association (IEC), a global organization that prepares and publishes international standards for all electrical, electronic and related technologies which serve as a basis for national standardization, utilizes a standard referred to as “rated capacity.” See IEC standards 60456 and 61121. “Rated capacity” is defined as the “maximum mass of dry textiles which the manufacturer declares can be treated in a specific programme.” See IEC 60456. IEC 61121 defines “rated capacity” as the “mass in kg of dry textiles of a particular defined type, which the manufacturer declares can be treated in a specific programme.”

Further, we have reviewed several Binding Tariff Information letters issued by various member states of the European Union (EU) and note that the washing machines’ “dry linen capacity” is expressed as the maximum

amount of textiles that can be cleaned in all operations by the washing machine.

In an effort to achieve uniformity in the interpretation of the Harmonized System (HS) at the international level, CBP regards rulings from other countries that classify identical or substantially similar merchandise as instructive. However, such rulings do not constitute the official interpretation of the HS. For this and other reasons, these rulings shall not be treated as dispositive and CBP is not bound by them. Nevertheless, while neither legally binding nor dispositive, they may provide a commentary on the scope of the term at issue. Accordingly, we are of the opinion that the term “dry linen capacity” is synonymous with “rated capacity” as defined by the IEC. Further, we are applying IEC standards 60456 and 61121 as the means by which “dry linen capacity” should be determined.

IEC standards 60456 and 61121 section 7 state that a washing machine with a rated capacity of 10kg shall consist of a base load (textile load without strips of standardized soiling) of 3 sheets and 22 pillowcases. The sheets and pillowcases are required to meet specific values also identified in section 7 of IEC standard 60456. Further, IEC standards 60456 and 61121 section 9 set forth the performance testing to be completed on a test (i.e., base) load of the specified rated capacity.

You have submitted performance tests you conducted in accordance with the IEC standards 60456 and 61121 that demonstrated that the washing machines and drying machine were able to meet the standards of the IEC standards 60456 and 61121 performance test using 10.1 or 10.5 kg loads of linens with marginal impact on performance results. Specifically, model number WM2077CW yielded a performance ratio of .83% with a 9.0 kg load of linens and a performance ratio of .85% with 10.1 kg load of linens. Model number WM2277H yielded a performance ratio of .86% with a 9.0 kg load of linens and a performance ratio of .88% with 10.1 kg load of linens. Dyer model DLE3777W yielded a drying time of 69 minutes with a 9.0 kg load of linens and a drying time of 72 minutes with a 10.5 kg load of linens. Based on the negligible differences of performance ratios for the two different loads, we conclude that the washing machines and dryer have a dry linen capacity exceeding 10.0 kg.

HOLDING:

The washing machines, model numbers WM2077CW and WM2277H, are classified in heading 8450, HTSUS. They are specifically provided for in subheading 8450.20.0090 HTSUS, which provides for “Household- or laundry-type washing machines, including machines which both wash and dry; parts thereof: Machines, each of a dry linen capacity exceeding 10kg . . . other.” The column one, general rate of duty is 1% *ad valorem*.

The drying machine, model number DLE3777W is classified in heading 8451, HTSUS. It is specifically provided for in subheading 8451.29.0090, HTSUS, which provides for “Machinery (other than machines of heading 8450) for washing, cleaning, wringing, drying, ironing, pressing (including fusing presses), bleaching, dyeing, dressing, finishing, coating or impregnating textile yarns, fabrics or made up textile articles and machines for applying the paste to the base fabric or other support used in the manufacture of floor coverings such as linoleum; machines for reeling, unreeling, folding, cutting or pinking textile fabrics; parts thereof: Drying machines: Other . . . Other.” The general column one rate of duty is 2.6% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY M85545, dated August 24, 2006, is hereby modified.

MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H015049
CLA-2: OT:RR:CTF:TCM H015049 KSH
CATEGORY: Classification
TARIFF NO.: 8450.20.0090; 8451.29.0090

MS. LYNNE GILLESPIE
LG ELECTRONICS, USA, INC.
1000 Sylvan Avenue
Englewood Cliffs, NJ 07632

RE: Revocation of NY M85993 dated August 28, 2006; Classification of washers, dryers and combination washer/dryer

DEAR MS. GILLESPIE:

This is in reply to your letters dated August 31, 2006 and January 2, 2007, in which you have requested reconsideration of New York Ruling Letter (NY) M85993, dated August 28, 2006. In NY M85993, two front load washing machines and a front load washer/dryer combination were classified in subheading 8450.11.0080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Household- or laundry-type washing machines, including machines which both wash and dry; parts thereof: Machines, each of a dry linen capacity not exceeding 10kg: Fully automatic machines . . . , Other: Other." Three front load dryers were classified in subheading 8451.21.0090, HTSUS, which provides for "Machinery (other than machines of heading 8450) for washing, cleaning . . . drying . . . textile yarns, fabrics or made up textile articles . . . : Drying machines: each of a dry linen capacity not exceeding 10 kg."

In your request for reconsideration, you have provided additional information regarding the performance of the washers, dryers and washer/dryer as measured by the International Electrochemical Association (IEC) standards 60456 and 61126. In accordance with your request for reconsideration of NY M85993, CBP has reviewed the classification of these items and has determined that the cited ruling is in error.

FACTS:

The merchandise at issue consists of front load washing machines, identified as model numbers WM2688H and WM0642HW, a front load combination washer/dryer identified as model number WM3677HW and three front load dryers, identified as model numbers DLE5977, DLE0442W and DLE8377. Model number WM2688H measures 27 inches by 39 inches by 29.75 inches and has a tub volume of 4.0 cubic feet. Submitted performance testing of the model number WM2688H in accordance with the IEC stan-

standard 60456 indicates that the performance ratio¹³ of a 9.0 kg load of linens averages .86% while a 10.5 kg load of linens averages .88%. Model number WM0642HW measures 27 inches by 44 inches by 29.5 inches and has a tub volume of 3.83 cubic feet. Submitted performance testing of model number WM0642HW in accordance with the IEC standard 60456 indicates that the performance ratio of a 9.0 kg load of linens averages .88% while a 10.4 kg load of linens averages .89%. Model number WM3677HW measures 27 inches by 38 11/16 inches by 29.75 inches and has a tub volume of 3.72 cubic feet. Submitted performance testing of model number WM3677HW in accordance with the IEC standard 60456 indicates that the performance ratio of a 9.0 kg load of linens averages .88% while a 10.1 kg load of linens averages .89%.

Model number DLE5977 measures 27 inches by 39 inches by 29 15/16 inches and has a tub volume of 7.3 cubic feet. Submitted performance testing of model number DLE5977 in accordance with the IEC standard 61126 indicates that the drying time¹⁴ of a 9.0 kg load of linens averages 68 minutes while a 10.5 kg load of linens averages 72 minutes. Model number DLE0442W measures 27 inches by 42.75 inches by 28.33 inches and has a tub volume of 7.3 cubic feet. Submitted performance testing of model number DLE0442W in accordance with the IEC standard 61126 indicates that the drying time of a 9.0 kg load of linens averages 69 minutes while a 10.5 kg load of linens averages 73 minutes. Model number DLE8377 measures 27 inches by 39 inches by 28.33 inches and has a tub volume of 7.3 cubic feet. Submitted performance testing of model number DLE8377 in accordance with the IEC standard 61126 indicates that the drying time of a 9.0 kg load of linens averages 68 minutes while a 10.5 kg load of linens averages 72 minutes.

ISSUE:

Whether the washing machines and washer/dryer combination are classified in subheading 8450.11.0080, HTSUS, as machines of a dry linen capacity not exceeding 10kg or in subheading 8450.20.0090, HTSUS, as machines of a dry linen capacity exceeding 10kg.

Whether the drying machines are classified in subheading 8451.21.0090, HTSUS, as machines of a dry linen capacity not exceeding 10 kg or in subheading 8451.29.0090, HTSUS, as an other drying machine.

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be clas-

¹³The performance ratio is determined by dividing the average sum of the soiling values (typical soil removal performance) for each of the four soiling types (carbon black/mineral oil, blood, chocolate and milk and red wine) for the washing machine under test and the reference washing machine.

¹⁴The drying time is determined by multiplying the measured program time by the nominal initial moisture content less the nominal final moisture content multiplied by the rated capacity divided by the actual moisture content less the actual final moisture content of the test load multiplied by the conditioned mass of the test load the for the dryer under test and the reference dryer.

sified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is Customs and Border Protection (CBP) practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 8450, HTSUS, provides in relevant part:

8450: Household- or laundry-type washing machines, including machines which both wash and dry; parts thereof:

Machines, each of a dry linen capacity not exceeding 10 kg:

- 8450.11.00 Fully automatic machines
- 8540.12.00 Other machines with built-in centrifugal dryer
- 8450.19.00 Other
- 8450.20.00 Machines, each of a dry linen capacity exceeding 10 kg

Heading 8451, HTSUS, provides in relevant part:

8451: Machinery (other than machines of heading 8450) for washing, cleaning, wringing, drying, ironing, pressing (including fusing presses), bleaching, dyeing, dressing, finishing, coating or impregnating textile yarns, fabrics or made up textile articles and machines for applying the paste to the base fabric or other support used in the manufacture of floor coverings such as linoleum; machines for reeling, unreeling, folding, cutting or pinking textile fabrics; parts thereof:

Drying machines:

- 8451.21.00 Each of a dry linen capacity not exceeding 10 kg
- 8451.21.0010 Coin operated
- 8451.21.90 Other
- 8451.29.00 Other
- 8451.29.0020 For drying made up articles
- 8451.29.0090 Other

The term “dry linen capacity” is neither defined in the HTSUS nor the EN’s. Where not defined in a legal note under the HTSUS or clearly described in the ENs, tariff terms are construed in accordance with their common and commercial meanings which are presumed to be the same. Nippon Kogaku (USA), Inc. v. United States, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. C.J. Tower & Sons v. United States, 69 CCPA 128, 673 F.2d 1268 (1982).

The International Electrochemical Association (IEC), a global organization that prepares and publishes international standards for all electrical,

electronic and related technologies which serve as a basis for national standardization, utilizes a standard referred to as “rated capacity.” See IEC standards 60456 and 61121. “Rated capacity” is defined as the “maximum mass of dry textiles which the manufacturer declares can be treated in a specific programme.” See IEC 60456. IEC 61121 defines “rated capacity” as the “mass in kg of dry textiles of a particular defined type, which the manufacturer declares can be treated in a specific programme.”

Further, we have reviewed several Binding Tariff Information letters issued by various member states of the European Union (EU) and note that the washing machines’ “dry linen capacity” is expressed as the maximum amount of textiles that can be cleaned in all operations by the washing machine.

In an effort to achieve uniformity in the interpretation of the Harmonized System (HS) at the international level, CBP regards rulings from other countries that classify identical or substantially similar merchandise as instructive. However, such rulings do not constitute the official interpretation of the HS. For this and other reasons, these rulings shall not be treated as dispositive and CBP is not bound by them. Nevertheless, while neither legally binding nor dispositive, they may provide a commentary on the scope of the term at issue. Accordingly, we are of the opinion that the term “dry linen capacity” is synonymous with “rated capacity” as defined by the IEC. Further, we are applying IEC standards 60456 and 61121 as the means by which “dry linen capacity” should be determined.

IEC standards 60456 and 61121 section 7 state that a washing machine with a rated capacity of 10kg shall consist of a base load (textile load without strips of standardized soiling) of 3 sheets and 22 pillowcases. The sheets and pillowcases are required to meet specific values also identified in section 7 of IEC standard 60456. Further, IEC standards 60456 and 61121 section 9 set forth the performance testing to be completed on a test (i.e., base) load of the specified rated capacity.

You have submitted performance tests you conducted in accordance with the IEC standard 60456 and 61121 that demonstrated that the washing machines, washer/dryer combination and drying machines were able to meet the standards of the IEC standard 60456 and 61121 performance test using 10.1, 10.4 or 10.5 kg loads of linens with marginal impact on performance results. Specifically, model number WM2688H yielded a performance ratio of .86% with a 9.0 kg load of linens and a performance ratio of .88% with a 10.5 kg load of linens. Model number WM0642HW with a 9.0 kg load of linens yielded a performance ratio of .88% while a 10.4 kg load of linens yielded a performance ratio of .89%. Model number WM3677HW with a 9.0 kg load of linens yielded a performance ratio of .88% and a performance ratio of .89% with a 10.1 kg load of linens. Dryer model DLE5977 with a 9.0 kg load of linens yielded a drying time of 68 minutes and a drying time of 72 minutes with a 10.5 kg load of linens. Dryer model DLE0442W with a 9.0 kg load of linens yielded a drying time of 69 minutes and a drying time of 73 minutes with a 10.5 kg load of linens. Dryer model DLE8377 with a 9.0 kg load of linens yielded a drying time of 68 minutes and a drying time of 72 minutes with a 10.5 kg load of linens. Based on the negligible differences of performance ratios for the two different loads, we conclude that the washing machines and dryer have a dry linen capacity greater than 10.5 kg.

HOLDING:

The washing machines, model numbers WM2688H and WM0642HW, and washer/dryer combination, model number WM3677HW, are classified in heading 8450, HTSUS. They are specifically provided for in subheading 8450.20.0090 HTSUS, which provides for “Household- or laundry-type washing machines, including machines which both wash and dry; parts thereof: Machines, each of a dry linen capacity exceeding 10kg . . . Other.” The column one, general rate of duty is 1% *ad valorem*.

The drying machines, model numbers DLE 5977, DLE0442W and DLE8377, are classified in heading 8451, HTSUS. They are provided for in subheading 8451.29.0090, HTSUS, which provides for “Machinery (other than machines of heading 8450) for washing, cleaning, wringing, drying, ironing, pressing (including fusing presses), bleaching, dyeing, dressing, finishing, coating or impregnating textile yarns, fabrics or made up textile articles and machines for applying the paste to the base fabric or other support used in the manufacture of floor coverings such as linoleum; machines for reeling, unreeling, folding, cutting or pinking textile fabrics; parts thereof: Drying machines: Other . . . Other.” The general column one rate of duty is 2.6% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY M85993, dated August 28, 2006, is hereby revoked.

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division.

—◆—

**REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF CERTAIN FOOD
PREPARATIONS CONTAINING COCOA**

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

ACTION: Notice of revocation of five tariff classification ruling letters and revocation of treatment relating to the classification of certain food preparations containing cocoa.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking five ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of certain food preparations containing cocoa. CBP also is revoking any treatment previously accorded by it to substantially identical transactions.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 27, 2008.

FOR FURTHER INFORMATION CONTACT: Isaac D. Levy, Tariff Classification and Marking Branch: (202) 572–8794.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the Customs Bulletin, Vol. 42, No. 29, on July 9, 2008, proposing to revoke five ruling letters pertaining to the tariff classification of certain food preparations containing cocoa. No comments were received in response to that notice. Although in that notice, CBP specifically proposed to revoke New York Ruling Letter (NY) N005039 (January 22, 2007), NY N005523 (February 13, 2007), NY N005972 (February 20, 2007), NY N005974 (February 20, 2007), and NY N006098 (February 20, 2007), the revocation 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 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 the notice period.

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

transactions should have advised CBP during the notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N005039, NY N005523, NY N005972, NY N005974, and NY N006098, and any other ruling not specifically identified, to reflect the proper classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letter (HQ) H008517, HQ H008511, HQ H008518, and HQ H008515, set forth as Attachments A through D 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 ruling will become effective 60 days after publication in the Customs Bulletin.

DATED: August 13, 2008

Ieva K. O'Rourke for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H008517
August 13, 2008
CLA-2 OT:RR:CTF:TCM H008517 IDL
CATEGORY: Classification
TARIFF NO.: 1806.20.9900

MR. BOB FORBES
ROE LOGISTICS
660 Bridge Street
Montreal, Quebec H3K 3K9
Canada

Re: Liquid Chocolate; Revocation of NY N005039

DEAR MR. FORBES:

This letter concerns NY N005039, dated January 22, 2007, issued to you on behalf of your client, Barry Callebaut Canada, Inc., by the National Commodity Specialist Division, U.S. Customs and Border Protection (CBP). At issue in that ruling was the correct classification of "liquid chocolate" (Product No. LSH 484) under the Harmonized Tariff Schedule of the United

States (HTSUS). We have reviewed NY N005039 and have found that it is incorrect.

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 was published in the Customs Bulletin, Volume 42, No. 29, on July 9, 2008. No comments were received in response to the notice.

FACTS:

In NY N005039, CBP described the liquid chocolate at issue as Product No. LSH 484, which contained 63.70 percent sugar, 25.80 percent cocoa liquor, 9.8 percent cocoa butter, 0.30 percent soya lecithin, 0.20 percent salt hydrate, and 0.20 percent admul emulsifier. According to the information submitted, the liquid chocolate was to be shipped in bulk in tanker trucks. The product was used for enrobing and panning cakes, pastries and confectionery.

CBP previously classified the product at issue under subheading 1806.20.5000, HTSUSA. We now believe that the liquid chocolate was classified incorrectly and that the correct classification is under subheading 1806.20.9900, HTSUSA.

ISSUE:

Whether the liquid chocolate described above is correctly classified under subheading 1806.20.5000 or under subheading 1806.20.9900, HTSUSA?

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 most 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 2 through 6 may then be applied in order.

The HTSUSA provisions under consideration are as follows:

| | |
|---------|--|
| 1806 | Chocolate and other food preparations containing cocoa: * * * |
| 1806.20 | Other preparations in blocks, slabs or bars, weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg: Preparations consisting wholly of ground cocoa beans, with or without added cocoa fat, flavoring or emulsifying agents, and containing not more than 32 percent by weight of butterfat or other milk solids and not more than 60 percent by weight of sugar: * * * |
| | Other: * * * |

1806.20.5000 Other
 * * *
 Other:
 * * *
 Other:
 * * *
 Other:
 * * *
 Other:
 * * *

Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17:

1806.20.9500 Described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions

1806.20.9800 Other 2/¹⁵

1806.20.9900 Other

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 18.06 provides the following:

Chocolate is composed essentially of cocoa paste and sugar or other sweetening matter, usually with the addition of flavouring and cocoa butter; in some cases, cocoa powder and vegetable oil may be substituted for cocoa paste.

* * *

The heading also includes all sugar confectionery containing cocoa in any proportion (including chocolate nougat), sweetened cocoa powder, chocolate powder, chocolate spreads, and, in general, all food preparations containing cocoa (**other than** those **excluded** in the General Explanatory Note to this Chapter).

As stated above, the liquid chocolate contains ingredients that include sugar, cocoa liquor, and cocoa butter. Therefore, it meets the requirements of heading 1806, HTSUS, and the description provided in EN 18.06. As such, the liquid chocolate is properly classified in heading 1806, HTSUS. Further,

¹⁵ Goods falling under this provision are subject to quota under chapter 99, HTSUS.

subheading 1806.20, HTSUS, provides for preparations containing cocoa, of more than 2 kg, in liquid form, in containers or immediate packings. As stated above, the liquid chocolate is shipped in bulk in tankers. It is the understanding of CBP that the normal capacity of a commercial tanker far exceeds 2 kgs. On this basis, we find that the liquid chocolate meets the requirements of subheading 1806.20, HTSUS.

At the eight-digit level, we find that, contrary to CBP's decision in NY N005039, the liquid chocolate is precluded from classification under subheading 1806.20.5000, HTSUSA. According to the terms of that subheading, the sugar content of any cocoa preparation falling under that provision may not exceed 60 percent by weight. As described above, the liquid chocolate at issue contains 63.70 percent sugar, exceeding the stated limit.

Further, we note that in order to be classified under subheading 1806.20.9500 or 1806.20.9800, HTSUSA, the liquid chocolate would have to contain "over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17", as provided by the corresponding article description in the HTSUS. Although the liquid chocolate in the instant case does contain over 10 percent by dry weight of sugar, we find that it is excluded from classification in subheading 1806.20.95/98, HTSUS, by Additional U.S. Note 3 to Chapter 17, which provides, in pertinent part, the following:

For purposes of this schedule, the term "articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17" means articles containing over 10 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, except . . . (d) cake decorations and similar products to be used in the same condition as imported without any further processing other than the direct application to individual pastries or confections, finely ground or masticated coconut meat or juice thereof mixed with those sugars, and sauces and preparations therefor.

Since the liquid chocolate was intended for use in enrobing and panning cakes, pastries and confectionery, it falls under the "cake decoration and similar products" exception listed in subsection (d) of Additional U.S. Note 3 to Chapter 17. Accordingly, we find that the liquid chocolate is classified under subheading 1806.20.9900, HTSUSA. CBP has previously classified chocolate products containing over 10 percent by dry weight of sugars and used for enrobing desserts under subheadings 1806.20.9900, HTSUSA. See NY I89145 (January 9, 2003) and NY I89812 (January 24, 2003).

HOLDING:

By application of GRI 1, the liquid chocolate is classified in heading 1806, HTSUS, and is specifically provided for under subheading 1806.20.9900, HTSUSA, as "Chocolate and other food preparations containing cocoa: Other preparations . . . in liquid . . . or other bulk form in containers or immediate packings, of a content exceeding 2 kg: Other . . . Other . . . Other . . . Other . . . Other." The 2008 column one, general rate of duty is 8.5% *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 <http://www.usitc.gov/tata/hts/>.

This merchandise is subject to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the

Bioterrorism Act can be obtained by calling the FDA, at (301) 575-0156, or from the World Wide Web at <http://www.fda.gov/oc/bioterrorism/bioact.html>.

EFFECT ON OTHER RULINGS:

NY N005039, dated January 22, 2007, is hereby revoked. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Ieva K. O'Rourke for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H008511
August 13, 2008
CLA-2 OT:RR:CTF:TCM H008511 IDL
CATEGORY: Classification
TARIFF NO.: 1806.20.9900

MR. BOB FORBES
ROE LOGISTICS
660 Bridge Street
Montreal, Quebec H3K 3K9
Canada

Re: Bittersweet Chocolate; Revocation of NY N005523

DEAR MR. FORBES:

This letter concerns New York Ruling Letter (NY) N005523, dated February 13, 2007, issued to you by the National Commodity Specialist Division, U.S. Customs and Border Protection (CBP). At issue in that ruling was the correct classification of bittersweet chocolate (Product No. CHD-F050100-15-105) under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY N005523 and have found that it is incorrect.

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 revocation was published in the Customs Bulletin, Volume 42, No. 29, on July 9, 2008. No comments were received in response to the notice.

FACTS:

In NY N005523, CBP classified bittersweet chocolate from France "stated to contain 44.0 percent cocoa paste, 28.5 percent sugar, 11.5 percent cocoa butter, 9.0 percent inulin, 6.5 percent corn dextrin, 1.0 percent soya lecithin and 0.5 percent vanillin" under subheadings 1806.20.9500 or 1806.20.9800, HTSUSA, depending on whether the quantitative limits of Additional U.S. Note 8 to Chapter 17 had been reached. The bittersweet chocolate was shipped in 5-kilogram blocks and was intended for use in enrobing food items.

CBP is now taking the position that the bittersweet chocolate described in NY N005523 was classified incorrectly, and that the chocolate should be classified under subheading 1806.20.9900, HTSUSA.

ISSUE:

Whether the bittersweet chocolate described above is correctly classified under subheadings 1806.20.9500/9800, HTSUSA, or under subheading 1806.20.9900, HTSUSA?

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 most 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 2 through 6 may then be applied in order.

The HTSUSA provisions under consideration are as follows:

| | |
|--------------|---|
| 1806 | Chocolate and other food preparations containing cocoa: * * * |
| 1806.20 | Other preparations in blocks, slabs or bars, weighing more than 2 kg or in liquid, paste powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg: * * * Other: * * * Other: * * * Other: * * * Other: * * * |
| 1806.20.9500 | Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17: Described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions |

1806.20.9800 Other 2¹⁶

1806.20.9900 Other

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 18.06 provides the following:

Chocolate is composed essentially of cocoa paste and sugar or other sweetening matter, usually with the addition of flavouring and cocoa butter

Chocolate and chocolate goods may be put up either as blocks, slabs tablets, bars, pastilles, croquettes, granules or powder, or in the form of chocolate products filled with creams, fruits, liqueurs, etc.

The heading also includes all sugar confectionery containing cocoa in any proportion (including chocolate nougat), sweetened cocoa powder, chocolate powder, chocolate spreads, and, in general, all food preparations containing cocoa (**other than** those **excluded** in the General Explanatory Note to this Chapter).

As stated above, the bittersweet chocolate contains ingredients that include cocoa paste, sugar, cocoa butter, and vanillin (flavoring). On that basis, we find that it meets the requirements of heading 1806, HTSUS, and the description of chocolate and chocolate goods provided in EN 18.06. As such, the bittersweet chocolate is properly classified in heading 1806, HTSUS. Further, we find that because the bittersweet chocolate is shipped in 5-kilogram blocks, it meets the requirements of subheading 1806.20, HTSUS.

According to the information submitted, the bittersweet chocolate contains over 10 percent by dry weight of sugar. However, subheadings 1806.20.9500 and 1806.20.9800, HTSUSA, require that articles containing over 10 percent by dry weight of sugar be described in Additional U.S. Note 3 to Chapter 17, which provides as follows:

For purposes of this schedule, the term “articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17” means articles containing over 10 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, except . . . (d) cake decorations and similar products to be used in the same condition as imported without any further processing other than the direct application to individual pastries or confections, finely ground or masticated coconut meat or juice thereof mixed with those sugars, and sauces and preparations therefor.

Although the bittersweet chocolate does contain over 10 percent by dry weight of sugar, when CBP previously classified this merchandise we failed to consider that the bittersweet chocolate was “intended for use in enrobing” and, therefore, fell under the exception listed in subsection (d) of Additional

¹⁶ Goods falling under this provision are subject to quota under chapter 99, HTSUS.

U.S. Note 3 to Chapter 17. As such, the bittersweet chocolate should have been precluded from classification under subheadings 1806.20.9500 and 1806.20.9800, HTSUSA. Accordingly, we now find that the bittersweet chocolate is classified under subheading 1806.20.9900, HTSUSA. CBP has previously classified chocolate products containing over 10 percent by dry weight of sugars and used for enrobing desserts under subheadings 1806.20.9900, HTSUSA. See NY I89145, dated January 9, 2003, and NY I89812, dated January 24, 2003.

HOLDING:

By application of GRI 1, the bittersweet chocolate is classified in heading 1806, HTSUS, and is specifically provided for under subheading 1806.20.9900, HTSUSA, as “Chocolate and other food preparations containing cocoa: Other preparations in blocks, slabs or bars, weighing more than 2 kg . . . Other . . . Other . . . Other . . . Other . . . Other.” The 2008 column one, general rate of duty is 8.5% *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 <http://www.usitc.gov/tata/hts/>.

This merchandise is subject to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling the FDA, at (301) 575-0156, or from the World Wide Web at <http://www.fda.gov/oc/bioterrorism/bioact.html>.

EFFECT ON OTHER RULINGS:

NY N005523, dated February 13, 2007, is hereby revoked. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Ieva K. O'Rourke MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

[ATTACHMENT C]

HQ H008518
 August 13, 2008
 CLA-2 OT:RR:CTF:TCM H008518 IDL
 CATEGORY: Classification
 TARIFF NO.: 1806.32.3000

MR. BOB FORBES
 ROE LOGISTICS
 660 Bridge Street
 Montreal, Quebec H3K 3K9
 Canada

Re: Chocolate Bars; “Neutral 5.5G Cupid”; “Xmas Flat 14G in Bulk”; Revocation of NY N005972 and NY N005974

DEAR MR. FORBES:

This letter concerns New York Ruling Letter (NY) N005972 and NY N005974, both dated February 20, 2007, issued to you by the National Commodity Specialist Division, U.S. Customs and Border Protection (CBP) on

behalf of your client, Barry Callebaut Canada, Inc. At issue in NY N005972 was the correct classification of “Neutral 5.5G Cupid” (Product No. 0563920–500) chocolate bars under the Harmonized Tariff Schedule of the United States (HTSUS). At issue in NY N005974 was the correct classification of “Xmas Flat 14G in bulk (Product No. 0304020–500)” chocolate bars under the HTSUS. We have reviewed NY N005972 and NY N005974 and have found that they are incorrect.

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 was published in the *Customs Bulletin*, Volume 42, No. 29, on July 9, 2008. No comments were received in response to the notice.

FACTS:

In both NY N005972 and NY N005974, the merchandise at issue was described as being “flat pieces of confectionery wrapped in foil ready for consumption as is . . . [to] be shipped in 12-kilogram cases.” Both the “Neutral 5.5G Cupid” and the “Xmas Flat 14G in bulk” chocolate bars were further described as being composed of 59.39 percent sugar, 15.86 percent cocoa butter, 10.95 percent chocolate liquor, 10.01 percent skim milk powder, 0.43 percent soya lecithin and 0.01 percent vanillin, with a total milk solids content of 13.33 percent. In error, two percentage values, 3.31 and 3.39, were given in each ruling for the total milk fat content of each type of chocolate bar.

CBP classified the chocolate bars described in NY N005972 and in NY N005974 under subheading 1806.32.0600, HTSUSA, which provides for: “Chocolate and other food preparations containing cocoa: Other, in blocks, slabs or bars: Not filled: Preparations consisting wholly of ground cocoa beans, with or without added cocoa fat, flavoring or emulsifying agents, and containing not more than 32 percent by weight of butterfat or other milk solids and not more than 60 percent by weight of sugar: Containing butterfat or other milk solids (excluding articles for consumption at retail as candy or confection): Other, containing over 5.5 percent by weight of butterfat: Other: Containing less than 21 percent by weight of milk solids.”

CBP now takes the position that the chocolate bars were classified incorrectly and that the correct classification is under subheading 1806.32.3000, HTSUSA.

ISSUE:

Whether the chocolate bars described above are correctly classified under subheading 1806.32.0600 or subheading 1806.32.3000, HTSUSA?

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 most 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 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

- 1806 Chocolate and other food preparations containing cocoa:
 - * * *
 - Other, in blocks, slabs or bars:
 - * * *
- 1806.32 Not filled:
 - Preparations consisting wholly of ground cocoa beans, with or without added cocoa fat, flavoring or emulsifying agents, and containing not more than 32 percent by weight of butterfat or other milk solids and not more than 60 percent by weight of sugar:
 - Containing butterfat or other milk solids (excluding articles for consumption at retail as candy or confection):
 - * * *
 - Other, containing over 5.5 percent by weight of butterfat:
 - * * *
 - Other:
 - 1806.32.0600 Containing less than 21 percent by weight of milk solids ^{1/17}
 - * * *
 - 1806.32.3000 Other

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 18.06 provides the following:

Chocolate is composed essentially of cocoa paste and sugar or other sweetening matter, usually with the addition of flavouring and cocoa butter; in some cases, cocoa powder and vegetable oil may be substituted for cocoa paste

Chocolate and chocolate goods may be put up either as blocks, slabs, tablets, bars, pastilles, croquettes, granules or powder, or in the form of chocolate products filled with creams, fruits, liqueurs, etc.

The heading also includes all sugar confectionery containing cocoa in any proportion (including chocolate nougat), sweetened cocoa powder,

¹⁷ Goods falling under this provision are subject to quota under chapter 99, HTSUS.

chocolate powder, chocolate spreads, and, in general, all food preparations containing cocoa (**other than** those **excluded** in the General Explanatory Note to this Chapter).

As stated above, the chocolate bars contain ingredients that include sugar, cocoa butter, chocolate liquor, and vanillin (flavor). The chocolate bars meet the requirements of heading 1806, HTSUS, and the description provided in EN 18.06. As such, the chocolate bars are properly classified in heading 1806, HTSUS. At the six-digit level, we find that the chocolate bars meet the requirements of 1806.32, HTSUS, because they are in bar form and not filled.

CBP previously classified the bars in subheading 1806.32.0600, HTSUSA. However, the text superior to subheadings 1806.32.0100 through 1806.32.1800, HTSUSA, which governs classification in the range of subheadings in which subheading 1806.32.0600 falls, excludes “articles for consumption at retail as candy or confection.” The chocolate bars at issue were described as being “confectionery wrapped in foil ready for consumption as is.” On the basis of the condition in which they were to be imported, we now find that the chocolate bars are excluded from classification in subheading 1806.32.0600, HTSUSA, by the terms of that subheading. Consequently, CBP’s previous classification of the bars was incorrect.

We now find that the chocolate bars are classified under subheading 1806.32.3000, HTSUSA, because they consist wholly of ground cocoa and do not contain, by weight, more than 32 percent milk solids or more than 60 percent of sugar, and are articles for consumption at retail as candy or confection. We note that the discrepancy in the milk fat percentage found in NY N005972 and in NY N005974 is inconsequential to this classification analysis.

HOLDING:

By application of GRI 1, the chocolate bars are classified in heading 1806, HTSUS, and are specifically provided for under subheading 1806.32.3000, HTSUSA, as “Chocolate and other food preparations containing cocoa: Other, in blocks, slabs or bars: Not filled: Preparations consisting wholly of ground cocoa beans, with or without added cocoa fat, flavoring or emulsifying agents, and containing not more than 32 percent by weight of butterfat or other milk solids and not more than 60 percent by weight of sugar: Other.” The 2008 column one, general rate of duty is 4.3% *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 <http://www.usitc.gov/tata/hts/>.

This merchandise is subject to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling the FDA, at (301) 575-0156, or from the World Wide Web at <http://www.fda.gov/oc/bioterrorism/bioact.html>.

EFFECT ON OTHER RULINGS:

NY N005972 and NY N005974, both dated February 20, 2007, are hereby revoked. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Ieva K. O'Rourke for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H008515
August 13, 2008
CLA-2 OT:RR:CTF:TCM H008515 IDL
CATEGORY: Classification
TARIFF NO.: 1806.20.20

MR. BOB FORBES
ROE LOGISTICS
660 Bridge Street
Montreal, Quebec H3K 3K9
Canada

Re: Milk Chocolate "Coating" (Slabs); Revocation of NY N006098

DEAR MR. FORBES:

This letter concerns New York Ruling Letter (NY) N006098, dated February 20, 2007, issued to you by U.S. Customs and Border Protection (CBP). At issue in that ruling was the classification of "milk chocolate coating (Product No. 0757180-400)" under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed N006098 and have found that it is incorrect.

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 was published in the Customs Bulletin, Volume 42, No. 29, on July 9, 2008. No comments were received in response to the notice.

FACTS:

In NY N006098, CBP described the milk chocolate product as follows:

The subject merchandise is stated to contain 54.55 percent sugar, 18.85 percent cocoa butter, 13.40 percent chocolate liquor, 9.36 percent skim milk powder, 3.34 percent anhydrous milk fat, 0.48 percent soya lecithin and 0.01 percent vanillin. Total milk solids are 12.7 percent and total milk fat is 3.40 percent. It will be shipped in 10-pound slabs . . . the product is ready for consumption; it just needs to be melted prior to coating and is intended for use in coating cakes, pastries and confectionery.

CBP classified the product under subheading 1806.20.3600, HTSUSA. However, it is now our position that the milk chocolate product described in

NY N006098 was classified incorrectly, and that the chocolate should be classified under subheading 1806.20.20, HTSUS.

ISSUE:

Whether the milk chocolate product described above is correctly classified under subheading 1806.20.20 or under subheading 1806.20.3600, HTSUS?

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 most 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 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

| | |
|--------------|--|
| 1806 | Chocolate and other food preparations containing cocoa: * * * |
| 1806.20 | Other preparations in blocks, slabs or bars, weighing more than 2kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2 kg: Preparations consisting wholly of ground cocoa beans, with or without added cocoa fat, flavoring or emulsifying agents, and containing not more than 32 percent by weight of butterfat or other milk solids and not more than 60 percent by weight of sugar: |
| 1806.20.20 | In blocks or slabs weighing 4.5 kg or more each * * * |
| | Other: Containing butterfat or other milk solids (excluding articles for consumption at retail as candy or confection): Other: * * * |
| | Other: |
| 1806.20.3600 | Containing less than 21 percent by weight of milk solids ^{1/18} |

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official

¹⁸ Goods falling under this provision are subject to quota under chapter 99, HTSUS.

interpretation of the Harmonized System at the international level. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 18.06 provides the following:

Chocolate is composed essentially of cocoa paste and sugar or other sweetening matter, usually with the addition of flavouring and cocoa butter; in some cases, cocoa powder and vegetable oil may be substituted for cocoa paste

* * *

The heading also includes all sugar confectionery containing cocoa in any proportion (including chocolate nougat), sweetened cocoa powder, chocolate powder, chocolate spreads, and, in general, all food preparations containing cocoa (**other than** those **excluded** in the General Explanatory Note to this Chapter).

As an initial matter, we note that, although in N006098 CBP referred to the product at issue as a “milk chocolate coating”, the product is actually entered in slab form and is melted and used as coating after importation; it is not imported in liquid form.

As stated above, the milk chocolate product contains ingredients that include sugar, flavoring, and cocoa butter. We find that the milk chocolate product meets the requirements of heading 1806, HTSUS, as well as the description provided in EN 18.06. As such, the milk chocolate product is properly classified in heading 1806, HTSUS. Further, subheading 1806.20, HTSUS, provides for “other preparations in . . . slabs . . . weighing more than 2 kg”. As earlier described, the milk chocolate is imported in slab form and weighs in excess of 2 kg. On that basis, we find that it meets the requirements of subheading 1806.20, HTSUS.

Contrary to our previous decision, at the eight-digit level, we now find that the milk chocolate slabs meet the requirements of subheading 1806.20.20, HTSUS, because, at 10 pounds, they exceed the stated minimum weight requirement of 4.5 kg (1 kg = 2.2 lbs.; 4.5 kg = 9.9 lbs.). Further, they are not described by the terms of subheading 1806.20.3600, HTSUSA. Accordingly, the milk chocolate slabs are classified under subheading 1806.20.20, HTSUS.

HOLDING:

By application of GRI 1, the milk chocolate slabs are classified in heading 1806, HTSUS, and are specifically provided for under subheading 1806.20.20, HTSUS, as: “Chocolate and other food preparations containing cocoa: . . . Other preparations in . . . slabs . . . weighing more than 2 kg: Preparations consisting wholly of ground cocoa beans, with or without added cocoa fat, flavoring or emulsifying agents, and containing not more than 32 percent by weight of butterfat or other milk solids and not more than 60 percent by weight of sugar: In blocks or slabs weighing 4.5 kg or more each.” The 2008 column one, general rate of duty is “free”.

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

This merchandise is subject to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the

Bioterrorism Act can be obtained by calling the FDA, at (301) 575-0156, or from the World Wide Web at <http://www.fda.gov/oc/bioterrorism/bioact.html>.

EFFECT ON OTHER RULINGS:

NY N006098, dated February 20, 2007, is hereby revoked. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Ieva K. O'Rourke for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.