

U.S. Customs and Border Protection

CBP Decisions

Notice of Expansion of Temporary Worker Visa Exit Program Pilot to Include H-2B

Temporary Workers

CBP Dec. 08-49

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

ACTION: General notice.

SUMMARY: This notice announces that U.S. Customs and Border Protection is expanding a pilot program that implements a land-border exit system for certain temporary workers at certain designated ports of entry. Under the expansion of this pilot program, temporary workers within the H-2A and H-2B nonimmigrant classifications that enter the United States at the ports of San Luis, Arizona or Douglas, Arizona on or after August 1, 2009, must depart from either one of those ports and provide certain biographic and biometric information at one of the kiosks established for this purpose. Any nonimmigrant alien admitted under an H-2A or H-2B nonimmigrant visa at one of the designated ports of entry will be issued a CBP Form I-94, Arrival and Departure Record, and be presented with information material that explains the pilot program requirements.

DATES: The effective date of this notice is August 1, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Erin M. Martin via e-mail at ERIN.Martin@dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

A pilot program for certain temporary workers was first proposed on February 13, 2008, when the Department of Homeland Security (DHS) published a notice of proposed rulemaking (73 FR 8230) to amend its regulations regarding the H-2A nonimmigrant classifica-

tion.¹ Specifically, DHS proposed to create 8 CFR 215.9 instituting a temporary worker visa exit pilot program and requiring certain H-2A temporary agricultural workers to participate in a pilot program that requires these workers to register with Customs and Border Protection (CBP) at the time of their departure from the United States. On December 19, 2008, a final rule was published in the **Federal Register** [73 FR 78104] establishing the pilot program. Pursuant to the final rule, CBP published a notice, CBP Dec. 08-48, in the same **Federal Register** that requires H-2A temporary agricultural workers entering the U.S. at the ports of San Luis and Douglas, Arizona, on or after August 1, 2009, to register with CBP at the time of departure from the United States.

On August 20, 2008, DHS published a Notice of Proposed Rulemaking in the **Federal Register** (73 FR 49109) proposing changes to requirements affecting temporary non-agricultural workers within the H-2B nonimmigrant classification and their U.S. employers.² Among other things, DHS proposed to expand the temporary worker visa exit pilot program to include the H-2B nonimmigrant classification by requiring H-2B temporary non-agricultural workers admitted at a port of entry participating in the program to register with CBP at the time of departure from the United States. DHS is publishing the final rule in today's edition of the **Federal Register**, concurrent with this Notice.

The final rule amends 8 CFR 215.9, to provide that an alien admitted with a certain temporary worker visa at a port of entry participating in the Temporary Worker Visa Exit Program must also depart at the end of his or her authorized period of stay through a port of entry participating in the program and present designated biographic and/or biometric information upon departure. The amended § 215.9 further states that CBP will publish a notice in the **Federal Register** designating which temporary workers must participate in the Temporary Worker Visa Exit Program, which ports of entry are participating in the program, which biographical and/or biometric information would be required, and the format for submission of that information by the departing designated temporary workers.

The instant notice is being issued pursuant to amended § 215.9. It contains all the required elements referenced in 8 CFR 215.9 as amended and expands the temporary worker visa exit pilot program to include both the H-2A and the H-2B classifications. The require-

¹The H-2A nonimmigrant classification applies to aliens seeking to perform agricultural labor or services of a temporary or seasonal nature in the United States. Immigration and Nationality Act (Act or INA) sec. 101(a)(15)(H)(ii)(a), 8 U.S.C. 1101(a)(15)(H)(ii)(a); see 8 CFR 214.1(a)(2) (designation for H-2A classification).

²The H-2B nonimmigrant classification applies to foreign workers coming to the U.S. temporarily to perform temporary, non-agricultural labor or services. Immigration and Nationality Act (Act or INA) sec. 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b); see 8 CFR 214.1(a)(2) (designation for H-2B classification).

ments of the pilot program, the designated ports, and the effective date of the pilot program will be the same for both H-2A and H-2B temporary workers. Therefore, any alien who is admitted into the United States with an H-2A or H-2B nonimmigrant visa at a designated port on or after August 1, 2009, will be subject to the expanded pilot program.

Temporary Worker Visa Exit Program Pilot

General Requirements

Any alien admitted into the United States at a designated port of entry with either an H-2A or H-2B nonimmigrant visa must depart from a designated port of entry and must submit certain biographic and biometric information at one of the kiosks established for this purpose.

Designated Ports of Entry

San Luis, Arizona

Douglas, Arizona

Entry Procedures

Any nonimmigrant alien admitted with an H-2A or H-2B nonimmigrant visa at one of the designated ports of entry will be issued a CBP Form I-94, Arrival and Departure Record, and be presented with information material that explains the pilot program requirements. The information material will instruct the alien to appear in person at one of the designated ports of entry to register his or her final departure from the United States at that port on or before the date that his or her work authorization expires.

Exit Procedures

An alien admitted with an H-2A or H-2B nonimmigrant visa must depart at a designated port on or before the date his or her work authorization expires. At the time of departure, the alien must present the following biographic and biometric information at a kiosk installed for this purpose:

- Biographic information – name, date of birth, country of citizenship, passport number, and the name of the Consulate where the alien's visa was issued. The biographic information will be provided by scanning the alien's travel document (visa). If the scan of the visa fails, the alien will scan his or her passport. If the scan of the passport fails, the alien will manually enter the required biographic information.
- Biometric information – a 4-finger scan from one hand.
- The departure portion of the CBP Form I-94 – this must be deposited into a lockbox attached to the kiosk and the departing

alien will receive a receipt verifying a successfully completed checkout registration.

Kiosks

Instructions for departure registration will be available in both English and Spanish for use by departing aliens at the kiosks.

Officer assistance will be available in the event that an alien is unable to utilize the designated kiosk to record his or her departure.

DATED: December 8, 2008

JAYSON P. AHERN,
Acting Commissioner,
U.S. Customs and Border Protection.

[Published in the Federal Register, December 19, 2008 (73 FR 77817)]

CBP Dec. 08-50

Guidelines for the Imposition and Mitigation of Civil Penalties for Failure to Comply with the Foreign Trade Regulations in 15 CFR Part 30

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

ACTION: General notice.

SUMMARY: This document provides mitigation guidelines for violations of the Foreign Trade Regulations (FTR) issued by the Census Bureau, Department of Commerce (DOC) in Title 15 of the Code of Federal Regulations part 30. On June 2, 2008, the Census Bureau published a final rule in the **Federal Register** amending the provisions of the FTR to require mandatory filing of export information through the Automated Export System (AES) or through AESDirect for all shipments where the export information is required by the FTR. The final rule included provisions for the issuance of civil penalties for violations of the FTR and the collection of the penalties. These penalty provisions are administered by U.S. Customs and Border Protection (CBP). Pursuant to the FTR, civil penalties not to exceed \$10,000 per violation may be imposed for the failure to file or the delayed filing of export information in AES, the filing of false or misleading information in AES, and other violations of the FTR.

EFFECTIVE DATES: These guidelines are effective on February 1, 2009 for violations occurring on or after February 1, 2009.

FOR FURTHER INFORMATION CONTACT: Susan Terranova, Penalties Branch, Regulations and Rulings, Office of International Trade, (202) 325-0009, or Chris Pappas, Penalties Branch, Regulations and Rulings, Office of International Trade, (202) 325-0109.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On July 1, 2005, the Secretary of the Department of Commerce (DOC), pursuant to his authority under 13 U.S.C. 306, delegated to the Secretary of the Department of Homeland Security (DHS) the authority to enforce the provisions of 13 U.S.C. 304, 305 and specific regulations in 15 CFR part 30 (the "Foreign Trade Regulations" (FTR)). The enforcement of the FTR was to be effected through the issuance of civil penalties in the amounts set forth in the FTR, and by the forfeiture of merchandise as provided for by 15 CFR 30.71(b)(3).

The authority to issue civil penalties to enforce the FTR was delegated by the Secretary of Homeland Security to the Commissioner of CBP. See DHS Delegation Number 7010.3, issued on May 11, 2006. However, DHS, CBP and DOC agreed that the enforcement of the FTR through the assessment of penalties would be postponed until the proposed amendments of the Census Bureau (DOC) to the FTR, published in the **Federal Register** on February 17, 2005 (see 70 FR 8200), were finalized. On June 2, 2008, the Census Bureau published a final rule in the **Federal Register** (73 FR 31548) amending the provisions of the FTR to require mandatory filing of export information through the Automated Export System (AES) or through AESDirect for all shipments where the export information is required by the FTR. The final rule stated that the implementation of the provisions of the FTR would be delayed until September 30, 2008, to allow all affected parties sufficient time in which to come into compliance with the final rule. However, in order to provide the public with advance notice of these guidelines, CBP will not commence the issuance of penalties for FTR violations until thirty days after the date of publication of this document.

The statutory basis for the penalty assessments for violation of the FTR resides in 13 U.S.C. 304. The penalty provisions that will be administered by CBP are set forth in sections 30.71 and 30.72 of the FTR (15 CFR 30.71 and 30.72). Pursuant to section 30.71(b)(1) and (b)(2), civil penalties not to exceed \$10,000 per violation may be imposed for the failure to file or the delayed filing of export information in AES, the filing of false or misleading information in AES, and other violations of the FTR. Section 30.72 sets forth the procedures for the collection of the penalties and provides for the mitigation of the penalties incurred under section 30.71(b)(1) and (b)(2). Inasmuch as the authority to assess and mitigate these penalties has been del-

egated ultimately to the Commissioner of CBP, the administration of these penalties shall be under the customs laws. See 15 CFR 30.72(b).

CBP coordinated with other offices in DHS and with DOC in drafting guidelines for the mitigation of the civil penalties set forth in the FTR. These guidelines provide for separate mitigation schemes for penalties assessed for the following: (1) the failure to file the export information in AES, (2) the late filing of the export information in AES, (3) the failure to file all the necessary information in AES, the filing of incorrect information in AES, or the failure to comply with some other requirement of the FTR, and (4) the failure of the exporting carrier to provide certain documents or certain information to CBP. The penalties may be assessed against any culpable party with respect to the export transaction. These parties include the U.S. Principal Party in Interest (USPPI), the Foreign Principal Party in Interest (FPPI), freight forwarders, authorized agents (which may include brokers and other parties to the export transaction), and carriers. Penalties may be assessed against more than one culpable party. For example, if the USPPI or its agent fails to provide the carrier with the AES proof of filing citation or exemption legend and the carrier then fails to include the filing citation or exemption legend on the manifest (when the manifest is required), CBP may issue a penalty against both the USPPI and the carrier. The penalty should be assessed against the culpable party or parties per each AES transmission that is found to be in violation of the FTR, rather than per each violation of the FTR with respect to the AES transmission. For instance, when a USPPI transmits incorrect foreign consignee information in AES and also transmits a false value for the merchandise, which is then exported without correction of the AES record, only one penalty will be issued to the USPPI.

For first violations of the FTR, CBP may take alternative action to the assessment of penalties, including, but not limited to, educating and informing the parties involved in the export transaction of the applicable U.S. export laws and regulations, or issuing a warning letter to the party. However, CBP may issue penalties when the party has previously received a warning letter or the party has been educated by an enforcement agency through an outreach program or by other means.

The issuance by CBP of a penalty for a violation of the FTR does not preclude CBP from issuing penalties for other violations that may exist with respect to the export transaction. For example, CBP may issue a penalty under the FTR against a USPPI who filed incorrect export information in AES for an exportation of counterfeit trademarked goods that had been illegally entered into the U.S., as well as a separate penalty under CBP laws for the trademark violation.

The mitigation guidelines for penalties issued for violations of the FTR are set forth below. **These guidelines are effective on February 1, 2009.**

The text of the guidelines is set forth below.

Date: December 12, 2008

W. RALPH BASHAM,
Commissioner,
Customs and Border Protection.

Attachment



Guidelines for the Imposition and Mitigation of Civil Penalties for Failure to Comply with the Foreign Trade Regulations in 15 CFR Part 30

The guidelines set forth below will pertain to penalties incurred for violations of the Foreign Trade Regulations (FTR) (15 CFR part 30). Penalties under the FTR may be issued to U.S. Principal Parties in Interest (USPPIs), Foreign Principal Parties in Interest (FPPIs), freight forwarders, authorized agents (including brokers and other parties to the export transaction, as appropriate) and carriers. Under 15 CFR Subpart H, the penalty may be issued in an amount up to \$10,000 per violation. Penalties may be assessed against more than one person for a violation stemming from the same export transaction.

NOTE: For purposes of the penalty guidelines below, only violations occurring or resolved within the 3-year period preceding the subject violation will be considered as prior violations.

Informed Compliance: For first offenses, enforcement agencies may take alternative action to the assessment of penalties, including the alternative to educate and inform the persons involved in the transaction of the applicable U.S. export laws, issuance of warning letters, or company outreach.

I. PENALTIES FOR THE FAILURE TO FILE ELECTRONIC EXPORT INFORMATION (EEI) IN THE AUTOMATED EXPORT SYSTEM (AES)—A failure to file occurs if the government discovers that there is no record in the AES for an export transaction by the date that the record is required and that discovery is made and communicated to the USPPI, authorized agent, or other party before the violation is corrected (See 15 CFR 30.4 for the time periods for filing of the EEI). However, any AES record filed later than 10 days after the due date will be considered a failure to file, regardless of whether the violation was or was not discovered by the government.

A. PENALTY ISSUANCE—These penalties will be assessed against USPPIs, authorized agents or other parties to the export transaction, or the FPPI, its authorized agent, or other appropriate party to the transaction if a routed export transaction as defined in 15 CFR 30.1(c). The Notice of Penalty will be issued at the maximum amount of \$10,000.

B. PENALTY MITIGATION:

1. First Recorded Offense—\$750 to \$2,500
2. Second Recorded Offense—\$1000 to \$3,500
3. Third Recorded Offense—\$1,500 to \$5,000
4. Fourth and Subsequent Recorded Offenses—\$2,000 to \$10,000

NOTE: The existence of one or more mitigating factors to the violation may result in mitigation at the low end of the mitigation range. If one or more aggravating factors exist, the penalty may be mitigated at the high end of the mitigation range. Mitigating and aggravating factors may be used to offset each other.

C. MITIGATING FACTORS (Not an exhaustive list):

1. First—time USPPI or authorized agent, FPPI, carrier, etc.
2. Voluntary self-disclosure of the violation, in accordance with 15 CFR 30.74 (Extraordinary Mitigating Factor).
3. Clear documentary evidence of remedial measures undertaken to prevent future violations.
4. Exceptional cooperation with CBP, Census or the Bureau of Industry and Security (BIS).
5. The violation was an isolated occurrence.
6. The party has provided substantial assistance in the investigation of another person.
7. The party demonstrates that it has a systematic export compliance effort.

D. AGGRAVATING FACTORS (Not an exhaustive list):

1. Several violations in the same export transaction (e.g., wrong port code; incorrect value; missing required data; violations of the regulations of other agencies, such as the Department of State or the Drug Enforcement Administration, in addition to the Census violation).
2. Circumstances suggest the intentional nature of the violation (e.g., wrong value where invoices or other documents covering goods show correct value; claiming post-departure to avoid pre-departure filing when filer is not an approved post-departure filer).
3. High number of violations in preceding 3-year period.
4. Evidence of criminal conviction for a related violation, such as a BIS violation.
5. The party exhibits a pattern of disregard for its responsibilities under U.S. export laws and regulations.
6. The party exports as a regular part of its business, but lacked a systematic export compliance effort.

II. PENALTIES FOR THE LATE FILING OF ELECTRONIC EXPORT INFORMATION (EEI) in AES—Late filing occurs when the AES record is filed beyond the due date for such filing (See 15 CFR 30.4 for the time periods for filing in AES). However, any AES record filed later than 10 days after the due date will be considered a non-filing of the AES record and will be subject to the penalties under Paragraph I. above. Further, any AES record filed after the government discovers the violation and communicates the violation to the USPPI or authorized agent will be considered a failure to file in the AES, also subject to the penalty scheme in Paragraph I. above.

- A. **PENALTY ISSUANCE**—These penalties will be issued to USPPIs, authorized agents, or other person as appropriate; or the FPPI, its authorized agent or other person as appropriate if a routed transaction. The Notice of Penalty will be issued in an amount that reflects \$1,100 per each day late, up to a maximum of \$10,000.
- B. **PENALTY MITIGATION:**
1. First Recorded Offense—\$250 per day to \$1,500
 2. Second Recorded Offense—\$500 per day to \$2,500
 3. Third Recorded Offense—\$750 per day to \$3,500
 4. Fourth and Subsequent Recorded Offenses—\$1,100 per day up to a maximum of \$10,000

NOTE: If one or more mitigating factors as enumerated in Paragraph I.C. above exist, the mitigated penalty amount may be reduced from the prescribed amount, but no lower than \$250. If one or more aggravating factors as enumerated in Paragraph I.D. above exist, the mitigated penalty amount may be increased beyond the prescribed amount, but no higher than \$10,000.

III. PENALTIES FOR OTHER FTR VIOLATIONS, INCLUDING THE FOLLOWING (Not an Exhaustive List):

- Incorrect value for shipment.
 - Other incorrect information in the AES record, such as an incorrect USPPI, consignee, end-user, commodity description, or port of export.
 - Failure to cite license code or license number.
 - Failure to obtain Power of Attorney for AES transmission.
 - Failure to identify transaction as a routed transaction.
 - Failure to correct information in AES as the changes become known to the filer.
 - Failure to provide carrier with appropriate proof of filing citation or exemption legend by the time periods set forth in the FTR.
 - Failure to retain all records relating to the export shipment for a 5-yr. period from the date of export.
- A. **PENALTY ISSUANCE**—These penalties may be issued against USPPIs, authorized agents, freight forwarders, and any other person as appropriate, or the FPPI or its authorized agent if a routed transaction, or other persons as appropriate. The Notice of Penalty will be issued at the maximum amount of \$10,000.
- B. **PENALTY MITIGATION:**
1. First Recorded Offense—\$500 to \$2,500
 2. Second Recorded Offense—\$750 to \$3,500
 3. Third Recorded Offense—\$1,000 to \$5,000
 4. Fourth and Subsequent Recorded Offenses—\$2,000 to \$10,000

NOTE: Mitigating factors as enumerated in paragraph I.C. above may result in a mitigated penalty at the low end of the mitigation range or a penalty below the minimum penalty amount, but no lower than \$500. Aggravating factors as enumerated in paragraph I.D. above may result in a mitigated amount at the high end of the mitigation range. Mitigating and aggravating factors may serve to offset each other.

IV. **CARRIER PENALTIES**—Penalties may be issued against exporting carriers or other persons as appropriate for the following violations:

- Failure of carriers to adhere to requirements set forth in section 30.45 (15 CFR 30.45).
 - Failure to provide the USPPI or authorized agent with changes to the date of export or the port of export.
 - Failure to report the proof of filing citation or exemption legend on the required manifest.
 - When filing an incomplete manifest under bond, the failure to file the manifest information within the prescribed time period after export (“late filing”).
 - When filing incomplete under bond, the failure to provide the list of proof of filing citations or exemption legends prior to departure from the port of exit.
 - For carriers exempted from filing a manifest, the failure to file, upon request, the proof of filing citations or exemption legends.
- A. **PENALTY ISSUANCE**—The Notice of Penalty will be issued at the maximum amount of \$10,000, except for late filing of the manifest information. For late filing of the manifest information, the penalty will be issued at \$1,100 per each day late, up to a maximum of \$10,000 per violation, in accord with section 30.47(b) of the FTR (15 CFR 30.47(b)).
- B. **PENALTY MITIGATION:**
1. First Recorded Offense—\$500 to \$2,500
 2. Second Recorded Offense—\$750 to \$3,500
 3. Third Recorded Offense—\$1,000 to \$5,000
 4. Fourth and Subsequent Recorded Offenses—\$2,000 to \$10,000

NOTE: Mitigating factors as enumerated in Paragraph I.C. above may result in a mitigated penalty amount at the low end of the mitigation range or lower, but not less than \$500. Aggravating factors as enumerated in Paragraph I.D. above may result in a mitigated amount at the high end of the mitigation range. Mitigating and aggravating factors may be used to offset each other.

(CBP Dec. 08–51)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR
JULY, 2008

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

Holiday(s): July 4, 2008

European Union euro:

July 1, 2008	1.577800
July 2, 2008	1.586900
July 3, 2008	1.570800
July 4, 2008	1.570800
July 5, 2008	1.570800
July 6, 2008	1.570800
July 7, 2008	1.564600
July 8, 2008	1.565300
July 9, 2008	1.574400
July 10, 2008	1.577100
July 11, 2008	1.589800
July 12, 2008	1.589800
July 13, 2008	1.589800
July 14, 2008	1.591400
July 15, 2008	1.592300
July 16, 2008	1.584700
July 17, 2008	1.586100
July 18, 2008	1.585500
July 19, 2008	1.585500
July 20, 2008	1.585500
July 21, 2008	1.587700
July 22, 2008	1.581100
July 23, 2008	1.570800
July 24, 2008	1.565700
July 25, 2008	1.568700
July 26, 2008	1.568700
July 27, 2008	1.568700
July 28, 2008	1.574700
July 29, 2008	1.558800
July 30, 2008	1.555900
July 31, 2008	1.558900

South Korea won:

July 1, 2008	0.000952
July 2, 2008	0.000965
July 3, 2008	0.000957
July 4, 2008	0.000957
July 5, 2008	0.000957
July 6, 2008	0.000957

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly list for July 2008 (continued):

South Korea won: (continued):

July 7, 2008	0.000957
July 8, 2008	0.000974
July 9, 2008	0.001000
July 10, 2008	0.001002
July 11, 2008	0.001000
July 12, 2008	0.001000
July 13, 2008	0.001000
July 14, 2008	0.000996
July 15, 2008	0.000994
July 16, 2008	0.000993
July 17, 2008	0.000989
July 18, 2008	0.000987
July 19, 2008	0.000987
July 20, 2008	0.000987
July 21, 2008	0.000983
July 22, 2008	0.000986
July 23, 2008	0.000991
July 24, 2008	0.000993
July 25, 2008	0.000993
July 26, 2008	0.000993
July 27, 2008	0.000993
July 28, 2008	0.000994
July 29, 2008	0.000994
July 30, 2008	0.000988
July 31, 2008	0.000989

Taiwan N.T. dollar:

July 1, 2008	0.032927
July 2, 2008	0.032916
July 3, 2008	0.032862
July 4, 2008	0.032862
July 5, 2008	0.032862
July 6, 2008	0.032862
July 7, 2008	0.032916
July 8, 2008	0.032916
July 9, 2008	0.032895
July 10, 2008	0.032862
July 11, 2008	0.032916
July 12, 2008	0.032916
July 13, 2008	0.032916
July 14, 2008	0.032895
July 15, 2008	0.032916
July 16, 2008	0.032949
July 17, 2008	0.032949
July 18, 2008	0.032982
July 19, 2008	0.032982
July 20, 2008	0.032982
July 21, 2008	0.032960
July 22, 2008	0.032960
July 23, 2008	0.032906
July 24, 2008	0.032862

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly list for July, 2008 (continued):

Taiwan N.T. dollar: (continued):

July 25, 2008	0.032841
July 26, 2008	0.032841
July 27, 2008	0.032841
July 28, 2008	0.032895
July 29, 2008	0.032808
July 30, 2008	0.032669
July 31, 2008	0.032552

Dated: August 1, 2008

MARGARET T. BLOM,
Acting Chief,
Customs Information Exchange.



(CBP Dec. 08-52)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR JULY, 2008

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in CBP Decision 08-38 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): July 4, 2008

Republic of South Africa rand

July 22, 2008	0.133476
July 28, 2008	0.133333
July 29, 2008	0.135208
July 30, 2008	0.135446
July 31, 2008	0.136790

Dated: August 1, 2008

MARGARET T. BLOM,
Acting Chief,
Customs Information Exchange.

(CBP Dec. 08-53)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR
AUGUST, 2008

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

Holiday(s): none

European Union euro:

August 1, 2008	1.556700
August 2, 2008	1.556700
August 3, 2008	1.556700
August 4, 2008	1.556900
August 5, 2008	1.546800
August 6, 2008	1.540900
August 7, 2008	1.534100
August 8, 2008	1.504700
August 9, 2008	1.504700
August 10, 2008	1.504700
August 11, 2008	1.495800
August 12, 2008	1.490500
August 13, 2008	1.489500
August 14, 2008	1.485600
August 15, 2008	1.469500
August 16, 2008	1.469500
August 17, 2008	1.469500
August 18, 2008	1.473000
August 19, 2008	1.474600
August 20, 2008	1.470100
August 21, 2008	1.487500
August 22, 2008	1.480000
August 23, 2008	1.480000
August 24, 2008	1.480000
August 25, 2008	1.480300
August 26, 2008	1.466000
August 27, 2008	1.468400
August 28, 2008	1.468500
August 29, 2008	1.466900
August 30, 2008	1.466900
August 31, 2008	1.466900

South Korea won:

August 1, 2008	0.000984
August 2, 2008	0.000984
August 3, 2008	0.000984
August 4, 2008	0.000984
August 5, 2008	0.000983
August 6, 2008	0.000985

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly
list for August 2008 (continued):

South Korea won: (continued):

August 7, 2008	0.000984
August 8, 2008	0.000973
August 9, 2008	0.000973
August 10, 2008	0.000973
August 11, 2008	0.000971
August 12, 2008	0.000967
August 13, 2008	0.000962
August 14, 2008	0.000962
August 15, 2008	0.000962
August 16, 2008	0.000962
August 17, 2008	0.000962
August 18, 2008	0.000959
August 19, 2008	0.000951
August 20, 2008	0.000955
August 21, 2008	0.000949
August 22, 2008	0.000941
August 23, 2008	0.000941
August 24, 2008	0.000941
August 25, 2008	0.000928
August 26, 2008	0.000920
August 27, 2008	0.000923
August 28, 2008	0.000925
August 29, 2008	0.000918
August 30, 2008	0.000918
August 31, 2008	0.000918

Taiwan N.T. dollar:

August 1, 2008	0.032520
August 2, 2008	0.032520
August 3, 2008	0.032520
August 4, 2008	0.032573
August 5, 2008	0.032531
August 6, 2008	0.032531
August 7, 2008	0.032216
August 8, 2008	0.032000
August 9, 2008	0.032000
August 10, 2008	0.032000
August 11, 2008	0.032134
August 12, 2008	0.032123
August 13, 2008	0.032031
August 14, 2008	0.032000
August 15, 2008	0.031888
August 16, 2008	0.031888
August 17, 2008	0.031888
August 18, 2008	0.031939
August 19, 2008	0.031817
August 20, 2008	0.031847
August 21, 2008	0.031990
August 22, 2008	0.031888
August 23, 2008	0.031888
August 24, 2008	0.031888
August 25, 2008	0.031827

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly list for August, 2008 (continued):

Taiwan N.T. dollar: (continued):

August 26, 2008	0.031706
August 27, 2008	0.031726
August 28, 2008	0.031706
August 29, 2008	0.031696
August 30, 2008	0.031696
August 31, 2008	0.031696

Dated: September 1, 2008

MARGARET T. BLOM,
Acting Chief,
Customs Information Exchange.



(CBP Dec. 08-54)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR AUGUST, 2008

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in CBP Decision 08-52 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): none

Australia dollar

August 8, 2008	0.891500
August 9, 2008	0.891500
August 10, 2008	0.891500
August 11, 2008	0.886900
August 12, 2008	0.875700
August 13, 2008	0.867500
August 14, 2008	0.870900
August 15, 2008	0.867600
August 16, 2008	0.867600
August 17, 2008	0.867600
August 18, 2008	0.871200
August 19, 2008	0.871000
August 20, 2008	0.871200
August 21, 2008	0.878500
August 22, 2008	0.868900
August 23, 2008	0.868900
August 24, 2008	0.868900

FOREIGN CURRENCIES—Variances from quarterly rates for August, 2008 (continued):

Australia dollar (continued):

August 25, 2008	0.867600
August 26, 2008	0.856100
August 27, 2008	0.855300
August 28, 2008	0.861800
August 29, 2008	0.856300
August 30, 2008	0.856300
August 31, 2008	0.856300

Denmark krone

August 11, 2008	0.200521
August 12, 2008	0.199804
August 13, 2008	0.199708
August 14, 2008	0.199191
August 15, 2008	0.196994
August 16, 2008	0.196994
August 17, 2008	0.196994
August 18, 2008	0.197496
August 19, 2008	0.197726
August 20, 2008	0.197134
August 21, 2008	0.199434
August 22, 2008	0.198432
August 23, 2008	0.198432
August 24, 2008	0.198432
August 25, 2008	0.198464
August 26, 2008	0.196564
August 27, 2008	0.196912
August 28, 2008	0.196928
August 29, 2008	0.196696
August 30, 2008	0.196696
August 31, 2008	0.196696

New Zealand dollar

August 6, 2008	0.717900
August 7, 2008	0.715000
August 8, 2008	0.705000
August 9, 2008	0.705000
August 10, 2008	0.705000
August 11, 2008	0.701200
August 12, 2008	0.698900
August 13, 2008	0.696700
August 14, 2008	0.699500
August 15, 2008	0.705500
August 16, 2008	0.705500
August 17, 2008	0.705500
August 18, 2008	0.712400
August 19, 2008	0.712300
August 20, 2008	0.711200
August 21, 2008	0.718300
August 22, 2008	0.710600
August 23, 2008	0.710600
August 24, 2008	0.710600

FOREIGN CURRENCIES—Variances from quarterly rates for August, 2008 (continued):

New Zealand dollar (continued):

August 25, 2008	0.709100
August 26, 2008	0.696800
August 27, 2008	0.698200
August 28, 2008	0.701900
August 29, 2008	0.699100
August 30, 2008	0.699100
August 31, 2008	0.699100

Norway krone

August 8, 2008	0.186986
August 9, 2008	0.186986
August 10, 2008	0.186986
August 11, 2008	0.186916
August 12, 2008	0.185901
August 13, 2008	0.185563
August 14, 2008	0.186195
August 15, 2008	0.184454
August 16, 2008	0.184454
August 17, 2008	0.184454
August 18, 2008	0.184915
August 19, 2008	0.185491
August 20, 2008	0.184898
August 21, 2008	0.187684
August 22, 2008	0.186518
August 23, 2008	0.186518
August 24, 2008	0.186518
August 25, 2008	0.186846
August 26, 2008	0.184877
August 27, 2008	0.185753
August 28, 2008	0.185629
August 29, 2008	0.184362
August 30, 2008	0.184362
August 31, 2008	0.184362

Republic of South Africa rand

August 1, 2008	0.137713
August 2, 2008	0.137713
August 3, 2008	0.137713
August 4, 2008	0.138217
August 5, 2008	0.135501
August 6, 2008	0.134544
August 7, 2008	0.133565

Sweden krona

August 12, 2008	0.158763
August 13, 2008	0.159025
August 14, 2008	0.158655
August 15, 2008	0.157082
August 16, 2008	0.157082
August 17, 2008	0.157082

FOREIGN CURRENCIES—Variances from quarterly rates for August, 2008 (continued):

Sweden krona (continued):

August 18, 2008	0.157585
August 19, 2008	0.156779
August 20, 2008	0.156568
August 21, 2008	0.158773
August 22, 2008	0.158228
August 23, 2008	0.158228
August 24, 2008	0.158228
August 25, 2008	0.158118
August 26, 2008	0.156460
August 27, 2008	0.156055
August 28, 2008	0.155734
August 29, 2008	0.155282
August 30, 2008	0.155282
August 31, 2008	0.155282

Switzerland franc

August 8, 2008	0.925840
August 9, 2008	0.925840
August 10, 2008	0.925840
August 11, 2008	0.923532
August 12, 2008	0.919118
August 13, 2008	0.921234
August 14, 2008	0.916506
August 15, 2008	0.912409
August 16, 2008	0.912409
August 17, 2008	0.912409
August 18, 2008	0.912492
August 19, 2008	0.915164
August 20, 2008	0.908430
August 21, 2008	0.920641
August 22, 2008	0.911577
August 23, 2008	0.911577
August 24, 2008	0.911577
August 25, 2008	0.915248
August 26, 2008	0.908760
August 27, 2008	0.908348
August 28, 2008	0.909587
August 29, 2008	0.907523
August 30, 2008	0.907523
August 31, 2008	0.907523

United Kingdom pound sterling

August 13, 2008	1.868200
August 14, 2008	1.871500
August 15, 2008	1.865100
August 16, 2008	1.865100
August 17, 2008	1.865100
August 18, 2008	1.867300
August 19, 2008	1.865500
August 20, 2008	1.860300
August 21, 2008	1.875800

FOREIGN CURRENCIES—Variances from quarterly rates for August, 2008 (continued):

United Kingdom pound sterling (continued):

August 22, 2008	1.854400
August 23, 2008	1.854400
August 24, 2008	1.854400
August 25, 2008	1.858700
August 26, 2008	1.838700
August 27, 2008	1.831800
August 28, 2008	1.826400
August 29, 2008	1.819000
August 30, 2008	1.819000
August 31, 2008	1.819000

Dated: September 1, 2008

MARGARET T. BLOM,
Acting Chief,
Customs Information Exchange.



(CBP Dec. 08-55)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR
SEPTEMBER, 2008

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

Holiday(s): September 1, 2008

European Union euro:

September 1, 2008	1.466900
September 2, 2008	1.452200
September 3, 2008	1.448900
September 4, 2008	1.436000
September 5, 2008	1.427300
September 6, 2008	1.427300
September 7, 2008	1.427300
September 8, 2008	1.412600
September 9, 2008	1.417300
September 10, 2008	1.402000
September 11, 2008	1.393900
September 12, 2008	1.417200
September 13, 2008	1.417200
September 14, 2008	1.417200

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly
list for September, 2008 (continued):

European Union euro: (continued):

September 15, 2008	1.417500
September 16, 2008	1.415500
September 17, 2008	1.421500
September 18, 2008	1.438200
September 19, 2008	1.438400
September 20, 2008	1.438400
September 21, 2008	1.438400
September 22, 2008	1.469700
September 23, 2008	1.473700
September 24, 2008	1.465500
September 25, 2008	1.464300
September 26, 2008	1.459600
September 27, 2008	1.459600
September 28, 2008	1.459600
September 29, 2008	1.438100
September 30, 2008	1.408100

South Korea won:

September 1, 2008	0.000918
September 2, 2008	0.000881
September 3, 2008	0.000871
September 4, 2008	0.000885
September 5, 2008	0.000895
September 6, 2008	0.000895
September 7, 2008	0.000895
September 8, 2008	0.000925
September 9, 2008	0.000910
September 10, 2008	0.000916
September 11, 2008	0.000901
September 12, 2008	0.000904
September 13, 2008	0.000904
September 14, 2008	0.000904
September 15, 2008	0.000895
September 16, 2008	0.000862
September 17, 2008	0.000896
September 18, 2008	0.000868
September 19, 2008	0.000893
September 20, 2008	0.000893
September 21, 2008	0.000893
September 22, 2008	0.000887
September 23, 2008	0.000872
September 24, 2008	0.000867
September 25, 2008	0.000870
September 26, 2008	0.000862
September 27, 2008	0.000862
September 28, 2008	0.000862
September 29, 2008	0.000843
September 30, 2008	0.000829

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly
list for September, 2008 (continued):

Taiwan N.T. dollar:

September 1, 2008	0.031696
September 2, 2008	0.031417
September 3, 2008	0.031456
September 4, 2008	0.031407
September 5, 2008	0.031387
September 6, 2008	0.031387
September 7, 2008	0.031387
September 8, 2008	0.031476
September 9, 2008	0.031387
September 10, 2008	0.031309
September 11, 2008	0.031133
September 12, 2008	0.031319
September 13, 2008	0.031319
September 14, 2008	0.031319
September 15, 2008	0.031182
September 16, 2008	0.031172
September 17, 2008	0.031162
September 18, 2008	0.031037
September 19, 2008	0.031095
September 20, 2008	0.031095
September 21, 2008	0.031095
September 22, 2008	0.031230
September 23, 2008	0.031338
September 24, 2008	0.031338
September 25, 2008	0.031211
September 26, 2008	0.031133
September 27, 2008	0.031133
September 28, 2008	0.031133
September 29, 2008	0.031201
September 30, 2008	0.031027

Dated: October 1, 2008

MARGARET T. BLOM,
Acting Chief,
Customs Information Exchange.

(CBP Dec. 08-56)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR SEPTEMBER, 2008

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in CBP Decision 08-54 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): September 1, 2008

Australia dollar

September 1, 2008	0.856300
September 2, 2008	0.836000
September 3, 2008	0.835200
September 4, 2008	0.829800
September 5, 2008	0.810700
September 6, 2008	0.810700
September 7, 2008	0.810700
September 8, 2008	0.815100
September 9, 2008	0.808100
September 10, 2008	0.803600
September 11, 2008	0.797800
September 12, 2008	0.817000
September 13, 2008	0.817000
September 14, 2008	0.817000
September 15, 2008	0.808000
September 16, 2008	0.793900
September 17, 2008	0.783100
September 18, 2008	0.798900
September 19, 2008	0.828800
September 20, 2008	0.828800
September 21, 2008	0.828800
September 22, 2008	0.844100
September 23, 2008	0.838500
September 24, 2008	0.836600
September 25, 2008	0.836000
September 26, 2008	0.829200
September 27, 2008	0.829200
September 28, 2008	0.829200
September 29, 2008	0.812500
September 30, 2008	0.790400

Brazil real

September 4, 2008	0.589345
September 5, 2008	0.576735
September 6, 2008	0.576735
September 7, 2008	0.576735
September 8, 2008	0.573756

FOREIGN CURRENCIES—Variances from quarterly rates for September, 2008 (continued):

Brazil real (continued):

September 9, 2008	0.569184
September 10, 2008	0.561073
September 11, 2008	0.550570
September 12, 2008	0.561482
September 13, 2008	0.561482
September 14, 2008	0.561482
September 15, 2008	0.554017
September 16, 2008	0.547016
September 17, 2008	0.532340
September 18, 2008	0.523697
September 19, 2008	0.548546
September 20, 2008	0.548546
September 21, 2008	0.548546
September 22, 2008	0.556019
September 23, 2008	0.550449
September 24, 2008	0.542535
September 25, 2008	0.545643
September 26, 2008	0.539374
September 27, 2008	0.539374
September 28, 2008	0.539374
September 29, 2008	0.523149
September 30, 2008	0.520156

Canada dollar

September 10, 2008	0.931532
September 11, 2008	0.926183
September 16, 2008	0.931359
September 17, 2008	0.926956

Denmark krone

September 1, 2008	0.196696
September 2, 2008	0.194791
September 3, 2008	0.194341
September 4, 2008	0.192600
September 5, 2008	0.191421
September 6, 2008	0.191421
September 7, 2008	0.191421
September 8, 2008	0.189430
September 9, 2008	0.190071
September 10, 2008	0.187949
September 11, 2008	0.187000
September 12, 2008	0.190107
September 13, 2008	0.190107
September 14, 2008	0.190107
September 15, 2008	0.190150
September 16, 2008	0.189822
September 17, 2008	0.189768
September 18, 2008	0.192842
September 19, 2008	0.192998
September 20, 2008	0.192998
September 21, 2008	0.192998

FOREIGN CURRENCIES—Variances from quarterly rates for
September, 2008 (continued):

Denmark krone (continued):

September 22, 2008	0.197025
September 23, 2008	0.197609
September 24, 2008	0.196452
September 25, 2008	0.196317
September 26, 2008	0.195653
September 27, 2008	0.195653
September 28, 2008	0.195653
September 29, 2008	0.192790
September 30, 2008	0.188829

India rupee

September 11, 2008	0.021997
September 12, 2008	0.021920
September 13, 2008	0.021920
September 14, 2008	0.021920
September 15, 2008	0.021772
September 16, 2008	0.021363
September 17, 2008	0.021664
September 18, 2008	0.021570
September 19, 2008	0.021877
September 20, 2008	0.021877
September 21, 2008	0.021877
September 23, 2008	0.021906
September 24, 2008	0.021777
September 25, 2008	0.021701
September 26, 2008	0.021515
September 27, 2008	0.021515
September 28, 2008	0.021515
September 29, 2008	0.021510
September 30, 2008	0.021529

Malaysia ringgit

September 4, 2008	0.290107
September 5, 2008	0.289059
September 6, 2008	0.289059
September 7, 2008	0.289059
September 9, 2008	0.290107
September 10, 2008	0.288767
September 11, 2008	0.288268
September 15, 2008	0.290470
September 16, 2008	0.290082
September 17, 2008	0.288110
September 18, 2008	0.288434
September 29, 2008	0.290318

Mexico peso

September 29, 2008	0.091609
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New Zealand dollar

September 1, 2008	0.699100
September 2, 2008	0.686200

FOREIGN CURRENCIES—Variances from quarterly rates for
September, 2008 (continued):

New Zealand dollar (continued):

September 3, 2008	0.684600
September 4, 2008	0.679400
September 5, 2008	0.666300
September 6, 2008	0.666300
September 7, 2008	0.666300
September 8, 2008	0.669900
September 9, 2008	0.671900
September 10, 2008	0.666200
September 11, 2008	0.650700
September 12, 2008	0.663500
September 13, 2008	0.663500
September 14, 2008	0.663500
September 15, 2008	0.660000
September 16, 2008	0.658400
September 17, 2008	0.654000
September 18, 2008	0.671800
September 19, 2008	0.686900
September 20, 2008	0.686900
September 21, 2008	0.686900
September 22, 2008	0.693900
September 23, 2008	0.685000
September 24, 2008	0.686200
September 25, 2008	0.683500
September 26, 2008	0.685800
September 27, 2008	0.685800
September 28, 2008	0.685800
September 29, 2008	0.678200
September 30, 2008	0.669000

Norway krone

September 1, 2008	0.184362
September 2, 2008	0.181990
September 3, 2008	0.180897
September 4, 2008	0.179672
September 5, 2008	0.178361
September 6, 2008	0.178361
September 7, 2008	0.178361
September 8, 2008	0.176308
September 9, 2008	0.176196
September 10, 2008	0.174167
September 11, 2008	0.171541
September 12, 2008	0.174654
September 13, 2008	0.174654
September 14, 2008	0.174654
September 15, 2008	0.173028
September 16, 2008	0.170893
September 17, 2008	0.168614
September 18, 2008	0.173154
September 19, 2008	0.175211
September 20, 2008	0.175211
September 21, 2008	0.175211
September 22, 2008	0.180297

FOREIGN CURRENCIES—Variances from quarterly rates for
September, 2008 (continued):

Norway krone (continued):

September 23, 2008	0.179359
September 24, 2008	0.177898
September 25, 2008	0.177280
September 26, 2008	0.176732
September 27, 2008	0.176732
September 28, 2008	0.176732
September 29, 2008	0.172473
September 30, 2008	0.169808

Republic of South Africa rand

September 30, 2008	0.120262
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Singapore dollar

September 2, 2008	0.698910
September 3, 2008	0.696864
September 4, 2008	0.696379
September 5, 2008	0.697058
September 6, 2008	0.697058
September 7, 2008	0.697058
September 9, 2008	0.698178
September 10, 2008	0.697447
September 11, 2008	0.692521
September 16, 2008	0.696282
September 17, 2008	0.697496
September 18, 2008	0.698324
September 30, 2008	0.697788

Sweden krona

September 1, 2008	0.155282
September 2, 2008	0.153690
September 3, 2008	0.152905
September 4, 2008	0.151752
September 5, 2008	0.150896
September 6, 2008	0.150896
September 7, 2008	0.150896
September 8, 2008	0.149105
September 9, 2008	0.149011
September 10, 2008	0.147456
September 11, 2008	0.146210
September 12, 2008	0.148894
September 13, 2008	0.148894
September 14, 2008	0.148894
September 15, 2008	0.148028
September 16, 2008	0.147206
September 17, 2008	0.146671
September 18, 2008	0.149710
September 19, 2008	0.150523
September 20, 2008	0.150523
September 21, 2008	0.150523
September 22, 2008	0.153556

FOREIGN CURRENCIES—Variances from quarterly rates for
September, 2008 (continued):

Sweden krona (continued):

September 23, 2008	0.152926
September 24, 2008	0.151515
September 25, 2008	0.151752
September 26, 2008	0.150716
September 27, 2008	0.150716
September 28, 2008	0.150716
September 29, 2008	0.147412
September 30, 2008	0.143970

Switzerland franc

September 1, 2008	0.907523
September 2, 2008	0.903342
September 3, 2008	0.904568
September 4, 2008	0.901388
September 5, 2008	0.900090
September 6, 2008	0.900090
September 7, 2008	0.900090
September 8, 2008	0.884486
September 9, 2008	0.888889
September 10, 2008	0.880282
September 11, 2008	0.877578
September 12, 2008	0.882223
September 13, 2008	0.882223
September 14, 2008	0.882223
September 15, 2008	0.893336
September 16, 2008	0.892937
September 17, 2008	0.892220
September 18, 2008	0.910084
September 19, 2008	0.900333
September 20, 2008	0.900333
September 21, 2008	0.900333
September 22, 2008	0.923020
September 23, 2008	0.924813
September 24, 2008	0.918358
September 25, 2008	0.918864
September 26, 2008	0.918274
September 27, 2008	0.918274
September 28, 2008	0.918274
September 29, 2008	0.912076
September 30, 2008	0.893735

United Kingdom pound sterling

September 1, 2008	1.819000
September 2, 2008	1.785300
September 3, 2008	1.779500
September 4, 2008	1.768900
September 5, 2008	1.768700
September 6, 2008	1.768700
September 7, 2008	1.768700
September 8, 2008	1.754300
September 9, 2008	1.767200

FOREIGN CURRENCIES—Variances from quarterly rates for
September, 2008 (continued):

United Kingdom pound sterling (continued):

September 10, 2008	1.754700
September 11, 2008	1.749700
September 12, 2008	1.789600
September 13, 2008	1.789600
September 14, 2008	1.789600
September 15, 2008	1.787700
September 16, 2008	1.780200
September 17, 2008	1.789500
September 18, 2008	1.818600
September 19, 2008	1.829700
September 20, 2008	1.829700
September 21, 2008	1.829700
September 22, 2008	1.848400
September 23, 2008	1.855800
September 24, 2008	1.850200
September 25, 2008	1.840600
September 26, 2008	1.840000
September 27, 2008	1.840000
September 28, 2008	1.840000
September 29, 2008	1.804400
September 30, 2008	1.780400

Dated: October 1, 2008

MARGARET T. BLOM,
Acting Chief,
Customs Information Exchange.

07/01/08

LIQ-03-01-RR:OO:CI

RE: SECTION 159.34 CFR

SUBJECT: CERTIFIED RATES OF FOREIGN EXCHANGE:
THIRD QUARTER, 2008

LISTED BELOW ARE THE BUYING RATES CERTIFIED FOR THE QUARTER TO THE SECRETARY OF THE TREASURY BY THE FEDERAL RESERVE BANK OF NEW YORK UNDER PROVISION OF 31 USC 5151. THESE QUARTERLY RATES ARE APPLICABLE THROUGHOUT THE QUARTER EXCEPT WHEN THE CERTIFIED DAILY RATES VARY BY 5% OR MORE. SUCH VARIANCES MAY BE OBTAINED BY CALLING (646) 733-3065 OR (646) 733-3057.

QUARTER BEGINNING JULY 1, 2008 AND ENDING
SEPTEMBER 30, 2008

COUNTRY	CURRENCY	U.S. DOLLARS
AUSTRALIA	DOLLAR	\$0.953500
BRAZIL	REAL	\$0.621504
CANADA	DOLLAR	\$0.978474
CHINA, P.R.	YUAN	\$0.145756
DENMARK	KRONE	\$0.211595
HONG KONG	DOLLAR	\$0.128218
INDIA	RUPEE	\$0.023132
JAPAN	YEN	\$0.009458
MALAYSIA	RINGGIT	\$0.305018
MEXICO	PESO	\$0.096293
NEW ZEALAND	DOLLAR	\$0.756700
NORWAY	KRONE	\$0.197258
SINGAPORE	DOLLAR	\$0.734376
SOUTH AFRICA	RAND	\$0.126341
SRI LANKA	RUPEE	\$0.009288
SWEDEN	KRONA	\$0.167017
SWITZERLAND	FRANC	\$0.982029
THAILAND	BAHT	\$0.029940
UNITED KINGDOM	POUND STERLING	\$1.993000
VENEZUELA	BOLIVAR	\$0.466287

MARGARET T. BLOM,
Acting Chief,
Customs Information Exchange.

General Notices

AGENCY INFORMATION COLLECTION ACTIVITIES

Screening Requirements for Carriers

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

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651-0122.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Screening Requirements for Carriers. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before February 17, 2009, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION:

CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Screening Requirements for Carriers

OMB Number: 1651-0122

Form Number: None

Abstract: The information collected is used to determine whether sufficient steps were taken by a carrier demonstrating improvement in the screening of its passengers in order for the carrier to be eligible for automatic fines mitigation.

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

Type of Review: Extension (without change)

Affected Public: Businesses

Estimated Number of Respondents: 65

Estimated Time Per Respondent: 100 hours

Estimated Total Annual Burden Hours: 6,500

Dated: December 10, 2008

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

[Published in the Federal Register, December 17, 2008 (73 FR 76672)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Complaint Management System

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

ACTION: 30-Day Notice and request for comments; Request for a new collection of information

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: Complaint Management System. This is a new collection of information collection. 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 58253) on October 6, 2008, allowing for a 60-day comment period. One public comments was received. 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 January 12, 2009.

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: Complaint Management System

Form Number: None

Abstract: CBP is creating the Complaint Management System (CMS) in order to allow anybody who has interacted with CBP, either as a result of importing or exporting goods, traveling to or from the U.S., seeking a job, or simply living in an area where CBP conducts operations such as border patrol checkpoints, to file a complaint or comment about their CBP experience through an on-line portal.

Current Actions: This submission is being made to establish a new collection of information.

Type of Review: New collection of information

Affected Public: Individuals and Businesses

Estimated Number of Respondents: 3,000

Estimated Number of Annual Responses: 3,000

Estimated Time Per Response: 23 minutes

Estimated Total Annual Burden Hours: 1,199

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: December 4, 2008

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

[Published in the Federal Register, December 12, 2008 (73 FR 75731)]

AGENCY INFORMATION COLLECTION ACTIVITIES

Arrival and Departure Record

AGENCY: Customs and Border Protection (CBP), Department of Homeland Security

ACTION: 60-Day Notice and request for comments; Extension of an existing information Collection: 1651-0111.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Form I-94 (Arrival/Departure Record), the Form I-94W (Nonimmigrant Visa Waiver Arrival/Departure), and the Electronic System for Travel Authorization (ESTA). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before February 10, 2009, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2.C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the

collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Arrival and Departure Record, Nonimmigrant Visa Waiver Arrival/Departure, the Electronic System for Travel Authorization (ESTA)

OMB Number: 1651-0111

Form Numbers: I-94 and I-94W

Abstract: Form I-94 (Arrival/Departure Record) and Form I-94W (Nonimmigrant Visa Waiver Arrival/Departure Record) are used to document a traveler's admission into the United States. These forms include date of arrival, visa classification and the date the authorized stay expires. The forms are also used by business employers and other organizations to confirm legal status in the United States. The Electronic System for Travel Authorization (ESTA) applies to aliens traveling to the United States under the Visa Waiver Program (VWP) and requires that VWP travelers provide information electronically to CBP before embarking on travel to the United States. The recent expansion of the VWP to include seven additional countries resulted in a change to the burden hours of this collection of information.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension (with change)

Affected Public: Individuals

Estimated Number of Respondents (I-94 and I-94W): 30,924,380

Estimated Number of Respondents (ESTA): 18,000,000

Estimated Time Per Response (I-94 and I-94W): 8 minutes

Estimated Time Per Response (ESTA): 15 minutes

Estimated Total Annual Burden Hours: 8,623,249

Estimated Total Annualized Cost on the Public: \$185,546,280

Dated: December 3, 2008

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

[Published in the Federal Register, December 12, 2008 (73 FR 75730)]

RECEIPT OF AN APPLICATION FOR “LEVER-RULE”
PROTECTION

AGENCY: Customs & Border Protection, Department of Homeland Security.

ACTION: Notice of receipt of application for “Lever-rule” protection.

SUMMARY: Pursuant to 19 CFR 133.2(f), this notice advises interested parties that Customs & Border Protection (CBP) has received an application from Chopard USA Ltd. (hereinafter referred to as “Chopard USA”) seeking “Lever-rule” protection for three federally registered and recorded trademarks.

FOR FURTHER INFORMATION CONTACT: John D. McCliggott, Intellectual Property Rights Branch, Regulations & Rulings, Office of International Trade (202) 325-0091.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 CFR § 133.2(f), this notice advises interested parties that CBP has received an application from Chopard USA seeking “Lever-rule” protection. Protection is sought against the importation of watches not authorized for sale in the United States that bear the (1) “Chopard GENÈVE” stylized word mark (U.S. Trademark Registration No. 0,956,491; CBP Recordation No. TMK 06-00518); (2) the “Chopard” stylized word mark (U.S. Trademark Registration No. 1,596,057; CBP Recordation No. TMK 06-00356); and (3) the “CHOPARD” word mark (U.S. Trademark Registration No. 1,877,546; CBP Recordation No. TMK 06-00365). In the event that CBP determines the watches under consideration are physically and materially different from the watches authorized for sale in the United States, CBP will publish a notice in the *Customs Bulletin*, pursuant to 19 CFR 133.2(f), indicating that the three above-referenced trademarks are entitled to Lever-rule protection with respect to those physically and materially different watches.

Dated: November 26, 2008

GEORGE FREDERICK MCCRAY, ESQ.,
Chief,
Intellectual Property Rights Branch,
Regulations & Rulings,
Office of International Trade.

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, December 17, 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.*

**REVOCAION OF RULING LETTERS AND REVOCAION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF CERTAIN BED RISERS OR BED
RAISERS**

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

ACTION: Notice of revocation of a tariff classification ruling letters and revocation of treatment relating to the classification of certain bed risers or bed raisers

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking three ruling letters relating to the tariff classification of certain bed risers (also known as bed raisers or bed lifters), under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed modification of NY H86521 was published on October 30, 2008, in the Customs Bulletin, Volume 42, Number 45. 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 March 3, 2009.

FOR FURTHER INFORMATION CONTACT: John Rhea, Tariff Classification and Marking Branch: (202) 325–0035

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 Volume 42, No. 45 on October 30, 2008, proposing to revoke three ruling letters pertaining to the tariff classification of bed risers (aka bed raisers). Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letters ("NY") NY R02967, dated January 11, 2006, NY H87303, dated February 4, 2002, and NY N026503, dated May 21, 2008, 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 have advised CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise is-

sues 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.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY H87303, NY R02967 and NY N026503 and any other ruling not specifically identified, to reflect the proper classification of the bed raisers according to the analysis contained in Headquarters Ruling Letter(s) ("HQ") H031398, H031399 and H031401, set forth as Attachment(s) A, B and C 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 USC §1625(c), these rulings will become effective 60 days after publication in the Customs Bulletin.

DATED: December 10, 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,
HQ H031398
December 10, 2008
CLA-2 OT:RR:CTF:TCM H031398 JER
CATEGORY: Classification
TARIFF NO.: 3926.90.99

MR. TROY D. CRAGO
ATICO INTERNATIONAL USA, INC.
501 South Andrews Avenue
Ft. Lauderdale, FL 33301

RE: Revocation of NY R02967; Bed Risers

DEAR MR. CRAGO:

On January 11, 2006, U.S. Customs and Border Protection ("CBP") issued New York Ruling Letter ("NY") R02967 to you on behalf of Atico International USA, Inc., classifying certain "bed risers" in heading 3924 of the Harmonized Tariff Schedule of the United States ("HTSUS"). After reviewing NY R02967, we have found that ruling to be in error. For the reasons set forth in this ruling, we are revoking NY R02967.

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 on October 30, 2008, in the Customs Bulletin, Volume 42, No. 45. No comments were received in response to this notice.

FACTS:

The subject merchandise is described as being comprised of four separate bed risers packaged for retail sale as a set, each of which are made of polypropylene plastic. Each bed riser measures 6 and 5/8 inches long, 6 and 5/8 inches in width and 6 inches in height.

ISSUE:

Whether the subject bed risers are classified under heading 3924, HTSUS, or under heading 3926, 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.

Although the merchandise is packaged as a retail set, all four items are identical and are not shipped with additional components (e.g., batteries, screws or bolts). As such, the goods are not classifiable in two or more headings and are not deemed to be a set for tariff purposes, making classification according to GRI 3 inapplicable.

The HTSUS provisions under consideration are as follows:

3924	Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastic:			
3924.10	Tableware and kitchenware:	*	*	*
3924.90	Other:	*	*	*
3924.90.5600	Other			
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:	*	*	*
3926.90	Other:	*	*	*
3926.90.99	Other			
3926.90.9980	Other			

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not 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, 54 Fed. Reg. 35127 (August 23, 1989).

CBP previously classified the subject bed risers¹ in heading 3924, HTSUS,

¹ Similar merchandise is also referred to as bed raisers, bed lifters or bed elevators.

as other household articles because these items were believed to impart storage capacity. NY R02967 explained that the bed risers were used under the legs or wheels of a bed to add height and to create additional storage space underneath the bed. However, following a recent classification decision involving substantially similar merchandise, and upon further review of the terms of the heading and the ENs to heading 3924, HTSUS, we are now of the view that the bed risers are not provided for in heading 3924, HTSUS.

Presently, we find that bed risers are not a household article of 3924, HTSUS, as these articles are not themselves storage containers capable of storing or holding items. Instead, their primary function is to increase the height of a bed. Our research demonstrates that bed raisers (aka bed elevators or bed risers) are marketed, designed and sold as both bed raisers for purposes of increasing the height of a bed and for creating storage space underneath the bed. In some cases bed raisers serve the purpose of elevating the height of a bed to provide convenient use for persons with medical conditions or disabilities. *Bed Raisers at www.abledata.com. In those instances where bed raisers are market and sold as items intended to elevate the height of beds, these items are in some cases, simultaneously marketed as being useful for creating additional storage space. However, standing alone, these items are incapable of adding storage space or storing items therein. See, Easy Risers Are Solution for Storage, at www.rehabmart.com; see also, And Add Storage Space! at www.mileskimball.com.*

Classification under heading 3924, HTSUS, is dependent upon the cannon of construction known as *ejusdem generis*, which means literally, “of the same class or kind.” “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. Accordingly, classification in heading 3924, HTSUS requires that the subject bed riser be *ejusdem generis* (of the same class or kind) as those household articles enumerated in the heading.

Unlike the bed risers of NY R02967, whose primary function is to increase the height of a bed, CBP has consistently found that storage containers or storage boxes, made of plastic, are within the purview of heading 3924, HTSUS, as other household articles. For instance, in Headquarters Ruling Letter (“HQ”) 089182, dated January 21, 1992, CBP classified a plastic “Earring Closet” designed to store earrings as a household article in heading 3924, HTSUS. Likewise, HQ H015358, dated November 2, 2007, classified a “plastic storage box” in heading 3924, HTSUS, because it stored items. In NY N012326, dated June 22, 2007, CBP classified a “plastic hardware storage case” in heading 3924, HTSUS, as a household article. Accordingly, storage containers, or articles which, standing alone provide storage, are within the scope of household articles of the heading, 3924, HTSUS. Unlike the storage containers discussed in HQ 089182, NY N012326 and HQ H015358, the subject bed risers do not themselves store items nor have the independent capacity to provide storage. By contrast, the primary function of the subject bed risers is to provide a means to raise the height of a bed. Increasing the height of furniture is not a function which is *ejusdem generis* with household articles of heading 3924, HTSUS.

The ENs to heading 3924 state that the heading covers four categories of merchandise: (A) Tableware (B) Kitchenware (C) Household articles and (D) Hygienic and Toilet articles. Category (A) includes items closely associated with food and beverage consumption, dining and table setting. Category (B) provides exemplars associated with foods, beverages, food preparation, food storage, etc. The examples provided in the ENs to heading 3924 under household articles list the following:

- (C) Other household articles such as ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust-covers (slipovers).

As the ENs to heading 3924, HTSUS, reflect, household articles are utilitarian, decorative, and receptacle in character, and are closely associated with household functions and household activities. Primarily, such articles are used to hold, contain, store and in some cases safeguard other items. For example, an ash tray may hold cigars and hot water bottles can contain water, while a food storage container can store food. Unlike the exemplars provided as household articles of heading 3924, HTSUS, increasing the height of a bed is not consistent with the uses contemplated by household articles of heading 3924, HTSUS.

In Totes, Inc. v. United States, 865 F. Supp. 867; 18 CIT 919 (1994), the Court found that a “trunk organizer” designed to store automotive necessities such as jumper cables, tire inflator, windshield washer fluid, etc., was *ejusdem generis* to merchandise designed to organize, store and protect various items. The Court noted that the essential characteristics and purpose of the exemplars of the heading are the very ones that the Courts had identified as having the capacity to organize, store, protect and carry various items.

The Court further explained that:

Insofar as the trunk organizers serve the purposes of organization, holding, storage and protection of articles, they fall within the class or kind of articles listed as exemplars in Heading 4202, especially jewelry boxes and cutlery cases that serve mainly to facilitate an organized separation, protection, storage or holding of jewelry or cutlery items. Totes at 925.

In keeping with the decision in Totes concerning the doctrine of *ejusdem generis*, the subject bed risers (aka bed elevator, bed raiser or bed lift) must possess the essential characteristics and purposes as do the holders and storage containers of heading 3924, HTSUS. Moreover, under Totes, the bed risers must be designed to hold, contain, store or safeguard various items. For the reasons set forth above, we find that they do not.

By contrast, the ENs to heading 3926 list protective cups and [furniture] glides designed to be placed underneath furniture legs as articles classifiable in heading 3926, HTSUS. Protective cups and glides affixed to furniture legs are similar to the subject merchandise in that they impact the character, performance and function of the furniture item to which they are affixed. The subject bed elevators, like the protective cups and glides, are affixed to the legs of a bed and function to affect the height of the bed. We find that, items such as the protective cups, furniture glides and the subject bed elevators work in conjunction with furniture items as goods classifiable in

heading 3926, HTSUS, rather than performing an independent household function as do the matchbox holders, buckets, food storage containers and other articles enumerated in the ENs to heading 3924, HTSUS.

Based on the foregoing, we find that the bed riser's capacity to create storage space is ancillary to their primary function of raising the height of a bed. As a result, CBP no longer finds classification of this merchandise under heading 3924, HTSUS, to be correct.

HOLDING:

By application of GRI 1, the subject bed riser is classifiable under heading 3926, HTSUS. Specifically, the item is classified under subheading 3926.90.9980, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other." The 2008 column one, general rate of duty is 5.3% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY R02967, dated January 11, 2006, is hereby 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.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
December 10, 2008
HQ H031399
CLA-2 OT:RR:CTF:TCM H031399 JER
CATEGORY: Classification
TARIFF NO.: 3926.90.99

MS. YVONNE M. W. RICHARDSON
THE MILLWORK TRADING CO., LTD.
148 West 37th Street, 4th Floor
New York, NY 10018

RE: Revocation of NY H87303; Bed Elevators

DEAR MS. RICHARDSON:

On February 4, 2002, U.S. Customs and Border Protection ("CBP") issued New York Ruling Letter ("NY") H87303 to you on behalf of Millwork Trading Company, Ltd., classifying certain "bed elevators" in heading 3924 of the Harmonized Tariff Schedule of the United States ("HTSUS"). After reviewing NY H87303, we have found that ruling to be in error. For the reasons set forth in this ruling, we are revoking NY H87303.

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 on October 30, 2008, in the Customs Bulletin, Volume 42, No. 45. No comments were received in response to this notice.

FACTS:

The subject merchandise is described as being comprised of four separate bed risers packaged for retail sale as a set, each of which are made of a sturdy polypropylene material (plastic). Each bed elevator measures 6 and 1/2 inches in height and 4 inches in diameter at the top, and 6 1/4 inches in diameter at the bottom. The bed elevators are hollow inside and are designed with a cut-out section in the top portion that is approximately 1 inch deep, designed to accommodate a leg of the bed.

ISSUE:

Whether the subject bed elevators are classified under heading 3924, HTSUS, or under heading 3926, 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.

Although the merchandise is packaged as a retail set, all four items are identical and are not shipped with additional components (e.g., batteries, screws or bolts). As such, the goods are not classifiable in two or more headings and are not deemed to be a set for tariff purposes, making classification according to GRI 3 inapplicable.

The HTSUS provisions under consideration are as follows:

3924	Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastic:
3924.10	Tableware and kitchenware:
	* * *
3924.90	Other:
	* * *
3924.90.5600	Other
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
	* * *
3926.90	Other:
	* * *
3926.90.99	Other
3926.90.9980	Other

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not 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, 54 Fed. Reg. 35127 (August 23, 1989).

CBP previously classified the subject bed elevators² in heading 3924, HTSUS, as other household articles because these items were believed to impart storage capacity. NY H87303 explained that the bed elevators are used to raise the height of the bed by placing one under each leg of the bed. However, following a recent classification decision involving substantially similar merchandise, and upon further review of the terms of the heading and the ENs to heading 3924, HTSUS, we are now of the view that the bed risers are not provided for in heading 3924, HTSUS.

Presently, we find that bed elevators are not a household article of 3924, HTSUS, as these articles are not themselves storage containers capable of storing or holding items. Instead, their primary function is to increase the height of a bed. Our research demonstrates that bed elevators (aka bed raisers or bed risers) are marketed, designed and sold as both bed raisers for purposes of increasing the height of a bed and for creating storage space underneath the bed. In some cases bed raisers serve the purpose of elevating the height of a bed to provide convenient use for persons with medical conditions or disabilities. *Bed Raisers at www.abledata.com. In those instances where bed raisers are market and sold as items intended to elevate the height of beds, these items are in some cases, simultaneously marketed as being useful for creating additional storage space. However, standing alone, these items are incapable of adding storage space or storing items therein. See, Easy Risers Are Solution for Storage, at www.rehabmart.com; see also, And Add Storage Space! at www.mileskimball.com.*

Classification under heading 3924, HTSUS, is dependent upon the cannon of construction known as *ejusdem generis*, which means literally, "of the same class or kind." "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. Accordingly, classification in heading 3924, HTSUS requires that the subject bed elevators be *ejusdem generis* (of the same class or kind) as those household articles enumerated in the heading.

Unlike the bed elevators of NY H87303, whose primary function is to increase the height of a bed, CBP has consistently found that storage containers or storage boxes, made of plastic, are within the purview of heading 3924, HTSUS, as other household articles. For instance, in Headquarters Ruling Letter ("HQ") 089182, dated January 21, 1992, CBP classified a plastic "Earring Closet" designed to store earrings as a household article in heading 3924, HTSUS. Likewise, HQ H015358, dated November 2, 2007, classified a "plastic storage box" in heading 3924, HTSUS, because it stored items. In NY N012326, dated June 22, 2007, CBP classified a "plastic hardware storage case" in heading 3924, HTSUS, as a household article. Accordingly, storage containers, or articles which, standing alone provide storage, are within the scope of household articles of the heading, 3924, HTSUS. Unlike the storage containers discussed in HQ 089182, NY N012326 and HQ H015358, the subject bed elevators do not themselves store items nor have

² Similar merchandise is also referred to as bed raisers, bed lifters or bed risers.

the independent capacity to provide storage. By contrast, the primary function of the subject bed elevators is to provide a means to raise the height of a bed. Increasing the height of furniture is not a function which is *ejusdem generis* with household articles of heading 3924, HTSUS.

The ENs to heading 3924 state that the heading covers four categories of merchandise: (A) Tableware (B) Kitchenware (C) Household articles and (D) Hygienic and Toilet articles. Category (A) includes items closely associated with food and beverage consumption, dining and table setting. Category (B) provides exemplars associated with foods, beverages, food preparation, food storage, etc. The examples provided in the ENs to heading 3924 under household articles list the following:

- (C) Other household articles such as ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust-covers (slipovers).

As the ENs to heading 3924, HTSUS, reflect, household articles are utilitarian, decorative, and receptacle in character, and are closely associated with household functions and household activities. Specifically, such articles are used to hold, contain, store and in some cases safeguard other items. For example, an ash tray may hold cigars and hot water bottles can contain water, while a food storage container can store food. Unlike the exemplars provided as household articles of heading 3924, HTSUS, increasing the height of a bed is not consistent with the uses contemplated by household articles of heading 3924, HTSUS.

In *Totes, Inc. v. United States*, 865 F. Supp. 867; 18 CIT 919 (1994), the Court found that a “trunk organizer” designed to store automotive necessities such as jumper cables, tire inflator, windshield washer fluid, etc., was *ejusdem generis* to merchandise designed to organize, store and protect various items. The Court noted that the essential characteristics and purpose of the exemplars of the heading are the very ones that the Courts had identified as having the capacity to organize, store, protect and carry various items.

The Court further explained that:

Insofar as the trunk organizers serve the purposes of organization, holding, storage and protection of articles, they fall within the class or kind of articles listed as exemplars in Heading 4202, especially jewelry boxes and cutlery cases that serve mainly to facilitate an organized separation, protection, storage or holding of jewelry or cutlery items. *Totes* at 925.

In keeping with the decision in *Totes* concerning the doctrine of *ejusdem generis*, the subject bed elevator (aka bed riser, bed raiser or bed lift) must possess the essential characteristics and purposes as do the holders and storage containers of heading 3924, HTSUS. Moreover, under *Totes*, the bed elevator must be designed to hold, contain, store or safeguard various items. For the reasons set forth above, we find that they do not.

By contrast, the ENs to heading 3926 list protective cups and [furniture] glides designed to be placed underneath furniture legs as articles classifiable in heading 3926, HTSUS. Protective cups and glides affixed to furniture legs are similar to the subject merchandise in that they impact the character, performance and function of the furniture item to which they are

affixed. The subject bed elevators, like the protective cups and glides, are affixed to the legs of a bed and function to affect the height of the bed. We find that, items such as the protective cups, furniture glides and the subject bed elevators work in conjunction with furniture items as goods classifiable in heading 3926, HTSUS, rather than performing an independent household function as do the matchbox holders, buckets, food storage containers and other articles enumerated in the ENs to heading 3924, HTSUS.

Based on the foregoing, we find that the bed elevator's capacity to create storage space is ancillary to their primary function of raising the height of a bed. As a result, CBP no longer finds classification of this merchandise under heading 3924, HTSUS, to be correct.

HOLDING:

By application of GRI 1, the subject bed elevator is classifiable under heading 3926, HTSUS. Specifically, the item is classified under subheading 3926.90.9980, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other." The 2008 column one, general rate of duty is 5.3% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY H87303, dated February 4, 2002, is hereby 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.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H031401
December 10, 2008
CLA-2 OT:RR:CTF:TCM H031401 JER
CATEGORY: Classification
TARIFF NO.: 3926.90.99

MR. GARY D. HOLLIS
THE CONTAINER STORE
500 Freeport Parkway
Coppell, TX 75019

RE: Revocation of NY N026503; Bed Lifts

DEAR MR. HOLLIS:

On May 21, 2008, U.S. Customs and Border Protection ("CBP") issued New York Ruling Letter ("NY") N026503 to you on behalf of The Container Store, classifying certain "bed lifts" in heading 3924 of the Harmonized Tariff Schedule of the United States ("HTSUS"). After reviewing NY N026503, we have found that ruling to be in error. For the reasons set forth in this ruling, we are revoking NY N026503.

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 on October 30, 2008, in the Customs Bulletin, Volume 42, No. 45. No comments were received in response to this notice.

FACTS:

The subject merchandise is described as being comprised of four separate identical blocks, each of which are made of polypropylene plastic. Each block stands 8 inches high and has a square shaped depression on the top surface measuring 3 inches wide and 1 inch deep which is designed to receive the foot of the bed (leg). The four blocks are placed underneath the legs of the bed increasing the height of the bed by approximately 7 inches.

ISSUE:

Whether the subject bed lifts are classified under heading 3924, HTSUS, or under heading 3926, 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.

Although the merchandise is packaged as a retail set, all four items are identical and are not shipped with additional components (e.g., batteries, screws or bolts). As such, the goods are not classifiable in two or more headings and are not deemed to be a set for tariff purposes, making classification according to GRI 3 inapplicable.

The HTSUS provisions under consideration are as follows:

3924	Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastic:
3924.10	Tableware and kitchenware:
	* * *
3924.90	Other:
	* * *
3924.90.5600	Other
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
	* * *
3926.90	Other:
	* * *
3926.90.99	Other
3926.90.9980	Other

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System.

While not 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, 54 Fed. Reg. 35127 (August 23, 1989).

CBP previously classified the subject bed lifts³ in heading 3924, HTSUS, as other household articles because these items were believed to impart storage capacity. NY N026503 explained that placing the four blocks under the four bed legs increased the height of the bed and in doing so increased the storage space underneath the bed and made it “easier for many people to get in and out of bed.” However, following a recent classification decision involving substantially similar merchandise, and upon further review of the terms of the heading and the ENs to heading 3924, HTSUS, we are now of the view that the bed risers are not provided for in heading 3924, HTSUS.

Presently, we find that bed lifts are not a household article of 3924, HTSUS, as these articles are not themselves storage containers capable of storing or holding items. Instead, their primary function is to increase the height of a bed. Our research demonstrates that bed raisers (aka bed elevators, bed lifts or bed risers) are marketed, designed and sold as both bed raisers for purposes of increasing the height of a bed and for creating storage space underneath the bed. In some cases bed raisers serve the purpose of elevating the height of a bed to provide convenient use for persons with medical conditions or disabilities. *Bed Raisers* at www.abledata.com. In those instances where bed raisers are market and sold as items intended to elevate the height of beds, these items are in some cases, simultaneously marketed as being useful for creating additional storage space. However, standing alone, these items are incapable of adding storage space or storing items therein. See, *Easy Risers Are Solution for Storage*, at www.rehabmart.com; see also, *And Add Storage Space!* at www.mileskimball.com.

Classification under heading 3924, HTSUS, is dependent upon the cannon of construction known as *ejusdem generis*, which means literally, “of the same class or kind.” “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. Accordingly, classification in heading 3924, HTSUS requires that the subject bed lifts be *ejusdem generis* (of the same class or kind) as those household articles enumerated in the heading.

Unlike the bed lifts of NY N026503 whose primary function is to increase the height of a bed, CBP has consistently found that storage containers or storage boxes, made of plastic, are within the purview of heading 3924, HTSUS, as other household articles. For instance, in Headquarters Ruling Letter (“HQ”) 089182, dated January 21, 1992, CBP classified a plastic “Earring Closet” designed to store earrings as a household article in heading 3924, HTSUS. Likewise, HQ H015358, dated November 2, 2007, classified a “plastic storage box” in heading 3924, HTSUS, because it stored items. In NY N012326, dated June 22, 2007, CBP classified a “plastic hardware stor-

³ Similar merchandise is also referred to as bed raisers, bed risers or bed elevators.

age case” in heading 3924, HTSUS, as a household article. Accordingly, storage containers, or articles which, standing alone provide storage, are within the scope of household articles of the heading, 3924, HTSUS. Unlike the storage containers discussed in HQ 089182, NY N012326 and HQ H015358, the subject bed lifts do not themselves store items nor have the independent capacity to provide storage. By contrast, the primary function of the subject bed lifts is to provide a means to raise the height of a bed. Increasing the height of furniture is not a function which is *ejusdem generis* with household articles of heading 3924, HTSUS.

The ENs to heading 3924 state that the heading covers four categories of merchandise: (A) Tableware (B) Kitchenware (C) Household articles and (D) Hygienic and Toilet articles. Category (A) includes items closely associated with food and beverage consumption, dining and table setting. Category (B) provides exemplars associated with foods, beverages, food preparation, food storage, etc. The examples provided in the ENs to heading 3924 under household articles list the following:

- (C) Other household articles such as ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust-covers (slipovers).

As the ENs to heading 3924, HTSUS, reflect, household articles are utilitarian, decorative, and receptacle in character, and are closely associated with household functions and household activities. Specifically, such articles are used to hold, contain, store and in some cases safeguard other items. For example, an ash tray may hold cigars and hot water bottles can contain water, while a food storage container can store food. Unlike the exemplars provided as household articles of heading 3924, HTSUS, increasing the height of a bed is not consistent with the uses contemplated by household articles of heading 3924, HTSUS.

In *Totes, Inc. v. United States*, 865 F. Supp. 867; 18 CIT 919 (1994), the Court found that a “trunk organizer” designed to store automotive necessities such as jumper cables, tire inflator, windshield washer fluid, etc., was *ejusdem generis* to merchandise designed to organize, store and protect various items. The Court noted that the essential characteristics and purpose of the exemplars of the heading are the very ones that the Courts had identified as having the capacity to organize, store, protect and carry various items.

The Court further explained that:

Insofar as the trunk organizers serve the purposes of organization, holding, storage and protection of articles, they fall within the class or kind of articles listed as exemplars in Heading 4202, especially jewelry boxes and cutlery cases that serve mainly to facilitate an organized separation, protection, storage or holding of jewelry or cutlery items. *Totes* at 925.

In keeping with the decision in *Totes* concerning the doctrine of *ejusdem generis*, the subject bed lifts (aka bed elevator, bed raiser or bed risers) must possess the essential characteristics and purposes as do the holders and storage containers of heading 3924, HTSUS. Moreover, under *Totes*, the bed lifts must be designed to hold, contain, store or safeguard various items. For the reasons set forth above, we find that they do not.

By contrast, the ENs to heading 3926 list protective cups and [furniture] glides designed to be placed underneath furniture legs as articles classifiable in heading 3926, HTSUS. Protective cups and glides affixed to furniture legs are similar to the subject merchandise in that they impact the character, performance and function of the furniture item to which they are affixed. The subject bed elevators, like the protective cups and glides, are affixed to the legs of a bed and function to affect the height of the bed. We find that, items such as the protective cups, furniture glides and the subject bed elevators work in conjunction with furniture items as goods classifiable in heading 3926, HTSUS, rather than performing an independent household function as do the matchbox holders, buckets, food storage containers and other articles enumerated in the ENs to heading 3924, HTSUS.

Based on the foregoing, we find that the bed lift's capacity to create storage space is ancillary to their primary function of raising the height of a bed. As a result, CBP no longer finds classification of this merchandise under heading 3924, HTSUS, to be correct.

HOLDING:

By application of GRI 1, the subject bed lift is classifiable under heading 3926, HTSUS. Specifically, the item is classified under subheading 3926.90.9980, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other." The 2008 column one, general rate of duty is 5.3% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N026503, dated May 21, 2008, is hereby 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.

**PROPOSED MODIFICATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF METAL BALUSTERS**

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

ACTION: Notice of proposed modification of a tariff classification ruling letter and proposed revocation of treatment relating to the classification of metal balusters.

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 proposing to modify a ruling letter relating to the tariff classification of metal balusters under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also 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 February 1, 2009.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Commercial Trade and Regulations Branch, 799 9th St., 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 Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Richard Mojica, Tariff Classification and Marking Branch, at (202) 325-0032.

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 modify a ruling letter pertaining to the tariff classification of metal balusters. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) C89444, dated July 15, 1998 (Attachment A), this notice covers any rulings on this merchandise which may exist but

have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930 (19 U.S.C. §1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to 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 C89444, CBP classified metal balusters under heading 7326, HTSUS, which provides for "Other articles of iron or steel." We have reviewed NY C89444 and determined that the classification set forth in that ruling is incorrect. It is now CBP's position that the subject metal balusters are properly classified under heading 7308, HTSUS, as "parts of structures . . . of iron or steel."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY C89444, dated July 15, 1998, and any other ruling not specifically identified, to reflect the proper classification of the merchandise according to the analysis contained in proposed Headquarters Ruling Letter H044637, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: December 9, 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 C89444
July 15, 1998
CLA-2-44:RR:NC:2:230 C89444
CATEGORY: Classification
TARIFF NO.: 4418.90.4090; 7326.90.8585

MR. KEVIN W. STEWARD
THE I.C.E. CO., INC.
P.O. Box 610583
Dallas/Fort Worth Airport, TX 75261-0583

RE: The tariff classification of wooden balusters and of metal balusters from Indonesia and from China

DEAR MR. STEWARD:

In your letter dated June 15, 1998, on behalf of your client, Woodmark International Inc., you requested a tariff classification ruling.

The ruling was requested on wooden balusters from Indonesia and on metal balusters from China. One sample of each was submitted which will be returned as you requested. The wooden baluster measures approximately 39 inches long and is painted white. The metal baluster measures approximately 35 inches long and has a black coating. The wooden baluster has a combination square, spindle and tapered shape. The metal baluster is square and spiral shaped and has a hole at one end. The balusters will be used as the upright supports of a balustrade or staircase rail.

The applicable subheading for the wooden balusters will be 4418.90.4090, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for builders' joinery and carpentry of wood, other, other. The duty rate will be 3.6 percent ad valorem.

Presently the Generalized System of Preferences (GSP) has expired.

However, articles which are classifiable under subheading 4418.90.4090, HTSUSA, and which are products of Indonesia are entitled to duty free treatment under the GSP upon compliance with all applicable regulations, if the GSP is renewed.

The applicable subheading for the metal balusters will be 7326.90.8585, HTSUSA, which provides for articles of iron or steel, other, other. The duty rate will be 3.5 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 Paul Garretto at 212-466-5779.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H044637
CLA-2 OT: RR: CTF: TCM H044637 RM
CATEGORY: Classification
TARIFF NO.: 7308.90.95

MR. KEVIN STEWART
THE I.C.E. CO., INC.
P.O. Box 610583
Dallas/Ft. Worth Airport, TX 75261-0583

RE: Modification of New York Ruling Letter C89444, dated July 15, 1998;
Classification of Metal Balusters

DEAR MR. SEWART:

This is in reference to New York Ruling Letter ("NY") C89444, dated July 15, 1998, issued to you on behalf of Woodmark International Inc., concerning the tariff classification of metal balusters imported from China and of wooden balusters from Indonesia. In that ruling, U.S. Customs and Border Protection ("CBP") classified the metal balusters under heading 7326, Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for "Other articles of iron or steel." We have reviewed NY C89444 and found this classification to be incorrect. It is now our position that the metal balusters are classified under heading 7308, HTSUS, which provides for "parts of structures . . . of iron or steel." The classification of the wooden balusters is not affected by this decision.

FACTS:

In NY C89444, we described the subject merchandise as follows:

The metal baluster measures approximately 35 inches long and has a black coating. [It] is square and spiral shaped and has a hole at one end. The balusters will be used as the upright supports of a balustrade or staircase rail.

ISSUE:

What is the proper tariff classification of the metal balusters 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:

7308 Structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge sections, lock gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and col-

umns) of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel:

7326 Other articles of iron or steel:

Heading 7308, HTSUS, provides for “Structures . . . and parts of structures . . . of iron or steel.” The term “structure” is not defined in the tariff or in the legal notes. The Court examined the meaning of the term “structure” in *S.G.B. Steel Scaffolding & Shoring Co., Inc. v. United States*, 82 Cust. Ct. 197, 211 (Cust. Ct. 1979) and determined that “there is no precise definition of the term ‘structure,’” but noted that the common meaning of tariff descriptions lacking precise definitions has frequently been applied by the courts. When a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. See *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). “To ascertain the common meaning of a term, a court may consult ‘dictionaries, scientific authorities, and other reliable information sources’ and ‘lexicographic and other materials.’” *Id.* (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271, 69 Cust. Ct. 128 (Cust. Ct. 1982); *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989)). In addition, the Explanatory Notes of the Harmonized Commodity Description and Coding System (“ENs”) while not binding law, offer guidance as to how tariff terms are to be interpreted. See *Len-Ron Mfg. Co. v. United States*, 334 F.3d 1304, 1309 (Fed. Cir. 2003) (noting that Explanatory Notes are “intended to clarify the scope of HTSUS subheadings and to offer guidance in their interpretation”).

In Headquarters Ruling Letter (“HQ”) 967415, dated August 1, 2005, CBP drew from the following dictionary sources to define the term “structure”: www.dictionary.com:

Something made up of a number of parts that are held or put together in a particular way: hierarchical social structure. The way in which parts are arranged or put together to form a whole; makeup: triangular in structure. The interrelation or arrangement of parts in a complex entity: political structure; plot structure. Something constructed, such as a building.

The American Heritage Dictionary of the English Language, 4th Ed. (2000):

1. Something made up of a number of parts that are held or put together in a particular way: hierarchical social structure.
2. The way in which parts are arranged.

Merriam-Webster’s Dictionary Online, available at www.m-w.com:

1. Something built as a dwelling, shelter, or place for human activity the only structure on the island is an old Spanish fort--or what’s left of.
2. Something put together by arranging or connecting an array of parts the Egyptian pyramids are among the most remarkable structures ever built the arrangement of parts that gives something its basic form the basic structure of all those tract houses is the same: basically, a box.

Based on these definitions, we determined that that a structure is “a complex system consisting of a number of different parts or sections.” In addition, EN 73.08 explains that:

Structures are characterized by the fact that once they are put in position, they generally remain in that position. They are usually made up from bars, rods, tubes, angles, shapes, sections, sheets, plates, wide flats including so called universal plates, hoop, strip, forgings or castings, by riveting, bolting, welding, etc.

Balustrades are structures because they are complex systems consisting of a number of parts or sections (bars riveted or bolted to a rail) that once put in position, generally remain in position. See EN 73.08. It follows that the metal balusters at issue, which are used as the upright supports of a balustrade, are parts of those structures and are thereby classified as such in heading 7308, HTSUS.

HOLDING:

In accordance with GRI 1, the metal balusters are classified under heading 7308, specifically in subheading 7308.90.95, HTSUS, which provides for: "Structures . . . and parts of structures (for example . . . balustrades . . .) of iron or steel; . . . : Other: Other: Other." The column one, general rate of duty is Free.

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.

EFFECT ON OTHER RULINGS:

NY C89444, dated July 15, 1998, is modified as it relates to the classification of the metal balusters from China. The classification of the wooden balusters from Indonesia is unchanged.

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

**WITHDRAWAL OF PROPOSED MODIFICATION OF RULING
LETTER AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
CERTAIN PRINTED CIRCUIT BOARD ASSEMBLIES**

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

ACTION: Withdrawal of notice of proposed modification of a ruling letter and proposed revocation of treatment relating to tariff classification of certain printed circuit board assemblies (PCAs) for electronic keyboards.

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), Customs and Border Protection (CBP) proposed to modify one ruling letter relating to the tariff classification of certain PCBs for electronic keyboards under the Harmonized Tariff Schedule of the United States (HTSUS).

CBP also proposed to revoke any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 42, No. 42, on October 9, 2008. One comment was received in response to the notice. As a result of the comment, we have determined that more information on the subject merchandise is necessary before proceeding with reconsideration of the relevant rulings. Therefore, we are withdrawing the proposed action.

EFFECTIVE DATE: This action is effective immediately.

FOR FURTHER INFORMATION CONTACT: Greg Connor, Tariff Classification and Marking Branch: (202) 325-0025.

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. 42, on October 9, 2008, proposing to modify New York Ruling Letter (NY) C88491, dated June 29, 1998, which classified fifteen PCAs under heading 8543, HTSUS, and specifically under subheading 8543.89.9695, HTSUSA (1998), which provides for, in pertinent part: "[e]lectrical machines and apparatus, having individual functions not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other: Other . . . Other". In the notice of October 9, 2008, we proposed to modify the tariff classification of

six of the fifteen PCAs subject to NY C88491. One comment was received in response to the notice. As a result of the comment, we have determined that more information about the subject PCAs is necessary before we reconsider NY C88491.

Pursuant to 19 U.S.C. §1625(c), and 19 C.F.R. §177.7(a), which states, in pertinent part, that “[n]o ruling letter will be issued . . . in any instance in which it appears contrary to the sound administration of the Customs and related laws to do so”, CBP is withdrawing its proposed modification of NY C88491.

DATED: December 9, 2008

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

GENERAL NOTICE
19 CFR PART 177

**PROPOSED MODIFICATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE CLASSIFICATION OF CERTAIN FLEXIBLE
PACKAGING MATERIAL**

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

ACTION: Notice of proposed modification of a ruling letter and revocation of treatment relating to the classification of certain flexible packaging material composed of poly ethylene terephthalate (PET) film, aluminum foil and peelable high density poly ethylene (HDPE) film adhered together in layers.

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) is proposing to modify a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain flexible packaging material composed of PET film, aluminum foil and peelable HDPE film adhered together in layers. 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 February 1, 2009.

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, 799 9th Street, N.W., Washington, D.C. 20001. 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) 325-0118.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Tariff Classification and Marking Branch at: (202) 325-0034.

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 modify a ruling letter relating to the tariff classification of certain flexible packaging material composed of PET film, aluminum foil and peelable HDPE film adhered together in layers. Although in this notice CBP is specifically referring to the modification of New York Ruling Letter (NY) J84648, dated July 3, 2003 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the rulings identified above. No further rulings have been found. Any party who has re-

ceived 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 is proposing 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 J84648, CBP classified certain flexible packaging material composed of PET film, aluminum foil and peelable HDPE film adhered together in layers in subheading 7607.20.50, HTSUS, which provides for: "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm: Backed: Other", by application of GRI 1. Based on our recent review of NY J84648, we have determined that the tariff classification set forth for the packaging material is incorrect. It is now CBP's view that the proper tariff classification is subheading 3921.90.40, HTSUS, which provides for: "Other plates, sheets, film, foil and strip, of plastics: Other: Other: Flexible," by application of GRI 1.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY J84648 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper tariff classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) H045859 (Attachment B). 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 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: December 15, 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 J84648
July 3, 2003
CLA-2-76:RR:NC:1:118 J84648
CATEGORY: Classification
TARIFF NO.: 7607.19.6000; 7607.20.1000;
7607.20.5000

MS. VENETIA HUFFMAN
C V INTERNATIONAL, INC.
#13 Interstate Corporate Center Suite 141
Norfolk, VA 23502

RE: The tariff classification of Vaassen flexible packaging foil from the Netherlands.

DEAR MS. HUFFMAN:

In your letter dated April 1, 2003, you requested a tariff classification ruling on behalf of Vaassen Flexible Packaging B.V. of the Netherlands. There was a delay in answering your inquiry because we sent your samples to our laboratory for analysis. The remaining pieces of the samples that you have submitted with your request will be returned to you as requested.

You have described your samples as follows:

PS CAL 620 is an aluminum foil with an acid resistant layer that seals to PS and PET containers. It is comprised primarily of the aluminum foil with primers and a lacquer. This foil is used as a lidding foil for blow-molded or injection molded cups and containers, providing a sterile closure. The total thickness is .0428mm and it is not cut to shape. Omniseal CAL 852 is an aluminum foil with a layer that seals to PET, PS, PVC, PP and PAN (Barex®) containers. It is comprised primarily of aluminum foil with primers and a HS lacquer. It is to be used as a lidding foil for blow-molded or injection molded cups and containers, providing a sterile closure in an aseptic filling process. The total thickness is .0458mm and it is not cut to shape. Capsteril® PAL 811 is a heat seal lacquered foil with polyester top-layer to make the foil extra tear resistant. It is comprised primarily of an aluminum foil with polyester film applied with an adhesive. It is to be used as a lidding foil for blow-molded or injection molded containers, providing a sterile closure in an aseptic filling process. The total thickness is .0706mm. The submitted sample was not cut to shape. Two of the submitted samples do have printing on one side.

Capsteril® PAF 212 is a tri-laminate of PET, aluminum foil and peelable HDPE. This foil gives a peelable sealing to PE containers. The aluminum foil and peelable HDPE are of the same thickness. The PET layer makes the foil extra tear resistant. It is to be used as a lidding foil for blow-molded or injection molded containers, providing a sterile closure in an aseptic filling process. The total thickness is .1182mm. The mass (g/m²) of the foil exceeds that of the plastic. The submitted sample was not cut to shape.

Capsteril® NAF 211 is a laminate of aluminum and peelable HDPE. The product provides a peelable sealing to PE containers. It can be used in re-torting processes. The thickness of the aluminum and peelable HDPE are the same. The total thickness is .105mm. The submitted sample was not cut to shape.

The applicable subheading for the PS CAL 620 and Omniseal CAL 85 will be 7607.19.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm: not backed: other: other: other. The rate of duty will be 3% ad valorem.

The applicable subheading for the PAL 811 (with print or decoration) will be 7607.20.1000, HTS, which provides for aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm: backed: covered or decorated with a character, design, fancy effect or pattern. The rate of duty will be 3.7% ad valorem.

The applicable subheading for the Capsteril® PAL 811 (without printing or decoration), Capsteril® PAF 212 (without printing or decoration) and the Capsteril® NAF 211 (without printing or decoration) will be 7607.20.5000, HTS, which provides for aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm: backed: other. The rate of duty will be free.

Consideration was given to classifying all of your products in subheading 7607.20, HTS, as you have suggested, however, that classification was deemed inappropriate for PS CAL 620 and Omniseal CAL 852. The Explanatory Note (EN) General Note to the chapter notes for chapter 76 mentions treatments (such as those referred to at the end of the General Explanatory Note to chapter 72), that are done to improve the properties or appearance of the metal to protect it from corrosion, etc., stating that it would not affect the classification. The limiting thickness of foil includes coatings, but not the thickness of any backing material. In your submission, you have indicated that the HS lacquer is applied for the purpose of sealing containers (PS CAL620, Omniseal CAL 852 and Capsteril PAL 811). The application of the HS lacquer, a surface finishing treatment is considered a coating. The Capsteril PAL 811 product, however, you state has been laminated with a polyester film to provide support to make the foil extra tear resistant. In line with the above, PS CAL 620 and Omniseal CAL 852 were not considered to be backed foil products.

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 Kathy Campanelli at 646-733-3021.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H045859
CLA-2 OT:RR:CTF:TCM H045859 HkP
CATEGORY: Classification
TARIFF NO.: 3921.90.40

MS. VENETIA HUFFMAN
C.V. INTERNATIONAL, INC.
#13 Interstate Corporate Center
Suite 141
Norfolk, VA 23502

RE: Modification of NY J84648; Capsteril® PAF212 flexible packaging material

DEAR MS. HUFFMAN:

This is in reference to New York Ruling Letter (NY) J84648, issued to you on July 3, 2003, regarding the classification of five kinds of flexible packaging material under the Harmonized Tariff Schedule of the United States ("HTSUS"). In that ruling, in relevant part, U.S. Customs and Border Protection ("CBP") classified Capsteril® PAF212, a material made up of PET, aluminum foil and peelable HDPE adhered together in layers, under heading 7607, HTSUS, as "backed" aluminum foil. After reviewing this decision we have come to the conclusion that this classification is incorrect and that the correct classification for this product is under heading 3921, HTSUS. For this reason, we hereby modify NY J84648.

FACTS:

In NY J84648, the merchandise at issue was described, in pertinent part, as follows:

Capsteril® PAF212 is a tri-laminate of PET, aluminum foil and peelable HDPE.⁴ This foil gives a peelable sealing to PE containers. The aluminum foil and peelable HDPE are of the same thickness. The PET layer makes the foil extra tear resistant. It is to be used as a lidding for blow-molded or injection molded containers, providing a sterile closure in an aseptic filling process. The total thickness is .1182mm. The mass (g/m²) of the foil exceeds that of the plastic.

According to a diagram included on the Technical Data Sheet for the Capsteril® PAF212 packaging material, submitted as a part of the ruling request that resulted in the issuance of NY J84648, the PET film is adhered to one side of the aluminum foil and the peelable HDPE film is adhered to the other.

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 tar-

⁴The acronym "HDPE" refers to high density poly ethylene, and the acronym "PET" refers to poly ethylene terephthalate. HDPE and PET are types of plastic.

iff 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:

- 3921** Other plates, sheets, film, foil and strip, of plastics:
- 7607** Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm:

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. While not 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 at the international level. See T.D. 89-80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The General EN to Chapter 39 provides, in relevant part:

This Chapter also covers the following products, whether they have been obtained by a single operation or by a number of successive operations **provided** that they retain the essential character of articles of plastics:

....

- (b) Plates, sheets, etc., of plastics, separated by a layer of another material such as metal foil, paper, paperboard.

EN 39.21 provides, in relevant part:

This heading covers plates, sheets, film, foil and strip, of plastics, **other than** those of **heading 39.18, 39.19 or 39.20** or of **Chapter 54**. It therefore covers only cellular products or those which have been reinforced, laminated, supported or similarly combined with other materials. (For the classification of plates, etc. combined with other materials, see the General Explanatory Note.)

As previously indicated, the instant merchandise was classified under heading 7607, HTSUS, as “backed” aluminum foil. The tariff does not define the term “backed”. When a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). “To ascertain the common meaning of a term, a court may consult ‘dictionaries, scientific authorities, and other reliable information sources’ and ‘lexicographic and other materials.’ ” *Id.* (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271, 69 C.C.P.A. 128 (C.C.P.A. 1982); *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989)). The *Random House Dictionary of the English Language* defines “backing” as “that which forms the back or is placed at or attached to the back of anything to support, strengthen, or protect it. The aluminum industry defines the term “backed foil” as “a lamination composed of foil and a coherent substrate. The substrates or backing may be either self-adherent or bonded to the foil by means of an interposed adhesive. Paper, woven fabrics, cellophane, polyethylene film and the like are typical examples of such backings or substrates.” (Cited in HQ 965210, March 20, 2002, and HQ 966769, January 5, 2004.) Based on these sources, CBP has previously found that the word “backed” is defined, in pertinent part, as “having a back, setting or

support". *Id.* We now note that the Oxford English Dictionary (Oxford University Press, 2008) defines the noun "back" as: "**3. a.** gen. That side or surface of any part . . . of any object, which answers in position to the back; that opposite to the face or front, or side approached, contemplated or exposed to view; e.g. the back of the head, of the leg; the back of a house, door, picture, bill, tablet, etc." Also, "**5. a.** The side of any object away from the spectator, or spectators generally, the other or far side. **at the back of:** behind, on the farther side of[.]" Furthermore, EN 74.10 (which applies, *mutatis mutandis*, to heading 76.07 (see EN 76.07)) explains that "backing" may be added to a good to facilitate handling or transport or in order to facilitate subsequent treatment. Based on the common and commercial meaning of the word "backed" and the explanation provided in the ENs, we find that foil to one side of which a coherent substrate has been added (the "back") in order to strengthen, support, or protect the foil or to facilitate handling, transport or subsequent treatment may be classified in heading 7607 as "backed" foil on the basis of GRI 1.

Capsteril® PAF212 packaging material is not described by the term "backed". Although the plastic layers are added to the foil for strength and to support, protect, and facilitate handling, transport and subsequent treatment of the foil, the plastics are added to both sides of the foil and, therefore, cannot properly be considered "backing." Consequently, the Capsteril® PAF212 packaging material cannot be classified in heading 7607, HTSUS, using a GRI 1 analysis. In this regard, we note that CBP has previously classified foil product comprised of a layer of plastic sandwiched between two layers of aluminum foil as "backed" aluminum foil under heading 7607, on the basis of GRI 1. See HQ 960276, dated August 1, 1997. However, the foil product classified in that ruling was an aluminum foil/plastic/aluminum foil composition while the product currently under consideration is a plastic/aluminum foil/plastic composition. The product classified in HQ 960276 was properly found to be "backed" because one side of each layer of the foil was adhered to a common inner plastic substrate, that is, the foil was placed "back-to-back" on the substrate, in order to strengthen the foil. In the current situation, both the front and the back of the internal foil layer are adhered to the back of each external plastic layer. Consequently, we find that the merchandise at issue is not similar to the merchandise classified in HQ 960276 and cannot be classified in the same provision.

Furthermore, we find that Capsteril® PAF212 flexible packaging material cannot be classified under heading 7607, HTSUS, as "not backed" aluminum foil on the basis of a GRI 1 analysis because it is combined with another material but is not backed or coated. Note 1(d) to Chapter 76 allows for foil which has been coated (the other specified treatments do not concern the combination of foil with other materials) to be classified in heading 7607, HTSUS, using GRI 1, provided that the foil has not assumed the character of an article or product of another heading. This is also explained in the General ENs to Chapter 72, which applies, in part, to products of Chapter 76 (see General EN to Chapter 76). CBP has previously found that a "coating" is "a layer of any substance spread over a surface." See HQ 966769, dated January 5, 2004, in which CBP determined that lacquer applied in liquid form and which hardened subsequent to its application was a coating and not a backing. We note that "lamination" is not mentioned in Note 1(d) to Chapter 76. Consequently, Capsteril® PAF212 flexible packaging material is not classifiable in heading 7607, HTSUS.

Capsteril® PAF212 flexible packaging material is a composite good consisting of foil and plastics. Under GRI 1, the expression “other” in the legal text of heading 3921, HTSUS, is to be construed “according to the terms of the headings and any relative section or chapter notes . . . provided such headings or notes do not otherwise require. . . .” Accordingly, heading 3921, HTSUS, has to be read in the context of the other headings in which plastic plates, sheets, film, foil and strip can be classified, *i.e.*, (in Chapter 39) heading 3918, HTSUS, (Floor coverings of plastics; wall and ceiling coverings of plastics), 3919, HTSUS, (Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics) and 3920, HTSUS, (Other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials). Based on the text of these headings, we find that heading 3921, HTSUS, provides for, among other things, plastic film (other than those of heading 3918, 3919, or 3920, HTSUS) combined with other materials. We find, therefore, that composite goods consisting in part of plastic sheets or other forms named in the heading may be classified in heading 3921, HTSUS, on the basis of GRI 1, provided they retain the essential character of articles of plastics. This interpretation of the heading text is supported by the Explanatory Notes to heading 3921, HTSUS. See EN 39.21 and the General EN to Chapter 39, which explain that sheets of plastics separated by a layer of foil are provided for in Chapter 39, HTSUS.

The Capsteril® PAF212 packaging material retains the essential character of an article of plastic because its plastic layers encase the foil layer and confer on to it the characteristics of plastic. Based on the foregoing, we find that the Capsteril® PAF212 packaging material is classified under heading 3921, HTSUS, pursuant to GRI 1.

HOLDING:

By application of GRI 1, Capsteril® PAF212 flexible packaging material is classified under heading 3921, HTSUS. It is specifically provided for in sub-heading 3921.90.40, HTSUS, which provides for: “Other plates, sheets, film, foil and strip, of plastics: Other: Other: Flexible.” The column one, general rate of duty is 4.2% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY J84648, dated July 3, 2003, is hereby modified with respect to the classification of Capsteril® PAF212 flexible packaging material. The classification of the other items described therein is unchanged.

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

