U.S. Customs Service

General Notices

NOTICE OF REVOCATION OF CUSTOMS BROKER LICENSE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 USC 1641) and the Customs Regulations [19 CFR 111.45(a)], the following Customs broker license is revoked by operation of law.

Name	*License*	*Port*
Dimerco Express (USA) Corporation	13620	San Francisco

Dated: March 4, 2002.

BONNI G. TISCHLER,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, March 8, 2002 (67 FR 10803)]

RECEIPT OF AN APPLICATION FOR "LEVER-RULE" PROTECTION

AGENCY: U.S. Customs Service, Department of the Treasury.

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 has received an application from McCormick Delaware, Inc. seeking "Lever-Rule" protection.

FOR FURTHER INFORMATION CONTACT: Paul Pizzeck, Esq., Intellectual Property Rights Branch, Office of Regulations & Rulings, (202) 927–1754.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 CFR 133.2(f), this notice advises interested parties that Customs has received an application from McCormick Delaware, Inc. seeking "Lever-Rule" protection. Protection is sought against importations of the following products intended for sale in Mexico:

1) "MAYONESA" mayonnaise with lime juice which bears the following trademarks: MC & DESIGN (U.S. Patent & Trademark Office Registration No. 2,223,933; U.S. Customs Recordation No. TMK 01–00488) and MCCORMICK (U.S. Patent & Trademark Office Registration No. 2,233,809; U.S. Customs Recordation No. TMK 01–00491).

2) "MERMELADA" strawberry fruit spread which bears the following trademarks: MC & DESIGN (U.S. Patent & Trademark Office Registration No. 2,223,933; U.S. Customs Recordation No. TMK 01–00488) and MCCORMICK (U.S. Patent & Trademark Office Registration No. 2,233,809; U.S. Customs Recordation No. TMK 01–00491).

Pursuant to 19 CFR 133.2(f), Customs will publish an additional notice in the CUSTOMS BULLETIN indicating which, if any, trademark(s) will receive Lever-rule protection relative to specific products in the event that Customs determines that the subject mayonnaise and/or fruit spread are physically and materially different from the products authorized for sale in the U.S.

Dated: March 1, 2002.

JOANNE ROMAN STUMP,
Chief, Intellectual Property Rights Branch,
Office of Regulations and Rulings.

DATES AND DRAFT AGENDA OF THE TWENTY-FIFTH SESSION OF THE HARMONIZED SYSTEM REVIEW SUBCOMMITTEE OF THE WORLD CUSTOMS ORGANIZATION

AGENCIES: U.S. Customs Service (Department of the Treasury) and U.S. International Trade Commission.

ACTION: Publication of the dates and draft agenda for the twenty-fifth session of the Harmonized System Review Subcommittee of the World Customs Organization.

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

DATE: February 28, 2002.

FOR FURTHER INFORMATION CONTACT: Myles B. Harmon, Director, International Agreements Staff, Office of Regulations & Rulings, U.S. Customs Service (tel: 202–927–2255 & fax: 202–927–1873), or Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission (tel: 202–205–2592 & fax: 202–205–2616).

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

In order to ensure that the Harmonized System continues to remain current, the Harmonized System Review Subcommittee ("RSC") was created as a subcommittee of the HSC. The RSC is responsible for periodically reviewing the Harmonized System and proposing amendments to the legal text that reflect changes in technology and in patterns of in-

ternational trade. The RSC is composed of the same representatives as the HSC. As with the HSC, the RSC meets twice a year in Brussels, Belgium. The next session of the RSC will be the twenty-fifth, and it will be held from March 18 to 22, 2002.

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

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

MYLES B. HARMON,
Director, International Agreements Staff,
Office of Regulations & Rulings.

[Attachment]

Attachment

DRAFT AGENDA FOR THE TWENTY-FIFTH SESSION OF THE HARMONIZED SYSTEM REVIEW SUB-COMMITTEE

Monday, March 18 (10 am.) to Friday, March 22, 2002

I.

ADOPTION OF THE AGENDA

1. Draft Agenda NR0206E2
2. Draft Timetable NR0207E1

II.

GENERAL QUESTIONS

1. Approval of Review Sub-Committee Reports NR0208E1
2. Report on the meeting of the Policy Commission (46th Session) NR0209E1
3. Decisions taken by the Harmonized System Committee at its 28th Session affecting the work of the Review Sub-Committee NR0210E1

III.

TECHNICAL QUESTIONS

A. FURTHER STUDIES

1. Possible amendments to the Nomenclature regarding the classification of waffles NR0211E1
2. Possible amendments to the Nomenclature regarding the classification of sauces NR0169E1 NR0198E1 (RSC/24) NR0212E1
3. Possible amendments to the Nomenclature and the Explanatory Note to heading 84.42 ..... NR0213E1
4. Possible amendments to the Nomenclature regarding the classification of cameras ..... **NR0173E1 (RSC/24)** NR0214E1 **NR0259E1 NR0260E1**
5. Possible amendments to the Nomenclature and Explanatory Notes to Chapter 24 ..... NR0174E1 NR0197E1 (RSC/24) NR0215E1
6. Possible amendments to the Nomenclature in order to update the terminology of certain products and to delete obsolete items NR0216E1
7. Proposal by the ***US*** Administration to amend the Nomenclature to Chapter 41 ..... NR0177E1 (RSC/24) NR0217E1
8. Proposal by the ***US*** Administration to amend the Nomenclature to heading 84.82 ..... NR0218E1 NR0248E1
9. Proposal by the ***US*** Administration to amend the Nomenclature to heading 85.19 ..... NR0219E1
10. Proposal by the ***US*** Administration to amend certain subheadings of heading 87.08 ..... NR0220E1

TECHNICAL QUESTIONS—Continued

TECHNICAL QUESTIONS—Continued

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, March 6, 2002.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

DOUGLAS M. BROWNING,
Acting Assistant Commissioner,
Office of Regulations and Rulings.

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF A GLASS PLATE ON A SNOWMAN FIGURINE BASE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of a ruling letter and treatment relating to tariff classification of a glass plate on a snowman figurine base.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking one ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of a glass plate on a snowman figurine base, and revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocation was published on January 23, 2002, in the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 20, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Stern, General Classification Branch, (202) 927–1638.

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 Customs 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 Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, a notice was published on January 23, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 4, proposing to revoke NY G89939, dated April 13, 2001, which classified the glass plate on a snowman figurine base, in subheading 7013.99.50, Harmonized Tariff Schedule of the United States (HTSUS). No comments were received in response to this notice.

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

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

In NY G89939, dated April 13, 2001, the "Snowman Table Server," which is comprised of glass plate on a snowman figurine base, was classified as a set put up for retail sale having the essential character of a decorative glass plate, and classified in subheading 7013.99.50, HTSUS, as: "Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018), other glassware, other * * *: * * * valued over $0.30 but not over $3.00 each." It is now Customs position that the merchandise is a composite good comprised in part of agglomerated stone with plastic resin, classifiable under heading 6810, HTSUS, and in part of glass with worked edges, classifiable under heading 7006, HTSUS. The merchandise is classified in subheading 6810.99.00, HTSUS, as: "Articles of cement, or concrete or of artificial stone, whether or not reinforced: other articles: other."

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY G89939 to reflect the proper classification of the glass plate on a snowman figurine base in subheading 6810.99.00, HTSUS, pursuant to the analysis in HQ 965125, which is set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

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

Dated: March 5, 2002.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, March 5, 2002.

CLA–2 RR:CR:GC: 965125 DBS
Category: Classification
Tariff No. 6810.99.00

MR. ROLANDO E. PORTAL
ABC DISTRIBUTING, INC.
6301 East 10th Avenue
Hialeah, FL 33013

Re: NY G89939 revoked; glass plate on a snowman figurine base.

DEAR MR. PORTAL:

This is in reference to your letter of June 19, 2001, requesting reconsideration of NY Ruling Letter G89939. In G89939, issued to you April 13, 2001, the Director, National Commodity Specialist Division, New York, classified a "Snowman Table Server" from China in subheading 7013.99.50, Harmonized Tariff Schedule of the United States (HTSUS),

which provides for decorative glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of the above identified rulings was published on January 23, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 4. No comments were received. Our decision follows.

Facts:

A color advertisement of the article and a sample were submitted. The subject article is comprised of a glass slab with worked edges, measuring approximately 25.0 cm in diameter, sitting atop an agglomerated stone figurine of a snowman with a bird on its shoulder. The Customs laboratory determined that the figurine was composed of approximately 43% plastic resin and 57% calcium carbonate (Lab Report # NO20011393). A submission by the importer confirmed that the calcium carbonate was derived from real stone. The figurine base measures approximately 24.0 cm high and 18.0 cm at its widest. The head of the bird and the raised arm of the snowman are slightly flattened and protective pads are placed on them to accommodate the glass piece.

The New York Customs office determined that the subject article was a set put up for retail sale, and as such was classified under subheading 7013.99.50, HTSUS, providing for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes, other than that of heading 7010 or 7018, valued between $0.30 and $3. You contend that the subject article is a composite good and should be classified under subheading 7013.99.80, HTSUS, providing for glassware valued between $3 and $5. The essential character of the article was not challenged.

Issue:

What is the proper classification of the Snowman Table Server?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

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

The HTSUS provisions under consideration are as follows:

6810	Articles of cement, or concrete or of artificial stone, whether or not reinforced:
	Other articles:
6810.99.00	Other
* * * * * * *	
7006.00	Glass of heading 7003, 7004, 7005, bent, edge-worked, engraved, drilled, enameled or otherwise worked, but not framed or fitted with other materials:
	Other:
7006.00.40	Other
* * * * * * *	
7013	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):
	Other glassware:
7013.99	Other:
	Other:
	Other

8013.99.50	Valued over $0.30 but not over $3 each
* * * * * * *	
	Valued over $3 each:
	Cut or engraved:
7013.99.60	Valued over $3 but not over $5 each

In NY G89939, dated April 13, 2001, the Director, National Commodity Specialist Division, New York, classified the snowman table server according to the standards used to classify glass articles on metal stands. We have reconsidered that ruling and now believe that applying those standards to the subject snowman table server was misplaced. Glass articles with metal stands are not analogous to the subject good. With glass articles with metal stands, the glass is usually the larger component, has greater consumer appeal and is more important to the function of the article. *See* Informed Compliance Publication on *Decorative Glassware*, issued August, 2001; *see also Lamps, Lighting and Candle Holders*, issued March 1998 and *New Decisions on Candle Holders v. Decorative Glass Articles*, issued February, 2000. With respect specifically to table/kitchen glassware with metal racks, stands or bases, articles are classified by the glass component because the glass makes up the body of the article. *See* Informed Compliance Publication on *Table and Kitchen Glassware*, issued March, 2000. None of these is true of the snowman table server.

Here, the snowman base exceeds the glass component in size, weight and bulk. The snowman base provides the consumer appeal; the item is in fact advertised to "add wintry charm." The decorative nature of the merchandise outweighs the utilitarian value provided by the glass because the primary purpose of purchasing such an item is for decoration. As such, the snowman makes up the body of the article. Accordingly, the glass component is not classifiable as being of a kind of glassware of heading 7013, HTSUS, as originally classified. Rather, it is worked glass of a kind classifiable in heading 7006, HTSUS.

EN 70.06 states, in pertinent part, that the heading includes: "Glass with worked edges (ground, polished, rounded, notched, chamfered, beveled, profiled, etc.), thus acquiring the character of articles such as slabs for table tops. * * *" Chapter Note 3 to Chapter 70 states that "The products referred to in heading 7006 remain classified in that heading whether or not they have the character of articles. The glass component of the subject item is a flat slab of glass, round in shape, with ground and slightly rounded edges. Imported with the base, it has the character of a small table-top. Thus, the glass component is clearly an article of heading 7006, HTSUS.

Further, it is noted that the EN also states that glass plates for articles of furniture are classified with the articles of furniture if imported at the same time, whether or not assembled, and are intended for incorporation therein. However, the subject article as a whole is not furniture. The ENs to Chapter 94, the chapter for furniture, define "furniture" to mean "any 'movable' articles * * * which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose * * *." This table server was not designed to be placed on the floor or ground, but rather on a raised surface (i.e., a table, counter, etc.). Nor is its purpose mainly utilitarian. The main purpose of the snowman table server is decorative, its utility is secondary. Therefore, the glass, though having the character of a table-top, is not furniture.

The snowman component is made of calcium carbonate, derived from stone, and reinforced with plastic resin. This material, known as agglomerated stone or artificial stone, is provided for in heading 6810, HTSUS. EN 68.10 states that the heading includes, *inter alia*, goods such as statues, statuettes and animal figurines, and ornamental goods. The snowman component is an article of heading 6810, HTSUS, which provides for articles of cement, concrete and artificial stone, whether or not reinforced.

The good is described in part only by heading 6810 and 7006, HTSUS. Thus it is properly classified according to GRI 3(b). EN (IX) to GRI 3(b) states that, "composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, **provided** these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts." We are satisfied that the snowman table server satisfies the requirements of a composite good that is in part agglomerated stone of heading 6810, HTSUS, and in part a piece of glass with worked edges of heading 7006, HTSUS. Although not attached to the glass, the snowman base would not normally be offered for sale separately, as its arm is raised to hold up the glass slab, and protective pads secure the

glass to the snowman base. Similarly, the glass slab is cut to size to complement the snowman base.

As the item is a composite good, we must now determine which component imparts the essential character. EN VIII to GRI 3(b) explains that "[t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods."

As discussed above, the bulk, weight and decorative nature of the snowman base exceeds the utility provided by the glass component. The snowman base provides the article with its essential character. Accordingly, the snowman table server is classifiable under heading 6810, HTSUS, as other articles of artificial stone, whether or not reinforced.

Holding:

The Snowman Table Server is classified in subheading 6810.99.00, HTSUS, which provides for, "articles of cement, of concrete or of artificial stone, whether or not reinforced: other articles: other."

Effect on Other Rulings:

NY G89939, dated April 13, 2001, 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.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED REVOCATION OF RULING LETTER RELATING TO FILLING OUT TUBES AS A MANUFACTURING PROCESS UNDER 1313(B)

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letter issued under 19 U.S.C. 1313(b), manufacturing drawback.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter which pertains manufacturing drawback claim under 19 U.S.C. 1313(b). Similarly, Customs proposes to revoke any treatment previously accorded that is contrary to position set forth in this notice. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before April 19, 2002.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Rebecca DeJesus, Duty and Refund Determination Branch (202) 927–2402.

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 Customs 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 Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs 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 Customs intends to revoke one ruling allowing a certain claimant 19 U.S.C. 1313(b) drawback privileges. Customs has determined to revoke the ruling because the described process is not covered by the statute. Although in this notice Customs is specifically referring to the revocation of (ACS) Ruling Letter # 44–04385–001 dated August 26, 1999 and (ACS) Ruling letter # 44–04385–000 dated September 29, 1995 as well as any treatment that may have resulted as the result of Customs action on claim BV800010008 (port 2704) and claims BV800010222, BV800010230, BV800010255, BV800010263, BV800010289, BV800010297, BV00010305, BV800010313 and BV800010339 (port 3901). This notice covers any rulings on this merchandise which may exist but have not been specifically identified that are contrary to the position set forth in this notice. Customs 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.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially

identical merchandise that is contrary to the position set forth in this notice. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of 19 U.S.C. 1313 drawback provisions. Any person involved with substantially identical merchandise should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice that is contrary to the position set forth in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

By letter, Customs acknowledged and authorized a letter of Notification of Intent to Operate Under a General Manufacturing Drawback Ruling (T.D. 81–300).

The manufacturing process was described in the following manner: "tubes, bottles, etc. will be filled with skin care and similar products, and closures, plugs, etc will be affixed, resulting in product ready for sale to end user". By approving this ruling, it was understood by the claimant that Customs held the ***filling*** of tubes to constitute a manufacturing or production process permissible under 19 U.S.C. 1313(b). Customs now intends to revoke both ruling and any treatment based on those rulings in order to reflect Customs' policy in that the stated operation does not fall within the purview of 19 U.S.C. 1313(b) statute nor what the courts have defined to be a "manufacturing process". Customs has determined that the filling process does not rise to the level of "manufacture" that is required for the purposes of manufacturing drawback under 1313(b). The filling process described began with imported foreign manufactured empty tubes being cleaned and automatically fed with lotion. The lower end is heated and then "crimped" to secure a seal of the contents. The tubes are then labeled for marketing purposes. We have determined that the imported plastic tube containers are being used for their intended purpose, to hold and transport the importer's product. In *U.S. v. Border Brokerage Co*. 48 C.C.P.A 10 (Cust. & Pat. App. 1960), it was held that the process of filling containers (such as bags with fertilizer and sewing them up) did not result in a change of condition that would qualify the goods to enter under temporary duty-free entry under section 305(1) of the Tariff Act of 1930 as articles to be "repaired altered or otherwise changed in condition". In *U.S. v Border Brokerage*, the purpose of the entry of the bags was to fill the bag with fertilizer. C.S.D. 79–40 defines "manufacture" or "production" for drawback as the process or processes which through labor and manipulation, change or transform an article or articles into a new and different article having a distinctive name, character and use (see, *Anheuser-Busch Brewing Ass'n v. U.S., (207 U.S. 556 (1907)*). It has been held that if an operation renders a commodity or article fit for use for which it was otherwise not

fit, the operation falls within "the letter and spirit" of "manufacture" *(United States v. International Paint Co. Inc.,* 35 C.C.P.A. 87, C.A.D. 376 (1948). In C.S.D. 79–40 the case explains that to be considered a "manufacture", a process must be viewed in terms of its results. "*Unless there is a new and different article having a distinctive name, character and use, there is no product of manufacture or production. Unless the process itself requires significant effort, measured in terms of capital, labor and complexity, the change is too insignificant to be considered a manufacture or production. All factors must be evaluated with reference to the specific fact.* Mere packaging is not considered a manufacture or production for drawback purposes. Manufacture or production for drawback purposes is defined under 19 C.F.R. 191.2(q) as:

> "Manufacture or production means: (1) a process including, but not limited to, an assembly by which merchandise is made into a new and different article having a distinctive "name character or use"; or (2) a process, including, but not limited to, an assembly, by which merchandise is made fit for a particular use even though it does not meet the requirements of paragraph (q)(1) of this section."

By the same token, Customs has also determined that the Amway's use of plastic bottles and jars in order to hold their finished products consisting of lotions and creams do not fall into the purview of a "manufacturing process". According to their assembly descriptions, Amway imports the plastic bottles, some of which are already constructed with pump assemblies and others with orifice reducers. The assembly process commences with an article which has already been constructed to hold Amway's product. During the filling process of these jars and plastic bottles, the lotions/creams are automatically dispensed and closures are inserted to ensure the flow of the product. Another type of product that Amway merchandises is the powder "godet". The godet consists of small aluminum rectangular shaped pans imported to hold the compressed powder. Customs has determined that while the injection of the compressed powder is a process in itself, the godet's function in this assembly process is merely to hold the pressed powder.

In HQ 226887 (May 1, 1997) we stated that the filling of imported bottles does not amount to a manufacture or production. It is well established that the filling of imported bottles with a substance is not a manufacture or production. In *Joseph Schlitz Brewing Co. v. United States,* 181 U.S. 584, 21 S. Ct. 740 (1901), the Supreme Court stated with respect to brewed beer and imported bottles, that the bottles and corks were not imported materials but finished products, and were not ingredients used in the manufacture of the beer, "but simply the packages" the manufacturer used.

Customs has determined that the process of using imported plastic tubes which are opened at the bottom and used to feed the claimant's product into it and subsequently sealed for the consumer's use does not constitute a manufacturing process under the definition of 19 C.F.R. 191.2. In C.S.D. 81–65 (dated September 4, 1980), Customs determined

that the filling of polypropylene bags was not a manufacturing process whereas a new and different article, having a distinctive name, character and use from the that which was imported. In C.S.D. 80–183, Customs held that the mere packing or filing of glass containers (vials) did not constitute a manufacture or production to satisfy the requirements of drawback law. However, Customs held that if, the vials were imported unsterilized and after importation the vials were sterilized (as described in the facts of the case), then, the making of hypothermic syringes constituted a manufacturing process under the drawback law. Sterilization, coupled with the assembly operations, created an article with a new name, an injectable, and a new character, the article was made capable for medical purposes.

In HQ 226898, dated February 10, 1997, Customs considered the situation involving an importer who assembled imported glass bottles and other integral parts such as caps and collars into scent sprayers for "packaging" fragrance products. Customs stated that mere packaging, and wrapping operations are not considered a manufacture or production for drawback purposes. However, when the assembly process of the imported bottles and other parts result in the creation of scent sprayers having a different character and use, then it would constitute a manufacturing or production process under the drawback law. In HQ 227906, dated May 27, 1998, Customs held that copy machine toner imported in bulk and repacked by filling in small cartridges or bottles and then exported would constitute a manufacturing process under the drawback provisions. An operation which creates an article fit for a new use for which it was otherwise not fit, enables a process to fall within the "letter and spirit" of a manufacturing process under the drawback provision. This case also cites HQ207865 dated June 25, 1977, which also pertained a copy machine toners imported in bulk and then being rebottled into smaller 600 milliliter bottles and repackaged for retail use. The retail bottles fit commercial copy machines whereas the bulk drums of 180 liters did not. The rebottling of the bulk toners into 600 milliliter bottles made the product suitable for immediate consumption. This process of rebottling in itself created an item with a new name character and use within the meaning of the drawback statute. In HQ 227976 (dated July 16, 1998) Customs held that a process involving the cutting and folding of rolled aluminum foil into bags (to add dry soup mix) was more than a mere "filling process". The process began with a roll of aluminum foil (not "preformed" foil bags) which, at the end of the process, the end product involved a change of name, character and use of imported aluminum foils. This type of manufacture or process qualified as a permissible operation under subheading 9813.00.05 HTSUS.

The cited decisions involve an examination of the relationship between imported parts and finished product. The packages are imported wholly manufactured outside the United States and merely filled up, *secured* and closed in the United States. The fact that the contents have been *secured* does not mean that a new item has been manufactured.

Based upon our analysis, it is our intention to revoke our decision allowing the affected importer to claim drawback on a filling process that does not constitute a "manufacturing" process under the applicable drawback provisions. The fact that when the empty imported tubes are filled with lotion and sealed closed, does not mean that "a change of condition" has occurred or that a manufacturing process is evidenced. According to *U.S. v Border Brokerage Co* the "change in condition" was merely incidental to the purpose of the entry, to hold and transport the contents of the marketed product. It is consistent with the existing Customs policy for the claimant to be precluded from requesting drawback privileges under 19 U.S.C. 1313(b) or (a) because the claimant has failed to establish that a manufacturing process created a new product with a different name, character or use from the product initially imported. A process whereby imported tubes are cleaned, filled and marked does not constitute a manufacturing production which would enable the importer to claim drawback privileges. Each tube is imported as a tube, filled and closed on one of its sides in order to hold the contents together. The tube is not transformed into a new and different article with a different name character or use than that originally imported. Likewise the plastic bottles, jars and godets, as imported, do not undergo a manufacturing process whereby a new and distinctive product is created. The imported tubes are being used for their intended purpose or primary purpose which is, to hold and transport the product that is being marketed by the importer. An article is used when it is employed for the purpose for which it was intended.

Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions that are contrary to the position set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

Dated: March 6, 2002.

WILLIAM G. ROSOFF,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Chicago, IL, August 26, 1999.

ENT–5–TO:REV:DB MMA
ACS RULING # 44–04385–001

AMWAY CORPORATION
ATTN: BRUCE H. HANSON
7575 Fulton Street
Ada, MI 49355–0001

Articles:	Skin/home care products and water/air treatment systems
Merchandise:	Closures, plugs, tubes, bottles, cartons, ultraviolet lamps, wiring harnesses, ballasts, power cords, circuit boards
Factories:	Ada, Michigan
Basis of claim:	Appearing in
Application signed:	August 19, 1999
Revokes:	44–04385–000

DEAR MR. HANSON:

Receipt of your letter of Notification of Intent to Operate Under a General Manufacturing Drawback Ruling, and acceptance of the terms and conditions specified in:

(1) Title 19, United States Code, 1313(b) and (i);
(2) Part 191 of the Customs Regulations; and
(3) General Drawback Ruling T.D. Number 81–300

is acknowledged, and your request to operate under the general manufacturing drawback ruling identified above is authorized.

This manufacturing drawback ruling shall be effective from the date of this letter, in accordance with the provisions of 191.8(h) of the Customs Regulations.

ROBYN DESSAURE,
Port Director.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Long Beach, CA, September 29, 1995.

DRA–1–O:C:T:L
RP:1c

BRUCE E. BENEDICT
AMWAY CORPORATION
7575 Fulton Street
Ada, MI 49355–0001

DEAR MR. BENEDICT:

This letter acknowledges receipt of your statement dated August 1, 1995, in which you agree to adhere to the conditions of the general contract published as Treasury Decision 81–300 dated December 3, 1981. This contract shall terminate fifteen years from the date of this letter unless renewed for another fifteen year period.

We have assigned a tracking number of 44–0435–000 to your contract. When filing under this contract, please place the number in box 16 on the Certificate of Manufacture and Delivery, (Customs Form 331).

RICHARD M. ANDREJKO,
Head, Liquidation Section I,
Commercial Operations.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

DRA–2–02–RR:CR:DR
228918 RDJ
Category Drawback

MR. JOSEPH F. DONOHUE
26 Broadway
New York, NY 10004

DEAR MR. DONOHUE:

Re: Packaging Material; Assembly of Personal Care Products; Manufacturing Process; Scope of General Drawback Ruling, T.D.81–300, 19 C.F.R. 191.7, 19 C.F.R. 191 Appendix A, 19 U.S.C. 1625; Ruling Revocation under Section 1625(c).

DEAR SIR OR MADAM:

This is in response to an internal advice request initiated by letter dated July 10, 2000 on behalf of Amway Corporation.

It is Customs intention to invoke the procedures established under 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), to revoke Amway's (ACS) Ruling Letter #44–04385–001 dated August 26, 1999 and (ACS) Ruling letter # 44–04385–000 dated September 29, 1995.

We have determined that the processes described in these rulings, those which specifically pertain the filling out of plastic tubes with lotion, the filling of plastic bottles, jars and godets which had been initially approved by Customs do not rise to the level of "manufacture" that is required for the purposes of manufacturing drawback under 1313(b). It is out intention to proceed with procedures under section 1625(c) to revoke the approval of the subject rulings. Customs intends not to allow a claim for drawback on these items because they do not fall into the purview of what is regarded to be a "manufacturing process". However, with respect to the assembly of fragrance sprays and nail enamel applicator, we have determine that these processes do constitute a "manufacturing process". Customs has determined to allow Amway to continue claiming drawback on these exported items.

The facts are as follow.

Facts:

On August 19, 1999, Amway Corporation filed a Notice of Intent to Operate Under General Manufacturing Drawback Ruling T.D. 81–300 with the Chicago Drawback Office. The imported merchandise to be used in the manufacture or production was described as closures, plugs, bottles, and cartons; the articles to be manufactured were described as skin care products and home care products. The manufacturing process was described as, *"tubes, bottles, etc will be filled with skin care and similar products and closures, plugs etc will be affixed, resulting in product ready for sale to end user"*. On August 26, 1999, the Chicago Drawback acknowledged and authorized Amway's request (ACS Ruling #44–04385–001). Amway proceeded to file its claims from March, 1999 to May, 2000.

In May, 2000 Customs conducted an onsite visit to verify Amway's manufacturing claim for tubes used for skin lotion. The Chicago Office informed Amway that the observed process was not a manufacturing operation, and that the tubes were being used merely as packaging material. Amway was informed that the tube was ineligible for unused drawback since it was being used for its intended purpose.

Customs has proceeded to review the processes described by Amway and has determined those regarding the assembly of fragrance sprayers and nail enamel can be considered a manufacturing process where drawback can be claimed upon exportation

As for the processes involving the filling of lotion tubes, plastic bottles, jars and godets, Customs intends to revoke Amway's approved ruling and any treatment based on those rulings in order to reflect Customs' policy in that the stated operations do not fall within the purview of 19 U.S.C. 1313(b). Customs has determined that the filling process does not rise to the level of "manufacture" that is required for the purposes of manufacturing drawback under 1313(b).

We hereby describe the processes in detail:

a. Fragrance Sprayer: the process being described as the sprayer components being loaded in the machinery and fragrance being dispensed into a bottle; the spray pump is inserted into the bottle; a ferrule ring on the pump skirt is crimped onto the bottle neck; an actuator is mechanically attached to the pump stem; a collar is seated over the actuator and pump closure so that it rests on the shoulders of the bottle; an overcap is seated over the actuator, pump and collar; and a label is affixed to the bottle.

b. Nail Enamel Container/Applicator: the process described as inserting the steel mixing beads into the bottle; dispensing the nail enamel into the bottle; mechanically inserting the brush/stem assembly into the bottle; seating the inner cap on top of the brush/stem and thredding it onto the bottle neck; affixing a label to the bottom of the bottle; mechanically placing the outer closure on top of the inner closure; and passing the bottle under the compression belt.

c. Tube Container/Dispenser: the process described as imported plastic tubes where a closure is affixed at the top and the bottom is open so that the product is fed into the tube from the bottom, then mechanically crimping and tapering the tube; and trimming off any rough or sharp edges.

d. Plastic Bottles, Jars and plastic godets: the process described as imported plastic bottles and jars are open on one end and closed on the other. Base product is dispensed inside; a disc is applied to the top of the jar; an orifice reducer is inserted; the bottle is capped; and labeled. The godets being small aluminum trays made to hold powder products. Base product is dispensed into the godets; the powder is pressed, imprinted; and the sides are cleaned of excess product.

Analysis:

Amway's drawback claims were filed under 19 U.S.C. § 1313 (b), which allows drawback on exported articles that are manufactured or produced with the use of imported merchandise or other merchandise of the same and kind quality. Manufacture or production for drawback purposes is defined in 19 C.F.R. § 191.2(q) as follows:

(1) A process, including, but not limited to, an assembly, by which merchandise is made into a new and different article having a distinction "name, character or use", or

(2) A process, including, but not limited to, an assembly, by which merchandise is made fit for a particular use even though it does not meet the requirements of paragraph (q)(1) of this section.

Amway also attempts to claim drawback based on the packaging material provision, 19 U.S.C. 1313(q) which states:

(1) Packaging material, when used on or for articles or merchandise exported or destroyed under subsection (a), (b), (c), or (j) of this section shall be eligible under such subsection for refund, as drawback of 99 percent of any duty, tax and fee imposed under Federal law on the importation of such material.

(2) Packaging material produced in the United States, which is used by the manufacturer or any other person on or for articles which are exported or destroyed under subsection (a) or (b), shall be eligible under such subsection for refund, as drawback, of 99 percent of any duty, tax and fee imposed on the importation of such material used to manufacture or produce the packaging material.

In Amway's submission dated July 10, 2000, Amway claimed that this provision allowed drawback to be claimed on merchandise as well as its packaging; the packaging should be claimed under the same provision of the law as the merchandise. Amway argued that the section does not state that drawback is only allowed on packaging material if drawback is claimed on the article being packaged.

In regards to section 1313(q), the statute clearly requires that in order to qualify for subsection (q), the merchandise must have had qualified under subsections (a), (b), (c), or (j). Sections (a) and (b) require that the packaging materials are "used in the manufacture or production of the articles." Section (c) requires that the merchandise be "nonconforming". Section (j) requires that the merchandise be "unused". Since Amway is not claiming that the material is nonconforming or unused; then, Amway would have to demonstrate that the packaging material is "used in the manufacture or production of the articles" as previously defined in 19 C.F.R. § 191.2(q) in order to apply for drawback under 19 U.S.C. 1313(q). Section 1313(q)(2) affords additional eligibility for packaging material which is produced in the United States that is used under 1313 (a) or (b). It provides for a refund of duties as a result of the importation of material used to produce the packaging material. Amway would have to prove that the products undergo a manufacturing process so that

Amway is qualified to request drawback privileges under 1313(b) and (q). We will proceed to discuss each item and the process to which it is subjected in order to determine if it constitutes a manufacturing process under Customs regulations (191.2(q)).

A. Fragrance Sprayer

Amway's fragrances are sold in sprayers consisting of domestically produced glass bottles, and imported pumps (classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 8424.89.7090), actuators (HTSUS subheading 8424.90.9080), collars (HTSUS subheading 8309.90.0000), and overcaps (HTSUS subheading 8424.90.0000. The sprayer components are loaded in the machinery and fragrance is dispensed into the bottle; the spray pump is inserted into the bottle; a ferrule ring on the pump skirt is crimped onto the bottle neck; an actuator is mechanically attached to the pump stem; a collar is seated over the actuator and pump closure so that it rests on the shoulders of the bottle; an overcap is seated over the actuator, pump and collar; and a label is affixed to the bottle. After this assembly process "[s]cent sprayers and similar toilet sprayers" are created, classified as HTSUS under subheading 9616.10.00/2.2%.

The packaging of fragrance products requires assembly of a scent sprayer, in this instance the set of facts presented and the circumstances involved constitute more than a mere packing or filling of glass containers. The assembly process of the glass bottles and imported pump and parts result in scent sprayers having a different character and use than the initial imported articles.

Customs, in C.S.D. 79–40, stated that "[m]anufacture or production is defined for drawback as the process or processes which, through labor and manipulation, change or transform an article or articles into a new and different article having a distinctive name, character or use." *See Anheuser-Bush Brewing Ass'n v. United States*, (207 U.S. 556 (1907) (stating that "[t]he requirements that a manufactured article have a different character or use are satisfied when an imported article which is not suited for commercial use is further manufactured into one that is suited for commercial use.")

In the instant case, bottles and sprayer parts (pump, actuator and collar) are assembled into a scent sprayer to package fragrance products. In the case of *U.S. v Adolphe Scwob, Inc.* (62 Trea. Dec. 248 T.D. 45908 (1933)) the court held that assembly of watchcases and watch movements into watches were eligible for drawback under 19 U.S.C. 1313(a). In this case, the testimony of the witness, Mr. Mayer, enabled the court to conclude that, the using of individual parts so as to unite them in one unit to make a complete watch was much more than a mere assemble. Mr. Mayer did more than putting the parts together, he drilled and fitted the distinctive parts such as the movements, the stems, and the crowns and a new and distinctive item emerged. These distinctive parts *transformed* several separate units into one item called a "watch". In the case at hand, after assembly, the assembled product is sold together as a scent sprayer, which functions to perform the dispersing of the fragrance; thus creating a distinct product with a distinct function. Additionally, Customs held in a very similar case, HQ 226898, dated February 10, 1997, that the assembly operation to create a scent sprayer using glass bottles, caps, and collars is a manufacture or production for drawback purposes.

Based on the foregoing, it is our belief that there has been a change or transformation into a new and different article with a distinctive character and use. Therefore, there has been a manufacture or production process sufficient to qualify this operation for manufacturing drawback. Consequently, upon exportation of the completely assembled fragrance product, the pumps, actuators, collars, and overcaps are eligible for drawback pursuant to 19 U.S.C. §1313(b).

B. Nail Enamel Container/Applicator

The nail enamel container/applicator is assembled with a glass bottle, brush with stem, inner closure (cap), outer closure (cap) and stainless steel mixing beads.

The assembly process includes inserting the steel mixing beads into the bottle; dispensing the nail enamel into the bottle; mechanically inserting the brush/stem assembly into the bottle; seating the inner cap on top of the brush/stem and thredding it onto the bottle neck; affixing a label to the bottom of the bottle; mechanically placing the outer closure on top of the inner closure; and passing the bottle under the compression belt.

The earlier analysis of the decision in *Anheuser-Bush,* which provided the general rule that a manufacture or production changes or transforms an article into a new and different article having a distinctive character or use, can also be applied here. In *Tidewater Oil*

Co v. U.S. 171 U.S. 210, 216 (1897)) the court recognizes that a certain manufacture can be the result of a "partial manufacture" as well as the result of successive manufacturing processes to come to a distinct product. In the case at hand, before assembly, each unit (i.e. integral parts of nail enamel containers/applicators such as a glass bottle, brush with stem, inner closure (cap), outer closure (cap), and stainless steel mixing beads) cannot function separately and is not sold separately. After assembly, the assembled product is sold together as a nail enamel container/applicator, which functions to be used in dispersing of the nail enamel. In the case of *Tidewater*, the court deemed that if an assembly process is so elemental that the value of the "manufacture" is inconsequential, then the "mere put together" would not constitute a manufacture under the drawback provisions.

As with the fragrance sprayer, on the facts here, the parts do not stand alone to independently function nor do they have commercial identities and uses of their own. Their identities and uses do not remain the same after the assembly procedure. The finished product does not perform a function that is essentially the same as that performed by the parts individually. The finished product has a specific character and use different from its component parts unassembled, it is more that a container after assembly.

Based on the foregoing, it is our belief that there has been a change or transformation into a new and different article with a distinctive character and use. Therefore, there has been a manufacture or production process sufficient to qualify this operation for manufacturing drawback. Consequently, upon exportation of the completely assembled nail enamel container/applicator, glass bottle, brush with stem, inner closure (cap), outer closure (cap), and stainless steel mixing beads are eligible for drawback pursuant to *19 U.S.C. §1313*(b), upon compliance with the applicable requirements.

C. Tube Container/Dispenser

The imported plastic tubes that Amway uses are open at the bottom end with a closure affixed to the top. The process of filling these tubes entails positioning the tubes in a machine, passing hot air (to clean). The lotion is then fed into the open end and finally, mechanically crimped and tapered trimming off any rough or sharp edges.

Amway contends that this process of manufacture creates a new and different article of commerce. Customs does not agree that heating and crimping the tube (in order to secure the contents) is significantly different from the situation considered by the court in *United States v. Border Brokerage Co.* 48 C.C.P.A. 10 (Cust. & Pat. App. 1960) where the court found that the sewing shut of imported bags filled with domestically produced fertilizer does not rise to a significant manufacturing procedure for the purpose of manufacturing drawback. The court stated:

> [T]he bags are not so 'changed in condition' as to establish a free entry status under the provisions of Section 308(1), alleging that if the instant operation per se effects a 'change in condition' then the same reasoning would allow virtually ever container imported for filling and exportation free entry under Section 308(1); and that such a result would be contrary to the legislative intent as reflect by the legislative history regarding containers.

Id. at 12.

> [I]t is argued that Congress, in Section 308(7), specifically considered the conditions under which containers should be given free entry and, therefore, could not have intended Section 308(1) to allow free entry for containers imported for filling.

Id. at 13.

We have determined that the imported plastic tube containers are being used for their intended purpose, to hold and transport the importer's product. In *U.S. v. Border Brokerage Co*. 48 C.C.P.A 10 (Cust. & Pat. App. 1960), it was held that the process of filling containers (such as bags with fertilizer and sewing them up) did not result in a change of condition that would qualify the goods to enter under temporary duty-free entry under section 305(1) of the Tariff Act of 1930 as articles to be "repaired altered or otherwise changed in condition". In *U.S. v Border Brokerage*, the purpose of the entry of the bags was to fill the bag with fertilizer. C.S.D 79–40 defines "manufacture" or "production" for drawback as the process or processes which through labor and manipulation, change or transform an article or articles into a new and different article having a distinctive name, character and use (see, *Anheuser-Busch Brewing Ass'n v. U.S., (207 U.S. 556 (1907)*). It has been held that if an operation renders a commodity or article fit for use for which it was otherwise not fit, the operation falls within "the letter and spirit" of "manufacture" *(United States v. International Paint Co. Inc.,* 35 C.C.P.A. 87, C.A.D. 376 (1948). In C.S.D.

79–40 the case explains that to be considered a "manufacture", a process must be viewed in terms of its results. "*Unless there is a new and different article having a distinctive name, character and use, there is no product of manufacture or production. Unless the process itself requires significant effort, measured in terms of capital, labor and complexity, the change is too insignificant to be considered a manufacture or production. All factors must be evaluated with reference to the specific fact.* Mere packaging is not considered a manufacture or production for drawback purposes. Manufacture or production for drawback purposes is defined under 19 C.F.R. 191.2(q) as:

> "Manufacture or production means: (1) a process including, but not limited to, an assembly by which merchandise is made into a new and different article having a distinctive "name character or use"; or (2) a process, including, but not limited to, an assembly, by which merchandise is made fit for a particular use even though it does not meet the requirements of paragraph (q)(1) of this section."

According to their assembly descriptions, Amway imports the plastic bottles, some of which are already constructed with pump assemblies and others with orifice reducers. The assembly process commences with an article which has already been constructed to hold Amway's product. During the filling process of these jars and plastic bottles, the lotions/creams are automatically dispensed and closures are inserted to ensure the flow of the product.

In C.S.D. 81–65, Customs held that imported polypropylene bags were formed already at the time of importation and a mere sewing shut did not constitute a manufacture or production under drawback law. It was concluded that the bag did not become "a new and different article having a distinctive name" which came as a result of a manufacturing process.

The instant case can be differentiated from C.S.D. 80–183 where Customs held that "[t]he importation of empty unsterilized glass vials and the transformation of the glass vials into sterile injectables ready for use * * * constitutes a manufacturing or production process under the drawback law." In C.S.D. 80–183, there was an intensive sterilization process that resulted in (a new product) sterile injectables. In the situation at hand, the imported containers are merely cleaned, filled and closed with cosmetic products.

In C.S.D. 79–40 the case explains that to be considered a "manufacture", a process must be viewed in terms of its results. "*Unless there is a new and different article having a distinctive name, character and use, there is no product of manufacture or production. Unless the process itself requires significant effort, measured in terms of capital, labor and complexity, the change is too insignificant to be considered a manufacture or production. All factors must be evaluated with reference to specific facts (C.S.D 79–40).*

We have stated that mere packaging is not considered a manufacture or production for drawback purposes. We have determined that the process of using imported plastic tubes which are opened at the bottom and used to feed the claimant's product into it and proceed to seal it for the consumer's use does not constitute a manufacturing process under the definition of 19 C.F.R. 191.2. In C.S.D. 81–65 (dated September 4, 1980), it was decided that the filling of polypropylene bags was not a manufacturing process whereas a new and different article, having a distinctive name character and use from the that which was imported Likewise, in C.S.D. 80–183, Customs held that the mere packing or filing of glass containers (vials) did not constitute a manufacture or production to satisfy the requirements of drawback law. However, it distinguished the fact that if, the vials were imported unsterilized and, after importation, the vials underwent a thorough process of sterilization (as described in the facts of the case), then, the making of hypothermic syringes constituted a manufacturing process under the drawback law. In the case at hand, the cleaning process described (by blowing hot air into the tube) does not amount to a "sterilization" that would, under the reasoning of C.S.D. 80–183, constitute a "manufacturing" process.

Based upon our analysis, it is our intention to revoke our decision allowing the affected importer to claim drawback on a filling process that does not constitute a "manufacturing" process under the applicable drawback provisions.

D. Plastic Bottles, Jars & Godets:

The imported plastic bottles and jars that Amway uses are open on one end and closed on the other. Base product is dispensed into them; a disc is applied to the top of the jar; an orifice reducer is inserted; the bottle is capped; and finally labeled.

The assembly process commences with an article which has already been constructed to hold Amway's product. During the filling process of these jars and plastic bottles, the lo-

tions/creams are automatically dispensed and closures are inserted to ensure the flow of the product. Customs has determined that the process of using imported plastic tubes which are opened at the bottom and used to feed the claimant's product into it and subsequently sealed does not create a new article of commerce. In *Joseph Schlitz Brewing Co. v. United States,* 181 U.S. 584, 21 S. Ct. 740 (1901), the Supreme Court stated with respect to brewed beer and imported bottles, that the bottles and corks were not imported materials but finished products, and were not ingredients used in the manufacture of the beer, "but simply the packages" the manufacturer used.

The current situation, as described, is markedly different than the facts described in C.S.D. 80–183. In the C.S.D. 80–183 empty glass veils were imported in an unsterilized state and were subjected to a series of processes (including passing the vials on a stainless steel belt through a heating chamber of at least 538° F for a minimum of 30 minutes, filtering them through a stream of sterilized cool air, and finally filled with sterile antibiotics in a sterile room) that resulted in injectables having a different character and use than the initial imported articles.

Likewise, in C.S.D. 80–58, Customs ruled for drawback purposes that a "manufacture or production" occurred where imported eyeglass frames were fitted with domestic lenses. An eyeglass frame has no commercial use apart from becoming part of eyeglasses which have a commercial use. In the Amway case, the commercial use of jars remains the commercial use of jars. They are not new and different articles of commerce. In *Joseph Schlitz Brewing Co. v. U.S.* (181 U.S. 584, 21 S.Ct.740, 742) the Supreme Court stated that, unlike the plaintiff's arguments, that imported bottles and corks for the bottling of beer was not to be regarded as an "imported material" to be added to a manufacturing process. The court stated that the bottles and corks were "simply the packages which the manufacturer, for the purposes of export, sees fit, and perhaps is required, to make use for the proper preservation of its product".

This case can also be differentiated from C.S.D. 79–39, which dealt with the importation of watch movements in watch casings, the removal of the movements from the casings for testing and adjustment, the return of the movements to the casings which were then tested for water resistance, the attachment of metal bracelets and the boxing of the finished products. On the basis of the general rule, Customs ruled that a manufacture took place because a new and different article was produced. Customs stated that the "end product is a watch, whereas the imported articles were watch parts." The watch "has a specific name, character and use different from its component parts unassembled or only partly assembled." In Amway's case the bottles and jars as originally imported remain bottles and jars, they are merely filled with a product. In HQ 227976, dated July 6, 1998, Customs held that even pre-printed and decorated aluminum foil imported as rolls did undergo a change in character, name and use when the importer processed the foil rolls into cutting, folding, filling and sealing, thus creating 7,500 new bags which served to contain dry soup. Amway's plastic bottles, jars, as well as the tubes have already been substantially manufactured in a foreign country and are only filled and sealed in the United States. Amway's products are basically formed and ready to be filled *before* importation to the United States.

In this situation, the packaging (whether it is a jar, bottle, tube, or dispenser) is imported as a functionable package and is merely filled. This filling process does not rise to the level of 'manufacture' that is necessary for the purposes of manufacture drawback. See *U.S. v. Border Brokerage Co.*, 48 C.C.P.A. 10 (Cust. & Pat. App. 1960).

As for the godets, Amway uses small aluminum trays known as godets to hold its powder products. Base product is dispensed into the godet; the powder is pressed and imprinted; and finally, the sides are cleaned of excess product. Customs has determined that while the injection of the compressed powder is a process in itself, the godet's function in this assembly process is merely to hold the pressed powder.

To allow drawback under 19 U.S.C. 1313(a), the godets must be used to manufacture or produce new articles for exportation. New and different articles of commerce must emerge from the process. In this situation, godets are imported and godets with powder are exported. These are not new and different articles of commerce. The godets do not fall under the purview of T.D. 81–300 because there is no manufacturing process whereby designated components would have been manufactured in accordance with the same specifications and from the same materials and identified according with any substituted components. Customs has determined that the godet is being imported as a finished product. When the godet was initially imported, its purpose was to hold Amway's pressed powder. This item

was not imported so that a process of manufacture would change its name, character and use. The item was imported as an empty godet and exported as a godet filled with Amway's product. In accordance with our ruling in HQ 207865, dated July 25, 1977, where the bulk importers of refined sugar satisfied the manufacture requirement by inserting small quantities of sugar in individually sized packages. In 207865 it was the sugar that was claiming drawback and that emerged in commerce as a consumer product; it was not the package. In Amway's case it is the packaging and not the powder that is claiming drawback. These godets were imported already manufactured as individual holders of powder and are exported as the same product.

Based upon our analysis, it is our intention to revoke our decision allowing the affected importer to claim drawback on a filling process that does not constitute a "manufacturing" process under the applicable drawback provisions. The fact that when the empty imported tubes are filled with lotion and sealed closed, does not mean that "a change of condition" has occurred or that a manufacturing process is evidenced. According to *U.S. v Border Brokerage Co.* the "change in condition" was merely incidental to the purpose of the entry, to hold and transport the contents of the marketed product. It is consistent with the existing Customs policy for the claimant to be precluded from requesting drawback privileges under 19 U.S.C. 1313(b) or (a) because the claimant has failed to establish that a manufacturing process created a new product with a different name, character or use from the product initially imported. A process whereby imported tubes are cleaned, filled and marked does not constitute a manufacturing production which would enable the importer to claim drawback privileges. Each tube is imported as a tube, filled and closed on one of its sides in order to hold the contents together. The tube is not transformed into a new and different article with a different name character or use than that originally imported. Likewise the plastic bottles, jars and godets, as imported, do not undergo a manufacturing process whereby a new and distinctive product is created. The imported tubes are being used for their intended purpose or primary purpose which is, to hold and transport the product that is being marketed by the importer. An article is used when it is employed for the purpose for which it was intended.

Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions that are contrary to the position set forth in this notice.

In summary:

Scent Sprayer:

The subject pumps, actuators, collars, and overcaps are eligible for drawback within 19 U.S.C. §1313(b). The described assembly operation to create a scent sprayer is sufficient manufacture or production for drawback purposes. Upon exportation of the assembled fragrance product, drawback can be obtained under 19 U.S.C. §1313(b), upon compliance with the applicable requirements.

Nail Enamel Container/Applicator:

The subject glass bottle, brush with stem, inner closure (cap), outer closure (cap), and stainless steel mixing beads are eligible for drawback within 19 U.S.C. §1313(b). The described assembly operation to create a nail enamel container/applicator is a manufacture or production for drawback purposes. Upon exportation of the assembled container/applicator, drawback could be obtained under 19 U.S.C. §1313(b), upon compliance with the applicable requirements.

Tube Container/Dispenser:

The heating and crimping closed of tubes does not create a new and different article of commerce as required to allow drawback under 19 U.S.C. 1313(a).

Plastic Bottles and Jars & Godets

The filling and sealing of bottles, jars and godets does not create a new and different article of commerce as required to allow drawback under 19 U.S.C. 1313(a).

WILLIAM G. ROSOFF,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF A CUTTLEBONE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to tariff classification of a cuttlebone.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a cuttlebone or a cuttlefish bone under the Harmonized Tariff Schedule of the United States (HTSUS). Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before April 19, 2002.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: John G. Black, General Classification Branch, (202) 927–1317.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs 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 Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs 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, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a cuttlebone. They are composed primarily of calcium carbonate and are used to supply calcium and mineral nutrition for caged birds. Although in this notice Customs is specifically referring to New York Ruling Letter (NY) B80733, dated January 7, 1997, this notice covers any rulings on this merchandise that may exist but have not been specifically identified. Customs 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., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs 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 notice of this proposed action.

In NY B80733, dated January 7, 1997, set forth as Attachment A to this document, Customs classified a cuttlebone under subheading 2309.90.95, HTSUS, which provides for: Preparations of a kind used in animal feeding: Other: Other: Other: Other: Other."

Since the issuance of this ruling, Customs has reexamined the competing tariff provisions and has determined that the original classification is in error. The product is provided for by name in heading 0508, HTSUS, providing it meets additional terms of the heading. Because the product meets those terms, it is correctly classified in heading 0508, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY B80733 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 965481, set forth as Attachment B of this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to

substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: March 5, 2002.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, January 7, 1997.

CLA–2–23:RR:NC:2:231 B80733
Category: Classification
Tariff No.: 2309.90.9500

MR. KIM YOUNG
BDP INTERNATIONAL, INC.
2721 Walker NW
Grand Rapids, MI 49504

Re: The tariff classification of a cuttlebone from Taiwan.

DEAR MR. YOUNG:

In your letter, dated December 12, 1996, you have requested a tariff classification ruling on behalf of your client, Meijer Inc., Grand Rapids, MI.

The product is a 5–6 inch cuttlebone with a metal holder for installation in a bird cage. The item supplies calcium and mineral nutrition for cage birds. The sample is herewith enclosed.

The applicable subheading for the cuttlebone will be 2309.90.9500, Harmonized Tariff Schedule of the United States (HTS), which provides for preparations of a kind used in animal feeding, other, other, other, other, other. The rate of duty will be 2.2 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Ralph Conte at (212) 466–5759.

GWENN KLEIN KIRSCHNER,
Chief, Special Products Branch,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 965481JGB
Category: Classification
Tariff No. 0508.00

MR. KIM YOUNG
BDP INTERNATIONAL, INC.
2721 Walker, NW
Grand Rapids, MI 49504

Re: NY B80733 revoked; cuttlebone.

DEAR MR. YOUNG:

Customs has reviewed the decision in New York Ruling Letter (NY) B80733, dated January 7, 1997, issued to you on behalf Meijer Inc., concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a cuttlebone and has determined that the classification is in error. Therefore, the classification of the merchandise provided in NY B80733 no longer reflects the view of Customs.

Facts:

The merchandise is described in NY B80733 was a 5 inch by 6 inch cuttlebone with a metal holder for installation in a bird cage. The item supplies calcium and mineral nutrition for birds kept in cages. The article is derived from the cuttlefish, a mollusk. During manufacture they are commonly cleaned with water, trimmed to various sizes (4–7 inches in length and 1–3 inches in width), soaked in hydrogen peroxide for whitening and to kill bacteria, and dried in ovens.

Issue:

Whether the cuttlebone is classified in subheading 2309.90.95, HTSUS, as preparations of a kind used in animal feeding; in heading 0508 which provides for cuttlebone, unworked or simply prepared but not cut to shape, or in heading 9601, HTSUS, which provides for ivory, bone, tortoise-shell, horn antlers, coral, mother-or-pearl, and other animal carving material, and articles of these materials.

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (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 may then be applied.

In interpreting the HTSUS, the Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, may be used. The ENs, although not dispositive or legally binding, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings. Customs believes the ENs should always be consulted. See T.D. 89–90, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

The HTSUS provisions under consideration are as follows:

0508:	Coral and similar materials, unworked or simply prepared but not otherwise worked; shells of molluscs, crustaceans or echinoderms and cuttlebone, unworked or simply prepared but not cut to shape, powder and waste thereof
2309.90.95:	Preparations of a kind used in animal feeding: Other: Other: Other: Other.
9601:	Worked ivory, bone, tortoise-shell, horn, antlers, coral, mother-of-pearls and other animal carving material, and articles of these materials (including articles obtained by molding)

This article is a composite good consisting of a cuttlebone and a metal clip, and, as such, cannot be classified by GRI 1, in that no single heading describes the article. The cuttle-

bone portion imported alone would be classified under one of the headings indicated *supra*. The metal clip component alone would be classified under heading 7326, HTSUS, the provision for other articles of iron or steel. Under the provisions of GRI 2, "the classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." GRI 3 provides, in pertinent part, "When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows: * * * when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods * * * those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods." GRI 3(b) provides that "* * * composite goods consisting of different materials or made up of different components, shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable."

The ENs to GRI 3(b) at paragraph (VIII) lists, as factors to help determine the essential character of such goods, the nature of the materials or components, their bulk, quantity, weight or value, and the role of a constituent material in relation to the use of the goods.

The cuttlebone component of the article is the most prominently featured aspect in the marketing and packaging. The metal clip merely holds the article up against the birdcage enabling the bird easily to reach the cuttlebone with its beak. The clip represents a minor portion of the good and does not represent the reason for purchasing the good in that the function of the good appears to be to provide minerals to the bird. The cuttlebone component is the predominant feature of the article. It constitutes the largest and most visible portion of the article. Therefore, in considering the relationship or role of the cuttlebone component to the use of the entire article, we conclude that the cuttlebone component represents the essential character.

Heading 0508, HTSUS, provides by name for cuttlebone, provided it is "unworked or simply prepared but not cut to shape." This office has determined through investigation and sampling that the cuttlebone has typically been subjected to some cutting operation along the exterior edges. This process raises the question whether they have been "worked" or "cut to shape." Samples provided by another importer demonstrate that the raw cuttlebone which has been whitened and disinfected in a hydrogen peroxide bath, but not cut or otherwise processed consists of the same, or very similar shape as the "finished" article. In the unfinished article, the cuttlebone remains embedded in a mantle, a thin, brittle cartilaginous material that covers one face of the cuttlebone, extending out beyond the edge of the natural cuttlebone in a band of varying widths, measuring as little as a few millimeters in width up to approximately two centimeters. Customs learned from an ichthyologist at the Smithsonian Institution that this mantle consists primarily of a proteinacious material. The cuttlebone, in contrast, is primarily calcium carbonate. Thus, while the two components in the untrimmed product are of different materials, it is the calcium carbonate portion of the cuttlebone which presents the desirable commercial entity. In preparing the cuttlebone for commercial sale, the cartilaginous mantle, which readily snaps off by application of finger pressure, appears to be trimmed off the cuttlebone either with a knife blade or by some abrasive process. The trimming process, itself, yields a natural cuttlebone of the same size and shape as contained embedded in the untrimmed mantle. The cuttlebone, *per se*, has not been cut to a new shape or size. Therefore, the cuttlebone is no more than "unworked or simply prepared cuttlebone, not cut to shape." It has not been processed beyond simple cleaning and disinfecting in the hydrogen peroxide bath, which incidentally whitens the product, nor does the removal of the cartilaginous mantle constitute more than a simple preparation necessary to bring the crude cuttlebone into a saleable condition.

Heading 2309 provides for preparations of a kind used in animal feeding. The ENs to heading 2309 state that the heading covers "sweetened forage" and "prepared animal feeding stuffs consisting of a mixture of several nutrients designed: (1) to provide the animal with a rational and balanced daily diet (complete feed); (2) to achieve a suitable daily diet by supplementing the basic farm-produced feed with organic or inorganic substances (supplementary feed); or (3) for use in making complete or supplementary feeds." The cuttlefish bone or cuttlebone is neither "sweetened forage" nor "prepared animal feeding stuffs consisting of a mixture of several nutrients" as described in the ENs and, therefore, cannot qualify for classification in heading 2309.

Heading 9601 provides for ivory, bone, tortoise-shell, horn, antlers, coral, mother-of-pearl, and other animal carving material, and articles of these materials (including articles obtained by molding.) The ENs to the heading state:

> This heading relates to worked animal material (other than those referred to in heading 96.02). These materials are mainly worked by carving or cutting. Most of them may also be moulded.
>
> For the purposes of this heading, the expression "worked" refers to materials which have undergone processes extending beyond the simple preparations permitted in the heading for the raw material in question (see the Explanatory Notes to heading 05.05 to 05.08). The heading therefore covers pieces of ivory, bone tortoise-shell, horn, antlers, coral, mother-of-pearl, etc, in the form of sheets, plates, rods, etc., cut to shape (including square or rectangular) or polished or otherwise worked by grinding, drilling, milling, turning, etc. * * *
>
> Provided they are worked or in the form of articles, the heading includes the following:
>
> * * * * * * *
>
> (X) Shells of crustaceans and molluscs."

The cuttlebones examined by Customs for similar uses appear not to be worked, because the trimming away of the proteinaceous mantle does not alter the natural shape of the cuttlebone and does not constitute more than a simple preparation of the cuttlebone for its use as a dietary supplement and honing block for birds. Therefore, classification in heading 9601, HTSUS, is precluded.

Holding:

The cuttlebone is classifiable under heading 0508, HTSUS, as cuttlebone, unworked or simply prepared but not cut to shape.

NY B80733 dated January 7, 1997, is hereby REVOKED.

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF ELECTRIC SIGNALING EQUIPMENT FOR MOTOR VEHICLES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of electric signaling equipment for motor vehicles.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling relating to the tariff classification of the Parking Assistant, and revoking any treatment Customs has previously accorded to substantially identical transactions. Notice of the proposed revocation was published on January 30, 2002, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 20, 2002.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927–0760.

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), 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 based on the premise 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 Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, 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 declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to Customs obligations, a notice was published on January 30, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 5, proposing to revoke *NY* F87653, dated June 21, 2000, which classified the Parking Assistant as other electric sound signaling apparatus, in subheading 8531.80.90, Harmonized Tariff Schedule of the United States (HTSUS). No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of rea-

sonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking *NY* F87653 to reflect the proper classification of the Parking Assistant in subheading 8512.30.00, HTSUS, as electric sound signaling equipment of a kind used for motor vehicles, pursuant to the analysis in *HQ* 965368, which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment it previously accorded to substantially identical transactions.

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

Dated: March 6, 2002.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, March 6, 2002.

CLA–2 RR:CR:GC 965368 JAS
Category: Classification
Tariff No. 8512.30.00

MR. ROBERT RESETAR
PORSCHE CARS NORTH AMERICA, INC.
980 Hammond Drive
Atlanta, GA 30328

Re: *NY* F87653 Revoked; Parking Assistant.

DEAR MR. RESETAR:

In *NY* F87653, which the Director of Customs National Commodity Specialist Division, New York, issued to you on June 21, 2000, the Parking Assistant, a device to assist drivers when backing vehicles into parking spaces, was found to be classifiable in subheading 8531.80.90, Harmonized Tariff Schedule of the United States (HTSUS), as other electric sound signaling apparatus.

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 of *NY* F87653 was published on January 30, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 5. No comments were received in response to that notice.

Facts:

The Parking Assistant was described in *NY* F87653 as consisting of four sensors located on the rear bumper, and a control unit mounted under the driver's seat, the apparatus powered by the vehicle's electrical system. The sensors emit and receive ultrasonic waves at regular intervals. These waves are transmitted back to the control unit which triangulates the distance between the vehicle and an object behind it. The control unit emits an audible beep, presumably for the benefit of the driver, with the signal increasing to a con-

tinuous sound as the vehicle gets closer to an object. The actual distance from the object, however, is not displayed numerically.

The HTSUS provisions under consideration are as follows:

8512	Electrical lighting or signaling equipment (excluding articles of heading 8539), windshield wipers, defrosters and demisters, of a kind used for cycles or motor vehicles; parts thereof:
8512.30.00	Sound signaling equipment
* * * * * * *	
8531	Electric sound or visual signaling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530; parts thereof:
8531.80	Other apparatus:
8531.80.90	Other

Issue:

Whether the Parking Assistant is a good of heading 8512.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. Customs believes the ENs should always be consulted. *See* T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

By its terms, heading 8531 excludes electric sound signaling apparatus of heading 8512. The qualifying language in heading 8512 "of a kind used for cycles or motor vehicles" denotes a provision governed by principal use, i.e., the use at or immediately prior to the date of importation of the goods of that class or kind to which an article belongs. The ENs on p. 1461 list horns, sirens and other electrical sound signaling appliances as being within the scope of heading 8512. It is reasonable and logical to conclude that the audible "beep" emitted by the control unit in the Parking Assistant qualifies as a type of sound signaling substantially similar to that produced by horns and sirens. Moreover, while a sample of the Parking Assistant is not currently available, our examination of substantially similar devices, their packaging and accompanying literature, leads us to conclude that the Parking Assistant belongs to a class or kind of sound signaling equipment principally used with motor vehicles. *See HQ* 964660 and *HQ* 964661, both dated January 4, 2001, motor vehicle alarm systems believed to be substantially similar to the Parking Assistant.

Holding:

Under the authority of GRI 1 the Parking Assistant is provided for in heading 8512. It is classifiable in subheading 8512.30.00, HTSUS.

Effect on Other Rulings:

NY F87653, dated June 21, 2000, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

U.S. Customs Service

Proposed Rulemaking

19 CFR Part 10

RIN 1515–AC88

PROTOTYPES USED SOLELY FOR PRODUCT DEVELOPMENT, TESTING, EVALUATION, OR QUALITY CONTROL PURPOSES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations in order to establish rules and procedures under the Product Development and Testing Act of 2000 (PDTA). The purpose of the PDTA is to promote product development and testing in the United States by allowing the duty-free entry of articles, commonly referred to as prototypes, that are to be used exclusively in product development, testing, evaluation or quality control. The proposed regulations set forth the procedures for both the identification of those prototypes properly entitled to duty-free entry, as well as the permissible sale of such prototypes, following use in the United States, as scrap, waste, or for recycling.

DATES: Comments must be received on or before April 8, 2002.

ADDRESSES: Written comments may be addressed to and inspected at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Patricia Fitzpatrick, Office of Field Operations, (202–927–1106).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Product Development and Testing Act of 2000 ("PDTA") was enacted on November 9, 2000, as part of the Tariff Suspension and Trade Act of 2000 ("Act") (Pub. L. 106–476). The provisions of the PDTA are found in sections 1431–1435 of the Act.

The purpose of the PDTA, as set forth in section 1432(b) of the Act, is to promote product development and testing in the United States by al-

lowing the importation on a duty-free basis of articles commonly referred to as "prototypes" that are to be used exclusively for such product development, testing, evaluation or quality control.

By way of background, Congress has found, as stated in section 1432(a) of the Act, that a substantial amount of product development and testing occurs in the United States incident to the introduction and manufacture of new products both for domestic consumption and for export overseas. Product testing also occurs with respect to products already introduced into commerce in order to ensure that these products continue to meet specifications and perform as designed.

Until the enactment of the PDTA, prototype articles have generally been subject to Customs duty when imported, unless the articles were eligible for duty-free treatment under a special trade program, such as the North American Free Trade Agreement (NAFTA) (19 U.S.C. 3301 *et seq*.), or unless they were entered under a temporary importation bond (TIB) (subheading 9813.00.30, Harmonized Tariff Schedule of the United States (HTSUS)).

Furthermore, the value of these prototypes had to be included in the dutiable value of any imported production merchandise that resulted from the same design and development efforts to which the prototype articles themselves were dedicated. In effect, duty on a prototype good was assessed twice, once when the prototype was imported and a second time as part of the dutiable value of the related imported production merchandise. In this latter respect, the prototype would be considered to be an "assist" (see § 152.102(a)(1), Customs Regulations (19 CFR part 152)) and, as such, it would have to be included in the dutiable cost of any associated production merchandise that was later imported.

Congress found that assessing duty twice on prototypes unnecessarily inflates costs for U.S. businesses, thereby reducing their competitiveness and thus discourages development and testing in the United States, and favors its occurrence overseas, given that duty would only be charged once, upon the subsequent importation of the related production merchandise.

Consequently, to provide for the duty-free entry of prototypes, section 1433 of the Act amended the Harmonized Tariff Schedule of the United States (HTSUS) by inserting a new subheading 9817.85.01 in Subchapter XVII of Chapter 98, HTSUS. The free rate of duty, as noted in HTSUS subheading 9817.85.01, only pertains to products from a country that would be entitled to the "Column 1" rate of duty; otherwise, the relevant rate would be that applicable in the absence of HTSUS subheading 9817.85.01.)

Additionally, section 1433 of the Act amended the HTSUS by including a new U.S. Note 6 in Subchapter XVII of Chapter 98, HTSUS, that defines the term "prototypes" as used in HTSUS subheading 9817.85.01.

As defined in U.S. Note 6(a) to Subchapter XVII, the term "prototypes" means originals or models of articles that are either in the pre-

production, production or postproduction stage and that are to be used exclusively for product development, testing, evaluation or quality control purposes. However, articles may not be classified as prototypes under HTSUS subheading 9817.85.01 if imported for automobile racing for purse, prize or commercial competition, as this activity is not considered to be product development, testing, evaluation, or quality control. For originals or models of articles that are in the production or postproduction stage to qualify as prototypes, they must be associated with a change in design from current production; this would include any refinement, advancement, improvement, development, or quality control in the product itself or in the means for producing the product.

Pursuant to U.S. Note 6(b) to Subchapter XVII of Chapter 98, HTSUS, prototypes may only be imported in limited noncommercial quantities based on industry practice. Moreover, any articles that are subject to quantitative restrictions, antidumping orders or countervailing duty orders may not be classified as prototypes. However, articles that are subject to licensing requirements, or that must comply with laws, rules or regulations administered by agencies other than Customs before being imported, may be entered as prototypes if they comply with all applicable provisions of law and otherwise meet the definition of prototypes in U.S. Note 6(a) to Subchapter XVII of Chapter 98, HTSUS.

In addition, except as provided by the Secretary of the Treasury, prototypes or parts of prototypes may not be sold after importation into the United States or be incorporated into other products that are sold.

By this document, Customs proposes to amend the Customs Regulations to add a new § 10.91, pursuant to sections 1433–1435 of the Act, that would: (1) establish requirements regarding the identification of prototypes at the time of their importation into the United States; and (2) establish requirements regarding the sale of prototypes, following their intended use in product development, testing and evaluation, as scrap, waste, or for recycling, if all applicable duties are tendered for sales of the prototypes, including prototypes and parts of prototypes that are incorporated into other products that are sold as scrap, waste, or recycled materials, at the rate of duty in effect for such scrap, waste, or recycled materials at the time of importation of the prototypes.

DECLARATION OF INTENT

Entry or withdrawal from warehouse for consumption of a prototype under HTSUS subheading 9817.85.01 may be accepted by the port director as an effective declaration that the articles will be used solely for the purposes stated in the subheading. If it is believed the circumstances so warrant, the port director may request the submission of proof of actual use, executed and dated by the importer. While there is no particular form proposed for this declaration, it may either be submitted in writing, or electronically as authorized by Customs, and must include a description of the use made of the articles set forth in sufficient detail so as to enable the port director to determine whether the articles have been entitled to entry as claimed.

SALE

The prototype or any part(s) of the prototype, after having been used for the purposes for which it was entered or withdrawn under HTSUS subheading 9817.85.01, may only be sold as scrap, waste, or for recycling. This includes a prototype or any part that is incorporated into another product, as scrap, waste, or recycled material. The importer must provide notice of such sale to the port director where the entry or withdrawal of the prototype was made. The notice of sale must be filed with a tender of appropriate duties within 10 business days of the sale.

While no particular form is required for the notice of sale, a consumption entry (Customs Form 7501), appropriately modified, or an electronic equivalent as authorized by Customs, may be used for this purpose. If the article sold is dutiable, the notice must also be accompanied by the payment of any duty due. In any case, a notice must be submitted in connection with the sale, whether or not duty is payable. If the notice is filed electronically, payment of any duty owed will be handled through the Automated Clearinghouse (see § 24.25, Customs Regulations (19 CFR 24.25)).

Such notice of sale must be executed by the importer, or other person having knowledge of the facts surrounding the sale, and it must include the following: the identity of the prototype, the consumption entry number under which it was imported, a copy of the declaration of actual use, and a description of the condition of the prototype following use for the intended permissible purposes, including any damage, degradation or deterioration to the article resulting from such use; the name and address of the party to whom the article was sold, and (if known) the use to which the party intends to put the article; the HTSUS subheading number for scrap, waste, or recycled material, as applicable, claimed in connection with the sale of the prototype, together with the corresponding rate of duty in effect at the time the prototype was originally imported for consumption; the value of the prototype article (if dutiable and the duty owed is based upon value); and the title of the party executing the declaration along with the date of execution.

For purposes of proposed § 10.91, with respect to any duty owed on prototypes or parts that are sold as scrap, or waste, or for recycling, where the duty owed is based upon value, the relevant value is the market value of the prototypes or parts, based upon their character and condition following use for the purposes prescribed in HTSUS subheading 9817.85.01. In this regard, the market value will generally be measured by the selling price. If a prototype or part of a prototype becomes a component of another product that is sold as scrap, waste, or recycled material, the relevant market valuewould be that portion of the selling price attributable to the component (that is, the prototype or part of prototype).

REQUIRED RECORDKEEPING

The importer must be prepared to submit to the Customs officer, if requested, such information, including any supporting documents, re-

ports and records, as was necessary for the preparation of the declaration of use and, if applicable, the notice of sale. As previously noted, the submission of the notice of sale, if a sale occurs, is mandatory. The supporting documentary evidence for the notice of sale must be retained for a period of 5 years, as provided in §163.4(a), Customs Regulations (19 CFR 163.4(a)), from the date of its filing in complete and proper form. Supporting records must be made available to the Customs officer upon request in accordance with § 163.6(a), Customs Regulations (19 CFR 163.6(a)). The notice, together with any related supporting evidence, may be subject to any verification that the port director reasonably deems necessary.

EFFECTIVE DATE

As noted in section 1435(1) and (2) of the Act, duty-free treatment under the PDTA applies to an entry of a prototype under HTSUS subheading 9817.85.01 made on or after the date of enactment of the Act (November 9, 2000) as well as to an entry of a prototype (as defined in U.S. Note 6(a) to Subchapter XVII of Chapter 98, HTSUS) made under subheading 9813.00.30, for which liquidation has not become final as of November 9, 2000.

In this latter regard, an entry under HTSUS subheading 9813.00.30 is made under a temporary importation bond (TIB), and an entry made under a TIB does not liquidate, given that a TIB entry does not involve liquidated duties (see § 10.31(h), Customs Regulations (19 CFR 10.31(h)). Rather, upon satisfaction of the terms and conditions of the TIB, charges under the bond are cancelled (see § 10.39, Customs Regulations (19 CFR 10.39)), and the related entry is "closed" (and not liquidated). Customs proposes in § 10.91 to give effect to the intent of Congress underlying section 1435(2) that certain prototypes already entered under a TIB as of November 9, 2000, be allowed to take advantage of duty-free entry under the PDTA.

To accomplish this, the importer must submit a written request, or an electronic equivalent as authorized by Customs, that a TIB entry under HTSUS subheading 9813.00.30, which had not been closed and for which the TIB period had not expired as of November 9, 2000, be converted instead into a duty-free consumption entry under HTSUS subheading 9817.85.01. Customs will so convert the TIB entry, provided that the port director is satisfied that the entry is for articles that are "prototypes" as defined in U.S. Note 6(a) to Subchapter XVII of Chapter 98, HTSUS, and provided further that the entry was in effect and had not been closed (as opposed to having been finally liquidated), and the TIB period for the entry had not expired, as of November 9, 2000. When the TIB entry is so converted, the bond will be cancelled and the entry closed. The port director will provide a courtesy acknowledgment to the importer in writing or electronically once the conversion is complete.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments that are timely submitted to Customs. Customs specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW. 3rd Floor, Washington, D.C.

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

The proposed regulations implement the terms and requirements of the PDTA which went into effect on November 9, 2000. The proposed amendments benefit the public by allowing the duty-free importation of prototypes that are to be used exclusively for product development and testing, thereby promoting such product development and innovation in the United States, as opposed to overseas. Accordingly, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Nor do the proposed amendments meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

PAPERWORK REDUCTION ACT

The collections of information encompassed within this proposed rule have previously been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Numbers 1515–0091 (Requirement of importer to maintain accurate, detailed records on use or other disposition of imported merchandise for "actual use" duty assessment requirements); and 1515–0109 (Certificate of importer to verify actual use of articles imported duty-free or at a reduced rate of duty under actual use provisions). These collections encompass a claim for duty-free entry for prototype articles imported for use exclusively for development, testing, product evaluation or quality control purposes. This proposed rule does not present any material change to the existing approved information collections.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

Upon adoption of the proposed amendments as a final rule, part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, will be revised to make reference to new § 10.91.

DRAFTING INFORMATION

The principal author of this document was Janet L. Johnson, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 10

Customs duties and inspection, Imports, Preference programs, Reporting and recordkeeping requirements, Shipments.

PROPOSED AMENDMENTS TO THE REGULATIONS

It is proposed to amend part 10, Customs Regulations (19 CFR part 10), as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 would continue to read as follows, and specific sectional authority for § 10.91 would be added in appropriate numerical order to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

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§ 10.91 also issued under Pub. L. 106–476 (114 Stat. 2101), sections 1434, 1435;

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2. It is proposed to amend part 10 by adding after § 10.90 a new center heading entitled "Prototypes" followed by a new § 10.91 to read as follows:

PROTOTYPES

§ 10.91 Prototypes used exclusively for product development and testing.

(a) *Duty-free entry; declaration of intent; suspension of liquidation*.

(1) *Entry or withdrawal for consumption*. Articles defined as "prototypes" and meeting the other requirements prescribed in paragraph (b) of this section may be entered or withdrawn from warehouse for consumption, duty-free, under subheading 9817.85.01, Harmonized Tariff Schedule of the United States (HTSUS), on Customs Form 7501 or an electronic equivalent. A separate entry or withdrawal must be made for a qualifying prototype article each time the article is imported/reimported to the United States.

(2) *Importer declaration*. (i) *Entry accepted as declaration*. Entry or withdrawal from warehouse for consumption under HTSUS subheading 9817.85.01 may be accepted by the port director as an effective declaration that the articles will be used solely for the purposes stated in the subheading.

(ii) *Proof of Actual Use*. If it is believed the circumstances so warrant, the port director may request the submission of proof of actual use, exe-

cuted and dated by the importer. While there is no particular form for this declaration, it may either be submitted in writing, or electronically as authorized by Customs, and must include the following:

(A) A description of the use to be made of the articles set forth in sufficient detail so as to enable the port director to determine whether the articles have been entitled to entry as claimed;

(B) A statement that the articles are not to be put to any other use; and

(C) A statement that neither the articles nor any parts of the articles will be sold, or be incorporated into other products that are sold, after the articles have been entered or withdrawn from warehouse for consumption and prior to the completion of their use as provided in HTSUS subheading 9817.85.01 (see paragraph (b)(2)(ii) of this section).

(b) *Articles classifiable as prototypes*. (1) *Prototypes defined*. In accordance with U.S. Note 6(a) to Subchapter XVII of Chapter 98, HTSUS, the term "prototypes" means originals or models of articles that:

(i) Are either in the preproduction, production or postproduction stage and are to be used exclusively for development, testing, product evaluation, or quality control purposes (not including automobile racing for purse, prize or commercial competition); and

(ii) In the case of originals or models of articles that are either in the production or postproduction stage, are associated with a design change from current production (including a refinement, advancement, improvement, development or quality control in either the product itself or the means of producing the product).

(2) *Additional requirements*. In accordance with U.S. Note 6(b) to Subchapter XVII of Chapter 98, HTSUS, the following additional restrictions apply to articles that may be classified as prototypes:

(i) *Importations limited*. Prototypes may be imported pursuant to this section only in limited noncommercial quantities in accordance with industry practice.

(ii) *Sale prohibited after entry and prior to use*. Prototypes or parts of prototypes may not be sold, or be incorporated into other products that are sold, after the prototypes have been entered or withdrawn from warehouse for consumption under HTSUS subheading 9817.85.01, unless, after having been used for the purposes for which they were entered or withdrawn from warehouse under HTSUS subheading 9817.85.01, such prototypes or any part(s) of the prototypes may be sold as scrap, waste, or for recycling, as prescribed in paragraph (d) of this section.

(iii) *Articles subject to laws of another agency.* Articles that are subject to licensing requirements, or that must comply with laws, rules or regulations administered by an agency other than Customs before being imported, may be entered as prototypes pursuant to this section if they meet all applicable provisions of law and otherwise meet the definition of prototypes in paragraph (b)(1) of this section.

(iii) *Articles excluded from being prototypes*. Articles subject to quantitative restrictions, antidumping orders or countervailing duty orders are excluded from being classified as prototypes under this section.

(c) *Sale of prototype following use*. (1) *Sale*. Prototypes or any part(s) of prototypes, after having been used for the purposes for which they were entered or withdrawn under HTSUS subheading 9817.85.01, may only be sold as scrap, waste, or for recycling. This includes a prototype or any part thereof that is incorporated into another product, as scrap, waste, or recycled material. In addition, prototypes or their parts may only be sold as scrap, waste, or for recycling, upon payment of applicable duty on the prototypes or parts, at the rate of duty in effect for such scrap, waste, or recycled materials at the time the prototypes were entered or withdrawn for consumption.

(2) *Notice of sale required*. If, after a prototype has been used for the purposes contemplated in HTSUS subheading 9817.85.01, the prototype or any part(s) of the prototype (including a prototype or any part that is incorporated into another product) is sold as scrap, waste, or for recycling, the importer must provide notice of such sale to the port director where the entry or withdrawal of the prototype was made. A notice must be submitted in connection with the sale, whether or not duty is payable. The notice, if applicable, should not be submitted prior to the submission of the declaration of actual use (see paragraph (c)(1) of this section).

(3) *Form and content of notice; tender of duty.* While no particular form is required for the notice of sale, a consumption entry (Customs Form 7501), appropriately modified, or an electronic equivalent as authorized by Customs, may be used for this purpose. The notice must be filed within 10 business days of the sale. If the article sold is dutiable, the payment of any duty due must be forwarded together with the notice (see paragraph (d)(1) of this section). If the notice is filed electronically, payment of any duty owed will be handled through the Automated Clearinghouse (see § 24.25 of this chapter). In addition, the notice of sale must be executed by the importer, or other person having knowledge of the facts surrounding the sale, and must include the following:

(i) The identity of the prototype, the consumption entry number under which it was imported, a copy of the declaration of actual use, along with a description of the condition of the prototype following use for the intended permissible purposes, including any damage, degradation or deterioration to the article resulting from such use;

(ii) The name and address of the party to whom the article was sold, and (if known) the use to which the party intends to put the article;

(iii) The HTSUS subheading number for scrap, waste, or recycled material, as applicable, claimed in connection with the sale of the prototype, together with the corresponding rate of duty in effect at the time the prototype was originally imported for consumption;

(iv) The value of the prototype article (if dutiable and the duty owed is based upon value) (see paragraph (e)(2) of this section); and

(v) The title of the party executing the declaration and the date of execution.

(4) *Failure to file timely notice*. Failure to file timely the notice of sale or to deposit the appropriate duty shall be a breach of the importer's bond and result in the assessment of liquidated damages.

(e) *Recordkeeping; retention and production*. (1) *Recordkeeping*. The importer must be prepared to submit to the Customs officer, if requested, such information, including any supporting documents, reports and records, as was necessary for the preparation of the declaration of use in paragraph (a)(2)(ii) of this section, and the notice of sale in paragraph (c)(3) of this section. The submission of the notice of sale is mandatory if a sale occurs after importation. The notice, together with any related supporting evidence, may be subject to such verification as the port director reasonably deems necessary. Such documentary evidence must be made available to the Customs officer, upon request, for a period of five years from the date of filing in complete and proper form, the declaration of use, if requested, and, if applicable, the notice of sale, as provided in § 163.4 of this chapter. The supporting records must be made available to the Customs officer upon request in accordance with §163.6 of this chapter. The specific documentary evidence necessary to support notice of sale, if applicable, consists of:

(i) The identity of the prototype, including the identity of the consumption entry under which it was imported, and a description of the condition of the prototype following use for the intended permissible purposes, including any damage, degradation or deterioration to the article resulting from such use;

(ii) The name and address of the party to whom the article was sold, and (if known) the use to which the party intends to put the article;

(iii) The HTSUS subheading number for scrap, waste, or recycled material, as applicable, claimed in connection with the sale of the prototype, together with the corresponding rate of duty in effect at the time the prototype was originally imported for consumption;

(iv) The value of the prototype article (if dutiable and the duty owed is based upon value) (see paragraph (e)(2) of this section); and

(v) The title of the party executing the declaration and the date of execution.

(2) *Relevant value for used prototype or parts sold*. For purposes of this section, with respect to any duty owed on prototypes or parts of prototypes that are sold as scrap, or waste, or for recycling, where the duty owed is based upon value, the relevant value is the market value of the prototypes or parts, based upon their character and condition following use for the purposes prescribed in HTSUS subheading 9817.85.01. The market value will generally be measured by the selling price. Should a prototype or part of a prototype become a component of another product that is sold as scrap, waste, or recycled material, the relevant market value would be that portion of the selling price attributable to the component (prototype or part) as provided in this paragraph.

(f) *Articles admitted under TIB*. (1) *Duty-free entry available*. Under the procedure presented in paragraph (f)(2) of this section, an entry of an article made under a temporary importation bond (TIB) solely for testing, experimental or review purposes under HTSUS subheading 9813.00.30 may be converted into a duty-free entry under HTSUS subheading 9817.85.01, if the following conditions exist:

(i) The article meets the definition for "prototypes" in paragraph (b) of this section (U.S. Note 6(a) to Subchapter XVII, Chapter 98, HTSUS); and

(ii) The TIB entry for the article was in effect and had not been closed, and the TIB period for the article had not expired, as of November 9, 2000.

(2) *Procedure for converting TIB entry to duty-free entry.* (i) *Importer request*. The importer must submit a written request, or an electronic equivalent as authorized by Customs, that a TIB entry made under HTSUS subheading 9813.00.30, which was in effect and had not been closed, and for which the TIB period had not expired, as of November 9, 2000, be converted instead into a duty-free consumption entry under HTSUS subheading 9817.85.01.

(ii) *Action by Customs*. Customs will convert the TIB entry under HTSUS subheading 9813.00.30 to a duty-free entry under HTSUS subheading 9817.85.01, provided that the port director is satisfied that the conditions set forth in paragraphs (f)(1)(i) and (f)(1)(ii) of this section have been met. When the TIB entry is converted, the bond will be cancelled and the entry closed. Once the conversion is complete, the port director will provide a courtesy acknowledgment to this effect to the importer in writing or electronically.

ROBERT C. BONNER,
Commissioner of Customs.

Approved: March 5, 2002.

TIMOTHY E. SKUD,
Acting Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, March 8, 2002 (67 FR 10636)]