

Bureau of Customs and Border Protection

General Notices

PROPOSED COLLECTION; COMMENT REQUEST

Application for Exportation of Articles under Special Bond

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Exportation of Articles under Special Bond. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 4, 2007, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

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

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

capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application for Exportation of Articles under Special Bond

OMB Number: 1651-0004

Form Number: Form CBP-3495

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

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

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 15,000

Estimated Time Per Respondent: 8 minutes

Estimated Total Annual Burden Hours: 2,000

Dated: March 26, 2007

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

[Published in the Federal Register, April 3, 2007 (72 FR 15892)]

PROPOSED COLLECTION; COMMENT REQUEST

Importation of Ethyl Alcohol For Non-Beverage Purpose

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Importation of Ethyl Alcohol for Non-Beverage Purpose. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 4, 2007, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Customs and

Border Protection, Attn: Tracey Denning, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Importation of Ethyl Alcohol for Non-Beverage Purpose

OMB Number: 1651-0056

Form Number: N/A

Abstract: This collection is a declaration claiming duty-free entry. It is filed by the broker or their agent, and then is transferred with other documentation to the Bureau of Alcohol, Tobacco, and Firearms.

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

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 300

Estimated Time Per Respondent: 5 minutes

Estimated Total Annual Burden Hours: 25

Dated: March 26, 2007

TRACEY DENNING,
Agency Clearance Officer,
Information Services Group.

[Published in the Federal Register, April 3, 2007 (72 FR 15892)]

PROPOSED COLLECTION; COMMENT REQUEST**Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit**

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 4, 2007, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit

OMB Number: 1651-0003

Form Number: CBP 7512 and 7512-A

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

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

Type of Review: Extension of a currently approved information collection.

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 50,000

Estimated Time Per Respondent: 14 hours

Estimated Total Annual Burden Hours: 700,000 hours

Dated: March 26, 2007

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

[Published in the Federal Register, April 3, 2007 (72 FR 15893)]

PROPOSED COLLECTION; COMMENT REQUEST

U.S./Israel Free Trade Agreement

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the U.S./Israel Free Trade Agreement. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 4, 2007, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2C, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: U.S./Israel Free Trade Agreement

OMB Number: 1651-0065

Form Number: N/A

Abstract: This collection is used to ensure conformance with the provisions of the U.S./Israel Free Trade Agreement for duty free entry status.

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

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 34,500

Estimated Time Per Respondent: 10 minutes

Estimated Total Annual Burden Hours: 7,505

Dated: March 26, 2007

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

[Published in the Federal Register, April 3, 2007 (72 FR 15891)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, April 4, 2007

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,
*Executive Director,
Regulations and Rulings Office of Trade.*

GENERAL NOTICE

19 CFR PART 177

**MODIFICATION OF RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE COUNTRY OF
ORIGIN OF ROASTED COFFEE**

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

ACTION: Notice of modification of ruling letter and revocation of treatment relating to the country of origin of roasted coffee.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is modifying a ruling letter pertaining to the country of origin of roasted coffee and revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed modification was published in the Customs Bulletin of February 14, 2007, Vol. 41, No. 8. No comments were received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after June 17, 2007.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, Tariff Classification and Marking Branch, 202-572-8778.

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on February 14, 2007, in the *Customs Bulletin*, Volume 41, Number 8, proposing to modify NY R03084, dated January 24, 2006, pertaining to the tariff classification and the country of origin of roasted coffee under the Harmonized Tariff Schedule of the United States (HTSUS). No comments were received in reply to the notice.

In NY R03084, dated January 24, 2006, the classification of a product commonly referred to as roasted coffee was determined to be in heading 0901.21.0030 or 0901.21.0060, HTSUS, depending on the size of the containers in which it is imported, and the country of origin of the product was said to be the country which produced the raw or green coffee. Since the issuance of that ruling, CBP has had a chance to review the country of origin of this merchandise and has determined that the country of origin of roasted coffee is in error and that the product is properly a product of Canada.

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

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

sues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY R03084, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) W968185 (*see* "Attachment" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: March 28, 2007

GAIL A. HAMILL for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ W968185
March 28, 2007
CLA-2 RR:CTF:TCM W968185ptl
CATEGORY: Country of Origin

MR. JOHN MARTIN SANDERS
16270 80A Avenue
Surrey, British Columbia
Canada, V3S8Y1

RE: Modification of NY R03084

DEAR MR. SANDERS:

On January 24, 2006, the Customs and Border Protection (CBP) National Commodity Specialist Division in New York issued ruling NY R03084 to you providing the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of raw or green coffee that was imported into Canada in bulk where it was then roasted before being shipped to the United States. That ruling also provided a determination of the country of origin for the roasted coffee. We have reviewed the country of origin decision of that ruling and determined that it is incorrect. This ruling corrects that decision.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by Title VI, a notice was published in the February 14, 2007, Customs Bulletin, Volume 41, Number 8, proposing to modify NY R03084, and to revoke any treatment accorded to substantially identical transactions. No comments were received in response to the notice.

FACTS:

According to information you provided, you will be importing raw or green coffee beans into Canada in burlap bags holding 60 to 70 kilograms. The coffee will then be roasted in Canada. The roasted coffee will then be imported into the United States for consumption. In ruling NY R03084, which was issued to you on January 24, 2006, the roasted coffee was classified in either subheading 0901.21.0030, HTSUS, or 0901.21.0060, HTSUS, (depending on the size of the container) as "Coffee, roasted: not decaffeinated." That ruling also stated that ". . . we find that the imported roasted coffee is a good of the country which produced the raw or green coffee, for marking purposes, noting the requirements of Section 102.20 (b)" of the CBP Regulations.

ISSUE:

Is the country of origin of coffee beans roasted in a North American Free Trade Agreement (NAFTA) country, the country which produced the raw or green coffee beans, or the country in which the roasting occurred?

LAW AND ANALYSIS:

The country of origin marking requirements for a "good of a NAFTA country" are determined in accordance with Annex 311 of the NAFTA, as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat 2057) (December 8, 1993), and the appropriate CBP Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, CBP Regulations. The marking requirements of these goods are set forth in Part 134, CBP Regulations.

Section 134.1(b) of the regulations, defines "country of origin" as the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin. (Emphasis added).

Section 134.1(j) of the regulations, provides that the "NAFTA Marking Rules" are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) of the regulations, defines a "good of a NAFTA country" as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules. Section 134.45(a)(2) of the regulations, provides that a "good of a NAFTA country" may be marked with the name of the country of origin in English, French or Spanish.

You state that the imported roasted coffee is processed in a NAFTA country "Canada" prior to being imported into the U.S. Since, "Canada" is defined under 19 CFR 134.1(g), as a NAFTA country, we must first apply the NAFTA Marking Rules in order to determine whether the imported roasted coffee is a good of a NAFTA country, and thus subject to the NAFTA marking requirements.

The Marking rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, CBP Regulations (19 CFR 102).

Section 102.11(a), CBP Regulations (19 CFR 102.11(a)), sets forth the procedures for determining the country of origin of goods for NAFTA purposes and provides, in relevant part, as follows:

- (a) The country of origin of a good is the country in which:
 - (1) The good is wholly obtained or produced;
 - (2) The good is produced exclusively from domestic materials; or
 - (3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in §102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

Section 102.1, CBP Regulations, provides definitions used in applying the NAFTA rules of origin. Section 102.1(g) defines “a good wholly obtained or produced” as being, in relevant part:

- (2) A vegetable or plant good harvested in that country;

* * *

(10) A good produced in that country exclusively from goods referred to in paragraphs (g)(1) through (10) of this section or from their derivatives, at any stage of production.

Because the raw or green coffee beans have been imported into Canada before roasting, the roasted coffee does not qualify as “a good wholly obtained or produced” in Canada, or any other country. Therefore, the country of origin of the roasted coffee cannot be determined under section 102.11(a)(1).

Since we cannot use section 102.11(a)(1) to determine the country of origin, we must move to section 102.11(a)(2). That subsection provides that the country of origin may be settled if a good is produced exclusively from domestic materials. “Domestic materials” is defined in section 102.1(d), CBP Regulations, as meaning “a material whose country of origin as determined under these rules is the same country as the country in which the good is produced.” Because the roasted coffee is not produced exclusively from domestic (Canadian) materials, the country of origin cannot be determined under section 102.11(a)(2).

We must proceed to section 102.11(a)(3) which provides that the country of origin of a good is the country in which “each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in section 102.20 and satisfies any other applicable requirements of that section.” Section 102.1(e), CBP Regulations, defines “foreign material” as “a material whose country of origin as determined under these rules is not the same country as the country in which the good is produced.” The applicable tariff change specified in section 102.20(b), CBP Regulations, states:

0901.21 – 0901.22 A change to subheading 0901.21 through 0901.22 from any subheading outside that group.

The raw, or green, coffee which was imported into Canada would be classified in subheading 0901.11, HTSUS, which provides for coffee, not roasted. However, the roasted coffee is classified in subheading 0901.21, HTSUS, which provides for coffee, roasted. Thus, the applicable tariff shift provided for in section 102.20(b), CBP Regulations, has been met, and the country of origin of the roasted coffee is Canada.

However, as stated in NY R03084, Section 14 of the Miscellaneous Trade and Technical Corrections Act of 1996, Pub. L. 104–295, 110 Stat. 3514 (October 11, 1996) amended the country of origin marking statute (19 U.S.C. 1304) to exempt imports of certain specified coffee, tea and spices from the marking requirements of 19 U.S.C. 1304 subsections (a) and (b). The roasted coffee is among the products included in this statutory marking exemption.

Therefore, neither the roasted coffee nor its container is required to be marked with the foreign country of origin.

HOLDING:

New York Ruling Letter R03084, dated January 24, 2006, is modified to provide that the country of origin of the roasted coffee is Canada.

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

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

**REVOCATION OF RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF CERTAIN DUAL FUNCTION
FLASHLIGHT/LANTERNS FROM CHINA**

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

ACTION: Notice of revocation of one ruling letter and revocation of treatment relating to the classification of a certain dual function flashlight lanterns from China.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of certain dual function flashlight lanterns from China. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 41, No. 8, on February 14, 2007. One comment was received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 17, 2007.

FOR FURTHER INFORMATION CONTACT: Sasha Kalb, Tariff Classification and Marking Branch, at (202) 572-8791.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the Customs Bulletin, Vol. 41, No. 8, on February 14, 2007, proposing to revoke one ruling letter relating to the tariff classification of a certain dual function flashlight lanterns from China. One comment was received in response to the notice. As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. 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 have advised CBP during this notice period.

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

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking Headquarters Ruling Letter (HQ) 967976 to reflect the proper tariff classification of the merchandise under heading 8513, HTSUS, specifically in sub-heading 8513.10.4000, HTSUSA, which provides for: “[p]ortable elec-

tric lamps designed to function by their own sources of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof: Lamps: Other," pursuant to the analysis set forth in HQ W968278 (Attachment). Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by it 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 29, 2007

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ W968278
March 30, 2007
CLA-2 RR:CTF:TCM W968278 ADK
CATEGORY: Classification
TARIFF NO.:N8513.10.40

MR. ROBERT LEO
MS. BARBARA DAWLEY
MEEKS & SHEPPARD
330 Madison Avenue, 39th Floor,
New York, NY 10017

RE: Revocation of Ruling HQ 967976, dated April 20, 2006; Classification of a Dual Function Flashlight/Lantern from China.

DEAR MR. LEO:

This letter is in response to your request of June 20, 2006, on behalf of your client, The Coleman Company Inc. (Coleman), for reconsideration of Headquarters Ruling (HQ) 967976. In that ruling, United States Customs and Border Protection (CBP) determined that The Companion™ Lantern should be classified under subheading 8513.10.20, Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed HQ 967976 and found it to be in error.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification was published on February 14, 2007, in the Customs Bulletin, Volume 41, No. 8. One comment was received in response to this notice.

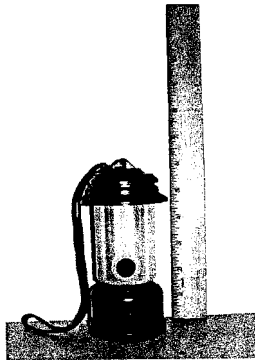
FACTS:

The subject article, The Companion™ Lantern, model number 5373, is a portable, battery-operated flashlight/lantern measuring approximately 6 ¼ inches high when closed, and 8 inches when extended. It is shaped to resemble a miniature version of a traditional table-top camping lantern. It has a flared, dome-like top with a cylindrical midsection and base. A nylon-wrist lanyard is attached to the top of the article. The housing, or handgrip area, is approximately 6 ¾ inches in circumference and 2½ inches in length. A push-button switch, which activates both the flashlight and the lantern, is situated in the housing's midsection and protrudes approximately 1 inch from the surface. The size and shape of the housing is such that it is difficult to hold comfortably in the hand.

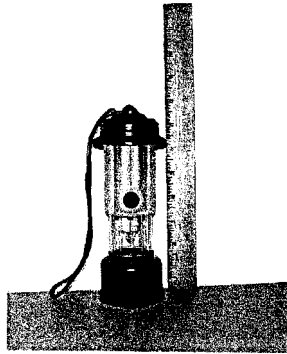
The Companion™ Lantern operates both as a flashlight and as a lantern. When in the flashlight position, the base incorporates a filament light bulb with a reflector and lens and emits a strong, focused beam. When extended, the light bulb is raised into a translucent cylindrical midsection to become an area light. Unlike the flashlight function, the area light emits a weak ray of light which extends over a narrow radius. Both the flashlight and lantern function on 4 "AA" batteries which are included in a separate and visible area of the retail packaging.

Text on retail packaging highlights the machine's dual function. Coleman describes the product as a "Personal-Size Companion™ Lantern", a "Retractable Flashlight" and indicates that the product "Converts easily from a flashlight into an area light when extended." The packaging also shows The Companion™ Lantern emitting light in both its extended and contracted positions.

Pictures of the Companion™ Lantern are shown below. For ease of reference, the item was placed next to a standard 12-inch ruler.



The Companion™ Lantern in a closed position.



The Companion™ Lantern in an open position.

Coleman argues that the Companion™ Lantern functions principally as an area light and should be classified under subheading 8513.10.40, HTSUS, as “[p]ortable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof: [l]amps: [o]ther.”

ISSUE:

Is the Companion™ Lantern classifiable as a flashlight or other portable lamp under heading 8513, HTSUS?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. GRI 6 provides that the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to GRIs 1 through 5, on the understanding that only subheadings at the same level are comparable.

There is no dispute that the subject merchandise is classifiable under heading 8513, HTSUS, specifically under subheading 8513.10, HTSUS. The complication arises at the 8-digit level as to whether the flashlight or the area light serves as the article’s principal function. The HTSUS provisions under consideration are as follows:

- | | |
|--------------|--|
| 8513 | Portable electric lamps designed to function by their own sources of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof: |
| 8513.10 | Lamps: |
| 8513.10.2000 | Flashlights |

* * *

8513.10.4000 Other
* * *

Section XVI, Note 3:

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80.

Section XVI, General Explanatory Note VI:

In general, the multi-function machines are classified according to the principal function of the machine.

Where it is not possible to determine the principal function, and where, as provided in Note 3 to the Section, the context does not otherwise require, it is necessary to apply General Interpretive Rule 3 (c) . . .

GRI 3 (c) provides:

When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs in last numerical order among those which equally merit consideration.

* * *

The Companion™ Lantern is a multi function machine designed to perform two complementary or alternative operations. When closed, it is a flashlight, of the kind classifiable under subheading 8513.10.20, HTSUS. When extended, it is an area light, of the kind classifiable under subheading 8513.10.40, HTSUS. As a multi-function machine, it should be classified “as if consisting only of that component . . . which performs the principal function.” Section XVI, Note 3. At issue is whether the flashlight or area light constitutes the principal function. If the principal function cannot be determined, classification will be in accordance with GRI 3(c).

The term “flashlight” has been judicially determined to mean a small, battery-operated, portable electric light, normally held in the hand by the housing. *Sanyo Electric Inc. v. United States*, 496 F.Supp. 1311, *aff’d*, 642 F.2d 435 (CAFC 1981). Subsequent CBP rulings have expanded the definition of flashlight to mean a small, battery operated light, held in the hand by the housing, the primary purpose of which is to emit a strong, focused beam of light. *See* HQ 951855, dated July 24, 1992; HQ 084852, dated March 28, 1990; HQ 953262, dated July 26, 1993. Machines that satisfy this definition are classified under the *eo nomine* subheading 8513.10.20, HTSUS. Importers seeking to classify their multi-function goods elsewhere must show

that the flashlight function is either a subordinate feature, or a coequal feature thus triggering GRI 3 (c). In the present matter, Coleman argues that the flashlight is a subordinate feature, and that the area light serves as the article's principal function.

Coleman's principal function argument is three-fold. First, it indicates that the article satisfies the definition of 'lantern,' when extended. While we agree that the article meets the definition of 'lantern' when extended, these definitions do not assist in the principal function determination. Furthermore, CBP does not dispute that the article can function as a lantern when extended.

Coleman also relies on HQ 952087, dated July 23, 1992, in which CBP classified "floating" lanterns. In that ruling, CBP determined that "one of the differences between a flashlight and a lantern is that a flashlight is **normally** held entirely in the hand by the housing itself, while a lantern has a handle on its framework so that it can be carried." (Emphasis added). Coleman has interpreted this ruling to mean that any portable lamp with a handle is *prima facie* excluded from subheading 8513.10.20, HTSUS. This argument overlooks CBP's use of the word "normally." In HQ 952087, CBP determined that flashlights are **normally**, but not always, held entirely in the hand by the housing itself. The presence of a handle alone is insufficient to warrant an alternative classification. Furthermore, Coleman itself markets and sells flashlights which feature molded plastic carrying handles¹. These products, the 4D Water Activated Waterbeam™ Spotlight, and the Floating 4D Spotlight, can be held in the hand by the housing, or by the handle.

Finally, Coleman relies on U.S. Additional Rule of Interpretation 1(a) (Rule 1(a)) which provides for classification of goods governed by principal use. According to Rule 1(a), in the absence of special language or context which otherwise requires, such use "is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use." In other words, the article's principal use at the time of importation determines whether it is classifiable within a particular class or kind. While Rule 1(a) provides general criteria for discerning the principal use of an article, it does not provide specific criteria for individual tariff provisions. However, the CIT has provided factors which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind.

The two factors relied upon by counsel are the article's physical characteristics and the environment of sale. In addition to those identified by counsel, these factors include the (2) expectation of the ultimate purchaser . . . (4) use in the same manner as merchandise which defines the class, (5) economic practicality of so using the import, and (6) recognition in the trade of this use." *See Lennox Collections v. United States*, 20 CIT 194, 196 (1996). *See also United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373,

¹(1) 4D Water Activated Waterbeam™ Spotlight: http://www.coleman.com/coleman/colemancom/detail.asp?product_id=5338-782&categoryid=1160; (2) Floating 4D Spotlight: http://www.coleman.com/coleman/colemancom/detail.asp?product_id=5338B732&categoryid=1160

377 (1976), *cert. denied*, 429 U.S. 979 (1976). We will first consider the Companion™ Lantern's physical characteristics.

Unlike other multifunction Coleman lights, such as the Floating 4AA Flashlight/Lantern, this particular model is not shaped to be held in the hand by the housing. *See* HQ W968269, dated January 17, 2007. If the housing were larger, the article would fall within the clearly established precedent that classifies substantially similar multi-function machines as flashlights. *See* HQ W968269, (The Coleman Floating Lantern, a dual function flashlight/lantern, classified under subheading 8513.10.20, HTSUS), HQ 962528, dated February 18, 2000 (The multifunction Coleman Power Failure light was classified under subheading 8513.10.20, HTSUS); NY R00399, dated June 4 2004 (The Coleman dual function flashlight/lantern, classified under subheading 8513.10.20, HTSUS); HQ 965772, dated September 25, 2002 (The multifunction rechargeable emergency light was classified under subheading 8513.10.20); HQ 953262, dated July 26, 1993 (The Rally Rite Lites designed to fit all hard hats were classified under subheading 8513.10.20, HTSUS); HQ 951855, dated July 24, 1992 (The multifunction Beam-N-Blink light was classified under subheading 8513.10.20, HTSUS). This Companion™ Lantern is distinguishable only because it does not comfortably fit into the average person's hand. Both the dome-shaped top and the on/off switch which protrudes from the housing, prevent the consumer from maintaining an ergonomic grip. The Companion™ Lantern's current size and shape, prevent it from functioning principally as a flashlight.

The strength of the light bulb is another physical characteristic indicative of principal function. In HQ 962528, CBP was asked to determine the principal function of a Coleman Power Failure Light. In that ruling, we held that "the **dim light emitted** upon power failure is insufficient to illuminate a substantial area, **a fact that reinforces the conclusion that the article is intended to be used primarily as a flashlight.**" (Emphasis added). The same reasoning is applicable to the present matter. When extended, The Companion™ Lantern emits a weak radius of light. Unlike the flashlight which emits a strong, focused beam, the lantern function "is insufficient to illuminate a substantial area." This supports the conclusion that the lantern does not serve as the principal function.

The expectations of the ultimate purchaser similarly fail to identify a principal function. Based on the other Coleman lighting products put up for retail sale, the ultimate purchaser should reasonably expect to buy this particular Companion™ Lantern as a multi-function machine. According to their website, Coleman carries a line of Pack-Away® lights which are single function, retractable lanterns. These small lanterns are designed for compact storage and feature large bulbs which distribute a wide radius of light. A purchaser seeking to buy a compact lantern would likely select such an item because it is both retractable and superior in function to the Companion™ Lantern. Similarly, a purchaser seeking to buy a simple flashlight would likely buy an item which is better suited to being held in the hand. Many Coleman flashlights are marketed as having housings that feature "[e]asy-to-hold rubber grip[s]²," "ergonomic . . . grip handle[s]³," or "[n]o-slip rubber

² http://www.coleman.com/coleman/colemancom/detail.asp?product_id=5338-781&categoryid=1160, http://www.coleman.com/coleman/colemancom/detail.asp?product_id=5338C701&categoryid=1185

grip[s]⁴.” The Companion™ Lantern features no such handle and is not easily held in the hand by the housing.

Finally, the manner of packaging and marketing fails to identify a principal function. Counsel argues that use of the word ‘lantern’ in the trademarked name, the presence of illustrative photographs printed on the article’s packaging, and descriptive language used on the packaging all identify the area light as the principal function.

Coleman’s trademarked name, Companion™ Lantern, is not evidence that the article primarily functions as a lantern. Many of Coleman’s multi-function light machines are given the name The Companion™ Lantern. The Coleman 8D Companion™ Lantern, specifically carries the same trademarked name but is marketed as a “flashlight [which] doubles as an area light.”⁵ Similarly, the Coleman Floating Companion™ Lantern is also trademarked as a lantern but CBP has identified its flashlight mode as the principal function⁶. The trademarked name “The Companion™ Lantern” is a marketing tool employed by Coleman to sell its products. Inclusion of the word ‘lantern’ in the name itself is not dispositive of principal function.

Counsel also relies on Coleman’s use of the words ‘lantern’ and ‘area light’ more frequently than the word ‘flashlight.’ The packaging describes The Companion™ Lantern as a “retractable flashlight,” a “personal size companion lantern.” The packaging also states that The Companion™ Lantern “converts easily” from a flashlight to an area light. Modern dictionaries define the word “convert” as a process that diverts “from the original or intended use.”⁷ According to this definition, The Companion™ Lantern’s original or intended use is a flashlight. This alone, however, is insufficient to warrant classification under subheading 8513.10.20, HTSUS. Without more, The Companion™ Lantern’s principal function cannot be identified only by reference to packaging and advertising.

After applying the *Carborundum* factors, we find that the principal function cannot be identified. When it is not possible to determine the principal function of an item, classification is made in accordance with GRI 3 (c). The Companion™ Lantern is *prima facie* classifiable under both subheading 8513.10.20, HTSUS, and subheading 8513.10.40, HTSUS. By application of GRI 3 (c), therefore, the article is classified under subheading 8513.10.40, HTSUS.

Pursuant to 19 U.S.C. §1625(c), CBP published a proposed notice of revocation of HQ 967976, on February 14, 2007, in the *Customs Bulletin*, Volume 41, No. 8. After publication, we recognized that the proposed ruling did not address the treatment of the four AA batteries which are sold with the Companion™ Lantern. In HQ 967976, we stated in pertinent part:

The batteries are classifiable in heading 8506, HTSUS . . . a different heading than the light component. The light and batteries meet the GRI

³ http://www.coleman.com/coleman/colemancom/detail.asp?product_id=5306-700C&categoryid=1140

⁴ http://www.coleman.com/coleman/colemancom/detail.asp?product_id=5338-770&categoryid=1185

⁵ http://www.walmart.com/catalog/product.do?product_id=4722924

⁶ See HQ 968269

⁷ www.dictionary.com; <http://www.infoplease.com/ipd/A0386759.html>

3(b) and attendant EN (X) definition of “goods put up in sets for retail sale.” . . . [W]e must now determine which item imparts the essential character to the set.

The factor which determines essential character may be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods. GRI 3(b) EN (VIII).

In this case, it is clear that the light component will provide the essential character for the set. Therefore, the Companion™ Lantern, packaged with batteries, is classified in heading 8513 HTSUS . . .

This same reasoning applies even under the new classification. The essential character of the GRI 3(b) set continues to be the light function. As a result, the Companion™ Lantern is classifiable as if it consists only of the flashlight.

One comment, submitted by counsel for Coleman, dated March 2, 2007, was received in response to the publication of the proposed revocation. The comment supports CBP’s decision to reclassify the subject merchandise under subheading 8513.10.40, HTSUS. Nonetheless, the importer objects to CBP’s reliance on HQ W968269. In that ruling, CBP classified the Coleman WaterBeam™ Floating Lantern under subheading 8513.10.20, HTSUS, primarily because of its physical characteristics. *See Infra* page 6. While we note the objection, CBP believes that the distinguishing factor between the subject merchandise and the WaterBeam™ Flashlight Lantern is the physical construction. Unlike the WaterBeam™ Flashlight Lantern, the Companion™ Lantern cannot easily be held in the hand by the housing. Furthermore, the principal function of the subject merchandise cannot be determined by application of the remaining Carborundum factors.

HOLDING:

By application of GRIs 1, 3(c) and 6, and Section XVI, Note 3, The Companion™ Lantern, model number 5373, is classifiable under subheading 8513.10.40 HTSUS, which provides for: “[p]ortable electric lamps designed to function by their own sources of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof: Lamps: Other.” The column one, general rate of duty is 3.9 percent *ad valorem*.

EFFECT ON OTHER RULINGS:

HQ 967976, dated April 20, 2006, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

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

┌

┐

└

┘