

U.S. Customs and Border Protection

General Notices

DATES AND DRAFT AGENDA OF THE FORTY-THIRD SESSION OF THE HARMONIZED SYSTEM COMMITTEE OF THE WORLD CUSTOMS ORGANIZATION

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

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

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

DATE: January 28, 2009

FOR FURTHER INFORMATION CONTACT: Joan A. Jackson, Staff Assistant, Tariff Classification and Marking Branch, U.S. Customs and Border Protection (202–325–0010), or David Beck, Director, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission (202–205–2592).

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Article 6 of the Harmonized System Convention establishes a Harmonized System Committee (“HSC”). The HSC is composed of representatives from each of the contracting parties to the Harmonized

System Convention. The HSC's responsibilities include issuing classification decisions on the interpretation of the Harmonized System. Those decisions may take the form of published tariff classification opinions concerning the classification of an article under the Harmonized System or amendments to the Explanatory Notes to the Harmonized System. The HSC also considers amendments to the legal text of the Harmonized System. The HSC meets twice a year in Brussels, Belgium. The next session of the HSC will be the forty-third and it will be held from March 9, 2009 to March 20, 2009.

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

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

GAIL A. HAMILL,
Chief,
Tariff Classification and Marking Branch.

Attachment



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

HARMONIZED SYSTEM
 COMMITTEE
 -
 43rd Session
 -

NC1380E1b

O. Eng.

Brussels, 26 January 2009.

DRAFT AGENDA FOR THE 43RD SESSION
 OF THE HARMONIZED SYSTEM COMMITTEE

From : Monday 9 March 2009 (11.00 a.m.)

To : Friday 20 March 2009

N.B. : Wednesday 4 March (10.00 a.m.) to Friday 6 March 2009 : Presessional Working Party
 (to examine the questions under Agenda Item VII)

Monday 9 March 2009 (9.30 a.m. – 10.30 a.m.) : Adoption of the Report of the
 38th Session of the Review Sub-Committee

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DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, January 28, 2009

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

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

**PROPOSED MODIFICATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF DRIED DILL WEED**

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

ACTION: Notice of proposed modification of a tariff classification ruling letter and proposed revocation of treatment relating to the classification of dill weed in dried form.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of dill weed in dried form. CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before March 7, 2009.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street N.W., Washington, D.C., 20229, and may be inspected during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Isaac D. Levy, Tariff Classification and Marking Branch: (202) 325-0028.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the tariff classification of dill weed. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) I85579, dated August 30, 2002 (Attachment “A”), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY I85579, CBP classified chopped and dried dill weed under subheading 0910.99.50, HTSUS, which provides for: “Ginger, saffron, turmeric (curcuma), thyme, bay leaves, curry and other spices: Other spices: Other: Other: Dill”. Upon our review of NY I85579, we have determined that the merchandise described in that ruling is properly classified under subheading 0712.90.85, HTSUS, which provides for: “Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared: Other vegetables; mixtures of vegetables: Other vegetables; mixtures of vegetables”.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP intends to modify NY I85579, and to revoke or modify any other ruling not specifically identified to reflect the proper classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H008157, set forth as Attachment “B” to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: January 21, 2009

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
NY I85579
August 30, 2002
CLA-2-07:RR:NC:2:231 I85579
CATEGORY: Classification
TARIFF NO.: 0712.90.8580; 0802.12.0000;
0802.22.0000; 0802.50.2000;
0802.50.4000; 0910.99.5000

MR. BEHROUSH SHARIFI
TRADERS LINK GROUP LIMITED
69 *Heritage Hills, Unit D*
Somers, NY 10589

RE: The tariff classification of chopped chives, chopped dill weed, in-shell pistachios, shelled and/or slivered pistachios, shelled almonds, and shelled hazelnuts from Iran.

DEAR MR. SHARIFI:

In your letter, dated August 23, 2002, you requested a tariff classification ruling.

The merchandise is described thus:

chopped chives – 100 percent pure, chopped chives that have been naturally dried

chopped dill weed – 100 percent pure, chopped dill weed that has been naturally dried in-shell pistachios – 100 percent pure, naturally dried.

shelled and/or slivered, raw pistachios that have been naturally dried
shelled hazelnuts – 100 percent pure, whole, shelled, raw (unprocessed) hazelnuts that have been naturally dried All items will be imported in quantities weighing 50–500 pounds. The merchandise will be bulk packed in food grade, plastic bags and then it will be placed in corrugated, cardboard boxes whose weight will not exceed 100 kilograms.

The applicable subheading for chopped chives (item 1) will be 0712.90.8580, Harmonized Tariff Schedule of the United States (HTS), which provides dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared, other vegetables; mixtures of vegetables, other vegetables; mixtures of vegetables, other. The rate of duty will be 8.3 percent ad valorem.

The applicable subheading for chopped dill weed (item 2) will be 0910.99.5000, HTS, which provides for ginger, saffron, turmeric (curcuma), thyme, bay leaves, curry and other spices, other spices, other, other, dill. The rate of duty will be free.

The applicable subheading for in-shell pistachios (item 3) will be 0802.50.2000, HTS, which provides for other nuts, fresh or dried, whether or not shelled or peeled, pistachios, in-shell. The rate of duty will be 0.9 cents per kilogram.

The applicable subheading for shelled and/or slivered pistachios (item 4) will be 0802.50.4000, HTS, which provides for other nuts, fresh or dried, whether or not shelled or peeled, pistachios, shelled. The rate of duty will be 1.9 cents per kilogram.

The applicable subheading for shelled almonds (item 5) will be 0802.12.0000, HTS, which provides for other nuts, fresh or dried, whether or not shelled or peeled, almonds, shelled. The rate of duty will be 24 cents per kilogram.

The applicable subheading for shelled hazelnuts (item 6) will be 0802.22.0000, HTS, which provides for other nuts, fresh or dried, whether or not shelled or peeled, hazelnuts or filberts (*Corylus* spp.), shelled. The rate of duty will be 14.1 cents per kilogram.

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 Thomas Brady at (646) 733–3030.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H008157
CLA-2 OT:RR:CTF:TCM H008157 IDL
CATEGORY: Classification
TARIFF NO.: 0712.90.85

MR. BEHROUSH SHARIFI
TRADERS LINK GROUP LIMITED
69 *Heritage Hills, Unit D*
Somers, New York 10589

Re: Chopped and Dried Dill Weed; Proposed Modification of NY I85579

DEAR MR. SHARIFI:

This letter concerns New York Ruling Letter (NY) I85579, dated August 30, 2002, issued to your company, Traders Link Group, Ltd., by the National Commodity Specialist Division, U.S. Customs Service (now Customs and Border Protection (CBP)). We have reviewed NY I85579 and have found it to be incorrect with respect to the classification of “chopped and dried dill weed” under the Harmonized Tariff Schedule of the United States (HTSUS). CBP now proposes to modify NY I85579.

FACTS:

In NY I85579, the U.S. Customs Service classified several products, including one described as “dill weed, one hundred percent pure, chopped and dried.” It has now come to the attention of CBP that the product was classified incorrectly under heading 0910, HTSUS. Our analysis on this matter is set forth below.

ISSUE:

Whether the chopped and dried dill weed described above is properly classified under heading 0712, HTSUS, as a dried vegetable or under heading 0910, HTSUS, as a spice?

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, HTSUS, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

In NY I85579, the U.S. Customs Service classified the subject merchandise under heading 0910, HTSUS, as: “Ginger, saffron, turmeric (curcuma), thyme, bay leaves, curry and other spices.” It is now the position of CBP that the subject merchandise should have been classified under heading 0712, as: “Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared.”

The 2009 HTSUS provisions under consideration are as follows:

10712 Dried vegetables, whole, cut, sliced, broken or in powder, but
not further prepared:

* * *

0712.90	Other vegetables; mixtures of vegetables: * * *
0712.90.85	Other vegetables; mixtures of vegetables * * *
0910	Ginger, saffron, turmeric (curcuma), thyme, bay leaves, curry and other spices: * * * Other spices: * * * 0910.99 Other: * * * Other: 0910.99.50 Dill. . . .

Chapter Notes 2 and 3 to chapter 7, HTSUS, provide, in pertinent part, the following:

2. In headings 0709, 0710, 0711 and 0712 the word “vegetables” includes edible mushrooms, truffles, olives, capers, marrows, pumpkins, eggplants (aubergines), sweet corn (*Zea mays* var. *saccharata*), fruits of the genus *Capsicum* (peppers) or of the genus *Pimenta* (e.g., allspice), fennel, parsley, chervil, tarragon, cress and sweet marjoram (*Marjorana hortensis* or *Origanum marjorana*).
3. Heading 0712 covers all dried vegetables of the kinds falling in headings 0701 to 0711, other than:
 - (a) Dried leguminous vegetables, shelled (heading 0713);
 - (b) Sweet corn in the forms specified in headings 1102 to 1104;
 - (c) Flour, meal, powder, flakes, granules and pellets of potatoes (heading 1105);
 - (d) Flour, meal and powder of the dried leguminous vegetables of heading 0713 (heading 1106).

Heading 0712, HTSUS, provides for “dried vegetables”. Note 2 to Chapter 7, HTSUS, which does not specifically list “dill”, covers a wide variety of vegetables, including “fennel”, “parsley” and “chervil”, that fall within the scope of heading 0712, HTSUS.

“Dill weed”, also known by its Latin name, *Anethum graveolens*, is a branched, aromatic annual herb, scientifically classified in the same “Apiaceae” family as fennel, parsley, and chervil. Dill, R. Gupta, *Handbook of Herbs and Spices*, 173 (K.V. Peter ed., Woodhead Publishing Ltd., 2001). The leaf and stem portion of the plant can be distinguished from the seed (fruit of the plant) in color, shape, texture, chemical composition, taste, etc. Dill weed has a delicate flavor in comparison to the seed, which has a stronger flavor due to higher levels of carvone, a volatile oil. Donna R. Tainter & Anthony T. Grenis, *Spices and Seasonings: A Food Technology Handbook*, 86–87 (2001).

In issuing a decision in NY I85579, the U.S. Customs Service classified the subject merchandise under heading 0910, HTSUS, which provides, in pertinent part, for “other spices”, apparently due to the perception of the existence of an “*eo nomine*” provision for “dill” under subheading 0910.99.50, HTSUS. However, it is now the position of CBP that the component of “dill” falling within the provisions of heading 0910, HTSUS, pertains to the seed, rather than “dill weed.” Inasmuch as “fresh dill weed” is closely related to the examples cited in Note 2, above, of vegetables falling within the scope of heading 0709, HTSUS, it is classified under heading 0709, HTSUS. Therefore, under Note 3 to chapter 7, the dried form of such vegetables is classified under heading 0712. Hence, by the terms of heading 0712, HTSUS, and the chapter notes cited, the subject “chopped and dried dill weed” is classified there.

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

EN 07.09 provides the following:

The vegetables of this heading include:

* * *

(13) Parsley, chervil, tarragon, cress (e.g., watercress), savory (*Satureia hortensis*), coriander, dill, sweet marjoram (*Majorana hortensis* or *Origanum majorana*). [Emphasis added].

EN 07.12 provides the following:

This heading covers vegetables of headings 07.01 to 07.09 which have been dried (including dehydrated, evaporated or freeze-dried) i.e., with their natural water content removed by various processes. . . .

EN 09.10 provides the following:

The heading includes:

* * *

(f) **Dill seed** (*Anethum graveolens*), and **fenugreek seed** (*Trigonella foenum graecum*). [Emphasis added]

The ENs provide examples of “dill weed” and “dill seed” as falling under headings 0712 and 0910, HTSUS. Therefore, the ENs support our position that, for classification purposes, “dill weed” is distinguishable from “dill seed”, and that the subject “chopped and dried dill weed” is classified in heading 0712, HTSUS. Accordingly, the “chopped and dried dill weed” is classified under heading 0712, HTSUS.

HOLDING:

By application of GRI 1, the chopped dill weed described above is classified in heading 0712, HTSUS, and specifically provided for under subheading 0712.90.85, HTSUS, as: “Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared: Other vegetables; mixtures of vegetables: Other vegetables; mixtures of vegetables.” The 2009 general, column one rate of duty is 8.3% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY I85579, dated August 30, 2002, is modified to reflect that the chopped dill weed is correctly classified under subheading 0712.90.85, HTSUS, as discussed above.

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

MODIFICATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF A TRIGGER SPRAYER

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

ACTION: Modification of a tariff classification ruling letter and proposed revocation of treatment relating to the classification of a trigger sprayer.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. §1625(c)), this notice advises interested parties that the Bureau of Customs and Border Protection (CBP) is modifying one ruling letter relating to the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a trigger sprayer. CBP is also revoking any treatment previously accorded by it to substantially identical transactions.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published on November 13, 2008, in Volume 42, Number 47 of the Customs Bulletin. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 6, 2009.

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Tariff Classification and Marking Branch: (202) 325-0026.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify one ruling letter pertaining to the classification of a trigger sprayer was published in the November 13, 2008, *Customs Bulletin*, Volume 42, Number 47. No comments were received in response to the notice.

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

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

In NY N006423, a “Goliath” trigger sprayer designed to spray fluids such as herbicides and pesticides was classified in subheading 8481.80.50, HTSUS, which provides for: “Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof: Other appliances: Hand operated: Of other materials.” Since the issuance of that ruling, CBP has reviewed the classification of the Goliath trigger sprayer and has determined that

the cited ruling is in error as it pertains to the eligibility of the trigger sprayer for duty free treatment in accordance with heading 9817.00.50, HTSUS, which provides for "Machinery, equipment and implements to be used for agricultural or horticultural purposes."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY N006423 and any other ruling not specifically identified, to reflect the proper classification of the Goliath trigger sprayer according to the analysis contained in Headquarters Ruling Letter (HQ) H009832, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

DATED: January 16, 2009

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H009832
January 16, 2009
CLA-2: RR:CTF:TCM H009832 KSH
CATEGORY: Classification
TARIFF NO.: 8481.80.5040; 9817.00.50

MARIAN LADNER, ESQ.
EPSTEIN BECKER GREEN WICKLIFF & HALL, P.C
Wells Fargo Plaza
1000 Louisiana
Suite 5400
Houston, Texas 77002-5013

RE: Modification of NY N006423, dated March 6, 2007; Classification of a plastic trigger sprayer

DEAR MR. LADNER:

This letter is in reply to your letter of April 10, 2007, on behalf of your client, MeadWestvaco Calmar, Inc., in which you request reconsideration of our determination in New York Ruling Letter (NY) N006423, dated March 6, 2007, regarding the classification of the Goliath trigger sprayer under the Harmonized Tariff Schedule of the United States ("HTSUS"). We have reviewed that ruling and found it to be in error as it pertains to the classification of the Goliath trigger sprayer as an agricultural or horticultural implement under heading 9817.00.50, HTSUS. Therefore, this ruling modifies NY N006423.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published on November 13, 2008, in Volume 42, Number 47 of the Customs Bulletin. CBP received no comments in response to the proposed notice.

FACTS:

The merchandise at issue is identified as the “Goliath trigger sprayer.” It consists of a grip body housing, a trigger actuator, an orifice cup, a manifold short and cap cover. It is affixed to an aerosol can. The Goliath trigger sprayer is designed to spray fluids contained with the aerosol can such as herbicides or pesticides. You state its actual planned use is for agricultural and/or horticultural applications.

In NY N006423, US Customs and Border Protection (CBP) classified the Goliath trigger sprayer in subheading 8481.80.50, HTSUS, which provides for: “Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof: Other appliances: Hand operated: Of other materials.” CBP determined that heading 9817.00.50, HTSUS was not applicable because the trigger sprayer is merely a part of agricultural or horticultural machinery, equipment or implements and did not meet the terms of the heading. You submit that the Goliath trigger sprayer should be classified under heading 9817.00.50, HTSUS, as “Machinery, equipment and implements to be used for agricultural or horticultural purposes.”

ISSUE:

Whether the Goliath trigger sprayer is classified in heading 9817.00.50, HTSUS, as an implement to be used for agricultural or horticultural purposes?

LAW AND ANALYSIS:

Merchandise imported into the U.S. is classified under the HTSUS. Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs 1 through 5.

The HTSUS headings under consideration are as follows:

8481 Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof:

9817.00.50 Machinery, equipment and implements to be used for agricultural or horticultural purposes . . .

Heading 9817.00.50, HTSUS, provides for the duty-free entry of machinery, equipment and implements to be used for agricultural or horticultural purposes. This is a provision based on actual use. *See* Headquarters Ruling Letter (HQ) 953152, dated March 15, 1993. A tariff classification controlled by the actual use to which the imported goods are put in the United States is satisfied only if such use is intended at the time of importation, the goods are so used and proof thereof is furnished within three years after the goods are entered. *See* Additional U.S. Rule of Interpretation 1(b), HTSUS.

We have consistently held that before an article can be classified in heading 9817.00.50, HTSUS, and qualify for the agricultural use duty exemption it must first satisfy each part of the following three-part test, taken in order.

- (1) the articles must not be among the long list of exclusions to heading 9817.00.50 or 9817.00.60 under Section XXII, Chapter 98, Subchapter XVII, U.S. Note 2;
- (2) the terms of heading 9817.00.50 or 9817.00.60 must be met in accordance with GRI 1; and
- (3) the merchandise must meet the actual use conditions required in accordance with sections 10.131 – 10.139 of the CBP Regulations (19 CFR 10.131 – 10.139).

If a good fails any part of the test, then recourse would have to be made to its primary classification. *See* HQ 086211, dated March 24, 1990.

At the outset, we note that the Goliath trigger sprayer is not precluded from classification in heading 9817.00.50, by any of the exclusions in Chapter 98, Subchapter XVII, U.S. Note 2, HTSUS, and, therefore, meets the first part of the test.

Next we need to determine if the Goliath trigger sprayer is machinery, equipment or an implement used for agricultural or horticultural purposes. In defining the terms of subheading 9817.00.50, HTSUS, we refer to the definitions found in *Webster's II New Riverside University Dictionary* (1988).

- Machinery: 1. Machines or machine parts in general. 2. The working parts of a machine. 3. A system of related elements that operates in a definable way.
- Equipment: 1. The act of equipping or state of being equipped. 2. Something with which one is equipped.
- Implement: 1. A tool, utensil, or instrument for doing a task. 2. An article used to outfit or equip.
- Agriculture: The science, art, and business of cultivating the soil, producing crops, and raising livestock.
- Horticulture: The science, art, and business of cultivating fruits, vegetables, flowers, and plants.

It is undisputed that the Goliath trigger sprayer conforms to the definition of an implement or equipment. Not all implements, apparatus or equipment used on a farm are necessarily related to an agricultural or horticultural pursuit within the meaning of these terms. *See* HQ 953152, *supra*. However, some implements have design features that dedicate them specifically to agricultural or horticultural applications. Devices specifically designed and used for spraying insecticides, pesticides or disinfectants in agricultural or horticultural environments have a rational and obvious relationship to the production of food or clothing. We have routinely held these to be agricultural or horticultural implements. *See* HQ 952868, dated November 26, 1993, and NY 869883, dated December 24, 1991. Accordingly, the Goliath trigger sprayer is machinery, equipment or an implement used for agricultural or horticultural purposes.

Provided the Goliath trigger sprayer meets the actual use conditions required in accordance with sections 10.131 – 10.139 of the CBP Regulations

(19 C.F.R. §§10.131 – 10.139), it is classifiable in heading 9817.00.50, HTSUS.

HOLDING:

The Goliath trigger sprayer is eligible for the duty free treatment of heading 9817.00.50, HTSUS, provided the actual use requirements of 19 C.F.R. Sections 10.131 through 10.139 are satisfied.

EFFECT ON OTHER RULINGS:

NY N006423, dated March 6, 2007, is modified with respect to classification of the trigger sprayer in heading 9817.00.50, HTSUS. The primary classification of the trigger sprayer in heading 8481, HTSUS, is unchanged.

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

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

**PROPOSED REVOCATION OF TWO RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
CERTAIN DECORATIVE CERAMIC DISHES**

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

ACTION: Notice of proposed revocation of two tariff classification ruling letters and proposed revocation of treatment relating to the classification of certain decorative ceramic dishes.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke two ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain decorative ceramic dishes. CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before March 7, 2009.

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

FOR FURTHER INFORMATION CONTACT: Isaac D. Levy, Tariff Classification and Marking Branch: (202) 325-0028.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke two ruling letters pertaining to the tariff classification of certain decorative ceramic dishes. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) K80905, dated January 8, 2004 (Attachment A), and NY R00528, dated July 30, 2004 (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. § 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical

transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY K80905 and NY R00528, CBP classified certain decorative ceramic dishes under subheading 6913.90.50, HTSUS, as: “Statuettes and other ornamental ceramic articles: Other: Other: Other”. Upon our review of NY K80905 and NY R00528, we have determined that the ceramic dishes described in those rulings are properly classified under subheading 6912.00.48, HTSUS, which provides for: “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Other: Other: Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP intends to revoke NY K80905 and NY R00528, and to revoke or modify any other ruling not specifically identified to reflect the proper classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H040755 and HQ H003885, respectively, set forth as Attachments C and D to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: January 16, 2009

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
NY K80905
January 8, 2004
CLA-2-69:RR:NC:1:127 K80905
CATEGORY: Classification
TARIFF NO.: 6913.90.5000

MS. MARY BUTTERLINE
LISS GLOBAL, INC.
7746 Dungan Road
Philadelphia, PA 19111

RE: The tariff classification of decorative ceramic articles from China.

DEAR MS. BUTTERLINE:

In your letter dated December 10, 2003, you requested a tariff classification ruling. Samples are being returned as requested.

The submitted samples are two butterfly-shaped ceramic (non-porcelain) articles, item number 934284, that measure approximately 6 ½ inches at their longest point. Each one features four small compartments that depict the exterior portion of the wings.

You indicate that these articles are classified under subheading 6912.00.4810, Harmonized Tariff Schedule of the United States (HTS), which provides for other ceramic tableware . . . other than of porcelain or china . . . other, suitable for food or drink contact. However, since this merchandise is found to be decorative multifunctional articles, consideration of classification under subheading 6912.00.4810, HTS, is precluded. The applicable subheading for these decorative ceramic articles will be 6913.90.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for other ornamental ceramic articles, other than of porcelain or china, other. The rate of duty will be 6 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist George Kalkines at 646-733-3028.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
NY R00528
July 30, 2004
CLA-2-69:RR:NC:1:126 R00528
CATEGORY: Classification
TARIFF NO.: 6913.90.5000

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

RE: The tariff classification of decorative ceramic articles from China

DEAR MR. CRAGO:

In your letter dated July 7, 2004, you requested a tariff classification ruling. A photograph depicting the item you wish to import was submitted with your ruling request.

The subject merchandise, which you describe as “Candy Dish” – item #C39E3436, consists of six, decorative, hand-painted ceramic (dolomite) articles. Four of these items are in the shape of a flower and two are in the shape of a butterfly. The measurements are 6 inches by 1 inch.

In your letter, you express your opinion that these articles should be classified under subheading 6912.00.4810, Harmonized Tariff Schedule of the United States (HTS), which provides for other ceramic tableware . . . other than of porcelain or china . . . other, suitable for food or drink contact. You also ask whether these products could be regarded as decorative articles and classified under subheading 6913.90.5000, HTS, which provides for other ornamental ceramic articles, other than of porcelain or china, other. Since these products are decorative multifunctional articles, consideration of classification under 6912.00.4810, HTS is precluded.

The applicable subheading for these decorative ceramic articles will be 6913.90.5000, HTS, which provides for other ornamental ceramic articles, other than of porcelain or china, other. The rate of duty will be 6 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Jacob Bunin at 646-733-3027.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H040755
CLA-2 OT:RR:CTF:TCM H040755 IDL
CATEGORY: Classification
TARIFF NO.: 6912.00.48

MS. MARY BUTTERLINE
LISS GLOBAL, INC.
7746 Dungan Road
Philadelphia, Pennsylvania 19111

Re: Ceramic Decorative Tidbit Dish; Proposed Revocation of NY K80905

DEAR MS. BUTTERLINE:

On January 8, 2004, U.S. Customs and Border Protection (CBP) issued New York Ruling Letter (NY) K80905 to you, classifying decorative ceramic articles under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed that decision and have found it to be incorrect. Our discussion on this matter is set forth below.

FACTS:

In NY K80905, the merchandise at issue, was described as follows:

The submitted samples are two butterfly-shaped ceramic (non-porcelain) articles, item number 934284, that measure approximately 6 ½ inches at their longest point. Each one features four small compartments that depict the exterior portion of the wings.

In your request for a binding ruling, dated August 18, 2003, you described the merchandise as ceramic tidbit dishes. Due to a deficiency in your initial submission, we asked that you provide us with additional information. In your amended request, dated December 10, 2003, and which culminated in our decision in NY K80905, you described the merchandise as ceramic decorative dishes that should be classified as tableware, suitable for contact with food or drink. CBP disagreed with your position.

CBP now finds that it erred in classifying the merchandise, which should have been classified as you had proposed in NY K80905.

ISSUE:

Whether the ceramic articles described above are properly classified under subheading 6912.00.48, HTSUS, as “ceramic tableware and kitchenware suitable for food or drink contact”, or under subheading 6913.90.50, HTSUS, as “other ornamental ceramic articles”?

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

6912 Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china:

Tableware and kitchenware:

Other:

Other:

Other:

* * *

6912.00.48 Other . . .

* * *

6913 Statuettes and other ornamental ceramic articles:

* * *

6913.90 Other:

* * *

Other:

* * *

6913.90.5000 Other

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

EN 69.12 provides, in pertinent part, the following:

The headings therefore include:

- (A) Tableware such as tea or coffee services, plates, soup tureens, salad bowls, dishes and trays of all kinds, coffee-pots, teapots, sugar bowls, beer mugs, cups, sauce-boats, fruit bowls, cruets, salt cellars, mustard opts, egg-cups, teapot stands, table mats, knife rests, spoons and serviette rings. [Emphasis added]

EN 69.13 provides, in pertinent part, the following:

This heading covers a wide range of ceramic articles of the type designed essentially for the interior decoration of homes, offices assembly rooms, churches, etc., and outdoor ornaments (e.g., garden ornaments).

The heading **does not include** articles falling in more specific headings of the Nomenclature even if they are suited by reason of their nature or finish for decorative use

. . .

The heading covers:

(A) **Articles which have no utility value but are wholly ornamental, and articles whose only usefulness is to support or contain other decorative articles or to add to their decorative effect**

. . .

(B) **Tableware and other domestic articles only if the usefulness of the articles is clearly subordinate to their ornamental character**

If, therefore, such decorated articles serve a useful purpose no less efficiently than their plainer counterparts, they are classified in **heading 69.11 or 69.12** rather than in this heading.

In NY K80905, CBP stated that “since this merchandise is found to be decorative multifunctional articles, consideration of classification under subheading 6912.00.4810, HTS[USA] is precluded.” We now believe this statement is incorrect with regard to the subject merchandise. Heading 6912 provides for “ceramic tableware” and similar articles. No exclusion is provided for “decorative” articles, and the ceramic articles retain their identity as ceramic tableware even after being decorated. Further, EN 69.12 includes dishes of all kinds, which includes the ceramic articles described above. Therefore, the subject merchandise is specifically included in heading 6912, HTSUS.

Heading 6913, HTSUS, covers “statuettes” and other articles that are merely ornamental in nature. EN 69.13 precludes articles that are described by more specific headings. As noted above, the subject merchandise is more specifically described as “ceramic tableware”. Further, EN 69.13 excludes from the heading ornamental articles which have a utilitarian value.

The ceramic decorative tidbit dishes are functional articles suitable for contact with food, and are, therefore, precluded from classification in heading 6913, HTSUS, as they are not merely ornamental ceramic articles. See HQ 962671, dated March 14, 2000, wherein we classified ceramic platters under subheading 6912.00.48, HTSUS. Accordingly, we find that the ceramic articles described above are classified in heading 6912, HTSUS, and more specifically, are covered under the provisions of subheading 6912.00.48, HTSUS. Therefore, for the reasons set forth above, NY K80905 is revoked.

HOLDING:

By application of GRI 1, the ceramic decorative tidbit dishes described above are classified under heading 6912, HTSUS, and more specifically, are provided for under subheading 6912.00.48, HTSUS, as: “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Other: Other: Other.” The column one, general rate of duty is 9.8%.

EFFECT ON OTHER RULINGS:

NY K80905, dated January 8, 2004, is revoked.

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

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H003885
CLA-2 OT:RR:CTF:TCM H003885 IDL
CATEGORY: Classification
TARIFF NO.: 6912.00.48

TROY CRAGO
IMPORT SPECIALIST
ATICO INTERNATIONAL
501 South Andrews Avenue
Fort Lauderdale, Florida 33301

Re: Candy Dishes; Proposed Revocation of NY R00528

DEAR MR. CRAGO:

On July 30, 2004, U.S. Customs and Border Protection (CBP) issued New York Ruling Letter (NY) R00528 to you, classifying decorative ceramic articles under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed that decision and have found it to be incorrect. Our discussion on this matter is set forth below.

FACTS:

In NY R00528, the merchandise at issue was described as follows:

The subject merchandise, which you describe as “Candy Dish” – item #C39E3436, consists of six, decorative, hand-painted ceramic (dolomite) articles. Four of these items are in the shape of a flower and two are in the shape of a butterfly. The measurements are 6 inches by 1 inch.

CBP classified the merchandise described above under subheading 6913.90.50, Harmonized Tariff Schedule of the United States (HTSUS), which provided for: “Statuettes and other ornamental ceramic articles: Other: Other: Other.” CBP now finds that such merchandise was classified incorrectly.

ISSUE:

Whether the candy dishes described above are properly classified under subheading 6912.00.48, HTSUS, as “ceramic tableware and kitchenware suitable for food or drink contact”, or under subheading 6913.90.50, HTSUS, as “other ornamental ceramic articles”?

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

6912 Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china:

Tableware and kitchenware:

Other:

Other:

Other:

* * *

6912.00.48

Other . . .

* * *

6913 Statuettes and other ornamental ceramic articles:

* * *

6913.91 Other:

* * *

Other:

* * *

6913.90.5001

Other . . .

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

EN 69.12 provides, in pertinent part, the following:

The headings therefore include:

- (A) Tableware such as tea or coffee services, plates, soup tureens, salad bowls, dishes and trays of all kinds, coffee-pots, teapots, sugar bowls, beer mugs, cups, sauce-boats, fruit bowls, cruets, salt cellars, mustard opts, egg-cups, teapot stands, table mats, knife rests, spoons and serviette rings. [Emphasis added]

EN 69.13 provides, in pertinent part, the following:

This heading covers a wide range of ceramic articles of the type designed essentially for the interior decoration of homes, offices assembly rooms, churches, etc., and outdoor ornaments (e.g., garden ornaments).

The heading **does not include** articles falling in more specific headings of the Nomenclature even if they are suited by reason of their nature or finish for decorative use . . .

...

The heading covers:

(A) **Articles which have no utility value but are wholly ornamental, and articles whose only usefulness is to support or contain other decorative articles or to add to their decorative effect**

. . .

(B) **Tableware and other domestic articles only if the usefulness of the articles is clearly subordinate to their ornamental character** If, therefore, such decorated articles serve a useful purpose no less efficiently than their plainer counterparts, they are classified in **heading 69.11** or **69.12** rather than in this heading.

In NY R00528, CBP stated that “[s]ince these products are decorative multifunctional articles, consideration of classification under [subheading] 6912.00.4810, HTS[USA] is precluded.” We now believe this statement is incorrect with regard to the subject merchandise. Heading 6912 provides for “ceramic tableware” and similar articles. No exclusion is provided for “decorative” articles, and the candy dishes retain their identity as ceramic tableware even after being decorated. Further, EN 69.12 includes dishes of all kinds, which includes “candy dishes.” Therefore, the subject merchandise is specifically included in heading 6912, HTSUS.

Heading 6913, HTSUS, covers “statuettes” and other articles that are merely ornamental in nature. EN 69.13 precludes articles that are described by more specific headings. As noted above, the subject merchandise is more specifically described as “ceramic tableware.” Further, EN 69.13 excludes from the heading ornamental articles which have a utilitarian value.

The candy dishes are functional articles suitable for contact with food, and are, therefore, precluded from classification in heading 6913, HTSUS, as they are not merely ornamental ceramic articles. See HQ 962671, dated March 14, 2000, wherein we classified ceramic platters under subheading 6912.00.48, HTSUS. Accordingly, we find that the ceramic candy dishes are classified in heading 6912, HTSUS, and more specifically, are covered under the provisions of subheading 6912.00.48, HTSUS. Therefore, for the reasons set forth above, NY R00528 is revoked.

HOLDING:

By application of GRI 1, the ceramic candy dishes are classified in heading 6912, HTSUS, and more specifically, are provided for under subheading 6912.00.48, HTSUS, as: “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Other: Other: Other.” The column one, general rate of duty is 9.8%.

EFFECT ON OTHER RULINGS:

NY R00528, dated July 30, 2004, is hereby revoked.

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

REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF A MOTORCYCLE LOCK SET

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

ACTION: Notice of revocation of a classification ruling letter and revocation of treatment relating to the classification of a motorcycle Lock Set.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter relating to the classification of a motorcycle Lock Set. CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on October 23, 2008, in Volume 42, Number 44, of the Customs Bulletin. CBP received one comment in support of the proposed notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 6, 2009.

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Tariff Classification and Marking Branch: (202) 325-0026.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

lect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke one ruling letter pertaining to the classification of the motorcycle Lock Set was published in the October 23, 2008, Customs Bulletin, Volume 42, Number 44. One comment was received in support of the proposed notice.

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

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

In N007611, a motorcycle Lock Set consisting of a switch assembly, fuel filler cap and motorcycle seat lock, was separately classified in each of the components respective headings. The switch assembly was classified in heading 8536, Harmonized Tariff Schedule of the United States (HTSUS), as "Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V." The fuel filler cap was classified in heading 8714, HTSUS, as "Parts and accessories of vehicles of headings 8711 to 8713" and the motorcycle seat lock was classified in heading 8301, which provides for "Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys and parts of any of the foregoing articles, of base metal." Since the issuance of that ruling, CBP has reviewed the classification of the motorcycle Lock Set and has determined that the cited ruling is in error.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking N007611, dated March 7, 2007, and is revoking or modifying any other ruling not specifically identified, to reflect the classification of the motorcycle Lock Set according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H009850, set forth as an attachment to this

document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

DATED: January 15, 2009

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

Attachment

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H009850
January 15, 2009
CLA-2: OT:RR:CTF:TCM H009850 KSH
CATEGORY: Classification
TARIFF NO.: 8714.19.00

DONALD HARRISON ESQ.
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue N.W.
Washington, DC 20036

RE: Revocation of NY N007611, dated March 7, 2007; tariff classification of a motorcycle Lock Set

DEAR MR. HARRISON:

This is in reply to your letter dated April 13, 2007, in which you have requested reconsideration of New York Ruling Letter (NY) N007611, dated March 7, 2007, as it pertains to the classification of a Lock Set for the Honda CBR 600F motorcycle.

In accordance with your request for reconsideration of NY N007611, CBP has reviewed the classification of this item and has determined that the cited ruling is in error.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published on October 23, 2008, in Volume 42, Number 44, of the Customs Bulletin. CBP received one comment in support of the proposed notice.

FACTS:

The merchandise at issue is a Lock Set, identified as part number 35010-MBW-A10, for use with the Honda CBR 600F motorcycle. It consists of a switch assembly, an alloy steel fuel filler cap with integrated lock and a motorcycle seat lock. A pair of matched keys to operate the three parts is included in the Lock Set. The Lock Set is packaged together in a box inside an unsealed clear plastic bag.

The switch assembly (an ignition cylinder attached to an ignition switch and contact base with wire harness) measures approximately 4 inches long and 2 3/4 inches at its widest. It has approximately 16 inches of harnessing

attached. The switch assembly controls the flow of electrical current from the battery to the starter and is operated by use of a key.

The alloy steel fuel filler cap with integrated lock measures approximately 4 ½ inches in diameter and 1 ½ inches in height. It maintains a liquid-tight seal on the fuel tank and has an integrated locking mechanism that needs to be released in order to access the fuel tank.

The motorcycle seat lock measures approximately 1 inch in diameter and 2 inches high. It secures the storage compartment that of the motorcycle. The lock is operated by the inserting of a key.

In NY N007611, we determined that the Lock Set was not classifiable as a set in accordance with General Rule of Interpretation (GRI) 3(b). Specifically we stated that the switch assembly was classified in heading 8536, Harmonized Tariff Schedule of the United States (HTSUS), as “Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V.” The fuel filler cap was classified in heading 8714, HTSUS, as “Parts and accessories of vehicles of headings 8711 to 8713” and the motorcycle seat lock was classified in heading 8301, which provides for “Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys and parts of any of the foregoing articles, of base metal.”

ISSUE:

Whether the Lock Set is classifiable as a set.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

8301	Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys and parts of any of the foregoing articles, of base metal:
8301.20.00	Locks of a kind used on motor vehicles
*	* * * *
8536	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V:
8536.50	Other switches:
8536.50.90	Other
*	* * * *

8714 Parts and accessories of vehicles of headings 8711 to 8713:

Of motorcycles (including mopeds):

8714.19.00 Other

Inasmuch as the Lock Set is composed of goods that are *prima facie* classifiable in more than one heading, classification cannot be resolved under GRI 1. GRI 2(b) directs that the “classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.”

GRI 3 provides that:

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:

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings refer to only part of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to the goods, even if one of them gives a more complete or precise description of the good.
- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
- (c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

The headings at issue only refer to part of the items in the set put up for retail sale. As such, they are regarded as equally specific and resort must be made to GRI 3(b).

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

EN X to GRI 3(b) provides guidance as to whether the Lock Set constitutes “goods put up in sets for retail sale”:

For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:

- (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings . . . ;
- (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without re-packing (e.g., in boxes or cases or on boards).

As previously explained, the items comprising the Lock Set are *prima facie* classifiable under different headings of the HTSUS.

The Lock Set is intended for installation on a single motorcycle to meet the need of an owner to carry a single key that will operate multiple functions of the motorcycle, all of which require the use of a key. The switch assembly requires a key for the owner to activate the ignition. The filler cap requires a key in order for the owner to fill the motorcycle with gas. The seat lock requires a key in order for the owner to access a storage compartment underneath the seat. Requiring the use of a key to access the ignition, gas tank, and storage compartment provides the owner with security for the motorcycle. The use of one key for accessing all three of these functions also fulfills the owner's need for convenience, so that the owner is not obligated to carry multiple keys for each function. Accordingly, the Lock Set is put up together to meet an owner's needs for convenience and security, through the use of a single key.

The goods are imported in a manner suitable for sale to users without re-packing. At importation, the Lock Set is packaged in a box labeled with a singular part number. American Honda Motor Co. sells these units to Honda motorcycle dealers in the same packaging. (See HQ 962339 dated June 29, 1999, noting that CBP has previously held that merchandise that is not sold directly to consumers can be "goods put up in sets for retail sales," where some other party acts as the ultimate purchaser.)

Because the three criteria under EN X to GRI 3(b) are satisfied, the three items are considered "goods put up in sets for retail sale" and will be "classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable."

Explanatory Note VIII to GRI 3(b) explains, "[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." In this case, the principal reason for purchasing the Lock Set is to obtain three items that utilize the same key. The common feature in all three distinct articles is the locking mechanism. However, we must classify the three articles incorporating the lock mechanism, rather than classifying divergent articles as locks. The articles have different functions, none of which is more important than the others. Therefore, the set is not classifiable on the basis of its essential character by reference to GRI 3(b).

Thus classification must be determined in accordance with GRI 3(c). Heading 8714, HTSUS, is last in numerical order. Thus the Lock Set is classified in heading, 8714, HTSUS.

HOLDING:

By application of GRI 3(c), the Lock Set for the Honda CBR 600F motorcycle is classified in heading 8714, HTSUS. It is specifically provided for in subheading 8714.19.0060, HTSUS, which provides for: "Parts and accessories of vehicles of headings 8711 to 8713: Of motorcycles (including mopeds): Other: Other". The general, column one rate of duty is "Free."

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

EFFECT ON OTHER RULINGS:

NY N007611, dated March 7, 2007, is hereby revoked.

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

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

**PROPOSED REVOCATION OF TWO RULING LETTERS
AND PROPOSED REVOCATION OF TREATMENT
RELATING TO THE CLASSIFICATION OF CERTAIN
HOLLOW BILLETS OF ALUMINUM AND CERTAIN
FORGED TITANIUM BILLETS**

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

ACTION: Notice of proposed revocation of two ruling letters and revocation of treatment relating to the tariff classification of certain aluminum hollow billets and of certain forged titanium billets.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke two ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain hollow billets of aluminum and of certain forged titanium billets. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before March 7, 2009.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., Mint Annex, Washington, D.C. 20001. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark, Trade and Commercial Regulations Branch, at (202) 325-0118.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke two ruling letters relating to the tariff classification of certain hollow billets of aluminum and of certain forged titanium billets. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) N018044, dated October 17, 2007 (Attachment A), and Headquarters Ruling Letter (“HQ”) 966570, dated November 7, 2003 (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

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

In NY N018044, CBP classified certain hollow billets of aluminum in subheading 7608.10.0030, HTSUSA, which provides for: "Aluminum tubes and pipes: Of aluminum, not alloyed: Seamless." It is now CBP's position that the subject aluminum hollow billets are properly classified in subheading 7601.10.60, HTSUS, which provides for: "Unwrought aluminum: Aluminum not alloyed: Other."

In HQ 966570, CBP classified certain forged billets of titanium in subheading 8108.90.60, HTSUS, which provides for: "Titanium and articles thereof, including waste and scrap: Other: Other." It is now CBP's position that the subject forged titanium billets are properly classified in subheading 8108.20, HTSUS, as "unwrought titanium".

Pursuant to 19 U.S.C. § 1625(c)(1), CBP intends to revoke NY N018044, HQ 966570, and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Ruling Letters HQ H021135 (Attachment C) and HQ H027436 (Attachment D). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

DATED: January 22, 2009

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

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
N018044
October 17, 2007
CLA-2-76:OT:RRE:NC:1 :117
CATEGORY: Classification
TARIFF NO.: 7608.10.0030

MS. LENA SHIM
HMA, INC.
1411 190th Street, Suite 470
Gardena, CA 90248

RE: The tariff classification of aluminum pipe from China

DEAR MS. SHIM:

In your letter dated October 3, 2007, you requested a tariff classification ruling.

The product you plan to import is described as a non-alloyed cast aluminum pipe. This pipe is comprised of 99.74% aluminum with an outside diameter ranging from 7 inches to 11 inches and an inside diameter ranging from 3 inches to 5 inches.

You suggest classification of this product under heading 7601, Harmonized Tariff Schedule of the United States (HTSUS), which provides for unwrought aluminum. However, the term "unwrought" as defined in Additional U.S. Note 2, Section XV, HTSUS, excludes "... drawn or extruded products, tubular products or cast or sintered forms which have been machined or processed otherwise than by simple trimming, scalping or descaling." Therefore, classification of the aluminum pipe under heading 7601, HTSUS, would not be applicable.

The applicable subheading for the non-alloyed cast aluminum pipe will be 7608.10.0030, Harmonized Tariff Schedule of the United States (HTSUS), which provides for aluminum tubes and pipes, of aluminum, not alloyed, seamless. The rate of duty will be 5.7 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Gloria Stingone at 646-733-3020.

Thomas J. Russo (for) ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ 966570
NOVEMBER 7, 2003
CLA-2 RR:CR:GC 966570 JAS
CATEGORY: Classification
TARIFF NO.: 8108.90.60

PAUL ABERLY
THE ABERLY GROUP
7934 North 54th Place
Paradise Valley, AZ 85253

RE: NY A84786 Revoked; Forged Titanium Billets

DEAR MR. ABERLY:

In NY A84786, which the Director of Customs National Commodity Specialist Division, New York, issued to you on July 12, 1996, certain titanium billets from Russia were held to be classifiable as unwrought titanium, in subheading 8108.10.50, Harmonized Tariff Schedule of the United States (HTSUS). 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 A84786 was published on October 1, 2003, in the Customs Bulletin, Volume 37, Number 40. One comment was received in response to that notice, opposing the proposed revocation. We will briefly discuss that comment, and our response, in the body of this ruling. FACTS:

The merchandise in NY A84786 was described as being imported in billet form and thereafter to be melted down for use in the manufacture of recreational equipment. The chemical analysis of the product was stated to be 90 percent titanium, 6 percent aluminum and 4 percent vanadium, all by weight. The product was not further described.

The HTSUS provisions under consideration are as follows:

Titanium and articles thereof, including waste and scrap:

8108.10.50 (now 20.00) Unwrought titanium

8108.90 Other:

8108.90.60 Other

ISSUE:

Whether forged titanium billets are unwrought products for tariff purposes.

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.

According to Section XV, Additional U.S. Note 1, HTSUS, the term "unwrought" includes billets, among other similar manufactured primary forms of metal, but does not cover rolled or forged products, among others.

Technical sources on titanium production we have consulted indicate that titanium ore is first chlorinated, then reacted with either magnesium or sodium to yield metallic titanium sponge. The sponge is crushed and pressed, then melted in a vacuum arc furnace. The melted sponge solidifies under the vacuum conditions of the furnace to form a solid titanium ingot which is then forged into either slabs or billets. Additionally, the term billet is defined as a semifinished section that is hot rolled from a metal ingot . . . , (2) a solid semifinished round or square product that has been hot worked by forging, rolling, or extrusion. Metals Handbook, Desk Edition, 2nd (1998), published by the American Society for Metals. As it appears that the titanium billets at issue here are produced by hot rolling or forging, they are not unwrought products for tariff purposes, and cannot be classified as unwrought titanium, in subheading 8108.20.00, HTSUS. See NY I89977, dated January 24, 2003.

The comment received in response to the October 1, 2003, notice contained two arguments in support of the subheading 8108.10.50 (now 20.00), HTSUS, classification. First, billets are clearly enumerated among the examples of “manufactured primary forms,” as that expression appears in Section XV, Additional U.S. Note 1, HTSUS, defining the term “unwrought,” such that the exclusionary language “forged, drawn, or extruded products, tubular products or cast or sintered forms” must be interpreted as a reference only to products that have been forged into the rough shape of a final product. The titanium billets are not such products. Second, the classification expressed in NY A84786 is consistent with existing Customs rulings on similar products produced by a vertical continuous casting process.

The fact that billets are listed in Additional U.S. Note 1 as one example of a manufactured primary form, does not establish them as unwrought products for tariff purposes. The phrase “manufactured primary form” in Note 1 must be examined in *pari materia* with the remaining text in that note so as to give full meaning to Note 1. The text of Note 1 expressly states the term “unwrought” does not cover forged products. This exclusion is unequivocal. Thus, titanium billets produced by forging cannot be considered “unwrought” for purposes of Additional U.S. Note 1, HTSUS. The two rulings cited in support of the subheading 8108.10.50 (now 20.00), HTSUS, classification, HQ 955629, dated April 21, 1994, and NY G82889, dated November 6, 2000, concerned so-called magnesium T-bars and aluminum billets, respectively, both produced by the continuous casting process. These rulings are distinguishable on the facts from the merchandise at issue here. The T-bars in HQ 955629 were subsequently processed by what was considered a simple trimming operation similar to one employed in removing gates, risers and fins. Additional U.S. Note 1, HTSUS, specifically states that simple trimming operations are not sufficient to disqualify a cast article from being considered unwrought, if it otherwise qualifies. Similarly, as NY G82889 is silent on whether the aluminum billets were further machined or processed otherwise than by simple trimming, scalping or descaling, the finding in that ruling is correct on its face.

HOLDING:

Under the authority of GRI 1, the titanium billets produced by forging are provided for in heading 8108. They are classifiable as other titanium and articles thereof, in subheading 8108.90.60, HTSUS.

EFFECT ON OTHER RULINGS:

NY A84786, dated July 12, 1996, 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.

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H021135
CLA-2 OT:RR:CTF:TCM H021135 HkP
CATEGORY: Classification
TARIFF NO.: 7601.10.30

MR. JAY JOO, MANAGING DIRECTOR
HMA INC.
1411 West 190th Street, Suite 470
Gardena, CA 90248

RE: Revocation of NY N018044; hollow billets; Additional U.S. Note 1 to Section XV

DEAR MR. JOO:

This is in response to your letter to the National Commodity Specialist Division of U.S. Customs and Border Protection ("CBP") dated December 17, 2007, requesting reconsideration of New York Ruling Letter ("NY") N018044, issued to your company on October 17, 2007. At issue in that ruling was the tariff classification of a non-alloyed cast aluminum "hollow billets" under the Harmonized Tariff Schedule of the United States ("HTSUS"). CBP classified the merchandise under heading 7608, HTSUS, as aluminum tubes or pipes because we were of the view that the product was not "unwrought", as that term is defined in Additional U.S. Note 1 to Section XV, HTSUS, and therefore was precluded from classification in heading 7601, HTSUS. You believe that the correct classification is under heading 7601, HTSUS, which provides for unwrought aluminum. Your letter was forwarded to this office for a response.

In reaching our decision we have taken into consideration the information contained in the short video of the manufacturing process of your product that you submitted with your request. For the reasons set forth in this ruling, we hereby revoke NY N018044.

FACTS:

In NY N018044, the product at issue was described as a non-alloyed cast aluminum pipe with an outside diameter ranging from 7 to 11 inches and an inside diameter ranging from 3 to 5 inches.

The video submitted demonstrates that molten aluminum is cast in a cylindrical mold with a solid core. The resultant castings are, therefore, hollow. After trimming the ends, the castings are cut into shorter lengths.

According to your submission, the casting process for the merchandise, which you describe as "hollow billets," is the same as billets and ingots. The

only difference is the size of the mold and the fact that the molds are “tube-shaped”. After the product is pulled from the mold and cut to length it is not further processed. After importation, the product will be re-melted to make wheels. You state that the reason hollow billets are made instead of full billets or ingots is because hollow billets save money and time during the re-melting process. You describe your merchandise as “raw material”.

ISSUE:

Whether the aluminum “hollow billets” can be classified as unwrought aluminum under heading 7601, HTSUS.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

7601 Unwrought aluminum

7608 Aluminum tubes and pipes

Note 1(e) to Chapter 76 provides, in pertinent part:

Tubes and pipes

Hollow products, coiled or not, which have a uniform cross section with only one enclosed void along their whole length in the shape of circles, ovals, rectangles (including squares), equilateral triangles or regular convex polygons, and which have a uniform wall thickness. Products with a rectangular (including square), equilateral triangular or regular convex polygonal cross section, which may have corners rounded along their whole length, are also to be considered as tubes and pipes, provided the inner and outer cross sections are concentric and have the same form and orientation. Tubes and pipes of the foregoing cross sections may be polished, coated, bent, threaded, drilled, waisted, expanded, cone-shaped or fitted with flanges, collars or rings.

CBP previously rejected your suggested classification under heading 7601, HTSUS, as unwrought aluminum because “the term unwrought, as defined in Additional U.S. Note 1, Section XV, HTSUS, excludes drawn or extruded products, tubular products or cast or sintered forms which have been machined or processed otherwise than by simple trimming, scalping or descaling.”¹

¹ The Metals Handbook, 8th ed., vol. 1, American Society for Metals (1961) provides the following definitions:

Machining. Removing material, in the form of chips, from work, usually through the use of a machine.

Trimming. (1) In drawing, shearing the irregular edge of the drawn part. (2) In forging or die casting, removing any parting-line flash and gates from the part by shearing. (3) In casting, the removal of gates, risers and fins.

However, on further reflection, CBP now believes that cast billet may meet the terms of the definition of “unwrought” set forth in Additional U.S. Note 1, Section XV. In full, Additional U.S. Note 1, Section XV, states:

For the purposes of this section, the term “unwrought” refers to metal, whether or not refined, in the form of ingots, blocks, lumps, billets, cakes, slabs, pigs, cathodes, anodes, briquettes, cubes, sticks, grains, sponge, pellets, flattened pellets, rounds, rondelles, shot and similar manufactured primary forms, but does not cover rolled, forged, drawn or extruded products, tubular products or cast or sintered forms which have been machined or processed otherwise than by simple trimming, scalping or descaling.

Other sources support this definition of “unwrought”. International Standard ISO 3134/2, Light metals and their alloys – Terms and definitions – Part 2: Unwrought products explains that the term “unwrought product” is a “[g]eneral term for products obtained by smelting or refining or casting processes, for example, ingots for rolling, ingots for extruding, ingots for forging and ingots for remelting.” *Id.* at 2.1. The Oxford English Dictionary defines the term “unwrought”, in relevant part, as follows: “2. Not formed or fashioned by being worked on; *esp.* of materials (as fabrics, stone, or metals): Still in a crude, raw, rude, or natural state; not worked into a finished condition.” Based on the above, we find that heading 7601, HTSUS, provides for, without limitation, aluminum that has not been worked into a finished condition.

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the HTSUS at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

EN 76.01 provides, in relevant part:

This heading covers unwrought aluminum in the liquid state, in blocks, ingots, billets, slabs, notched bars, wore bars, or similar forms obtained by casting electrolytic aluminum or by remelting metal waste or scrap. These goods are generally intended for rolling, forging, drawing, extruding, hammering or for remelting and for casting into shaped articles.

* * *

This heading also covers certain cast or sintered bars, etc. (see the Explanatory Note to heading 74.03 which applies, *mutatis mutandis*, to this heading).

Scalping. Removing surface layers from ingots, billets or slabs. See *die scalping*. “Die scalping.” Removing surface layers from a bar, rod, wire or tube by drawing through a sharp-edged die to eliminate minor surface defects.

Descaling. Removing the thick layer of oxides formed on some metals at elevated temperatures.

The Encarta Dictionary defines the term “process” as “to treat or prepare something in a series of steps or actions, e.g. using chemicals or industrial machinery.”

EN 74.03 provides, in relevant part:

This heading further covers cast and sintered slabs, bars, rods and ingots, etc., provided they have not been worked after production otherwise than by simple trimming or de-scaling (to remove the set or top surface consisting largely of cuprous oxide) or by shaving, chipping, grinding, etc., to eliminate setting or other casting defects which have been machined on one surface for inspection purposes (quality control).

EN 76.08 provides, in relevant part:

Chapter Note 1(e) defines tubes and pipes. The tubes and pipes of this heading may be manufactured by the following processes:

....

(d) by casting

....

The tubes and pipes of this heading are used for many purposes, e.g. as pipelines for oil or water, as conduits for electrical wiring, in the manufacture of furniture, heat exchanges, structures.

Based on the above, we find that heading 7601, HTSUS, provides for cast, remelted or other aluminum that has not been worked into a finished condition and which may be for use in a manufacturing process.

In light of the manufacturing process depicted in the submitted video, we find that the product at issue has been manufactured by casting and has not been machined or further processed but simply trimmed and cut to length. As such, we find that the hollow billet is “unwrought” as required by the text of heading 7601, HTSUS. In addition, based on the submitted information, the product is intended for remelting or for casting into shaped articles as explained by EN 76.01.

HOLDING:

By application of GIR 1, the hollow billet of aluminum is classified under heading 7601, HTSUS. It is specifically provided for in subheading 7601.10.60, HTSUS, which provides for: “Unwrought aluminum: Aluminum, not alloyed: Other.” The 2008 column one, general rate of duty is Free.

EFFECT ON OTHER RULINGS:

NY N018044, dated October 17, 2007, is hereby revoked.

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H027436
CLA-2 OT:RR:CTF:TCM H027436 HkP
CATEGORY: Classification
TARIFF NO.: 8108.20

MR. PAUL ABERLY
THE ABERLY GROUP
7934 North 54th Place
Paradise Valley, AZ 85253

RE: Revocation of HQ 966570; forged titanium billets; Additional U.S. Note 1 to Section XV

DEAR MR. ABERLY:

This is in reference to Headquarters Ruling Letter (“HQ”) 966570, issued to you on November 7, 2003, in which the tariff classification of forged titanium billets was determined under the Harmonized Tariff Schedule of the United States (“HTSUS”). Through HQ 966570, U.S. Customs and Border Protection (“CBP”) revoked New York Ruling Letter (“NY”) A84786, dated July 12, 1996, and classified the titanium billets under subheading 8108.90.60, HTSUS, as “other” titanium and articles thereof. We have reconsidered HQ 966570 and determined that the tariff classification of the articles described therein is not correct. For the reasons set forth below, we hereby revoke HQ 966570.

FACTS:

The merchandise at issue was described in NY A84786 and HQ 966570 as being imported in billet form and thereafter to be melted down for use in the manufacture of recreational equipment. The chemical analysis of the product was stated to be 90 percent titanium, 6 percent aluminum, and 4 percent vanadium, by weight. The product was not further described.

In HQ 966570, CBP stated, in relevant part, the following:

According to Section XV, Additional U.S. Note 1, HTSUS, the term “unwrought” includes billets, among other similar manufactured primary forms of metal, but does not cover rolled or forged products, among others. Technical sources on titanium production we have consulted indicate that titanium ore is first chlorinated, then reacted with either magnesium or sodium to yield metallic titanium sponge. The sponge is crushed and pressed, then melted in a vacuum arc furnace. The melted sponge solidifies under the vacuum conditions of the furnace to form a solid titanium ingot which is then forged into either slabs or billets. Additionally, the term **billet** is defined as a semifinished section that is hot rolled from a metal ingot . . . , (2) a solid semifinished round or square product that has been hot worked by forging, rolling, or extrusion. *Metals Handbook*, Desk Edition, 2nd (1998), published by the American Society for Metals. As it appears that the titanium billets at issue here are produced by hot rolling or forging, they are not unwrought products for tariff purposes, and cannot be classified as unwrought titanium, in subheading 8108.20.00, HTSUS.

These statements no longer reflect our view on the classification of the forged titanium billets described in HQ 966570.

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 subheading of a heading shall be determined according to the terms of those subheadings on the understanding that only subheadings at the same level are comparable.

The HTSUS provisions under consideration are as follows:

8108 Titanium and articles thereof, including waste and scrap:

8108.20 Unwrought titanium; powders

* * *

8108.20.0091 Other

8108.90 Other:

* * *

8108.90.60 Other

Additional U.S. Note 1 to Section XV, HTSUS, in which chapter 81 is located, provides:

For the purposes of this section, the term “unwrought” refers to metal, whether or not refined, in the form of ingots, blocks, lumps, billets, cakes, slabs, pigs, cathodes, anodes, briquettes, cubes, sticks, grains, sponge, pellets, flattened pellets, rounds, rondelles, shot and similar manufactured primary forms, but does not cover rolled, forged, drawn or extruded products, tubular products or cast or sintered forms which have been machined or processed otherwise than by simple trimming, scalping or descaling.

In construing the provisions of this Note, the Court of International Trade has found that:

The definition of unwrought contained in Additional U.S. Note 2 [now Note 1] connotes a stage in a manufacturing process which eventually results in a different ultimate product. The Court concludes that the phrase “manufactured primary forms” refers to forms that have undergone some processing but must undergo further processing before they appear in an eventual final product. This definition provides a unifying characteristic for the otherwise disparate enumerated forms.

Anval Nyby Powder AB v United States, 20 Ct. Int’l Trade 608, 616; 927 F. Supp. 463, 471 (citations omitted) (1996). Based on this interpretation by the court, it is evident that the language of Additional U.S. Note 2 to Section XV, HTSUS, also reflects the common and commercial meaning of the term “unwrought.” Furthermore, it is clear from the statements of the court that the term “unwrought” is in no way tied to a particular manufacturing pro-

cess (such as hot rolling or forging). Rather, it refers to a product at an intermediate stage of a manufacturing process.

Other sources support this interpretation of “unwrought”. International Standard ISO 3134/2, Light metals and their alloys – Terms and definitions – Part 2: Unwrought products explains that the term “unwrought product” is a “[g]eneral term for products obtained by smelting or refining or casting processes, for example, ingots for rolling, ingots for extruding, ingots for forging and ingots for remelting.” Id. at 2.1. The Oxford English Dictionary defines the term “unwrought” in relevant part, as follows: “2. Not formed or fashioned by being worked on; *esp.* of materials (as fabrics, stone, or metals): Still in a crude, raw, rude, or natural state; not worked into a finished condition.”

Based on the above meanings of “unwrought”, we find that subheading 8108.20, HTSUS, provides for, without limitation, titanium that has not been worked into a finished condition. Accordingly, we find that the titanium billets are classified under subheading 8108.20, HTSUS, as “unwrought titanium” because they have not been worked into a finished condition.

HOLDING:

By application of GRI 1 through the provisions of GRI 6, the titanium billets are correctly classified under heading 8108, HTSUS. They are specifically provided for in subheading 8108.20, HTSUS, which provides for: “Titanium and articles thereof, including waste and scrap: Unwrought titanium; powders.” The 2008 column one, general rate of duty is 15%.

EFFECT ON OTHER RULINGS:

HQ 966570, dated November 7, 2003, is hereby revoked.

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