

# U.S. Customs and Border Protection

## *General Notices*

### **AGENCY INFORMATION COLLECTION ACTIVITIES:**

#### **Application for Extension of Bond for Temporary Importation**

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60-Day Notice and request for comments; Extension of an existing collection of information: 1651-0015.

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

**DATES:** Written comments should be received on or before March 31, 2009, to be assured of consideration.

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

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

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

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

**Title:** Application for Extension of Bond for Temporary Importation

**OMB Number:** 1651-0015

**Form Number:** CBP Form 3173

**Abstract:** Imported merchandise that is to remain in the Customs territory for one year or less without duty payment is entered as a temporary importation. The importer may apply for an extension of this period on CBP Form 3173.

**Current Actions:** This submission is being made to extend the expiration date. The burden hours have been adjusted to correct a calculation error.

**Type of Review:** Extension (with change)

**Affected Public:** Business or other for-profit institutions

**Estimated Number of Respondents:** 1,200

**Estimated Number of Annual Respondents per Respondent:** 14

**Estimated Number of Total Annual Responses:** 16,800

**Estimated Time Per Response:** 13 minutes

**Estimated Total Annual Burden Hours:** 3,646

Dated: January 7, 2009

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

**AGENCY INFORMATION COLLECTION ACTIVITIES:****Cargo Container and Road Vehicle Certification for Transport under Customs Seal**

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60-Day Notice and request for comments; Extension of an existing collection of information: 1651-0124

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Cargo Container and Road Vehicle Certification for Transport under Customs Seal. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before March 31, 2009, to be assured of consideration.

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

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

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

**Title:** Cargo Container and Road Vehicle Certification for Transport Under Customs Seal

**OMB Number:** 1651-0124

**Form Number:** None

**OMB Number:** 1651-0124

**Form Number:** None

**Abstract:** The information collected is used as part of a voluntary program to receive internationally-recognized CBP certification that intermodel container/road vehicles meet the construction requirements of international Customs conventions. Such certification facilitates International trade by reducing intermediate international controls.

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

**Type of Review:** Extension (without change)

**Affected Public:** Businesses or other for-profit institutions

**Estimated Number of Respondents:** 25

**Estimated Number of Responses per Respondent:** 120

**Estimated Number of Responses:** 3,000

**Estimated Time Per Response:** 3.5 hours

**Estimated Total Annual Burden Hours:** 10,500

Dated: January 9, 2009

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

[Published in the Federal Register, January 30, 2009 (74 FR 5668)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:**

**Bonded Warehouse Proprietor's Submission**

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60-Day Notice and request for comments; Extension of an existing collection of information: 1651-0033.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other

Federal agencies to comment on an information collection requirement concerning the Bonded Warehouse Proprietor's Submission. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before March 31, 2009, to be assured of consideration.

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

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

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

**Title:** Bonded Warehouse Proprietor's Submission

**OMB Number:** 1651-0033

**Form Number:** CBP Form 300

**Abstract:** CBP Form 300 is prepared by Bonded Warehouse Proprietor and submitted to CBP annually. The document reflects all bonded merchandise entered, released, and manipulated, and includes beginning and ending inventories.

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

**Type of Review:** Extension (without change)  
**Affected Public:** Businesses or other for-profit institutions  
**Estimated Number of Respondents:** 1,800  
**Estimated Time Per Respondent:** 24.3 hours  
**Estimated Total Annual Burden Hours:** 43,740

Dated: January 7, 2009

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

[Published in the Federal Register, January 30, 2009 (74 FR 5669)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:**

**Declaration of Person Who Performed Repairs**

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60-Day Notice and request for comments; Extension of an existing collection of information: 1651-0048.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Declaration of a Person Who Performed Repairs. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before March 31, 2009, to be assured of consideration.

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

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

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Re-

duction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

**Title:** Declaration of Person Who Performed Repairs

**OMB Number:** 1651–0048

**Form Number:** None

**Abstract:** The Declaration of Person Who Performed Repairs is used by CBP to ensure duty-free status for entries covering articles repaired aboard. It must be filed by importers claiming duty-free status.

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

**Type of Review:** Extension (without change)

**Affected Public:** Businesses or other for-profit institutions

**Estimated Number of Respondents:** 10,236

**Estimated Number of Total Annual Responses:** 20,472

**Estimated Number of Annual Responses per Respondent:** 2

**Estimated Time Per Response:** 30 minutes

**Estimated Total Annual Burden Hours:** 10,236

Dated: January 7, 2009

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

[Published in the Federal Register, January 30, 2009 (74 FR 5669)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:**

**Customs Modernization Act Recordkeeping Requirements**

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60-Day Notice and request for comments; Extension of an existing collection of information: 1651-0076.

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

**DATES:** Written comments should be received on or before March 31, 2009, to be assured of consideration.

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

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

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

**Title:** Customs Modernization Act Recordkeeping Requirements

**OMB Number:** 1651-0076

**Form Number:** None

**Abstract:** This recordkeeping requirement is required to allow CBP to verify the accuracy of the claims made on the entry documents regarding the tariff status of imported merchandise, admissibility, classification/nomenclature, value and rate of duty applicable to the entered goods.

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

**Type of Review:** Extension (without change)

**Affected Public:** Businesses or other for-profit institutions

**Estimated Number of Respondents:** 4,695

**Estimated Average Annual Time Per Respondent:** 1,037 hours

**Estimated Total Annual Burden Hours:** 4,870,610

Dated: January 7, 2009

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

[Published in the Federal Register, January 30, 2009 (74 FR 5670)]

#### **AGENCY INFORMATION COLLECTION ACTIVITIES:**

##### **Importers of Merchandise Subject to Actual Use Provisions**

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60-Day Notice and request for comments; Extension of an existing collection of information: 1651-0032.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning Importer's of Merchandise Subject to Actual Use Provisions. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before April 3, 2009, to be assured of consideration.

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

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

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

**Title:** Importers of Merchandise Subject to Actual Use Provisions

**OMB Number:** 1651-0032

**Form Number:** None

**Abstract:** The Importers of Merchandise Subject to Actual Use Provision of the CBP regulations provides that certain items may be admitted duty-free such as farming implements, seeds, potatoes etc., providing the importer can prove these items were actually used as contemplated by law. The importer must maintain detailed records and furnish a statement of use.

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

**Type of Review:** Extension (without change)

**Affected Public:** Individuals, Businesses.

**Estimated Number of Respondents:** 12,000

**Estimated Number of Total Annual Responses:** 12,000

**Estimated Time Per Response:** 65 minutes

**Estimated Total Annual Burden Hours:** 13,000

Dated: January 7, 2009

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

[Published in the Federal Register, February 2, 2009 (74 FR 5846)]

## **AGENCY INFORMATION COLLECTION ACTIVITIES:**

### **Transfer of Cargo to a Container Station**

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60-Day Notice and request for comments; Extension of an existing collection of information: 1651-0096.

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

**DATES:** Written comments should be received on or before April 3, 2009, to be assured of consideration.

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

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

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

agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

**Title:** Transfer of Cargo to a Container Station

**OMB Number:** 1651-0096

**Form Number:** None

**Abstract:** Before the filing of an entry of merchandise for the purpose of breaking bulk and redelivery of the cargo, containerized cargo may be moved from the place of unloading, or may be received directly at the container station from a bonded carrier after transportation-in-bond. This also applies to loose cargo as part of containerized cargo. The container station operator may make a request for the transfer of a container intact to the station. This is pursuant to the requirements of 19 CFR 41, 19 CFR 42, 19 CFR 44, and 19 CFR 45.

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

**Type of Review:** Extension

**Affected Public:** Businesses or other for-profit institutions

**Estimated Number of Respondents:** 380

**Estimated Number of Annual Responses per Respondent:** 57

**Estimated Total Annual Responses:** 21,660

**Estimated Time per Response:** 7 minutes

**Estimated Total Annual Burden Hours:** 2,513

Dated: January 7, 2009

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

**AGENCY INFORMATION COLLECTION ACTIVITIES:****Country of Origin Marking Requirements for Containers or Holders**

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 60-Day Notice and request for comments; Extension of an existing collection of information: 1651-0057.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Country of Origin Marking Requirements for Containers or Holders. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before April 3, 2009, to be assured of consideration.

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

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

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

**Title:** Country of Origin Marking Requirements for Containers or Holders

**OMB Number:** 1651-0057

**Form Number:** None

**Abstract:** Containers or holders imported into the United States destined for an ultimate purchaser must be marked with the English name of the country of origin at the time of importation into Customs territory.

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

**Type of Review:** Extension (without change)

**Affected Public:** Business or other for-profit institutions

**Estimated Number of Respondents:** 250

**Estimated Number of Annual Responses per Respondent:** 40

**Estimated Number of Total Annual Responses:** 10,000

**Estimated Time Per Respondent:** 15 seconds

**Estimated Total Annual Burden Hours:** 41

Dated: January 7, 2009

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

[Published in the Federal Register, February 2, 2009 (74 FR 5847)]

Notice of Cancellation of Customs Broker License Due to Death of  
the License Holder

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

ACTION: General Notice

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the  
Code of Federal Regulations at section 111.51(a), the following individual  
Customs broker license and any and all permits have been  
cancelled due to the death of the broker:

| <u>Name</u> | <u>License #</u> | <u>Name Port</u> |
|-------------|------------------|------------------|
| David Meth  | 04820            | Los Angeles      |

DATED: January 15, 2009

DANIEL BALDWIN,  
*Assistant Commissioner,  
Office of International Trade.*

[Published in the Federal Register, February 2, 2009 (74 FR 5848)]

Notice of Cancellation of Customs Broker Licenses

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

ACTION: General Notice

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as  
amended, (19 USC 1641) and the Customs Regulations (19 CFR  
111.51), the following Customs broker licenses and all associated  
permits are cancelled without prejudice.

| <u>Name</u>                               | <u>License #</u> | <u>Issuing Port</u> |
|---|------------------|---------------------|
| Clayton International Forwarders,<br>Inc. | 14510            | Atlanta             |
| World Trade Cargo & Logistics             | 13327            | Dallas              |
| James O. Lindsey Co., Ltd.                | 07951            | Los Angeles         |
| Kashmira Vijaiyan                         | 16815            | Los Angeles         |
| Modawest International, Inc.              | 11605            | Los Angeles         |
| Rohde & Liesenfeld, Inc.                  | 10499            | New York            |
| Paul Martin Schlechter CHB, Inc.          | 04842            | New York            |

DATED: January 15, 2009

DANIEL BALDWIN,  
*Assistant Commissioner,  
Office of International Trade.*

[Published in the Federal Register, February 2, 2009 (74 FR 5848)]

DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS.  
*Washington, DC, February 4, 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 REVOCATION OF A RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF CERTAIN GREENHOUSE  
TUNNELS**

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

**ACTION:** Proposed revocation of a classification ruling letter and revocation of treatment relating to the classification of certain greenhouse tunnels.

**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 proposing to revoke a ruling letter relating to the classification of a certain greenhouse tunnels. CBP is also proposing to modify or revoke any treatment previously accorded by it to substantially identical merchandise.

**DATE:** Comments must be received on or before March 14, 2009.

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

**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, this notice advises interested parties that CBP is proposing to revoke a ruling letter pertaining to the classification of two greenhouse tunnels. Although in this notice, CBP is specifically referring to the revocation of Headquarters Ruling Letter (HQ) H011657, dated April 18, 2008 (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 the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to modify 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 HQ H011657, CBP determined that Visqueen polythene greenhouse tunnels were classifiable in heading 6306, HTSUS, which provides for "Tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; camping goods:". Since the issuance of that ruling, CBP has reviewed the classification of the greenhouse tunnels and has determined that the cited ruling is in error.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke HQ H011657 and is proposing to revoke or modify any other ruling not specifically identified, to reflect the classification of the greenhouse tunnels according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H035698, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

**DATED:** January 30, 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,  
HQ H011657  
April 18, 2008  
CLA-2 OT:RR:CTF:TCM H011657 HkP  
CATEGORY: Classification  
TARIFF NO.: 6306.22.9030

PORT DIRECTOR  
PORT OF PORTLAND  
U.S. CUSTOMS AND BORDER PROTECTION  
8337 NE Alderwood Road  
Portland, OR 97220

RE: Application for Further Review of Protest No. 2904-07-100028; greenhouse tunnels

DEAR PORT DIRECTOR:

This is our decision regarding the Application for Further Review of Protest no. 2904-07-100028, timely filed on behalf of Haygrove Limited ("Haygrove"), concerning the classification of greenhouse tunnels under the Harmonized Tariff Schedule of the United States ("HTSUS").

FACTS:

The entries at issue are described in the entry documents as "Haygrove multi-bay tunnels for flower and vegetable growing." Protestant has submit-

ted marketing information on Haygrove 3 and 4- Series tunnels to this office.

According to the submitted information, the Haygrove 3-Series is designed for sheltered sites where crops need low cost protection during spring, summer and early autumn. The 3-Series is used for four raised beds of strawberries, summer flowers and high value vegetable crops. Features include:

frame constructed using 35mm steel bay width from 5.5 m (18 ft.) up to 7.2 m (24 ft.) built on 1.5 m (5 ft.) or 2 m (6.5 ft.) legs Open-end kit strut system enabling full tractor access Wire bracing using top, leg and star wire systems All steel pre-galvanised both outside and inside the steel tube Visqueen polythene, shade net or insect net provided. □ The 4-Series is used by growers for five raised beds of strawberries, raspberries, high value flowers, salads, vegetables, ornamentals and nursery stock. Its features are similar to the 3-series but for the width of the bay, the height of the legs and the gauge of the steel.

Protestant attempted to enter the merchandise under subheading 9817.00.5000, HTSUSA, using the Remote Location Filed (RLF) program on May 31, 2006. CBP rejected the RLF entry on June 8, 2006, because subheading 9817.00.5000 is an actual use provision and actual use entries may not be filed using the RLF program. On that same date, the Port advised Protestant by means of the Entry/Summary Rejection Sheet that the entry could be brought into compliance by one of two methods:

The Electronic Entry could be revised to reclassify the goods appropriately within the first 97 chapters of the tariff and the applicable duties and fees paid, or The Electronic Entry could be deleted and an entry filed by a broker that is licensed to conduct customs business within the Port of Portland area.

Protestant did not respond to this notification. CBP personnel then emailed Protestant on June 14, 2006, as a follow up to the notice. After receiving no response, CBP issued a Notice of Action on July 14, 2006, proposing to deny the duty-free claim under heading 9817 and to reclassify the merchandise under subheading 6306.22.9030, HTSUSA. Again, Protestant did not respond to CBP. On August 28, 2006, CBP issued a Notice of Action notifying Protestant that the entry would be liquidated under subheading 6306.22.9030. CBP liquidated the entry on September 22, 2006.

ISSUE: What is the correct classification of the greenhouse tunnels?

#### LAW AND ANALYSIS:

Initially, we note that the matter protested is protestable under 19 U.S.C. § 1514(a)(2) as a decision on classification. The protest was timely filed, within 90 days of liquidation of the first entry for entries made before December 18, 2004, and within 180 days of liquidation of the first entry for entries made on or after December 18, 2004. (Miscellaneous Trade and Technical Corrections Act of 2004, Pub.L. 108-429, § 2103(2)(B)(ii), (iii) (codified as amended at 19 U.S.C. § 1514(c)(3) (2006)).

Further Review of Protest No. 2704-05-102242 was properly accorded to protestant pursuant to 19 C.F.R. § 174.24 because the decision against which the protest was filed is alleged to be inconsistent with a ruling of the Commissioner of Customs or his designee. Specifically, Protestant alleges the action of the Port is inconsistent with Headquarters Ruling Letter ("HQ") 956727, dated October 25, 1994, in which CBP classified structural steel components of a floating dock as other structures of iron or steel.

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 2006 HTSUS provisions under consideration are as follows:

6306 Tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; camping goods:

- \* \* \* Tents:
- \* \* \* 6306.22 Of synthetic fibers:
- \* \* \* 6306.22.90 Other . . . . .
- \* \* \* 6306.22.9030 Other (669) . . . . .

7308 Structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge sections, lock gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns) of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel:

- \* \* \* 7308.90 Other:
- \* \* \* Other:
- \* \* \* 7308.90.95 Other . . . . .
- \* \* \* 7308.90.9590 Other . . . . .

9817.00.5000 Machinery, equipment and implements to be used for agricultural or horticultural purposes . . . . .

Subheading 9817.00.5000 is located in Subchapter XVII of Chapter 98, HTSUS. U.S. Note 2 to that Subchapter provides, in relevant part:

The provisions of heading 9817.00.50 and 9817.00.60 do not apply to:

- \* \* \* (e) articles of textile material[.]

The Port classified the greenhouse tunnels in subheading 6306.22.9030, HTSUSA, which provides for other tents of synthetic fibers, based on product descriptions on the importer's and supplier's websites. Note 1 to Chapter 63 states that "Subchapter 1 applies only to made up articles, of any textile fabric." Thus, we must first determine whether the greenhouse is a made up article of textile fabric.

As previously noted, the Port concluded that the polyethylene is formed from fabric woven from strips not measuring over 5 mm in width. Note 1(g) to Section XI, which contains Chapter 63, excludes from the section, among other things, "strip or the like (for example, artificial straw) of an apparent width exceeding 5 mm of plastics (chapter 39)". Given that the polyethylene does not exceed 5 mm in width, the greenhouse tunnel which is formed in part from the polyethylene is not excluded from classification in Section XI as a textile article, or from Chapter 63, HTSUS.

Heading 6306, HTSUS, provides for, in relevant part, tents. The Explanatory Notes to heading 6306 explain, in pertinent part:

Tents are shelters made of lightweight to fairly heavy fabrics of man-made fibres, cotton or blended textile materials, whether or not coated, covered or laminated, or of canvas. They usually have a single or double roof and sides or walls (single or double), which permit the formation of an enclosure. The heading covers tenets of various sizes and shapes, e.g., marquees and tents for military, camping (including backpack tents), circus, beach use. They are classified in this heading, whether or not they are presented complete with their tent poles, tent pegs, guy ropes or other accessories.

CBP has previously construed the class or kind of merchandise for which heading 6306, HTSUS, provides and has found, with regard to “tents”, that the heading is broad enough to encompass a variety of tents so long as they provide minimal protection from the elements. See Headquarters Ruling Letter (“HQ”) 962126, dated June 11, 1999. Specifically, with regard to greenhouses, which are used to protect plants, we have found that “the tariff does not restrict or qualify the nature of the subject which is to be protected from the elements; all that is required is that the structure itself have the capacity to provide minimum protection from the elements.” *Id.* Likewise, in this instance, we find that the greenhouse is classified under heading 6306, HTSUS, because it provides protection to plants from the elements. Furthermore, because the greenhouse is a textile article, we find that it is excluded from classification under heading 9817, HTSUS, pursuant to U.S. Note 2 to Subchapter XVII of Chapter 98. CBP has previously classified greenhouses comprised of metal frames and coverings of fabric produced by weaving polyethylene strip and coated or laminated with polyethylene in subheading 6306.22.9030, HTSUSA. See, for example, HQ 982129, dated June 11, 1999, and HQ 964230, dated September 28, 2001. Finally, we address Protestant’s arguments that the merchandise at issue should be classified under subheading 7308.90.9590, HTSUSA, because it is similar to merchandise classified under that subheading in HQ 956727 (October 25, 1994). In HQ 956727, CBP classified galvanized steel structural components of floating docks in subheading 7308.90.95, HTSUSA. Given that the floating dock therein was composed entirely of steel components, it is distinguishable from the instant merchandise which consists of both textile and steel components. Moreover, we note that HQ 956727 may be inconsistent with CBP current position on the classification of the components of floating docks and may be subject to revocation.

**HOLDING:**

By application of GRI 1, the greenhouse tunnels are classified under heading 6306, HTSUS. They are specifically provided for in subheading 6306.22.9030, HTSUSA, which provides for: “Tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; camping goods: Tents: Of synthetic fibers: Other: Other. The 2006 column one, general rate of duty is 8.8% ad valorem and the quota category is 669.□ Since the rate of duty under the classification indicated above is the same as the liquidated rate, you are instructed to deny the protest in full. In accordance with Sections IV and VI of the CBP Protest/Petition Processing Handbook (HB 3500–08A, December 2007, pp. 24 and 26), you are to mail this decision, together with the CBP Form 19, to the protestant no later than 60 days from the date of this letter. No later than 60 days from the date of this letter, the Office of

International Trade, Regulations and Rulings will make the decision available to CBP personnel, and to the public on the CBP homepage on the World Wide Web at [www.cbp.gov](http://www.cbp.gov), by means of the Freedom of Information Act, and other methods of public distribution.

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

[ATTACHMENT B]

HQ H035968  
CLA-2: OT:RR:CTF:TCM H035968 KSH  
CATEGORY: Classification  
TARIFF NO.: 3920.10.00; 9817.00.50

GREGORY S. MCCUE, ESQ.  
LAURA R. ARDITO, ESQ.  
STEPTOE AND JOHNSON LLP  
1330 Connecticut Avenue N.W.  
Washington, DC 20036-1795

RE: Revocation of HQ H011657, dated April 18, 2008; Classification of greenhouse tunnels.

DEAR MR. MCCUE AND MS. ARDITO:

This is in reply to your correspondence on behalf of your client, Haygrove Inc., dated July 29, 2008, in which you have requested reconsideration of Headquarters Ruling Letter (HQ) H011657, issued on April 18, 2008, concerning the classification of Visqueen polythene greenhouse tunnels under the Harmonized Tariff Schedule of the United States (HTSUS). The greenhouse tunnels were previously classified in HQ H011657, in heading 6306, HTSUS, which provides for "Tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; camping goods." Samples of the Visqueen polythene coverings have been provided for review.

In your request for reconsideration, you have provided additional information that the greenhouse tunnel coverings are composed entirely of Visqueen polythene. Accordingly, CBP has reviewed the classification of the greenhouse tunnels and has determined that the cited ruling is in error.

HQ H011657 is a Headquarters ruling on Protest 2904-07-100028. In accordance with *San Francisco Newspaper Printing Co. v. United States*, 9 CIT 517, 620 F. Supp. 738 (1985), the liquidation of the entries covering the merchandise which was the subject of Protest 2904-07-100028 was final on both the protestant and CBP. Therefore, this decision has no effect on those entries.

FACTS:

The merchandise was described in HQ H011657 as follows:

The entries at issue are described in the entry documents as "Haygrove multi-bay tunnels for flower and vegetable growing." Protestant has submitted marketing information on Haygrove 3 and 4- Series tunnels to this office.

According to the submitted information, the Haygrove 3-Series is designed for sheltered sites where crops need low cost protection during spring, summer and early autumn. The 3-Series is used for four raised beds of strawberries, summer flowers and high value vegetable crops. Features include:

- frame constructed using 35mm steel
- bay width from 5.5 m (18 ft.) up to 7.2 m (24 ft.)
- built on 1.5 m (5 ft.) or 2 m (6.5 ft.) legs
- Open-end kit strut system enabling full tractor access
- Wire bracing using top, leg and star wire systems
- All steel pre-galvanised both outside and inside the steel tube
- Visqueen polythene, shade net or insect net provided.

The 4-Series is used by growers for five raised beds of strawberries, raspberries, high value flowers, salads, vegetables, ornamentals and nursery stock. Its features are similar to the 3-series but for the width of the bay, the height of the legs and the gauge of the steel.

The greenhouse tunnels use a Visqueen polythene covering which is a polyethylene film. The film is included in the greenhouse tunnel kits as large rolls of 800m in various widths ranging from 8m to 12m. There are no holes or grommets in the rolls. The film is clipped onto the tunnels' steel frames. One of two types of Visqueen polythene are included in the tunnel kits, to wit: (1) High UV Luminance (Luminance THB) and (2) High UV Clear (UVI). Each type is imported in measurements of either 150 or 180 microns ( $\mu$ ). Luminance THB is a thermal heat barrier and a 90% diffusing polythene. UVI is used where crops need rain, hail, wind and frost protection and the grower is not looking to manipulate the photo-spectrum that enters the greenhouse. UV films have specific calibrated levels of UV to enable them to be guaranteed for 3 seasons irrespective of the UV intensity of the geographical area.

#### ISSUE:

Whether the greenhouse tunnels are classified in heading 3920, HTSUS, as other sheets of plastic, heading 6306, HTSUS, as tents, or heading 7308, HTSUS, as structures of steel.

Whether the greenhouse tunnels are eligible for duty-free treatment into the United States under subheading 9817.00.50, 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 2009 HTSUS provisions at issue are as follows:

- 3920 Other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials:
- 6306 Tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; camping goods:

7308 Structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge sections, lock gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns) of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel:

9817.00.5000 Machinery, equipment and implements to be used for agricultural or horticultural purposes . . . . .

Note 10 to Chapter 39, HTSUS, provides:

In headings 3920 and 3921, the expression “plates, sheets, film, foil and strip” applies only to plates, sheets, film, foil and strip (other than those of chapter 54) and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use).

The term “sheets” is not defined in the text of the HTSUS or the Explanatory Notes. When terms are not so defined, they are construed in accordance with their common and commercial meaning. Nippon Kogasku (USA), Inc. v. United States, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. C.J. Tower & Sons v. United States, 69 CCPA 128, 673 F.2d 1268 (1982).

Webster’s Third New International Dictionary (Webster’s) (1986) defines “sheeting,” in relevant part, as “1: material in the form of sheets or suitable for forming into sheets: as . . . b: material (as a plastic) in the form of a continuous film . . .” Id. at 2092. Webster’s defines “sheet,” in relevant part, as “3 a: a broad stretch or surface of something that is usu. thin in comparison to its length and breadth. . . .” Id. at 2091. The Oxford English Dictionary (2d Ed. 1989) defines “sheet” as “9. a. A relatively thin piece of considerable breadth of a malleable, ductile, or pliable substance.” Id. at 224.

The Court of International Trade has also examined the term sheet in various cases. In 3G Mermet Fabric Corp. v. United States, 135 F. Supp. 2d 151, 156 (2001), the Court defined “sheet” as a “material in the form of a continuous stem covering or coating.”

In Sarne Handbags Corp. v. United States, 100 F. Supp. 2d 1126, 1134 (2000), the Court defined the term “sheeting” as follows:

[T]he common meaning of “sheeting” is material in the form of or suitable for forming into a broad surface of something that is unusually thin, or is a material in the form of a continuous thin covering or coating.

Note 1 to Chapter 63 states that “Subchapter 1 applies only to made up articles, of any textile fabric.”

The provisions of heading 9817.00.50 and 9817.00.60 do not apply to:

\* \* \* (e) articles of textile material[.]

As noted in HQ H011657, numerous attempts were made to obtain a swatch of the polyethylene material, however, none were successful. In the absence of evidence to the contrary, it was presumed that the polyethylene

was formed from fabric woven from strips not measuring over 5mm in width. Accordingly, the merchandise was not excluded from classification in Section XI as a textile article, or from Chapter 63, HTSUS.

However, in the request for reconsideration, new evidence has been provided that the polyethylene sheeting is not strip. Rather, it is 800m rolls of varying lengths of solid, non-woven polyethylene. Insofar as the Visqueen polythene is not a textile material, it is excluded from Chapter 63, HTSUS, by Note 1 to Chapter 63, HTSUS.

The Visqueen polythene which is imported in continuous rolls meet the terms of Note 10 to Chapter 39, HTSUS and the definitions of sheet or sheeting as set forth in 3M Mermet Fabric Corp. and Sarne Handbags Corp., *supra*.

The greenhouse tunnels are prima facie classifiable in two headings, each of which describes part only of the good. Under GRI 3(a), each heading is deemed to be equally specific. Under GRI 3(b), the greenhouse tunnels are composite goods made up of different materials and/or components which are to be classified as if consisting only of that material or component which imparts the essential character to the whole. The Visqueen polythene covering is classified in heading 3920, HTSUS and the steel frame in heading 7308, HTSUS.

In essential character determinations, CBP may consider the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the good. Other factors may be considered relevant, depending on the particular merchandise. In this case, the steel frame predominates by weight. In addition, the steel provides strength and support to the greenhouse tunnels and gives form and shape to them. However, the nature of the Visqueen polythene covering and its role in relation to the use of the greenhouse tunnels are equally compelling factors. Considering bulk or size, the covering clearly predominates over the steel frame. More importantly, however, the greenhouse tunnels are designed to provide low cost protection for crops. This is how it is marketed and why users purchase it. The Visqueen polythene covering is the component that affords crops protection from inclement weather. For these reasons, we conclude that in this case it is the Visqueen polythene covering whose role is critical and which imparts the essential character to the greenhouse tunnels. Accordingly, the greenhouse tunnels are classified in heading 3920, HTSUS.

The tariff provision for machinery, equipment and implements to be used for agricultural or horticultural purposes, subheading 9817.00.50, HTSUS, is an actual use provision. See HQ 083930, dated May 19, 1989. In order for this machinery to fall within the special provisions of Chapter 98, HTSUSA, the following three-part test must be met:

- (1) The article in question must not be excluded from the heading under Section XXII, Chapter 98, Subchapter XVII, U.S. Note 2, HTSUSA.
- (2) The terms of the headings must be met in accordance with GRI 1, HTSUSA, which provides that classification is determined according to the terms of the headings and any relative section or chapter notes.
- (3) The article must comply with the actual use provision requirements of sections 10.131–10.139, Customs Regulations (19 CFR 10.131–10.139).

As stated, the greenhouse tunnels are provided for under heading 3920, HTSUS. This heading is not excluded from classification in heading 9817.00.50, HTSUS, by operation of Section XXII, Chapter 98, Subchapter XVII, U.S. Note 2.

The second part of the test requires the greenhouse tunnels to be “machinery”, “equipment” or “implements” used for “agricultural or horticultural purposes”. As such, the initial determination to be made is what agricultural or horticultural pursuit is in question. The greenhouse tunnels assist in cultivating fruits, vegetables and flowers in a controlled environment. This is an agricultural pursuit.

The third part of the test is that importers meet the actual use requirements of section 10.131 through 10.139, CBP Regulations [19 CFR 10.131 through 10.139]. If these requirements are satisfied, the third part of the test will be met and the subject merchandise will qualify for duty-free entry as agricultural or horticultural equipment, under Chapter 98, HTSUS.

**HOLDING:**

By application of GRI 3, the Series 3 and Series 4 Haygrove Tunnel systems are classified in heading 3920, HTSUS. They are specifically provided for in subheading 3920.10.00, HTSUS, which provides for “Other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other material: of polymers of ethylene.” The column one, general rate of duty is 4.2% *ad valorem*. The greenhouse tunnels are eligible for duty-free treatment under heading 9817.00.50, HTSUS, provided the actual use requirements of section 10.131–10.139, CBP Regulations [19 CFR 10.131–10.139], are satisfied.

**EFFECT ON OTHER RULINGS:**

HQ H011657, dated April 18, 2008, is revoked.

MYLES B. HARMON,  
*Director,*

*Commercial and Trade Facilitation Division.*

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

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

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

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

identical transactions. Comments are invited on the correctness of the intended actions.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 13, 2009.

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

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. § 1625 (c)(1)), as amended by section 623 of Title VI, a notice was published in the Customs Bulletin, Vol. 43, No. 2, on January 2, 2009, proposing to modify one ruling letter pertaining to the tariff classification of metal balusters. No comments were received in response to the notice. Although the notice refers specifically to the modification of New York Ruling Letter (NY) C89444, dated July 15, 1998, this modification will cover any rulings on the merchandise which may exist but may not have 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 subject merchandise 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.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY C89444 and any other ruling not specifically identified, to reflect the proper classification of the merchandise according to the analysis contained in proposed Headquarters Ruling Letter H044637 (Attachment). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice.

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

DATED: February 2, 2009

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
**HQ H044637**  
February 2, 2009  
**CLA-2 OT: RR: CTF: TCM H044637 RM**  
**CATEGORY: Classification**  
**TARIFF NO.: 7308.90.95**

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

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

DEAR MR. STEWART:

This is in reference to New York Ruling Letter ("NY") C89444, dated July 15, 1998, issued to you on behalf of Woodmark International Inc., concerning the tariff classification of metal balusters imported from China and of

wooden balusters from Indonesia. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the metal balusters under heading 7326, Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “Other articles of iron or steel.” We have reviewed NY C89444 and found this classification to be incorrect. It is now our position that the metal balusters are classified under heading 7308, HTSUS, which provides for “parts of structures . . . of iron or steel.” The classification of the wooden balusters is not affected by this decision.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification was published in the *Customs Bulletin*, Volume 43, No. 2, on January 2, 2009. No comments were received in response to this notice.

**FACTS:**

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

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

**ISSUE:**

What is the proper tariff classification of the metal balusters under the HTSUS?

**LAW AND ANALYSIS:**

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

The 2009 HTSUS provisions under consideration are as follows:

7308 Structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge sections, lock gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns) of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel:

7326 Other articles of iron or steel:

Heading 7308, HTSUS, provides for “Structures . . . and parts of structures . . . of iron or steel.” The term “structure” is not defined in the tariff or in the legal notes. The Court examined the meaning of the term “structure” in *S.G.B. Steel Scaffolding & Shoring Co., Inc. v. United States*, 82 Cust. Ct. 197, 211 (Cust. Ct. 1979) and determined that “there is no precise definition of the term ‘structure,’” but noted that the common meaning of tariff descriptions lacking precise definitions has frequently been applied by the courts. When a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. See

Rocknel Fastener, Inc. v. United States, 267 F.3d 1354, 1356 (Fed. Cir. 2001). “To ascertain the common meaning of a term, a court may consult ‘dictionaries, scientific authorities, and other reliable information sources’ and ‘lexicographic and other materials.’” Id. (quoting C.J. Tower & Sons of Buffalo, Inc. v. United States, 673 F.2d 1268, 1271, 69 Cust. Ct. 128 (Cust. Ct. 1982); Simod Am. Corp. v. United States, 872 F.2d 1572, 1576 (Fed. Cir. 1989)). In addition, the Explanatory Notes of the Harmonized Commodity Description and Coding System (“ENs”) while not binding law, offer guidance as to how tariff terms are to be interpreted. See Len-Ron Mfg. Co. v. United States, 334 F.3d 1304, 1309 (Fed. Cir. 2003) (noting that Explanatory Notes are “intended to clarify the scope of HTSUS subheadings and to offer guidance in their interpretation”).

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

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

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

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

Merriam-Webster’s Dictionary Online, available at [www.m-w.com](http://www.m-w.com):

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

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

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

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

**HOLDING:**

In accordance with GRI 1, the metal balusters are classified under heading 7308, specifically in subheading 7308.90.95, HTSUS, which provides for: "Structures . . . and parts of structures (for example . . . balustrades . . . ) of iron or steel; . . . : Other: Other: Other." The 2009 column one, general rate of duty is: Free.

Duty rates are provided for convenience only and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

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

Gail A. Hamill for MYLES B. HARMON,  
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