

U.S. Customs and Border Protection



PROPOSED REVOCATION OF TREATMENT RELATING TO THE PROCESS OF PITTING AND HYDRATING PRUNES FOR DRAWBACK PURPOSES

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

ACTION: Notice of proposed revocation of treatment relating to the manufacture or production process of hydrating and pitting prunes for drawback purposes.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to revoke the treatment previously accorded by CBP to substantially similar transactions relating to the manufacture or production process of hydrating and pitting prunes for drawback purposes. Comments are invited on the correctness of the proposed action.

DATES: Comments must be received on or before May 10, 2013.

ADDRESSES: Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street, NE, 10th Floor, Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 90 K Street, NE, Washington, D.C. 20002 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: Gail Kan, Entry Process and Duty Refunds Branch: (202) 325–0346.

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)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625 (c)(2)), CBP proposes to revoke the treatment previously accorded by it to substantially similar transactions relating to the manufacture or production process of hydrating and pitting prunes for purposes of 19 U.S.C. § 1313(b) drawback. 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 may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

CBP has previously treated the process of hydrating and pitting prunes as a manufacture or production process for purposes of 19 U.S.C. § 1313(b) drawback. Pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any such treatment previously accorded by it to substantially identical transactions in order to reflect the proper determination that the process of hydrating and pitting prunes is not a manufacture or production for purposes of 19 U.S.C. § 1313(b) drawback. See Attachment, proposed Headquarters Ruling Letter H128998.

Before taking this action, consideration will be given to any written comments timely received.

Dated: March 27, 2013

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H128998

DRA-4

OT:RR:CTF:ER H128998 GGK

CATEGORY: Drawback

MS. KAREN CHEUNG
DRAWBACK CHIEF
PORT OF SAN FRANCISCO
U.S. CUSTOMS AND BORDER PROTECTION
555 BATTERY STREET
SAN FRANCISCO, CA 94111-2316

RE: Internal Advice; Unused Merchandise Substitute Drawback

DEAR MS. CHEUNG:

This is in response to your request for internal advice dated, October 6, 2010, submitted pursuant to 19 C.F.R. § 177.11. The request seeks guidance on whether pitting and hydrating prunes is considered a manufacture for purposes of unused merchandise drawback. Our response follows.

FACTS:

Sunsweet Growers, Inc. (“Sunsweet Growers”) imports prunes. When ripe, the prunes are picked, washed, and dried to a moisture level of approximately 18 percent. They are then graded into various sizes in preparation for processing and packaging.

On January 21, 2012 we corresponded with Sunsweet Growers to inquire more into its prune operations. It provided our office with the following information regarding its process. Upon importation into the United States, Sunsweet Growers places the prunes in a steamer or cooker for thirty minutes to be hydrated and to reach a moisture level of approximately 25 percent. The prunes are then pitted and placed under a laser scanner to detect pit or pit fragments that may remain. The nutritional content of the imported prunes is the same as when the prunes are hydrated and pitted.

Sunsweet Growers argues that hydrating and pitting its prunes should qualify as unused merchandise pursuant to 19 U.S.C. § 1313(j)(2) drawback. You inquired whether this operation is a manufacture for purposes of drawback.

ISSUE:

Whether hydrating prunes from 18 to 25 percent moisture and pitting them is a manufacture or production per 19 C.F.R. § 191.2.

LAW AND ANALYSIS:

Sunsweet Growers argues that hydrating and pitting its prunes should qualify as unused merchandise pursuant to 19 U.S.C. § 1313(j)(2) drawback. To qualify as unused merchandise there cannot be a manufacture or production. We determined that Sunsweet Growers’ hydrating and pitting process is not a “manufacture,” because the prunes are not fitted for a particular use, nor is there a change in name, character or use.

To qualify for unused merchandise drawback per 19 U.S.C. § 1313(j)(2), the exported merchandise cannot be “used” in the United States. The unused

merchandise drawback statute specifies that any operations not amounting to manufacture or production shall not be treated as a use for purposes of determining a drawback refund. *See* 19 U.S.C. § 1313(j)(3). The enumerated operations in the statute are: “testing, cleaning, repacking, inspecting, sorting, refurbishing, freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing components, relabeling, disassembling, and unpacking.” *Id.* However, Sunsweet Growers is not performing any of the enumerated operations in the statute.

CBP regulation, 19 C.F.R. § 191.2(q) further defines “manufacture or production” within the drawback context as follows:

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

The definition in Section 191.2(q) reflects the holding in Customs Service Decision (“C.S.D.”) 82–67, dated December 22, 1981. In that decision, legacy Customs considered whether certain operations performed on imported cotton towels constituted a manufacture or production for purposes of manufacturing drawback. Those operations included the weighing, inspecting, trimming, folding, spraying, and wrapping the towels in polyethylene film for use by airline passengers. In the analysis, the decision discusses the judicial test established by the Supreme Court in *Anheuser-Busch v. U.S.*, 207 U.S. 556, 562 (1907). In that case, the Court held:

Manufacture implies change, but every change is not manufacture, and yet every change in an article is the result of treatment, labor and manipulation. But something more is necessary There must be a transformation; a new and different article must emerge, having a different name, character, or use.

In addition, C.S.D. 82–67 adopts the “fit for a particular use” standard established by the former Court of Customs and Patent Appeals in *United States v. International Paint Co., Inc.*, 35 CCPA 87 (1948). C.S.D. 82–67 states that the decision in *International Paint*:

appears to support Customs more recent interpretation of “manufacture” as a process brought about by significant investment of capital and labor to produce articles or commodities which, despite the fact they are in some cases much the same as their conditions prior to processing, have been made suitable for a particular intended use. In determining what constitutes a manufacture, we have held in our administrative rulings that if an operation involves special treatment of merchandise to obtain certain properties required for a specific use by the entity performing the operation or his customers and the operation involves significant capital and labor expenditure, then that operation is a manufacture or production.

(emphasis added). Thus, in order to determine whether an article is one that is manufactured, it is necessary to compare the imported merchandise with

the finished article. If the finished article has been rendered fit for a particular use, or is a new and different article having a distinctive name, character or use, vis-a-vis the imported merchandise, a manufacture or production has taken place.

In *Washington International Insurance Co. v. United States*, stainless steel scrap was imported. 395 F.3d 1258 (Fed. Cir. 2005). After importation the stainless steel scrap was tested, sorted, reduced in size, cleaned and pressed into bales or briquettes for exportation. The court concluded that between the importation of the stainless steel scrap and the exportation of the bales or briquettes no manufacture or process of manufacture within the meaning of subheading 806.30, Tariff Schedules of the United States, had taken place because such manipulation of the steel scrap did not “transform a raw material into a final product.” *Id.* at 1262. This conclusion was based on the fact that the steel scrap was not changed, i.e., despite the sorting, cleaning and changing its size and form, the stainless steel scrap was still, after the processing stainless steel scrap. The stainless steel scrap in bales or briquettes were not new and different articles and did not have a distinctive name, character or use as compared with the imported scrap.

Similarly, Sunsweet Grower’s procedure does not transform the prunes into a different product. They are imported as prunes and exported as prunes. The prunes are still named prunes after the hydration and pitting. Moreover, their character or use has not changed either. In prior Headquarters ruling, C.S.D. 86–28 (HRL 729365) (June 26, 1986), legacy Customs ruled that fresh broccoli processed by cutting to length, quartering or spearing, steam blanching for six minutes, freezing solid and packaging did not change its use. In that case, one of the many operations was steaming the broccoli and it was not held to change its use. *See* HQ 967925 (February 28, 2006).

Similarly, in this case, steaming and pitting do not make the prunes “fitted for a particular use” as the use remains for human consumption. Moreover, in HQ 563211 (April 26, 2005) we held that rehydrating carrots from 10–15 percent, pressure heating, vacu-puffing, screening and electronically sorting them, did not change their use when determining country of origin. Like the carrots, the prunes undergo hydrating that does not make them fit for a particular use. The prunes are then also pitted. This procedure is like the ones listed in HQ 563211 or HRL 729365, which are intended to make the produce more desirable to the consumer and not to make it fit for a particular use.

Both the imported natural prunes and the hydrated pitted prunes are for human consumption and share the same nutritional content. Therefore, the hydrated pitted prunes have not been made fit for a particular use. Thus, Sunsweet Growers hydrating and pitting procedure is not a manufacture or production for purposes of drawback and 19 C.F.R § 191.2.

HOLDING:

Under the facts described herein, and in response to the request for internal advice, we find that Sunsweet Growers proposed procedure of rehydrating and pitting its prunes does not reach the level of manufacture or production for drawback purposes.

You are to mail this decision to counsel for the importer no later than 60 days from the date of this letter. On that date, the Office of International Trade will make the decision available to CBP personnel, and to the public on the Customs Home Page on the World Wide Web at www.cbp.gov, by means of the Freedom of Information Act, and other methods of public distribution.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

ACCREDITATION AND APPROVAL OF SGS NORTH AMERICA, INC., AS A COMMERCIAL GAUGER AND LABORATORY

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

ACTION: Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that SGS North America, Inc., has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of August 1, 2012.

DATES: *Effective Dates:* The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on August 1, 2012. The next triennial inspection date will be scheduled for August 2015.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that SGS North America, Inc., 925 Corn Product Road, Corpus Christi, TX 78409, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested.

Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. http://cbp.gov/linkhandler/cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.

Dated: March 19, 2013.

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, March 27, 2013 (78 FR 18620)]

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**ACCREDITATION AND APPROVAL OF SGS NORTH
AMERICA, INC., AS A COMMERCIAL GAUGER AND
LABORATORY**

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

ACTION: Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that SGS North America, Inc., has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of August 30, 2012.

DATES: *Effective Dates:* The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on August 30, 2012. The next triennial inspection date will be scheduled for August 2015.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that SGS North America, Inc., 11729 Port Road, Seabrook, TX 77586, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or

approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. http://cbp.gov/linkhandler/cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.

Dated: March 19, 2013.

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, March 28, 2013 (78 FR 19000)]



**ACCREDITATION AND APPROVAL OF AMSPEC
SERVICES, LLC, AS A COMMERCIAL GAUGER AND
LABORATORY**

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

ACTION: Notice of accreditation and approval of AmSpec Services, LLC, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec Services, LLC, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of September 21, 2012.

DATES: *Effective Dates:* The accreditation and approval of AmSpec Services, LLC, as commercial gauger became effective on January 26, 2011 and as a commercial laboratory on September 21, 2012. The next triennial inspection date will be scheduled for January 2014.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, AmSpec Services, LLC, 1906 Suntide Rd, Corpus Christi, TX 78409, has been approved to gauge and accredited to test petroleum and petroleum

products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. http://cbp.gov/linkhandler/cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.

Dated: March 18, 2013.

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, March 26, 2013 (78 FR 18362)]



**ACCREDITATION AND APPROVAL OF SGS NORTH
AMERICA, INC., AS A COMMERCIAL GAUGER AND
LABORATORY**

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

ACTION: Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that SGS North America, Inc., has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of November 1, 2012.

DATES: *Effective Dates:* The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on November 1, 2012. The next triennial inspection date will be scheduled for November 2015.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific

Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that SGS North America, Inc., 1084 West Lathrop Ave., Savannah, GA 31415, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. http://cbp.gov/linkhandler/cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.

Dated: March 19, 2013.

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, March 28, 2013 (78 FR 18999)]