Bureau of Customs and Border Protection

CBP Decisions

(CBP Dec. 04–12)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR MARCH, 2004

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in CBP Decision 04–11 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): None

Norway krone:

March 2, 2004	$0.140203
March 3, 2004	.140040
March 4, 2004	.140984
March 5, 2004	.142878
March 6, 2004	.142878
March 7, 2004	.142878
March 10, 2004	.141103
March 11, 2004	.143010

South Africa rand:

March 3, 2004	$0.144509

Sweden krona:

March 2, 2004	$0.131709
March 3, 2004	.130830
March 12, 2004	.131666
March 13, 2004	.131666
March 14, 2004	.131666
March 15, 2004	.132415
March 17, 2004	.132048
March 24, 2004	.131562
March 25, 2004	.131165
March 26, 2004	.130514

FOREIGN CURRENCIES—Variances from quarterly rates for March 2004 (continued):

Sweden krona: (continued):

March 27, 2004	.130514
March 28, 2004	.130514
March 29, 2004	.131053
March 30, 2004	.131718
March 31, 2004	.132450

Switzerland franc:

March 3, 2004	$0.766989

Venezuela bolivar:

March 1, 2004	$0.000521
March 2, 2004	.000521
March 3, 2004	.000521
March 4, 2004	.000521
March 5, 2004	.000521
March 6, 2004	.000521
March 7, 2004	.000521
March 8, 2004	.000521
March 9, 2004	.000521
March 10, 2004	.000521
March 11, 2004	.000521
March 12, 2004	.000521
March 13, 2004	.000521
March 14, 2004	.000521
March 15, 2004	.000521
March 16, 2004	.000521
March 17, 2004	.000521
March 18, 2004	.000521
March 19, 2004	.000521
March 20, 2004	.000521
March 21, 2004	.000521
March 22, 2004	.000521
March 23, 2004	.000521
March 24, 2004	.000521
March 25, 2004	.000521
March 26, 2004	.000521
March 27, 2004	.000521
March 28, 2004	.000521
March 29, 2004	.000521
March 30, 2004	.000521
March 31, 2004	.000521

Dated: April 1, 2004

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.

(CBP Dec. 04–13)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR MARCH, 2004

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): None

European Union euro:

March 1, 2004	$1.243100
March 2, 2004	1.221200
March 3, 2004	1.208800
March 4, 2004	1.222500
March 5, 2004	1.240100
March 6, 2004	1.240100
March 7, 2004	1.240100
March 8, 2004	1.237100
March 9, 2004	1.242800
March 10, 2004	1.222600
March 11, 2004	1.226800
March 12, 2004	1.219100
March 13, 2004	1.219100
March 14, 2004	1.219100
March 15, 2004	1.224300
March 16, 2004	1.227000
March 17, 2004	1.219700
March 18, 2004	1.239200
March 19, 2004	1.226900
March 20, 2004	1.226900
March 21, 2004	1.226900
March 22, 2004	1.236800
March 23, 2004	1.231100
March 24, 2004	1.221300
March 25, 2004	1.217000
March 26, 2004	1.209200
March 27, 2004	1.209200
March 28, 2004	1.209200
March 29, 2004	1.214100
March 30, 2004	1.220200
March 31, 2004	1.229200

South Korea won:

March 1, 2004	$0.000848
March 2, 2004	.000852
March 3, 2004	.000849
March 4, 2004	.000854
March 5, 2004	.000853

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly list for March 2004 (continued):

South Korea won: (continued):

March 6, 2004	.000853
March 7, 2004	.000853
March 8, 2004	.000852
March 9, 2004	.000853
March 10, 2004	.000854
March 11, 2004	.000854
March 12, 2004	.000847
March 13, 2004	.000847
March 14, 2004	.000847
March 15, 2004	.000851
March 16, 2004	.000854
March 17, 2004	.000857
March 18, 2004	.000864
March 19, 2004	.000864
March 20, 2004	.000864
March 21, 2004	.000864
March 22, 2004	.000861
March 23, 2004	.000862
March 24, 2004	.000866
March 25, 2004	.000864
March 26, 2004	.000864
March 27, 2004	.000864
March 28, 2004	.000864
March 29, 2004	.000864
March 30, 2004	.000867
March 31, 2004	.000872

Taiwan N.T. dollar:

March 1, 2004	$0.030039
March 2, 2004	.030030
March 3, 2004	.030012
March 4, 2004	.030003
March 5, 2004	.030048
March 6, 2004	.030048
March 7, 2004	.030048
March 8, 2004	.029985
March 9, 2004	.030048
March 10, 2004	.029985
March 11, 2004	.030048
March 12, 2004	.029922
March 13, 2004	.029922
March 14, 2004	.029922
March 15, 2004	.029940
March 16, 2004	.030021
March 17, 2004	.030075
March 18, 2004	.030184
March 19, 2004	.030102
March 20, 2004	.030102
March 21, 2004	.030102
March 22, 2004	.030111
March 23, 2004	.030075

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly list for March 2004 (continued):

Taiwan N.T. dollar: (continued):

March 24, 2004	.030157
March 25, 2004	.030130
March 26, 2004	.030084
March 27, 2004	.030084
March 28, 2004	.030084
March 29, 2004	.030166
March 30, 2004	.030221
March 31, 2004	.030303

Dated: April 1, 2004

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.

(CBP Dec. 04–14)

CIE C 14/04
LIQ–03–01–RR:OO:CI

RE: SECTION 159.34 CFR

SUBJECT: CERTIFIED RATES OF FOREIGN EXCHANGE: SECOND QUARTER, 2004

LISTED BELOW ARE THE BUYING RATES CERTIFIED FOR THE QUARTER TO THE SECRETARY OF THE TREASURY BY THE FEDERAL RESERVE BANK OF NEW YORK UNDER PROVISION OF 31 USC 5151. THESE QUARTERLY RATES ARE APPLICABLE THROUGHOUT THE QUARTER EXCEPT WHEN THE CERTIFIED DAILY RATES VARY BY 5% OR MORE. SUCH VARIANCES MAY BE OBTAINED BY CALLING (646) 733–3065 OR (646)733–3057.

QUARTER BEGINNING APRIL 1, 2004 AND ENDING JUNE 30, 2004

COUNTRY	CURRENCY	U.S. DOLLARS
AUSTRALIA	DOLLAR	$0.767100
BRAZIL	REAL	$0.345722
CANADA	DOLLAR	$0.763301
CHINA, P.R.	YUAN	$0.120818
DENMARK	KRONE	$0.165961

COUNTRY	CURRENCY	U.S. DOLLARS
HONG KONG	DOLLAR	$0.128398
INDIA	RUPEE	$0.023041
JAPAN	YEN	$0.009643
MALAYSIA	RINGGIT	$0.263158
MEXICO	NEW PESO	&0.089429
NEW ZEALAND	DOLLAR	$0.667800
NORWAY	KRONE	$0.146628
SINGAPORE	DOLLAR	$0.598086
SOUTH AFRICA	RAND	$0.157604
SRI LANKA	RUPEE	$0.010204
SWEDEN	KRONA	$0.133958
SWITZERLAND	FRANC	$0.791954
THAILAND	BAHT	$0.025536
UNITED KINGDOM	POUND STERLING	$1.856400
VENEZUELA	BOLIVAR	$0.000521

Date: April 1, 2004

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.

QUARTERLY IRS INTEREST RATES USED IN CALCULATING INTEREST ON OVERDUE ACCOUNTS AND REFUNDS ON CUSTOMS DUTIES

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

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the calendar quarter beginning April 1, 2004, the interest rates for overpayments will be 4 percent for corporations and 5 percent for non-corporations, and the interest rate for underpayments will be 5 percent. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

EFFECTIVE DATE: April 1, 2004.

FOR FURTHER INFORMATION CONTACT: Trong Quan, National Finance Center, Collections Section, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278; telephone (317) 614–4516.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C.1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29,1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2004–26, the IRS determined the rates of interest for the calendar quarter beginning April 1, 2004, and ending June 30, 2004. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1%) plus four percentage points (4%) for a total of five percent (5%). For corporate overpayments, the rate is the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus four percentage points (4%) for a total of five percent (5%). These interest rates are subject to change for the calendar quarter beginning July 1, 2004, and ending September 30, 2004.

For the convenience of the importing public and Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning Date	Ending Date	Underpayments (percent)	Overpayments (percent)	Corporate Overpayments (Eff 1–1–99) (percent)
070174	063075	6%	6%	
070175	013176	9%	9%	
020176	013178	7%	7%	
020178	013180	6%	6%	
020180	013182	12%	12%	
020182	123182	20%	20%	
010183	063083	16%	16%	
070183	123184	11%	11%	

Beginning Date	Ending Date	Under-payments (percent)	Over-payments (percent)	Corporate Overpay-ments (Eff 1–1–99) (percent)
010185	063085	13%	13%	
070185	123185	11%	11%	
010186	063086	10%	10%	
070186	123186	9%	9%	
010187	093087	9%	8%	
100187	123187	10%	9%	
010188	033188	11%	10%	
040188	093088	10%	9%	
100188	033189	11%	10%	
040189	093089	12%	11%	
100189	033101	11%	10%	
040191	123191	10%	9%	
010192	033192	9%	8%	
040192	093092	8%	7%	
100192	063094	7%	6%	
070194	093094	8%	7%	
100194	033195	9%	8%	
040195	063095	10%	9%	
070195	033196	9%	8%	
040196	063096	8%	7%	
070196	033198	9%	8%	
040198	123198	8%	7%	
010199	033199	7%	7%	6%
040199	033100	8%	8%	7%
040100	033101	9%	9%	8%
040101	063001	8%	8%	7%
070101	123101	7%	7%	6%
010102	123102	6%	6%	5%
010103	093003	5%	5%	4%
100103	033104	4%	4%	3%
040104	063004	5%	5%	4%

Dated: March 31, 2004

ROBERT C. BONNER,
Commissioner,
Customs and Border Protection.

8 CFR Part 103

19 CFR Part 24

RIN 1651–AA51

Overtime compensation and premium pay for Customs officers

AGENCY: Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the definition of "customs officer" for the purpose of eligibility for overtime compensation and premium pay. In addition, a conforming change is made to the definition of "immigration officer". These revisions are necessary to reflect recent changes in the functions and organizational structure of U.S. Customs and Border Protection consistent with the Homeland Security Act of 2002.

DATE: Comments must be received by May 7, 2004.

ADDRESS: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, and may be inspected at 799 9th Street, NW, 5th Floor, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Richard Balaban, Financial Analyst, Office of Field Operations, (202) 927–0031.

SUPPLEMENTARY INFORMATION:

Background

Section 24.16 of the Customs Regulations (19 CFR 24.16) sets forth the procedure that U.S. Customs and Border Protection (CBP) must follow to furnish overtime and premium pay to customs officers, as required by the Customs Officer Pay Reform Act ("COPRA"; 19 U.S.C. 267). The statutory language at 19 U.S.C. 267(e)(1) provides that overtime compensation and premium pay may be paid to an individual performing those functions specified by regulation by the Secretary of the Treasury for a customs inspector or canine enforcement officer. Since the enactment of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2135, 6 U.S.C. 101 et seq.), these regulations are promulgated by the Secretary of Homeland Security.

The enabling regulation, specifically § 24.16(b)(7), Customs Regulations, defines those eligible for COPRA coverage by specifying only four position descriptions: "Customs Inspector," "Supervisory Cus-

toms Inspector," "Canine Enforcement Officer," and "Supervisory Canine Enforcement Officer." This definition does not encompass the expanded border security and inspection functions brought into CBP by the government reorganization consistent with the Homeland Security Act of 2002. (See Homeland Security Act and the President's Reorganization Plan of November 25, 2002, as amended by the President's January 30, 2003 modification.)

When CBP was established on March 1, 2003, it brought together some 18,000 inspection personnel from different agencies and disciplines at the nation's ports of entry, with the priority mission of preventing terrorists and terrorist weapons from entering the United States. At present, three different overtime and premium pay systems are required to administer overtime compensation and premium pay for inspection personnel.

Proposed Regulation

This proposed regulation would amend the definition of "customs officer" for the purpose of eligibility for overtime compensation and premium pay. As a result of this regulatory change to the definition of "customs officer" in 19 CFR and a conforming change to the definition of "immigration officer" in 8 CFR, the Department of Homeland Security (DHS) will implement a single overtime and premium pay system, COPRA, replacing the three different systems that are now in place. This will eliminate the inequities and disparities in pay and scheduling under the three different systems.

A new position, Customs and Border Protection Officer (known as CBP Officer), is being established to merge the expanded border and inspection functions formerly performed within three separate agencies: the Immigration and Naturalization Service (Department of Justice), the United States Customs Service (Department of the Treasury), and the Animal and Plant Health Inspection Service (Department of Agriculture). The CBP Officer will be the principal front line officer carrying out the priority mission and the traditional customs, immigration and some agriculture inspection functions, which are now the responsibility of CBP. The establishment of the new position will enable the agency to perform its mission more efficiently and to provide better protection and service to the public at the ports of entry. In addition, CBP is establishing the CBP Agriculture Specialist position with responsibilities for agriculture inspection of passengers and cargo as well as analysis of agriculture imports. In order to assure that these officers meet their responsibilities to the public, they are required to be available for overtime as a condition of employment.

To enable CBP to furnish overtime compensation and premium pay for these new positions, it is necessary to include "Customs and Border Protection Officer" and related positions within the definition of "customs officer" in 19 CFR 24.16(b)(7). It is noted that the contin-

ued usage of the term "customs officer" does not reflect any reorganization within DHS. Rather, it occurs because it reflects the pertinent statutory authority, 19 U.S.C. 267, regarding overtime compensation and premium pay. Including the "Customs and Border Protection Officer" within the definition of "customs officer" in 19 CFR 24.16(b)(7) does not affect the authority of a "Customs and Border Protection Officer" to engage in customs, immigration, and agriculture inspection functions. Instead, it is a key step to implementing the "one face at the border" initiative by harmonizing the pay systems for the personnel who perform those functions.

Furthermore, it is necessary to include a technical change in 8 CFR 103.1 to authorize a customs officer, as defined in 19 CFR 24.16(b)(7), to perform immigration inspection functions, without a separate designation. Currently, customs officers perform such immigration functions pursuant to a designation as an immigration officer.

Finally, it is important to note that this proposed rule is tangentially related but separate and distinct from the proposed rule published on February 20, 2004 in the Federal Register by DHS and the Office of Personnel Management regarding the establishment of a new human capital system for DHS. The two proposals address different human resources issues. This proposed rule expands the eligibility of certain employees to receive overtime compensation and premium pay under 19 U.S.C. 267. This rule has no impact on setting any employee's basic rate of pay. The human capital rule, on the other hand, proposes to create a new system for setting basic pay within DHS.

Comments

Before adopting this proposed regulation as a final rule, consideration will be given to any written comments timely submitted to CBP, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 A.M. and 4:30 P.M. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs and Border Protection, 799 9th Street, N.W., 5th Floor, Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

Executive Order 12866

This rule is considered by DHS to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning

and Review. Accordingly, this rule has been submitted to the Office of Management and Budget (OMB) for review. DHS has assessed the impacts of this rulemaking and its alternatives, as presented below.

Impact on User Fees

At present, three user fees, supplemented by appropriations, fund the three different overtime pay systems that, in turn, govern the three traditional inspection disciplines. CBP will assure that there will be no impact on fees or service levels. CBP will track and account by activity how the fees are spent to ensure the proper transfer of immigration and agriculture funds to reimburse the Customs User Fee Account to cover costs incurred for immigration and agriculture overtime services. CBP plans to use the Cost Management Information System (CMIS) to track expenses by activity. CMIS is an activity-based cost accounting system that has been audited and endorsed by the General Accounting Office. Employees use established activity codes to track their time through the Customs Time and Attendance System. Fee payers that are currently providing the traditional user fee funding for customs, immigration and agriculture inspection services will continue to pay and benefit as they have in the past.

Impact on Employees

As noted, when CBP was established on March 1, 2003, it brought together inspection personnel from three different agencies (Agriculture, Immigration and Naturalization Service, and Customs). Inspectors in each of these workforces earn overtime and premium pay based on three different statutes. In order to establish "one face at the border," CBP is creating a new frontline officer corps to unify and integrate the inspectional work of these three legacy agencies. The unified occupations require a single compensation system. Today, while the officers are still classified in the three legacy occupations, they are paid under three sets of overtime rules, which has resulted in disparate earnings for virtually the same work. In addition, the three separate occupations and overtime rules have created significant administrative inefficiencies, as well as work assignment and payroll problems. The impact of this proposal on the inspectional workforce is that officers who perform the same functions at the ports of entry will be paid overtime and premium pay under the same computational rules.

This proposed rule does not address the number of overtime hours the officers will be required to work, which varies by individual, by port, and by other factors such as workload fluctuations, staffing levels at a particular location, and changes to the national threat alert level. Instead, this proposed rule adds currently classified immigra-

tion and agriculture officers (approximately 8,000 inspectors) to the COPRA system, and thus affects their rates of overtime and premium pay for actual hours worked. (Over 10,000 inspectors, all former Customs Service, are already covered by COPRA.)

The impact of this rule will be that for some work schedules, certain employees will earn more, while for other work schedules, they will earn less. For example, current agriculture inspectors who work overtime on a weekday will earn "double time" under COPRA instead of "time-and-a-half" under their current system. On the other hand, these same inspectors may earn less under COPRA than under their current system for work on a Sunday. The chart below provides additional examples of how the three overtime systems differ when comparing hours worked. On the whole, the impact of this proposed rule on the overall earnings for the same or similar number of hours worked is expected to be minimal. While some features of COPRA are less generous than those of other systems, there are compensating features that are more generous. Thus, the differences between COPRA and the other systems balance out in terms of earnings for hours worked. However, it is noted that this proposed rule affects only one aspect of overtime and premium pay earnings of employees. Other factors, such as the total number of hours worked and when the overtime is worked, impact the aggregate earnings of officers on an annual basis. The explanation provided herein, both in text and in the accompanying Table, represent a good faith effort to explain the potential impact of this proposed rule on the employees. However, due to the complexities of the different systems and the differing work schedules of individual inspectors, the exact impact of the proposed rule on a specific employee is speculative and incapable of exact computation. The difficulty of comparing these systems is highlighted in the November 2001 GAO Report titled Customs and INS—Comparison of Officer's Pay (GAO–02–21). The GAO Report compared two of these systems and concluded that "straightforward and generalizable comparisons in relation to these pay provisions are infeasible."

CBP does not anticipate that the proposed amendment will have an impact on private entities, as the proposed changes pertain to the agency's internal operating procedures and, because overtime compensation will be funded with existing user fees the expenditure of which will be subject to normal accounting within the government. However, DHS has determined this action is a "significant" regulatory action within the meaning of Executive Order 12866 because it may be perceived to relate to the revisions of the Federal employment system DHS is presently considering under the Homeland Security Act. This proposal is separate from those revisions, which do not address overtime compensation.

Similarities and differences between COPRA and other overtime systems

There are a number of similarities and differences between COPRA and the overtime systems under which legacy immigration and agriculture inspectors have been covered.

The following chart compares the major provisions of the three systems. The chart contains a high-level overview of the systems and is not intended to contain all the details relevant to determining the rate of pay in specific situations.

TABLE.—GENERAL COMPARISON OF OVERTIME SYSTEMS

Pay provision/term	Customs Inspectors	Immigration Inspectors	Agriculture Inspectors
Basic pay	General Schedule pay with locality pay adjustment based on geographic area.	Same as Customs.	Same as Customs.
Basic hourly rate	General Schedule hourly rate with locality pay included.	Same as Customs.	Same as Customs.
Basic workweek	7-day	6-day (Monday–Saturday)	6-day (Monday–Saturday)
Basic overtime	Compensation in addition to basic pay for work in excess of the 40-hour regularly scheduled work week or work in excess of 8 hours in a day. Overtime pay is 2 times the basic hourly rate—a 100-percent premium (COPRA).	Compensation in addition to basic pay for work in excess of the 40-hour regularly scheduled workweek. Applies to inspection overtime hours worked between 5:00 p.m. and 8:00 a.m., Monday–Saturday and anytime on Sunday or a holiday. Overtime pay is 4 hours pay for each additional 2 hours or fraction thereof (1931 Act).	Compensation in addition to basic pay for work in excess of the 40-hour regularly scheduled work week or work in excess of 8 hours in a day. Overtime pay is 1.5 times the basic hourly rate not to exceed a GS–10.1 pay for overtime Monday through Saturday (Title 5).

Pay provision/term	Customs Inspectors	Immigration Inspectors	Agriculture Inspectors
Other overtime	Not applicable.	Compensation in addition to basic pay for (1) overtime inspection work between 8:00 a.m. and 5:00 p.m. Monday–Saturday and (2) non-inspection overtime outside these hours. Overtime is paid at 1.5 times the basic hourly rate (50-percent premium.) Maximum rate is based on salary for GS–10, step 1- (the 1945 Act, FEPA).	Not applicable.
Premium pay	Overall term referring to extra compensation or "premium" paid for work performed on Sunday, holiday, or at night. (The term does not cover overtime pay.)	In addition to Sunday, holiday, and night pay, INS includes overtime in its definition of premium pay.	Overall term referring to extra compensation or "premium" paid for work performed on holiday or at night. (The term does not cover overtime pay.)
Sunday pay	Premium paid in addition to basic hourly rate for Sunday work. Sunday pay is 1.5 times the basic hourly rate (50-percent premium). Sunday can be a regularly scheduled workday. Officers are paid for actual hours worked.	Compensation for Sunday work. Sunday pay is 2-days' pay for 8 or fewer hours worked. Sunday is not a regularly scheduled workday. Sunday work is scheduled in addition to the regular workweek and is always staffed with overtime. Immigration inspectors are paid based on minimum periods of time worked.	Compensation for Sunday work. Sunday pay is 2 times the hourly rate for actual hours worked. Sunday is not a regularly scheduled workday. Sunday work is scheduled in addition to the regular workweek and is always staffed with overtime (Public Law 107–171).

Pay provision/term	**Customs Inspectors**	**Immigration Inspectors**	**Agriculture Inspectors**
Holiday pay	Premium paid in addition to basic hourly rate for work on a holiday. Holiday pay is 2 times the basic hourly rate (100-percent premium).	Premium paid in addition to basic hourly rate for work on a holiday. Two days' pay for 8 or fewer hours worked (Mon.–Sat.), in addition to basic pay.	Premium paid in addition to basic hourly rate for work on a holiday. Holiday pay is 2 times the basic hourly rate (100-percent premium).
Night pay (night differential)	Premium paid in addition to basic hourly rate for night work. Night differential pay rates differ based on the time or shift hours worked. Officers paid 1.15 or 1.2 times the basic hourly rate (15- or 20-percent differential). "Majority of hours" provision applies depending on actual hours worked.	Premium paid in addition to basic hourly rate for night work. Officers are paid 10-percent premium or "differential" for hours worked between 6 p.m. and 6 a.m.	Same as Immigration.
Night pay on leave	Customs inspectors are paid night differential for work assigned on night shifts when they are on annual, sick, or other leave.	Immigration inspectors are paid limited night differential (if less than 8 hours per pay period) for work assigned to night shifts when they are on leave. INS does not pay night differential to officers on vacation (extended annual leave).	Same as Immigration.

Pay provision/term	Customs Inspectors	Immigration Inspectors	Agriculture Inspectors
Commute compensation	Compensation for returning to work (commute) to perform an overtime work assignment. Commute compensation is 3 times the basic hourly rate.	Not authorized.	Compensation for returning to work (commute) to perform an overtime work assignment. Commute compensation is based on local rates. It is generally between 1 to 3 times the basic hourly rate.
Callback	Additional overtime paid for reporting early or returning to work for unscheduled inspections. Callback is 2 times the basic hourly rate.	See rollback.	Additional overtime paid for returning to work for unscheduled inspections. Callback is 2 times the basic hourly rate for Sundays but capped at GS–10.1 pay for overtime work between Monday and Saturday.
Rollback	See callback.	Additional overtime paid for reporting early or returning to work for unscheduled inspections. Rollback is 2-hours' additional pay at basic overtime rate.	See callback.
Foreign language proficiency Award	Premium paid for proficiency and use of foreign language while performing inspection duties. Foreign language award is between 3 and 5 percent of basic pay.	Not authorized.	Not authorized.
Retirement annuity (overtime earnings included)	Customs includes overtime earnings (up to 1/2 the Statutory Cap) in calculating retirement pay.	Not authorized.	Not authorized.

Pay provision/term	Customs Inspectors	Immigration Inspectors	Agriculture Inspectors
Alternate work schedule	Regularly scheduled work during a pay period based on a 9- or 10-hour workday totaling 80 hours per pay period (every 2 weeks).	Same as Customs.	Same as Customs.

Increased Efficiency

The adoption of a single overtime system in lieu of three overtime systems now in place provides greater efficiencies in scheduling, monitoring and tracking overtime. Thus, CBP anticipates no net costs from this proposed regulation, either to the public at large or to user fee payers interested in maintaining levels of services and facilitation. In fact, CBP anticipates savings both to the government and to the public as the systems for paying officers for overtime and clearing goods and passengers are made more effective and efficient.

DHS invites comment on the impacts of this proposed rule.

Alternatives Considered

A key objective in establishing DHS was to unify border security functions at the nation's ports of entry. In DHS, the three separate agencies whose employees previously worked side by side at these ports of entry are now united. They are unified not only in the same organization, with the same management chain of command—they are also united around a common priority mission. In addition, these employees, with appropriate cross-training, will merge to perform the traditional missions that came together at the ports of entry from the legacy agencies of U.S. Customs, the Immigration and Naturalization Service, and the Animal and Plant Health Inspection Service. Thus, a well-trained and well-integrated workforce serves as a "force multiplier" in carrying out both the priority mission and the traditional missions of CBP. However, in order to integrate the workforce, a common overtime and premium pay system is required.

In order to implement the new frontline positions of CBP Officer and CBP Agriculture Specialist, it is necessary and appropriate to have the incumbents of these positions work under the same overtime system. That is, it is not feasible to pay incumbents of the same position under different overtime systems. Notwithstanding the feasibility, it is also not fair to employees to pay them differently when they are working side by side, performing the same type of work. Thus, the alternative of maintaining three overtime systems was

considered not viable under the Secretary's "one face at the border" initiative.

A review of available options for the overtime system was undertaken. COPRA was selected as the best available compensation system for the new positions because of the advantages it offers management, employees, and the traveling public. It is the most modern of the three systems, implemented only 10 years ago; in contrast, the statutes governing the other legacy systems were each enacted over 50 years ago, before the exponential growth of international trade and travel. COPRA more closely aligns pay to actual work performed, enabling the agency to more efficiently manage overtime. It establishes a 7-day workweek under which Sunday is not considered an overtime day, thereby providing greater flexibility in managing work assignments since officers can be regularly scheduled for any day of the week based on operational needs. Further, it is not statutorily permissible to use the overtime systems governing the immigration (1931 Act) and agriculture (Public Law 107–171) inspectors to cover all inspectional activities performed by these new unified officer positions.

CBP considered, but rejected, the option of converting all inspectors to a totally new overtime and premium pay system. In order to do so, CBP would have needed to seek authorizing legislation. As a result, it is not certain whether, or when, appropriate legislation would have been enacted. This would have involved unacceptable delays in the implementation of the "one face at the border" initiative.

For the employee, COPRA offers better premium pay rates than the other systems for employees who work night shifts (as outlined in the comparison chart above). Another significant advantage over the other systems is that COPRA provides a retirement benefit. Under the statute, up to 50% of the statutory cap (P.L. 103–66) on overtime earnings is credited as base pay for retirement purposes, yielding a higher annuity that is more aligned with the officer's annual earnings. COPRA also authorizes payment of a foreign language proficiency award (up to 5% of base pay) to officers who maintain and use their language skills as part of their job duties.

Regulatory Flexibility Act

DHS has determined that as this proposed rule would apply only internally to CBP employees, it will not have a significant economic impact on a substantial number of small entities, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Unfunded Mandates

These proposed regulations would not result in the expenditure by State, local, or tribal governments of more than $100 million

annually. Thus, no written assessment of unfunded mandates is required.

E.O. 13132, Federalism

DHS has determined these proposed regulations would not have Federalism implications because they would apply only to Federal agencies and employees. The proposed regulations would not have financial or other effects on States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government.

E.O. 12988, Civil Justice Reform

The proposed regulation is consistent with the requirements of E.O. 12988. Among other things, the regulation would not preempt, repeal or modify any federal statute; provides clear standards; has no retroactive effects; defines key terms; and is drafted clearly.

Paperwork Reduction Act

The proposed regulations do not involve any information collection from any member of the public.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Immigration, Reporting and recordkeeping requirements.

19 CFR Part 24

Accounting, Customs duties and inspection, Financial and accounting procedures, User fees, Wages.

Proposed Amendments to the Regulations

For the reasons stated above, it is proposed to amend chapter I of Title 8 and chapter I of Title 19 of the Code of Federal Regulations as set forth below.

TITLE 8, CHAPTER I

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552A; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq*.); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

* * * * *

2. In § 103.1, paragraph (a) is republished and paragraph (b) is amended by adding a sentence at the end to read as follows:

§ 103.1 Delegations of authority; designation of immigration officers.

(a) Delegations of authority. Delegations of authority to perform functions and exercise authorities under the immigration laws may be made by the Secretary of Homeland Security as provided by § 2.1 of this chapter.

(b) Immigration Officer. * * * Any customs officer, as defined in 19 CFR 24.16, is hereby authorized to exercise the powers and duties of an immigration officer as specified by the Act and this chapter.

TITLE 19, CHAPTER I

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

3. The general authority citation for part 24 is revised and the specific authority citation for § 24.16 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States) 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 et seq.).

* * * * *

Section § 24.16 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1623; 46 U.S.C. 2111, 2112;

* * * * *

4. In § 24.16, paragraph (b)(7) is revised to read as follows:

§ 24.16 Overtime services; overtime compensation and premium pay for Customs Officers; rate of compensation.

* * * * *

(b) * * *

(7) *Customs Officer* means only those individuals assigned to position descriptions entitled "Customs Inspector," "Supervisory Customs Inspector," "Canine Enforcement Officer," "Supervisory Canine Enforcement Officer," "Customs and Border Protection Officer," "Supervisory Customs and Border Protection Officer," "Customs and

Border Protection Agriculture Specialist," or "Supervisory Customs and Border Protection Agriculture Specialist."

Date: April 1, 2004

ROBERT C. BONNER,
Commissioner,
Customs and Border Protection.

TOM RIDGE,
Secretary,
Department of Homeland Security.

[Published in the Federal Register, April 7, 2004 (69 FR 18296)]

AGENCY INFORMATION COLLECTION ACTIVITIES: UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: United States-Caribbean Basin Trade Partnership Act. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 70281) on December 17, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before May 6, 2004.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington,

D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: United States-Caribbean Basin Trade Partnership Act
OMB Number: 1651–0083
Form Number: CBP–450
Abstract: The collection of information is required to implement the duty preference provisions of the United States-Caribbean Basin Trade Partnership Act.
Current Actions: This submission is being submitted to extend the expiration date without a change in the burden hours.
Type of Review: Extension (without change)
Affected Public: Business or other for-profit institutions, Not for profit institutions, Individuals
Estimated Number of Respondents: 440
Estimated Time Per Respondent: 42.5 hours
Estimated Total Annual Burden Hours: 18,720
Estimated Total Annualized Cost on the Public: $430,560

If additional information is required contact: Daryl Joyner, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202–927–1429.

Dated: March 29, 2004

DARYL JOYNER,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, April 6, 2004, (69 FR 18097)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, April 7, 2004,

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

SANDRA L. BELL,
Acting Assistant Commissioner,
Office of Regulations and Rulings.

19 CFR PART 177

REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF GLASS-BEADED ARTIFICIAL FOLIAGE

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

ACTION: Notice of revocation of three ruling letters, modification of one ruling letter, and revocation of treatment relating to tariff classification of glass-beaded artificial foliage.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking three ruling letters and modifying one ruling letter pertaining to the tariff classification of glass-beaded artificial foliage under the Harmonized Tariff Schedule of the United States ("HTSUS"). Customs is also revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin on February 25, 2004. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 20, 2004.

FOR FURTHER INFORMATION CONTACT: Neil S. Helfand, General Classification Branch, (202) 572–8791.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the Customs Bulletin on February 25, 2004, proposing to revoke three ruling letters and modify one ruling letter pertaining to the classification of glass-beaded artificial foliage. No comments were received in response to the notice.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous inter-

pretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying NY G89195 and revoking NY I81590, NY I82557 and NY I82558 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analyses set forth in proposed HQ 966663, HQ 966664 and HQ 966665. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. HQ 96663, HQ 966664 and HQ 966665 are set forth as Attachments A, B and C of this document.

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

DATED: April 1, 2004

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966663
March 31, 2004
CLA–2 RR:CR:GC 966663 NSH
CATEGORY: Classification
TARIFF NO.: 7018.90.5000

MS. JULIE SCOGGAN
EVANS AND WOOD AND COMPANY, INC.
612 East Dallas Road, Suite 200
Grapevine, Texas 76051

RE: NY G89195 modified; Articles of glass beads

DEAR MS. SCOGGAN:

This letter is pursuant to U.S. Customs and Border Protection (Customs) reconsideration of New York Ruling letter (NY) G89195, dated April 25, 2001, on behalf of your client, Hobby Lobby. We have reviewed the classifica-

tion of item CP132 in NY G89195 and have determined that it is incorrect. This ruling sets forth the correct classification.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY G89195, as described below, was published in the Customs Bulletin on February 25, 2004. No comments were received in response to the notice.

FACTS:

The item at issue, CP132, was previously classified in NY G89195 under subheading 6702.10.20, HTSUS, as "[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f plastics: [a]ssembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods." In researching similar issues, Customs concluded that its classification was incorrect and that this item should be classified under subheading 7018.90.50, HTSUS, as "[g]lass beads . . . and similar glass smallwares and articles thereof other than imitation jewelry; . . . glass microspheres not exceeding 1 mm in diameter: [o]ther: [o]ther."

Item CP132 resembles plastic grapes that are covered with glass beads and green, plastic leaves. These glass-beaded grapes are interspersed along a plastic vine. The glass beads impart a wet or sparkling look to the item. The materials composing the item are glass beads, polyvinyl chloride (PVC) paste, DOP oil, and limited other materials.

ISSUE:

Whether the glass-beaded artificial foliage is classified as artificial foliage or as an article of glass beads.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) to the HTSUS constitute the official interpretation of the Harmonized System at the international level. Although not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. See T.D. 89–80.

The HTSUS provisions under consideration are as follows:

6702	Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit:
6702 .10	Of plastics:
6702.10.20	Assembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods

* * * * *

7018	Glass beads, imitation pearls, imitation precious or semi-precious stones and similar glass smallwares and articles thereof other than imitation jewelry; glass eyes other than prosthetic articles; statuettes and other ornaments of lamp-worked glass, other than imitation jewelry; glass microspheres not exceeding 1 mm in diameter:
7018.90	Other:
7018.90.50	Other

Artificial fruit is generally classified under heading 6702, HTSUS, as "[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f plastics: [a]ssembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods." Although the item in question contains some of the materials described in heading 6702, HTSUS, and by its shape resembles artificial fruit, it is covered with glass beads. In contrast, articles of glass beads are listed under heading 7018, HTSUS.

Item CP132 is described as consisting of plastic grapes with plastic leaves that are attached to a plastic vine; the grapes are covered with glass beads. The item is to be hung as an ornament or display piece, not intended for use on a specific occasion. The glass beads impart to the item a wet or sparkling look which substantially enhances the visual appeal of the grapes and their merchantability. Furthermore, located exclusively on the surface of the item, and virtually covering it in its entirety, the glass beads effectively hide from view most all of the other materials used in its construction.

Note 3(a) to chapter 67 states that heading 6702 does not cover articles of glass and directs that such an article be classified in chapter 70. Because this item is substantially covered with glass beads on its surface that effectively hide from view any of the other materials used in its construction, it is an article of glass. Therefore, it is precluded from classification under heading 6702, HTSUS, by reference to the chapter note. Instead, classification will be under chapter 70.

The ENs to heading 7018, HTSUS, provide, in pertinent part:

> This heading covers a range of widely diversified glass articles, most of which are used, directly or after further processing, for ornamental and decorative purposes.
>
> These include:
>
> . . .
>
> (E) **Various glass articles (other than imitation jewellery)**, obtained by assembling certain of the individual articles mentioned above, such as flowers, foliage and pearl ornaments for wreaths; fringes made of beads or bulges and intended for lampshades, shelves, etc.; blinds and portieres made of glass beads or bugles, and table mats made similarly; rosaries made of glass beads or imitation precious or semi-precious stones.

In view of the foregoing, item CP132 is classified under subheading 7018.90.50 as "[g]lass beads . . . and articles thereof other than imitation jewelry; . . . glass microspheres not exceeding 1 mm in diameter: [o]ther: [o]ther."

HOLDING:

Pursuant to GRI 1, the classification for item CP132 is under subheading 7018.90.5000, HTSUS, as "[g]lass beads . . . and articles thereof other than imitation jewelry; . . . glass microspheres not exceeding 1 mm in diameter: [o]ther: [o]ther." The rate of duty is 6.6 percent *ad valorem*.

EFFECT ON OTHER RULINGS:

NY G89195 is MODIFIED. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966664
March 31, 2004
CLA–2 RR:CR:GC 966664 NSH
CATEGORY: Classification
TARIFF NO.: 7018.90.5000

MS. LINDA C. PEARSON
SEASONAL SPECIALTIES
11455 Valley View Road
Eden Prairie, Minnesota 55344

RE: NY I81590 revoked; Articles of glass beads

DEAR MS. PEARSON:

This letter is pursuant to U.S. Customs and Border Protection (Customs) reconsideration of New York Ruling letter (NY) I81590, dated May 31, 2002. We have reviewed the classifications in NY I81590 and have determined that they are incorrect. This ruling sets forth the correct classifications.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY I81590, as described below, was published in the Customs Bulletin on February 25, 2004. No comments were received in response to the notice.

FACTS:

The items at issue, T60071 and T60072, were previously classified in NY I81590. Customs classified the items under subheading 6702.10.20, HTSUS, as "[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f plastics: [a]ssembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods." In researching similar issues, Customs concluded that its classification was incorrect and that these items should be classified under subheading 7018.90.50, HTSUS, as "[g]lass beads . . . and similar

glass smallwares and articles thereof other than imitation jewelry; . . . glass microspheres not exceeding 1 mm in diameter: [o]ther: [o]ther."

Item T60071 is identified as a Beaded Berry Wreath. It is composed of polyester, iron wire, gypsum, glass beads, gold leaf and glue. The gypsum berries are made of styrofoam and are completely covered with glass beads. The glass beads impart a wet or sparkling look to the item. The wire stems have been wrapped with paper and are attached to a metal base that also has been wrapped with paper.

Item T60072 is identified as a Beaded Berry/Heart Wreath. It is composed of polyester, iron wire, gypsum, glass beads, gold leaf and glue. The gypsum berries are made of styrofoam and the tiny hearts made of hard plastic. The berries and hearts are completely covered with glass beads. The glass beads impart a wet or sparkling look to the item. The wire stems have been wrapped with paper and are attached to a metal base that also has been wrapped with paper.

ISSUE:

Whether the glass-beaded artificial foliage is classified as artificial foliage or as an article of glass beads.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) to the HTSUS constitute the official interpretation of the Harmonized System at the international level. Although not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. See T.D. 89–80.

The HTSUS provisions under consideration are as follows:

6702	Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit:
6702 .10	Of plastics:
6702.10.20	Assembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods
* * * * *	
7018	Glass beads, imitation pearls, imitation precious or semiprecious stones and similar glass smallwares and articles thereof other than imitation jewelry; glass eyes other than prosthetic articles; statuettes and other ornaments of lampworked glass, other than imitation jewelry; glass microspheres not exceeding 1 mm in diameter:
7018.90	Other:
7018.90.50	Other

Artificial fruit is generally classified under heading 6702, HTSUS, as "[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f plastics: [a]ssembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods." Although the two items in question contain some of the materials described in heading 6702, HTSUS, and by their shape resemble artificial fruit, they are covered with glass beads. In contrast, articles of glass beads are listed under heading 7018, HTSUS.

The two articles at issue are described as a wreath of artificial berries, one with hearts, both of which having berries completely covered with glass beads. The items are intended to serve as an ornament to be hung on a door or appropriate display area, not anticipated for use on a specific occasion. The glass beads impart to both items a wet or sparkling look which substantially enhances the visual appeal of the berries and their merchantability. Furthermore, located exclusively on the surface of the item, and virtually covering it in its entirety, the glass beads effectively hide from view most all of the other materials used in the item's construction.

Note 3(a) to chapter 67 states that heading 6702 does not cover articles of glass and directs that such an article be classified in chapter 70. Because this item is substantially covered with glass beads on its surface that effectively hide from view most of the other materials used in its construction, it is an article of glass. Therefore, it is precluded from classification under heading 6702, HTSUS, by reference to the chapter note. Instead, classification will be under chapter 70.

The ENs to heading 7018, HTSUS, provide, in pertinent part:

> This heading covers a range of widely diversified glass articles, most of which are used, directly or after further processing, for ornamental and decorative purposes.
>
> These include:
>
> . . .
>
> (E) **Various glass articles (other than imitation jewellery)**, obtained by assembling certain of the individual articles mentioned above, such as flowers, foliage and pearl ornaments for wreaths; fringes made of beads or bulges and intended for lampshades, shelves, etc.; blinds and portieres made of glass beads or bugles, and table mats made similarly; rosaries made of glass beads or imitation precious or semi-precious stones.

In view of the foregoing, items T60071 and T60072 are classified under subheading 7018.90.50 as "[g]lass beads . . . and articles thereof other than imitation jewelry; . . . glass microspheres not exceeding 1 mm in diameter: [o]ther: [o]ther."

HOLDING:

Pursuant to GRI 1, the classification for items T60071 and T60072 is under subheading 7018.90.5000, HTSUS, as "[g]lass beads . . . and articles thereof other than imitation jewelry; . . . glass microspheres not exceeding 1 mm in diameter: [o]ther: [o]ther." The rate of duty is 6.6 percent *ad valorem*.

EFFECT ON OTHER RULINGS:

NY I81590 is REVOKED. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966665
March 31, 2004
CLA–2 RR:CR:GC 966665 NSH
CATEGORY: Classification
TARIFF NO.: 7018.90.5000

MS. BARBARA Y. WIERBICKI
TOMPKINS & DAVIDSON, LLP
One Astor Plaza
1515 Broadway
New York, New York 10036–8901

RE: NY I82557 and NY I82558 revoked; Articles of glass beads

DEAR MS. WIERBICKI:

This letter is pursuant to U.S. Customs and Border Protection (Customs) reconsideration of New York Ruling letters (NY) I82557 and I82558, dated June 19, 2002 and June 13, 2002, respectively, on behalf of Avon Products, Inc. We have reviewed the classifications and have determined that they are incorrect. This ruling sets forth the correct classifications.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY I82557 and NY I82558, as described below, was published in the Customs Bulletin on February 25, 2004. No comments were received in response to the notice.

FACTS:

The two articles at issue were previously classified in NY I82557 and NY I82558. Customs classified both items under subheading 6702.10.20, HTSUS, as "[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f plastics: [a]ssembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods." In researching similar issues, Customs concluded that its classification was incorrect and that these items should be classified under subheading 7018.90.50, HTSUS, as "[g]lass beads . . . and similar glass smallwares and articles thereof other than imitation jewelry; . . . glass microspheres not exceeding 1 mm in diameter: [o]ther: [o]ther."

In NY I82557, Customs classified item PP239211. The item, identified as a "Jeweled Fruit Potpourri," resembles a collection of scented artificial fruit and nuts. The varieties of fruit represented are apples, peaches, grapes, strawberries, cranberries, oranges and pears. The fruit is constructed from styrofoam, painted the appropriate color for the representative fruit and covered with glass beads. These glass beads impart a wet or sparkling look to the item. Some of the fruit incorporates polyester leaves and a stem of plastic or wire. The artificial nuts are wooden and painted various colors.

In NY I82558, Customs classified item PP239215. The item, identified as a "kissing ball," measures approximately 4 inches in diameter and resembles artificial fruit. It is constructed from styrofoam and covered with glass beads. These glass beads impart a wet or sparkling look to the item. The segments of the item made to resemble artificial fruit are set into a larger styrofoam ball by means of metal stems, which also incorporates green leaves made from polyester and a burgundy colored ribbon for hanging the item. By total weight of the item, the ribbon is 5 percent, the PVC leaf is 5 percent, the glass beads are 60 percent, the polyfoam fruit is 20 percent and the acetate box is 10 percent.

ISSUE:

Whether the glass-beaded artificial fruit is classified as artificial foliage or as an article of glass beads.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) to the HTSUS constitute the official interpretation of the Harmonized System at the international level. Although neither legally binding or dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. See T.D. 89–80.

The HTSUS provisions under consideration are as follows:

6702	Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit:
6702 .10	Of plastics:
6702.10.20	Assembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods
* * * * *	
7018	Glass beads, imitation pearls, imitation precious or semiprecious stones and similar glass smallwares and articles thereof other than imitation jewelry; glass eyes other than prosthetic articles; statuettes and other ornaments of lampworked glass, other than imitation jewelry; glass microspheres not exceeding 1 mm in diameter:

7018.90 Other:

7018.90.50 Other

Artificial fruit is generally classified under heading 6702, HTSUS, as "[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f plastics: [a]ssembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods." Although the two items in question contain some of the materials described in heading 6702, HTSUS, and by their shape resemble artificial fruit, they are covered with glass beads. In contrast, articles of glass beads are listed under heading 7018, HTSUS.

The two articles at issue are described as artificial fruit that is covered with glass beads, the exception being the polyester leaves. The items are intended to be hanging ornaments or display pieces, not intended for use on a specific occasion. The glass beads impart to the items a wet or sparkling look which substantially enhances the visual appeal of the fruit and their merchantability. Furthermore, located exclusively on the surface of the items, and virtually covering them in their entirety, the glass beads effectively hide from view most all of the other materials used in their construction. On item PP239215, the glass beads constitute 60 percent of the total weight and are therefore the heaviest material used in its construction.

Note 3(a) to chapter 67 states that heading 6702 does not cover articles of glass and directs that such an article be classified in chapter 70. Because these items are substantially covered with glass beads on their surface that effectively hide from view most all of the other materials used in their construction, and because by weight the glass beads on item PP239215 are the most prevalent material used in its construction, these are articles of glass. Although information on percentages is not available for item PP239211, it is exceedingly similar to item PP239215. Therefore, both items are precluded from classification under heading 6702, HTSUS, by reference to the chapter note. Instead, classification will be under chapter 70.

The ENs to heading 7018, HTSUS, provide, in pertinent part:

> This heading covers a range of widely diversified glass articles, most of which are used, directly or after further processing, for ornamental and decorative purposes.
>
> These include:
>
> . . .
>
> (E) **Various glass articles (other than imitation jewellery)**, obtained by assembling certain of the individual articles mentioned above, such as flowers, foliage and pearl ornaments for wreaths; fringes made of beads or bulges and intended for lampshades, shelves, etc.; blinds and portieres made of glass beads or bugles, and table mats made similarly; rosaries made of glass beads or imitation precious or semi-precious stones.

In view of the foregoing, items PP239211 and PP239215 are classified under subheading 7018.90.50 as "[g]lass beads . . . and articles thereof other than imitation jewelry; . . . glass microspheres not exceeding 1 mm in diameter: [o]ther: [o]ther."

HOLDING:

Pursuant to GRI 1, the classification for items PP239211 and PP239215 is under subheading 7018.90.5000, HTSUS, as "[g]lass beads . . . and articles thereof other than imitation jewelry; . . . glass microspheres not exceeding 1 mm in diameter: [o]ther: [o]ther." The rate of duty is 6.6 percent *ad valorem*.

EFFECT ON OTHER RULINGS:

NY I82557 and NY I82558 are REVOKED. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

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

19 CFR Part 177

MODIFICATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF INK JET PRINTER CARTRIDGES

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

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to the tariff classification of certain ink jet printer cartridges under the Harmonized Tariff Schedule of the United States ("HTSUS").

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling letter concerning the tariff classification of certain ink jet printer cartridges under the HTSUS. Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed modification was published on February 25, 2004, in Vol. 38, No. 9 of the *Customs Bulletin*. No comments were received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 20, 2004.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch: (202) 572–8776.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to Customs obligations, notice proposing to modify Headquarters Ruling Letter ("HQ") 963301, dated June 14, 2001, as it pertains to the classification of certain ink jet printer cartridges, was published on February 25, 2004, in Vol. 38, No. 9 of the *Customs Bulletin*. No comments were received in response to this notice.

As stated in the proposed notice, the modification action will cover any rulings on this merchandise that may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings other than those herein identified; no further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in sub-

stantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to the effective date of this final decision.

In HQ 963301, merchandise described as Hewlett Packard 51649A printer cartridges to be used in ink jet printers were classified under subheading 8473.30.30, HTSUS, which provides for parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 8469 to 8472: other parts for printers, specified in additional U.S. note 2 to chapter 84. In reaching this conclusion, we erroneously incorporated language concerning laser jet printers and laser jet cartridges, articles that are distinct in design and function from ink jet printers and cartridges. While the classification decision made in HQ 963301 is correct, it is necessary to remove the language concerning laser jet printers and cartridges.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying HQ 963301, and any other ruling not specifically identified, to reflect the proper rationale for the classification of the inkjet printer cartridges, pursuant to the analysis in Headquarters Ruling Letter (HQ) 966222, which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

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

DATE: April 5, 2004

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966222
April 5, 2004
CLA–2 RR:CR:GC 966222 AML
CATEGORY: Classification
TARIFF NO.: 8473.30.30

MR. CARL SOLLER
SOLLER, SHAYNE & HORN
46 Trinity Place
New York, NY 10006

RE: Modification of HQ 963301; Hewlett Packard 51649A printer cartridge

DEAR MR. SOLLER:

This is in reference to Headquarters Ruling Letter ("HQ") 963301, dated June 14, 2001, which decided protest 0712–99–100120, filed by you on behalf of Access Data, Inc., concerning the classification of printer cartridges under subheading 3707.90.32, Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for other chemical preparations for photographic uses. We have reconsidered HQ 963301 and have concluded that certain language needs to be modified. This ruling serves that purpose. It has no effect on the classification determination made in HQ 963301 (see below).

Pursuant to section 625(c)(1), 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), notice of the proposed modification of HQ 963301 was published on February 25, 2004, in Vol. 38, No. 9 of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

We described the articles in HQ 963301 as follows:

> The articles are Hewlett Packard 51649A printer cartridges to be used in ink jet printers in conjunction with automatic data processing machines. A broker for the importer entered the articles under subheading 9801.00.1043, HTSUS, which provides for products of the United States when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad, articles provided for in headings 8469, 8470, 8471, 8472 or 8473. When the broker did not timely respond to either the CF 28 or CF 29 requesting a drawback affidavit and proposing a rate advance, respectively, Customs classified the articles under heading 3707, HTSUS, as other chemical preparations for photographic uses. The importer subsequently filed a corrected entry summary (CF 7501) which indicated classification under subheading 8473.30.30, HTSUS, which provides for parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 8469 to 8472: other parts for printers, specified in additional U.S. note 2 to chapter 84.

ISSUE:

Whether the printer cartridges are classifiable under subheading 3707.90.3290, HTSUS, which provides for other chemical preparations for photographic uses; or under subheading 8473.30.30, HTSUS, as parts and

accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 8469 to 8472: other parts for printers, specified in Additional U.S. Note 2 to Chapter 84?

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 may then be applied.

The HTSUS provisions under consideration are as follows:

3707	Chemical preparations for photographic uses (other than varnishes, glues, adhesives and similar preparations); unmixed products for photographic uses, put up in measured portions or put up for retail sale in a form ready for use:
3707.90	Other:
	Chemical preparations for photographic uses:
3707.90.32	Other.
	* * *
8473	Parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 8469 to 8472:
	Parts:
8473.30	Parts and accessories of the machines of heading 8471:
8473.30.30	Other parts for printers, specified in additional U.S. note 2 to this chapter.

When interpreting and implementing the HTSUS, the Explanatory Notes ("ENs") of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See, T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Note 2 to Chapter 37 provides that "the word 'photographic' relates to the process by which visible images are formed, directly or indirectly, by the action of light or other forms of radiation on photosensitive surfaces." Grolier's Encyclopedia (Grolier Electronic Publishing, 1994)(hereinafter "Grolier's"), under the heading "photography" elaborates:

> The fundamental physical principle of photography is that light falling briefly on the grains of certain insoluble silver salts (silver chloride, bromide, or iodide) produces small, invisible changes in the grains. When placed in certain chemical solutions known as developers, the affected grains are converted into a black form of silver.

The ink jet printer cartridges do not form visible images "by the action of light or other forms of radiation on photosensitive surfaces," nor is there any evidence that the ink jet cartridges contain "grains of certain insoluble silver salts." Under the heading "printer, computer," Grolier's provides that "a printer is a computer output device that records information on paper." An ink jet printer "fire[s] small bursts of ink at the paper." As such, the ink jet cartridge is not classifiable as a chemical preparation for photographic use.

The ink jet printer, an electronic machine used in conjunction with an automatic data processing machine (the ink jet cartridges of which are subject of the protest) is clearly classifiable in Chapter 84, which provides for, *inter alia*, machinery and mechanical appliances; parts thereof. The ink jet cartridge is an integral part of the printer.

Section XVI (in which Chapter 84 is found), note 2, HTSUS, states that:

> [s]ubject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:
>
> (a) Parts which are goods included in any of the headings of chapters 84 and 85 (other than headings 8485 and 8548) are in all cases to be classified in their respective headings;
>
> (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;
>
> (c) All other parts are to be classified in heading 8485 or 8548.

Subject to certain exceptions not relevant here, goods that are identifiable parts of machines or apparatus of Chapter 84 or Chapter 85 are classifiable in accordance with Section XVI, Note 2, HTSUS. *Nidec Corporation v. United States*, 861 F. Supp. 136, *aff'd*, 68 F. 3d 1333 (1995). Parts, which are goods included in any of the headings of Chapters 84 and 85, are in all cases to be classified in their respective headings. See Note 2(a). Other parts, if suitable for use solely or principally with a particular machine, or with a number of machines of the same heading, are to be classified with the machines of that kind. See Note 2(b).

Ink jet printers for use with automatic data processing machines are classifiable under heading 8471, HTSUS. See, *e.g.*, HQ 964347, dated March 15, 2001; HQ 962479, dated March 12, 2001; NY C86223, dated April 13, 1998; and NY C80900, dated October 21, 1997.

Thus, in accordance with the above-referenced section and chapter notes, the ink jet cartridges, which constitute an integral part of the printers, are classifiable as parts of the printers under subheading 8473.30.30, HTSUS.

As indicated above, this ruling has no effect on the entries which were the subject of Protest 0712–99–100120, as Customs no longer has jurisdiction over those entries. See *San Francisco Newspaper Printing Co. v. United States*, 620 F. Supp. 738 (CIT 1985).

HOLDING:

The Hewlett Packard 51649A printer cartridges are classifiable under subheading 8473.30.30, HTSUS, as parts and accessories (other than covers,

carrying cases and the like) suitable for use solely or principally with machines of headings 8469 to 8472: other parts for printers, specified in additional U.S. note 2 to Chapter 84.

EFFECT ON OTHER RULINGS:

HQ 963301 is hereby modified. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective sixty (60) days after its publication in the *Customs Bulletin*.

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

cc: National Commodity Specialist Division
NIS Kaplan

Port Director
U.S. Customs Service
35 West Service Road
Champlain, NY 12919

19 CFR PART 177

NOTICE OF PROPOSED MODIFICATION OF RULING LETTER AND TREATMENT RELATING TO THE COUNTRY OF ORIGIN MARKING REQUIREMENTS FOR ITALIAN-ORIGIN JEWELRY CHAINS AND CLASPS THAT ARE ASSEMBLED WITHIN THE UNITED STATES TO FORM FINISHED JEWELRY

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

ACTION: Notice of proposed modification of ruling letter and treatment relating to the country of origin marking requirements for Italian-origin jewelry chains and clasps that are assembled within the United States to form finished jewelry.

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 modify one ruling letter and any treatment previously accorded by CBP to substantially identical transactions, concerning the country of origin marking requirements for Italian-origin jewelry chains and clasps that are assembled within the United States to form finished jewelry. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before May 21, 2004.

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

FOR FURTHER INFORMATION CONTACT: Edward Caldwell, Commercial Rulings Division (202) 572–8872.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to modify one ruling letter relating to the country of origin marking requirements for Italian-origin jewelry chains and clasps that are assembled within the United States to form finished jewelry pieces. Although in this notice CBP is specifically referring to the modification of New York Ruling Letter ("NY") I85493 dated August 22, 2002, (*see* Attachment "A"),

this notice covers any rulings on similar merchandise that 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.*, ruling letter, internal advice memorandum or decision or protest review decision) on transactions similar to the one presented in this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to modify any treatment previously accorded by CBP to substantially identical merchandise under the stated circumstances. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the relevant statutes. Any person involved with substantially identical merchandise or transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical merchandise or transactions or of a specific ruing 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.

Section 304 of the Tariff Act of 1930 (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the United states shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article.

In NY I85493, upon considering three production scenarios for jewelry, CBP held that cutting jewelry chains to length and combining the chains with lobster clasps within the United States substantially transformed certain foreign-origin chains and clasps into articles with a new name, character, and use. The first two scenarios involved assembling U.S.-origin chain with foreign-made clasps, while the third scenario involved joining foreign-origin chain with a foreign-made clasp. It was determined that the country of origin of the completed jewelry in all three scenarios was the United States. Upon further review of the matter, CBP has determined that, with respect to the third production scenario considered in that case, assembling Italian-origin chains and clasps within the United States to form completed jewelry pieces does not substantially transform the items of foreign origin into a product of the United States.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to modify NY I85493 and any other rulings not specifically identified to reflect the proper country of origin marking requirements applicable to Italian-origin jewelry chains combined with Italian-origin lobster clasps within the United States pursuant to the analysis set forth in proposed HRL 562868. (*See* Attachment "B"). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to modify any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: April 5, 2004

Edward M. Leigh for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY I85493
August 22, 2002
CLA–2–71:RR:NC:SP:233 I85493
CATEGORY: Classification
TARIFF NO.: 7113.19.3000; 7113.11.5000; 7113.11.10

MS. SUSAN STUDENY
TIFFANY & CO.
15 Sylvan Way
Parsippany, NJ 07054–3893

RE: The tariff classification and country of origin of jewelry made from components from the U.S. and Italy.

DEAR MS. STUDENY:

In your letter dated August 16, 2002, you requested a tariff classification and country of origin ruling.

You have presented the following scenarios regarding two components of jewelry; a chain and clasp. The two components will be assembled and finished in the United States. In all cases, the chain will be purchased on a spool or portioned with no defined function.

1. 750 yellow gold chain fabricated in the U.S. weighing 33 grams, cost $348, combined with 750 yellow gold lobster clasp fabricated in Italy weighing 6.5 grams, cost $70.

2. Sterling silver chain fabricated in the U.S. weighing 52 grams, cost $13, combined with sterling silver lobster clasp fabricated in Italy weighing 7.5 grams, cost $11.

3. Sterling silver chain fabricated in Italy weighing 52 grams, cost $14, combined with sterling silver lobster clasp fabricated in Italy weighing 7.5 grams, cost $11.

The applicable subheading for the yellow gold lobster clasp will be 7113.19.3000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles of jewelry and parts thereof, of precious metal or of metal clad with precious metal . . . clasps and parts thereof. The rate of duty will be 5.8% ad valorem.

The applicable subheading for the sterling silver lobster clasps will be 7113.11.5000, HTS, which provides for articles and jewelry and parts thereof, of precious metal or of metal clad with precious metal . . . of silver, whether or not plated or clad with other precious metal: other: other. The rate of duty will be 5% ad valorem.

The applicable subheading for the sterling silver chain will be 7113.11.1000, HTS, which provides for articles of jewelry and parts thereof: of precious metal or of metal clad with precious metal . . . of silver, whether or not plated or clad with precious metal: rope, curb, cable, chain and similar articles produced in continuous lengths, all the foregoing, whether or not cut to specific lengths and whether or not set with imitation pearls or imitation gemstones, suitable for use in the manufacture of articles provided for in this heading. The rate of duty will be 6.3% ad valorem.

The country of origin of a product is the country of manufacture, production, or growth of the article. If further work or material is added to an article in another country, there must be a substantial transformation in that country in order to render such other country the country of origin. In the three scenarios described above, the cutting of the chain into material lengths, and the combining of the chain with the lobster clasp in the U.S. substantially transforms the components into an article of jewelry whose name, character and use is different from that of the components used in the processing. Accordingly, the country of origin in each case is the United States.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 646–733–3036.

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

[ATTACHMENT B]

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

HQ 562868
MAR–2–05 RR:CR:SM 562868 EAC
CATEGORY: Marking

MS. SUSAN STUDENY
TIFFANY & CO.
15 Sylvan Way
Parsippany, NJ 07054–3893

RE: Country of origin marking requirements for jewelry comprised of Italian-origin chains and clasps; substantial transformation

DEAR MS. STUDENY:

Pursuant to your request of August 16, 2002, for a ruling pertaining to the tariff classification and country of origin marking requirements applicable to jewelry that is comprised of components of U.S. and Italian origin, the Director, U.S. Customs and Border Protection ("CBP") National Commodity Specialist Division, issued New York Ruling Letter ("NY") I85493 dated August 22, 2002, to your company. Upon further consideration of NY I85493, we have determined that, while the tariff classifications in that ruling are correct, the country of origin marking requirements set forth for jewelry assembled to completion within the United States from Italian-origin clasps and chains are incorrect. Therefore, NY I85493 is hereby modified for the reasons set forth below.

FACTS:

Three scenarios of production for jewelry were presented for consideration in NY I85493, in which CBP held that cutting jewelry chain to length and combining the chain with lobster clasps within the United States substantially transformed certain foreign-origin components into an article with a new name, character, and use. The first two scenarios involved assembling U.S.-origin chain with foreign-made clasps, while the third scenario involved joining foreign-origin chain with a foreign-made clasp. It was determined that the country of origin of the completed jewelry in all three scenarios was the United States. As it is our belief that the forgoing is correct with respect to the first and second production scenarios considered in that case, this ruling will only consider the facts of the third scenario.

Accordingly, in the third production scenario, Italian-origin sterling silver jewelry chains and Italian-origin sterling silver lobster clasps are assembled within the United States to form completed jewelry pieces. Each sterling silver chain weighs 52 grams and is valued at $14. Each sterling silver lobster clasp weighs 7.5 grams and is valued at $11. The assembled jewelry pieces will be finished subsequent to assembly.

ISSUE:

For marking purposes, what is the country of origin of the jewelry assembled within the United States from the components described above?

LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930 (19 U.S.C. § 1304), provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently

as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. § 1304 was that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. "The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will." United States v. Friedlander & Co., 27 C.C.P.A. 297 at 302 (1940).

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and the exceptions of 19 U.S.C. § 1304. Section 134.1(b), Customs Regulations (19 CFR 134.1(b)), defines "country of origin" as the country of manufacture, production or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within the meaning of the marking laws and regulations. The case of U.S. v. Gibson-Thomsen Co., Inc., 27 C.C.P.A. 267 (C.A.D. 98)(1940), provides that an article used in manufacture which results in an article having a name, character, or use differing from that of the constituent article will be considered substantially transformed and, as a result, the manufacturer or processor will be considered the ultimate purchaser of the constituent materials. In such circumstances, the imported article is excepted from marking and only the outermost container is required to be marked. See, 19 CFR 134.35(a).

In Headquarters Ruling Letter ("HRL") 557100 dated April 30, 1993, raw Bolivian gold was converted into bars of pure gold within Bolivia by means of a melting process. Utilizing rolling mills and drawing machines, the bars were thereafter converted into gold wire that was wound around spools. The spooled gold wire was then exported to Italy where it was fed into machines and converted into gold chain. The gold chain was subsequently cleaned, prepared with soldering powder, passed through soldering ovens, and wound around spools. At this point, the gold chain was returned to Bolivia for further processing which included cutting the chain to length for necklaces and bracelets, manually soldering end tips to the chains, passing the chains through ovens for heat treatment, cleaning the chains with chemicals and ultrasonic processes, manually assembling locks to the chains, cleaning the assembled jewelry, "finishing" the gold chains with a brushing machine, testing the assembled jewelry for quality control compliance, and packing the jewelry for shipment to the United States.

At issue in HRL 557100 was whether, for purposes of eligibility under the Andean Trade Preference Act ("ATPA"), the jewelry imported into the United States was considered to be a "product of" Bolivia. In deciding this issue, we initially noted that processing gold wire into gold chain substantially transforms the gold wire into a product of the country where processed into gold chain. Citing, HRL 555929 dated April 22, 1991. Therefore, as it was evident that the Bolivian gold wire was substantially transformed into a product of Italy when converted into gold chain, the remaining issue was whether the Italian-origin gold chain was subsequently substantially transformed back into a product of Bolivia when integrated into necklaces and bracelets.

Regarding whether cutting to length, soldering end tips, attaching locks or clasps, brushing, and inspecting the completed jewelry substantially transformed the Italian gold chain into a product of Bolivia, we held:

> It is our opinion that once the woven gold chain is returned to Bolivia, the processes performed there to create the finished necklaces and bracelets do not substantially transform the imported chain into a "product of" Bolivia. We believe that the essential character of the bracelet or necklace is the chain which results from cutting, formation of the links and weaving operations which occur in Italy.

See also, HRL 560333 dated July 24, 1997 (simple assembly or weaving of gold links into chain, even when coupled with a soldering operation, does not substantially transform the gold links).

As applied to the case presently under consideration, it is our opinion that merely combining an Italian-origin sterling silver chain with an Italian-origin sterling silver lobster clasp and finishing the resulting product does not substantially transform the items of foreign origin. Therefore, the country of origin of the jewelry produced in this manner is Italy.

HOLDING:

NY I85493 dated August 22, 2002, is hereby modified. Based upon the information before us, we believe that combining an Italian-origin sterling silver chain with an Italian-origin sterling silver lobster clasp within the United States to form completed jewelry does not substantially transform the foreign-origin items into a product of the United States. As such, the country of origin of completed jewelry pieces produced under these circumstances is Italy.

MYLES B. HARMON,
Director,
Commercial Rulings Division.