

Bureau of Customs and Border Protection

CBP Decisions

(CBP Dec. 04-20)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR JUNE, 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:

June 1, 2004.....	\$1.221000
June 2, 2004.....	1.225000
June 3, 2004.....	1.220500
June 4, 2004.....	1.225800
June 5, 2004.....	1.225800
June 6, 2004.....	1.225800
June 7, 2004.....	1.232000
June 8, 2004.....	1.227300
June 9, 2004.....	1.209700
June 10, 2004.....	1.211000
June 11, 2004.....	1.201100
June 12, 2004.....	1.201100
June 13, 2004.....	1.201100
June 14, 2004.....	1.207300
June 15, 2004.....	1.213900
June 16, 2004.....	1.200600
June 17, 2004.....	1.204000
June 18, 2004.....	1.211800
June 19, 2004.....	1.211800
June 20, 2004.....	1.211800
June 21, 2004.....	1.211000
June 22, 2004.....	1.209200
June 23, 2004.....	1.209000
June 24, 2004.....	1.217000

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

European Union euro: (continued):

June 25, 2004	1.214500
June 26, 2004	1.214500
June 27, 2004	1.214500
June 28, 2004	1.219300
June 29, 2004	1.212400
June 30, 2004	1.217900

South Korea won:

June 1, 2004	\$0.000861
June 2, 2004 .....	.000859
June 3, 2004 .....	.000859
June 4, 2004 .....	.000859
June 5, 2004 .....	.000859
June 6, 2004 .....	.000859
June 7, 2004 .....	.000862
June 8, 2004 .....	.000863
June 9, 2004 .....	.000866
June 10, 2004 .....	.000862
June 11, 2004 .....	.000859
June 12, 2004 .....	.000859
June 13, 2004 .....	.000859
June 14, 2004 .....	.000859
June 15, 2004 .....	.000860
June 16, 2004 .....	.000864
June 17, 2004 .....	.000864
June 18, 2004 .....	.000862
June 19, 2004 .....	.000862
June 20, 2004 .....	.000862
June 21, 2004 .....	.000864
June 22, 2004 .....	.000863
June 23, 2004 .....	.000862
June 24, 2004 .....	.000865
June 25, 2004 .....	.000870
June 26, 2004 .....	.000870
June 27, 2004 .....	.000870
June 28, 2004 .....	.000867
June 29, 2004 .....	.000868
June 30, 2004 .....	.000865

Taiwan N.T. dollar:

June 1, 2004	\$0.029824
June 2, 2004 .....	.029895
June 3, 2004 .....	.029895
June 4, 2004 .....	.029878
June 5, 2004 .....	.029878
June 6, 2004 .....	.029878
June 7, 2004 .....	.029886
June 8, 2004 .....	.029940

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

Taiwan N.T. dollar: (continued):

June 9, 2004 .....	.029985
June 10, 2004 .....	.029940
June 11, 2004 .....	.029842
June 12, 2004 .....	.029842
June 13, 2004 .....	.029842
June 14, 2004 .....	.029833
June 15, 2004 .....	.029674
June 16, 2004 .....	.029780
June 17, 2004 .....	.029753
June 18, 2004 .....	.029727
June 19, 2004 .....	.029727
June 20, 2004 .....	.029727
June 21, 2004 .....	.029700
June 22, 2004 .....	.029586
June 23, 2004 .....	.029595
June 24, 2004 .....	.029771
June 25, 2004 .....	.029789
June 26, 2004 .....	.029789
June 27, 2004 .....	.029789
June 28, 2004 .....	.029718
June 29, 2004 .....	.029682
June 30, 2004 .....	.029709

Dated: July 1, 2004

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.

(CBP Dec. 04–21)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR JUNE, 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 04–18 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

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

Australia dollar:

June 1, 2004.	\$0.706700
June 2, 2004. ....	.697000
June 3, 2004. ....	.684900
June 4, 2004. ....	.692200
June 5, 2004. ....	.692200
June 6, 2004. ....	.692200
June 7, 2004. ....	.704300
June 8, 2004. ....	.701000
June 9, 2004. ....	.692000
June 10, 2004. ....	.698300
June 11, 2004. ....	.691200
June 12, 2004. ....	.691200
June 13, 2004. ....	.691200
June 14, 2004. ....	.688300
June 15, 2004. ....	.696000
June 16, 2004. ....	.687000
June 17, 2004. ....	.684000
June 18, 2004. ....	.690500
June 19, 2004. ....	.690500
June 20, 2004. ....	.690500
June 21, 2004. ....	.690500
June 22, 2004. ....	.685500
June 23, 2004. ....	.686500
June 24, 2004. ....	.699600
June 25, 2004. ....	.699000
June 26, 2004. ....	.699000
June 27, 2004. ....	.699000
June 28, 2004. ....	.699800
June 29, 2004. ....	.690800
June 30, 2004. ....	.695200

Brazil real:

June 1, 2004.	\$0.316957
June 2, 2004. ....	.319489
June 3, 2004. ....	.318066
June 4, 2004. ....	.319489
June 5, 2004. ....	.319489
June 6, 2004. ....	.319489
June 7, 2004. ....	.320924
June 8, 2004. ....	.320564
June 9, 2004. ....	.321234
June 10, 2004. ....	.321234
June 11, 2004. ....	.317460
June 12, 2004. ....	.317460
June 13, 2004. ....	.317460
June 14, 2004. ....	.316256
June 15, 2004. ....	.319693
June 16, 2004. ....	.317511
June 17, 2004. ....	.320102
June 18, 2004. ....	.318218

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

Brazil real: (continued):

June 19, 2004 .....	.318218
June 20, 2004 .....	.318218
June 21, 2004 .....	.319591
June 22, 2004 .....	.318979
June 23, 2004 .....	.319642
June 24, 2004 .....	.322269
June 25, 2004 .....	.321543
June 26, 2004 .....	.321543
June 27, 2004 .....	.321543
June 28, 2004 .....	.318725
June 29, 2004320513
June 30, 2004322061

Canada dollar:

June 16, 2004	\$0.726111
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India rupee:

June 18, 2004	\$0.021901
June 19, 2004021901
June 20, 2004021901
June 21, 2004021796
June 22, 2004 .....	.021640
June 23, 2004 .....	.021882
June 24, 2004 .....	.021810
June 25, 2004 .....	.021810
June 26, 2004 .....	.021810
June 27, 2004 .....	.021810
June 28, 2004 .....	.021744
June 29, 2004 .....	.021716
June 30, 2004 .....	.021744

Japan yen:

June 1, 2004	\$0.009054
June 2, 2004 .....	.009068
June 3, 2004 .....	.008998
June 4, 2004 .....	.008987
June 5, 2004 .....	.008987
June 6, 2004 .....	.008987
June 7, 2004 .....	.009123
June 8, 2004 .....	.009110
June 9, 2004 .....	.009112
June 10, 2004 .....	.009147
June 11, 2004 .....	.009083
June 12, 2004 .....	.009083
June 13, 2004 .....	.009083
June 14, 2004 .....	.008997
June 15, 2004 .....	.009125
June 16, 2004 .....	.009079

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

Japan yen: (continued):

June 17, 2004 .....	.009122
June 22, 2004 .....	.009174
June 30, 2004 .....	.009138

New Zealand dollar:

June 1, 2004	\$0.628800
June 2, 2004 .....	.623000
June 3, 2004 .....	.615900
June 4, 2004 .....	.619300
June 5, 2004 .....	.619300
June 6, 2004 .....	.619300
June 7, 2004 .....	.629800
June 8, 2004 .....	.627100
June 9, 2004 .....	.620400
June 11, 2004 .....	.629000
June 12, 2004 .....	.629000
June 13, 2004 .....	.629000
June 14, 2004 .....	.625500
June 15, 2004 .....	.633500
June 16, 2004 .....	.629400
June 17, 2004 .....	.624200
June 18, 2004 .....	.627200
June 19, 2004 .....	.627200
June 20, 2004 .....	.627200
June 21, 2004 .....	.627500
June 22, 2004 .....	.626800
June 23, 2004 .....	.625900
June 24, 2004 .....	.633700
June 29, 2004632500
June 30, 2004632200

Thailand baht:

June 14, 2004	\$0.024319
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Dated: July 1, 2004

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.

7/1/04

CIE C 28/03
LIQ-03-01-RR:OO:CI

RE: SECTION 159.34 CFR

SUBJECT: CERTIFIED RATES OF FOREIGN EXCHANGE:
THIRD 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 JULY 1, 2004 AND ENDING
SEPTEMBER 30, 2004

COUNTRY	CURRENCY	U.S. DOLLARS
AUSTRALIA	DOLLAR	\$0.703600
BRAZIL	REAL	\$0.324359
CANADA	DOLLAR	\$0.750469
CHINA, P.R.	YUAN	\$0.120821
DENMARK	KRONE	\$0.163559
HONG KONG	DOLLAR	\$0.128205
INDIA	RUPEE	\$0.021796
JAPAN	YEN	\$0.009239
MALAYSIA	RINGGIT	\$0.263158
MEXICO	NEW PESO	\$0.086911
NEW ZEALAND	DOLLAR	\$0.640000
NORWAY	KRONE	\$0.143441
SINGAPORE	DOLLAR	\$0.582920
SOUTH AFRICA	RAND	\$0.160128
SRI LANKA	RUPEE	\$0.009766
SWEDEN	KRONA	\$0.132521
SWITZERLAND	FRANC	\$0.799424
THAILAND	BAHT	\$0.024492
UNITED KINGDOM	POUND STERLING	\$1.816000
ENEZUELA	BOLIVAR	\$0.000521

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.

19 CFR Part 101**[CBP Dec. 04-22]****EXTENSION OF PORT LIMITS OF MEMPHIS, TENNESSEE**

AGENCY: Customs and Border Protection, Homeland Security

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, a proposed extension of the port limits of the port of Memphis, Tennessee, to include all of the territory within the limits of DeSoto County, northern Mississippi. The port extension is being proposed in order to facilitate economic development in northern Mississippi, and to provide convenience and improved service to carriers, importers, and the general public.

EFFECTIVE DATE: August 11, 2004.

FOR FURTHER INFORMATION CONTACT: Dennis Dore, Office of Field Operations, (202) 927-6871.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

The current port limits of Memphis, Tennessee are described in Treasury Decision (T.D.) 84-126, signed May 14, 1984, and published in the **Federal Register** (49 FR 22629) on May 31, 1984, as encompassing the corporate limits of the city of Memphis, Tennessee and all the territory within the limits of Shelby County, Tennessee.

Recently, northern Mississippi has experienced marked business expansion and population growth. Currently, businesses located in northern Mississippi utilize the nearest port of entry at Memphis, Tennessee, and the port limits of Memphis do not extend beyond the Tennessee border.

In order to facilitate economic development in northern Mississippi, and provide convenience and improved service to carriers, importers, and the general public, Customs and Border Protection (CBP), in a document published in the **Federal Register** (69 FR 2092) on January 14, 2004, proposed to extend the port limits of the port of Memphis, Tennessee, to include all of the territory within the limits of DeSoto County, northern Mississippi. The document proposed to amend § 101.3(b)(1) of the CBP Regulations if a determination was made to proceed with the expansion of the port limits.

ADOPTION OF PROPOSAL AS FINAL RULE

Comments on the proposed amendment to the CBP Regulations were solicited. Five comments were submitted within the designated comment period. Each of the comments supported the proposed extension of the port limits and agreed that it will facilitate economic development in northern Mississippi. Upon further consideration of the matter, CBP has decided to adopt the proposal as published on January 14, 2004.

NEW PORT LIMITS OF THE PORT OF MEMPHIS, TENNESSEE

Accordingly, CBP is amending § 101.3(b)(1) of the CBP Regulations to reflect that the new limits of the port of entry of Memphis, Tennessee are as follows:

The corporate limits of Memphis, Tennessee and all of the territory within the limits of Shelby County, Tennessee and DeSoto County, Mississippi.

AUTHORITY

This change is being made under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

Although CBP solicited public comments, notice and public procedure was not required pursuant to 5 U.S.C. 553 because this document relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq). The Office of Management and Budget has determined this rule to be non-significant under Executive Order 12866.

DRAFTING INFORMATION

The principal author of this document is Kevin J. Fandl, Attorney, Office Regulations and Rulings, Customs and Border Protection. However, personnel from other Bureau offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 101

Customs duties and inspection, Organization and functions (Government agencies), Customs ports of entry, Exports, Imports.

AMENDMENT TO THE REGULATIONS

For the reasons stated above, part 101 of the CBP Regulations (19 CFR part 101) is amended as follows:

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 and specific authority provision for § 101.3 continue to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * *

2. In the list of ports table in § 101.3(b)(1), under the state of Tennessee, in the “Limits of port” column adjacent to “Memphis” in the “Ports of entry” column, remove the entry “(Restated in T.D. 84–126)” and add in its place “CBP Dec. 04–22”.

Dated: July 6, 2004

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

TOM RIDGE,
Secretary,
Department of Homeland Security.

[Published in the Federal Register, July 12, 2004 (69 FR 41749)]

General Notices

GRANT OF “LEVER-RULE” PROTECTION

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

ACTION: Notice of grant of “Lever-rule” protection.

SUMMARY: Pursuant to 19 CFR § 133.2(f), this notice advises interested parties that Customs & Border Protection has granted “Lever-rule” protection to Johnson & Johnson for its blood glucose monitoring devices that bear the ONE TOUCH ULTRA® trademark.

Notice of the receipt of an application for “Lever-rule” protection was published in the Customs Bulletin on December 10, 2003.

FOR FURTHER INFORMATION CONTACT: Joseph E. Howard, Esq., Intellectual Property Rights Branch, Office of Regulations & Rulings, (202) 572-8701.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 CFR 133.2(f), this notice advises interested parties that Customs & Border Protection has granted “Lever-rule” protection for the Johnson & Johnson blood glucose monitoring devices that bear the trademark ONE TOUCH ULTRA®. The blood glucose monitoring devices that bear the ONE TOUCH ULTRA® trademark are granted protection against the versions of the monitoring devices that are sold in the European Union and Norway. Customs & Border Protection (CBP) has determined that the versions of the blood glucose monitoring devices sold in the European Union and Norway that bear the trademark ONE TOUCH ULTRA differ from the U.S. versions of the blood glucose monitoring devices sold under the trademark (ONE TOUCH ULTRA®) in numerous individual ways that in the aggregate establish that the foreign versions of the blood glucose monitoring devices are materially, physically different from the U.S. versions.

In *Societe Des Produits Nestle, S.A. v. Casa Helvetia, Inc.*, 982 F.2d 633, 641 (1st Cir. 1992), the First Federal Circuit found that material differences exist where the “bundle of characteristics that are associated with the mark” vary in the gray market version of the goods. The Third Federal Circuit noted that characteristics of the gray market goods that are not shared by the trademark owner’s goods are likely to affect consumers’ perceptions regarding the desirability of the goods. *Iberia Foods Corp. v. Roland Romero, Jr.*, 150 F3d. 298, 302 (3rd Cir. 1998).

The U.S. versions of the blood glucose monitoring devices that bear the ONE TOUCH ULTRA® trademark differ from the versions of the devices sold in the European Union and Norway in a host of ways that are likely to affect Consumers’ perceptions regarding the Johnson & Johnson products here in issue. The U.S. versions of the trademarked blood glucose monitoring devices differ in terms of packaging in which the devices are sold and the information included in the text on the product packaging. The differences in packaging include coloration and accents such as imagery used on the packaging. The text used on the packaging differs in that the U.S. versions of the products have textual information geared to the United States market while the versions of the products sold in The European Union and Norway have product packaging text that provide information for the targeted foreign market and use foreign Languages appropriate for these markets.

The version of the product that bears the ONE TOUCH ULTRA® trademark that is sold in the United States is sold in a carton that incorporates dark blue coloring that fades into light blue, has a rose accent strip, and depicts testing meters on the front and back of the carton. The testing meters depicted are the ONE TOUCH ULTRA and the TOUCH INDUO testing meters. The U.S. version incorporates text on the packaging that is aimed at the U.S. market: the packaging notes that the product is “[f]or blood glucose testing with ONE TOUCH Meters and INDUO systems only[;]” promotes the device as a “FastDraw Design;” uses temperature storage instructions that highlight the Fahrenheit temperature scale with the temperature on the Celsius temperature scale included in parenthesis; contains a “ONE TOUCH Commitment” marketing statement; a Customer Service Phone number for LifeScan, Inc. which is located in Milpitas, California; and provides instructions in English.

The version of the ONE TOUCH ULTRA blood glucose testing strip that bears the ONE TOUCH ULTRA® but is sold in the European Union and Norway, differs from the version of the product that is sold in the United States in the following physically material ways: retail configuration; carton design; and, text used on product packaging.

The ONE TOUCH ULTRA blood testing device sold in the European Union and Norway is sold in retail configurations of 50 testing strips everywhere except France and Italy, where cartons of 25 and 100 testing strips are offered. The carton sold abroad in these areas is blue, with a rose accent stripe, and bears a depiction of blood dripping from a finger. The text on the packaging does not include information specific to the U.S. market such as promotion of the testing device as “FastDraw Design;” United States Patent coverage; product commitment marketing statement; and English language only instructions. It does include information germane to marketing the product outside of the United States such as: product storage information that highlights temperature ranges on the Celsius (rather than Fahrenheit) temperature scale; indicates that the vial cap contains silica gel; provides customer service numbers in the country where the product is sold; and, has instructions in various languages depending on where the specific product lot is to be sold.

These physical differences may reasonably be considered as relevant to a decision about whether to purchase a product. In *Societe Des Produits Nestle, S.A. v. Casa Helvetia, Inc.*, *op. cit.*, at 639, the court found that physical differences might result in consumer confusion when, as here, also, “. . . a product catering to the indigenous conditions of a foreign country competes domestically against a physically different product that bears the same name.” This rationale suggests that consumers would consider market-specific differences, such as those under consideration in this case, relevant to

their decision about whether to purchase the ONE TOUCH ULTRA® trademarked products.

ENFORCEMENT

Importation of the subject gray market versions of the ONE TOUCH ULTRA® blood glucose monitoring devices intended for sale in, The European Union and Norway are restricted, unless the labeling requirements of 19 CFR § 133.23(b) are satisfied.

Dated: July 1, 2004

GEORGE FREDERICK MCCRAY,
Chief,
Intellectual Property Rights Branch,
Office of Regulations and Rulings.



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 July 1, 2004, the interest rates for overpayments will be 3 percent for corporations and 4 percent for non-corporations, and the interest rate for underpayments will be 4 percent. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

EFFECTIVE DATE: July 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 2004-56, the IRS determined the rates of interest for the calendar quarter beginning July 1, 2004, and ending September 30, 2004. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). For corporate overpayments, the rate is the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). These interest rates are subject to change for the calendar quarter beginning October 1, 2004, and ending December 31, 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.

<u>Beginning Date</u>	<u>Ending Date</u>	<u>Under-payments (percent)</u>	<u>Over-payments (percent)</u>	<u>Corporate Overpayments (Eff. 1-1-99) (percent)</u>
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%	
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%	

<u>Beginning Date</u>	<u>Ending Date</u>	<u>Under- payments (percent)</u>	<u>Over- payments (percent)</u>	<u>Corporate Overpay- ments (Eff. 1-1-99) (percent)</u>
100188	033189	11%	10%	
040189	093089	12%	11%	
100189	033191	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%
070104	093004	4%	4%	3%

Dated: July 6, 2004

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

[Published in the Federal Register, July 12, 2004 (69 FR 41837)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:
APPLICATION FOR EXPORTATION OF ARTICLES
UNDER SPECIAL BOND**

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: Application for Exportation of Articles Under Special Bond. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (69 FR 25135) on May 5, 2004, 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 August 9, 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 Homeland Security 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: Application for Exportation of Articles under Special Bond

OMB Number: 1651-0004

Form Number: Form CBP-3495

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

Current Actions: This submission is being submitted to extend the expiration date with no change to the burden hours.

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 1500

Estimated Time Per Respondent: 8 minutes

Estimated Total Annual Burden Hours: 2,000

Estimated Total Annualized Cost on the Public: \$32,040.00

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

Dated: June 30, 2004

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

[Published in the Federal Register, July 8, 2004 (69 FR 41273)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:
DECLARATION BY THE PERSON WHO PERFORMED
THE PROCESSING OF GOODS**

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: Declaration by the Person Who Performed the Processing of Goods Abroad. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Regis-**

ter (69 FR 25136–25137) on May 5, 2004, 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 August 9, 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 Homeland Security 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: Declaration by the Person Who Performed the Processing of Goods Abroad

OMB Number: 1651–0039

Form Number: N/A

Abstract: This declaration, which is prepared by the foreign processor and submitted by the filer with each entry, provides details on the processing performed abroad and is necessary to assist CBP in

determining whether the declared value of the processing is accurate.

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

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 7,500

Estimated Time Per Respondent: 15 minutes

Estimated Total Annual Burden Hours: 1,880

Estimated Total Annualized Cost on the Public: \$41,284.

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

Dated: June 30, 2004

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

[Published in the Federal Register, July 8, 2004 (69 FR 41274)]

AGENCY INFORMATION COLLECTION ACTIVITIES: IMPORTATION BOND STRUCTURE

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: Importation Bond Structure. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (69 FR 25138) on May 5, 2004, 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 August 9, 2004.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public bur-

den and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security 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: Importation Bond Structure

OMB Number: 1651-0050

Form Number: CBP-301 and CBP-5297

Abstract: Bonds are used to assure that duties, taxes, charges, penalties, and reimbursable expenses owed to the Government are paid. They are also used to provide legal recourse for the Government for noncompliance with CBP laws and regulations.

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

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 590,250

Estimated Time Per Respondent: 15 minutes

Estimated Total Annual Burden Hours: 147,563

Estimated Total Annualized Cost on the Public: \$4,283,777

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

Dated: June 30, 2004

TRACEY DENNING,
Agency Clearance Officer;
Information Services Branch.

[Published in the Federal Register, July 8, 2004 (69 FR 41274)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:
IMPORTATION OF ETHYL ALCOHOL FOR
NON-BEVERAGE PURPOSES**

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: Importation of Ethyl Alcohol for Non-Beverage Purposes. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (69 FR 25136) on May 5, 2004, 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 August 9, 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 Homeland Security 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: Importation of Ethyl Alcohol for Non-Beverage Purpose

OMB Number: 1651-0056

Form Number: N/A

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

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

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 300

Estimated Time Per Respondent: 5 minutes

Estimated Total Annual Burden Hours: 25

Estimated Total Annualized Cost on the Public: \$544.50

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

Dated: June 30, 2004

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

[Published in the Federal Register, July 8, 2004 (69 FR 41276)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:
TRANSPORTATION ENTRY AND MANIFEST OF GOODS
SUBJECT TO CBP INSPECTION AND PERMIT**

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: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (69 FR 25137–25138) on May 5, 2004, 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 August 9, 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: Transportation Entry and Manifest of Goods Subject to CBP Inspection and Permit

OMB Number: 1651-0003

Form Number: Form CBP-7512 and 7512-A

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

Current Actions: This submission is being submitted to extend the expiration date with a change in the burden hours.

Type of Review: Extension (with change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 50,000

Estimated Time Per Respondent: 14 hours

Estimated Total Annual Burden Hours: 700,000 hours

Estimated Total Annualized Cost on the Public: \$12,950,000

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

Dated: June 30, 2004

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

[Published in the Federal Register, July 8, 2004 (69 FR 41272)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:
U.S./ISRAEL FREE TRADE AGREEMENT**

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 follow-

ing information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: U.S./Israel Free Trade Agreement. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (69 FR 25137) on May 5, 2004, 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 August 9, 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 Homeland Security 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: U.S./Israel Free Trade Agreement

OMB Number: 1651-0065

Form Number: N/A

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

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

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 34,500

Estimated Time Per Respondent: 13 minutes

Estimated Total Annual Burden Hours: 7,505

Estimated Total Annualized Cost on the Public: \$143,345

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

Dated: June 30, 2004

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

[Published in the Federal Register, July 8, 2004 (69 FR 41275)]

**UNDERTAKINGS OF THE DEPARTMENT OF
HOMELAND SECURITY BUREAU OF CUSTOMS
AND BORDER PROTECTION REGARDING THE
HANDLING OF PASSENGER NAME RECORD DATA**

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

ACTION: General notice.

SUMMARY: On May 11, 2004, the Department of Homeland Security (DHS), Customs and Border Protection (CBP) issued to the European Union (EU) a document containing a set of representations regarding the manner in which CBP will handle certain Passenger Name Record (PNR) data relating to flights between the United States and EU member states. The document provides the framework within which the EU was able to approve several measures which the EU requires to permit the transfer of such PNR data to CBP, consistent with EU law. On May 17, 2004, the European Com-

mission announced that it had issued an “adequacy finding” for the transfer of such PNR data to CBP, and a related international agreement was also approved for execution by the European Council. DHS wishes to provide the public with notice of the issuance of the document upon which the EU has based these very important decisions.

FOR FURTHER INFORMATION CONTACT: Erik Shoberg, Office of Field Operations, 202-927-0530.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On May 11, 2004, the Department of Homeland Security (DHS), Customs and Border Protection (CBP) issued to the European Union (EU) the document set forth below (the “Undertakings”). These Undertakings contain a set of representations regarding the manner in which CBP will handle certain Passenger Name Record (PNR) data relating to flights between the United States and EU member states, access to which is required under U.S. law (49 U.S.C. 44909) and the implementing regulations (19 CFR 122.49b). These Undertakings provide the framework within which the EU was able to approve several measures which the EU requires to permit the transfer of such PNR data to CBP, consistent with EU law. On May 17, 2004, the European Commission announced that it had issued an “adequacy finding” for the transfer of such PNR data to CBP, and a related international agreement was also approved for execution by the European Council. DHS wishes to provide the public with notice of the issuance of this document upon which the EU has based these very important decisions.

Dated: July 6, 2004

TOM RIDGE,
Secretary,
Department of Homeland Security.

**UNDERTAKINGS OF THE DEPARTMENT OF
HOMELAND SECURITY BUREAU OF
CUSTOMS AND BORDER PROTECTION (CBP)**

In support of the plan of the European Commission (Commission) to exercise the powers conferred on it by Article 25(6) of Directive 95/46/EC (the Directive) and to adopt a decision recognizing the Department of Homeland Security Bureau of Customs and Border Protection (CBP) as providing adequate protection for the purposes of air

carrier transfers of Passenger¹ Name Record (PNR) data which may fall within the scope of the Directive, CBP undertakes as follows:

Legal Authority to Obtain PNR

1) By legal statute (title 49, United States Code, section 44909(c)(3)) and its implementing (interim) regulations (title 19, Code of Federal Regulations, section 122.49b), each air carrier operating passenger flights in foreign air transportation to or from the United States, must provide CBP (formerly, the U.S. Customs Service) with electronic access to PNR data to the extent it is collected and contained in the air carrier's automated reservation/departure control systems ("reservation systems");

Use of PNR Data by CBP

2) Most data elements contained in PNR data can be obtained by CBP upon examining a data subject's airline ticket and other travel documents pursuant to its normal border control authority, but the ability to receive this data electronically will significantly enhance CBP's ability to facilitate bona fide travel and conduct efficient and effective advance risk assessment of passengers;

3) PNR data is used by CBP strictly for purposes of preventing and combating: 1) terrorism and related crimes; 2) other serious crimes, including organized crime, that are transnational in nature; and 3) flight from warrants or custody for the crimes described above. Use of PNR data for these purposes permits CBP to focus its resources on high risk concerns, thereby facilitating and safeguarding bona fide travel;

Data Requirements

4) Data elements which CBP requires are listed herein at Attachment "A". (Such identified elements are hereinafter referred to as "PNR" for purposes of these Undertakings). Although CBP requires access to each of those thirty-four (34) data elements listed in Attachment "A", CBP believes that it will be rare that an individual PNR will include a full set of the identified data. In those instances where the PNR does not include a full set of the identified data, CBP will not seek direct access from the air carrier's reservation system to other PNR data which are not listed on Attachment "A";

5) With respect to the data elements identified as "OSI" and "SSI/SSR" (commonly referred to as general remarks and open fields), CBP's automated system will search those fields for any of the other data elements identified in Attachment "A". CBP personnel will not be authorized to manually review the full OSI and SSI/SSR fields

¹For the purposes of these Undertakings, the terms "passenger" and "passengers" shall include crew members.

unless the individual that is the subject of a PNR has been identified by CBP as high risk in relation to any of the purposes identified in paragraph 3 hereof;

6) Additional personal information sought as a direct result of PNR data will be obtained from sources outside the government only through lawful channels, including through the use of mutual legal assistance channels where appropriate, and only for the purposes set forth in paragraph 3 hereof. For example, if a credit card number is listed in a PNR, transaction information linked to that account may be sought, pursuant to lawful process, such as a subpoena issued by a grand jury or a court order, or as otherwise authorized by law. In addition, access to records related to e-mail accounts derived from a PNR will follow U.S. statutory requirements for subpoenas, court orders, warrants, and other processes as authorized by law, depending on the type of information being sought;

7) CBP will consult with the European Commission regarding revision of the required PNR data elements (Attachment "A"), prior to effecting any such revision, if CBP becomes aware of additional PNR fields that airlines may add to their systems which would significantly enhance CBP's ability to conduct passenger risk assessments or if circumstances indicate that a previously non-required PNR field will be needed to fulfill the limited purposes referred to in paragraph 3 of these Undertakings;

8) CBP may transfer PNRs on a bulk basis to the Transportation Security Administration (TSA) for purposes of TSA's testing of its Computer Assisted Passenger Prescreening System II (CAPPS II). Such transfers will not be made until PNR data from US domestic flights has first been authorized for testing. PNR data transferred under this provision will not be retained by TSA or any other parties directly involved in the tests beyond the period necessary for testing purposes, or be transferred to any other third party². The purpose of the processing is strictly limited to testing the CAPPS II system and interfaces, and, except in emergency situations involving the positive identification of a known terrorist or individual with established connections to terrorism, is not to have any operational consequences. Under the provision requiring an automated filtering method described in paragraph 10, CBP will have filtered and deleted "sensitive" data before transferring any PNRs to TSA on a bulk basis under this paragraph

Treatment of "Sensitive" Data

9) CBP will not use "sensitive" data (i.e. personal data revealing racial or ethnic origin, political opinions, religious or philosophical

²For purposes of this provision, CBP is not considered a party directly involved in the CAPPS II testing or a "third party."

beliefs, trade-union membership, and data concerning the health or sex life of the individual) from the PNR, as described below;

10) CBP will implement, with the least possible delay, an automated system which filters and deletes certain "sensitive" PNR codes and terms which CBP has identified in consultation with the European Commission;

11) Until such automated filters can be implemented CBP represents that it does not and will not use "sensitive" PNR data and will undertake to delete "sensitive" data from any discretionary disclosure of PNR under paragraphs 28–34;³

Method of Accessing PNR Data

12) With regard to the PNR data which CBP accesses (or receives) directly from the air carrier's reservation systems for purposes of identifying potential subjects for border examination, CBP personnel will only access (or receive) and use PNR data concerning persons whose travel includes a flight into or out of⁴ the United States;

13) CBP will "pull" passenger information from air carrier reservation systems until such time as air carriers are able to implement a system to "push" the data to CBP;

14) CBP will pull PNR data associated with a particular flight no earlier than 72 hours prior to the departure of that flight, and will re-check the systems no more than three (3) times between the initial pull, the departure of the flight from a foreign point and the flight's arrival in the United States, or between the initial pull and the departure of the flight from the United States, as applicable, to identify any changes in the information. In the event that the air carriers obtain the ability to "push" PNR data, CBP will need to receive the data 72 hours prior to departure of the flight, provided that all changes to the PNR data which are made between that point and the time of the flight's arrival in or departure from the U.S., are also pushed to CBP.⁵ In the unusual event that CBP obtains advance information that person(s) of specific concern may be travelling on a flight to, from or through the U.S., CBP may pull (or request a particular push) of PNR data prior to 72 hours before departure of the

³Prior to CBP's implementation of automated filters (as referenced in paragraph 10 hereof), if "sensitive" data exists in a PNR which is the subject of a non-discretionary disclosure by CBP as described in paragraph 35 hereof, CBP will make every effort to limit the release of "sensitive" PNR data, consistent with U.S. law.

⁴This would include persons transiting through the United States.

⁵In the event that the air carriers agree to push the PNR data to CBP, the agency will engage in discussions with the air carriers regarding the possibility of pushing PNR data at periodic intervals between 72 hours before departure of the flight from a foreign point and the flight's arrival in the United States, or within 72 hours before the departure of the flight from the United States, as applicable. CBP seeks to utilize a method of pushing the necessary PNR data that meets the agency's needs for effective risk assessment, while minimizing the economic impact upon air carriers.

flight to ensure proper enforcement action may be taken when essential to prevent or combat an offense enumerated in paragraph 3 hereof. To the extent practicable, in such instances where PNR data must be accessed by CBP prior to 72 hours before the departure of the flight, CBP will utilize customary law enforcement channels;

Storage of PNR Data

15) Subject to the approval of the National Archives and Records Administration (44 U.S.C. 2101, et seq.), CBP will limit on-line access to PNR data to authorized CBP users⁶ for a period of seven (7) days, after which the number of officers authorized to access the PNR data will be even further limited for a period of three years and 6 months (3.5 years) from the date the data is accessed (or received) from the air carrier's reservation system. After 3.5 years, PNR data that has not been manually accessed during that period of time, will be destroyed. PNR data that has been manually accessed during the initial 3.5 year period will be transferred by CBP to a deleted record file,⁷ where it will remain for a period of eight (8) years before it is destroyed. This schedule, however, would not apply to PNR data that is linked to a specific enforcement record (such data would remain accessible until the enforcement record is archived). With respect to PNR which CBP accesses (or receives) directly from air carrier reservation systems during the effective dates of these Undertakings, CBP will abide by the retention policies set forth in the present paragraph, notwithstanding the possible expiration of the Undertakings pursuant to paragraph 46 herein;

CBP Computer System Security

16) Authorized CBP personnel obtain access to PNR through the closed CBP intranet system which is encrypted end-to-end and the connection is controlled by the Customs Data Center. PNR data stored in the CBP database is limited to "read only" access by authorized personnel, meaning that the substance of the data may be programmatically reformatted, but will not be substantively altered in any manner by CBP once accessed from an air carrier's reservation system;

⁶These authorized CBP users would include employees assigned to analytical units in the field offices, as well as employees assigned to the National Targeting Center. As indicated previously, persons charged with maintaining, developing or auditing the CBP database will also have access to such data for those limited purposes.

⁷Although the PNR record is not technically deleted when it is transferred to the Deleted Record File, it is stored as raw data (not a readily searchable form and, therefore, of no use for "traditional" law enforcement investigations) and is only available to authorized personnel in the Office of Internal Affairs for CBP (and in some cases the Office of the Inspector General in connection with audits) and personnel responsible for maintaining the database in CBP's Office of Information Technology, on a "need to know" basis.

17) No other foreign, federal, state or local agency has direct electronic access to PNR data through CBP databases (including through the Interagency Border Inspection System (IBIS));

18) Details regarding access to information in CBP databases (such as who, where, when (date and time) and any revisions to the data) are automatically recorded and routinely audited by the Office of Internal Affairs to prevent unauthorized use of the system;

19) Only certain CBP officers, employees or information technology contractors⁸ (under CBP supervision) who have successfully completed a background investigation, have an active, password-protected account in the CBP computer system, and have a recognized official purpose for reviewing PNR data, may access PNR data;

20) CBP officers, employees and contractors are required to complete security and data privacy training, including passage of a test, on a biennial basis. CBP system auditing is used to monitor and ensure compliance with all privacy and data security requirements;

21) Unauthorized access by CBP personnel to air carrier reservation systems or the CBP computerized system which stores PNR is subject to strict disciplinary action (which may include termination of employment) and may result in criminal sanctions being imposed (fines, imprisonment of up to one year, or both) (see title 18, United States Code, section 1030);

22) CBP policy and regulations also provide for stringent disciplinary action (which may include termination of employment) to be taken against any CBP employee who discloses information from CBP's computerized systems without official authorization (title 19, Code of Federal Regulations, section 103.34);

23) Criminal penalties (including fines, imprisonment of up to one year, or both) may be assessed against any officer or employee of the United States for disclosing PNR data obtained in the course of his employment, where such disclosure is not authorized by law (see title 18, United States Code, sections 641, 1030, 1905);

CBP Treatment and Protection of PNR Data

24) CBP treats PNR information regarding persons of any nationality or country of residence as law enforcement sensitive, confidential personal information of the data subject, and confidential commercial information of the air carrier, and, therefore, would not make disclosures of such data to the public, except as in accordance with these Undertakings or as otherwise required by law;

25) Public disclosure of PNR data is generally governed by the Freedom of Information Act (FOIA) (title 5, United States Code, section 552) which permits any person (regardless of nationality or

⁸ Access by "contractors" to any PNR data contained in the CBP computer systems would be confined to persons under contract with CBP to assist in the maintenance or development of CBP's computer system.

country of residence) access to a U.S. federal agency's records, except to the extent such records (or a portion thereof) are protected from public disclosure by an applicable exemption under the FOIA. Among its exemptions, the FOIA permits an agency to withhold a record (or a portion thereof) from disclosure where the information is confidential commercial information, where disclosure of the information would constitute a clearly unwarranted invasion of personal privacy, or where the information is compiled for law enforcement purposes, to the extent that disclosure may reasonably be expected to constitute an unwarranted invasion of personal privacy (title 5, United States Code, sections 552(b)(4), (6), (7)(C));

26) CBP regulations (title 19, Code of Federal Regulations, section 103.12), which govern the processing of requests for information (such as PNR data) pursuant to the FOIA, specifically provide that (subject to certain limited exceptions in the case of requests by the data subject) the disclosure requirements of the FOIA are not applicable to CBP records relating to: (1) confidential commercial information; (2) material involving personal privacy where the disclosure would constitute a clearly unwarranted invasion of personal privacy; and (3) information compiled for law enforcement purposes, where disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.⁹

27) CBP will take the position in connection with any administrative or judicial proceeding arising out of a FOIA request for PNR information accessed from air carriers, that such records are exempt from disclosure under the FOIA;

Transfer of PNR Data to Other Government Authorities

28) With the exception of transfers between CBP and TSA pursuant to paragraph 8 herein, Department of Homeland Security (DHS) components will be treated as "third agencies", subject to the same rules and conditions for sharing of PNR data as other government authorities outside DHS;

29) CBP, in its discretion, will only provide PNR data to other government authorities, including foreign government authorities, with counter-terrorism or law enforcement functions, on a case-by-case basis, for purposes of preventing and combating offenses identified in paragraph 3 herein. (Authorities with whom CBP may share such data shall hereinafter be referred to as the "Designated Authorities");

30) CBP will judiciously exercise its discretion to transfer PNR data for the stated purposes. CBP will first determine if the reason

⁹CBP would invoke these exemptions uniformly, without regard to the nationality or country of residence of the subject of the data.

for disclosing the PNR data to another Designated Authority fits within the stated purpose (see paragraph 29 herein). If so, CBP will determine whether that Designated Authority is responsible for preventing, investigating or prosecuting the violations of, or enforcing or implementing, a statute or regulation related to that purpose, where CBP is aware of an indication of a violation or potential violation of law. The merits of disclosure will need to be reviewed in light of all the circumstances presented;

31) For purposes of regulating the dissemination of PNR data which may be shared with other Designated Authorities, CBP is considered the “owner” of the data and such Designated Authorities are obligated by the express terms of disclosure to: (1) use the PNR data only for the purposes set forth in paragraph 29 or 34 herein, as applicable; (2) ensure the orderly disposal of PNR information that has been received, consistent with the Designated Authority’s record retention procedures; and (3) obtain CBP’s express authorization for any further dissemination. Failure to respect the conditions for transfer may be investigated and reported by the DHS Chief Privacy Officer and may make the Designated Authority ineligible to receive subsequent transfers of PNR data from CBP;

32) Each disclosure of PNR data by CBP will be conditioned upon the receiving agency’s treatment of this data as confidential commercial information and law enforcement sensitive, confidential personal information of the data subject, as identified in paragraphs 25 and 26 hereof, which should be treated as exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Further, the recipient agency will be advised that further disclosure of such information is not permitted without the express prior approval of CBP. CBP will not authorize any further transfer of PNR data for purposes other than those identified in paragraphs 29, 34 or 35 herein;

33) Persons employed by such Designated Authorities who without appropriate authorization disclose PNR data, may be liable for criminal sanctions (title 18, United States Code, sections 641, 1030, 1905);

34) No statement herein shall impede the use or disclosure of PNR data to relevant government authorities, where such disclosure is necessary for the protection of the vital interests of the data subject or of other persons, in particular as regards significant health risks. Disclosures for these purposes will be subject to the same conditions for transfers set forth in paragraphs 31 and 32 of these Undertakings;

35) No statement in these Undertakings shall impede the use or disclosure of PNR data in any criminal judicial proceedings or as otherwise required by law. CBP will advise the European Commission regarding the passage of any U.S. legislation which materially affects the statements made in these Undertakings;

Notice, Access and Opportunities for Redress for PNR Data Subjects

36) CBP will provide information to the traveling public regarding the PNR requirement and the issues associated with its use (i.e., general information regarding the authority under which the data is collected, the purpose for the collection, protection of the data, data sharing, the identity of the responsible official, procedures available for redress and contact information for persons with questions or concerns, etc., for posting on CBP's website, in travel pamphlets, etc.);

37) Requests by the data subject (also known as "first party requesters") to receive a copy of PNR data contained in CBP databases regarding the data subject are processed under the Freedom of Information Act (FOIA). Such requests may be addressed to: Freedom of Information Act (FOIA) Request, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229, if by mail; or such request may be delivered to the Disclosure Law Officer, U.S. Customs and Border Protection, Headquarters, Washington, D.C. For further information regarding the procedures for making FOIA requests are contained in section 103.5 of title 19 of the U.S. Code of Federal Regulations. In the case of a first-party request, the fact that CBP otherwise considers PNR data to be confidential personal information of the data subject and confidential commercial information of the air carrier will not be used by CBP as a basis under FOIA for withholding PNR data from the data subject;

38) In certain exceptional circumstances, CBP may exercise its authority under FOIA to deny or postpone disclosure of all (or, more likely, part) of the PNR record to a first party requester, pursuant to title 5, United States Code, section 552(b) (e.g., if disclosure under FOIA "could reasonably be expected to interfere with enforcement proceedings" or "would disclose techniques and procedures for law enforcement investigations...[which] could reasonably be expected to risk circumvention of the law"). Under FOIA, any requester has the authority to administratively and judicially challenge CBP's decision to withhold information (see 5 U.S.C. 552(a)(4)(B); 19 CFR 103.7-103.9);

39) CBP will undertake to rectify¹⁰ data at the request of passengers and crewmembers, air carriers or Data Protection Authorities (DPAs) in the EU Member States (to the extent specifically autho-

¹⁰By "rectify", CBP wishes to make clear that it will not be authorized to revise the data within the PNR record that it accesses from the air carriers. Rather, a separate record linked to the PNR record will be created to note that the data was determined to be inaccurate and the proper correction. Specifically, CBP will annotate the passenger's secondary examination record to reflect that certain data in the PNR may be or is inaccurate.

ized by the data subject), where CBP determines that such data is contained in its database and a correction is justified and properly supported. CBP will inform any Designated Authority which has received such PNR data of any material rectification of that PNR data;

40) Requests for rectification of PNR data contained in CBP's database and complaints by individuals about CBP's handling of their PNR data may be made, either directly or via the relevant DPA (to the extent specifically authorized by the data subject) to the Assistant Commissioner, Office of Field Operations, U.S. Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229;

41) In the event that a complaint cannot be resolved by CBP, the complaint may be directed, in writing, to the Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, who will review the situation and endeavor to resolve the complaint;¹¹

42) Additionally, the DHS Privacy Office will address on an expedited basis complaints referred to it by DPAs in the European Union (EU) Member States on behalf of an EU resident to the extent such resident has authorized the DPA to act on his or her behalf and believes that his or her data protection complaint regarding PNR has not been satisfactorily dealt with by CBP (as set out in paragraphs 37–41 of these Undertakings) or the DHS Privacy Office. The Privacy Office will report its conclusions and advise the DPA or DPAs concerned regarding actions taken, if any. The DHS Chief Privacy Officer will include in her report to Congress issues regarding the number, the substance and the resolution of complaints regarding the handling of personal data, such as PNR;¹²

Compliance Issues

43) CBP, in conjunction with DHS, undertakes to conduct once a year, or more often if agreed by the parties, a joint review with the European Commission assisted as appropriate by representatives of European law enforcement authorities and/or authorities of the

¹¹The DHS Chief Privacy Officer is independent of any directorate within the Department of Homeland Security. She is statutorily obligated to ensure that personal information is used in a manner than complies with relevant laws (see footnote 13). The determinations of the Chief Privacy Officer shall be binding on the Department and may not be overturned on political grounds.

¹²Pursuant to section 222 of the Homeland Security Act of 2002 (the "Act") (Public Law 107–296, dated November 25, 2002), the Privacy Officer for DHS is charged with conducting a "privacy impact assessment" of proposed rules of the Department on "on the privacy of personal information, including the type of personal information collected and the number of people affected" and must report to Congress on an annual basis regarding the "activities of the Department that affect privacy. . . ." Section 222(5) of the Act also expressly directs the DHS Privacy Officer to hear and report to Congress regarding all "complaints of privacy violations."

Member States of the European Union,¹³ on the implementation of these Undertakings, with a view to mutually contributing to the effective operation of the processes described in these Undertakings;

44) CBP will issue regulations, directives or other policy documents incorporating the statements herein, to ensure compliance with these Undertakings by CBP officers, employees and contractors. As indicated herein, failure of CBP officers, employees and contractors to abide by CBP's policies incorporated therein may result in strict disciplinary measures being taken, and criminal sanctions, as applicable;

Reciprocity

45) In the event that an airline passenger identification system is implemented in the European Union which requires air carriers to provide authorities with access to PNR data for persons whose current travel itinerary includes a flight to or from the European Union, CBP shall, strictly on the basis of reciprocity, encourage U.S.-based airlines to cooperate; Review and Termination of Undertakings

46) These Undertakings shall apply for a term of three years and six months (3.5 years), beginning on the date upon which an agreement enters into force between the United States and the European Community, authorizing the processing of PNR data by air carriers for purposes of transferring such data to CBP, in accordance with the Directive. After these Undertakings have been in effect for two years and six months (2.5 years), CBP, in conjunction with DHS, will initiate discussions with the Commission with the goal of extending the Undertakings and any supporting arrangements, upon mutually acceptable terms. If no mutually acceptable arrangement can be concluded prior to the expiration date of these Undertakings, the Undertakings will cease to be in effect;

No Private Right or Precedent Created

47) These Undertakings do not create or confer any right or benefit on any person or party, private or public.

¹³The composition of the teams on both sides will be notified to each other in advance and may include appropriate authorities concerned with privacy/data protection, customs control and other forms of law enforcement, border security and/or aviation security. Participating authorities will be required to obtain any necessary security clearances and will adhere to the confidentiality of the discussions and documentation to which they may be given access. Confidentiality will not however be an obstacle to each side making an appropriate report on the results of the joint review to their respective competent authorities, including the US Congress and the European Parliament. However, under no circumstances may participating authorities disclose any personal data of a data subject; nor may participating authorities disclose any non-public information derived from documents to which they are given access, or any operational or internal agency information they obtain during the joint review. The two sides will mutually determine the detailed modalities of the joint review.

48) The provisions of these Undertakings shall not constitute a precedent for any future discussions with the European Commission, the European Union, any related entity, or any third State regarding the transfer of any form of data.

May 11, 2004

Attachment "A"

PNR Data Elements Required by CBP from Air Carriers

1. PNR record locator code
2. Date of reservation
3. Date(s) of intended travel
4. Name
5. Other names on PNR
6. Address
7. All forms of payment information
8. Billing address
9. Contact telephone numbers
10. All travel itinerary for specific PNR
11. Frequent flyer information (limited to miles flown and address(es))
12. Travel agency
13. Travel agent
14. Code share PNR information
15. Travel status of passenger
16. Split/Divided PNR information
17. Email address
18. Ticketing field information
19. General remarks
20. Ticket number
21. Seat number
22. Date of ticket issuance
23. No show history
24. Bag tag numbers
25. Go show information
26. OSI information
27. SSI/SSR information
28. Received from information
29. All historical changes to the PNR
30. Number of travelers on PNR
31. Seat information
32. One-way tickets
33. Any collected APIS information
34. ATFQ fields

[Published in the Federal Register, July 9, 2004 (69 FR 41543)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.

Washington, DC, July 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

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF PAINTED GLASS SINKS

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

ACTION: Notice of proposed modification of a ruling letter and revocation of treatment relating to the tariff classification of painted glass sinks under the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA").

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") intends to modify a ruling concerning the tariff classification of painted glass sinks and to revoke any treatment CBP has previously accorded to substantially identical merchandise. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before August 20, 2004.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229. Submitted comments may be inspected at

U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572-8768.

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 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 customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify New York Ruling Letter ("NY") G81092, dated September 7, 2000. In NY G81092, merchandise described as painted glass sinks was classified under subheading 7020.00.60, HTSUSA, which provides for other articles of glass. NY G81092 is set forth as "Attachment A" to this document.

Although in this notice CBP is specifically referring to one ruling, 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; 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, other than the referenced ruling, should advise CBP during this notice period.

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

Pursuant to 19 U.S.C. § 1625(c)(1), CBP intends to modify NY G81092 only as it pertains to the classification of painted glass sinks, and any other ruling not specifically identified, to reflect the proper classification of the merchandise under subheading 7013.99, HTSUSA, which provides for glassware for toilet, office, indoor decoration or similar purposes (classification at the eighth digit is determined by the unit value of the sink) pursuant to the analysis set forth in proposed HQ 966770 (see "Attachment B" to this document).

Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: July 6, 2004

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY G81092
September 7, 2000
CLA-2-70:RR:NC:2:226 G81092
CATEGORY: Classification
TARIFF NO.: 7020.00.6000, 7013.99.9000, 7318.11.0000

MS. JULIA E. HARTENFELS
WILLIAM B. SKINNER INC.
247 Frelinghuysen Avenue
Newark, NJ 07114

RE: The tariff classification of three glass articles and five metal screws from Poland

DEAR MS. HARTENFELS:

In your letter received August 17, 2000, on behalf of your client, Sara Mone Imports Inc., you requested a tariff classification ruling. Representative samples were submitted and will be returned to you as requested.

The first item is a glass sink painted royal blue. The item will be imported with plastic fittings for the drain and plumbing and a stainless steel drain and drain plug with a rubber backing.

The second item is a glass towel rack painted royal blue. You indicated in your letter that the item includes two metal screws that will be imported separately. The screws are ferrous metal, have hexagonal unslotted heads with a thread form which prohibits assembly with a nut. They are three and one-quarter inches in length, each having an attached plastic cap and a plastic anchor.

The third item is a large glass shelf painted royal blue. This item will include three metal screws that will be imported separately. The screws are ferrous metal, have hexagonal unslotted heads with a thread form which prohibits assembly with a nut. They are three and one-quarter inches in length, each having an attached plastic cap and a plastic anchor.

The applicable subheading for the glass sink with plastic fittings and stainless steel drain and drain plug will be 7020.00.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of glass: other. The rate of duty will be 5 percent ad valorem.

The applicable subheading for the glass towel rack and glass shelf will be 7013.99.9000, HTS, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes . . . : other glassware: other: other: other: valued over \$5 each. The rate of duty will be 7.2 percent ad valorem.

The applicable subheading for the metal screws with attached plastic cap and plastic anchor will be 7318.11.0000, HTS, which provides for screws, bolts, nuts, coach screws, screw hooks, . . . and similar articles, of iron or steel: threaded articles: coach screws. The rate of duty will be 12.5 percent ad valorem.

Articles classifiable under subheading 7020.00.6000, HTS, which are products of Poland may be entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, check the Customs Web site at www.customs.gov. At the Web site, click on "CEBB" then search for the term "GSP".

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Jacob Bunin at 212-637-7074.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966770
CLA-2 RR:CR:GC 966770 AML
CATEGORY: Classification
TARIFF NO.: 7013.99

MS. JULIA E. HARTENFELS
WILLIAM B. SKINNER INC.
247 Frelinghuysen Avenue
Newark, NJ 07114

RE: NY G81092 modified; glass sink

DEAR MS. HARTENFELS:

This is in reference to New York Ruling Letter ("NY") G81092, dated September 7, 2000, issued to you on behalf of Sara Mone Imports Inc., regarding the tariff classification of, *inter alia*, a glass sink under the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"). We have taken the opportunity to revisit the determination reached in NY G81092 as it pertains to the classification of the glass sink. While this letter does not affect the classification determination made in NY G81092 as it concerns the seven other articles therein classified, this ruling modifies it as it pertains to the glass sink.

FACTS:

We described and classified the glass sink in NY G81092 as follows:

The first item is a glass sink painted royal blue. The item will be imported with plastic fittings for the drain and plumbing and a stainless steel drain and drain plug with a rubber backing.

* * *

The applicable subheading for the glass sink with plastic fittings . . . will be 7020.00.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of glass: other. The rate of duty will be 5 percent ad valorem.

ISSUE:

Whether the subject merchandise is classifiable under heading 7013, HTSUSA, which provides for, *inter alia*, glassware for toilet, office, indoor decoration or similar purposes, or heading 7020, HTSUSA, which provides for other articles of glass.

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUSA in accordance with the General Rules of Interpretation (“GRIs”). GRI 1 states, in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The HTSUSA provisions under consideration are as follows:

7013 Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):

Glassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass-ceramics: Other glassware:

7013.99 Other.

* * *

7020.00 Other articles of glass:

7020.00.60 Other.

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise. Customs and Border Protection’s (“CBP”) believes the ENs should always be consulted. See T.D. 89–80, published in the Federal Register August 23, 1989 (54 FR 35127, 35128).

There is no question that the article is classified in Chapter 70, HTSUSA, which provides for articles of glass (we note that in *Los Angeles Tile Jobbers, Inc. v. United States*, 63 Cust. Ct. 248, C.D. 3904 (1969), the Court stated that “all articles of glass are generally defined as ‘glassware’ ” (63 Cust. Ct. at 250; citing Webster’s Third new International Dictionary (1968); see also Webster’s New World Dictionary, Third College Edition, at 573 (1988), defin-

ing “glassware” as “articles made of glass”). To be determined is which heading within Chapter 70 best describes the articles.

Heading 7020, HTSUSA, is a so-called “basket” provision within Chapter 70, in which classification “is appropriate only when there is no tariff category that covers the merchandise more specifically.” (*Apex Universal, Inc., v. United States*, CIT Slip Op. 98–69 (May 21, 1988)). Therefore, we are first addressing the competing provision within Chapter 70. Only if classification under heading 7013 is precluded will we address classification in heading 7020, HTSUSA.

An article is to be classified according to its condition as imported. See *XTC Products, Inc. v. United States*, 771 F.Supp. 401, 405 (1991). See also, *United States v. Citroen*, 223 U.S. 407 (1911). The article at issue is a glass sink painted royal blue. We consider the characteristics and appearance of the glass article determining its classification.

Heading 7013, HTSUSA, provides for “glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018).” Reasonable paraphrasing of the goods enumerated in the superior heading 7013 (of a kind used for table, kitchen, toilet, office, indoor decoration or *similar purposes*) is to describe those articles as household articles. We believe that the phrase “indoor decoration or similar purposes” can also be reasonably interpreted to include articles that are decorative and functional within the home.

The article in question, upon importation, is intended to be decorative, given its unique color and painted appearance (compared with “ordinary” porcelain sinks). It apparently is part of a line of decorative household products, given that NY G81092 classified a royal blue glass shelf and towel rack as well. In consideration of its characteristics and appearance, we find that the painted glass sink is classifiable as a decorative glass article under heading 7013, HTSUSA. Because the painted glass sink meets the terms of heading 7013, classification under heading 7020 is precluded.

This conclusion comports with the decision made in NY J85634, dated June 20, 2003, in which a glass sink (among other articles) was classified under 7013.99.9000, HTS, which provides for “glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes . . . Other glassware: Other: Other: Other: Valued over \$5 each.”

HOLDING:

The glass sink is classified as glassware for toilet, office, indoor decoration or similar purposes (classification at the eighth digit is determined by the unit value of the sink) under subheading 7013.99, HTSUSA. The 2004 general column 1 duty rate is also dependent upon the unit value of the article.

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

EFFECT ON OTHER RULINGS:

NY G81092 is modified only as it pertains to the classification of the painted glass sink; the remaining classifications remain unchanged.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

cc: National Commodity Specialist Division
NIS Bunin


19 CFR PART 177**PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO TARIFF CLASSIFICATION
OF AERO-DERIVATIVE GAS TURBINES**

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

ACTION: Notice of proposed revocation of ruling letter, and revocation of treatment relating to tariff classification of aero-derivative gas turbines.

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 CBP intends to revoke a ruling letter pertaining to the tariff classification of aero-derivative gas turbines under the Harmonized Tariff Schedule of the United States ("HTSUS"). CBP also intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before August 20, 2004.

ADDRESS: Written comments (preferably in triplicate) 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. Comments submitted may be inspected at Customs and Border Protection, 799 9th Street, N.W., Washington, D.C. 20229, 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: 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 CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the classification of aero-derivative gas turbines. Although in this notice CBP is specifically referring to NY H81222, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases 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 the merchandise subject to this notice should advise CBP during this notice period.

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

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

In NY H81222, dated May 31, 2001, set forth as Attachment A to this document, CBP classified two aero-derivative gas turbines under subheading 8411.12.8000, Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"), as: "Turbojets: Of a thrust exceeding 25 kN: Other."

It is now the CBP position that these aero-derivative gas turbines are classified under subheading 8411.82.8000, HTSUSA, as "Other gas turbines: Of a power exceeding 5,000 kW."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY H81222 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 967102, which is set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

DATED: July 6, 2004

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY H81222
May 31, 2001
CLA-2-84:RR:NC:MM:106 H81222
CATEGORY: Classification
TARIFF NO.: 8411.12.8000

MR. JOSEPH P. BRICK
KPMG LLP CHARTERED ACCOUNTANTS
Suite 3300 Commerce Court West
PO Box 31 Stn Commerce Court
Toronto ON MSL 1B2

RE: The tariff classification of aero-derivative turbo-jets from the United Kingdom.

DEAR MR. BRICK:

In your letter dated May 7, 2001, on behalf of Rolls Wood Group Limited, you requested a tariff classification ruling. You submitted descriptive literature with your request.

The articles in question are the Rolls-Royce Avon and Rolls-Royce RB-211 turbo-jets, also identified by you as gas generators, both of which have a thrust exceeding 25 kN. You indicate that the merchandise does not include any other components, such as free power turbines, generators or compressors. These turbo-jets/gas generators are designed for use in a variety of industrial applications.

The Rolls-Royce RB-211 provides thrust for a wide range of aircraft, including the Boeing 747, the Boeing 767, the Boeing 757 and the Lockheed L-1011. In its aircraft configuration, the engine comprises a low pressure bypass fan, an intermediate pressure compressor and a high pressure compressor each driven by its own turbine. In adapting the engine for industrial use, the bypass fan and fan turbines are removed. This results in a twin spool gas generator which is capable of producing thrust levels in the order of 97.8 kN.

The Rolls-Royce Avon incorporates a seventeen stage, single spool compressor, eight individual combustion chambers, and a three stage turbine to drive the compressor. The turbo-jet/gas generator accepts a variety of fuels including natural gas and Jet A1 (kerosene). Typical thrust levels produced by the Avon Gas Generator are approximately 48.9 kN.

Both the Avon and the RB-211 operate in the following manner. The engine ingests a large volume of air through the front opening. The air is squeezed or compressed to many times atmospheric pressure by the lower pressure compressor. In the combustion chamber, fuel and air are mixed together and ignited. The resulting hot gases are expanded over the high pressure turbine. The high pressure turbine drives the low pressure compressor in the front end which causes more air to be ingested through the front opening. What remains is residual gas energy (thrust) either for expansion through a propulsive nozzle or through a separate free power turbine.

The applicable subheading for the adapted turbo-jets will be **8411.12.8000**, Harmonized Tariff Schedule of the United States (HTS), which provides for other turbojets of a thrust exceeding 25 kN. The rate of duty will be free.

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 Patrick J. Wholey at 212-637-7036.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967102
CLA-2 RR:CR:GC 967102 NSH
CATEGORY: Classification
TARIFF NO.: 8411.82.8000

MR. JOSEPH P. BRICK
KPMG LLP
CHARTERED ACCOUNTANTS
Suite 3300 Commerce Court West
PO Box 31 Stn Commerce Court
Toronto ON M5L 1B2

RE: NY H81222 revoked; aero-derivative gas turbines

DEAR MR. BRICK:

This is in response to an internal request for reconsideration of NY H81222, dated May 31, 2001, on the classification of two gas turbines under the Harmonized Tariff Schedule of the United States (HTSUS). The merchandise was classified under subheading 8411.12.80, HTSUS. However, in researching a related issue, Customs and Border Protection (CBP) determined that NY H81222 should be revoked. This ruling letter sets forth the correct classification.

FACTS:

The merchandise at issue are the Rolls-Royce RB-211 and Rolls-Royce Avon gas turbines. Both engines, although originally designed as turbojets to provide motive power for aircraft, have been adapted for industrial use, thereby putting them in a class of engine referred to as "aero-derivative," a term of art indicative of their original design purpose.

In the case of the Rolls-Royce RB-211, the bypass fan and fan turbines have been removed, with the resulting product being a twin spool gas generator capable of generating power between 25,200 kilowatts and 44,500 kilowatts, depending on what type of use the engine is put to. Primarily, it is

used for a variety of power generation and mechanical drive applications. The Rolls-Royce Avon has been reconfigured and matched with either the RT48 or RT56 power turbine, making it well suited for a variety of power generation and mechanical drive applications. Depending on what type of use the Rolls-Royce Avon is put to, it is capable of generating power between 14,672 kilowatts and 21,000 kilowatts. Because of their adapted designs, these aero-derivative gas turbines are now incapable of providing motive power for aircraft.

In NY H81222, CBP classified both gas turbines under subheading 8411.12.80, HTSUS, which provides for "Turbojets, turbopropellers and other gas turbines and parts thereof: Turbojets: Of a thrust exceeding 25 kN: Other."

ISSUE:

Whether the Rolls-Royce RB-211 and Rolls-Royce Avon gas turbines are turbojets of subheading 8411.12.80, HTSUS, or other gas turbines of subheading 8411.82.80, HTSUS.

LAW AND ANALYSIS:

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

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. The ENs, although neither dispositive or legally binding, facilitate classification by providing a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

The HTSUS provisions under consideration are as follows:

8411 Turbojets, turbopropellers and other gas turbines, and parts thereof:

Turbojets:

8411.12 Of a thrust exceeding 25kN:

8411.12.80 Other

* * * * *

Other gas turbines:

8411.82 Of a power exceeding 5,000 kW:

8411.82.80 Other

In NY H81222, CBP held that the Rolls-Royce RB-211 and Rolly-Royce Avon gas turbines at issue therein, recognized aircraft engines having been adapted for industrial use (aero-derivative), were classified as turbojets under subheading 8411.12.80, HTSUS. Having been adapted for industrial use, these engines are no longer capable of providing motive power to an aircraft. However, CBP classified them as turbojets, the classification of these engines in an unaltered state, in keeping with the position that an aero-derivative gas turbine is essentially still a turbojet. Heading 8411, HTSUS,

covers three types of engines: Turbojets; Turbopropellers; and Other Gas Turbines. EN 84.11 parallels the heading listings for these three engine types and states in pertinent part as follows:

This heading covers **turbo-jets, turbo-propellers and other gas turbines.**

...

(A) **Turbo-Jets**

A turbo-jet consists of a compressor, a combustion system, a turbine and a nozzle, which is a convergent duct placed in the exhaust pipe. The hot pressurized gas exiting from the turbine is converted to a high velocity gas stream by the nozzle. The reaction of this gas stream acting on the engine provides the motive force which may be used to power aircraft. In its simplest form the compressor and turbine are accommodated on a single shaft. In more complex designs the compressor is made in two parts (a two spool compressor) in which the spool of each part is driven by its own turbine through concentric shafting. Another variation is to add a ducted fan usually at the inlet to the compressor and drive this either by a third turbine or connect it to the first compressor spool. The fan acts in the nature of a ducted propeller, most of its output bypassing the compressor and turbine and joining the exhaust jet to provide extra thrust. This version is sometimes called a "bypass fan jet."

...

(B) **Turbo-Propellers**

Such engines are similar to turbo-jets, but have a further turbine downstream of the compressor turbine, which is coupled to a conventional propeller such as is used on piston engined aircraft. This latter turbine is sometimes referred to as a "free turbine," meaning that it is not mechanically coupled to the compressor and compressor turbine shaft. Thus most of the hot pressurized gas leaving the compressor turbine is converted into shaft power by the free turbine instead of being expanded in a nozzle as is the case in turbo-jets. In some cases, the gases leaving the free turbine may be expanded in a nozzle to provide auxiliary jet power and assist the propeller.

(C) **Other Gas Turbines**

This group includes industrial gas-turbine units which are either specifically designed for industrial use or adapt turbo-jets or turbo-propeller units for uses other than providing motive power for aircraft.

There are two types of cycles:

- (1) The simple cycle, in which air is ingested and compressed by the compressor, heated in the combustion system and passed through the turbine, finally exhausting to the atmosphere.
- (2) The regenerative cycle, in which air is ingested, compressed and passed through the air pipes of a regenerator. The air is pre-heated by the turbine exhaust and is then passed to the combustion system where it is further heated by the addition of fuel. The air/gas mixture passes through the turbine and is exhausted through the hot gas side of the regenerator and finally to the atmosphere.

There are two types of designs:

- (a) The single-shaft gas turbine unit, in which the compressor and turbine are built on a single shaft, the turbine providing power to rotate the compressor and to drive rotating machinery through a coupling. This type of drive is most effective for constant speed applications such as electrical power generation.
- (b) The two-shaft gas turbine unit, in which the compressor, combustion system and compressor turbine are accommodated in one unit generally called a gas generator, whilst a second turbine on a separate shaft receives the heated and pressurized gas from the exhaust of the gas generator. This second turbine known as the power turbine is coupled to a driven unit, such as a compressor or pump. Two-shaft gas turbines are normally applied where load demand variations require a range of power and rotational speed from the gas turbine

These gas turbines are used for marine craft and locomotives, for electrical power generation, and for mechanical drives in the oil and gas, pipeline and petrochemical industries.

We note initially that each type of engine designated under heading 8411, HTSUS, is considered to be a "Gas turbine," but it is the specific construction and use of the gas turbine that determines whether that model is classified as a "Turbojet," "Turboprop" or "Other Gas Turbine."

As in H81222, CBP had previously classified aero-derivative gas turbines under subheadings 8411.11/12, HTSUS, and 8411.21/22, HTSUS, in keeping with the position that, notwithstanding certain adaptations, they were still described under the *eo nomine* provisions for turbojets and turbopropellers, respectively. This prior approach to classifying such merchandise was followed despite the fact that, in their altered state for industrial use, aero-derivative gas turbines are no longer capable of providing motive power to aircraft. However, it should be noted that an *eo nomine* provision is one which describes a commodity by a specific name, usually one well known to commerce, i.e. "turbojets" or "turbopropellers." Ordinarily, use is not a criterion in determining whether merchandise is included within an *eo nomine* provision, but use may be considered where common and commercial meaning of the article at the time the tariff schedule was drafted included references to use. See *Admiral Div. Of Magic Chef, Inc. v. United States*, 754 F. Supp. 881 (1990) and *United States v. Quon Quon Co.*, 46 C.C.P.A. 70, 73, C.A.D. 699 (1959). In considering the scope of the *eo nomine* provisions at issue, EN 84.11 states that turbojets and turbopropellers specifically described in subheadings 8411.11/12 and 8411.21/22, HTSUS, may be used to power aircraft. In contrast, other gas turbines of subheading 8411.81/82, HTSUS, are described as including industrial gas-turbine units which are either specifically designed for industrial use or else adapt turbojets or turbopropeller units for uses other than providing motive power for aircraft.

Recent Customs rulings further demonstrate that aero-derivative gas turbines are not defined by the *eo nomine* provisions for turbojets or turbopropellers because those designations are reserved for gas turbines that provide motive power for aircraft. In HQ 966934, dated May 6, 2004, CBP ruled that aero-derivative gas turbines for industrial use and gas turbines designed specifically for industrial use are in all cases classified under subheading 8411.81/82, HTSUS. This position is further supported in NY

J84449, dated June 2, 2003, NY J84454, dated June 2, 2003 and NY J84459, dated June 2, 2003, wherein engine parts of an aero-derivative gas turbine were classified under subheading 8411.99.9060, as parts for “nonaircraft gas turbines.”

The above analysis and cited rulings support the finding by CBP that turbojet and turbopropeller gas turbines, which provide motive power for aircraft, are classified under subheadings 8411.11/12, HTSUS, and 8411.21/22, HTSUS, respectively. In contrast, both aero-derivative gas turbines and gas turbines designed specifically for industrial use, and incapable of providing motive power to aircraft, form the class or kind of gas turbine that is considered a turboshaft engine and which comprise the “Other gas turbine” subheading group of 8411.81/82, HTSUS. In addition, and to further assist in classifying gas turbines, it is equally apparent that the power output of turbojet engines is measured in pound thrust, or so-called kilonewtons, while the power output of turboprop and turboshaft engines is normally measured in kilowatts. This expression of power is usually indicative of the type of use to which the engine is utilized. Turbojet engines are typically used on high-speed and commercial aircraft wherein compressed air and gas are exhausted from the engine, providing the thrust that powers the aircraft. In contrast, turboprop engines operate on low-speed, low-altitude aircraft, the exhaust flow from the compressor turbine being used to power a conventional propeller as opposed to exhausting into the atmosphere to provide thrust. And, turboshaft engines are typically used in industrial and marine applications, being derived from aircraft engines (aero-derivative), designed specifically for industry, or else used to power a helicopter or boat propeller.

In considering NY H81222, it seems apparent that the analysis used by CBP was consistent with the previous approach to gas turbine classification. Both the Rolls-Royce RB-211 and Rolls-Royce Avon gas turbines at issue have been adapted from their original designs for exclusive industrial use. In practical terms, this entailed removing the bypass fan and fan turbines of the Rolls-Royce RB-211 so that exhaust flow could be routed to another turbine that in turn generates power. In the case of the Rolls-Royce Avon, the engine has been reconfigured and matched with a separate power turbine, again for the purpose of generating power; in their adapted form, each is capable of generating power in excess of 5,000 kilowatts. In view of the foregoing, they are both aero-derivative engines and therefore classified under subheading 8411.82.80, HTSUS, as “Turbojets, turbopropellers and other gas turbines, and parts thereof: Other gas turbines: Of a power exceeding 5,000 kW: Other.” It should also be noted that in March 2004, CBP issued an Informed Compliance Publication (ICP) entitled “Turbojets, Turbopropellers and Other Gas Turbines, (HTSUS) and Parts Thereof.” Although an ICP is published for general information purposes only and therefore cannot serve as the sole basis upon which an importer claims, or CBP issues, a classification, the ICP nevertheless reflects the current CBP position on this merchandise.

HOLDING:

The Rolls-Royce RB-211 and Rolls-Royce Avon gas turbines are classified under subheading 8411.82.8000, Harmonized Tariff Schedule of the United States Annotated, as “Turbojets, turbopropellers and other gas turbines, and parts thereof: Other gas turbines: Of a power exceeding 5,000 kW: Other.” The general column one rate of duty is 2.5 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY H81222 is REVOKED.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

**PROPOSED MODIFICATION OF CLASSIFICATION LETTER
AND REVOCATION OF TREATMENT RELATING TO CLAS-
SIFICATION OF NONELECTRIC, METAL BICYCLE BELLS**

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

ACTION: Notice of proposed modification of one ruling letter and revocation of treatment relating to the classification of certain non-electric, metal bicycle bells.

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) intends to modify one ruling letter relating to the classification of certain non-electric, metal bicycle bells under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise.

DATE: Comments must be received on or before August 20, 2004.

ADDRESS: Written comments are to be addressed to Bureau of 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 Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Teresa Frazier, Textiles Branch, at (202) 572-8821.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify one ruling letter relating to the tariff classification of certain nonelectric, metal bicycle bells. Although in this notice CBP is specifically referring to the modification of New York Ruling Letter (NY) I89597 dated January 13, 2003, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, Customs and Border Protection intends to revoke any treatment previously accorded by CBP to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP's 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 HTSUSA. Any person involved with substantially identical merchandise should advise CBP during this notice period. An importer's

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

In NY I89597, dated January 13, 2003, CBP classified among other things, certain non-electric, metal bicycle bells in subheading 8714.99.8000, Harmonized Tariff Schedule of the United States Annotated, which provides for "parts and accessories of vehicles of heading 8711 to 8713: Other: Other: Other."

Upon review of this ruling, CBP has determined that the merchandise's classification within this heading was incorrect. Rather, CBP finds the merchandise is classifiable in subheading 8306.10.0000, HTSUSA, which provides, *eo nomine* for nonelectric base metal bells.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY I89597 (Attachment A) and any other rulings not specifically identified that are contrary to the determination set forth in this notice to reflect consistency in classification pursuant to the analysis set forth in proposed Headquarters Ruling Letter HQ 967097 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: July 7, 2004

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

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

NY I89597

January 13, 2003

CLA-2-87:RR:NC:MM:101 I89597

CATEGORY: Classification

TARIFF NO.: 6307.90.9889, 8714.99.8000

MS. CARI GREGO
CUSTOMS COMPLIANCE MANAGER
DOLLAR TREE STORES, INC.
*500 Volvo Parkway
Chesapeake, Virginia 23320*

RE: The tariff classification of Bicycle Accessories: Bell, Horn, Streamers, Mirror, and Spoke Decorations from China

DEAR MS. GREGO:

In your letter dated December 17, 2002 you requested a tariff classification ruling.

You submitted samples of various bicycle accessories (SKU 803552): Bell, Streamers, Mirror, and Spoke Decorations. You did not submit a sample of a Horn.

You state in your narrative that all of the bicycle accessories are made of molded plastic in elaborate colors. The bell has a base metal housing and operates by twisting the top portion to produce the ring. The streamers are made of three-millimeter wide polypropylene strips looped through a molded plastic housing that is to be inserted at the end of the handlebars. The mirror is made of clear plastic with a silver backing, housed in flexible plastic. There are two types of multi-colored plastic spoke decorations designed to snap between the spokes of a bicycle wheel. The retail package will contain two of the items named above. You further state that the samples provided are not packaged for retail sale because mock artwork is not available and does not contain appropriate country of origin information.

The applicable subheading for the Bicycle Handlebar Streamer will be 6307.90.9889, Harmonized Tariff Schedule of the United States (HTS), which provides for Other made up articles, including dress patterns: Other: Other: Other . . . Other: Other. The rate of duty will be 6.4% ad valorem. The applicable subheading for the Bicycle Bell, Horn, Spoke Decorations and Mirror will be 8714.99.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of vehicles of headings 8711 to 8713: Other: Other: Other. The rate of duty will be 10% ad valorem. This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is im-

ported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 646-733-3008.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967097
CLA-2 RR:CR:TE 967097 TMF
CATEGORY: Classification
TARIFF NO.: 8306.10.0000

MS. CARI GREGO, CUSTOMS COMPLIANCE MANAGER
DOLLAR TREE STORES, INC.
500 Volvo Parkway
Chesapeake, Virginia 23320

RE: Modification of New York Ruling Letter (NY) I89597, dated January 13, 2003 concerning the classification of bicycle bells from China

DEAR MS. GREGO,

Pursuant to your request dated December 17, 2002 for a binding tariff classification ruling, Customs and Border Protection (formerly U. S. Customs Service) issued New York Ruling Letter (NY) I89597, dated January 13, 2003, which classified certain bicycle bells. This ruling classified the merchandise in subheading 8714.99.8000, Harmonized Tariff Schedule of the United States Annotated, which provides for "Parts and accessories of vehicles of headings 8711 to 8713: Other: Other: Other."

Upon review, the Bureau of Customs and Border Protection (CBP) has determined that the merchandise was erroneously classified. This ruling letter sets forth the correct classification determination.

FACTS:

NY I89597 dated January 13, 2003 describes three bicycle accessories (SKU 803552): Bell, Streamers, Mirror, and Spoke Decorations. The bell, which is the subject of this ruling, is taken directly from the ruling and reads as follows:

You state in your narrative that all of the bicycle accessories are made of molded plastic in elaborate colors. The bell has a base metal housing and operates by twisting the top portion to produce the ring . . . The retail package will contain two . . . [items . . . and that the] samples provided are not packaged for retail sale because mock artwork is not available and does not contain appropriate country.

ISSUE:

What is the correct classification of the bicycle bell within the Harmonized Tariff Schedules of the United States Annotated?

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings.

CBP originally classified the bicycle bells in subheading 8714.99.8000, which provides in pertinent part for other parts and accessories of vehicles of heading 8711 to 8713. We note that Explanatory Note 87.14 states the following:

This heading covers parts and accessories of a kind used with . . . non-motorised cycles, provided the parts and accessories fulfill **both** the following conditions:

- i. They must be identifiable as being suitable for use or principally with the above-mentioned vehicles;
- ii. They **must not be excluded** [*emphasis added*] by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note).

In your original narrative to CBP, you indicated that the subject bells are bicycle accessories that are not packaged for retail sale. We refer to Note 2, Section XVII, which states:

The expressions “parts” and “parts and accessories” do not apply to the following articles, whether or not they are identifiable as for the goods of this Section:

- (d) Articles of heading 83.06.

Although you provided a narrative about the merchandise, you did not provide evidence (i.e., any evidence of retail packaging) of the bell's exclusive use for bicycles. Rather, you simply stated that the bell is a bicycle accessory. Heading 8306, HTSUSA, provides, in pertinent part, for non-electric, base metal bells, gongs and the like. Note A to EN 83.06, states:

This group covers **non-electric** bells and gongs of base metal . . . [including] . . . bells for bicycles . . .

As the subject bells are parts and accessories, we find that Note 2, Section XVII precludes the goods from classification within heading 8714, HTSUSA.

In this instance, you indicated in your original submission that the subject bells are non-electric, base metal housing bicycle accessories that operate by twisting the top portion to produce a ring sound. Therefore, the bells are classifiable within heading 8306, HTSUSA, specifically subheading 8306.10.0000, HTSUSA, which provides, *eo nomine* for bells, gongs and the like.

HOLDING:

NY I89597, dated January 13, 2003, is hereby modified. Based on the foregoing, pursuant to GRI 1, the subject bells are classifiable in subheading

8306.10.0000, HTSUSA, which provides “bells, gongs and the like, nonelectric, of base metal; , , , bells, gongs and the like, and parts thereof,” dutiable at the column one general rate of 5.8 percent *ad valorem*.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

