

Bureau of Customs and Border Protection

General Notices

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

AGENCY: Bureau of Customs and Border Protection, U.S. Depart-
ment of Homeland Security

ACTION: General Notice

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the
Code of Federal Regulations § 111.51(a), the following individual
Customs broker licenses and any and all permits have been can-
celled due to the death of the broker:

<u>Name</u>	<u>License #</u>	<u>Port Name</u>
Peter Gawi	10645	New York
Kirk K. Lakis	6361	Dallas
George J. Young	02612	Los Angeles
Daniel J. Hayes, Sr.	3758	Los Angeles
James J. Rea	5498	New York
Eugenio D. Santana	6864	New York
Dennis Nowakowski	20659	Buffalo
Terry M. Hatada	3679	San Francisco

DATED: May 15, 2006

JAYSON P. AHERN,
*Assistant Commissioner,
Office of Field Operations.*

[Published in the Federal Register, May 22, 2006 (71 FR 29345)]

Notice of Cancellation of Customs Broker License

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

ACTION: General Notice

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

<u>Name</u>	<u>License #</u>	<u>Issuing Port</u>
Roopa Mirchandani	9890	New York
Lynne A. Palmitier	13772	Detroit
Elsie M. Clark	10280	Los Angeles
Allstates Customs Brokerage, Inc.	20638	Atlanta
Arzoon Global Commerce, Inc.	21283	San Francisco
Panta Enterprises, Inc.	14584	Miami
Associated Customhouse Brokers, Inc.	9706	Miami
James P. Cesped	4581	San Francisco
Steve A. Ashline	7054	Champlain
All-Ways Customs Broker, Inc.	20131	Miami
Marialuisa Yoshikawa	10998	San Francisco
2nd Edison, Inc.	22315	San Francisco
Harry S. Sanders	9716	New York
Barbara A. Elibay	6095	Savannah

DATED: May 15, 2006

JAYSON P. AHERN,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, May 22, 2006 (71 FR 29346)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, May 24, 2006

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

MODIFICATION OF RULING LETTER AND TREATMENT RELATING TO CLASSIFICATION OF NECKLACES OF PLASTIC BEADS WITH METALLIC PAINT

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

ACTION: Notice of modification of ruling letter and revocation of treatment relating to the classification of necklaces of plastic beads with metallic paint.

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) is modifying a ruling letter pertaining to the tariff classification of necklaces of plastic beads with metallic paint and revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed modification was published in the Customs Bulletin of April 5, 2006, Vol. 40, No. 15. No comments were received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after August 6, 2006.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, Tariff Classification and Marking Branch, 202–572–8778.

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 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on April 5, 2006, in the Customs Bulletin, Volume 40, Number 15, proposing to modify NY E87523, dated September 14, 1999, pertaining to the tariff classification of necklaces of plastic beads with metallic paint under the Harmonized Tariff Schedule of the United States (HTSUS). No comments were received in response to the notice.

In NY E87523, dated September 14, 1999, the classification of a product commonly referred to as diamond metallic bead necklace, item #95110, was determined to be in heading 7117.19.9000, HTSUS, which provides for "[i]mitation jewelry: of base metal, whether or not plated with precious metal: other: other: other." Since the issuance of that ruling, CBP has had a chance to review the classification of this merchandise and has determined that classification is in error and that the product is properly classified in subheading 7117.90.7500, HTSUS, which provides for: "Imitation jewelry: Other: Other: Valued over 20 cents per dozen pieces or parts: Other: Of plastics."

As stated in the proposal notice, this modification will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or

decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during the notice period.

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY E87523, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 967788 (see "Attachment" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 19, 2006

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

Attachment

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

HQ 967788
May 19, 2006
CLA-2 RR:CTF:TCM 967788ptl
CATEGORY: Classification
TARIFF NO.: 7117.90.7500

MS. JANE L. TAEGER
COMPLIANCE MANAGER
SAMUEL SHAPIRO & COMPANY, INC.
401 East Pratt Street
Suite 500
Baltimore, MD 21202

RE: Plastic Bead Necklace with Metallic Paint; NY E87523 Modified

DEAR MS. SHAPIRO:

This is in response to your letter, on behalf of your client, Unique Industries, Inc., dated June 14, 2005, in which you request modification of the portion of New York Ruling (NY) E87523, dated September 14, 1999, that classified item #95110, referred to as "Diamond Metallic Bead Necklace," in subheading 7117.19.9000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "[i]mitation jewelry: of base metal, whether or not plated with precious metal: other: other: other." You contend that the beads in the Diamond Metallic Bead Necklace are actually plastic and therefore the article should properly be classified in subheading 7117.90.7500, HTSUS, which provides for "[i]mitation jewelry: other: other: other: of plastics." To assist Customs and Border Protection (CBP) in ascertaining the composition of the product, you provided samples and laboratory analyses.

In addition to the Diamond Metallic Bead Necklace, NY E87523 also classified four other products. You are not requesting reconsideration of the classification provided for any of the other products and this ruling will not affect those classification determinations.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by Title VI, a notice was published in the April 5, 2006, CUSTOMS BULLETIN, Volume 40, Number 15, proposing to modify NY E87523, and to revoke any treatment accorded to substantially identical transactions. No comments were received in response to the notice.

FACTS:

Although the products under consideration are called "Diamond Metallic Bead Necklaces," information you have provided indicates that the actual composition of the necklaces is black plastic beads that have been covered with a colored coating that is either purple, green, gold or silver. The CBP Laboratory tested two samples of the product you provided, and the results showed the products were composed of polystyrene plastic beads covered with paints that were either acrylic or polyurethane based. The CBP Laboratory reports are: NY20051149 and NY20051150, both dated 08/18/05.

Additional product information you have provided shows that the imported value of the necklaces is more than 20 cents per dozen.

ISSUE:

What is the classification of the necklaces made of plastic beads coated with metallic paint?

LAW AND ANALYSIS:

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

The HTSUS subheadings under consideration are as follows:

7117	Imitation jewelry: Of base metal, whether or not plated with precious metal: * * *
7117.19	Other: Other: * * *
7117.19.9000	Other
7117.90	Other: * * * Other: * * * Valued over 20 cents per dozen pieces or parts: * * * Other:
7117.90.7500	Of plastics

When the subject necklaces were initially classified in NY E87523, CBP did not have the benefit of the technical data regarding the composition of the product from the manufacturer, nor were tests performed on the goods by the CBP Laboratory. Classification in that ruling was made based upon the appearance of the product and information provided by the requester. Unfortunately, neither the appearance, the marketing designation ("Metallic Bead Necklace") nor available product data provided accurate information about the product.

Based on the product information currently before CBP, we have determined that the classification provided for the product identified as item #95110, called Diamond Metallic Bead Necklace, in NY E87523 is incorrect. The correct classification for the product is subheading 7117.90.7500, HTSUS.

HOLDING:

Item #95110, referred to as a "Diamond Metallic Bead Necklace," composed of plastic beads that have been coated with colored metallic-appearing paint is classified in subheading 7117.90.7500, HTSUS, which provides for: "Imitation jewelry: Other: Other: Valued over 20 cents per dozen pieces or parts: Other: Of plastics.

The 2006 column one duty rate for products of that subheading is "Free." Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY E87523, dated September 14, 1999, is modified.

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

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


REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF A CERTAIN BASE METAL MEDALLION

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

ACTION: Notice of revocation of one ruling letter and revocation of treatment relating to the classification of a certain base metal medallion.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a certain base metal medallion. Similarly, CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 40, No. 16, on April 12, 2006. No comments were received in response to the notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 6, 2006.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Tariff Classification and Marking Branch, at (202) 572-8828.

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 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the Customs Bulletin on April 12, 2006, proposing to revoke ruling letter NY 894287, dated January 31, 1994, relating to the tariff classification of a certain base metal medallion. No comments were received in response to the notice. As stated in the proposed notice, this revocation will cover any rulings on the subject 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 have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially identical transactions should have advised 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 this final decision.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY 894287 to reflect the proper classification of a base medal medallion under heading 7117, HTSUS specifically subheading 7117.19.0000, HTSUS, which provides for imitation jewelry in accordance with the analysis set forth in HQ 968149, which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment it previously accorded to substantially identical transactions.

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

DATED: May 19, 2006

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

Attachment

HQ 968149
May 19, 2006
CLA-2 RR:CTF:TCM 968149 HkP
CATEGORY: Classification
TARIFF NO.: 7117.19.9000

MR. SHELDON BERNSTEIN
THE IRWIN BROWN COMPANY
212 Chartres Street
P.O. Box 2426
New Orleans, LA 70176-2426

RE: Award medallion from Taiwan; revocation of NY 894287

DEAR MR. BERNSTEIN:

This is in reference to New York Ruling Letter (NY) 894287, issued to you on January 31, 1994, in which the tariff classification of award medallions was determined under the Harmonized Tariff Schedule of the United States ("HTSUS"). NY 894287 classified the medallion in heading 7806, HTSUS, as "other articles of lead". We have reconsidered NY 894287 and have determined that the tariff classification of the medallion is not correct.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published on April 12, 2006, in the Customs Bulletin, Volume 40, Number 16. No comments were received in response to this notice.

FACTS:

NY 894287 described the medallion as follows:

The subject item is an award medallion approximately 2" in diameter with the designation Scholar ARCS Foundation, Inc. on its surface. It is made mainly of lead. This item will be given to award recipients and worn only at ceremonies.

ISSUE:

Whether the subject medallion is classified in heading 7806, HTSUS, which provides for: "other articles of lead", or in heading 7117, HTSUS, which provides for: "imitation jewelry."

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

7117	Imitation jewelry:
	Of base metal, whether or not plated with precious metal:
7117.19	Other:
	Other:
7117.19.9000	Other. . . .
7806.00.0000	Other articles of lead. . . .

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

We first consider heading 7117, HTSUS, which provides for "imitation jewelry". Legal Note 11 to Chapter 71, HTSUS, provides that:

For the purposes of heading 71.17, the expression "imitation jewellery" means articles of jewellery within the meaning of paragraph (a) of Note 9 . . . not incorporating natural or cultured pearls, precious or semi-precious stones . . . nor (except as plating or as minor constituents) precious metal or metal clad with precious metal.

In turn, Note 9(a) to Chapter 71, HTSUS, provides that "articles of jewellery" means "any small objects of personal adornment . . . (for example, rings, bracelets, necklaces, brooches, . . . , religious or other medals and insignia)". Finally, EN 71.17 explains that the expression "imitation jewelry", as defined in Note 11 to Chapter 71, is restricted to small objects of personal adornment. Consequently, we find that the medallion meets the terms of heading 7117, HTSUS, and the conditions of Legal Note 11 to Chapter 71 be-

cause it is an article of personal adornment that does not incorporate precious metal or metal clad with precious metal, natural or cultured pearls, or precious or semi-precious stones.

Conversely, heading 7806.00.0000, HTSUS, which is located in Section XV of the HTSUS, provides for "other articles of lead." Legal Note 1(e) to Section XV, HTSUS, excludes goods of Chapter 71, HTSUS, from Section XV. Further, EN 78.06 explains that heading 7806, HTSUS, "covers all lead articles not included in the preceding headings of this Chapter, or in Chapter 82 or 83, or more specifically covered elsewhere in the Nomenclature."

Applying Legal Note 1(e) to Section XV, HTSUS, and EN 78.06 to these facts, we find that the award medallion is precluded from classification under heading 7806, HTSUS, as the medallion is specifically described in heading 7117, HTSUS, as imitation jewelry.

HOLDING:

By application of GRI 1, we find that the subject medallion is classified in heading 7117, HTSUS, and is specifically provided for in subheading 7117.19.9000, HTSUS, which provides for: "Imitation jewelry: Of base metal, whether or not plated with precious metal: Other: Other: Other."

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 894287, dated January 31, 1994, is revoked. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

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

**REVOCATION OF ONE RULING LETTER, MODIFICATION
OF THREE RULING LETTERS, AND REVOCATION OF
TREATMENT RELATING TO THE CLASSIFICATION OF
CERTAIN STAINLESS STEEL MEASURING SPOONS**

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

ACTION: Notice of revocation of one ruling letter, modification of three ruling letters, and revocation of treatment relating to the classification of certain stainless steel measuring spoons.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter and modifying three ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of

the United States (HTSUS), of certain stainless steel measuring spoons. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed actions was published in the Customs Bulletin, Volume 40, Number 16, on April 12, 2006. No comments were received in response to the notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 6, 2006.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Tariff Classification and Marking Branch, at (202) 572-8828.

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 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the Customs Bulletin, Volume 40, Number 16, on April 12, 2006, proposing to revoke one ruling letter and modify three ruling letters relating to the tariff classification of certain stainless steel measuring spoons. No comments were received in response to the notice. As stated in the proposed notice, this revocation and modification 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 those identified. No further rulings have been found. Any party who

has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY J87441, NY J87521, and NY E82964, and revoking NY B86306, to reflect the proper tariff classification of the stainless steel measuring spoons under heading 7323, HTSUS, specifically subheading 7323.93.00, HTSUS, as other stainless steel kitchenware, pursuant to the analysis set forth in Headquarters Ruling Letters (HQ) 968080 (Attachment A), HQ 968081 (Attachment B), and HQ 968163 (Attachment C). This is a change from the proposed subheading 7323.99.90, HTSUS, published in the Customs Bulletin of April 12, 2006, to subheading 7323.93.00, HTSUS. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice.

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

DATED: May 19, 2006

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

Attachments

[ATTACHMENT A]

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

HQ 968080

May 19, 2006

CLA-2 RR:CTF:TCM 968080 HkP**CATEGORY:** Classification**TARIFF NO.:** 7323.93.0060

MEIJER, INC.
c/o Ms. KIM YOUNG
BDP INTERNATIONAL, INC.
2721 Walker NW
Grand Rapids, MI 49504

RE: Classification of stainless steel measuring spoon set; revocation of NY B86306

DEAR MS KIM:

This is in reference to New York Ruling Letter ("NY") B86306, dated June 18, 1997, in which the tariff classification of stainless steel measuring spoons was determined under the Harmonized Tariff Schedule of the United States ("HTSUS"). NY B86306 classified the spoons in heading 8215, HTSUS, which provides for: "Spoons, forks, ladles, skimmers, cake-servers, fish knives, butter-knives, sugar tongs and similar kitchen or tableware". We have reconsidered NY B86306 and have determined that the tariff classification of the measuring spoons is not correct.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published on April 12, 2006, in the Customs Bulletin, Volume 40, Number 16. No comments were received in response to this notice.

FACTS:

In NY B86306, the measuring spoons were described as "a set of four stainless steel measuring spoons graduated in size from 1/4 teaspoon to 1 tablespoon. . . . all four spoons are valued under 25 cents each."

ISSUE:

Whether the stainless steel measuring spoons are classified in heading 7323, HTSUS, which provides for: "Table, kitchen or other household articles and parts thereof, of iron or steel", or heading 8215, HTSUS, which provides for: "Spoons, forks, ladles, skimmers, cake-servers, fish knives, butter-knives, sugar tongs and similar kitchen or tableware."

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings

and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

7323	Table, kitchen or other household articles and parts thereof, of iron or steel; . . . :
	Other:
7323.93.00	Of stainless steel. . . .
	Cooking and kitchen ware:
	Other:
7323.93.0060	Kitchen ware. . . .
8215	Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or table-ware; and base metal parts thereof:
	Other:
8215.99	Other:
	Spoons and ladles:
	With stainless steel handles:
8215.99.3000	Spoons valued under 25¢ each. . . .

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

We first consider classification in heading 7323, HTSUS, which provides for: “Table, kitchen or other household articles and parts thereof, of iron or steel.” Iron or steel measuring spoons are kitchen or household articles and are therefore, *prima facie*, classifiable in heading 7323, HTSUS. In addition, EN 73.23 provides in pertinent part, that:

This group comprises a wide range of iron or steel articles, **not more specifically covered** by other headings of the Nomenclature, used for table, kitchen or other household purposes; . . .

. . .

The group includes:

- (1) Articles for kitchen use such as saucepans, steamers, pressure cookers, preserving pans, stew pans, casseroles, fish kettles; . . . ; kitchen type capacity measures[.]

(Original emphasis.)

However, EN 73.23 indicates that this heading is a “basket” provision, in that, merchandise may only be classified in this heading if not more specifically covered by any other tariff heading.

Next, we consider classification in heading 8215, HTSUS, which provides for: “Spoons, forks, ladles, skimmers, cake-servers, fish knives, butter-

knives, sugar tongs and similar kitchen or tableware.” Explanatory Note 82.15 provides that:

This heading includes:

- (1) Spoons of all kinds including salt or mustard spoons.
- (2) Table forks: carving forks, serving forks, cooks’ forks; cake forks; oyster forks; snail forks; toasting forks.
- (3) Ladles and skimmers (for vegetables, frying, etc.)
- (4) Slices for serving fish, cake strawberries, asparagus.
- (5) Non-cutting fish knives and butter knives.
- (6) Sugar tongs of all kinds (cutting or not), cake tongs, hors-d’oeuvre tongs, asparagus tongs, small tongs, meat tongs and ice tongs.
- (7) Other tableware, such as poultry or meat grips, and lobster or unit grips.

The term “spoon” is not defined in the HTSUS or the Ens. A tariff term that is not defined in the HTSUS or in the Ens is construed in accordance with its common and commercial meaning. Nippon Kogaku (USA) Inc. v. United States, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. C.J. Tower & Sons v. United States, 69 CCPA 128, 673 F.2d 1268 (1982). The Oxford English dictionary (www.askoxford.com) defines a spoon as “an implement consisting of a small, shallow bowl on a long handle, used for eating, stirring, and serving.”

“Spoons” is an *eo ominee* provision. An *eo ominee* provision is one that describes merchandise by a specific name that is well known in the trade, and includes all forms of the article as if each were provided for by name in the tariff provisions. Explanatory Note 82.15 states that heading 8215, HTSUS, covers “spoons of all kinds”. The Court of International Trade has stated that “[b]readth undermines specificity. Where an *eo ominee* provision encompasses more and more disparate items, almost without limit, it necessarily begins to lose its specificity.” Midwest of Canon Falls, Inc. v. United States, 20 C.I.T. 123, 130 (1996). In that case, the court was of the opinion that because the classification “dolls” covered many disparate items, the court could not “accept a blanket rule that every decorative article with some doll-like feature is simply a doll.” (quoting Russ Berrie & Co. v. United States, 76 Cust. Ct. 218, at 224–5, 417 F. Supp. 1035 at 1039). Id. So too, in the instant case, we are of the opinion that “spoons” covers many disparate items and that not every article with spoon-like features can be simply classified as a spoon.

Conversely, “kitchen or other household articles” is best described as a use provision because the defining feature of such articles is implied by their use. Additional U.S. Rule of Interpretation (a) states that, in the absence of special language or context which otherwise requires, a tariff classification controlled by use (other than by actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use. Explanatory Note 73.23 explains that the articles of heading 7323, HTSUS, are used for kitchen, table and household purposes, and include “kitchen type capacity measures”. Based on the exemplars of EN 73.23, we are of the opinion that the principal use of the class of goods to which the measuring spoons belong (kitchen articles) is kitchen use, and in particular, capacity measurement. In addition,

we note that this approach is consistent with CPB's classification of measuring spoons of plastic. See **NY L85919**, dated August 3, 2005; **NY D87578**, dated March 2, 1999; **NY 808944**, dated May 4, 1995; and, **NY 888561**, dated August 17, 1993.

HOLDING:

By application of GRI 1 and Additional U.S. Rule of Interpretation (a), HTSUS, we find that measuring spoons are classified in heading 7323, HTSUS, as "Table, kitchen or other household articles and parts thereof, of iron or steel", and are specifically provided for in subheading 7323.93.0060, HTSUS, which provides for: "Table, kitchen or other household articles and parts thereof, of iron or steel; . . . : Other: Of stainless steel: Cooking and kitchen ware: Other: Kitchen ware."

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 B86306, dated June 18, 1997, is hereby revoked. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

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

[ATTACHMENT B]

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

HQ 968081
May 19, 2006
CLA-2 RR:CTF:TCM 968081 HkP
CATEGORY: Classification
TARIFF NO.: 7323.93.0060

MR. SHACHAR GAT
SHONFELD'S USA
3100 South Susan Street
Santa Ana, CA 92704

RE: Classification of stainless steel measuring spoons; modification of NY J87441 and NY J87521

DEAR MR. GAT:

This is in reference to New York Ruling Letters ("NY") J87441 and NY J87521, both dated August 6, 2003, in which the tariff classification of stainless steel measuring spoons was determined under the Harmonized Tariff Schedule of the United States ("HTSUS"). NY J87441 and NY J87521 classi-

fied the spoons in heading 8215, HTSUS, which provides for: “Spoons, forks, ladles, skimmers, cake-servers, fish knives, butter-knives, sugar tongs and similar kitchen or tableware.” We have reconsidered NY J87441 and NY J87521 and have determined that the tariff classification of the measuring spoons is not correct.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published on April 12, 2006, in the Customs Bulletin, Volume 40, Number 16. No comments were received in response to this notice.

FACTS:

In both NY J87441 and NY J87521, the measuring spoons were part of products packaged together to make one retail item, but not classifiable as a set, and marketed as “coffee flavoring” and “coffee toppings”, respectively. The measuring spoons, made of stainless steel and measuring in one-teaspoon increments, were attached to bottles of vanilla sugar.

ISSUE:

Whether the stainless steel measuring spoons are classified in heading 7323, HTSUS, which provides for: “Table, kitchen or other household articles and parts thereof, of iron or steel”, or in heading 8215, HTSUS, which provides for: “Spoons, forks, ladles, skimmers, cake-servers, fish knives, butter-knives, sugar tongs and similar kitchen or tableware.”

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

7323	Table, kitchen or other household articles and parts thereof, of iron or steel; . . . :
	Other:
7323.93.00	Of stainless steel. . . .
	Cooking and kitchen ware:
	Other:
7323.93.0060	Kitchen ware. . . .

8215 Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware; and base metal parts thereof:

Other:

8215.99

Other:

Spoons and ladles:

With stainless steel handles:

8215.99.3000

Spoons valued under 25¢ each. . . .

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

We first consider classification in heading 7323, HTSUS, which provides for: "Table, kitchen or other household articles and parts thereof, of iron or steel." Iron or steel measuring spoons are kitchen or household articles and are therefore, *prima facie*, classifiable in heading 7323, HTSUS. Explanatory Note 73.23 provides in pertinent part, that:

This group comprises a wide range of iron or steel articles, **not more specifically covered** by other headings of the Nomenclature, used for table, kitchen or other household purposes; . . .

. . .

The group includes:

- (1) Articles for kitchen use such as saucepans, steamers, pressure cookers, preserving pans, stew pans, casseroles, fish kettles; . . . ; kitchen type capacity measures[.]

(Original emphasis.)

However, EN 73.23 indicates that this heading is a "basket" provision, in that, merchandise may only be classified in this heading if not more specifically covered by any other tariff heading.

Next, we consider classification in heading 8215, HTSUS, which provides for: "Spoons, forks, ladles, skimmers, cake-servers, fish knives, butter-knives, sugar tongs and similar kitchen or tableware." Explanatory Note 82.15 provides that:

This heading includes:

- (1) Spoons of all kinds including salt or mustard spoons.
- (2) Table forks: carving forks, serving forks, cooks' forks; cake forks; oyster forks; snail forks; toasting forks.
- (3) Ladles and skimmers (for vegetables, frying, etc.)
- (4) Slices for serving fish, cake strawberries, asparagus.
- (5) Non-cutting fish knives and butter knives.
- (6) Sugar tongs of all kinds (cutting or not), cake tongs, hors-d'oeuvre tongs, asparagus tongs, small tongs, meat tongs and ice tongs.
- (7) Other tableware, such as poultry or meat grips, and lobster or unit grips.

The term “spoon” is not defined in the HTSUS or the ENs. A tariff term that is not defined in the HTSUS or in the ENs is construed in accordance with its common and commercial meaning. Nippon Kogaku (USA) Inc. v. United States, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. C.J. Tower & Sons v. United States, 69 CCPA 128, 673 F.2d 1268 (1982). The Oxford English dictionary (www.askoxford.com) defines a spoon as “an implement consisting of a small, shallow bowl on a long handle, used for eating, stirring, and serving.”

“Spoons” is an *eo nomine* provision. An *eo nomine* provision is one that describes merchandise by a specific name that is well known in the trade, and includes all forms of the article as if each were provided for by name in the tariff provisions. Explanatory Note 82.15 states that heading 8215, HTSUS, covers “spoons of all kinds.” The Court of International Trade has stated that “[b]readth undermines specificity. Where an *eo nomine* provision encompasses more and more disparate items, almost without limit, it necessarily begins to lose its specificity.” Midwest of Canon Falls, Inc. v. United States, 20 C.I.T. 123, 130 (1996). In that case, the court was of the opinion that because the classification “dolls” covered many disparate items, the court could not “accept a blanket rule that every decorative article with some doll-like feature is simply a doll.” (quoting Russ Berrie & Co. v. United States, 76 Cust. Ct. 218, at 224–5, 417 F. Supp. 1035 at 1039). *Id.* So too, in the instant case, we are of the opinion that “spoons” covers many disparate items and that not every article with spoon-like features can be simply classified as a spoon.

Conversely, “kitchen or other household articles” is best described as a use provision because the defining feature of such articles is implied by their use. Additional U.S. Rule of Interpretation (a) states that, in the absence of special language or context which otherwise requires, a tariff classification controlled by use (other than by actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use. Explanatory Note 73.23 explains that the articles of heading 7323, HTSUS, are used for kitchen, table and household purposes, and include “kitchen type capacity measures”. Based on the exemplars of EN 73.23, we are of the opinion that the principal use of the class of goods to which the measuring spoons belong (kitchen articles) is kitchen use, and in particular, capacity measurement. In addition, we note that this approach is consistent with CPB’s classification of measuring spoons of plastic. See **NY L85919**, dated August 3, 2005; **NY D87578**, dated March 2, 1999; **NY 808944**, dated May 4, 1995; and **NY 888561**, dated August 17, 1993.

HOLDING:

By application of GRI 1 and Additional U.S. Rule of Interpretation (a), HTSUS, we find that measuring spoons are classified in heading 7323, HTSUS, as “Table, kitchen or other household articles and parts thereof, of iron or steel”, and are specifically provided for in subheading 7323.93.0060, HTSUS, which provides for: “Table, kitchen or other household articles and parts thereof, of iron or steel; . . . : Other: Of stainless steel: Cooking and kitchen ware: Other: Kitchen ware.”

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 J87521 and NY J87441, dated August 6, 2003, are hereby modified with respect to the classification of stainless steel measuring spoons. The classification of the remaining items described in NY J87521 and NY J87441, is unchanged. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

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

[ATTACHMENT C]

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

HQ 968163
May 19, 2006
CLA-2 RR:CTF:TCM 968163 HkP
CATEGORY: Classification
TARIFF NO.: 7323.93.0060

MR. EDWARD N. JORDAN
EXPEDITORS INTERNATIONAL
601 North Nash Street
El Segundo, CA 90245

RE: Classification of stainless steel measuring spoons; modification of NY E82964

DEAR MR. JORDAN:

This is in reference to New York Ruling Letter ("NY") E82964, dated June 11, 1999, in which the tariff classification of stainless steel measuring spoons was determined under the Harmonized Tariff Schedule of the United States ("HTSUS"). NY E82964 classified the spoons in heading 8215, HTSUS, which provides for: "Spoons, forks, ladles, skimmers, cake-servers, fish knives, butter-knives, sugar tongs and similar kitchen or tableware." We have reconsidered NY E82964 and have determined that the tariff classification of the measuring spoons, imported separately, is not correct.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published on April 12, 2006, in the Customs Bulletin, Volume 40, Number 16. No comments were received in response to this notice.

FACTS:

NY E82964 stated:

The merchandise is a 9-piece stainless steel mix and measure set (item number 0639). The set consists of a 2-quart mixing bowl, 4 measuring cups on a ring, and 4 measuring spoons on a ring. Your letter indicates that the total value of the four spoons is 50 cents. You asked for the classification of this merchandise when imported as a retail packaged set, and also when the individual components are imported separately.

ISSUE:

Whether the stainless steel measuring spoons, when imported separately, are classified in heading 7323, HTSUS, which provides for: "Table, kitchen or other household articles and parts thereof, of iron or steel", or in heading 8215, HTSUS, which provides for: "Spoons, forks, ladles, skimmers, cake-servers, fish knives, butter-knives, sugar tongs and similar kitchen or table-ware."

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

7323	Table, kitchen or other household articles and parts thereof, of iron or steel; . . . :
	Other:
7323.93.00	Of stainless steel. . . .
	Cooking and kitchen ware:
	Other:
7323.93.0060	Kitchen ware. . . .
8215	Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or table-ware; and base metal parts thereof:
	Other:
8215.99	Other:
	Spoons and ladles:
	With stainless steel handles:
8215.99.3000	Spoons valued under 25¢ each. . . .

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of

each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

We first consider classification in heading 7323, HTSUS, which provides for: “Table, kitchen or other household articles and parts thereof, of iron or steel.” Iron or steel measuring spoons are kitchen or household articles and are therefore *prima facie* classifiable in heading 7323, HTSUS. Explanatory Note 73.23 provides, in pertinent part, that:

This group comprises a wide range of iron or steel articles, **not more specifically covered** by other headings of the Nomenclature, used for table, kitchen or other household purposes; . . .

. . .

The group includes:

- (1) Articles for kitchen use such as saucepans, steamers, pressure cookers, preserving pans, stew pans, casseroles, fish kettles; . . . ; kitchen type capacity measures[.]
- (Original emphasis.)

However, EN 73.23 indicates that this heading is a “basket” provision, in that, merchandise may only be classified in this heading if not more specifically covered by any other tariff heading.

Next, we consider classification in heading 8215, HTSUS, which provides for: “Spoons, forks, ladles, skimmers, cake-servers, fish knives, butter-knives, sugar tongs and similar kitchen or tableware.” Explanatory Note 82.15 provides that:

This heading includes:

- (1) Spoons of all kinds including salt or mustard spoons.
- (2) Table forks: carving forks, serving forks, cooks’ forks; cake forks; oyster forks; snail forks; toasting forks.
- (3) Ladles and skimmers (for vegetables, frying, etc.)
- (4) Slices for serving fish, cake strawberries, asparagus.
- (5) Non-cutting fish knives and butter knives.
- (6) Sugar tongs of all kinds (cutting or not), cake tongs, hors-d’oeuvre tongs, asparagus tongs, small tongs, meat tongs and ice tongs.
- (7) Other tableware, such as poultry or meat grips, and lobster or unit grips.

The term “spoon” is not defined in the HTSUS or the ENs. A tariff term that is not defined in the HTSUS or in the ENs is construed in accordance with its common and commercial meaning. Nippon Kogaku (USA) Inc. v. United States, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. C.J. Tower & Sons v. United States, 69 CCPA 128, 673 F.2d 1268 (1982). The Oxford English Dictionary (www.askoxford.com) defines a spoon as “an implement consisting of a small, shallow bowl on a long handle, used for eating, stirring, and serving.”

“Spoons” is an *eo nomine* provision. An *eo nomine* provision is one that describes merchandise by a specific name that is well known in the trade, and includes all forms of the article as if each were provided for by name in the tariff provisions. Explanatory Note 82.15 states that heading 8215, HTSUS, covers “spoons of all kinds.” The Court of International Trade has stated that “[b]readth undermines specificity. Where an *eo nomine* provision en-

compasses more and more disparate items, almost without limit, it necessarily begins to lose its specificity.” Midwest of Canon Falls, Inc. v. United States, 20 C.I.T. 123, 130 (1996). In that case, the court was of the opinion that because the classification “dolls” covered many disparate items, the court could not “accept a blanket rule that every decorative article with some doll-like feature is simply a doll.” (quoting Russ Berrie & Co. v. United States, 76 Cust. Ct. 218, at 224–5, 417 F. Supp. 1035 at 1039). Id. So too, in the instant case, we are of the opinion that “spoons” covers many disparate items and that not every article with spoon-like features can be simply classified as a spoon.

Conversely, “kitchen or other household articles” is best described as a use provision because the defining feature of such articles is implied by their use. Additional U.S. Rule of Interpretation (a) states that, in the absence of special language or context which otherwise requires, a tariff classification controlled by use (other than by actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use. Explanatory Note 73.23 explains that the articles of heading 7323, HTSUS, are used for kitchen, table and household purposes, and include “kitchen type capacity measures”. Based on the exemplars of EN 73.23, we are of the opinion that the principal use of the class of goods to which the measuring spoons belong (kitchen articles) is kitchen use, and in particular, capacity measurement. In addition, we note that this approach is consistent with CPB’s classification of measuring spoons of plastic. See **NY L85919**, dated August 3, 2005; **NY D87578**, dated March 2, 1999; **NY 808944**, dated May 4, 1995; and, **NY 888561** dated August 17, 1993.

HOLDING:

By application of GRI 1 and Additional U.S. Rule of Interpretation (a), HTSUS, we find that measuring spoons are classified in heading 7323, HTSUS, as “Table, kitchen or other household articles and parts thereof, of iron or steel”, and are specifically provided for in subheading 7323.93.0060, HTSUS, which provides for: “Table, kitchen or other household articles and parts thereof, of iron or steel; . . . : Other: Of stainless steel: Cooking and kitchen ware: Other: Kitchen ware.”

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 E82964 is hereby modified with respect to the classification of stainless steel measuring spoons, imported separately. The classification of the remaining items described in NY E82964 is unchanged. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

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

**PROPOSED MODIFICATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE RATE OF
DUTY AND COUNTRY OF ORIGIN MARKING OF A SUGAR
AND GELATIN BLEND**

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 tariff classification, rate of duty and country of origin marking of a sugar and gelatin blend.

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 the Bureau of Customs and Border Protection ("CBP") intends to modify a ruling letter pertaining to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), rate of duty, and country of origin, of a sugar and gelatin blend and 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 July 7, 2006.

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

FOR FURTHER INFORMATION CONTACT: Keith Rudich, Tariff Classification and Marking Branch, Commercial and Trade Facilitation Division, Office of Regulations and Rulings, at (202) 572-8782.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify a ruling letter pertaining to the tariff classification, rate of duty and country of origin marking of a sugar and gelatin blend. Although in this notice CBP is specifically referring to one ruling, NY K80306, 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 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY K80306, dated November 5, 2003, set forth as “Attachment A” to this document, CBP found that a sugar and gelatin blend was classified in subheading 2106.90.5870, HTSUSA, as “[f]ood preparations not elsewhere specified or included: [o]ther: [o]ther: [o]f gelatin:

[o]ther: [c]ontaining sugar derived from sugar cane or sugar beets.” NY K80306 found that the sugar and gelatin blend qualified under the North American Free Trade Agreement (“NAFTA”) for a column one, special rate of duty. NY K80306 also determined that, pursuant to the NAFTA Marking Rules, the sugar and gelatin blend was a product of the United States and exempt from country of origin marking.

CBP has reviewed the matter and determined that although the classification and country of origin determinations were correct, the sugar and gelatin blend does not qualify for duty free treatment pursuant to NAFTA. Pursuant to a “substantial transformation” analysis, the country of origin under Part 134 of the CBP Regulations (19 CFR Part 134) is the United States and the sugar and gelatin blend is exempt from country of origin marking.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY K80306, and any other ruling not specifically identified, to reflect the proper classification analysis and country of origin marking of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 967896, as set forth in “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: May 23, 2006

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

Attachments

[ATTACHMENT A]

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

NY K80306
November 5, 2003
CLA-2-21:RR:NC:2:228 K80306
CATEGORY: Classification
TARIFF NO.: 2106.90.5870

MS. SHIRLEY COFFIELD
COFFIELDLAW
*666 Eleventh Avenue NW.
Washington, DC 20001*

RE: The tariff classification and status under the North American Free Trade Agreement (NAFTA), and country of origin marking of a sugar and gelatin blend from a Foreign Trade Zone; Article 509

DEAR MS. COFFIELD:

In your letter dated October 15, 2003, on behalf of Streamline Foods, Inc., 6018 West Maple Road, West Bloomfield, MI, you requested a ruling on the status of a sugar and gelatin blend produced in a Foreign Trade Zone (FTZ) in Toledo, OH, under the NAFTA.

Samples, submitted with your letter, were examined and disposed of. The merchandise is described as a blend of 94 percent sugar and 6 percent gelatin. Examination of the sample found the product to be of a fine granulation, with the sugar and gelatin particles virtually indistinguishable. The sugar will be a product of Brazil, Australia, or another non-NAFTA country, and the gelatin may be a product of the United States or Brazil. The sugar and gelatin blend imported from the FTZ will be used by food processors, who will add flavorings, colors, preservatives, salt, and sodium citrate to make a retail-packaged gelatin dessert mix.

The applicable tariff provision for the sugar and gelatin blend will be 2106.90.5870, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for food preparations not elsewhere specified or included . . . other . . . of gelatin . . . other . . . containing sugar derived from sugar cane or sugar beets. The general rate of duty will be 4.8 percent ad valorem.

Each of the non-originating materials used to make the sugar and gelatin blend has satisfied the changes in tariff classification required under HTSUSA General Note 12(t)/21.14. The sugar and gelatin blend will be entitled to a free rate of duty under the NAFTA upon compliance with all applicable laws, regulations, and agreements.

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

The country of origin marking requirements for a “good of a NAFTA country” are also determined in accordance with Annex 311 of the North American Free Trade Agreement (“NAFTA”), as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat 2057) (December 8, 1993) and the appropriate Customs Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, Customs Regulations. The marking requirements of these goods are set forth in Part 134, Customs Regulations.

Section 134.1(b) of the regulations, defines “country of origin” as the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin. (Emphasis added).

Section 134.1(j) of the regulations, provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) of the regulations, defines a “good of a NAFTA country” as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules. Section 134.45(a)(2) of the regulations, provides that a “good of a NAFTA country” may be marked with the name of the country of origin in English, French or Spanish.

Part 102 of the regulations, sets forth the “NAFTA Marking Rules” for purposes of determining whether a good is a good of a NAFTA country for marking purposes. Section 102.11 of the regulations, sets forth the required hierarchy for determining country of origin for marking purposes.

Applying the NAFTA Marking Rules set forth in Part 102 of the regulations to the facts of this case, we find that the imported sugar and gelatin blend is a good of the United States for marking purposes. Products of the United States are not subject to the country of origin marking requirements of 19 U.S.C. 1304.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181).

This ruling letter is binding only as to the party to whom it is issued and may be relied on only by that party.

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 Stanley Hopard at 646–733–3029.

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

[ATTACHMENT B]

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

HQ 967896
CLA-2 RR:CTF:TCM 967896 KBR
CATEGORY: Classification
TARIFF NO.: 2106.90.5870

MS. SHIRLEY COFFIELD
COFFIELDLAW
666 Eleventh Street, NW
Suite 315
Washington, D.C. 20001

RE: Modification of NY K80306; Sugar and Gelatin Blend

DEAR MS. COFFIELD:

This is in reference to New York Ruling Letter (NY) K80306, issued to you, on behalf of your client Streamline Foods, Inc., by Customs and Border Protection ("CBP"), on November 5, 2003. That ruling concerned the classification and duty rate under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) and country of origin of sugar and gelatin blended in a Foreign Trade Zone ("FTZ"). In NY K80306, we determined that the sugar and gelatin blended in a FTZ was subject to the North American Free Trade Agreement ("NAFTA") and, therefore, was entitled to a free rate of duty. Further, NY K80306 determined that pursuant to the NAFTA country of origin marking rules, the country of origin of the sugar and gelatin blend was the United States. Therefore, the sugar and gelatin blend was exempt from country of origin marking. We have reviewed NY K80306 and determined that the sugar and gelatin blend is not subject to treatment pursuant to NAFTA.

FACTS:

NY K80306, concerned a sugar and gelatin blend. The goods were described as a blend of 94% sugar and 6% gelatin. The sample of the product was of a fine granulation with the sugar and gelatin particles virtually indistinguishable. NY K80306 stated that the sugar used to create the blend would be imported from Brazil, Australia or another non-NAFTA country. You now report that sugar is no longer being imported from Australia, but is being imported directly from Costa Rica, Guatemala or other countries eligible for treatment under the Generalized System of Preferences ("GSP") or the Caribbean Basin Economic Recovery Act ("CBERA"). In NY K80306, you indicated that the gelatin used to make the blend may be a product of the United States or Brazil.

The sugar and gelatin are imported directly into a FTZ in Toledo, Ohio, where they are blended. After leaving the FTZ, the sugar and gelatin blend is used by food processors, who will add flavoring, coloring, preservatives, salt, and sodium citrate to make a gelatin dessert mix for retail sale. The sugar and gelatin blend was classified in subheading 2106.90.5870, HTSUSA, which provides for "[f]ood preparations not elsewhere specified or included: [o]ther: [o]ther: [o]f gelatin: [o]ther: [c]ontaining sugar derived from sugar cane or sugar beets." The tariff classification of the sugar and gelatin blend was correct in NY K80306.

However, NY K80306 also determined that the non-originating materials used to make the sugar and gelatin blend were subject to NAFTA and underwent a change in tariff classification provided under HTSUSA General Note 12(t)/21.14, and were entitled to a free rate of duty. NY K80306 used Part 102, CBP Regulations, (19 CFR Part 102) to apply the NAFTA marking rules to determine that the sugar and gelatin blend was not subject to country of origin marking requirements. We have reviewed that ruling and determined that although the classification was correct, the sugar and gelatin blend does not qualify for treatment under NAFTA. This ruling sets forth the correct classification and country of origin marking analysis for the sugar and gelatin blend.

ISSUES:

What is the correct analysis for determining the classification and country of origin of the sugar and gelatin blend upon leaving a Foreign Trade Zone?

LAW AND ANALYSIS:

The country of origin marking requirements for a "good of a NAFTA country" are determined in accordance with Annex 311 of the NAFTA, as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat 2057) (December 8, 1993) and the appropriate CBP Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, CBP Regulations. The marking requirements of these goods are set forth in Part 134, CBP Regulations.

NY K80306 involved sugar which could be a product of Brazil, Australia, or another non-NAFTA country and gelatin which could be a product of the United States or Brazil. Your client is no longer importing sugar from Australia, only from Costa Rica, Guatemala or other GSP or CBERA eligible countries. The products are processed in a FTZ in Toledo, Ohio. In NY K80306, CBP used the NAFTA provisions to determine the country of origin and duty rate of the sugar and gelatin blend. However, since none of the sugar or gelatin is from Canada or Mexico, and the processing is performed in a FTZ in the United States, NAFTA is not applicable. Therefore, NY K80306 incorrectly applied a NAFTA analysis and must be modified.

Section 304 of the Tariff Act of 1930 (19 U.S.C. § 1304), provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. §1304 was that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods, the country of which the goods is the product. "The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will." *United States v. Friedlander & Co.*, 27 C.C.P.A. 297 at 302 (1940).

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and the exceptions of 19 U.S.C. §1304. Section 134.1(b), Customs Regulations (19 CFR 134.1(b)), defines "country of origin" as the country of manufacture, production or growth of any article of foreign origin entering the United States. Further work or material added to

an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of the marking laws and regulations. The case of *United States v. Gibson-Thomsen Co., Inc.*, 27 C.C.P.A. 267 (C.A.D. 98)(1940), provides that an article used in manufacture which results in an article having a name, character, or use differing from that of the constituent article will be considered substantially transformed and, as a result, the manufacturer or processor will be considered the ultimate purchaser of the constituent materials. In such circumstances, the imported article is excepted from marking and only the outermost container is required to be marked. *See*, 19 CFR 134.35(a).

In the instant situation, the foreign sugar is admitted into a FTZ where it is blended with either domestic or foreign gelatin. The ratio of the blend is 94 percent sugar and 6 percent gelatin and once blended, the sugar and gelatin particles are virtually indistinguishable. The Court of International Trade recently decided that the blending of sugar and gelatin together changed the character of the initial ingredients. *See Arbor Foods, Inc. v. United States*, slip op. 06-74 (CIT May 17, 2006). Although this decision only determined the classification of the 98% sugar and 2% gelatin blend, not the country of origin, it clearly stated that characteristics of the blend were different than that of the component parts. The court stated “that the characteristics of this blend impart it with a different functionality from that of pure sugar.” *Id*, slip op. at 8. Therefore, the court determined that the blend was a different product, a food preparation. *See also*, HQ 559259 (December 6, 1995), HQ 735559 (September 1, 1994), NY C81089 (December 2, 1997) determining under a NAFTA tariff shift analysis that blending sugar and gelatin is sufficient to meet the necessary tariff shift to change the country of origin.

Since blending the sugar and the gelatin creates a new product, a food preparation, this satisfies the substantial transformation requirement of 19 CFR 134.35(a) of having a new “name, character or use”. Thus, since there is a substantial transformation of the component ingredients, the country of origin of the sugar and gelatin blend is the country where the blending process occurred. CBP previously issued you two rulings determining under the traditional substantial transformation analysis that the sugar and gelatin blend underwent a change in name, character or use and, therefore, was substantially transformed and the country of origin of the blend was the country where the blending process occurred. This was true even though the processing occurred in a FTZ. *See* NY L82489 (February 23, 2005) and NY L83843 (April 29, 2005). These rulings correctly used a “substantial transformation” analysis to determine that the classification of the sugar and gelatin blend was under subheading 2106.90.5870, HTSUSA, and the country of origin for marking purposes was the United States. Therefore, since in the instant case the sugar and gelatin are blended in the FTZ located in the United States, we find the instant sugar and gelatin are substantially transformed in the FTZ and the country of origin of the sugar and gelatin blend is the United States.

The court in *Arbor Foods* also addressed the issue of classification at the subheading level of heading 2106, HTSUSA. The court considered the percentage of gelatin in the blend and held that the need to add additional gelatin or other thickeners/stabilizers to make the final product determined that the essential character of the blend was as a sweetener. The court stated that “the need to add further gelatin to the majority of products demon-

strates that the primary purpose of the blend is its sweetening function. . . . Furthermore, the undisputed facts also show that gelatin is not the ingredient of chief value and does not comprise the majority of the ingredients in the blend. . . . Accordingly, because the gelatin is not the essential ingredient, the ingredient of chief value, or the preponderant ingredient, the subject blend is not classifiable as a food preparation of gelatin.” *Arbor Foods*, slip op. at 14.

In the instant case, Streamline’s gelatin is at a higher concentration, 6% compared to 2%, and there is no need to add additional gelatin to make the end product. Therefore, we find that in the instant case, pursuant to the analysis of *Arbor Foods*, the gelatin is the essential ingredient and the sugar and gelatin blend is classifiable in subheading 2106.90.5870, HTSUSA, as a food preparation of gelatin.

The statute governing the creation and operation of FTZ’s is the Foreign Trade Zones Act of 1934, as amended (48 Stat. 998; 19 U.S.C. 81a through 81u). Under 19 U.S.C. 81c(a), foreign and domestic merchandise of every description (except prohibited merchandise) may be brought into a FTZ without being subject to the United States customs laws and may there be, among other things, stored, mixed with foreign or domestic merchandise, or otherwise manipulated and be exported, destroyed, or sent into the United States customs territory. When foreign merchandise is so sent from a FTZ into United States customs territory, it is subject to the United States laws and regulations affecting imported merchandise. Articles of the United States and articles previously imported on which duty and/or tax has been paid, or which have been admitted free of duty and tax, may be taken into a FTZ from the United States customs territory, placed under the supervision of the appropriate CBP officer, and, whether or not they have been combined with or made part of other articles while in the FTZ, be brought back thereto free of quotas, duty, or tax. If the identity of such articles (*i.e.*, the “domestic status” articles described in the preceding sentence) has been lost, articles not entitled to free entry by reason of noncompliance with the requirements under the authority of this provision are treated as foreign merchandise if they reenter the customs territory. The CBP Regulations issued under the authority of this statute are found in 19 CFR Part 146.

Section 146.65(a)(2) of the CBP Regulations covering nonprivileged foreign merchandise states:

Nonprivileged foreign merchandise provided for in this section will be subject to tariff classification in accordance with its character, condition and quantity as constructively transferred to Customs territory at the time the entry or entry summary is filed with Customs.

This allows an enterprise operating within the FTZ to take advantage of favorable differentials in the tariff schedules between the rates of duty for foreign materials used in the manufacturing process in the FTZ and the duty rates for the finished articles. See HQ 556976 (June 9, 1994) (citing *Armco Steel Corp. v. Stans*, 431 F.2d 779 (2nd Cir. 1970)). CBP has held that when a nonprivileged good is substantially transformed in an FTZ, it becomes a product of the United States. See HQ 735399 (December 22, 1993) and C.S.D. 81-44 (August 4, 1980). Further, that product upon withdrawal from the FTZ for consumption in the United States is subject to the rate of duty of the finished product. See HQ 560102 (June 17, 1997), and HQ 967222 (September 3, 2004).

In the instant case, as discussed above, the sugar and gelatin are substantially transformed by the processing in the FTZ. Therefore, the country of origin of the sugar/gelatin blend is the United States. Upon withdrawal from the FTZ, the sugar/gelatin blend is subject to the duty and quota provisions applicable to a sugar/gelatin blend which is a product of the United States. Therefore, the sugar and gelatin blend is classified in subheading 2106.90.5870, as “[f]ood preparations not elsewhere specified or included: [o]ther: [o]ther: [o]f gelatin: [o]ther: [c]ontaining sugar derived from sugar cane or sugar beets.” The sugar and gelatin blend will be a good of the United States for duty, quota and country of origin marking purposes. As such the sugar/gelatin blend is exempt from country of origin marking.

HOLDING:

In accordance with the above discussion, the sugar and gelatin entered into a FTZ in nonprivileged status and then blended, upon withdrawal from the FTZ is classified under subheading 2106.90.5870, as “[f]ood preparations not elsewhere specified or included: [o]ther: [o]ther: [o]f gelatin: [o]ther: [c]ontaining sugar derived from sugar cane or sugar beets.” The sugar and gelatin blend will be a good of the United States and is exempt from country of origin marking. The 2006 column one general rate of duty is 4.8% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY K80306, dated November 5, 2003, is **modified**.

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

