U.S. Customs and Border Protection

GENERAL NOTICE

Copyright, Trademark, and Trade Name Recordations [No. 122011]

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

SUMMARY: Presented herein are the copyrights, trademarks, and trade names recorded with U.S. Customs and Border Protection during the month of December 2011. The last notice was published in the CUSTOMS BULLETIN on December 28, 2011.

Corrections or updates may be sent to: Department of Homeland Security, U.S. Customs and Border Protection, Office of Regulations and Rulings, IPR Branch, 1300 Pennsylvania Avenue, N.W., Mail Stop 1179, Washington, D.C. 20229–1179

FOR FURTHER INFORMATION CONTACT: Delois Johnson, Paralegal, Intellectual Property Rights Branch, (202) 325–0088.

Dated: January 6, 2012

Charles R. Steuart
Chief,
Intellectual Property Rights
& Restricted Merchandise Branch

| Recordation No. | Effective | Expiration | Name of Cop/Tmk/Tnm | Owner Name | GM |
|-----------------|------------|------------|------------------------|---------------------------------|------------|
| | Date | Date | | | Restricted |
| COP 99-00203 | 12/12/2011 | 12/12/2031 | BASIC MINIFIGURES | INTERLEGO A.G. | No |
| TMK 11–01488 | 12/13/2011 | 8/2/2021 | THE BOYFRIEND | RBR, LLC | No |
| TMK 01-00584 | 12/12/2011 | 8/21/2021 | HIBISCUS & FERN DESIGN | TRADE WEST INC | No |
| TMK 02-00325 | 12/12/2011 | 1/26/2021 | LACOSTE | LACOSTE ALLIGATOR S.A. | No |
| TMK 02-00337 | 12/12/2011 | 10/23/2021 | METS AND DESIGN | STERLING METS, L.P. | No |
| TMK 02-00601 | 12/12/2011 | 11/21/2021 | INNER RIM OF LOCK NUT | MACLEAN INDUSTRIAL, L.L.C. | Yes |
| TMK 02-00927 | 12/13/2011 | 9/24/2021 | DOLBY & DD DESIGN | DOLBY LABORATORIES LICENSING | No |
| | | | | CORPORATION | |
| TMK 02-01064 | 12/12/2011 | 11/6/2021 | C REDS AND DESIGN | THE CINCINNATI REDS LLC. | No |
| TMK 03-00095 | 12/12/2011 | 10/30/2021 | 8 | ABERCROMBIE & FITCH TRADING CO. | No |
| TMK 05-00315 | 12/12/2011 | 8/20/2021 | BAMBU & DESIGN OF MAN | BAMBU SALES, INC. | Yes |
| TMK 05–00577 | 12/12/2011 | 8/7/2021 | NIFE | SAFT AKTIEBOLAG | No |
| TMK 11-01489 | 12/13/2011 | 8/9/2021 | LATEX FREE | EXELINT INTERNATIONAL CO. (DBA, | No |
| | | | | EXEL INTERNATIONAL) | |
| TMK 06-00343 | 12/12/2011 | 10/16/2021 | ELDORADO STONE | ELDORADO STONE OPERATIONS LLC | No |
| TMK 11-01490 | 12/13/2011 | 3/27/2021 | RED ARMY | HIGH POINT GROUP, INC. | No |
| TMK 07-01224 | 12/12/2011 | 12/5/2016 | DESIGN ONLY | OFFICINE PANERAI A.G. | No |
| TMK 11-01467 | 12/12/2011 | 10/18/2021 | RAINY DAY KITS | SALLORS FOR THE SEA, INC. | No |
| TMK 11-01468 | 12/12/2011 | 7/25/2015 | LUXATOR | DIRECT AB | No |
| TMK 09-00155 | 12/12/2011 | 8/7/2017 | TAPOUT | AGB TAPOUT LLC | No |

| Recordation No. | Effective | Expiration | Name of Cop/Tmk/Tnm | Owner Name | GM |
|-----------------|------------|------------|---------------------|--------------------------------|------------|
| | Date | Date | | | Restricted |
| TMK 09-01042 | 12/12/2011 | 5/6/2013 | ENABLEX | WARNER CHILOTT COMPANY, LLC | No |
| TMK $10-00552$ | 12/12/2011 | 5/7/2022 | ENERGIZER MAX | EVEREADY BATTERY COMPANY, INC. | No |
| TMK 11-01471 | 12/12/2011 | 2/8/2013 | DUREX | LRC PRODUCTS LIMITED | No |
| TMK 10-00731 | 12/12/2011 | 8/28/2021 | CONCERTA | ALZA CORPORATION | No |
| TMK 09-00165 | 12/12/2011 | 5/2/2020 | TAPOUT | AGB TAPOUT LLC | No |
| TMK 11-01514 | 12/13/2011 | 5/27/2018 | MYBAT (STYLIZED) | VALOR COMMUNICATION, INC. | No |
| TMK 11-01517 | 12/13/2011 | 11/1/2021 | LEVELUP | SCVNGR, INC. | No |
| TMK 11-01469 | 12/12/2011 | 4/12/2021 | 9/11 MEMORIAL | NATIONAL SEPTEMBER 11 MEMORIAL | Yes |
| | | | | & MUSEUM AT THE WORLD TRADE | |
| | | | | CENTER FOUNDATION INC. | |
| TMK 11-01472 | 12/12/2011 | 8/13/2018 | SALTY DOG | JAKE DOG, LLC | No |
| TMK 11-01473 | 12/12/2011 | 5/13/2018 | TORY BURCH | RIVER LIGHT V | No |
| TMK 11-01470 | 12/12/2011 | 7/3/2021 | RHINOBOND | HANDY & HARMAN | No |
| TMK 11-01479 | 12/12/2011 | 5/13/2018 | TORY BURCH | RIVER LIGHT V | No |
| TMK 11-01476 | 12/12/2011 | 9/7/2020 | MARINES | U.S. MARINE CORPS, A COMPONENT | No |
| | | | | OF THE U.S. DEPARTMENT OF THE | |
| | | | | NAVY | |
| TMK 11-01474 | 12/12/2011 | 1/31/2016 | BLUES | POWERBASS USA, INC. | No |
| TMK 11-01475 | 12/12/2011 | 8/16/2015 | DUREX PLAY | LRC PRODUCTS LIMITED | No |
| TMK 11-01478 | 12/12/2011 | 9/20/2021 | DESIGN | MICROSOFT CORPORATION | No |
| | | | | | |

| Recordation No. | Effective | Expiration | Name of Cop/Tmk/Tnm | Owner Name | GM |
|-----------------|------------|------------|----------------------------|------------------------------------|------------|
| | Date | Date | | | Restricted |
| COP 11-00198 | 12/12/2011 | 12/12/2031 | GHOST MASK WITH SHROUD | FUN WORLD, DIV., EASTER UNLIMITED | No |
| | | | | INC. | |
| TMK 11-01477 | 12/12/2011 | 5/2/2016 | SCOUT LIGHT | SUREFIRE LLC | No |
| TMK 11-01482 | 12/12/2011 | 10/19/2014 | ENGLISH LAUNDRY | EL ACQUISITION LLC | No |
| TMK 11–01480 | 12/12/2011 | 11/29/2021 | KANGEN WATER | ENAGIC CO. LTD. | No |
| TMK 11-01484 | 12/12/2011 | 11/22/2021 | BELLISSIMA | VINCENE PARRINELLO | No |
| TMK 11-01481 | 12/12/2011 | 5/13/2018 | TORY BURCH | RIVER LIGHT V | No |
| TMK 11-01491 | 12/13/2011 | 3/9/2020 | TORY BURCH | RIVER LIGHT V | No |
| TMK 11-01492 | 12/13/2011 | 10/2/2021 | DESIGN (EAGLE) | UNITED STATES POSTAL SERVICE | No |
| TMK 11-01483 | 12/12/2011 | 10/25/2021 | USMC | U.S. MARINE CORPS, A COMPONENT | No |
| | | | | OF THE U.S. DEPARTMENT OF THE | |
| | | | | NAVY | |
| COP 11-00199 | 12/13/2011 | 12/13/2031 | ANGRY BIRD | ROVIO MOBILE OY D. B.A. ROVIO MO- | No |
| | | | | BILE OY. ADDRESS: KEILARANTA 19 D, | |
| | | | | FI-02150 ESPOO. FINLAND | |
| TMK 11-01515 | 12/13/2011 | 9/22/2019 | M STYLIZED WITHIN A CIRCLE | MONAVIE, LLC | No |
| TMK 11–01485 | 12/12/2011 | 7/11/2021 | DOWNY | THE PROCTER & GAMBLE COMPANY | No |
| TMK 03-00280 | 12/12/2011 | 11/23/2021 | KETASET | WYETH LLC | No |
| TMK 11–01486 | 12/12/2011 | 10/15/2016 | VEGA REAL | LA TABACALERA, C. POR A. | No |
| TMK 11-01493 | 12/13/2011 | 11/8/2021 | DESIGN | SULZER MIXPAC AG | No |
| | | | | | |

| Recordation No. | Effective | Expiration | Name of Con/Tmk/Tnm | Owner Name | GM |
|-----------------|------------|------------|---|---|------------|
| | Date | Date | 4 | | Restricted |
| TMK 11-01503 | 12/13/2011 | 11/1/2021 | GUARDIAN | THE NANOSTEEL COMPANY, INC. | No |
| TMK 11-01502 | 12/13/2011 | 11/1/2021 | PRECISE PORTIONS MAKING IT EASY TO RAT WELL | BLUE HORIZON DEVELOPMENT, LLC | No |
| TMK 11-01494 | 12/13/2011 | 12/5/2019 | FENDI | FENDI ADELE S.R.L. | No |
| TMK 11-01506 | 12/13/2011 | 11/15/2021 | SIGNAL TIGHT | JOHN MEZZALINGUA ASSOCIATES, | No |
| | | | | INC. D/B/A PPC | |
| TMK 11-01498 | 12/13/2011 | 2/20/2020 | FF | FENDI ADELE S.R.L. | No |
| TMK 11–01516 | 12/13/2011 | 11/7/2016 | DESIGN | SKULLCANDY, INC. | No |
| TMK 11-01487 | 12/12/2011 | 12/5/2021 | SEMPER FIDELIS AND DESIGN | U.S. MARINE CORPS, A COMPONENT | No |
| | | | | OF THE U.S. DEPARTMENT OF THE | |
| | | | | NAVY | |
| TMK 11-01499 | 12/13/2011 | 9/20/2021 | STARBUZZ | STARBUZZ TOBACCO, INC. | No |
| TMK 01-00573 | 12/12/2011 | 8/20/2021 | CC MONOGRAM DESIGN | CHANEL INC. | No |
| TMK 11-01496 | 12/13/2011 | 4/26/2015 | DUREX QUALITY & DESIGN | LRC PRODUCTS LIMITED | No |
| TMK 11-01458 | 12/12/2011 | 9/13/2015 | PHARMACY DIRECT | PHARMACY DIRECT, INC. | No |
| TMK 02-00164 | 12/12/2011 | 11/10/2021 | CHANEL | CHANEL INC. | No |
| TMK 02-00021 | 12/12/2011 | 10/6/2021 | NO.5 | CHANEL, INC. | No |
| TMK 11-01495 | 12/13/2011 | 9/12/2019 | I NY AND DESIGN | NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT | No |
| TMK 11-01507 | 12/13/2011 | 11/20/2017 | JOIE (STYLIZED) | RBR, LLC | No |
| | | | | | |

| Recordation No. | Effective | Expiration | Name of Cop/Tmk/I'nm | Owner Name | GM |
|-------------------|------------|------------|--------------------------------|---|------------|
| TMK 11-01459 | 12/12/2011 | 4/19/2021 | SRS | SRS LABS, INC. | No |
| TMK 11-01460 | 12/12/2011 | 4/12/2021 | KLEYNIMALS CLEAN KEY ANIMALS | KIRSTEN CHAPMAN | No |
| TMK 11-01510 | 12/13/2011 | 11/1/2021 | CEDMEX | INTERNATIONAL TRADING AND CON- | No |
| | | | | SULTING CORP. | |
| TMK 11–01461 | 12/12/2011 | 6/8/2020 | MTE | GREGORY P MCGEE | No |
| TMK 11-01512 | 12/13/2011 | 2/1/2021 | SOFT JOIE | RBR, LLC | No |
| TMK 11-01504 | 12/13/2011 | 6/22/2020 | FOLLE DE JOIE | RBR, LLC | No |
| TMK 11-01501 | 12/13/2011 | 6/16/2019 | PETIT JOIE | RBR, LLC | No |
| TMK 11-01462 | 12/12/2011 | 9/26/2016 | DESIGN | REACH GLOBAL INDUSTRIES INC. | No |
| TMK 11-01463 | 12/12/2011 | 9/27/2021 | CRYSTAL ROCK WATERS AND DESIGN | CRYSTAL ROCK LLC | No |
| TMK 11-01465 | 12/12/2011 | 9/26/2016 | NANOSTEEL | THE NANOSTEEL COMPANY, INC. | No |
| TMK 11-01466 | 12/12/2011 | 4/10/2020 | DESIGN | BEAUTE PRESTIGE INTERNATIONAL | No |
| | | | | S.A. | |
| TMK 11-01513 | 12/13/2011 | 9/21/2014 | JOIE JEANS (STYLIZED) | RBR, LLC | No |
| TMK 11-01505 | 12/13/2011 | 11/3/2019 | NARCISO RODRIGUEZ | NARCISO RODRIGUEZ CORPORATION | No |
| TMK $1\sim-01511$ | 12/13/2011 | 6/14/2021 | NARCISO RODRIGUEZ | NARCISO RODRIGUEZ CORPORATION | No |
| TMK 11-01508 | 12/13/2011 | 4/29/2020 | SECURE TOUCH | EXELINT INTERNATIONAL CO. (DBA, EXEL INTERNATIONAL) | $ m N_{0}$ |
| TMK 02-00306 | 12/12/2011 | 11/13/2021 | CHICAGO CUBS (C STYLIZED) | CHICAGO NATIONAL LEAGUE BALL CLU | No |
| | | | | | |

| Recordation No. | Effective | Expiration | Expiration Name of Cop/Imk/Inm | Owner Name | GM |
|-----------------|------------|------------|--------------------------------|--------------------------------|------------|
| | Date | Date | | | Restricted |
| TMK 11-01500 | 12/13/2011 | 1/25/2021 | CURRENT/ELLIOTT | RBR, LLC | No |
| TMK 11-01497 | 12/13/2011 | 12/23/2013 | COMFORT POINT (STYLIZED) | EXELINT INTERNATIONAL CO. DBA, | No |
| | | | | EXEL INTERNATIONAL | |
| TMK 11-01509 | 12/13/2011 | 1/8/2018 | VALOR | VALOR COMMUNICATION INC. | No |
| TMK 11-01464 | 12/12/2011 | 2/7/2016 | SUPER HARD STEEL | THE NANOSTEEL COMPANY, INC. | No |
| TMK 11-01457 | 12/12/2011 | 5/27/2018 | M (STYLIZED) | VALOR COMMUNICATION, INC. | No |
| TMK 11-01456 | 12/12/2011 | 7/3/2017 | BREATHE RIGHT | GLAXOSMITHKLINE LLC | No |
| TMK 11-01518 | 12/30/2011 | 3/26/2017 | STEVE TEST | STEVE CHAU | No |
| | | _ | | | |

Total Records: 87 Date as of: 1/4/2012

GRANT OF "LEVER-RULE" PROTECTION

AGENCY: Customs and Border Protection (CBP), 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 CBP has granted "Lever-rule" protection to Liberty Gold Food Co., Inc.'s "Ligo" trademark. Notice of the receipt of an application for "Lever-rule" protection was published in the July 6, 2011 issue of the Customs Bulletin.

FOR FURTHER INFORMATION CONTACT: Suzanne Kane, Intellectual Property Rights and Restricted Merchandise Branch, Regulations & Rulings, (202) 325–0119.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 CFR §133.2(f), this notice advises interested parties that CBP has granted "Lever-rule" protection for the following products: canned sardines bearing the "Ligo" trademark (CBP Rec. No. TMK 11–00150) that are intended for sale in the United States.

In accordance with the holding of Davidoff & CIE v. PLD Int'l Corp., 263 F. 3d 1297 (11th Cir. 2001), Societe Des Produits Nestle, S.A. v. Casa Helvetia, Inc., 982 F.2d 633 (1st Cir. 1992) and Ferrero U.S.A., Inc. v. Ozak Trading, Inc., 753 F. Supp. 1240 (D.N.J), aff'd 935 F.2d 1281 (3d Cir. 1991), CBP has determined that the gray market canned sardines differ physically and materially from their correlating canned sardines authorized for sale in the United States with respect to the following product characteristics: different nutritional, volumetric, and product information.

ENFORCEMENT

Importation of the Ligo canned sardines packaged and/or formulated for sale in other countries are restricted, unless the labeling requirements of 19 CFR §133.23(b) are satisfied.

Dated: January 4, 2012

Charles R. Steuart, Chief Intellectual Property Rights Branch

RECEIPT OF APPLICATION FOR "LEVER-RULE" PROTECTION

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

ACTION: Notice of receipt of application for "Lever-Rule" protection.

SUMMARY: Pursuant to 19 CFR 133.2(f), this notice advises interested parties that CBP has received an application from The Procter & Gamble Company (hereinafter referred to as "Procter & Gamble") seeking "Lever-Rule" protection for the federally registered and recorded "DOWNY" trademark.

FOR FURTHER INFORMATION CONTACT: Tatiana Salnik Matherne, Intellectual Property Rights Branch, Regulations & Rulings, (202) 325–0351.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 CFR 133.2(f), this notice advises interested parties that CBP has received an application from Procter & Gamble seeking "Lever-Rule" protection. Protection is sought against importations of products that bear the Downy trademark (U.S. Trademark Registration No. 0,718,074; CBP Recordation No. TMK 11–01485), but are intended for sale in countries outside the United States. In the event that CBP determines that the Downy products under consideration are physically and materially different from the Downy products authorized for sale in the United States, CBP will publish a notice in the Customs Bulletin, pursuant 19 CFR 133.2 (f), indicating that the above-referenced trademark is entitled to "Lever-Rule" protection with respect to those physically and materially different Downy products.

Dated: January 11, 2012

Charles R. Steuart
Chief, Intellectual Property Rights Branch
Regulations and Rulings, Office of International Trade

19 CFR PART 177

Revocation of Ruling Letters and Revocation of Treatment Relating to Classification of Salad Spinners

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

ACTION: Notice of revocation of two ruling letters and treatment relating to the classification of salad spinners.

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 CPB is revoking two rulings concerning the classification of salad spinners under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB is revoking any treatment previously accorded by CPB to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 31, on July 27, 2011. CBP received no comments in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 26, 2012.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

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 (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 is revoking two ruling letters pertaining to the classification of salad spinners. Although in this notice CBP is specifically referring to New York Ruling Letters (NY) N047346, dated January 14, 2009 and NY N061380, dated June 15, 2009, 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. This notice will cover any rulings on this merchandise that 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 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 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 his agents for importations of merchandise subsequent to this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N047346 and NY N061380 in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter H121095, set forth as an 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 the publication in the $Customs\ Bulletin$.

Dated: December 23, 2011

Ieva K. O'Rourke
For
Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H121095

December 23, 2011
CLA-2 OT:RR:CTF:TCM HQ H121095 TNA
CATEGORY: Classification
TARIFF NO.: 8421.19.00

Mr. Mahir Akarsu BJ's Wholesale Club, Inc. One Mercer Road Natick, MA 01760

RE: Revocation of NY N047346 and NY N061380; Classification of Salad Spinners

Dear Mr. Akarsu:

This letter is in reference to New York Ruling Letter ("NY") N047346, issued to BJ's Wholesale Club, Inc. on January 14, 2009, and NY N061380, issued to Delmar International, Inc. on June 15, 2009, concerning the tariff classification of Salad Spinners from China. In those rulings, U.S. Customs and Border Protection ("CBP") classified the merchandise under subheading 8479.89.98, Harmonized Tariff Schedule of the United States ("HTSUS"), as "Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances: Other: Other." We have reviewed NY N04738 and NY N061380 and found them to be in error. For the reasons set forth below, we hereby revoke NY N04738 and NY N061380.

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, notice proposing to revoke NY N047346 and NY N061380 was published on July 27, 2011, in Volume 45, Number 31, of the *Customs Bulletin*. CBP received no comments in response to this notice.

FACTS:

The subject merchandise consists of salad spinners. The spinner at issue in NY N047346 contains a plastic body and a nonslip base for better stability. It is 7-1/2 H" X 11" inches in diameter. The basket holds up to 6 quarts of food and features 3 removable, divided compartments that allow for washing and spinning different foods without mixing the foods together. The plastic lid of the bowl contains a mechanical feature which is a soft-grip plunger pump that initiates the spinner that whisks the water away from the salad material inside the bowl. The lid also has a quick stop mechanism.

The merchandise at issue in NY N061380 is a commercial salad spinner dryer used to dry salad in the food service industry and restaurants. It is made of heavy duty plastic material and consists of an outer casing with an inner spinning basket and a cover that incorporates a hand cranking mechanism. The hand crank shaft is made of rust resistant commercial grade aluminum. The mechanical cranking mechanism contains the cranking handle, gear box and gear braking system. The inner basket holds the salad which can spin both clockwise and counter-clockwise, which facilitates the drying of the wet salad. The dryer has a 5 gallon capacity and can accommodate 5–6 heads of lettuce.

ISSUE:

Whether plastic salad spinners that use centrifugal force to remove water from salad greens should be classified in heading 3924, HTSUS, as articles of plastic; under heading 8421, HTSUS, as other types of centrifuges; or under heading 8479, HTSUS, as other types of machines or mechanical appliances?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). 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 GRI may then be applied.

The HTSUS provisions under consideration are as follows:

3924 Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics:

3924.10 Tableware and kitchenware:

3924.10.40 Other

8421 Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof:

Centrifuges, including centrifugal dryers:

8421.19.00 Other

8479 Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof

Other machines and mechanical appliances:

8479.89 Other 8479.89.98 Other

Note 2 to Chapter 39, HTSUS, states, in pertinent part, the following: This chapter does not cover: ...

(s) Articles of section XVI (machines and mechanical or electrical appliances)

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. 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, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The EN to heading 3924, HTSUS, provides, in pertinent part:

This heading covers the following articles of plastics:

(A) Tableware such as tea or coffee services, plates, soup tureens, salad bowls, dishes and trays of all kinds, coffee-pots, teapots, sugar bowls, beer

mugs, cups, sauce-boats, fruit bowls, cruets, salt cellars, mustard pots, egg-cups, teapot stands, table mats, knife rests, serviette rings, knives, forks and spoons.

- (B) Kitchenware such as basins, jelly moulds, kitchen jugs, storage jars, bins and boxes (tea caddies, bread bins, etc.), funnels, ladles, kitchen-type capacity measures and rolling-pins.
- (C) Other household articles such as ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust-covers (slipovers).
- (D) Hygienic and toilet articles (whether for domestic or non-domestic use) such as toilet sets (ewers, bowls, etc.), sanitary pails, bed pans, urinals, chamber-pots, spittoons, douche cans, eye baths; teats for baby bottles (nursing nipples) and finger-stalls; soap dishes, towel rails, toothbrush holders, toilet paper holders, towel hooks and similar articles for bathrooms, toilets or kitchens, not intended for permanent installation in or on walls. However, such articles intended for permanent installation in or on walls or other parts of buildings (e.g., by screws, nails, bolts or adhesives) are **excluded** (heading 39.25).

The EN to heading 8421, HTSUS, provides, in pertinent part: This heading covers:

Machines which, by the use of centrifugal force, completely or partly separate substances according to their different specific gravities, or which remove the moisture from wet substances....

(I) CENTRIFUGES. INCLUDING CENTRIFUGAL DRYERS

Most of these machines consist essentially of a perforated plate, drum, basket or bowl, etc., revolving at great speed in a stationary collector, usually cylindrical, against the walls of which the expelled materials are projected by centrifugal force. In some types the substances of different specific gravities are collected at different levels by means of a series of inverted separator cones. In other types the solid ingredients are retained in the perforated revolving drum, basket, etc., and the liquid ingredients expelled. Machines of this latter type may also be used to force liquids to penetrate thoroughly into materials (e.g., in dyeing or cleaning).

The EN to heading 8479, HTSUS, provides, in pertinent part:

This heading is **restricted to** machinery having individual functions, which:

- (a) Is not excluded from this Chapter by the operation of any Section or Chapter Note.
- and (b) Is not covered more specifically by a heading in any other Chapter of the Nomenclature.
- and (c) Cannot be classified in any other particular heading of this Chapter since:
 - (i) No other heading covers it by reference to its method of functioning, description or type.
- and (ii) No other heading covers it by reference to its use or to the industry in which it is employed.

or (iii) It could fall equally well into two (or more) other such headings (general purpose machines).

NY N047346 and NY N061380 classified the salad spinners in heading 8479, HTSUS, the text of which requires that merchandise classified there cannot be classified elsewhere in the chapter. Therefore, we examine other headings to determine whether the subject merchandise is classified elsewhere in chapter 84, HTSUS.

The subject salad spinners use centrifugal force to whisk water away from salad greens. Heading 8421 covers centrifuges, and includes centrifuges that remove the moisture from wet substances. See EN 84.21. It consists of a basket that revolves at great speed in a stationary cylindrical collector. The solid ingredients- i.e., the salad greens- are retained and the moisture is removed by centrifugal force. See EN 84.21. As such, the subject merchandise is described by the terms of heading 8421, HTSUS, and can be classified there eo nomine. The heading text does not limit the heading to industrial items. While the EN notes "great speed" is required, there is no indication that such speed could not be obtained manually. See EN 84.21.

Insofar as the subject merchandise is classified in Section XVI, HTSUS, and specifically in heading 8421, HTSUS, it cannot be classified in heading 3924, HTSUS, in accordance with Note 2 to Chapter 39, HTSUS.

HOLDING:

Under the authority of GRI 1, the salad spinners are classified in heading 8421, HTSUS, and specifically in subheading 8421.19.00, HTSUS, which provides for "Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof: Centrifuges, including centrifugal dryers: Other." The 2011 column one general rate of duty is 1.3% 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 internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY N047346, dated January 14, 2009, and NY N061380, dated June 15, 2009, are REVOKED.

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

Sincerely,

IEVA K. O'ROURKE for

Myles B. Harmon,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177

Notice of Revocation and Modification of Three Ruling Letters and Revocation of Treatment Relating to the Tariff Classification of Plastic Beverage Bottles

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

ACTION: Notice of revocations and modification of three ruling letters and revocation of treatment concerning the tariff classification of plastic beverage bottles.

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 two ruling letters and modifying one ruling letter, all relating to the tariff classification of plastic beverage bottles under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed modification and revocations was published on November 2, 2011, in the Customs Bulletin, Vol. 45, No. 45. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 26, 2012.

FOR FURTHER INFORMATION CONTACT: Dwayne S. Rawlings, Tariff Classification and Marking Branch, (202) 325–0092.

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 to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, a notice was published in the Customs Bulletin, Vol. 45, No. 45, on November 2, 2011, proposing to modify HQ 952264 and revoke NY D82348 and NY F80484, pertaining to the tariff classification of plastic beverage bottles. No comments were received in response to the notice. As stated in the proposed notice, this action will cover any ruling 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 rulings identified above. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should 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 in 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 action.

In HQ 952264, NY D82348, and NY F80484, CBP classified the plastic beverage bottles in heading 3924, HTSUS, specifically in subheading 3924.90, HTSUS, which provides for other household articles of plastics. It is now CBP's position that the plastic beverage bottles are properly classified in subheading 3924.10, HTSUS, which provides for tableware and kitchenware of plastics.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying HQ 952264, and revoking NY D82348, and NY F80484, and any other ruling not

specifically identified, in order to reflect the proper analysis contained in proposed HQ H100800 (Attachment A), HQ H100801 (Attachment B), and HQ H100804 (Attachment C), respectively. 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 action will become effective 60 days after publication in the Customs Bulletin.

Dated: January 4, 2012

Greg Connor
for
Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ H100800

December 23, 2011
CLA-2 OT:RR:CTF:TCM HQ H100800 DSR
CATEGORY: Classification
TARIFF NO.: 3924.10.40

Mrs. Julie C. Vair Air and Ocean Services James J. Boyle and Co. 720 3rd Avenue, #2020 Seattle, WA 98104

RE: Modification of HQ 952264, dated November 25, 1992; Subheading 3924.10.40, HTSUS; Classification of a plastic sports beverage bottle.

Dear Mrs. Vair:

This is in regard to Headquarters Ruling Letter (HQ) 952264, issued to you on November 25, 1992, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a completely assembled plastic sports beverage bottle and various components for such bottle. We have reviewed HQ 952264 and find it to be in error with respect to the completely assembled plastic sports bottle. Therefore, HQ 952264 is modified for the reasons set forth in this ruling.

Notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 45, on November 2, 2011. No comments were received in response to the notice.

FACTS:

The article under consideration is a plastic sports beverage bottle for holding liquids, and various components for such bottle. The bottle consists of six separate pieces: the plastic bottle base, a 3-inch diameter plastic lid which screws onto the bottle, a cartridge which will contain the blue ice pack, a plastic lid which fits onto the cartridge, an 11-inch plastic drinking straw and a plastic stopper for the straw which prevents the liquids in the bottle from leaking out through the straw. The plastic stopper is two inches long. It has an open circular appendage on one end so that it can fit onto the straw to prevent the stopper from becoming lost. Its other end is a closed circular appendage with a tip that fits into the open end of the straw which permits the stopper to perform its function.

The bottle or its components will be imported in one of three scenarios. Under scenario one all the components would be manufactured in Thailand and would be imported as a complete sports bottle. Under scenario two the bottle base would be manufactured in the United States, but all of the remaining components would be manufactured in Thailand. Under scenario three all the components would be manufactured in the United States except for the blue ice pack, which would be manufactured in Thailand. Non-U.S. components will be assembled with U.S. components subsequent to importation, as necessary, by screwing the components together to form a complete sports bottle. In HQ 952264, CBP determined that the bottle was classifiable under subheading 3924.90.50, HTSUS (1991), which provides for other household articles of plastics, other.

ISSUE:

Whether the plastic sports beverage bottle is classifiable under subheading 3924.10, HTSUS, as tableware of plastics, or under subheading 3924.90, HTSUS, other household articles of plastics.

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. In addition, in interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

The 2011 HTSUS provisions under consideration in this case are as follows:

Tableware, kitchenware, other household articles and hygienic and toilet articles, plastics:

3924.10 Tableware and kitchenware:

* * * *

Heading 3924, HTSUS, is organized in relevant part as a list of items or exemplars – tableware and kitchenware – followed by a general phrase, "other household articles." The common characteristic or unifying purpose of the exemplars is to store or contain food and beverages. See Dolly, Inc. v. United States, 27 C.I.T. 1597, 293 F. Supp. 2d 1340 (2003) (quoting SGI, Inc. v. United States, 122 F.3d 1468, 1473 (Fed. Cir. 1997) ("The exemplars listed in Heading 3924 encompass various household containers for foodstuffs."). Additionally, although the subject bottle is capable of being transported from point to point with liquids therein, the specific primary purpose of the bottle is to store or contain beverages. The bottle is thus ejusdem generis with the exemplars listed in heading 3924, HTSUS, and classifiable under that heading.

As pertains to the specific subheading under which the bottle is classifiable, EN 39.24 lists exemplars of "other household articles" that fall within subheading 3924.90, HTSUS. Those exemplars are ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust-covers. It is important to note that the only listed exemplar with any connection to foodstuffs – food storage containers – is used for storage, and is not used to dispense food or beverages.

By contrast, many of the exemplars of "tableware" in EN 39.24, and classifiable under subheading 3924.10, HTSUS, are items from which the consumer can directly consume beverages or food, a primary characteristic shared with the bottle that is the subject of this ruling. It should also be noted that the expression "tableware" does not solely refer to items used in the home. Subheading 3924.10, HTSUS, provides for *all* tableware, regardless of whether it will be used inside or outside of the household, and CBP has consistently interpreted subheading 3924.10, HTSUS, to cover such goods. *See* N019128, dated November 28, 2007 (plastic bottle with pop-up drinking spout); N031727, dated July 23, 2008 (plastic water bottle with spout and carrying handle); N035015, dated September 5, 2008 (plastic bottle with spout and loop handle); N047581, dated July 20, 2009 (plastic bottle with twist spout); N048029 (plastic bottle with straw, carrying handle, mouthpiece and straw).

Here, the primary purpose of the subject bottle is to dispense beverages that its user can directly consume, whether in a home or elsewhere. It is not used for storage. Accordingly, we find that the subject plastic sports beverage bottle constitutes "tableware" and is properly classifiable under subheading 3924.10.40, HTSUS, as tableware of plastics, other.

HOLDING:

By application of GRI 1, the subject complete plastic sports beverage bottle is classifiable under heading 3924, HTSUS. Specifically, it is classifiable under subheading 3924.10.40, HTSUS, which provides for "Tableware, kitchenware, other household articles and hygienic and toilet articles, plastics: Tableware and kitchenware: Other." The column one, general rate of duty is 3.4% ad valorem. Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at www.usitc.gov/tata/hts.

EFFECT ON OTHER RULINGS:

HQ 952264, dated September 25, 1992, is hereby modified. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Sincerely,
IEVA K. O'ROURKE
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT B]

HQ H100801

December 23, 2011 CLA-2 OT:RR:CTF:TCM HQ H100801 DSR CATEGORY: Classification TARIFF NO.: 3924.10.40

Mrs. Julie Kim JCC Company 330 Fifth Avenue, Suite 200 New York, NY 10001

RE: Revocation of NY D82348, dated October 9, 1998; Subheading 3924.10.40, HTSUS; Classification of plastic water bottles.

Dear Mrs. Kim:

This is in regard to New York Ruling Letter (NY) D82348, issued to you on October 9, 1998, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of two plastic water bottles. We have reviewed NY D82348 and find it to be in error. Therefore, NY D82348 is revoked for the reasons set forth in this ruling.

Notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 45, on November 2, 2011. No comments were received in response to the notice.

FACTS:

The subject bottles, covers and straws are made entirely of plastics and each can hold thirty-two ounces of liquid. The first bottle is a yellow bottle with a black snap-on cover and a clear plastic straw with a black cover on the tip. The printed label contains yellow, red, purple and green colors with a Coca-Cola ® bottle logo in the center. The label exhibits the words "Always Coca-Cola". The second bottle is a white bottle with a black screw-on cover and white plastic straw with a black cover on the tip. The gold and black printed design features the face and front paws of a tiger above the word "MIZZOU". Printed below the word "MIZZOU" are large and small tiger footprints with the letter "M" on each one. In NY D82348, CBP determined that both bottles were classifiable under subheading 3924.90.5500, HTSUSA (1998), which provides for other household articles of plastics, other, other.

ISSUE:

Whether the subject water bottles are classifiable under subheading 3924.10, HTSUS, as tableware of plastics, or under subheading 3924.90, HTSUS, other household articles of plastics.

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. In addition, in interpreting the

HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

The 2011 HTSUS provisions under consideration in this case are as follows:

Tableware, kitchenware, other household articles and hygienic and toilet articles, plastics:

* * * *

3924.10 Tableware and kitchenware:

3924.90 Other:

Heading 3924, HTSUS, is organized in relevant part as a list of items or exemplars – tableware and kitchenware – followed by a general phrase, "other household articles." The common characteristic or unifying purpose of the exemplars is to store or contain food and beverages. See Dolly, Inc. v. United States, 27 C.I.T. 1597, 293 F. Supp. 2d 1340 (2003) (quoting SGI, Inc. v. United States, 122 F.3d 1468, 1473 (Fed. Cir. 1997) ("The exemplars listed in Heading 3924 encompass various household containers for foodstuffs."). Additionally, although the subject bottles are capable of being transported from point to point with liquids therein, the specific primary purpose of the bottles is to store or contain beverages. The bottles are thus ejusdem generis with the exemplars listed in heading 3924, HTSUS, and classifiable under that heading.

As pertains to the specific subheading under which the bottles are classifiable, EN 39.24 lists exemplars of "other household articles" that fall within subheading 3924.90, HTSUS. Those exemplars are ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust-covers. It is important to note that the only listed exemplar with any connection to foodstuffs – food storage containers – is used for storage, and is not used to dispense food or beverages.

By contrast, many of the exemplars of "tableware" in EN 39.24, and classifiable under subheading 3924.10, HTSUS, are items from which the consumer can directly consume beverages or food, a primary characteristic shared with the bottles that are the subject of this ruling. It should also be noted that the expression "tableware" does not solely refer to items used in the home. Subheading 3924.10, HTSUS, provides for *all* tableware, regardless of whether it will be used inside or outside of the household, and CBP has consistently interpreted subheading 3924.10, HTSUS, to cover such goods. *See* N019128, dated November 28, 2007 (plastic bottle with pop-up drinking spout); N031727, dated July 23, 2008 (plastic water bottle with spout and carrying handle); N035015, dated September 5, 2008 (plastic bottle with

spout and loop handle); N047581, dated July 20, 2009 (plastic bottle with twist spout); N048029 (plastic bottle with straw, carrying handle, mouthpiece and straw).

Here, the primary purpose of the subject bottle is to dispense beverages that its user can directly consume, whether in a home or elsewhere. It is not used for storage. Accordingly, we find that the subject plastic sports beverage bottle constitutes "tableware" and is properly classifiable under subheading 3924.10.40, HTSUS, as tableware of plastics, other.

HOLDING:

By application of GRI 1, the subject plastic water bottles are classifiable under heading 3924, HTSUS. Specifically, they are classifiable under subheading 3924.10.40, HTSUS, which provides for "Tableware, kitchenware, other household articles and hygienic and toilet articles, plastics: Tableware and kitchenware: Other." The column one, general rate of duty is 3.4% ad valorem. Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at www.usitc.gov/tata/hts.

EFFECT ON OTHER RULINGS:

NY D82348, dated October 9, 1998, is hereby revoked. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Sincerely,

Ieva K. O'Rourke
for

Myles B. Harmon,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT C]

HQ H100804

December 23, 2011 CLA-2 OT:RR:CTF:TCM HQ H100804 DSR CATEGORY: Classification TARIFF NO.: 3924.10.40

Mrs. Lori Aldinger Rite Aid Corporation P.O. Box 3165 Harrisburg, PA 17105

RE: Revocation of NY F80484, dated December 27, 1999; Subheading 3924.10.40, HTSUS; Classification of the "Cool Gear Freezer Bottle" from China.

DEAR MRS. ALDINGER:

This is in regard to New York Ruling Letter (NY) F80484, issued to you on December 27, 1999, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a plastic beverage bottle. We have reviewed NY F80484 and find it to be in error. Therefore, NY F80484 is revoked for the reasons set forth in this ruling.

Notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 45, on November 2, 2011. No comments were received in response to the notice.

FACTS:

The Cool Gear Freezer Bottle is composed of plastics. The freezer bottle is a three-piece construction consisting of a bottle, cap and cooling unit. The bottle holds twenty-two ounces of liquid, and is approximately 7 $\frac{1}{4}$ inches in height by 2 $\frac{1}{2}$ inches in diameter, narrowing slightly at the top. The plastic threaded cap has a pull-up spout. When the spout is pulled up, the beverage can be released from the bottle. When the spout is pressed down, the bottle is sealed. The cooling unit, which contains a gel, is cylindrical and measures approximately 5 $\frac{1}{2}$ inches in height by one inch in diameter. The cooling unit is placed in a freezer approximately four hours before use. After the gel freezes, the cooling unit is snapped onto the lid and inserted into the bottle. The cooling unit then keeps the beverage cool. In NY F80484, CBP determined that the bottle was classifiable under subheading 3924.90.55, HTSUS (1999), which provides for other household articles of plastics, other.

ISSUE:

Whether the subject beverage bottle is classifiable under subheading 3924.10, HTSUS, as tableware of plastics, or under subheading 3924.90, HTSUS, other household articles of plastics.

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. In addition, in interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

The 2011 HTSUS provisions under consideration in this case are as follows:

Tableware, kitchenware, other household articles and hygienic and toilet articles, plastics:

* * *

Tableware and kitchenware:

* * *

Other:

3924.90 * * * *

Heading 3924, HTSUS, is organized in relevant part as a list of items or exemplars – tableware and kitchenware – followed by a general phrase, "other household articles." The common characteristic or unifying purpose of the exemplars is to store or contain food and beverages. See Dolly, Inc. v. United States, 27 C.I.T. 1597, 293 F. Supp. 2d 1340 (2003) (quoting SGI, Inc. v. United States, 122 F.3d 1468, 1473 (Fed. Cir. 1997) ("The exemplars listed in Heading 3924 encompass various household containers for foodstuffs."). Additionally, although the subject bottle is capable of being transported from point to point with liquids therein, the specific primary purpose of the bottle is to store or contain beverages. The bottle is thus ejusdem generis with the exemplars listed in heading 3924, HTSUS, and classifiable under that heading.

As pertains to the specific subheading under which the bottle is classifiable, EN 39.24 lists exemplars of "other household articles" that fall within subheading 3924.90, HTSUS. Those exemplars are ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust-covers. It is important to note that the only listed exemplar with any connection to foodstuffs – food storage containers – is used for storage, and is not used to dispense food or beverages.

By contrast, many of the exemplars of "tableware" in EN 39.24, and classifiable under subheading 3924.10, HTSUS, are items from which the consumer can directly consume beverages or food, a primary characteristic shared with the bottles that are the subject of this ruling. It should also be noted that the expression "tableware" does not solely refer to items used in the home. Subheading 3924.10, HTSUS, provides for *all* tableware, regardless of whether it will be used inside or outside of the household, and CBP has consistently interpreted subheading 3924.10, HTSUS, to cover such goods. *See* N019128, dated November 28, 2007 (plastic bottle with pop-up drinking spout); N031727, dated July 23, 2008 (plastic water bottle with spout and carrying handle); N035015, dated September 5, 2008 (plastic bottle with

spout and loop handle); N047581, dated July 20, 2009 (plastic bottle with twist spout); N048029 (plastic bottle with straw, carrying handle, mouthpiece and straw).

Here, the primary purpose of the subject bottle is to dispense beverages that its user can directly consume, whether in a home or elsewhere. It is not used for storage. Accordingly, we find that the subject plastic sports beverage bottle constitutes "tableware" and is properly classifiable under subheading 3924.10.40, HTSUS, as tableware of plastics, other.

HOLDING:

By application of GRI 1, the Cool Gear Freezer Bottle is classifiable under heading 3924, HTSUS. Specifically, it is classifiable under subheading 3924.10.40, HTSUS, which provides for "Tableware, kitchenware, other household articles and hygienic and toilet articles, plastics: Tableware and kitchenware: Other." The column one, general rate of duty is 3.4% ad valorem. Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at www.usitc.gov/tata/hts.

EFFECT ON OTHER RULINGS:

NY F80484, dated December 27, 1999, is hereby revoked. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Sincerely,

Ieva K. O'Rourke
for

Myles B. Harmon,
Director

Commercial and Trade Facilitation Division

PROPOSED MODIFICATION OF RULING LETTERS HQ 228508 & HQ H046995 RELATING TO ANALYSIS OF MANUFACTURE IN CBP BONDED WAREHOUSE

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

ACTION: Proposed modification of two ruling letters relating to the analysis of manufacture in the context of bonded warehouses

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) intends to modify two ruling letters relating to manufacturing in CBP bonded warehouses. Similarly, CBP proposes to modify any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

EFFECTIVE DATE: Written comments should be received on or before February 24, 2012.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Commercial and Trade Facilitation Division, Entry Process and Duty Refunds Branch, 799 9th Street, NW – 7th Floor, Washington DC 20229–1177. 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 Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Tina Termei, Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade (202) 325–0324.

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 laws and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify two ruling letters relating manufacture in CBP bonded warehouses.

Although in this notice CBP is specifically referring to the modification of Headquarters Ruling Letter ("HQ") HQ 228508, dated September 9, 1999 (set forth as Attachment A) and HQ H046995, dated February 2, 2009 (set forth as Attachment C), this notice covers any rulings on this issue which may exist but have not been identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during 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 proposes 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 its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In HQ 228508, dated September 9, 1999, and HQ H046995, dated February 2, 2009, CBP used the "substantial transformation" analysis of Ferrostaal Metals Corp. v. United States, 11 C.I.T. 470 (1987), in determining whether an action would constitute 'manufacture' for purposes of 19 U.S.C. § 1562, the provision on permissible manipulation in CBP bonded warehouses. However, in 1992 the Court of International Trade held in Tropicana Products, Inc. v. United States that, the "substantial transformation" test was inapplicable for 19 U.S.C. § 1562 determinations of 'manufacture' and instead a "low threshold" may be used. 789 F. Supp. 1154, 1158 (1992). Based on our recent review of HQ 228508 and HQ H046995, we have concluded that the use of the 'substantial transformation' analysis in the context of §1562 is incorrect. However, the proposed modification to HQ 228508 and HQ H046995 does not change their holding. Pursuant to 19 U.S.C. § 1625(c)(1), CBP intends to modify HQ 228508 and HQ H046995 and any other ruling not specifically identified, in order to reflect the proper analysis as contained in proposed HQ H140895 (Attachment B) and HQ H141855 (Attachment D). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to modify any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

Dated: January 3, 2012

Myles B. Harmon
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ 228508

September 9, 1999 WAR-3-01-RR:CR:DR: 228508 BJB CATEGORY: Bonded Warehouse

Port Director of Customs Attn: Eugenio Garza, Jr. P.O. Box 3130 Laredo, TX 78044

RE: Request for Internal Advice concerning manufacture or manipulation of merchandise in a bonded warehouse; 19 U.S.C. §1562; *Tropicana Products, Inc. v. United States*, 789 F. Supp. 1154 (CIT 1992); broccoli.

DEAR SIR:

This office has received the above-referenced request for internal advice as provided for under Customs Regulations. We have considered your request and have made the following decision.

FACTS:

On January 22, 1999, the Port of Laredo, Texas submitted a request for internal advice to the Entry Procedures and Carriers Branch. This request was later forwarded to the Duty and Refund Determination Branch on June 30, 1999. You have requested advice concerning a proposed manipulation in a bonded warehouse.

The proposed manipulation is sought by Sun Harvest Foods ("SHF"). SHF purchases and sells frozen vegetables, in particular, frozen broccoli. Frozen Broccoli is generally packaged for import in large plastic sacks called "totes." The totes generally contain broccoli cut in the following forms: florets, stalks, and mixed florets and stalks. The top part, or "floret" appears to be the choice, or at least, the more expensive portion of the vegetable. The stalk or bottom part of the plant is the least expensive portion of the vegetable. SHF has submitted invoices showing the cost, per pound, for florets, stalks, and a 40–60% mixture of florets and stalks. SHF has expressed concerned over the release of the exact cost/pricing figures for its precooked and frozen broccoli. SHF has however, provided the following information:

According to the invoices provided by SHF, a pound of 40% (florets) and 60% (stalks) mixture costs approximately half as much per pound as a pound of florets, and 100% more per pound than a pound of stalks. The precooked and frozen broccoli has been classified under HTSUS 0710.80.97.24. SHF proposes to take totes of florets and totes of stalks in a bonded warehouse and mix them together.

ISSUE:

Whether the proposed operation is a permissible manipulation under title 19 U.S.C. §1562.

LAW AND ANALYSIS:

Whether SHF may mix or blend its imported florets and stalks in a bonded warehouse rests upon whether the mixing or blending is a permissible ma-

nipulation under section 1562. If this process of mixing or blending ("blending") constitutes a manufacture, it is not permitted in a bonded warehouse under 19 U.S.C. §1562.

19 U.S.C. §1562 provides that imported "merchandise may [with Customs permission and supervision] be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose" Manufacture requires that a substantial transformation has taken place. "Substantial transformation is a concept of major importance in administering the customs and trade laws." *Tropicana Products, Inc. v. U.S.*, 789 F. Supp. 1154, 1157, no.4 (CIT 1992). In order for there to be a substantial transformation, "there must be transformation" such that "a new and different article must emerge, 'having a distinctive name, character, or use.' The criteria of name character and use continue to determine when substantial transformation has occurred ***." Ferrostal Metals Corp. V. United States 11 CIT 470, 664 F. Supp. 535 (1987). See also Torrington Co. V. United States, 3 CAFC (T) 105, 741 F.2d 11563 (1985) and cases cited; Axteca Milling Co. V. United States, 12 CIT 1153, 703 F. Supp. 949 (1988), aff'd, 8 CAFC ----(T), 890 F.2d 1150 (1989)." Id.1157.

As SHF argues here, so argued Tropicana Products, Inc., supra., 1157, "that its bonded warehouse operations will not result in a 'substantial transformation' of the imported merchandise and therefore will not constitute a 'manufacture' in its bonded warehouse." In Tropicana, the court held, that "[t]o interpret 'manufacturing'--an expressly prohibited manipulation under \\$1562--as requiring a high threshold of transformation (viz. a substantial transformation as stringently required in country of original and drawback cases), would negate the evident legislative intent of the statute to permit only very minor or rudimentary manipulations in bonded warehouses--akin to the exemplars (cleaning, sorting and repacking)."id., at 1158. "Hence," the court found, "in the context of \\$1562, the prohibited manipulation, manufacturing, may be contravened at a relatively low threshold of 'transformation."id.

SHF's proposed operation involves blending totes of broccoli florets and broccoli stalks. The broccoli florets and the broccoli stalks will be blended on a 40%/60% basis, and then placed in totes containing the blend, for export. There are essentially three steps to SHF's proposed process: 1. The opening of the tote containers; 2. The blending of the florets and the stalks; 3. The repackaging of the blended mixture known in the industry as "broccoli cuts." Although, the broccoli remains broccoli, the nature of the merchandise has changed. The broccoli florets are no longer solely broccoli florets. The broccoli stalks are no longer solely broccoli stalks. The blend is now known in the industry and in the marketplace as "broccoli cuts." The price of the new merchandise is significantly different. The 60% broccoli stalk content is now priced at one-hundred percent more than it was when it was sold as part of a stalks-only tote. The 40% floret content is now priced at 50% less than it was when marketed in a tote containing florets only. This substantial increase in overall price for "broccoli cuts," represents a significant indication that there is a new product, and that it is recognized as such, by both the broccoli industry and by the public. The blended broccoli cuts have taken on a new name, a new price, and a new character, albeit the three products are still for eating.

In *Tropicana*, where the blending of orange juice concentrates to achieve desired Brix to acid ratios changed the fundamental character of the imported unblended concentrate, the court concluded that the blending operation was not a permitted manipulation. As noted in HQ Ruling 225490, the court, "analyzed the exemplars in the statute." Clearly, "blending" was not one of the listed terms. Blending "was not analogous to 'cleaning, sorting, or repacking,' so that the phrase "or otherwise changed in condition," did not apply." (HQ225490). The situation is analogous and applicable in this case. The processes of blending and dilution performed upon the orange juice concentrate in Tropicana, were highly sophisticated and calibrated. In the present case, the blending process is substantially less so. It is necessary however, to consider, the sophistication of the process in relationship to the sophistication of the article in question. Orange juice concentrate manufacture and sales is a highly complex trade. Broccoli, in this case however, appears to be fundamentally more basic. When dealing with a basic product such as broccoli, with three forms, florets, stalks, and a blend called cuts, each has its own distinct character, use, and name. The distinctiveness of each is reflected by a substantial variance in the price. Moreover, the transformation as with the change in character, need not be complex and intricate, it need only substantially change the character, nature and/or name of the article.

The *Tropicana* Court stressed that the merchandise must not be otherwise changed in "condition" as stated in the statute. From the description of the blending or mixing description received from you, it appears that the merchandise in fact, does change condition. The mixing of the more expensive florets, with the less expensive stalks, in a 40%-60% mix, produces a new product, at a new price. The mixing/blending is not performed for a decorative purpose. It appears to be performed for a marketing and for profit purpose. There are those who would prefer to eat florets and stalks mixed rather than just stalks or just florets. Further, a tote of florets only costs two hundred percent, on average, more than a tote of stalks only. A mix or blend of florets and stalks costs nearly 100% more that a tote of stalks only, but nearly 100% of a tote of florets only. The company and the market perceive a difference in the product and attraction to it and in its relative cost. We find this processing to be the kind of change in condition section 1562 considered to be a manufacture and not a mere manipulation. Thus, in accordance with section 1562 and the *Tropicana* holding, we find that the processing describe above, would result in a manufacture of the subject merchandise and is therefore not permitted under 19 U.S.C. §1562.

HOLDING:

The blending of broccoli florets and stalks described above is considered to be a manufacture under 19 U.S.C. § 1562, for the purposes of admitting the subject merchandise to a bonded warehouse. Insofar as the blending of

broccoli, florets and stalks, constitutes a manufacture, it is as such, not eligible for admission into a bonded warehouse under these circumstances.

This decision should be mailed by your office to the internal advice requester no later than 60 days from the date of this letter. On that date, the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS and to the public via the Customs Ruling Module in ACS and the public via the Diskette Subscription Service, Freedom of Information Act and other public access channels 60 days from the date of this decision.

Sincerely,
John Durant,
Director
Commercial Rulings Division

[ATTACHMENT B]

HQ H140895 WAR-3-01-RR:CTF:EPD: H140895 TT CATEGORY: Bonded Warehouse

Port Director of Customs Attn: Eugenio Garza, Jr. P.O. Box 3130 Laredo, TX 78044

RE: Modification of HQ 228508; Request for Internal Advice concerning manufacture or manipulation of merchandise in a bonded warehouse; 19 U.S.C. §1562; broccoli.

Dear Sir:

This letter is in reference to Headquarters Ruling HQ 228508, dated September 9, 1999, concerning the permissibility of mixing totes of broccoli florets and stalks in a Customs and Border Protection ("CBP") bonded warehouse. In that ruling, CBP found the action to be a manufacture and thus, impermissible in the CBP bonded warehouse. We have reviewed HQ 228508 and found some of the analysis to be incorrectly applied. However, the error in analysis does not change the holding. For the reasons set forth below, we hereby modify HQ 228508 to reflect the proper analysis.

FACTS:

In HQ 228508, we described the facts as follows. On January 22, 1999, the Port of Laredo, Texas submitted a request for internal advice to the Entry Procedures and Carriers Branch. This request was later forwarded to the Duty and Refund Determination Branch on June 30, 1999. You have requested advice concerning a proposed operation in a bonded warehouse.

The proposed operation is sought by Sun Harvest Foods, Inc. ("SHF"). SHF purchases and sells frozen vegetables, in particular, frozen broccoli. Frozen broccoli is generally packaged for import in large plastic sacks called "totes." The totes generally contain broccoli cut in the following forms: florets, stalks, and mixed florets and stalks. The top portion of the broccoli, the floret, is preferred by consumers and hence, it is the more expensive portion of the vegetable. In contrast, the bottom portion of the broccoli, the stalk, is the least expensive portion of the vegetable. SHF has submitted invoices showing the cost, per pound, of florets, stalks, and a 40–60% mixture of florets and stalks.

According to SHF's invoices, one pound of mixed broccoli composed of 40% floret and 60% stalk costs approximately half as much as a pound of only florets, and twice as much as a pound of only stalks. The precooked and frozen broccoli has been classified under the Harmonized Tariff Schedule of the United States ("HTSUS") 0710.80.97.24. SHF proposes to take totes of florets and totes of stalks in a Customs and Border Protection ("CBP") bonded warehouse and blend them together to create totes of mixed florets and stalks.

ISSUE:

Whether the proposed operation of mixing totes of broccoli florets and broccoli stalks in a bonded warehouse is a permissible manipulation under 19 U.S.C. §1562.

LAW AND ANALYSIS:

Whether SHF may mix its imported broccoli florets and stalks in a bonded warehouse is contingent on whether the mixing is a permissible manipulation under 19 U.S.C. § 1562. If this process constitutes a manufacture, it is not permitted in a bonded warehouse under Section 1562.

The statute, in 19 U.S.C. §1562 provides that, imported "merchandise may [with customs permission and supervision] be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose "Manufacture" for purposes of 19 U.S.C. § 1562 does not require a substantial transformation, instead "a low threshold of 'transformation" satisfies the meaning of 'manufactured' for bonded warehouses purposes. *Tropicana Products, Inc. v. U.S.*, 16 C.I.T. 155, 160 (1992). In *Tropicana*, the Court of International Trade ("CIT") looked at the meaning of "manufacture" in 19 U.S.C. § 1562 and distinguished it from the meaning of "manufacture" when used in the context of drawback, classification, and a country of origin analysis. *Id.* ("the criterion of whether goods have been 'manufactured' serves different purposes under different statutes, particularly § 1562 on the one hand and statutes concerned with country-of-origin marking, Generalized System of Preferences and drawback on the other. . ."). The CIT determined that:

To interpret "manufacturing" – an expressly prohibited manipulation under § 1562 – as requiring a high threshold of transformation (*viz.*, a substantial transformation as stringently required in country of origin and drawback cases), would negate the evident legislative intent of the statute to permit only very minor or rudimentary manipulations in bonded warehouses – akin to the exemplars (cleaning, sorting and repacking).

Id. at 160. Therefore, the analysis to determine whether a procedure constitutes a "manufacture" for purposes of 19 U.S.C. § 1562 is a "low threshold." Id.

In *Tropicana*, the CIT held that the process of diluting concentrated orange juice by adding water to be a manufacture for purposes of 19 U.S.C. § 1562. 16 C.I.T. at 162. SHF argues that its bonded warehouse operations will not result in a 'substantial transformation' of the imported merchandise and therefore, it will not constitute a "manufacture" in its bonded warehouse. However, SHF's proposed operations of mixing totes of florets and stalks creates a new product, at a vastly different price, and thus, constitutes a manufacture.

SHF's proposed procedure involves mixing totes of broccoli florets and stalks. The broccoli florets and stalks will be blended together to create totes composed of 40% florets and 60% stalks. There are three main steps to SHF's proposed process: 1) the opening of the tote containers; 2) the blending of the florets and stalks; and 3) the repackaging of the blended mixture. Although, the broccoli remains broccoli, the nature of the merchandise has significantly changed. The broccoli florets are no longer solely broccoli florets. The broccoli stalks are no longer solely broccoli stalks. The blend is now known in the industry and in the marketplace

as "broccoli cuts." This new name given to this product demonstrates that there is a significant difference between totes of solely stalks or florets.

Additionally, the price of this new merchandise, broccoli cuts, is considerably different than the price of totes of stalks or totes of florets. This new product is priced twice as much as a stalks-only tote and half as much as a florets-only tote. This substantial difference in price for broccoli cuts, indicates there is a new product and that it is recognized as such, by not only the broccoli industry, but also, the public. The blended broccoli cuts have taken on a new name and price.

In *Tropicana*, where the blending of orange juice concentrates to achieve a desired Brix to acid ratios changed the fundamental character of the imported unblended concentrate, the CIT concluded that the blending operation was not a permitted manipulation. The CIT "analyzed the exemplars in the statute" and "blending" was not one of the permissible listed terms. The Court also held that, Tropicana's blending "was not. . . analogous to. . . [§ 1562's language of] 'cleaned, sorted, repacked,' and that therefore, it was "not within the scope of [§ 1562's] 'otherwise changed in condition." *Tropicana*, 161 C.I.T. at 162. *Tropicana*'s analysis is applicable to this case.

The process of blending and diluting the orange juice concentrate in *Tropicana* was highly sophisticated and calibrated. While in the present case, the blending process is not as intricate, we must consider the sophistication of the process in question in relation to the sophistication of the merchandise itself. The manufacture and sale of orange juice concentrate is a highly complex trade. Broccoli, however, is fundamentally more basic. When dealing with a basic product such as broccoli, with only three forms (florets, stalks, and a broccoli cuts), the distinctiveness of each form is reflected by a substantial variance in the price. Thus, the process of transforming broccoli into a different form need not be complex and intricate to be deemed a manufacture.

According to the blending description provided by SHF, it appears that the broccoli will change substantially. The blending of the more expensive florets with the less expensive stalks, in a 40%-60% mix, produces a new product at a new price. This mixing is not performed for a decorative purpose. It appears to be performed for a marketing and a profit-building purpose. Further, on average, a tote of florets costs two hundred percent more than a tote of stalks. A mix of florets and stalks costs nearly 100% more that a tote of stalks, but nearly half as much as a tote of florets. This demonstrates that both SHF and consumers perceive a difference in these products, whether it is totes of florets, stalks, or cuts. Thus, we find that the operation described above would result in a manufacture of the subject merchandise and is therefore, not permitted under 19 U.S.C. §1562.

HOLDING:

The blending of broccoli florets and stalks described above is considered to be a manufacture under 19 U.S.C. § 1562, for the purposes of admitting the subject merchandise to a CBP bonded warehouse.

EFFECT ON OTHER RULINGS:

HQ 228508, dated September 9, 1999, is hereby modified. Since rely,

Myles B. Harmon
Director
Commercial and Trade Facilitation Division

[ATTACHMENT C]

HQ H046995

February 2, 2009 DRA-4-OT:RR:CTF:ER H046995 BAS CATEGORY: Bonded warehouse entry

James C. Alberdi, President A.J. Arango, Inc. 1516 E. 8th Avenue Tampa, Florida 33605

RE: Class 8 Bonded Warehouse

DEAR MR. ALBERDI:

This is in response to your letter, dated October 27, 2008, on behalf of Vigo Import Co. (Vigo) for a binding ruling on whether Vigo may add salt to drinking wine to transform it into cooking wine in a Class 8 Bonded Warehouse prior to withdrawal for consumption. Your request was forwarded to our office by New York CBP. We have reviewed your ruling request and have made the following decision.

FACTS:

Vigo proposes to import drinking wine in 1000 liter plastic totes and add salt to the wine to transform it into cooking wine. The proposal states that after the addition of the salt, the wine will contain greater than 1.5 grams of salt per 100 milliliters of wine making it unfit for consumption as a beverage.

Information submitted on January 6, 2009 by electronic mail, stated that the value of the drinking wine prior to the addition of the salt is \$810.00 per 1000 liter tote. The value of the salt added per 1000 liter tote is \$4.25.

The drinking wine is to be imported in 1000 liter plastic totes featuring large screw top openings. The necessary salt would be added to each tote transforming the wine into "cooking wine". After this is done the totes would be labeled as "cooking wine" and a U.S. Customs entry would then be made under the appropriate classification for cooking wine. The product would then be moved to Vigo's warehouse for further packaging.

ISSUE:

Whether the proposed operation is a permissible manipulation under title 19 U.S.C. \S 1562?

LAW AND ANALYSIS:

Whether Vigo may add salt to its drinking wine in a bonded warehouse rests upon whether the mixing or blending is a permissible manipulation under title 19 U.S.C. § 1562. If the process of adding, mixing or blending ("blending") constitutes a manufacture, it is not permitted in a bonded warehouse under 19 U.S.C. §1562.

19 U.S.C. §1562 provides that imported "merchandise may [with Customs permission and supervision] be cleaned, sorted, repacked, or otherwise

changed in condition, but not manufactured, in bonded warehouses established for that purpose" Manufacture requires that a substantial transformation has taken place. "Substantial transformation is a concept of major importance in administering the customs and trade laws." *Tropicana Products, Inc. v. U.S.*, 789 F. Supp. 1154, 1157, no.4 (CIT 1992). In order for there to be a substantial transformation, "there must be transformation" such that "a new and different article must emerge, 'having a distinctive name, character, or use.' The criteria of name character and use continue to determine when substantial transformation has occurred ***." Ferrostal Metals Corp. V. United States, 11 CIT 470, 664 F. Supp. 535 (1987). See also Torrington Co. V. United States, 3 CAFC (T) 105, 741 F.2d 11563 (1985) and cases cited; Axteca Milling Co. V. United States, 12 CIT 1153, 703 F. Supp. 949 (1988), aff'd, 8 CAFC ----(T), 890 F.2d 1150 (1989)." Id.1157.

In *Tropicana Products*, Tropicana argued, "that its bonded warehouse operations will not result in a 'substantial transformation' of the imported merchandise and therefore will not constitute a 'manufacture' in its bonded warehouse." *Tropicana* at 1157. In *Tropicana*, the court held, that "[t]o interpret 'manufacturing'--an expressly prohibited manipulation under \\$1562--as requiring a high threshold of transformation (viz. a substantial transformation as stringently required in country of original and drawback cases), would negate the evident legislative intent of the statute to permit only very minor or rudimentary manipulations in bonded warehouses--akin to the exemplars (cleaning, sorting and repacking)." Id., at 1158. "Hence," the court found, "in the context of \\$1562, the prohibited manipulation, manufacturing, may be contravened at a relatively low threshold of 'transformation."

In *Tropicana*, where the blending of orange juice concentrates to achieve desired Brix to acid ratios changed the fundamental character of the imported unblended concentrate, the court concluded that the blending operation was not a permitted manipulation. As noted in HQ 225490, dated October 24, 1994, the court "analyzed the exemplars in the statute." Clearly, "blending" was not one of the listed terms. Blending "was not analogous to 'cleaning, sorting, or repacking,' so that the phrase "or otherwise changed in condition," did not apply." Likewise "pouring" salt into drinking wine is not cleaning, sorting or repacking as contemplated by the exemplars.

In HQ 228508, September 9, 1999, we held that the mixing of imported broccoli florets and stalks in a bonded warehouse would be considered a manufacture and not a mere manipulation and was therefore not permitted under 19 U.S.C. § 1562. In HQ 228508, the proposed operation involved blending totes of broccoli florets and broccoli stalks. The broccoli florets and the broccoli stalks were to be blended on a 40%/60% basis, and then placed in totes containing the blend, for export. There were essentially three steps to the process: 1. The opening of the tote containers; 2. The blending of the florets and the stalks; 3. The repackaging of the blended mixture known in the industry as "broccoli cuts." In finding that the mixing of the florets and stalks was a manufacture, we reasoned that although, the broccoli remained broccoli, the nature of the merchandise had changed. The broccoli florets were no longer solely broccoli florets. The broccoli stalks were no longer solely

broccoli stalks. After processing the blend became known in the industry and in the marketplace as "broccoli cuts." The price of the new merchandise was significantly different. The 60% broccoli stalk content was priced at one-hundred percent more than it was when it was sold as part of a stalks-only tote. The 40% floret content was priced at 50% less than it was when marketed in a tote containing florets only. This substantial increase in overall price for "broccoli cuts," represented a significant indication that there was a new product, and that it was recognized as such, by both the broccoli industry and by the public. The blended broccoli cuts had taken on a new name, a new price, and a new character, albeit the three products are still for eating.

The *Tropicana* Court stressed that the merchandise must not be otherwise changed in "condition" as stated in the statute. In the case of the broccoli, the merchandise did in fact, change condition. The mixing of the more expensive florets, with the less expensive stalks, in a 40%-60% mix, produced a new product, at a new price. The mixing/blending was not performed for a decorative purpose. It was performed for marketing and for profit purpose. There are those who would prefer to eat florets and stalks mixed rather than just stalks or just florets. Further, a tote of florets only costs two hundred percent, on average, more than a tote of stalks only. A mix or blend of florets and stalks costs nearly 100% more that a tote of stalks only, but nearly 100% of a tote of florets only. The company and the market perceive a difference in the product and attraction to it and in its relative cost. Accordingly, in HQ 228508 we found this processing to be the kind of change in condition section 1562 considered to be a manufacture and not a mere manipulation.

Likewise in the instant case, we find that the addition of the salt to the drinking was the kind of change in condition that would be considered a manufacture and not a mere manipulation pursuant to 19 U.S.C. § 1562. The transformation as with the change in character, need not be complex and intricate, it need only substantially change the character, nature and/or name of the article. *Tropicana* at 1157. In the case of the cooking wine while the only change is that salt is added to the drinking wine, it changes the character of the wine as well as its name. Once the salt is added to the wine, it is no longer fit for drinking and its name its character is changed from drinking wine to cooking wine. While the value of the product does not change significantly, the purpose and marketing of the product completely changes. Therefore the addition of salt to the wine goes beyond the permissible operations allowed by 19 U.S. C. § 1562.

HOLDING:

Based on the above determinations, we conclude that the addition of approximately 1.5 grams of salt per 100 milliliters of wine to transform drinking wine to cooking wine constitutes a manufacture and therefore Vigo's proposed operations go beyond the permissible operations allowed by 19 U.S. C. 1562. Sincerely,

William G. Rosoff, Chief Entry Process and Duty Refunds Branch

[ATTACHMENT D]

HQ H141855 DRA-4-OT:RR:CTF:ER H141855 TT CATEGORY: Bonded warehouse entry

James C. Alberdi, President A.J. Arango, Inc. 1516 E. 8th Avenue Tampa, Florida 33605

RE: Modification of HQ H046995; Class 8 Bonded Warehouse

Dear Mr. Alberdi:

This letter is in reference to Headquarters Ruling H046995, dated February 2, 2009, concerning the permissibility of adding salt to wine, to create cooking wine, in a Customs and Border Protection ("CBP") Class 8 bonded warehouse. In that ruling, CBP found the action to be a manufacture and thus, impermissible in a CBP Class 8 bonded warehouse. We have reviewed HQ H046995 and found some of the analysis to be incorrectly applied. However, the error in analysis does not change the holding. For the reasons set forth below, we hereby modify HQ H046995 to reflect the proper analysis.

FACTS:

In HQ H046995, we described the facts as follows. Vigo proposes to import drinking wine in 1000 liter plastic totes and to add salt to the wine to transform it into cooking wine. Upon the addition of the salt, the wine will contain greater than 1.5 grams of salt per 100 milliliters of wine. This would then make the wine unfit for consumption as a beverage.

Information submitted on January 6, 2009 by email, stated that the value of the drinking wine prior to the addition of the salt is \$810.00 per 1000 liter tote. The value of the salt added per 1000 liter tote is \$4.25.

The drinking wine is to be imported in 1000 liter plastic totes featuring large screw top openings. The necessary salt would be added to each tote transforming the wine into "cooking wine." The totes would then be labeled as "cooking wine" and a CBP entry would be made under the appropriate classification for cooking wine. The product would then be moved to Vigo's warehouse for further packaging.

ISSUE:

Whether the proposed operation of adding and mixing salt to wine to create cooking wine is permissible manipulation for purposes of CBP bonded warehouses under title 19 U.S.C. § 1562.

LAW AND ANALYSIS:

Whether Vigo may add and mix salt to its drinking wine in a CBP bonded warehouse is contingent upon whether the adding and mixing of salt to wine is a permissible manipulation under title 19 U.S.C. § 1562. If the process of adding and mixing constitutes a manufacture, it is not permitted in a CBP bonded warehouse under 19 U.S.C. §1562.

19 U.S.C. §1562 provides that imported "merchandise may [with Customs permission and supervision] be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose. . . . " "Manufacture" for purposes of 19 U.S.C. § 1562

does not require a substantial transformation, instead "a low threshold of 'transformation'" satisfies the meaning of 'manufactured' for bonded warehouses purposes. Tropicana Products, Inc. v. U.S., 16 C.I.T. 155, 160 (1992). In *Tropicana*, the Court of International Trade ("CIT") looked at the meaning of "manufacture" in 19 U.S.C. § 1562 and distinguished it from the meaning of "manufacture" when used in the context of drawback, classification, and a country of origin analysis. *Id.* ("the criterion of whether goods have been 'manufactured' serves different purposes under different statutes, particularly § 1562 on the one hand and statutes concerned with country-of-origin marking, Generalized System of Preferences and drawback on the other. . ."). The CIT determined that:

To interpret "manufacturing" – an expressly prohibited manipulation under § 1562 – as requiring a high threshold of transformation (*viz.*, a substantial transformation as stringently required in country of origin and drawback cases), would negate the evident legislative intent of the statute to permit only very minor or rudimentary manipulations in bonded warehouses – akin to the exemplars (cleaning, sorting and repacking).

Id. at 160. Therefore, the analysis to determine whether a procedure constitutes a "manufacture" for purposes of 19 U.S.C. § 1562 is a "low threshold." Id.

In *Tropicana*, the CIT held that the process of diluting concentrated orange juice by blending in water to be a manufacture for purposes of 19 U.S.C. § 1562. 16 C.I.T. at 162. The CIT "analyzed the exemplars in the statute" and "blending" was not one of the permissible listed terms. The Court also held that Tropicana's blending "was not. . . analogous to. . . [§ 1562's language of] 'cleaned, sorted, repacked,' and that therefore, it was "not within the scope of [§ 1562's] 'otherwise changed in condition." *Tropicana*, 161 C.I.T. at 162. *Tropicana* 's analysis is applicable to this case as pouring and mixing in salt into drinking wine is not cleaning, sorting or repacking as contemplated by the exemplars.

In HQ 228508 (September 9, 1999), modified in HQ H140895, we held that the mixing of imported broccoli florets and stalks in a CBP bonded warehouse would be considered a manufacture, not a mere manipulation, and thus, impermissible under 19 U.S.C. § 1562. In HQ 228508, the proposed operation involved blending totes of broccoli florets and broccoli stalks. The broccoli florets and stalks were to be blended on a 40/60 percent basis, and then placed in totes containing the blend, for export. There were essentially three steps to the process: 1) the opening of the tote containers; 2) the blending of the florets and the stalks; and 3) the repackaging of the blended mixture. In finding that the mixing of the florets and stalks was a manufacture, we reasoned that although, the broccoli remained broccoli, the nature of the merchandise had changed. The broccoli florets were no longer solely broccoli florets. The broccoli stalks were no longer solely broccoli stalks. After processing, the blend became known in the industry and in the marketplace as "broccoli cuts." Additionally, the price of the new merchandise became significantly different as well. The new totes of broccoli cuts costs twice as much as totes carrying only stalks and half as much as totes carrying only florets.

This substantial difference in price for broccoli cuts indicated that there was a new product, and that it was recognized as such by both the broccoli industry and the public. The broccoli cuts had taken on a new name and price.

In the case of the broccoli, the merchandise changed significantly in its condition. The mixing of the more expensive florets with the less expensive stalks, in a 40–60 percent mix, produced a new product at a new price. The mixing was performed for marketing and profit-related purposes. As evidenced by the price differential, both the company and consumers perceive a difference in the new product of broccoli cuts and hence, they attach to it a different value. Accordingly, in HQ 228508 we found this processing to be the kind of change in condition 19 U.S.C. § 1562 considered to be a manufacture and not a mere manipulation.

Likewise in the instant case, we find that the addition and mixing of salt to the drinking wine is the kind of change in condition that would be considered a manufacture and not a mere manipulation pursuant to 19 U.S.C. § 1562. Although, the only change to the wine is the addition of salt, it dramatically changes the wine from a beverage to a cooking ingredient. Once the salt is added to the wine, it is no longer fit for drinking and it becomes a cooking wine. While the value of the product does not change significantly, the purpose and marketing of the product changes completely. Therefore, the process of adding salt to the wine is impermissible manufacture pursuant to 19 U.S.C. § 1562.

HOLDING:

Based on the above determinations, we conclude that the addition of approximately 1.5 grams of salt per 100 milliliters of wine to transform drinking wine to cooking wine constitutes a manufacture and therefore, Vigo's proposed operations go beyond the permissible operations allowed by 19 U.S.C. § 1562.

EFFECT ON OTHER RULINGS:

HQ H046995, dated February 2, 2009, is hereby modified.

Sincerely,

Myles B. Harmon

Director

Commercial and Trade Facilitation Division

19 CFR PART 177

Modification of Ruling Letter and Revocation of Treatment Relating to the Tariff Classification of EZ Tree Bar

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

ACTION: Notice of modification of a tariff classification ruling letter and revocation of treatment relating to the classification of the EZ Tree Bar.

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 modifying a ruling letter relating to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS), of the EZ Tree Bar from China. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published in the *Customs Bulletin*, Vol.44, No.47 on November 16, 2011. No comments were received in response to this notice.

DATES: This action is effective for merchandise entered or withdrawn form warehouse for consumption on or after March 26, 2012.

FOR FURTHER INFORMATION CONTACT: Robert Dinerstein, Valuation and Special Programs Branch, at (202)-325–0132.

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 commu-

nity'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 is modifying a ruling letter relating to the tariff classification of certain EZ Tree Bars. Although in this notice CBP is specifically referring to the modification of New York Ruling Letter (NY) N132377, dated December 7, 2010, 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, CBP is revoking 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 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 HTSUS. Any person involved with substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this Notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N132377, CBP classified the EZ Tree Bar in subheading 7326.00.50, HTSUS, which provides for other articles of iron or steel, other, other, other, other. Based on our analysis, we continue to believe that this primary classification is correct. However, in N132377, CBP also ruled that the EZ Tree Bar was eligible for entry under subheading 9817.00.50, HTSUS, which provides for the duty-free entry of machinery, equipment and

implements to be used for agricultural or horticultural purposes. We now believe that this determination is not correct. U.S. Note 2(ij) in Chapter 98 Subchapter XVII states that the provisions of 9817.00.50, HTSUS do not apply to articles classified in Chapter 73, HTSUS, with certain exceptions. Because subheading 7326.00.50, HTSUS, is not among the subheadings excepted from of the exclusion for articles of Chapter 73 HTSUS, set forth in U.S. note 2(ij), we now believe that the EZ Tree Bar is not eligible for duty-free entry under subheading 9817.00.50, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N132377 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) H188375 (Attachment). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions that is contrary to the determination set forth in this notice.

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

Dated: January 10, 2012

Monika R. Brenner
for
Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H188375

January 10, 2012 CLA-2 OR:RR:CTF:TCM H188375 RSD CATEGORY: Classification TARIFF No. 7326.90.85

Mr. Ole Skaaning Ken Hamanaka Company, Inc. 5777 West Century Blvd. Suite 760 Los Angeles, California 90045

RE: Modification of NY N132377, Eligibility for Duty-Free Entry of the EZ Tree Bar under 9817.00.50, HTSUS, Chapter 98, U.S. Note 2(ij)

DEAR MR. SKAANING:

This is in reference to New York Ruling Letter (NY) N132377 issued by the Customs and Border Protection (CBP) National Commodity Specialist Division on December 7, 2010, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of the EZ Tree Bar from China. The ruling held that the EZ Tree Bar was classified in subheading 7326.90.85, HTSUS, and would also be eligible for duty-free entry under subheading 9817.00.50, HTSUS. We have reconsidered this decision and for the reasons set forth below, have determined that although the product would still be classified in subheading 7326.90.85, HTSUS, its eligibility for duty-free entry under subheading 9817.00.50, HTSUS is not correct.

FACTS:

The item concerned is referred to as a EZ Tree Bar, which is used to hold a tree in place while it grows. According to the facts set forth in NY N132377, the product is composed of two, nine inch galvanized steel tubes. Located on each end of each tube is a slit where an adjustable clamp is inserted. The larger tube contains holes drilled at one inch intervals and also contains a larger diameter than the other tube. The smaller tube is inserted into the larger tube and contains a push lock that will allow the tube to be locked into place into one of the holes of the larger tube, thus making the EZ Tree Bar adjustable.

The adjustable bar comes with a protective strip comprised of foam material. It measures approximately 12 inches in length by 1 inch in width and is ¼ inch thick. The protective strip is self-adhesive on one side and may be cut to size. The strip is secured to the clamp to protect the newly planted tree from damage. The clamp comes completely assembled except for the protective strip which is separately packaged in the retail box. One side of the bar is attached to a pole and the other side of the bar is attached to the newly planted tree so that the tree is held in place.

LAW AND ANALYSIS:

Merchandise imported into the U.S. is classified under the HTSUS. Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of

goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and mutatis mutandis, to the GRIs 1 through 5.

The HTSUS subheadings under consideration are as follows:

| | 7326 | Other articles of iron or steel: |
|------------|---------|--|
| | 7326.90 | Other: |
| | | Other: |
| | | Other: |
| 7326.90.85 | | 5 Other. |
| 9817.00.50 | | Machinery, equipment and implements to be used for agri- cultural or horticultural purposes |

In NY N132377, CBP ruled that the applicable subheading for the EZ Tree Bar will be 7326.90.85, HTSUS, which provides for other articles of iron or steel, other, other, other, other. After review, we affirm that this primary classification of the EZ Tree Bar is correct.

However, NY N132377 also found that the EZ Tree Bar would qualify for duty-free entry under subheading 9817.00.50, HTSUS. Subheading 9817.00.50, HTSUS, provides for the duty-free entry of machinery, equipment and implements to be used for agricultural or horticultural purposes. This is a provision based on actual use. See Headquarters Ruling Letter (HQ) 953152, dated March 15, 1993. A tariff classification controlled by the actual use to which the imported goods are put in the United States is satisfied only if such use is intended at the time of importation, the goods are so used and proof thereof is furnished within three years after the goods are entered. See Additional U.S. Rule of Interpretation 1(b), HTSUS. U.S. Note 2(ij) to Chapter 98 Subchapter XVII states in part, that the provisions of subheading 9817.00.50, HTSUS does not apply to articles classified in Chapter 73, HTSUS, with certain exceptions. Subheading 7326.90, HTSUS is not one of the exceptions.

We have held that before an article may be classified in subheading 9817.00.50, HTSUS, and qualify for the agricultural use duty exemption it must first satisfy each part of the following three-part test, taken in order.

- 1) the articles must not be among the long list of exclusions to subheading 9817.00.50 or 9817.00.60 under Section XXII, Chapter 98, Subchapter XVII, U.S. Note 2;
- 2) the terms of subheading 9817.00.50 must be met in accordance with GRI 1; and
- 3) the merchandise must meet the actual use conditions required in accordance with sections 10.131 10.139 of the CBP Regulations (19 CFR 10.131 10.139).

If a good fails any part of the test, then recourse would have to be made to its primary classification. *See* HQ 086211, dated March 24, 1990.

Therefore, because the EZ Tree Bar is classified in subheading 7326.90 HTSUS, it is not eligible for duty-free entry under 9817.00.50, HTSUS. Thus, it will be classified according to its primary classification in subheading 7326.90.85, HTSUS.

HOLDING:

The EZ Tree Bar is classified in subheading 7326.90.85, HTSUS which provides for articles of iron or steel, other, other, other, other. In accordance with U.S. Note 2(ij), articles classifiable in this provision are not eligible for duty-free entry under heading 9817.00.60, HTSUS. Therefore, the EZ Tree Bar is not eligible for duty-free entry under subheading 9817.00.60.

EFFECT ON OTHER RULINGS:

NY N183835 dated December 7, 2010, is modified with respect to classification of the EZ Tree Bar in subheading 9817.00.50, HTSUS. The primary classification of the EZ Tree Bar in subheading 7326.90.85, HTSUS, 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**

Sincerely,

Myles B. Harmon,

Director

Commercial and Trade Facilitation Division

AGENCY INFORMATION COLLECTION ACTIVITIES: JADE ACT

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

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0133.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the JADE Act. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before March 12, 2012, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177, at (202) 325–0265.

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

become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: JADE Act.

OMB Number: 1651–0133.

Form Number: None.

Abstract: The Tom Lantos Block Burmese JADE Act of 2008 (JADE Act) prohibits the importation of "Burmese covered articles" (jadeite, rubies, and articles of jewelry containing jadeite or rubies mined or extracted from Burma), and sets forth conditions for the importation of "non-Burmese covered articles" (jadeite, rubies, and articles of jewelry containing jadeite or rubies mined or extracted from a country other than Burma).

In order to implement the provisions of this Act, CBP requires that the importer enter the specific HTSUS subheading for jadeite, rubies or articles containing jadeite or rubies on the CBP Form 7501, *Entry Summary*, which serves as the importer's certification. In addition, at the time of entry, the importer must have in his or her possession a certification from the exporter certifying that the conditions of the JADE Act have been met. Importers must keep this certification in their records and make it available to CBP upon request.

This information collection is authorized by Public Law 110–286 and provided for by 19 CFR 12.151. Guidance regarding how to comply with the JADE Act is on the CBP Web site at: http://www.cbp.gov/linkhandler/cgov/trade/trade_programs/entry_summary/laws/public_law/jade_act.ctt/jade_act.pdf

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 22,197.

Estimated Number of Annual Responses per Respondent: 20.

Estimated Total Annual Responses: 443,940. Estimated Time per Respondent: 10 minutes. Estimated Total Annual Burden Hours: 74,005.

Dated: January 9, 2012.

Tracey Denning,
Agency Clearance Officer,
U.S. Customs and Border Protection.

[Published in the Federal Register, January 12, 2012 (77 FR 1947)]