

# U.S. Customs and Border Protection



## **PROPOSED REVOCATION OF ELEVEN RULING LETTERS, PROPOSED MODIFICATION OF TWO RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF METAL LUNCH BOXES**

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

**ACTION:** Notice of proposed revocation of eleven ruling letters, proposed modification of two ruling letters and revocation of treatment relating to the tariff classification of metal lunch boxes.

**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 revoke eleven ruling letters and to modify two ruling letters concerning tariff classification of metal lunch boxes under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

**DATE:** Comments must be received on or before May 29, 2020.

**ADDRESS:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance write to Ms. Cammy Canedo at [cammy.d.canedo@cbp.dhs.gov](mailto:cammy.d.canedo@cbp.dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** Reema Bogin, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–7703.

**SUPPLEMENTARY INFORMATION:****BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public 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 19 U.S.C. §1625(c)(1), this notice advises interested parties that CBP is proposing to revoke eleven ruling letters and to modify two ruling letters pertaining to the tariff classification of metal lunch boxes. Although in this notice, CBP is specifically referring to Headquarters Ruling Letter ("HQ") 965555, dated August 12, 2002 (Attachment "A"); HQ 967931, dated April 21, 2006 (Attachment "B"); HQ 966836, dated April 1, 2004 (Attachment "C"); HQ 965554, dated August 12, 2002 (Attachment "D"); HQ 963339, dated April 19, 2002 (Attachment "E"); HQ 965063, dated April 12, 2002 (Attachment "F"); HQ 963647, dated April 12, 2002 (Attachment "G"); New York Ruling Letter ("NY") H88277, dated April 26, 2002 (Attachment "H"); NY N150496, dated March 18, 2011 (Attachment "I"); NY N104149, May 20, 2010 (Attachment "J"); NY I82546, dated June 7, 2002 (Attachment "K"); HQ 963670, dated April 12, 2002 (Attachment "L"); and HQ 963539, dated April 12, 2002 (Attachment "M"), this notice also 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 thirteen 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 the comment period.

Similarly, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this comment 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 965555, HQ 967931, HQ 966836, HQ 965554, HQ 963339, HQ 965063, HQ 963647, NY H88277, NY N150496, NY N104149, NY I82546, HQ 963670, and HQ 963539, CBP classified metal lunch boxes in heading 7326, HTSUS, specifically in subheading 7326.90, HTSUS, which provides for “[o]ther articles of iron or steel: Other.” CBP has reviewed HQ 965555, HQ 967931, HQ 966836, HQ 965554, HQ 963339, HQ 965063, HQ 963647, NY H88277, NY N150496, NY N104149, NY I82546, HQ 963670, and HQ 963539, and has determined the ruling letters to be in error. It is now CBP's position that metal lunch boxes are properly classified, in heading 4202, HTSUS, specifically in subheading 4202.19.00, HTSUS, which provides for “[t]runks, suitcases, vanity cases, attache cases, briefcases school satchels and similar containers: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke HQ 965555, HQ 967931, HQ 966836, HQ 965554, HQ 963339, HQ 965063, HQ 963647, NY H88277, NY N150496, NY N104149, and NY I82546; to modify HQ 963670 and HQ 963539; and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H275864, set forth as Attachment “N” to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

CRAIG T. CLARK,  
*Director*  
*Commercial and Trade Facilitation Division*

Attachments

HQ 965555

August 12, 2002

CLA-2 RR:CR:TE 965555 jsj

CATEGORY: Classification

TARIFF NO.: 7326.90.1000

Ms. KATHY M. BELAS

JAMES G. WILEY CO.

P.O. Box 90008

LOS ANGELES, CALIFORNIA 90009-0008

Re: Revocation of HQ 964234 (April 23, 2001); "Lunch Tote"; Lunch Box Style Metal Container; Tin-plated Iron or Steel; Subheading 7326.90.1000, HTSUSA.

DEAR Ms. BELAS:

The purpose of this correspondence is to advise you that the Customs Service has reconsidered Headquarters Ruling Letter (HQ) 964234 (April 23, 2001) issued to you as the customhouse broker of Dorothy Thorpe / Christmas Corner.

Headquarters Ruling Letter 964234 classified a metal container in the shape of traditional school lunch box, only smaller, in subheading 4202.19.0000, HTSUSA. We have reviewed that ruling and found it to be in error. The Customs Service is reclassifying the merchandise in subheading 7326.90.1000, HTSUSA. This ruling, therefore, revokes HQ 964234.

Pursuant to section 625 (c), Tariff Act of 1930, as amended, 19 U.S.C. 1625 (c), notice of the proposed revocation of HQ 964234 was published on June 19, 2002, in the *Customs Bulletin*, Volume 36, Number 25.

**FACTS:**

The article subject to this reconsideration is a container that has the shape of a traditional school lunch box, only smaller. It measures seven and one-half (7 1/2) inches in length, three and one-eighth (3 1/8) inches in width and five and one-eighth (5 1/8) inches in height. It is composed of metal believed by the Customs Service to be sheet steel. The initial ruling request indicates that the item is made of tin. Customs is issuing this revocation on the assumption that the article is tin-plated. No laboratory analysis has been performed to determine its precise composition.

The item, described by the broker as a "lunch tote," has a plastic handle on top that swivels side to side. One side of the item opens and may be secured closed by a latch on the top. Attachments for a shoulder strap are located on the narrow or width sides, one and one-half (1 1/2) inches from the top. No shoulder straps accompanied the sample. It is not insulated and does not have an accompanying container or interior attachment designed to facilitate the transportation and storage of liquids. The Customs Service has not been advised of the country of manufacture.

**ISSUE:**

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the above-described, tin-plated, steel container with a handle and a latch?

## LAW AND ANALYSIS:

The federal agency responsible for initially interpreting and applying the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is the U.S. Customs Service.<sup>1</sup> The Customs Service, in accordance with its legislative mandate, classifies imported merchandise pursuant to the General Rules of Interpretation (GRI) and the Additional U.S. Rules of Interpretation.<sup>2</sup>

General Rule of Interpretation 1 provides, in part, that classification decisions are to be “determined according to the terms of the headings and any relative section or chapter notes.” *General Rule of Interpretation 1*. General Rule of Interpretation 1 further states that merchandise which cannot be classified in accordance with the dictates of GRI 1 should be classified pursuant to the other General Rules of Interpretation, provided the HTSUSA chapter headings or notes do not require otherwise. According to the Explanatory Notes (EN), the phrase in GRI 1, “provided such headings or notes do not otherwise require,” is intended to “make it quite clear that the terms of the headings and any relative Section or Chapter Notes are paramount.” *General Rules for the Interpretation of the Harmonized System, Rule 1, Explanatory Note (V)*.

The Explanatory Notes constitute the official interpretation of the Harmonized System at the international level. *See* Joint Explanatory Statement *supra* note 1, at 549. The Explanatory Notes, although neither legally binding nor dispositive of classification issues, do provide commentary on the scope of each heading of the HTSUS. The EN are generally indicative of the proper interpretation of the headings. *See* T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989); *Lonza, Inc. v. United States*, 46 F.3d 1098, 1109 (Fed. Cir. 1995).

Commencing classification of the tin-plated metal container in accordance with the dictates of GRI 1, the Customs Service examined the headings of Chapter 73, *Articles of Iron or Steel*, of the HTSUSA. Customs concludes the lunch box shaped container subject to this reconsideration is properly classified in heading 7326, HTSUSA, pursuant to GRI 1. Heading 7326, HTSUSA, more specifically than any other heading in the tariff schedule, describes the container.

Customs notes that heading 7326, HTSUSA, which covers “Other articles of iron or steel,” is a residual or basket provision into which merchandise of iron or steel not described by any other heading of Chapter 73 is classified. Although the classification decision arrived at by this office relies on General Rule of Interpretation 1, this determination was made by a process of elimination, only subsequent to considering all of the other headings of Chapter 73, particularly headings 7310, HTSUSA, and 7323, HTSUSA.

Heading 7310, HTSUSA, provides for “Tanks, casks, drums, cans, boxes and similar containers, for any material (other than compressed or

<sup>1</sup> *See* 19 U.S.C. 1500 (West 1999) (providing that the Customs Service is responsible for fixing the final appraisement, classification and amount of duty to be paid); *See also* Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 100–576, at 549 (1988) *reprinted in* 1988 U.S. Code Cong. and Adm. News 1547, 1582 [hereinafter Joint Explanatory Statement].

<sup>2</sup> *See* 19 U.S.C. 1202 (West 1999); *See generally*, *What Every Member of The Trade Community Should Know About: Tariff Classification*, an Informed Compliance Publication of the Customs Service available on the World Wide Web site of the Customs Service at [www.customs.gov](http://www.customs.gov), search “Importing & Exporting” and then “U.S. Customs Informed Compliance Publications.”

liquefied-gas), of iron or steel, of a capacity not exceeding 300 liters, whether or not lined or heat insulated, but not fitted with mechanical or thermal equipment.” The EN to heading 7310, HTSUSA, Explanatory Note 73.10, provides an illustrative list of “larger containers,” as well as “smaller containers” that are properly classified in heading 7310, HTSUSA. *Explanatory Note 73.10*. The smaller containers “include boxes, cans, tins, etc.” and are “mainly used as sales packings for butter, milk, beer, preserves, fruit or fruit juices, biscuits, tea, confectionery, tobacco, cigarettes, shoe cream, medications, etc.” *Explanatory Note 73.10*.

Although the container subject to this reconsideration falls within the EN description of “boxes, cans, tins, etc.,” it is not “mainly used as sales packings.” *Explanatory Note 73.10*. The container in issue, although it may be used as packing for candy or other merchandise, has uses beyond sales packing. The broker’s submission that accompanied the initial ruling request indicates that the item will function as a lunch box. Customs will not suggest the numerous uses to which this container may be put, but is of the conclusion that this container is significantly distinct from sales packing, precluding its classification in heading 7310, HTSUSA. *See generally* HQ 963670 (April 12, 2002) (discussing merchandise classified in heading 7310, HTSUSA, and providing a list of precedential Customs Service ruling letters).

Heading 7323, HTSUSA, provides, in pertinent part, for the classification of “Table, kitchen or other household articles and parts thereof, of iron or steel.” The Explanatory Notes to heading 7323, HTSUSA, state that this group “comprises a wide range of iron or steel articles... used for table, kitchen or other household purposes...” *Explanatory Note 73.23*. The EN further provides an extensive list of articles considered being for kitchen, table and other household uses. *See Explanatory Note 73.23*. Kitchen articles include items “such as saucepans, steamers...; frying pans...; kettles; colanders; ...jelly or pastry moulds;...kitchen storage tins and canisters...funnels.” *Explanatory Note 73.23(A)(1)*. Articles for table use include “trays, dishes, plates...sugar basins, butter dishes...coffee pots...tea pots; cups, mugs...cruets; knife rests;...serviette rings, table cloth clips.” *Explanatory Note 73.23(A)(2)*. Items enumerated as “other household articles” encompass articles such as “wash coppers and boilers; dustbins, buckets...watering cans; ash-trays;...baskets for laundry, fruit, vegetables, etc.; letter-boxes...luncheon boxes.” *Explanatory Note 73.23(A)(3)*.

It is the conclusion of the Customs Service, subsequent to a review of this list, that the “lunch tote” container subject to this reconsideration is not analogous to the above articles. Merchandise properly classified in heading 7323, HTSUSA, is limited in scope to table, kitchen or other household articles made of iron or steel. The container under review in this reconsideration may not reasonably be described as a table, kitchen or household article. *See generally* HQ 956218 (Aug. 23, 1994), New York Ruling Letter (NY) C88472 (June 24, 1998), NY 813291 (Aug. 23, 1995) and NY 808180 (Mar. 24, 1995). The container subject to this reconsideration may be used around the home, but it is not designed nor specifically intended for table, kitchen or household use, precluding classification in heading 7323, HTSUSA.

It is Customs determination that the heading that is most descriptive of the lunch box style container is heading 7326, HTSUSA. Heading 7326, HTSUSA, provides very simply for “Other articles of iron or steel.” Heading 7326, HTSUSA, as previously stated is a residual provision and encompasses



the classification of “all iron or steel articles...**other than** articles included in the preceding headings of this Chapter or ...more specifically covered elsewhere in the Nomenclature.” *Explanatory Note 73.26*.

Understanding that heading 7326, HTSUSA, is a residual or basket provision into which all merchandise properly classified in Chapter 73, HTSUSA, falls by default when a more descriptive heading in the chapter does not exist, the variety of iron or steel merchandise that is properly classified in heading 7326, HTSUSA, is broad. This is confirmed by a further reading of the Explanatory Notes. The Explanatory Note that corresponds to heading 7326, HTSUSA, Explanatory Note 73.26, offers an extensive listing of merchandise that is classified in heading 7326, HTSUSA.

Explanatory Note 73.26 (3) provides that heading 7326, HTSUSA, covers “Certain boxes and cases, *e.g.*, tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (see the Explanatory Note to heading 42.02); botanists’, *etc.*, collection or specimen cases, trinket boxes; cosmetic or powder boxes and cases; cigarette cases, tobacco boxes, cachou boxes, *etc.*, but **not including** containers of **heading 73.10**, household containers (**heading 73.23**), nor ornaments (**heading 83.06**.” (Emphasis added). The container subject to this reconsideration is not easily analogized to the “boxes and cases” specifically identified in the EN, but this is not necessary. The drafters of the EN, by employing the phrases abbreviated “*e.g.*” and “*etc.*” in EN 73.26, exhibited an intent that the identified articles were only intended to be representative or illustrative.

It is the conclusion of the Customs Service that the container in issue and the articles identified by example in EN 73.26 share enough common features to warrant the classification of the “lunch tote” in heading 7326, HTSUSA. The container in issue is essentially a steel box, the size of which according to a reading of EN 73.26 may vary significantly. The container is larger than trinket and cachou boxes, smaller than tool boxes, but is about the size of powder or tobacco boxes. It is not specially shaped nor is it internally fitted. The possible uses of the container are similar to the anticipated uses of the containers referenced in the EN. It may carry a variety of items, none of which fall into any particular category that might preclude classification in heading 7326, HTSUSA. As should be appreciated, there is no single example provided for in EN 73.26 to which Customs may point as the perfect example of a container similar to the one subject to this reconsideration. Customs has, however, demonstrated that there are a significant number of common characteristics between the container in issue and the “boxes and cases” illustrated in Explanatory Note 73.26 to warrant classification in heading 7326, HTSUSA.

Although Customs has discussed the similarities between the relevant merchandise and the items identified in the Explanatory Notes to heading 7326, HTSUSA, it is important to remember that since heading 7326, HTSUSA, is a basket or residual provision it is only necessary to determine that Dorothy Thorpe/Christmas Corner’s merchandise is not excluded from heading 7326, HTSUSA, nor specifically provided for elsewhere in the tariff schedule. Customs concludes that the merchandise is not precluded from classification in heading 7326, HTSUSA, nor is it specifically provided for in another tariff schedule heading.

Continuing the classification of the traditional school lunch box shaped tin-plated container at the subheading level, the container is classified in

subheading 7326.90.1000, HTSUSA. *See generally* NY H81764 (June 19, 2001), NY F81395 (Jan. 13, 2000) and NY B80840 (Jan. 10, 1997). Subheading 7326.90.1000, HTSUSA, provides for the classification of

|              |                                  |
|--------------|----------------------------------|
| 7326         | Other articles of iron or steel: |
| 7326.90      | Other:                           |
| 7326.90.1000 | Of tinplate.                     |

The Customs Service specifically notes for the attention of the importer and the customs broker that Customs has not undertaken a laboratory analysis to confirm that the container in issue is tin-plated. Customs has relied on the statements of the customhouse broker indicating that the item is “made of tin” or “comprised mostly of tin.” Should the container not prove to be tin-plated, this would significantly impact the classification and rate of duty of this merchandise and, additionally, bear negatively on the importer’s obligation to use reasonable care in the classification, value and entry of its merchandise. *See* HQ 965063 (April 12, 2002) (a binding classification ruling classifying similar merchandise said to be tin-plated).

Should this container not be tin-plated, it would be classified in subheading 7326.90.8586, HTSUSA. Subheading 7326.90.8586, HTSUSA, provides for:

|              |                                  |
|--------------|----------------------------------|
| 7326         | Other articles of iron or steel: |
| 7326.90      | Other:                           |
|              | Other,                           |
|              | Other:                           |
| 7326.90.85   | Other,                           |
| 7326.90.8586 | Other.                           |

Although not raised as an issue in the initial ruling request, substantially similar containers are frequently imported with edibles or other merchandise. Headquarters Ruling Letter 963670 addressed the classification of a container and other merchandise when imported together.

It is noted that Customs, in HQ 964234, initially classified this item in heading 4202, HTSUSA. Heading 4202, HTSUSA, provides for the classification of:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly of mainly covered with such materials or with paper.

Customs, during the course of this reconsideration, determined that the merchandise in issue was not similar to the items designated by name in the first part of heading 4202, HTSUSA, that aspect which precedes the semicolon. It was also determined that consideration of the items listed in the second part of the heading was unnecessary because those articles must be made of specific materials and sheet steel, of which the “lunch tote” is



believed to be composed, is not an enumerated material. Since Customs determined that the metal container imported by Dorothy Thorpe / Christmas Corner is not similar to the containers designated *eo nomine* in heading 4202, HTSUSA, Customs re-examined the headings of the HTSUSA and has concluded that the “lunch tote” is properly classified in heading 7326, HTSUSA.

**HOLDING:**

Headquarters Ruling Letter 964234 is hereby revoked.

The tin-plated container with a hinge and a handle in the shape of a school lunch box, only smaller, not designed to be used principally as sales packing nor designed as a table, kitchen or other household article, is classified in subheading 7326.90.1000, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty is FREE.

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

*Sincerely,*

MYLES B. HARMON,

*Acting Director*

*Commercial Rulings Division*

HQ 967931

April 21, 2006

CLA-2 RR:CTF:TCM 967931 DSS

CATEGORY: Classification

TARIFF NO.: 7326.90.1000

MS. DIANE FLOWERS  
MGA ENTERTAINMENT  
16340 ROSCOE BLVD., #240  
VAN NUYS, CA 91406

RE: Bratz Babyz Chill-Out Lounge™ from China; metal imitation lunch box;  
NY L80711 Modified

DEAR MS. FLOWERS:

This letter is in reference to New York Ruling Letter (NY) L80711, dated December 1, 2004, which was issued to you on behalf of MGA Entertainment, Inc. (importer) by the Director, National Commodity Specialist Division, Bureau of Customs and Border Protection (CBP). The issue is the classification of a metal imitation lunch box that is part of the Bratz Babyz Chill-Out Lounge™ under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After reviewing NY L80711, we have determined that the classification of the metal imitation lunch box under subheading 4202.19.0000, HTSUSA, is incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 USC 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY L80711 was published in the November 23, 2005, CUSTOMS BULLETIN, Volume 39, Number 48. No comments were received in response to this notice.

**FACTS:**

In NY L80711, we wrote:

You submitted a sample of a Bratz Babyz Chill-Out Lounge™ identified as item number 296690. The item consists of a set of miniature plastic toy furniture, appliances, a smoothie bar, bottles, etc. that is intended to simulate a lounge setting. The toys are packaged inside a metal carrying case that is of a kind similar to a lunch box and measures approximately 7–1/2 inches in height x 8 inches in length x 4 inches in depth. The carrying case has a hinged lid, a plastic carrying handle, and an illustrated depiction of a lounge on both of its long sides with the words “Chill-Out Lounge Bratz Babyz.”

Although packaged together, the metal carrying case is not the normal or usual packing for the toys, nor is the metal carrying case itself a toy. Therefore, the toy set will be classified separately from the metal carrying case.

Your sample is being returned as you requested.

The applicable subheading for the toys will be 9503.70.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for “Other toys, put up in sets or outfits, and parts and accessories thereof.” The rate of duty will be Free.

The applicable subheading for the metal lunchbox will be 4202.19.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for “Trunks, suitcases, vanity cases... and similar containers...Other.” The rate of duty will be 20 percent ad valorem.

Based upon a further review of this ruling and a sample provided by the importer, we now believe that the classification of the metal imitation lunch box is incorrect.

#### ISSUE:

Whether the instant metal imitation lunch box is classified under heading 4202, HTSUS, as a trunk, suitcase, or similar container, or under heading 7326, HTSUS, as an other article of base metal.

#### LAW AND ANALYSIS:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the Harmonized System. The Bureau of Customs and Border Protection (CBP) believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration (2004) are as follows:

|            |  |
|------------|--|
| 4202       | Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:<br>Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels and similar containers: |
| 4202.19.00 | Other.<br>* * *  |
| 7326       | Other articles of iron or steel:   |
| 7326.90    | Other:   |
| 7326.90.10 | Of tinplate.   |

Based upon further examination of the instant article and a review of our previous rulings, it has become apparent that the metal imitation lunch box does not fall under heading 4202, HTSUS.

Heading 4202, HTSUS, provides for the classification of:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly of mainly covered with such materials or with paper.

It is apparent the metal box in NY L80711 is not similar to the articles listed by name and similar containers in the first part of heading 4202, HTSUS, i.e., that aspect which precedes the semi-colon. It is not necessary to consider whether the instant box is listed in the second part of the heading because those articles must be made of specific materials; iron and steel are not enumerated materials.

The box is made of metal and is *prima facie* classified in heading 7326, HTSUS. EN 73.26 states in relevant part that heading 7326, HTSUS, includes:

- (3) Certain boxes and cases, e.g., tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (see the Explanatory Note to heading 42.02); botanists', etc., collection or specimen cases, trinket boxes; cosmetic or powder boxes or cases; cigarette cases, tobacco boxes, cachou boxes, etc. but **not including** containers of **heading 73.10**, household containers (**heading 73.23**), nor ornaments (**heading 83.06**) [emphasis in original].

CBP has issued several rulings in which certain metal lunch boxes have been classified under heading 7326, HTSUS. *See, e.g.*, HQ 965063, dated April 12, 2002; HQ 965554, dated August 12, 2002; and HQ 965555, dated August 12, 2002.

It should be noted that the instant boxes contain a printed paperboard lining attached to the interior walls. A true lunch box does not normally have a paperboard interior and the interior edges are finished. However, similar to those boxes, the instant box is larger than trinket and casket boxes, but smaller than a tool box. It is not specially shaped, nor is it internally fitted. The possible uses of the container are similar to the anticipated use of the containers referenced in EN 73.26.

Based upon the information submitted, the instant imitation metal lunch box is sufficiently similar to other metal lunch boxes classified by CBP under heading 7326, HTSUS, to fall under heading 7326, HTSUS, as well. The box is reportedly made of tinplate. The instant tinplate imitation lunch box is classified under subheading 7326.90.10, HTSUS.

Based on the foregoing analysis, the metal imitation lunch box is classified separately from the toy set under subheading 7326.90.10, HTSUS. The classification of the other items in NY L80711 remains unchanged.

**HOLDING:**

At GRI 1, the instant metal imitation lunch box is provided for in heading 7326, HTSUSA. It is classified under subheading 7326.90.1000, HTSUSA, as “Other articles of iron or steel: Other: Of tinplate.” The 2005 column one, general rate of duty is free.

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

**EFFECT ON OTHER RULINGS:**

NY L80711 is MODIFIED in accordance with this decision. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

HQ 966836

April 1, 2004

CLA-2 RR:CR:TE 966836 SG

CATEGORY: Classification

TARIFF NO.: 7326.90.8586

PORT DIRECTOR  
U.S. CUSTOMS SERVICE  
*LINCOLN/JUAREZ BRIDGE #2*  
*ADMINISTRATION BUILDING 2*  
*LAREDO, TX 78040*

Re: Application for Further Review of Protest No.: 2304-03-100119; Lunch Box Style Metal Container; Timplated Iron or Steel; Subheading 7326.90.1000, HTSUSA; Untimely Filing of Protest.

DEAR PORT DIRECTOR:

**FACTS:**

This is in response to the request for further review of a protest filed by Gayle Aker Rodriguez, Customhouse broker for Ross Acquisition Company doing business as Galerie au Chocolat against Customs and Border Protection's (CBP) decision to deny "liquidation at a reduced rate and a refund of duties paid" on 19 unliquidated entries cited in Supplemental Information Letter (SIL) numbered 2304-S-02-0115 dated May 21, 2002. In the SIL it was claimed that the articles imported in the cited entries were like the tin-plated containers in Headquarters Ruling (HQ) 965064, dated April 12, 2002, and that the proper classification for the containers is under subheading 7326.90.1000, HTSUSA, the provision for other articles of iron or steel, other, of timplate.

The merchandise was invoiced and entered at time of importation under subheading 7326.90.8586, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), the provision for other articles of iron or steel, other, other. Seventeen of the 19 entries were liquidated between October 11, 2002, and December 27, 2002, as "no change liquidations". One entry dated December 10, 2001, was liquidated on November 28, 2003, and one entry dated January 23, 2002, was liquidated on January 16, 2004. Protestant filed the protest and request for AFR on June 18, 2003.

As provided for in 19 U.S.C. 1514, (with certain exceptions not applicable in this matter) certain listed decisions (including the legality of all orders and findings entering into the same) of the Customs Service (now, Customs and Border Protection) are final and conclusive on all persons unless a protest is filed in accordance with section 1514, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Court of International Trade in accordance with chapter 169 of Title 28, United States Code.

Thus, a protest must be based on, or in response to, a decision made by CBP. Such decisions are: (1) the appraised value of merchandise; (2) the classification and rate and amount of duties chargeable; (3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury; (4) the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody under any provision of the customs laws, except a determination appealable under [19 U.S.C. 1337]; (5) the liquidation or reliquidation of an entry, or reconciliation as to the issues



contained therein, or any modification thereof; (6) the refusal to pay a claim for drawback; or (7) the refusal to reliquidate an entry under [19 U.S.C. 1520(c)]. 19 U.S.C. 1514.

The procedures for filing a protest of one of the above decisions are provided in 19 U.S.C. 1514(c). Section 1514(c)(3) provides that a protest of a decision, order, or finding described in section 1514(a) shall be filed with Customs **within 90 days** after but not before the notice of liquidation or reliquidation or the date of the decision as to which protest is made (if the notice of liquidation or reliquidation is inapplicable).

Customs Form 19 reflects that your office received the Protest on June 18, 2003. Pursuant to 19 CFR 174.12(f) “The date on which a protest is received by the Customs officer with whom it is required to be filed shall be deemed the date on which it is filed.” Thus, the protest was filed on June 18, 2003. Seventeen of the 19 entries subject of the protest were liquidated on or before December 27, 2002, by far more than 90 days prior to the date of protest (June 18, 2003).

Accordingly, the protest of June 18, 2003, is untimely and the relief requested for all the entries with the exception of the entry dated December 10, 2001, which was liquidated on November 28, 2003, and the entry dated January 23, 2002, which was liquidated on January 16, 2004, is denied.

Our decision on the timely protests filed against the entry dated December 10, 2001, and the entry dated January 23, 2002, follows.

#### **ISSUE:**

Does AFR number 2304–03–100119 satisfy the criteria for further review under 19 CFR §§174.24 and 174.25?

#### **LAW AND ANALYSIS:**

Section 174.24 of the Customs Regulations (19 CFR §174.24) lists the criteria for granting an AFR. It states that an AFR will be granted when the decision against which the protest was filed:

- (A) Is alleged to be inconsistent with a ruling of the Commissioner of Customs or his designee, or with a decision made at any port with respect to the same or substantially similar merchandise;
- (B) Is alleged to involve questions of law or fact which have not been ruled upon by the Commissioner of Customs or his designee or by the Customs courts;
- (C) Involves matters previously ruled upon by the Commissioner of Customs or his designee or by the Customs courts but facts are alleged or legal arguments presented which were not considered at the time of the original ruling; or
- (D) Is alleged to involve questions which the Headquarters Office, United States Customs Service, refused to consider in the form of a request for internal advice pursuant to §177.11(b)(5) of this chapter.

Additionally, Section 174.25(b)(3) of the Customs Regulations (19 CFR §174.25(b)(3) provides, in pertinent part, that an application for further review shall contain a statement of any facts or additional legal arguments,

not part of the record, upon which the protesting party relies, including the criterion set forth in §174.24 which justifies further review.

The merchandise subject of this protest consists of articles described as “tin lunch boxes”. Photographs of boxes, presumably of metal, with handles and hinged lids were submitted with the protest. The items were originally entered under subheading 7326.90.8586, HTSUSA, as other articles of iron or steel, other, other. Protestant claims that they are properly classified under subheading 7326.90.1000, HTSUSA, as other articles of iron or steel, other of tinplate. In support thereof protestant cites HQ 965063, dated April 12, 2002, wherein tinplated containers were classified under subheading 7326.90.1000, HTSUSA.

The protest concerns an issue of fact. The articles are described as “tin”. Tin is a metal classifiable in Chapter 80, HTS. “Tinplate” is defined as “thin sheet iron or steel coated with tin” (Merriam-Webster Dictionary) and as “thin steel sheet with a very thin coating of metallic tin...primarily used in can-making” (American Metal Market). No samples from the shipments were provided, nor was any information or evidence submitted to indicate or show that these containers were made of either tin or tinplate.

Under Section V of the instant Protest (“Justification of Further Review Under the Criteria in 19 CFR 174.24 and 174.25”), the protestant does not properly identify the issue and does not provide sufficient information to identify the issue and does not provide sufficient information or a sample to identify the composition of the metal. Thus no statement or evidence to substantiate that this protest involves facts or legal arguments which warrant further review by this office has been provided. Protestant has merely cited 19 CFR 174.24 as authority for further review in section III of the Protest (“Detailed Reasons for Protest and/or Further Review”). Protestant has completely failed to provide any justification for further review under the criteria set forth in 19 CFR 174.24 and 174.25 as required in Section III of the Protest.

Accordingly, we find that the protestant fails to meet the criteria of 19 CFR §174.24 and the justification requirements of 19 CFR §174.25(b)(3), and that further review of the AFR is not warranted.

#### **HOLDING:**

Protest number 2304–03–100119 does not meet the criteria for further review under 19 CFR §174.24 and 19 CFR §174.25. Accordingly, the AFR should not have been granted. We are returning the protest file to your office for appropriate action.

The protest should be in **DENIED in full**.

The protest of the denial of the SIL dated May 21, 2002, was filed on June 18, 2003, more than 90 days after all the entries, with the exception of the entry dated December 10, 2001, and the entry dated January 23, 2002, were liquidated. It is therefore untimely insofar as to those 17 entries, and the relief requested is denied.

Insofar as the protest and AFR filed against the entry dated December 10, 2001, and the entry dated January 23, 2002, is concerned, it does not meet the criteria for further review under 19 CFR §174.24 and 19 CFR §174.25, and the relief requested is denied.

In accordance with Section IV of the *Customs Protest/Petition Processing Handbook* (CIS HB, January 2002, pp. 18 and 22), you are to mail this decision, together with the Customs Form 19, to the protestant no later than

60 days from the date of this letter. Any reliquidation of the entry or entries in accordance with the decision must be accomplished prior to mailing of the decision.

No later than 60 days from the date of this letter, the Office of Regulations and Rulings will make the decision available to CBP personnel, and to the public on the CBP Home Page on the World Wide Web at [www.cbp.gov](http://www.cbp.gov), by means of the Freedom of Information Act, and by other methods of public distribution.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial Rulings Division*

HQ 965554

August 12, 2002

CLA-2 RR:CR:TE 965554 jsj

CATEGORY: Classification

TARIFF NO.: 7326.90.1000

MR. DAVID M. RICKERT  
E. BESLER & COMPANY  
P.O. Box 66361  
CHICAGO, ILLINOIS 60666-0361

Re: Revocation of HQ 961707 (Mar. 19, 1999); Lunch Box Style Metal Container; With or Without a Roughneck Thermos®; Tin-plated Iron or Steel; Set; Subheading 7326.90.1000, HTSUSA.

DEAR MR. RICKETT:

The purpose of this correspondence is to advise you that the Customs Service has reconsidered Headquarters Ruling Letter (HQ) 961707 (Mar. 19, 1999) which was issued to you as a revocation of Port Decision C85024 (Mar. 31, 1998).

Headquarters Ruling Letter 961707 classified a metal container in the shape of traditional school lunch box in subheading 4202.19.0000, HTSUSA. We have reviewed that ruling and found it to be in error. The Customs Service is reclassifying the merchandise in subheading 7326.90.1000, HTSUSA. This ruling, therefore, revokes HQ 961707.

Pursuant to section 625 (c), Tariff Act of 1930, as amended, 19 U.S.C. 1625 (c), notice of the proposed revocation of HQ 961707 was published on June 19, 2002, in the *Customs Bulletin*, Volume 36, Number 25.

**FACTS:**

The article subject to this reconsideration is a container that has the shape of a traditional school lunch box. It measures nine (9) inches in height, seven (7) inches in length and four (4) inches in width. It is composed of metal. Customs is issuing this revocation on the assumption that the article is tin-plated. No laboratory analysis has been performed to determine its precise composition.

The item has a secured top closure and a single carrying handle. It is not insulated. Customs is advised that it may be imported with or without a ten ounce "roughneck bottle" inside. No details regarding the construction of the bottle have been provided. Customs is advised that the country of manufacture is China.

**ISSUE:**

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the above-described lunch box style metal container with a handle and a latch, imported with or without a bottle ?

**LAW AND ANALYSIS:**

The federal agency responsible for initially interpreting and applying the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is the

U.S. Customs Service.<sup>1</sup> The Customs Service, in accordance with its legislative mandate, classifies imported merchandise pursuant to the General Rules of Interpretation (GRI) and the Additional U.S. Rules of Interpretation.<sup>2</sup>

General Rule of Interpretation 1 provides, in part, that classification decisions are to be “determined according to the terms of the headings and any relative section or chapter notes.” *General Rule of Interpretation 1*. General Rule of Interpretation 1 further states that merchandise which cannot be classified in accordance with the dictates of GRI 1 should be classified pursuant to the other General Rules of Interpretation, provided the HTSUSA chapter headings or notes do not require otherwise. According to the Explanatory Notes (EN), the phrase in GRI 1, “provided such headings or notes do not otherwise require,” is intended to “make it quite clear that the terms of the headings and any relative Section or Chapter Notes are paramount.” *General Rules for the Interpretation of the Harmonized System, Rule 1, Explanatory Note (V)*.

The Explanatory Notes constitute the official interpretation of the Harmonized System at the international level. See Joint Explanatory Statement *supra* note 1, at 549. The Explanatory Notes, although neither legally binding nor dispositive of classification issues, do provide commentary on the scope of each heading of the HTSUS. The EN are generally indicative of the proper interpretation of the headings. See T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989); *Lonza, Inc. v. United States*, 46 F.3d 1098, 1109 (Fed. Cir. 1995).

Commencing classification of the metal container in accordance with the dictates of GRI 1, the Customs Service examined the headings of Chapter 73, *Articles of Iron or Steel*, of the HTSUSA. Customs concludes the lunch box style container subject to this reconsideration is properly classified in heading 7326, HTSUSA, pursuant to GRI 1. Heading 7326, HTSUSA, more specifically than any other heading in the tariff schedule, describes the container.

Customs notes that heading 7326, HTSUSA, which covers “Other articles of iron or steel,” is a residual or basket provision into which merchandise of iron or steel not described by any other heading of Chapter 73 is classified. Although the classification decision arrived at by this office relies on General Rule of Interpretation 1, this determination was made by a process of elimination, only subsequent to considering all of the other headings of Chapter 73, particularly headings 7310, HTSUSA, and 7323, HTSUSA.

Heading 7310, HTSUSA, provides for “Tanks, casks, drums, cans, boxes and similar containers, for any material (other than compressed or liquefied gas), of iron or steel, of a capacity not exceeding 300 liters, whether or not lined or heat insulated, but not fitted with mechanical or thermal equip-

<sup>1</sup> See 19 U.S.C. 1500 (West 1999) (providing that the Customs Service is responsible for fixing the final appraisement, classification and amount of duty to be paid); See also Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 100–576, at 549 (1988) *reprinted in* 1988 U.S. Code Cong. and Adm. News 1547, 1582 [hereinafter Joint Explanatory Statement].

<sup>2</sup> See 19 U.S.C. 1202 (West 1999); See generally, *What Every Member of The Trade Community Should Know About: Tariff Classification*, an Informed Compliance Publication of the Customs Service available on the World Wide Web site of the Customs Service at [www.customs.gov](http://www.customs.gov), search “Importing & Exporting” and then “U.S. Customs Informed Compliance Publications.”

ment.” The EN to heading 7310, HTSUSA, Explanatory Note 73.10, provides an illustrative list of “larger containers,” as well as “smaller containers” that are properly classified in heading 7310, HTSUSA. *Explanatory Note 73.10*. The smaller containers “include boxes, cans, tins, etc.” and are “mainly used as sales packings for butter, milk, beer, preserves, fruit or fruit juices, biscuits, tea, confectionery, tobacco, cigarettes, shoe cream, medicaments, etc.” (Emphasis added) *Explanatory Note 73.10*.

Although the container subject to this reconsideration falls within the EN description of “boxes, cans, tins, etc.,” it is not “mainly used as sales packings.” *Explanatory Note 73.10*. The container in issue, although it may be used as packing for candy or other merchandise, has uses beyond sales packing. Customs will not suggest the numerous uses to which this container may be put, but is of the conclusion that this container is significantly distinct from sales packing, precluding its classification in heading 7310, HTSUSA. See generally HQ 963670 (April 12, 2002) (discussing merchandise classified in heading 7310, HTSUSA, and providing a list of precedential Customs Service ruling letters).

Heading 7323, HTSUSA, provides, in pertinent part, for the classification of “Table, kitchen or other household articles and parts thereof, of iron or steel.” The Explanatory Notes to heading 7323, HTSUSA, state that this group “comprises a wide range of iron or steel articles...used for table, kitchen or other household purposes...” *Explanatory Note 73.23*. The EN further provides an extensive list of articles considered being for kitchen, table and other household uses. See *Explanatory Note 73.23*. Kitchen articles include items “such as saucepans, steamers...; frying pans...; kettles; colanders; ... jelly or pastry moulds;...kitchen storage tins and canisters...funnels.” *Explanatory Note 73.23(A)(1)*. Articles for table use include “trays, dishes, plates...sugar basins, butter dishes...coffee pots...tea pots; cups, mugs...cruets; knife-rests;...serviette rings, table cloth clips.” *Explanatory Note 73.23(A)(2)*. Items enumerated as “other household articles” encompass articles such as “wash coppers and boilers; dustbins, buckets...watering-cans; ash-trays;...baskets for laundry, fruit, vegetables, etc.; letter-boxes...luncheon boxes.” *Explanatory Note 73.23(A)(3)*.

It is the conclusion of the Customs Service, subsequent to a review of this list, that the container subject to this reconsideration, a school lunch box, is not analogous to the articles enumerated in EN 73.23. Merchandise properly classified in heading 7323, HTSUSA, is limited in scope to table, kitchen or other household articles made of iron or steel. The container under review in this reconsideration may not reasonably be described as a table, kitchen or household article. See generally HQ 956218 (Aug. 23, 1994), New York Ruling Letter (NY) C88472 (June 24, 1998), NY 813291 (Aug. 23, 1995) and NY 808180 (Mar. 24, 1995). The container subject to this reconsideration may be used around the home, but it is not designed nor specifically intended for table, kitchen or household use, precluding classification in heading 7323, HTSUSA.

It is Customs determination that the heading that is most descriptive of the lunch box container is heading 7326, HTSUSA. Heading 7326, HTSUSA, provides very simply for “Other articles of iron or steel.” Heading 7326, HTSUSA, as previously stated is a residual provision and encompasses the classification of “all iron or steel articles...**other than** articles included in the preceding headings of this Chapter or ...more specifically covered elsewhere in the Nomenclature.” *Explanatory Note 73.26*.



Understanding that heading 7326, HTSUSA, is a residual or basket provision into which all merchandise properly classified in Chapter 73, HTSUSA, falls by default when a more descriptive heading in the chapter does not exist, the variety of iron or steel merchandise that is properly classified in heading 7326, HTSUSA, is broad. This is confirmed by a further reading of the Explanatory Notes. The Explanatory Note that corresponds to heading 7326, HTSUSA, Explanatory Note 73.26, offers an extensive listing of merchandise that is classified in heading 7326, HTSUSA.

Explanatory Note 73.26 (3) provides that heading 7326, HTSUSA, covers “Certain boxes and cases, *e.g.*, tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (see the Explanatory Note to heading 42.02); botanists’, *etc.*, collection or specimen cases, trinket boxes; cosmetic or powder boxes and cases; cigarette cases, tobacco boxes, cachou boxes, *etc.*, but **not including** containers of **heading 73.10**, household containers (**heading 73.23**), nor ornaments (**heading 83.06**.” (Emphasis added). The container subject to this reconsideration is not easily analogized to the “boxes and cases” specifically identified in the EN, but this is not necessary. The drafters of the EN, by employing the abbreviations “*e.g.*” and “*etc.*” in EN 73.26, exhibited an intent that the identified articles were only intended to be representative or illustrative.

It is the conclusion of the Customs Service that the lunch box container in issue and the articles identified by example in EN 73.26 share enough common features to warrant the classification of it in heading 7326, HTSUSA. The container in issue is essentially a metal box, the size of which according to a reading of EN 73.26 may vary significantly. The container is larger than trinket and cachou boxes, but smaller than tool boxes. It is not specially shaped nor is it internally fitted. The possible uses of the container are similar to the anticipated uses of the containers referenced in the EN. It may carry a variety of items, none of which fall into any particular category that might preclude classification in heading 7326, HTSUSA. As should be appreciated, there is no single example provided for in EN 73.26 to which Customs may point as the perfect example of a container similar to the one subject to this reconsideration. Customs has, however, demonstrated that there are a significant number of common characteristics between the container in issue and the “boxes and cases” illustrated in Explanatory Note 73.26 to warrant classification in heading 7326, HTSUSA.

Although Customs has discussed the similarities between the relevant merchandise and the items identified in the Explanatory Notes to heading 7326, HTSUSA, it is important to remember that since heading 7326, HTSUSA, is a basket or residual provision it is only necessary to determine that the Thermos® merchandise is not excluded from heading 7326, HTSUSA, nor specifically provided for elsewhere in the tariff schedule. Customs concludes that the merchandise is not precluded from classification in heading 7326, HTSUSA, nor is it specifically provided for in another tariff schedule heading.

Continuing the classification of the school lunch box style container at the subheading level, the container is classified in subheading 7326.90.1000, HTSUSA. See *generally* NY H81764 (June 19, 2001), NY F81395 (Jan. 13, 2000) and NY B80840 (Jan. 10, 1997). Subheading 7326.90.1000, HTSUSA, provides for the classification of

7326                    Other articles of iron or steel:  
 7326.90                Other:  
 7326.90.1000            Of tinplate.

The Customs Service specifically notes for the attention of the importer and the customs broker that Customs has not undertaken a laboratory analysis to confirm that the container in issue is tin-plated. Should the container not prove to be tin-plated, this would significantly impact the classification and rate of duty of this merchandise. *See* HQ 965063 (April 12, 2002) (a binding classification ruling classifying similar merchandise said to be tin-plated).

Should this container not be tin-plated, it would be classified in subheading 7326.90.8586, HTSUSA. Subheading 7326.90.8586, HTSUSA, provides for:

7326                    Other articles of iron or steel:  
 7326.90                Other:  
                                  Other:  
    Other:  
 7326.90.85                    Other,  
 7326.90.8586                    Other.

It is noted that Customs, in PD C85024 and HQ 961707, classified this item in heading 4202, HTSUSA. Heading 4202, HTSUSA, provides for the classification of:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly of mainly covered with such materials or with paper.

Customs, during the course of this reconsideration, determined that the merchandise in issue was not similar to the items designated by name in the first part of heading 4202, HTSUSA, that aspect which precedes the semicolon. It was also determined that consideration of the items listed in the second part of the heading was unnecessary because those articles must be made of specific materials and iron and steel, of which the instant merchandise is composed, are not enumerated materials. Since Customs determined that the metal container imported by Thermos® is not similar to the containers designated *eo nomine* in heading 4202, HTSUSA, Customs re-examined the headings of the HTSUSA and has concluded that the lunch box style container is properly classified in heading 7326, HTSUSA.

The Customs Service, in addition to having been requested to provide a binding classification ruling for the lunch box style container, was also requested to provide a ruling on the container when imported with the “rough-neck” bottle. Customs, in examining this question, considered whether the container and the bottle were a “set” pursuant to GRI 3.

An examination of GRI 3 becomes appropriate when goods are *prima facie* classifiable under two or more headings. The container is classified in heading 7326, HTSUSA, and although the ruling request did not provide sufficient information to classify the bottle, Customs will assume that the bottle is classifiable in a different heading.

Continuing with the application of General Rule of Interpretation 3, GRI 3(a) provides that the articles should be classified according to the heading which affords the most specific description, unless the multiple headings under consideration refer to only part of the materials or substances contained in goods that are mixed or composite, or to only part of “items in a set put up for retail sale.” The container and the bottle are not mixed or composite goods, warranting inquiry into the issue of whether they cumulatively constitute “items in a set put up for retail sale.”<sup>3</sup> *General Rule of Interpretation 3*.

The General Rules of Interpretation do not define the phrase “items in a set put up for retail sale.” The Explanatory Notes do, however, offer guidance. The precise phrase in GRI 3(a) “items in a set put up for retail sale” is not addressed in the EN. The EN do, however, address a similar phrase employed in GRI 3(b). The phrase employed in GRI 3(b) and discussed in the EN is “goods put up in sets for retail sale.” *General Rules for the Interpretation of the Harmonized System, Rule 3(b), Explanatory Note (X)*. It is the conclusion of the Customs Service that the two phrases address the same issue.

Explanatory Note (X) to GRI 3(b) provides three factors to be considered when determining whether goods have been put up in sets for retail sale. The term is taken to mean goods which:

- (a) consist of at least two different articles that are, *prima facie*, classifiable in different headings....
- (b) consist of ...articles put up together to meet a particular need or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without repacking.... [*General Rules for the Interpretation of the Harmonized System, Rule 3(b), Explanatory Note (X) (a) – (c)*].

A review of the HTSUSA and an examination of the container and the bottle establish that they are *prima facie* classifiable in different headings and are packaged in a manner suitable for sale directly to users. The issue that remains, the second of the three factors, is whether the articles as put up together “meet a particular need or carry out a specific activity.” *General Rules for the Interpretation of the Harmonized System, Rule 3(b), Explanatory Note (X)(b)*.

The Explanatory Notes do not define the phrase “meet a particular need or carry out a specific activity.” *Id.* The EN do, however, offer examples of items put up together for sale directly to the user which constitute sets. The initial example consists of “a sandwich made of beef, with or without cheese, in a bun...packaged with potato chips (French Fries)....” *General Rules for the Interpretation of the Harmonized System, Rule 3(b), Explanatory Note*

<sup>3</sup> See generally, *What Every Member of The Trade Community Should Know About: Classification of Sets Under the HTS*, an Informed Compliance Publication of the Customs Service available on the World Wide Web site of the Customs Service at [www.customs.gov](http://www.customs.gov), search “Importing & Exporting” and then “U.S. Customs Informed Compliance Publications.”

(X)(1)(a). The second example consists of items to be used together to prepare a spaghetti meal. The components include: (1) A packet of uncooked spaghetti; (2) A sachet of grated cheese; and (3) A small tin of tomato sauce, put up in a carton. *See General Rules for the Interpretation of the Harmonized System, Rule 3(b), Explanatory Note (X)(1)(b)*. The third example is a hair-dressing set. The items in this set include: (1) A pair of electric hair clippers; (2) A comb; (3) A pair of scissors; (4) A brush; (5) A towel of textile material; and (6) a leather case to store and carry the items. *See General Rules for the Interpretation of the Harmonized System, Rule 3(b), Explanatory Note (X)(2)*. The final example of a set is a drawing kit. The drawing kit includes five items put up together in a case of plastic sheeting. The items are: (1) A ruler; (2) A disc calculator; (3) A drawing compass; (4) A pencil; and (5) A pencil-sharpener, put up in a case of plastic sheeting. *See General Rules for the Interpretation of the Harmonized System, Rule 3(b), Explanatory Note (X)(3)*.

A review of each of the examples of sets in EN (X) indicates that components of sets share at least one common trait. *See HQ 953472 (Mar. 21, 1994)*. The fact that the drafters of EN (X) did not explain when goods put up together “meet a particular need or carry out a specific purpose” suggests that resolution of the issue must be determined by analogy on a case-by-case basis.

The items that comprise each example of a set in EN (X) are related to one another in such a fashion that they interact together to serve a distinct purpose or function to enable a singular result to be achieved. The items in examples one and two are used in conjunction with one another to complete a sandwich meal and prepare a spaghetti meal. The articles in example three are used together for the purpose of hair grooming and the items in example four function with one another to enable the user to draw.

The Explanatory Notes, in addition to offering examples of items that constitute sets, also provides examples of collections of articles which do not function with one another to the degree necessary to establish a set. The initial accumulation of items in EN (X) consists of a can of shrimp, a can of *pate de foie*, a can of cheese, a can of sliced bacon and a can of cocktail sausages. *See General Rules for the Interpretation of the Harmonized System, Rule 3(b), Explanatory Note (X)(1)*. The second example includes a bottle of spirits and a bottle of wine. *See id.* The items in the first example, although related to one another and usable together, do not “interact with one another so as to comprise a single dish.” *HQ 953472 supra*. It was concluded in *HQ 953472* that the wine and spirits example did not constitute a set because the items would not be used together for the mixing of a single drink nor be suitable for serving together on a particular occasion.<sup>4</sup> *See HQ 953472 Id.*

The issue in the instant ruling is whether the container has a nexus with the bottle such that both are intended to be used together or in conjunction with one another to meet a particular need or carry out a specific activity. It is the conclusion of the Customs Service that the metal container and the bottle will be used together or in conjunction with one another to meet a particular need or carry out a specific activity. The container provides a means of packing and transporting food and snacks and will be used with the

<sup>4</sup> It should be noted that the Explanatory Notes of the Harmonized Commodity Description and Coding System are an international document that employs words, phrases and understandings which are intended to have a universal international meaning that may be different from the domestic meaning or understanding of a particular member-country or member-countries of the World Customs Organization.

bottle that will enable the user to store and transport a beverage. Customs understands that the food and beverage will be enjoyed at the same time and the container accompanied by the bottle facilitates this enjoyment. The container and the bottle function together to further a specific activity, the storage, transportation and enjoyment of food and beverage. They are a “set” pursuant to General Rule of Interpretation 3(b). See *Generally* HQ 088134 (Sept. 22, 1989) and HQ 959305 (Sept. 20, 1996).

General rule of interpretation 3(b) additionally provides that goods put up in sets for retail sale shall be classified as if they consisted of that component of the set that gives the set its “essential character.” The General Rules of Interpretation do not define the phrase “essential character,” but the Explanatory Notes offer a non-exhaustive list of factors which may be considered. The factors include: (1) The nature of the component; (2) Its bulk; (3) Its quantity; (4) Its weight; (5) Its value; and (6) The role of the component in relation to the use of the goods. See *General Rules for the Interpretation of the Harmonized System, Rule 3(b), Explanatory Note (VIII)*. Explanatory Note (VIII) to GRI 3(b) specifically states that the essential character of a set will “vary between different kinds of goods.” *Id.*

It is the conclusion of Customs that the lunch box style container provides the set with its essential character. The role of the lunch box is more fundamental to the set than the bottle. The container enables both the food items stored in the container and the beverage stored in the bottle to be transported. The role of the lunch box container, as previously stated in HQ 961707, is paramount to the overall use of both the container and the bottle.

**HOLDING:**

Headquarters Ruling Letter 961707 is hereby revoked.

The tin-plated container with a hinge and a handle in the shape of a school lunch box, when imported separately, is classified in subheading 7326.90.1000, Harmonized Tariff Schedule of the United States Annotated.

The tin-plated container with a hinge and a handle in the shape of a school lunch box, when imported with the roughneck bottle, is classified as a set pursuant to General Rule of Interpretation 3(b).

The container provides the set with its essential character and the container and bottle set is classified in subheading 7326.90.1000, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty for merchandise classified in subheading 7326.90.1000, HTSUSA, is FREE.

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

*Sincerely,*

MYLES B. HARMON,  
Acting Director  
Commercial Rulings Division

HQ 963339

April 19, 2002

CLA-2 RR:CR:TE 963339 SG

CATEGORY: Classification

TARIFF NO.: 7326.90.1000

PORT DIRECTOR  
U.S. CUSTOMS SERVICE  
400 MICHIGAN AVENUE  
DETROIT, MICHIGAN 48226

Re: Application for Further Review of Protest No.: 3501-99-00028 Lunch Box Style Metal Container; Tinpated Iron or Steel; Subheading 7326.90.1000, HTSUS.

DEAR PORT DIRECTOR:

This is in response to the request for further review of a protest timely filed by Schylling Associates, Inc., against your decision on the proper classification of a lunch box style metal container. The item was originally entered under subheading 9503.90.0045, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), the provision for other toys, and was liquidated under subheading 4202.19.0000, HTSUSA, the provision for trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers, other. The protester contends that the proper classification for the lunch box is under subheading 7326.90.1000, HTSUSA, the provision for other articles of iron or steel, other, of tinplate. Our decision follows.

**FACTS:**

The article at issue is identified on the invoice as "Curious George Tin Box with Red Handle PMS 485C". The UPC number on the sample submitted with the application for further review is 19649 20275. The sample submitted is a container in the shape of traditional school lunch box manufactured wholly of tinplated steel. The metal container measures seven and one-half (7 1/2) inches in width, six (6) inches in height and three and three-eighths (3 3/8) inches in depth. It has a flat plastic handle that is attached to the top of the container and swivels from side to side. One of the sides of the containers opens outward by means of three loop-style hinges on the bottom. The opening secures closed through the use of a metal clasp on the top. The outside of the container has a Kermit the Frog motif. Customs is advised that the container will be imported empty.

The container is made of tinplated steel; however, it is not constructed for long-term or rigorous use. The handle, hinges, and the metal clasp are not designed or constructed for significant wear.

**ISSUE:**

Is the merchandise properly classifiable in subheading 4202.19.0000, HTSUSA, or in subheading 7326.90.1000, HTSUSA?

**LAW AND ANALYSIS:**

The federal agency responsible for initially interpreting and applying the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is the



U.S. Customs Service.<sup>1</sup> The Customs Service, in accordance with its legislative mandate, classifies imported merchandise pursuant to the General Rules of Interpretation (GRI) and the Additional U.S. Rules of Interpretation.<sup>2</sup>

General Rule of Interpretation 1 provides, in part, that classification decisions are to be “determined according to the terms of the headings and any relative section or chapter notes.” *General Rule of Interpretation 1*. General Rule of Interpretation 1 further states that merchandise which cannot be classified in accordance with the dictates of GRI 1 should be classified pursuant to the other General Rules of Interpretation, provided the HTSUSA chapter headings or notes do not require otherwise. According to the Explanatory Notes (EN), the phrase in GRI 1, “provided such headings or notes do not otherwise require,” is intended to “make it quite clear that the terms of the headings and any relative Section or Chapter Notes are paramount.” *General Rules for the Interpretation of the Harmonized System, Rule 1, Explanatory Note (V)*.

The Explanatory Notes constitute the official interpretation of the Harmonized System at the international level. See Joint Explanatory Statement *supra* note 1, at 549. The Explanatory Notes, although neither legally binding nor dispositive of classification issues, do provide commentary on the scope of each heading of the HTSUS. The EN’s are generally indicative of the proper interpretation of the headings. See T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989); *Lonza, Inc. v. United States*, 46 F.3d 1098, 1109 (Fed. Cir. 1995).

Commencing classification of the traditional school lunch box shaped container in accordance with the dictates of GRI 1, the Customs Service examined the headings of Chapter 73, *Articles of Iron or Steel*, of the HTSUSA. Customs concludes that all of the containers subject to this protest are properly classified in heading 7326, HTSUSA, pursuant to GRI 1. Heading 7326, HTSUSA, more specifically than any other heading in the tariff schedule, describes the containers.

Customs notes that heading 7326, HTSUSA, is a residual or basket provision into which merchandise of iron or steel not described by any other heading of Chapter 73 is classified. Although the classification decision arrived at by this office relies on General Rule of Interpretation 1, this determination was made by a process of elimination, only subsequent to considering all of the headings of Chapter 73, particularly headings 7310, HTSUSA, and 7323, HTSUSA.

Heading 7310, HTSUSA, provides for “Tanks, casks, drums, cans, boxes and similar containers, for any material (other than compressed or liquefied gas), of iron or steel, of a capacity not exceeding 300 liters, whether or not lined or heat insulated, but not fitted with mechanical or thermal equip-

<sup>1</sup> See 19 U.S.C. 1500 (West 1999) (providing that the Customs Service is responsible for fixing the final appraisement, classification and amount of duty to be paid); See also Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 100–576, at 549 (1988) *reprinted in* 1988 U.S. Code Cong. and Adm. News 1547, 1582 [hereinafter Joint Explanatory Statement].

<sup>2</sup> See 19 U.S.C. 1202 (West 1999); See generally, *What Every Member of The Trade Community Should Know About: Tariff Classification*, an Informed Compliance Publication of the Customs Service available on the World Wide Web site of the Customs Service at [www.customs.gov](http://www.customs.gov), search “Importing & Exporting” and then “U.S. Customs Informed Compliance Publications.”

ment.” The EN to heading 7310, HTSUSA, Explanatory Note 73.10, provides an illustrative list of “larger containers,” as well as “smaller containers” that are properly classified in heading 7310, HTSUSA. *Explanatory Note 73.10*. The smaller containers “include boxes, cans, tins, etc.” and are “mainly used as sales packings for butter, milk, beer, preserves, fruit or fruit juices, biscuits, tea, confectionery, tobacco, cigarettes, shoe cream, medicaments, etc.” *Explanatory Note 73.10*.

Although the container subject to this protest falls within the EN description of “boxes, cans, tins, etc.,” they are not “mainly used as sales packings.” *Explanatory Note 73.10*. See generally HQ 963670 (April 12, 2002) (discussing merchandise classified in heading 7310, HTSUSA, and providing a list of precedential Customs Service ruling letters).

Heading 7323, HTSUSA, provides, in pertinent part, for the classification of “Table, kitchen or other household articles and parts thereof, of iron or steel.” The Explanatory Notes to heading 7323, HTSUSA, state that this heading “comprises a wide range of iron or steel articles...used for table, kitchen or other household purposes.” *Explanatory Note 73.23*. The EN further provides an extensive list of articles considered being for kitchen, table and other household uses. See *Explanatory Note 73.23*. Kitchen articles include items “such as saucepans, steamers...; frying pans...; kettles; colanders; ...jelly and pastry moulds;...kitchen storage tins and canisters...funnels.” *Explanatory Note 73.23(A)(1)*. Articles for table use include “trays, dishes, plates...sugar basins, butter dishes...coffee pots...tea pots; cups, mugs...cruets; knife rests;...serviette rings, table cloth clips.” *Explanatory Note 73.23(A)(2)*. Items enumerated as “other household articles” encompass articles such as “wash coppers and boilers; dustbins, buckets...watering cans; ash-trays;...baskets for laundry, fruit vegetables, etc.; letter-boxes...luncheon boxes.” *Explanatory Note 73.23(A)(1)*.

It is the conclusion of the Customs Service, subsequent to a review of this list, that the container subject to this protest is not analogous. Merchandise properly classified in heading 7323, HTSUSA, is limited in scope to table, kitchen or other household articles made of iron or steel. The container under review in this protest may not reasonably be described as table, kitchen or household articles. See generally HQ 956218 (Aug. 23, 1994), NY C88472 (June 24, 1998), NY 813291 (Aug. 23, 1995) and NY 808180 (Mar. 24, 1995).

The container subject to classification consideration in this protest may be used in the kitchen or around the home, but it is not designed nor specifically intended for kitchen or household use. Customs also concludes that it is not table articles.

It is Customs determination that the heading that is most descriptive of the lunch box style container is heading 7326, HTSUSA. Heading 7326, HTSUSA, provides very simply for “Other articles of iron or steel.” Heading 7326, HTSUSA, as previously stated is a residual provision and encompasses the classification of “all articles of iron or steel...**other than** articles included in the preceding headings of this Chapter or ...more specifically covered elsewhere in the Nomenclature.” *Explanatory Note 73.26*.

Understanding that heading 7326, HTSUSA, is a residual or basket provision into which all merchandise properly classified in Chapter 73, HTSUSA, falls by default when a more descriptive heading in the chapter does not exist, the variety of iron or steel merchandise that is properly classified in heading 7326, HTSUSA, is broad. This is confirmed by a further reading of the Explanatory Notes. The Explanatory Note that correspond to heading

7326, HTSUSA, Explanatory Note 73.26, offers an extensive listing of merchandise that is classified in heading 7326, HTSUSA.

Explanatory Note 73.26 (3) provides that heading 7326, HTSUSA, covers “Certain boxes and cases, *e.g.*, tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (see the Explanatory Note to heading 42.02); botanists’, *etc.*, collection or specimen cases, trinket boxes; cosmetic or powder boxes and cases; cigarette cases, tobacco boxes, cachou boxes, *etc.* but **not including** containers of **heading 73.10**, household containers (**heading 73.23**), nor ornaments (**heading 83.06**). (Emphasis added). The container subject to this protest is not easily analogous to the “boxes and cases” specifically identified in the EN, but this is not necessary. The drafters of the EN’s, by employing the phrases “*e.g.*” and “*etc.*” in EN 73.26, exhibited an intent that the identified articles were only intended to be representative or illustrative.

It is the conclusion of the Customs Service that the container in issue and the articles identified by example in EN 73.26 share enough common features to warrant the classification of the container in heading 7326, HTSUSA. The container in issue is essentially a steel box, the size of which according to a reading of EN 73.26 may vary significantly. The container is larger than trinket and cachou boxes, smaller than tool boxes. It is not specially shaped nor internally fitted. The possible uses of the container are similar to the anticipated uses of the containers referenced in the EN. It may carry a variety of items, none of which fall into any particular category that might preclude classification of the container in heading 7326, HTSUSA. As should be appreciated, there is no single example provided for in EN 73.26 to which Customs may point as the perfect example of a container similar to that subject to this protest. Customs has, however, demonstrated that there are a significant number of common characteristics between the container in issue and the “boxes and cases” illustrated in Explanatory Note 73.26 to warrant classification in heading 7326, HTSUSA.

Although Customs has discussed the similarities between the relevant merchandise and the items identified in the Explanatory Notes to heading 7326, HTSUSA, it is important to remember that since heading 7326, HTSUSA, is a basket or residual provision it is only necessary to determine that the merchandise subject to this protest is not excluded from heading 7326, HTSUSA, nor specifically provided for elsewhere in the tariff schedule. Customs concludes that the merchandise is not precluded from classification in heading 7326, HTSUSA, nor is it specifically provided for in another tariff schedule heading.

Continuing the classification of the traditional school lunch box shaped containers at the subheading level, the container is classified in subheading 7326.90.1000, HTSUSA. *See generally* NY H81764 (June 19, 2001), NY F81395 (Jan. 13, 2000) and NY B80840 (Jan. 10, 1997). Subheading 7326.90.1000, HTSUSA, provides for the classification of

|              |                                  |
|--------------|----------------------------------|
| 7326         | Other articles of iron or steel: |
| 7326.90      | Other:                           |
| 7326.90.1000 | Of tinplate.                     |

The Customs Service specifically notes that it has not undertaken a laboratory analysis to confirm that the containers in issue are tinplated. Should the containers not prove to be tinplated, this would significantly impact the

classification and rate of duty of this merchandise and, additionally, bear negatively on the importer's obligation to use reasonable care in the classification, value and entry of its merchandise.

Although not raised as an issue in this protest, substantially similar merchandise is frequently imported with edibles. Headquarters Ruling Letter 963670 addressed the classification of the containers and the edibles when imported together. *Supra*.

It is noted that Customs liquidated the entries in subheading 4202.19.0000, HTSUSA. Heading 4202, HTSUSA, provides for the classification of:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly of mainly covered with such materials or with paper.

Customs, during the course of this administrative review, determined that the merchandise in issue was not similar to the items designated by name in the first part of heading 4202, HTSUSA, that aspect which precedes the semi-colon. It was also determined that consideration of the items listed in the second part of the heading was unnecessary because those articles must be made of specific materials and iron and steel, of which the containers are composed, are not enumerated materials. Since Customs determined that the metal container here is not similar to the containers designated *eo nomine* in heading 4202, HTSUSA, Customs re-examined the headings of the HTSUSA and has concluded that the merchandise is properly classified in heading 7326, HTSUSA.

The Customs Service is aware of HQ 964234 (April 23, 2001), HQ 961707 (Mar. 19, 1999) and PD C85024 (Mar. 31, 1998) classifying similar metal containers in Chapter 42, HTSUSA. Customs is re-examining the classification of this merchandise and considering whether this merchandise should be classified in heading 7326, HTSUSA, of Chapter 73. If a decision is made to re-classify the merchandise addressed in the identified ruling letters, the Customs Service will proceed in accordance with 19 U.S.C. 1625 (c).

#### **HOLDING:**

The Protest is ALLOWED.

The traditional school lunch box shaped container is properly classified in subheading 7326.90.1000, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty is FREE.

In accordance with Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, section 3 A. (11) (b), you are to mail this decision and the Protest (Customs Form 19) to the Protestant no later than 60 days from the date of this letter. Any reliquidation of the entry or entries in accordance with this decision must be accomplished prior to mailing the decision.

The Office of Regulations & Rulings will make this decision available to Customs personnel and to the public on the Customs Service Home Page on the World Wide Web, [www.customs.gov](http://www.customs.gov), by means of the Freedom of Information Act and by other methods of public distribution sixty days from the date of this decision and by other methods of public distribution sixty days from the date of this decision.

*Sincerely,*

JOHN DURANT,

*Director*

*Commercial Rulings Division*

HQ 965063

April 12, 2002

CLA-2 RR:CR:TE 965063 jsj

CATEGORY: Classification

Tariff No.: 7326.90.1000

MS. JENNIFER SCOTT  
EXPEDITORS INTERNATIONAL OF WASHINGTON, INC.  
COMPLIANCE MANAGER  
21318 64TH AVENUE SO.  
KENT, WASHINGTON 98032

Re: Tin-plated Steel Containers With Handles and Latches; Subheading 7326.90.1000, HTSUSA; HQ 963539 (April 12, 2002) Incorporated by Reference.

DEAR MS. SCOTT:

The purpose of this correspondence is to respond to your request of May 9, 2001, directed to the National Commodity Specialist Division of the U.S. Customs Service. The correspondence in issue requested a binding classification ruling on behalf of Rix Products, LLC of five "tinplated holders." New York Ruling Letter H81177 (May 22, 2001) classified one of the items. This ruling letter will address the classification of the four remaining articles.

This ruling letter is being issued subsequent to the following: (1) A review of your submission dated May 9, 2001; and (2) An examination of the four samples.

**FACTS:**

The articles submitted for classification consideration are containers composed of tin-plated, sheet steel. Samples One, Three and Four are painted. Sample Two is not painted. Each of the containers has a handle and a latch.

Sample One is a round container with a flat bottom, identified as item number: 111088. The bottom enables the container to rest upright. Sample One measures six (6) inches in height and three (3) inches in depth. It is six and three-sixteenth ( $6 \frac{3}{16}$ ) inches in diameter. It has a plastic handle that is three and three-eighths ( $3 \frac{3}{8}$ ) inches long. The handle swivels from the right side of the container to the left side, as opposed to front to back. The container has a single loop-style hinge on the bottom of one side that enables the side to be opened. It has a metal latch on the top that secures the container closed. It is not internally fitted and has no container for a beverage.

The first sample is described by the customs broker as a "round storage box." It is presented to this office painted on the exterior and interior with depictions of the cartoon character "Lisa" from the cartoon "The Simpsons."

Sample Two is a rectangular container with no style or identification number. Sample Two measures eleven and three-fourths ( $11 \frac{3}{4}$ ) inches in width, eight (8) inches in height and three and one-half ( $3 \frac{1}{2}$ ) inches in depth. It has a plastic handle that is four and seven-eighths ( $4 \frac{7}{8}$ ) inches long. The handle swivels from the right side of the container to the left side. The container has a single five and one-half ( $5 \frac{1}{2}$ ) inch long loop-style hinge on the bottom of one side that enables the side to be opened. It has a metal latch on the top that secures the container closed. It is not internally fitted and has no container for a beverage.



The second sample is described by the customs broker as a “large tinplated container.” It is presented to this office with a shiny, unpainted exterior and interior.

Sample Three has the shape and characteristics of a traditional school lunch box, only smaller. It is seven and five-eighths (7 5/8) inches in width, six (6) inches in height and three and three-eighths (3 3/8) inches in depth. It has a plastic handle that is approximately four (4) inches long. The handle swivels from front to back. The container has three loop-style hinges on the bottom of one side that enables the side to be opened. It has a metal latch on the top that secures the container closed. It is not internally fitted and has no container for a beverage. Sample three does not have a style or identification number.

The third sample is described by the customs broker as a “small tinplated holder.” It is presented to this office painted on the exterior and interior with depictions of the cartoon character “Batman.” The broker specifically states that the item is “not of a shape or size to hold or accommodate a lunch, drink or any type of thermos....”

Sample Four is essentially a square container, identified as item number: 2520. It measures seven (7) inches in width, six and one-half (6 ½) in height and six (6) inches in depth. It has a plastic handle that is approximately four (4) inches long. The handle swivels from front to back. This container, unlike the other samples, does not open on its side, but rather, opens from the top. The container has three loop-style hinges on the top aspect of the back side that enables the top to be opened. The metal latch, similar in style to the latches on the other samples, is partially attached to the top, front side of the container and partially attached to the lid or top of the container. It is not internally fitted and has no container for a beverage.

The fourth sample is described by the customs broker as “an odd shaped tin plated holder.” It is presented to this office with cartoon characters decorating the exterior. The interior is in its natural, unfinished state. The broker specifically states that the item is “not of a shape or size to hold or accommodate a thermos or a drink” and is of a size “such that it would not fit in a carrier or backpack.”

The samples one, three and four have labeling on the bottom that provide information regarding their origin and trademark rights. The labeling on sample one additionally notes that the item is “NOT RECOMMENDED FOR CHILDREN 3 YEARS OF AGE AND UNDER.” The labeling on samples three and four additionally note that they are for “Ages 3 & up” and “Ages 4 & up,” respectively.

The containers, as previously indicated, are made of tin-plated steel. They are not, however, constructed for long-term or rigorous use. The handle hinges and the metal clasps are not designed or constructed for significant wear.

The containers are marked as products of China.

## **ISSUE:**

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the tin-plated, sheet steel containers with handles and latches of the above-described dimensions?

## LAW AND ANALYSIS

The Customs Service in Headquarters Ruling Letter 963539 (April 12, 2002) classified a substantially similar container in subheading 7326.90.1000, HTSUSA.

Subheading 7326.90.1000, HTSUSA, provides for:

|              |                                  |
|--------------|----------------------------------|
| 7326         | Other articles of iron or steel: |
| 7326.90      | Other:                           |
| 7326.90.1000 | Of tinplate.                     |

The legal reasoning and analysis employed in HQ 963539 is adopted by reference. Headquarters Ruling Letter 963539 is attached to and made a part of this ruling letter.

The containers to be imported by Rix Products, LLC should be classified in subheading 7326.90.1000, HTSUSA, pursuant to the analysis provided in HQ 963539.

The Customs Service specifically notes for the attention of the importer and the customs broker that Customs has not undertaken a laboratory analysis to confirm that the containers in issue are tin-plated. Customs has relied on the express statements of the customs broker in the submission dated May 9, 2001. Should the containers not prove to be tin-plated, this would significantly impact the classification and rate of duty of this merchandise and, additionally, bear negatively on the importer's obligation to use reasonable care in the classification, value and entry of its merchandise.

The Customs Service is aware of HQ 964234 (April 23, 2001), HQ 961707 (Mar. 19, 1999) and PD C85024 (Mar. 31, 1998) classifying similar metal containers in Chapter 42, HTSUSA. Customs is re-examining the classification of this merchandise and considering whether this merchandise should be classified in heading 7326, HTSUSA, of Chapter 73. If a decision is made to re-classify the merchandise addressed in the identified ruling letters, the Customs Service will proceed in accordance with 19 U.S.C. 1625 (c).

## HOLDING

The containers to be imported by Rix Products, LLC are classified in subheading 7326.90.1000, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty is FREE.

The legal reasoning and analysis of Headquarters Ruling Letter 963539 (April 12, 2002) is adopted by reference. Headquarters Ruling Letter 963539 is attached to and made a part of this ruling letter.

*Sincerely,*

JOHN DURANT,

*Director*

*Commercial Rulings Division*

HQ 963647

April 12, 2002

LA-2 RR:CR:TE 963647 jsj

CATEGORY: Classification

TARIFF NO.: 7326.90.1000 7326.90.8586

Ms. JENNIFER SCOTT  
EXPEDITORS INTERNATIONAL OF WASHINGTON, INC.  
21318 64TH AVENUE, SOUTH  
KENT, WASHINGTON 98032

Re: Metal Containers with Hinges and Handles; Tin-plated Iron or Steel; Subheadings 7326.90.1000 and 7326.90.8586 HTSUSA; HQ 965063; HQ 963539 (April 12, 2002) Incorporated by Reference.

DEAR Ms. SCOTT:

The purpose of this correspondence is to respond to your request dated December 21, 1999, and received by the Customs Service, Customs Information Exchange on January 11, 2000. The correspondence in issue requested a binding classification ruling of five metal containers on the behalf of Rix Products, L.L.C.

New York Ruling Letter F81219 (Jan. 13, 2000) classified two of the items. This ruling letter will address the classification of the three remaining containers.

This ruling is being issued subsequent to the following: (1) A review of your submission dated December 21, 1999; and (2) An examination of the sample containers not classified in NY F81219.

**FACTS:**

The articles submitted for classification consideration are steel painted containers of varying sizes. The containers have hinges and handles.

Sample One is described by the customs broker as a "storage nesting box." It is presented to this office painted on the exterior and interior with depictions of the cartoon character "Batman." It is identified as item number: 107784.

The first sample has the shape and characteristics of a traditional school lunch box, only smaller. It is seven and five-eighths (7 5/8) inches in width, six (6) inches in height and three and three-eighths (3 3/8) inches in depth. It has a plastic handle that is approximately four (4) inches long. The handle swivels from the right side of the container to the left side, as opposed to front to back. The container has two loop-style hinges on the bottom of one side that enables the side to be opened outward. It has a metal latch on the top that secures the container closed. It is not internally fitted and has no container for a beverage.

Sample Two is described by the customs broker as a "round storage box." It is presented to this office painted on the exterior and interior with depictions of the cartoon character "Scooby-Doo." The face of the character "Scooby-Doo" is impressed in the sheet steel on the side of the container that opens. It is identified as item number: 108590.

The second sample is a round container with a flat bottom. The flat bottom enables the container to rest up right. Sample two measures six (6) inches in height and three (3) inches in depth. It is six and three-sixteenth (6 3/16) inches in diameter. It has a plastic handle that is approximately four (4) inches long. The handle swivels from the front side of the container to the

back. The container has two loop-style hinges on the bottom of one side that enables the side to be opened. It has a metal latch on the top that secures the container closed. It is not internally fitted and has no container for a beverage.

Sample Three is described by the customs broker as a “large rectangular box.” It is presented to this office painted on the exterior and interior with depictions of the cartoon character “Tasmanian Devil.” It is identified as item number: 108675.

The third sample is a rectangular container. Sample three measures eleven and three-fourths (11  $\frac{3}{4}$ ) inches in width, eight (8) inches in height and three and one-half (3  $\frac{1}{2}$ ) inches in depth. It has a plastic handle that is four and seven-eighths (4  $\frac{7}{8}$ ) inches long. The handle swivels from the right side of the container to the left side. The container has a single five and one-half (5  $\frac{1}{2}$ ) inch long loop-style hinge on the bottom of one side that enables the side to be opened. It has a single metal latch on the top that secures the container closed. It is not internally fitted and has no container for a beverage.

The samples have labeling on the bottom that provides information regarding their origin and trademark rights. The labeling additionally notes that the items are “NOT RECOMMENDED FOR CHILDREN 3 YEARS OF AGE AND UNDER.”

The containers, according to Customs understanding, are made of tin-plated steel. They are not, however, constructed for long-term or rigorous use. The handle hinges and the metal clasps are not designed or constructed for significant wear.

The sample containers are all marked as products of China.

#### **ISSUE:**

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the painted, tin-plated, steel containers with handles and latches of the above-described dimensions ?

#### **LAW AND ANALYSIS:**

The Customs Service in Headquarters Ruling Letter 963539 (April 12, 2002) classified substantially similar containers in subheading 7326.90.1000, HTSUSA.

Subheading 7326.90.1000, HTSUSA, provides for:

|              |                                  |
|--------------|----------------------------------|
| 7326         | Other articles of iron or steel: |
| 7326.90      | Other:                           |
| 7326.90.1000 | Of tinplate.                     |

The legal reasoning and analysis employed in HQ 963539 is adopted by reference. Headquarters Ruling Letter 963539 is attached to and made a part of this ruling letter.

The Customs Service notes that although sample three is significantly larger than the other samples in this ruling request and in HQ 963539, it is not very durable and, therefore, not classified in heading 4202, HTSUSA. The items designated *eo nomine* in heading 4202, HTSUSA, are:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food

or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly of mainly covered with such materials or with paper.

The Tasmanian Devil container, while possessing a shape and size similar to suitcases and briefcases listed in heading 4202, HTSUSA, lacks other important characteristics. Customs has determined that sample three, particularly because it is not durable nor intended to organize, store, protect and carry personal effects, is not *ejusdem generis*, or of the same kind, with the containers identified *eo nomine*, that is by name, in heading 4202, HTSUSA. See *Totes v. United States*, 865 F. Supp. 867 (Ct. Int'l Trade 1994).

The metal containers with hinges and handles, identified by Rix Products, L.L.C. as the "storage nesting box," "round storage box" and "large rectangular box," are classified in subheading 7326.90.1000, HTSUSA, pursuant to the analysis provided in HQ 963539.

The Customs Service specifically notes for the attention of the importer and the customs broker that Customs has not undertaken a laboratory analysis to confirm that the containers in issue are tin-plated. Should the containers not prove to be tin-plated, this would significantly impact the classification and rate of duty of this merchandise and, additionally, bear negatively on the importer's obligation to use reasonable care in the classification, value and entry of its merchandise. See HQ 965063 (April 12, 2002) (a binding classification ruling issued to Expeditors International of Washington, Inc. as the customs house broker of Rix Products, L.L.C. classifying similar merchandise advised to be tin-plated).

Should these containers not be tin-plated, they would be classified in subheading 7326.90.8586, HTSUSA. Subheading 7326.90.8596, HTSUSA, provides for:

|              |                                  |
|--------------|----------------------------------|
| 7326         | Other articles of iron or steel: |
| 7326.90      | Other:                           |
|              | Other:                           |
|              | Other:                           |
| 7326.90.85   | Other,                           |
| 7326.90.8586 | Other.                           |

The Customs Service is aware of HQ 964234 (April 23, 2001), HQ 961707 (Mar. 19, 1999) and PD C85024 (Mar. 31, 1998) classifying similar metal containers in Chapter 42, HTSUSA. Customs is re-examining the classification of this merchandise and considering whether this merchandise should be classified in heading 7326, HTSUSA, of Chapter 73. If a decision is made to re-classify the merchandise addressed in the identified ruling letters, the Customs Service will proceed in accordance with 19 U.S.C. 1625 (c).

**HOLDING:**

The tin-plated steel containers with hinges and handles, identified by Rix Products, L.L.C. as a “storage nesting box,” a “round storage box” and a “large rectangular box,” are classified in subheading 7326.90.1000, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty is FREE.

The legal reasoning and analysis of Headquarters Ruling Letter 963539 (April 12, 2002) is adopted by reference. Headquarters Ruling Letter 963539 is attached to and made a part of this ruling letter.

*Sincerely,*

JOHN DURANT,

*Director*

*Commercial Rulings Division*

NY H88277

April 26, 2002

CLA-2-73:RR:NC:N1:113 H88277

CATEGORY: Classification

TARIFF NO.: 7326.90.1000

MR. MICHAEL R. DORMAN  
CRESKOFF & DORMAN  
1028 NORTH LAKE AVENUE, SUITE 202  
PASADENA, CA 91104

RE: The tariff classification of a lunch box from China.

DEAR MR. DORMAN:

In your letter dated February 21, 2002, you requested a ruling on behalf of NECA, Inc. on tariff classification.

The sample you provided is a set consisting of a lunch box with an insulated beverage container. It is 21 cm. in length, 17cm in height and 9.7 cm. in width. The lunch box is made of tinfoil and has a plastic handle. The sample is decorated with a Star Trek theme, but you intend to import others with various television and movie themes. The insulated container has a metal shell with a plastic chamber. It is not a vacuum vessel.

The applicable subheading for this product will be 7326.90.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of iron or steel, other, of tinfoil. The general rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist James Smyth at 646-733-3018.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*



N150496

March 18, 2011

CLA-2-73:OT:RR:NC:N1:113

CATEGORY: Classification

TARIFF NO.: 7326.90.8588

MR. RAYMOND HASSON  
CORBETT INTERNATIONAL, INC.  
ONE CROSS ISLAND PLAZA  
SUITE 203F  
ROSEDALE, NY 11422

RE: The tariff classification of a lunch box from Taiwan

DEAR MR. HASSON:

In your letter dated February 24, 2011, you requested a tariff classification ruling. The sample which you submitted is being returned to you as requested.

The sample which you submitted is identified as a lunch box. It measures approximately 7¾ inches in length by 6 inches in height and 2¾ inches deep. In your email message sent to our office on March 8, 2011, you stated that the lunch box is comprised of 99 percent iron. The lunch box is painted blue and contains blue and white pinstripes. It has a plastic handle and a metal hinge latch. The lunch box features the NY Yankee™ logo on the front and on the back the lunch box.

The applicable subheading for the lunch box will be 7326.90.8588, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of iron or steel, other, other, other, other, other. The rate of duty will be 2.9 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Ann Taub at (646) 733-3018.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

N104149

May 20, 2010

CLA-2-73:OT:RR:NC:N1:113

CATEGORY: Classification

TARIFF NO.: 7326.90.1000

Ms. JENNIFER A. METAYER  
SUI INTERNATIONAL, LTD.  
380 HURRICANE LANE, SUITE 201  
WILLISTON, VT 05495

RE: The tariff classification of a lunch box from China

DEAR Ms. METAYER:

In your letter dated April 30, 2010, you requested a tariff classification ruling.

The sample which you submitted is a lunch box. It measures approximately 20.2 centimeters in length by 17.2 centimeters in height and 10.2 centimeters in width. In a telephone conversation with our office on May 19, 2010, you stated that the lunch box is made of painted, tin-plated steel and has a plastic handle. The subject lunch box features an illustration of a skeleton wearing a helmet on roller skates. The word "Rollerbones®" is printed beneath the skeleton.

The applicable subheading for the lunch box will be 7326.90.1000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of iron or steel, other, of tinplate. The rate of duty will be free.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Ann Taub at (646) 733-3018.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

NY I82546

June 7, 2002

CLA-2-73:RR:NC:N1:113 I82546

CATEGORY: Classification

TARIFF NO.: 7326.90.3500

MR. KEN AUGUST  
EASTER UNLIMITED, INC.  
80 VOICE ROAD  
CARLE PLACE, 11514

RE: The tariff classification of a lunch box from China.

DEAR MR. AUGUST:

In your letter dated May 14, 2002, you requested a ruling on tariff classification.

The sample you provided is item 3352, an Easter Lunch Box. The box is made of sheet steel, and measures 18 cm. x 7.6 cm x 13.5 cm. It has a hinged lid and a plastic handle. The box is decorated with bunnies playing baseball and chicks hatching from Easter eggs.

The applicable subheading for this product will be 7326.90.3500, Harmonized Tariff Schedule of the United States (HTS), which provides for articles of iron or steel, other, other, containers of a kind normally carried on the person, in the pocket or in the handbag. The general rate of duty will be 7.8 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist James Smyth at 646-733-3018.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

HQ 963670

April 12, 2002

CLA-2 RR:CR:TE 963670 jsj

CATEGORY: Classification

TARIFF NO.: 7326.90.1000 1704.10.0000

MS. CINDY HAZLETT, CHB  
ASSISTANT MANAGER, CUSTOMS  
INTERNATIONAL TRADE AND LOGISTICS APPLAUSE, INC.  
6101 VARIEL AVENUE  
WOODLAND HILLS, CALIFORNIA 91367

Re: "Candy Carry All"; Metal Container; Subheading 7326.90.1000, HTSUSA; HQ 963539 (April 12, 2002) Incorporated by Reference; Chewing Gum; Subheading 1704.10.0000, HTSUSA.

DEAR MS. HAZLETT:

The purpose of this correspondence is to respond to your request dated October 18, 1999, and received by the U.S. Customs Service, Customs Information Exchange on October 20, 1999. The correspondence in issue requested a binding classification ruling of the merchandise described as a "Candy Carry All" consisting of a metal container and chewing gum which will be packed in and imported with the container.

This ruling is being issued subsequent to the following: (1) A review of your submission dated October 18, 1999; (2) A review of the sample "Candy Carry All," and (3) A review of the "composition certificate" of the chewing gum.

**FACTS:**

The article in issue, identified as a "Candy Carry All," is a metal container in the shape of a traditional school lunch box, but smaller. The container measures four and one-eighth (4 1/8) inches in height, five and one-half (5 1/2) inches in width and two and one-fourth (2 1/4) inches in depth. It has a plastic handle that is attached to the top of the container and swivels from side to side.

One of the sides of the container opens outward by means of two loop-style hinges on the bottom. The opening secures closed through the use of a metal clasp on the top.

The container will be painted depicting a cartoon rabbit named "Lord Rabbitwell" and a goose named "Lady Goosedown." The rabbit and goose will be dressed in formal attire. It is the understanding of the Customs Service that the exterior will be painted to indicate in writing that candy is enclosed.

The article is made of sheet steel, however, it is not constructed for long-term or rigorous use. The handle hinges and the metal clasp are not designed or constructed for significant wear.

A label on the container indicates that it is a product of China.

The container will be imported filled with chewing gum. The chewing gum is made of the following ingredients: sugar, gum base, corn syrup, dextrose, tapioca dextrin, corn starch, confectioners glaze, carnauba wax, as well as other ingredients to add color, flavor and maintain freshness. Customs is advised that the chewing gum is a product of Canada.

**ISSUE:**

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the above-described “Candy Carry All” and chewing gum ?

**LAW AND ANALYSIS:**

The Customs Service in Headquarters Ruling Letter 963539 (April 12, 2002) classified containers substantially similar to the “Candy Carry All” container in subheading 7326.90.1000, HTSUSA. Subheading 7326.90.1000, HTSUSA, provides for:

|              |                                  |
|--------------|----------------------------------|
| 7326         | Other articles of iron or steel: |
| 7326.90      | Other:                           |
| 7326.90.1000 | Of tinplate.                     |

The legal reasoning and analysis employed in HQ 963539 in classifying those containers is adopted by reference in the classification of the “Candy Carry All” container. Headquarters Ruling Letter 963539 is attached to and made a part of this ruling letter.

The chewing gum is classified pursuant to GRI 1 in subheading 1704.10.0000, HTSUSA. Subheading 1704.10.0000, HTSUSA, provides for:

|              |  |
|--------------|--|
| 1704         | Sugar confectionery (including white chocolate), not containing cocoa: |
| 1704.10.0000 | Chewing gum, whether or not sugar-coated.                              |

The Customs Service elected not to provide extensive legal analysis on the classification of the chewing gum. The classification issue of concern for Customs in this ruling letter is the container. The classification of merchandise substantially similar to the chewing gum in this ruling letter may be found in: NY A85048 (July 3, 1996), NY A84164 (June 25, 1996) and NY 806794 (Feb. 15, 1995).

The Customs Service has been advised that the chewing gum is a product of Canada. Customs has not been provided any additional information nor undertaken any legal analysis to determine whether the chewing gum qualifies as a good “originating in the territory of a NAFTA party” pursuant to General Note 12 (b), HTSUSA.

The Customs Service, when called on to classify the “Candy Carry All” container and the chewing gum, contemplated whether the HTSUSA dictates that the container and the gum be classified together. Customs, in examining this question, considered whether the container and the gum were a “set” pursuant to GRI 3 or whether the principles of GRI 5 relating to packing containers entered with goods applied. It is Customs determination, as will be addressed in the succeeding paragraphs, that neither GRI 3 nor GRI 5 apply to the container and the gum in issue. The “Candy Carry All” container and the chewing gum should be classified separately.

An examination of GRI 3 becomes appropriate when goods are *prima facie* classifiable under two or more headings. The container is classified in heading 7326, HTSUSA, and the chewing gum is classified in heading 1704, HTSUSA. Continuing with the application of General Rule of Interpretation 3, GRI 3(a) provides that the articles should be classified according to the heading which affords the most specific description, unless the multiple

headings under consideration refer to only part of the materials or substances contained in goods that are mixed or composite, or to only part of “items in a set put up for retail sale.” The container and the chewing gum are not mixed or composite goods, warranting inquiry into the issue of whether they cumulatively constitute “items in a set put up for retail sale.”<sup>1</sup> *General Rule of Interpretation 3*.

The General Rules of Interpretation do not define the phrase “items in a set put up for retail sale.” The Explanatory Notes do, however, offer guidance. The precise phrase in GRI 3(a) “items in a set put up for retail sale” is not addressed in the EN’s. The EN’s do, however, address a similar phrase employed in GRI 3(b). The phrase employed in GRI 3(b) and discussed in the EN’s is “goods put up in sets for retail sale.” *General Rules for the Interpretation of the Harmonized System, Rule 3 (b), Explanatory Note (X)*. It is the conclusion of the Customs Service that the two phrases address the same issue.

Explanatory Note (X) of GRI 3(b) provides three factors to be considered when determining whether goods have been put up in sets for retail sale. The factors are:

- (1) The goods consist of at least two different articles that are, *prima facie*, classifiable in different headings;
- (2) The goods consist of articles put up together to “meet a particular need or carry out a specific activity;” and
- (3) The goods are “put up in a manner suitable for sale directly to users without repacking.” *General Rules for the Interpretation of the Harmonized System, Rule 3(b), Explanatory Note (X) (a) – (c)*.

A review of the HTSUSA and an examination of the container and the gum establish that they are *prima facie* classifiable in different headings and are packaged in a manner suitable for sale directly to users. The issue that remains, the second of the three factors, is whether the articles as put up together “meet a particular need or carry out a specific activity.” *General Rules for the Interpretation of the Harmonized System, Rule 3(b), Explanatory Note (X)(b)*.

The Explanatory Notes do not define the phrase “meet a particular need or carry out a specific activity.” *Id.* The EN’s do, however, offer examples of items put up together for sale directly to the user which constitute sets. The initial example consists of “a sandwich made of beef, with or without cheese, in a bun..., packaged with potato chips (French Fries).” *General Rules for the Interpretation of the Harmonized System, Rule 3(b), Explanatory Note (X)(1)(a)*. The second example consists of items to be used together to prepare a spaghetti meal. The components include: (1) A packet of uncooked spaghetti; (2) A sachet of grated cheese, and (3) A small tin of tomato sauce, put up in a carton. *See General Rules for the Interpretation of the Harmonized System, Rule 3(b), Explanatory Note (X)(b)*. The third example is a hairdressing set. The items in this set include: (1) A pair of electric hair clippers; (2) A comb; (3) A pair of scissors; (4) A brush; (5) A towel of textile material; and (6)

<sup>1</sup> See generally, *What Every Member of The Trade Community Should Know About: Classification of Sets Under the HTS*, an Informed Compliance Publication of the Customs Service available on the World Wide Web site of the Customs Service at [www.customs.gov](http://www.customs.gov), search “Importing & Exporting” and then “U.S. Customs Informed Compliance Publications.”

a leather case to store and carry the items. See *General Rules for the Interpretation of the Harmonized System, Rule 3(b), Explanatory Note (X)(2)*. The final example of a set is a drawing kit. The drawing kit includes five items put up together in a case of plastic sheeting. The items are: (1) A ruler; (2) A disc calculator; (3) A drawing compass; (4) A pencil; and (5) A pencil-sharpener, put up in a case of plastic sheeting. See *General Rules for the Interpretation of the Harmonized System, Rule 3(b), Explanatory Note (X)(3)*.

A review of each of the examples of sets in EN (X) indicates that components of sets share at least one common trait. See HQ 953472 (Mar. 21, 1994). The fact that the drafters of EN (X) did not explain when goods put up together “meet a particular need or carry out a specific purpose” suggests that resolution of the issue must be determined by analogy on a case-by-case basis.

The items that comprise each example of a set in EN (X) are related to one another in such a fashion that they interact together to serve a distinct purpose or function to enable a singular result to be achieved. The items in examples one and two are used in conjunction with one another to complete a sandwich meal and prepare a spaghetti meal. The articles in example three are used together for the purpose of hair grooming and the items in example four function with one another to enable the user to draw.

The Explanatory Notes, in addition to offering examples of items that constitute sets, also provides examples of collections of articles which do not function with one another to the degree necessary to establish a set. The initial accumulation of items in EN (X) consists of a can of shrimp, a can of *pate de foie*, a can of cheese, a can of sliced bacon and a can of cocktail sausages. See *General Rules for the Interpretation of the Harmonized System, Rule 3(b), Explanatory Note (X)(1)*. The second example includes a bottle of spirits and a bottle of wine. See *id.* The items in the first example, although related to one another and usable together, do not “interact with one another so as to comprise a single dish.” HQ 953472 *supra*. It was concluded in HQ 953472 that the wine and spirits example did not constitute a set because they would not be used together for the mixing of a single drink nor suitable for serving together on a particular occasion.<sup>2</sup> See HQ 953472 *Id.*

The issue in the instant ruling is whether the container has a nexus with the chewing gum such that both are intended to be used together or in conjunction with one another to meet a particular need or carry out a specific activity. It is the conclusion of the Customs Service that the metal container and the chewing gum will not be used together or in conjunction with one another to meet a particular need or carry out a specific activity. The container provides a means of packing and transporting the gum, but will not be used when the gum is being enjoyed. The container and the chewing gum do not meet a particular need or carry out a specific activity and are not a “set” pursuant to General Rule of Interpretation 3(b). See *Generally* HQ 088134 (Sept. 22, 1989), HQ 959305 (Sept. 20, 1996).

General Rule of Interpretation 5(a) addresses the classification of specifically shaped or fitted containers entered with their contents when the containers are suitable for long-term use and are of a kind of container normally

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<sup>2</sup> It should be noted that the Explanatory Notes of the Harmonized Commodity Description and Coding System are an international document that employs words, phrases and understandings which are intended to have a universal international meaning that may be different from the domestic meaning or understanding of a particular member-country or member-countries of the World Customs Organization.



sold with the merchandise contained therein. *See Generally* HQ 957577 (May 31, 1995), HQ 081862 (Feb. 21, 1990). General Rule of Interpretation 5(b) concerns the classification of packing materials and packing containers that are entered with the goods they are transporting and are of a kind normally used for the packing of the merchandise. *See Generally* HQ 956347 (Aug. 30, 1994).

It is the determination of the Custom Service that neither GRI 5(a) or GRI 5(b) are applicable. The container subject to this ruling is not specifically shaped or fitted to carry the gum, is not suitable for long-term use and is not the kind of container normally used in the sale of gum as required for classification pursuant to GRI 5(a). *See generally* HQ 958523 (December 6, 1995), HQ 958236 (Nov. 28, 1995), HQ 954879 (Oct. 29, 1993) and HQ 084257 (July 18, 1989). Although the container in this instance is premium packing and is used to pack the chewing gum for sale, the “Candy Carry All” container is not the kind of packing normally used to sell chewing gum precluding the classification of the container and the gum pursuant to GRI 5(b). *See Generally* HQ 957960 (Feb. 5, 1996) and HQ 081862 *Supra*.

The Customs Service is aware of HQ 964234 (April 23, 2001), HQ 961707 (Mar. 19, 1999) and PD C85024 (Mar. 31, 1998) classifying similar, but larger metal containers in Chapter 42, HTSUSA. Customs is re-examining the classification of this merchandise and considering whether this merchandise should be classified in heading 7326, HTSUSA, of Chapter 73. If a decision is made to re-classify the merchandise addressed in the identified ruling letters, the Customs Service will proceed in accordance with 19 U.S.C. 1625 (c).

**HOLDING:**

The “Candy Carry All” container is classified in subheading 7326.90.1000, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty is FREE.

The legal reasoning and analysis of Headquarters Ruling Letter 963539 (April 12, 2002) is adopted by reference. Headquarters Ruling Letter 963539 is attached to and made a part of this ruling letter.

The chewing gum is classified in subheading 1704.10.0000, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty is four (4) percent, *ad valorem*.

*Sincerely,*

JOHN DURANT,

*Director*

*Commercial Rulings Division*

HQ 963539

April 12, 2002

CLA-2 RR:CR:TE 963539 jsj

CATEGORY: Classification

TARIFF NO.: 7326.90.1000

PORT DIRECTOR  
U.S. CUSTOMS SERVICE  
*SECOND AND CHESTNUT STREETS*  
*PHILADELPHIA, PENNSYLVANIA 19106*

Attention: Team 172

Re: Application for Further Review of Protest No.: 1101-99-100235 Lunch Box Style Metal Containers; Round Metal Containers; Dog Bone Shaped Metal Containers; Timplated Iron or Steel; Subheading 7326.90.1000, HT-SUS.

DEAR PORT DIRECTOR:

The purpose of this correspondence is to address the Application for Further Review of Protest Number: 1101-99-100235, dated September 9, 1999. The Importer of Record and Protesting Party is American Specialty Confections, Inc.

The Customs Service issued a Notice of Action (Customs Form 29) to American Specialty Confections, Inc. (American Specialty Confections). The Notice of Action is dated May 21, 1999. It indicated that a rate advance had been taken based on the conclusion of the Customs Service Import Specialist that the Importer had not properly classified "lunch boxes."

The Importer, subsequent to receipt of the Notice of Action and liquidation, filed a Protest challenging Customs classification. American Specialty Confections' Protest accompanied an Application for Further Review that was approved. The Importer's application for further review was based on 19 C.F.R. 174.24(a), which provides for further review when the decision of the port is alleged to be inconsistent with a Headquarters ruling or a decision made at any port concerning the same or substantially similar merchandise.

A review of the Protest (Customs Form 19) and the Customs Protest and Summons Information Report (Customs Form 6445) indicates that the protest was timely filed pursuant to 19 U.S.C. 1514 (c) (3) (West 1999) and 19 C.F.R. 174.12 (e) (1). The Protest was filed on September 9, 1999, within ninety days of the liquidation of the entries.

This protest decision is being issued subsequent to the following: (1) A review of the Protest; (2) A review of the Customs Protest and Summons Information Report; (3) A review of the submission of counsel for the Importer dated August 29, 2000; (4) A review of the facsimile submission received from the Customs broker for the Importer on January 29, 2002; (5) A review of the samples; and (6) A review of the American Specialty Confections sales and marketing literature, particularly its 1999 catalogue.

**FACTS:**

The articles in issue are threefold: (1) Metal containers with handles and latches in the shape of traditional school lunch boxes, only smaller; (2) Metal containers with handles and latches that are round with flat bottoms; and (3) Metal containers in the shape of dog bones that do not have handles or latches.

#### Traditional School Lunch Box Shaped Containers:

The metal containers in the shape of traditional school lunch boxes measure seven and five-eighths (7 5/8) inches in width, six (6) inches in height and two and seven-eighths (2 7/8) inches in depth. They have flat plastic handles that are attached to the top of the container and swivel from side to side. One of the sides of the containers opens outward by means of two loop-style hinges on the bottom. The opening secures closed through the use of a metal clasp on the top.

The containers are made of tinplated steel, however, they are not constructed for long-term or rigorous use. The handle hinges and the metal clasp are not designed or constructed for significant wear.

The containers will be painted with various motifs. The traditional school lunch box styles in issue in this Protest, as identified by the Protestant, include: (1) Bazooka Lunch Box, Item Number: 88097T; (2) Candyland Lunch Box, Item Number: 88075T; (3) GI Joe Ast. Lunch Box, Item Number: 88187T; (4) GI Joe Frogman Lunch Box, Item Number: 88186T; (5) Howdy Doody Lunch Box, Item Number: 88189T; (6) Curious George Bicycle, Item Number: 88076T; (7) GI Joe, Item Number: 88072T; (8) Tootsie Roll, Item Number: 88077T; (9) Pat the Bunny Lunch Box, Item Number: 88245T; and (10) Dick Tracy Lunch Box, Item Number: 88250T.

#### Round Containers With Flat Bottoms:

The round metal containers with flat bottoms measure six and one-fourth (6 ¼) inches in width, five and three-fourths (5 ¾) inches in height and three (3) inches in depth. They have round plastic handles that are attached to the top of the container and swivel from front to back. One of the sides of the containers opens outward by means of a single loop-style hinge on the bottom. The opening secures closed through the use of a metal clasp on the top.

The containers are made of tinplated steel, however, they are not constructed for long-term or rigorous use. The handle hinges and the metal clasp are not designed or constructed for significant wear.

The containers will be painted with various motifs. The round containers with flat bottoms in issue in this Protest, as identified by the Protestant, include: (1) Betty Boop Round Lunch Box, Item Number: 88188T; and (2) Oreo Round Lunch Box, Item Number: 88067T.

#### Dog Bone Shaped Containers:

The dog bone shaped metal containers come in two styles: (1) Milk Bone Shaped Tin, Item Number: 44401T (also identified in the 1999 American Specialty Confections catalogue as Item Number: 290021); and (2) Snoopy Bone Shaped Tin, Item Number: 88209T (also identified in the 1999 American Specialty Confections catalogue as Item Number: 882097).

The Milk Bone container measures six and one-fourth (6 ¼) inches in width, three and one-half (3 ½) inches in height and two and one-fourth (2 ¼) inches in depth. The Snoopy Bone container measures nine and one-fourth (9 ¼) inches in width, three (3) inches in height and five (5) inches in depth.

These containers do not have handles or latches. The top of each container, with the words "Milk Bone" or "Snoopy," lifts off.

The containers are made of tinplated steel, however, they are not constructed for long-term or rigorous use.

Customs is advised that the containers will be imported empty. The traditional school lunch box style and the round style will be filled with candy or cookies subsequent to importation. The dog bone shaped containers will be filled with dog treats.

The Customs Service is advised that China is the country of origin of all of the containers addressed in this Protest decision.

**ISSUE:**

Did Customs properly liquidate the entries in subheading 4202.19.0000, Harmonized Tariff Schedule of the United States Annotated, based on the conclusion of the Customs Service Import Specialist that the Importer of Record had incorrectly entered the above-described metal containers in subheading 7310.29.0050, HTSUSA, and subheading 7326.90.1000, HTSUSA?

**LAW AND ANALYSIS:**

The federal agency responsible for initially interpreting and applying the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is the U.S. Customs Service.<sup>1</sup> The Customs Service, in accordance with its legislative mandate, classifies imported merchandise pursuant to the General Rules of Interpretation (GRI) and the Additional U.S. Rules of Interpretation.<sup>2</sup>

General Rule of Interpretation 1 provides, in part, that classification decisions are to be “determined according to the terms of the headings and any relative section or chapter notes.” *General Rule of Interpretation 1*. General Rule of Interpretation 1 further states that merchandise which cannot be classified in accordance with the dictates of GRI 1 should be classified pursuant to the other General Rules of Interpretation, provided the HTSUSA chapter headings or notes do not require otherwise. According to the Explanatory Notes (EN), the phrase in GRI 1, “provided such headings or notes do not otherwise require,” is intended to “make it quite clear that the terms of the headings and any relative Section or Chapter Notes are paramount.” *General Rules for the Interpretation of the Harmonized System, Rule 1, Explanatory Note (V)*.

The Explanatory Notes constitute the official interpretation of the Harmonized System at the international level. *See* Joint Explanatory Statement *supra* note 1, at 549. The Explanatory Notes, although neither legally binding nor dispositive of classification issues, do provide commentary on the scope of each heading of the HTSUS. The EN’s are generally indicative of the proper interpretation of the headings. *See* T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989); *Lonza, Inc. v. United States*, 46 F.3d 1098, 1109 (Fed. Cir. 1995).

Commencing classification of the traditional school lunch box shaped containers, the round containers with flat bottoms and the dog bone shaped containers in accordance with the dictates of GRI 1, the Customs Service examined the headings of Chapter 73, *Articles of Iron or Steel*, of the HTSUSA. Customs concludes that all of the containers subject to this protest are

<sup>1</sup> *See* 19 U.S.C. 1500 (West 1999) (providing that the Customs Service is responsible for fixing the final appraisement, classification and amount of duty to be paid); *See also* Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 100–576, at 549 (1988) *reprinted in* 1988 U.S. Code Cong. and Adm. News 1547, 1582 [hereinafter Joint Explanatory Statement].

<sup>2</sup> *See* 19 U.S.C. 1202 (West 1999); *See generally*, *What Every Member of The Trade Community Should Know About: Tariff Classification*, an Informed Compliance Publication of the Customs Service available on the World Wide Web site of the Customs Service at [www.customs.gov](http://www.customs.gov), search “Importing & Exporting” and then “U.S. Customs Informed Compliance Publications.”

properly classified in heading 7326, HTSUSA, pursuant to GRI 1. Heading 7326, HTSUSA, more specifically than any other heading in the tariff schedule, describes the containers.

Customs notes that heading 7326, HTSUSA, is a residual or basket provision into which merchandise of iron or steel not described by any other heading of Chapter 73 is classified. Although the classification decision arrived at by this office relies on General Rule of Interpretation 1, this determination was made by a process of elimination, only subsequent to considering all of the headings of Chapter 73, particularly headings 7310, HTSUSA, and 7323, HTSUSA.

Heading 7310, HTSUSA, provides for “Tanks, casks, drums, cans, boxes and similar containers, for any material (other than compressed or liquefied gas), of iron or steel, of a capacity not exceeding 300 liters, whether or not lined or heat insulated, but not fitted with mechanical or thermal equipment.” The EN to heading 7310, HTSUSA, Explanatory Note 73.10, provides an illustrative list of “larger containers,” as well as “smaller containers” that are properly classified in heading 7310, HTSUSA. *Explanatory Note 73.10*. The smaller containers, relevant to this protest, “include boxes, cans, tins, etc.” and are “mainly used as sales packings for butter, milk, beer, preserves, fruit or fruit juices, biscuits, tea, confectionery, tobacco, cigarettes, shoe cream, medicaments, etc.” *Explanatory Note 73.10*.

Although the containers subject to this protest fall within the EN description of “boxes, cans, tins, etc.,” they are not “mainly used as sales packings.” *Explanatory Note 73.10*. The containers in issue, although intended to be used by the importer as packing for candy or other edibles for people or animals, have uses beyond sales packing. The Importer’s submission that accompanied its Protest refers to the containers as collectibles and an examination of its catalogue suggests that the containers have intended uses beyond packing. Customs will not suggest the numerous uses to which these containers may be put, but is of the conclusion that these containers are significantly more than sales packing. *See generally* HQ 963670 (April 12, 2002) (discussing merchandise classified in heading 7310, HTSUSA, and providing a list of precedential Customs Service ruling letters).

Heading 7323, HTSUSA, provides, in pertinent part, for the classification of “Table, kitchen or other household articles and parts thereof, of iron or steel.” The Explanatory Notes to heading 7323, HTSUSA, state that this heading “comprises a wide range of iron or steel articles...used for table, kitchen or other household purposes.” *Explanatory Note 73.23*. The EN further provides an extensive list of articles considered being for kitchen, table and other household uses. *See Explanatory Note 73.23*. Kitchen articles include items “such as saucepans, steamers...; frying pans...; kettles; colanders; ...jelly and pastry moulds;...kitchen storage tins and canisters...funnels.” *Explanatory Note 73.23(A)(1)*. Articles for table use include “trays, dishes, plates...sugar basins, butter dishes...coffee pots...tea pots; cups, mugs...cruets; knife rests;...serviette rings, table cloth clips.” *Explanatory Note 73.23(A)(2)*. Items enumerated as “other household articles” encompass articles such as “wash coppers and boilers; dustbins, buckets...watering cans; ash-trays;...baskets for laundry, fruit vegetables, etc.; letter-boxes...luncheon boxes.” *Explanatory Note 73.23(A)(1)*.

It is the conclusion of the Customs Service, subsequent to a review of this list, that the containers subject to this protest are not analogous. Merchandise properly classified in heading 7323, HTSUSA, is limited in scope to table,

kitchen or other household articles made of iron or steel. The containers under review in this protest may not reasonably be described as table, kitchen or household articles. *See generally* HQ 956218 (Aug. 23, 1994), NY C88472 (June 24, 1998), NY 813291 (Aug. 23, 1995) and NY 808180 (Mar. 24, 1995).

The containers subject to classification consideration in this protest may be used in the kitchen or around the home, but they are not designed nor specifically intended for kitchen or household use. Customs also concludes that they are not table articles.

It is Customs determination that the heading that is most descriptive of the lunch box style container, the round container and the dog bone style container is heading 7326, HTSUSA. Heading 7326, HTSUSA, provides very simply for "Other articles of iron or steel." Heading 7326, HTSUSA, as previously stated is a residual provision and encompasses the classification of "all articles of iron or steel...**other than** articles included in the preceding headings of this Chapter or ...more specifically covered elsewhere in the Nomenclature." *Explanatory Note 73.26*.

Understanding that heading 7326, HTSUSA, is a residual or basket provision into which all merchandise properly classified in Chapter 73, HTSUSA, falls by default when a more descriptive heading in the chapter does not exist, the variety of iron or steel merchandise that is properly classified in heading 7326, HTSUSA, is broad. This is confirmed by a further reading of the Explanatory Notes. The Explanatory Note that correspond to heading 7326, HTSUSA, Explanatory Note 73.26, offers an extensive listing of merchandise that is classified in heading 7326, HTSUSA.

Explanatory Note 73.26 (3) provides that heading 7326, HTSUSA, covers "Certain boxes and cases, *e.g.*, tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (see the Explanatory Note to heading 42.02); botanists', *etc.*, collection or specimen cases, trinket boxes; cosmetic or powder boxes and cases; cigarette cases, tobacco boxes, cachou boxes, *etc.* but **not including** containers of **heading 73.10**, household containers (**heading 73.23**), nor ornaments (**heading 83.06**). (Emphasis added). The containers subject to this protest are not easily analogous to the "boxes and cases" specifically identified in the EN, but this is not necessary. The drafters of the EN's, by employing the phrases "*e.g.*" and "*etc.*" in EN 73.26, exhibited an intent that the identified articles were only intended to be representative or illustrative.

It is the conclusion of the Customs Service that the containers in issue and the articles identified by example in EN 73.26 share enough common features to warrant the classification of the containers in heading 7326, HTSUSA. The containers in issue are essentially steel boxes, the sizes of which according to a reading of EN 73.26 may vary significantly. The containers are larger than trinket and cachou boxes, smaller than tool boxes, but are about the size of powder or tobacco boxes. They are not specially shaped nor are they internally fitted. The possible uses of the containers are similar to the anticipated uses of the containers referenced in the EN. They may carry a variety of items, none of which fall into any particular category that might preclude classification of the containers in heading 7326, HTSUSA. As should be appreciated, there is no single example provided for in EN 73.26 to which Customs may point as the perfect example of a container similar to those subject to this protest. Customs has, however, demonstrated that there are a significant number of common characteristics between the containers in issue



and the “boxes and cases” illustrated in Explanatory Note 73.26 to warrant classification in heading 7326, HTSUSA.

Although Customs has discussed the similarities between the relevant merchandise and the items identified in the Explanatory Notes to heading 7326, HTSUSA, it is important to remember that since heading 7326, HTSUSA, is a basket or residual provision it is only necessary to determine that American Specialty Confections’ merchandise is not excluded from heading 7326, HTSUSA, nor specifically provided for elsewhere in the tariff schedule. Customs concludes that the merchandise is not precluded from classification in heading 7326, HTSUSA, nor is it specifically provided for in another tariff schedule heading.

Continuing the classification of the traditional school lunch box shaped containers, the round containers with flat bottoms and the dog bone shaped containers at the subheading level, the containers are classified in subheading 7326.90.1000, HTSUSA. *See generally* NY H81764 (June 19, 2001), NY F81395 (Jan. 13, 2000) and NY B80840 (Jan. 10, 1997). Subheading 7326.90.1000, HTSUSA, provides for the classification of

|              |                                  |
|--------------|----------------------------------|
| 7326         | Other articles of iron or steel: |
| 7326.90      | Other:                           |
| 7326.90.1000 | Of tinfoil.                      |

The Customs Service specifically notes for the attention of the importer and the Customs broker that Customs has not undertaken a laboratory analysis to confirm that the containers in issue are tinfoiled. Customs has relied on the express statements of the Customs broker in the Protest and the express statements of counsel for the importer in the submission dated August 29, 2000. Should the containers not prove to be tinfoiled, this would significantly impact the classification and rate of duty of this merchandise and, additionally, bear negatively on the importer’s obligation to use reasonable care in the classification, value and entry of its merchandise.

Although not raised as an issue in this protest, substantially similar merchandise is frequently imported with edibles. Headquarters Ruling Letter 963670 addressed the classification of the containers and the edibles when imported together. *Supra*.

It is noted that Customs liquidated the entries in subheading 4202.19.0000, HTSUSA. Heading 4202, HTSUSA, provides for the classification of:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly of mainly covered with such materials or with paper.

Customs, during the course of this administrative review, determined that the merchandise in issue was not similar to the items designated by name in the first part of heading 4202, HTSUSA, that aspect which precedes the



semi-colon. It was also determined that consideration of the items listed in the second part of the heading was unnecessary because those articles must be made of specific materials and iron and steel, of which the containers are composed, are not enumerated materials. Since Customs determined that the metal containers being imported by American Specialty Confections were not similar to the containers designated *eo nomine* in heading 4202, HTSUSA, Customs re-examined the headings of the HTSUSA and has concluded that American Specialty Confections' merchandise is properly classified in heading 7326, HTSUSA.

The Customs Service is aware of HQ 964234 (April 23, 2001), HQ 961707 (Mar. 19, 1999) and PD C85024 (Mar. 31, 1998) classifying similar metal containers in Chapter 42, HTSUSA. Customs is re-examining the classification of this merchandise and considering whether this merchandise should be classified in heading 7326, HTSUSA, of Chapter 73. If a decision is made to re-classify the merchandise addressed in the identified ruling letters, the Customs Service will proceed in accordance with 19 U.S.C. 1625 (c).

**HOLDING:**

The Protest is ALLOWED.

The traditional school lunch box shaped containers, the round containers with flat bottoms and the dog bone shaped containers are classified in sub-heading 7326.90.1000, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty is FREE.

In accordance with Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, section 3 A. (11) (b), you are to mail this decision and the Protest (Customs Form 19) to the Protesant no later than 60 days from the date of this letter. Any reliquidation of the entry or entries in accordance with this decision must be accomplished prior to mailing the decision.

The Office of Regulations & Rulings will make this decision available to Customs personnel and to the public on the Customs Service Home Page on the World Wide Web, [www.customs.gov](http://www.customs.gov), by means of the Freedom of Information Act and by other methods of public distribution sixty days from the date of this decision.

*Sincerely,*

JOHN DURANT,

*Director*

*Commercial Rulings Division*

HQ H275864  
OT:RR:CTF:CPMM H275864 RRB  
CATEGORY: Classification  
TARIFF NO.: 4202.19.0000

Ms. KATHY M. BELAS  
JAMES G. WILEY CO.  
P.O. BOX 90008  
LOS ANGELES, CA 90009-0008

RE: Revocation of HQ 965555, HQ 967931, HQ 966836, HQ 965554, HQ 963339, HQ 965063, HQ 963647, NY H88277, NY N150496, NY N104149, NY I82546; Modification of HQ 963670 and HQ 963539; Tariff classification of a metal lunch box

DEAR Ms. BELAS:

This is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered Headquarters Ruling Letter (“HQ”) 965555, dated August 12, 2002, regarding the classification of metal lunch boxes. We have also reconsidered HQ 967931<sup>1</sup>, dated April 21, 2006; HQ 966836<sup>2</sup>, dated April 1, 2004; HQ 965554<sup>3</sup>, dated August 12, 2002; HQ 963339<sup>4</sup>, dated April 19, 2002; HQ 965063<sup>5</sup>, dated April 12, 2002; HQ 963647<sup>6</sup>, April 12, 2002; New York Ruling Letter (“NY”) H88277<sup>7</sup>, dated April 26, 2002; NY N150496<sup>8</sup>, dated March 18,

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<sup>1</sup> HQ 967931 classified a metal carrying case that is similar to a lunch box, measures approximately 7.5 inches in height, 8 inches in length and 4 inches in depth, and has a hinged lid and plastic carrying handle in subheading 7326.90.10, HTSUS.

<sup>2</sup> In HQ 966836, Protestant argued that the subject lunch boxes should have been classified in subheading 7326.90.10, HTSUS, as “other articles of iron or steel: Other: Of tinfoil.” CBP denied the protest and application for further review concerning the proper classification of metal lunch boxes with handles and hinged lids that were originally entered under subheading 7326.90.8586, HTSUS, as “other articles of iron or steel: Other: Other.”

<sup>3</sup> HQ 965554 classified a metal container in the shape of a traditional school lunch box, measuring 9 inches in height, 7 inches in length and 4 inches in depth, with a secured top closure and a single handle, in subheading 7326.90.10, HTSUS.

<sup>4</sup> HQ 963339 classified in subheading 7326.90.10, HTSUS, a “Curious George Tin Box with Red Handle PMS 485C,” which is a container in the shape of a traditional school lunch box and manufactured wholly of tinfoil. It is seven and one-half inches in width, six inches in height and three and three-eighths inches in depth. The merchandise has a flat plastic handle that is attached to the top of the container and swivels from side to side. It also has a hinged bottom and a metal clasp closure on the top.

<sup>5</sup> HQ 965063 classified in subheading 7326.90.10, HTSUS, containers composed of tinfoil sheet steel with handles and latches that secure the container closed.

<sup>6</sup> HQ 963647 classified tinfoil-plated steel containers with hinges, handles, and metal latch closures in subheading 7326.90.10, HTSUS.

<sup>7</sup> NY H88277 classified a tin-plated lunch box with a plastic handle in subheading 7326.90.10, HTSUS.

<sup>8</sup> NY N150496 classified an iron lunch box, which was seven and three-quarter inches in length, six inches in height, and two and three-quarter inches deep, with a plastic handle and metal hinge latch in subheading 7326.90.8588, HTSUS.

2011, NY N104149<sup>9</sup>, dated May 20, 2010; NY I82546<sup>10</sup>, dated June 7, 2002; HQ 963670<sup>11</sup>, dated April 12, 2002; and HQ 963539<sup>12</sup>, April 12, 2002, regarding substantially similar merchandise. The metal lunch boxes were classified under subheading 7326.90, Harmonized Tariff Schedule of the United States (“HTSUS”), as “[o]ther articles of iron or steel: Other.” For the reasons set forth below, we hereby revoke HQ 965555, HQ 967931, HQ 966836, HQ 965554, HQ 963339, HQ 965063, HQ 963647, NY H88277, NY N150496, NY N104149, NY I82546, and modify HQ 963670 and HQ 963539 with respect to the classification of the metal lunch box.

#### **FACTS:**

In HQ 965555, we described the product as follows:

The article subject to this reconsideration is a container that has the shape of a traditional school lunch box, only smaller. It measures seven and one-half (7 1/2) inches in length, three and one-eighth (3 1/8) inches in width and five and one-eighth (5 1/8) inches in height. It is composed of metal believed by the Customs Service to be sheet steel. The initial ruling request indicates that the item is made of tin. . .

The item, described by the broker as a “lunch tote,” has a plastic handle on top that swivels side to side. One side of the item opens and may be secured closed by a latch on the top. Attachments for a shoulder strap are located on the narrow or width sides, one and one-half (1 1/2) inches from the top. . .

The subject metal lunch box in HQ 965555, as well as those described in HQ 967931, HQ 966836, HQ 965554, HQ 963339, HQ 965063, HQ 963647, NY H88277, NY N150496, NY N104149, NY I82546, HQ 963670, and HQ 963539<sup>13</sup> each have a handle, hinged lid, and metal latch closure.

#### **ISSUE:**

Whether the subject metal lunch boxes are classified in heading 4202, HTSUS, as “trunks, suitcases, vanity cases, attache cases, briefcases school satchels and similar containers,” or in heading 7326, HTSUS, as “other articles of iron or steel.”

<sup>9</sup> NY N104149 classified a tin-plated steel lunch box, measuring 20.2 centimeters in length, 17.2 centimeters in heights, and 10.2 centimeters in width, with a plastic handle, in subheading 7326.90.10, HTSUS.

<sup>10</sup> NY I82546 classified a lunch box made of sheet steel, measuring 18 centimeters by 7.6 centimeters by 13.5 centimeters, with a hinged lid and plastic handle in subheading 7326.90.35, HTSUS.

<sup>11</sup> HQ 963670 classified a metal container in the shape of a traditional school lunch, but smaller, measuring four and one-eighth inches in height, five and one-half inches in width and two and one-fourth inches in depth, in subheading 7326.90.10, HTSUS. The metal container has a plastic handle attached to the top, two loop-style hinges on the bottom, and a metal clasp on the top to close the container. The chewing gum inside the container was classified separately in subheading 1704.10.00, HTSUS.

<sup>12</sup> HQ 963539 classified two types of metal containers with handles and latches in subheading 7326.90.10, HTSUS, and a metal container without handles or latches in subheading 7326.90.10, HTSUS.

<sup>13</sup> One of the metal lunch boxes in HQ 963539 does not have handles, latches, or hinges and was correctly classified in heading 7326, HTSUS.

**LAW AND ANALYSIS:**

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (“GRIs”). GRI 1 provides, in part, that “for legal purposes, classification shall be determined according to terms of the headings and any relative section or chapter notes...” In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

The HTSUS headings under consideration are as follows:

4202 Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers:

|            |                                  |
|------------|----------------------------------|
| 4202.19.00 | Other. . .                       |
|            | * * *                            |
| 7326       | Other articles of iron or steel: |
| 7326.90    | Other:                           |
| 7326.90.10 | Of tinplate...                   |
|            | * * *                            |

The Harmonized Commodity Description and Coding System Explanatory Notes (“EN”) constitute the official interpretation of the Harmonized System at the international level. While neither 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 the headings. It is CBP’s practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to 42.02 states, in relevant part, that:

This heading covers **only** the articles specifically named therein and similar containers.

These containers may be rigid or with a rigid foundation, or soft and without foundation.

Subject to Notes 2 and 3 to this Chapter, the articles covered by the first part of the heading may be of any material. The expression “similar containers” in the first part includes hat boxes, camera accessory cases, cartridge pouches, sheaths for hunting or camping knives, portable tool boxes or cases, specially shaped or internally fitted to contain particular tools with or without their accessories, etc.

The articles covered by the second part of the heading must, however, be only of the materials specified therein or must be wholly or mainly covered with such materials or with paper (the foundation may be of wood, metal, etc.). The term “leather” includes chamois (including combination chamois) leather, patent leather, patent laminated leather and metallised leather (see Note 1 to this Chapter). The expression “similar containers” in this second part includes note-cases, writing-cases, pen-cases, ticket-cases, needle-cases, key-cases, cigar-cases, pipe-cases, tool and jewellery rolls, shoe-cases, brush-cases, etc....

The heading **does not cover**: ... (f) Tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (generally, **heading 39.26** or **73.26**) ....

\* \* \*

The EN to 73.26 states, in relevant part, that heading 7326, HTSUS, includes:

(3) Certain boxes and cases, e.g., tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (see the Explanatory Note to heading 42.02); botanists', etc., collection or specimen cases, trinket boxes; cosmetic or powder boxes and cases; cigarette cases, tobacco boxes, cachou boxes, etc., but **not including** containers of **heading 73.10**, household containers (**heading 73.23**), nor ornaments (**heading 83.06**).

\* \* \*

In recent rulings, as well as in rulings from two to three decades ago, CBP has classified multiple-use, metal or molded plastic lunch boxes and hinged containers with handles, in heading 4202, as containers similar to articles of the heading, *i.e.*, trunks, suitcases, vanity cases, attache cases briefcases, and school satchels. *See, e.g.*, HQ H266606, dated November 10, 2015; NY N239382, dated April 2, 2013; NY N231558, dated September 4, 2012; NY N047586, dated January 21, 2009; NY K84289, dated March 24, 2004; NY K81365, dated December 17, 2003; and NY H83774, dated July 23, 2001; HQ 953663, dated May 21, 1993; HQ 953044, dated April 19, 1993; HQ 952702, dated April 9, 1993; HQ 088472, dated August 17, 1992; HQ 950049, dated April 21, 1992; HQ 951029, dated April 7, 1992; HQ 087281, dated October 29, 1990; and HQ 082488, dated February 21, 1989.

We erroneously departed from that analysis in the rulings at issue here, dated from 2002 through 2006, due to the addition of language to EN 42.02 regarding the exclusion of tool boxes, not specially shaped or internally fitted for their tools. We do not believe this EN language should have been applied to lunch boxes.

Heading 4202, HTSUS, is an *eo nomine* provision, which describes goods by their specific name. *Otter Prods., LLC v. United States*, 834 F. 3d 1369, 1376 (Fed. Cir. 2016) (citing *La Crosse Tech. v. United States*, 723 F. 3d 1353, 1358 (Fed. Cir. 2013)). Metal lunch boxes are not named in heading 4202, HTSUS.

Rather, the subject metal lunch boxes are “similar containers” to the named articles listed before the semicolon, as they possess the essential characteristics that unite these articles, namely, organizing, storing, protecting and carrying various items. *See Avenues III*, 423 F.3d at 1332; *see also* HQ H284146, dated June 20, 2017.

Although not required, lunch boxes do indeed contain all four characteristics.<sup>14</sup> Like trunks that are designed to store, protect and carry personal property such as clothing, toys, blankets, etc.<sup>15</sup>, the subject metal lunch boxes each have a handle, hinged lid, and metal latch closure.<sup>16</sup> They are designed to transport one's lunch, snacks and beverages from home to school, a workplace, or other destination. They can also be used to transport personal objects such as small figurines, marbles, coins, etc. from one location to another. In addition, the lunch boxes are made of metal to withstand the rigors of travel to and from home and school or another destination. These same features allow for the storage of these items.

In *Otter Prods.*, the CAFC held that in the context of heading 4202, HTSUS, "organization implies multiple items placed in a single container." *Otter Prods.*, 834 F.3d at 1370. Similarly, when the lunch box is in use, one of its purposes is to organize one's lunch, snacks, and beverages while placed in the lunch box.

The metal lunch box is also designed to protect food and beverages from being crushed while a child goes about his or her daily activities at school, either in the classroom, cafeteria, or on the playground. Accordingly, the subject metal lunch boxes are *ejusdem generis* with containers of the first part of heading 4202, HTSUS.

In light of the foregoing, we find that the metal lunch boxes with handles, hinged lids, and latch closures in HQ 965555, HQ 967931, HQ 966836, HQ 965554, HQ 963339, HQ 965063, HQ 963647, NY H88277, NY N150496, NY N104149, NY I82546, HQ 963670, and HQ 963539 are classified in heading 4202, HTSUS, and specifically provided for under subheading 4202.19.00, HTSUS, as "[t]runks, suitcases, vanity cases, attache cases, briefcases school satchels and similar containers: Other." As such, they are not described as an other article of steel in heading 7326.

### **HOLDING:**

Pursuant to GRI 1, metal lunch boxes are classified in heading 4202, HTSUS, specifically under subheading 4202.19.0000, HTSUSA (Annotated), as "[t]runks, suitcases, vanity cases, attache cases, briefcases school satchels and similar containers: Other." The 2019 column one general rate of duty is 20% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompany duty rate are provided on the World Wide Web, at <http://www.usitc.gov/tata.hts/>.

<sup>14</sup> The CAFC in *Otter Prods., LLC* clarified that there was no requirement that the merchandise meet all four characteristics to qualify as a "similar container" under heading 4202, HTSUS. However, if the subject metal lunch boxes met only one of the four characteristics, they would not qualify for heading 4202, HTSUS.

<sup>15</sup> See, e.g., HQ 964480, dated November 30, 2000; NY N265610, dated July 9, 2015; NY N103895, dated May 7, 2010; NY N049978, dated February 23, 2009; NY N043237, dated December 2, 2008; and NY I81458, dated May 16, 2002.

<sup>16</sup> All of the subject metal lunch boxes have a handle, hinged lid, and metal latch closure except for one of the items in HQ 963539, which was correctly classified in heading 7326, HTSUS. The other two items in that ruling each have a handle, hinged lid, and metal latch closure.

**EFFECT ON OTHER RULINGS:**

HQ 965555, dated August 12, 2002; HQ 967931, dated April 21, 2006; HQ 966836, dated April 1, 2004; HQ 965554, dated August 12, 2002; HQ 963339, dated April 19, 2002; HQ 965063, dated April 12, 2002; HQ 963647, dated April 12, 2002; NY H88277, dated April 26, 2002; NY N150496, dated March 18, 2011; NY N104149, May 20, 2010; NY I82546, dated June 7, 2002, are hereby REVOKED.

HQ 963670, dated April 12, 2002, and HQ 963539, dated April 12, 2002, are hereby MODIFIED with respect to the classification of the metal container in the shape of a traditional school lunch box.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Cc: Ms. Diane Flowers  
MGA Entertainment  
16340 Roscoe Blvd., #240  
Van Nuys, CA 91406

Port Director  
U.S. Customs and Border Protection  
Port of Laredo  
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Mr. David M. Rickert  
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CHB Assistant Manager  
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Port Director  
U.S. Customs and Border Protection  
Second and Chestnut Streets  
Philadelphia, PA 19106

**PROPOSED REVOCATION OF ONE RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF TEXTILE COVERED  
HIGH-DENSITY FIBERBOARD BOXES**

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

**ACTION:** Notice of proposed revocation of one ruling letter, and proposed revocation of treatment relating to the tariff classification of textile covered high-density fiberboard boxes.

**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 revoke one ruling letter concerning tariff classification of textile covered high-density fiberboard boxes under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

**DATE:** Comments must be received on or before May 29, 2020.

**ADDRESS:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229-1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Ms. Cammy Canedo at (202) 325-0439.

**FOR FURTHER INFORMATION CONTACT:** Marie Durane, Food, Textiles, and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0984.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public 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 19 U.S.C. § 1625(c)(1), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of textile covered high-density fiberboard boxes. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) N302855, dated March 5, 2019 (Attachment A), this notice also 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., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this comment 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 N302855, CBP classified textile covered high-density fiberboard boxes in heading 6307, HTSUS, specifically in subheading 6307.90.98, HTSUS, which provides for "Other made up articles, including dress patterns: Other: Other: Other." CBP has reviewed NY N302855 and has determined the ruling letter to be in error. It is now CBP's position that the textile covered high-density fiberboard boxes are properly classified, in heading 4420, HTSUS, specifically in subheading 4420.90.65, HTSUS, which provides for "Wood marquetry and inlaid wood; caskets and cases for jewelry or cutlery and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling within chapter 94: Other: Jewelry boxes, silverware chests, cigar and cigarette boxes, microscope cases, tool or utensil cases and similar boxes, cases and chests, all the foregoing of wood: Other: Lined with textile fabrics."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N302855 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (HQ) H305320, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

CRAIG T. CLARK,  
*Director*  
*Commercial and Trade Facilitation Division*

Attachments

HQ H305320  
OT:RR:CTF:FTM H305320 MJD  
CATEGORY: Classification  
TARIFF NO.: 4420.90.65

MR. ALAN R. KLESTADT  
MS. MARIA T. VANIKIOTIS  
GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & KLESTADT LLP  
599 LEXINGTON AVE, 36TH FLOOR  
NEW YORK, NY 10022 - 7648

RE: Revocation of NY N302855; Classification of textile covered  
high-density fiberboard boxes

DEAR MR. KLESTADT AND MS. VANIKIOTIS:

This is in response to your letter of September 3, 2019, on behalf of The Container Store (“TCS”), requesting reconsideration of New York Ruling Letter (“NY”) N302855 issued to TCS by U.S. Customs and Border Protection (“CBP”) on March 5, 2019. The ruling pertained to the tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of two textile covered storage boxes, a drawer organizer and a drop front storage bin. In NY N302855, CBP classified both storage boxes under subheading 6307.90.9889, of the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”), which provides for “Other made up articles, including dress patterns: Other: Other: Other: Other: Other.” We have reviewed NY N302855 and found it to be incorrect. Accordingly, CBP is revoking NY N302855 for the reasons set forth below.

**FACTS:**

NY N302855 pertains to two styles of storage boxes. Each storage box is made with high-density fiberboard (“HDF”) and covered in textile. The first box is an opened faced drawer organizer that contains multiple divider panels inside of it. The second box is a closed box sweater organizer with a drop front panel that is see through so consumers can view the contents inside of the box.<sup>1</sup> The drop front panel can be opened to provide access to the stored items. Both storage boxes come in a variety of sizes and can be used to store clothes, accessories, hosiery, and lingerie. In NY N302855 the subject boxes were classified in heading 6307, HTSUS. They were specifically classified in subheading 6307.90.9889, HTSUSA, which provides for “Other made up articles, including dress patterns: Other: Other: Other: Other: Other.”

**ISSUE:**

Whether the subject boxes are classified under heading 4420, HTSUS, which provides for “Wood marquetry and inlaid wood; caskets and cases for jewelry or cutlery and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling within chapter 94” or heading 6307, HTSUS, which provides for “Other made up articles, including dress patterns.”

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<sup>1</sup> NY N302855 describes the drop front sweater organizer as an open box. However, the sample received was a closed box sweater organizer, and TCS describes the box as a closed box sweater organizer.

**LAW AND ANALYSIS:**

Classification of goods under the HTSUS is governed by 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 GRIs 2 through 6 may then be applied in order.

GRI 3 states, in pertinent part:

When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

...

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

The 2020 HTSUS headings under consideration are as follows:

4420: Wood marquetry and inlaid wood; caskets and cases for jewelry or cutlery and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling within chapter 94:

\* \* \* \*

6307: Other made up articles, including dress patterns:

\* \* \* \*

Note 7 to Section XI, which includes Chapters 50–63, provides that:

For the purposes of this section, the expression “made up” means:

- (a) Cut otherwise than into squares or rectangles;
- (b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, tablecloths, scarf squares, blankets);
- (c) Cut to size and with at least one heat-sealed edge with a visibly tapered or compressed border and the other edges treated as described in any other subparagraph of this note, but excluding fabrics the cut edges of which have been prevented from unraveling by hot cutting or by other simple means;
- (d) Hemmed or with rolled edges, or with a knotted fringe at any of the edges, but excluding fabrics the cut edges of which have been prevented from unraveling by whipping or by other simple means;
- (e) Cut to size and having undergone a process of drawn thread work;
- (f) Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to

end and piece goods composed of two or more textiles assembled in layers, whether or not padded); or

- (g) Knitted or crocheted to shape, whether presented as separate items or in the form of a number of items in the length.

\* \* \* \*

In addition, in interpreting the HTSUS, the Explanatory Notes (“ENs”) of the Harmonized Commodity Description and Coding System may be utilized. The ENs to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. While neither 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, 35128 (August 23, 1989).

The EN to heading 44.20 provides, in pertinent part, the following:

The articles of this heading may be made of ordinary wood or of particle board or similar board, fibreboard, laminated wood or densified wood (see Note 3 to this Chapter).

It also covers a wide variety of articles of wood (including those of wood marquetry or inlaid wood), generally of careful manufacture and good finish, such as: small articles of cabinetwork (for example, caskets and jewel cases); small furnishing goods; decorative articles. Such articles are classified in this heading, even if fitted with mirrors, **provided** they remain essentially articles of the kind described in the heading. Similarly, the heading includes articles wholly or partly lined with natural or composition leather, paperboard, plastics, textile fabrics, etc., **provided** they are articles essentially of wood.

The EN to heading 63.07 provides, in pertinent part, the following:

This heading covers made up articles of any textile material which are **not included** more specifically in other headings of Section XI or elsewhere in the Nomenclature.

\* \* \* \*

In this case, no single heading describes the boxes at issue in their entirety. Each box is a composite good made of two materials, the fiberboard and the textile fabric. The fiberboard is prima facie classified in heading 4420, HTSUS, and the textile covering is prima facie classified in heading, 6307, HTSUS. As such, the tariff classification of these boxes must be determined by applying GRI 3(b).

According to GRI 3(b), composite goods must be classified according to the material or component that imparts the good’s essential character. In order to identify a composite good’s essential character, the U.S. Court of International Trade (“CIT”) has stated that the “essential character” of an article is “that which is indispensable to the structure, core or condition of the article, i.e., what it is.” *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (Ct. Int’l Trade 2005). EN VIII of GRI 3(b) also provides guidance on the meaning of “essential character.” EN VIII to GRI 3(b) explains that “[t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods.” Several court



decisions on the essential character for GRI 3(b) purposes have looked primarily to the role of the constituent material in relation to the use of the goods. See *Estee Lauder, Inc. v. United States*, 815 F. Supp. 2d 1287, 1296 (Ct. Int'l Trade 2012); *Structural Industries*, 360 F. Supp. 2d 1330; *Conair Corp. v. United States*, 29 C.I.T. 888 (2005); *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d 1278 (Ct. Int'l Trade 2006), aff'd 491 F.3d 1334 (Fed. Cir. 2007).

In NY N302855, CBP found that the fabric covered drawer organizer and drop front sweater organizer made with HDF and covered in fabric were products of 6307, HTSUS. However, the boxes are products of 4420, HTSUS because the essential character of the boxes is the HDF, it is what makes the boxes function as a box. The HDF is greater in weight and bulk than the textile fabric, it gives the boxes its structure, support and rigidity, without which the boxes would not be able to stand on its own, hold any contents inside of it, or be recognized as a box. Essentially, the box would not be a box without the HDF. Although, the textile is important to the box—it may enhance the marketability of the box—the textile fabric is not an integral part of what makes the box function as a box. The textile covering is an aesthetic feature that does not change the essential character of the box or its use as a box.

In addition, we note that prior CBP rulings have classified similar items made of wood material and covered in textile fabric as merchandise classified in heading, 4420, HTSUS. See, for example, NY 851879, dated May 14, 1990 (classifying, in part, a wood trinket box covered on the outside with textile. CBP stated that “[e]ssentially, this product is a decorated wood box. The simple textile covering on it is not any more unusual than a paper covering, a plastic covering or any other decorative finishing applied to the box.”); NY N012065, dated July 2, 2007 (classifying a “Brown Suede Candy Box” constructed of Medium density wood fiberboard and covered with imitation suede fabric. CBP explained that “[t]he role the wood plays in the functioning of the product as a box is more important than the role the fabric plays in providing its decorative appeal.”); NY N013058, dated July 19, 2007 (classifying a shoe storage box constructed of wood fiberboard and covered on the top and sides in a woven tweed fabric); NY N021907, dated January 28, 2008 (classifying a fabric covered medium density wood fiberboard box. CBP stated that the “[t]he essential character of the box is imparted by the wood because of the role the wood plays in the functioning of the article.”); NY N224320, dated July 31, 2012 (classifying four various storage boxes constructed of medium density fiberboard, covered on the outside with a woven linen textile, and lined with woven cotton textile<sup>2</sup>); and, NY N238344, dated March 12, 2013, (classifying two trunks made with medium density fiberboard and covered in woven textile).<sup>3</sup>

<sup>2</sup> In NY N224320, CBP also classified a fifth box, the “Small V Bin” under heading 4819, HTSUS.

<sup>3</sup> We note that CBP has classified certain boxes as “[o]ther made up textile articles” of heading 6307, HTSUS. However, these boxes oftentimes relied on the textile to form the box, without which, the box would not function as a box. For example, in Headquarters Ruling Letter (“HQ”) H259325, dated March 27, 2015, CBP classified several paperboard boxes in heading 6307, HTSUS. In that case, the boxes were formed by taking paperboard rectangles and inserting them into textile sleeves to form a storage box. CBP explained that, “[w]ithout the textile component, the paperboard rectangles would not form a box on their own since the paperboard merely provides a rigid form to the textile. Accordingly, we find

Accordingly, we conclude that the boxes in NY N302855 are properly classified in heading 4420, HTSUS.

**HOLDING:**

By application of GR1 3(b) and GRI 6, the articles at issue in NY N302855 are classified in heading 4420, HTSUS, specifically under subheading 4420.90.6500, HTSUS, which provides for “wood marquetry and inlaid wood; caskets and cases for jewelry or cutlery and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling within chapter 94: Other: Jewelry boxes, silverware chests, cigar and cigarette boxes, microscope cases, tool or utensil cases and similar boxes, cases and chests, all the foregoing of wood: Other: Lined with textile fabrics.” The 2020 column one duty rate is free.

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 for at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

NY N302855, dated March 5, 2019, is hereby REVOKED.

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

*Sincerely,*

CRAIG T. CLARK,

*Director*

*Commercial and Trade Facilitation Division*

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that the paperboard rectangles would serve no purpose if used alone. However, the textile portion of the subject boxes is their essential part, since it is sewn in a shape resembling a bag capable of functioning independently.” Likewise, in NY N303917, dated May 7, 2019, CBP classified a textile covered paperboard storage box under heading 6307, HTSUS. In NY N303917, the paperboard consisted of five separate rectangular pieces encased in textile fabric. CBP explained that the paperboard on its own would not create a box.

N302855

March 5, 2019

CLA-2-63:OT:RR:NC:N3:351

CATEGORY: Classification

TARIFF NO.: 6307.90.9889

Ms. GERI DAVIDSON  
THE CONTAINER STORE  
500 FREEPORT PARKWAY  
COPPELL, TX 75019-3863

RE: The tariff classification of textile drawer organizers from China

DEAR Ms. DAVIDSON:

In your letter dated January 17, 2019, you requested a tariff classification ruling.

You submitted representative samples of a textile drawer organizer and a drop front sweater organizer. The drawer organizer is an open box constructed of linen fabric over high-density fiberboard. The drop front sweater organizer is an open box that is constructed from the same textile fabric. A clear plastic sheeting panel makes up the front of the sweater organizer that allows for viewing into the interior and opens to gain access to stored and organized items. You indicate that the drawer organizer and drop front sweater organizer come in five different sizes and can be used for storing sweaters, lingerie, hosiery, and accessories.

The applicable subheading for the fabric covered drawer organizer and drop front sweater organizer, will be 6307.90.9889, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other made up textile articles, other. The rate of duty will be 7 percent ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at <https://hts.usitc.gov/current>.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Adleasia Lonesome via email at [adleasia.a.lonesome@cbp.dhs.gov](mailto:adleasia.a.lonesome@cbp.dhs.gov).

*Sincerely,*

STEVEN A. MACK

*Director*

*National Commodity Specialist Division*

**PROPOSED MODIFICATION OF ONE RULING LETTER  
AND REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF MEN'S CLOSED-TOE,  
CLOSED-HEEL, CASUAL SLIP-ON SHOE WITH A  
FOXING-LIKE BAND.**

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

**ACTION:** Notice of proposed modification of one ruling letter and revocation of treatment relating to the tariff classification of a men's closed-toe, closed-heel, casual slip-on shoe with a foxing-like band.

**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 one ruling letter concerning the tariff classification of a men's closed-toe, closed-heel, casual slip-on shoe with a foxing-like band under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

**DATE:** Comments must be received on or before May 29, 2020.

**ADDRESS:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229-1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Ms. Cammy Canedo at (202) 325-0439.

**FOR FURTHER INFORMATION CONTACT:** John Rhea, Food, Textiles and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0035.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and

related laws. In addition, both the public 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 19 U.S.C. §1625(c)(1), this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of a men's closed-toe, closed-heel, casual slip-on shoe with a foxing-like band. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N285624, dated May 24, 2017 (Attachment A), this notice also 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 ruling 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 the comment period.

Similarly, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this comment 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 N285624, CBP classified a men's closed-toe, closed-heel, casual slip-on shoe with a foxing-like band, Style # H8012000 (Model Brewster 2317) in heading 6404, HTSUS, specifically in subheading 6404.19.39, HTSUS, which provides for "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: Footwear with outer soles of rubber or plastics: Other: Footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except...footwear having foxing or foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper: Other: Other, For men." CBP has reviewed NY N285624 and has determined the ruling letter to be in error. It is now CBP's position

that the men's closed-toe, closed-heel, casual slip-on shoe with a foxing-like band, Style # H8012000 (Model Brewster 2317) is properly classified, in heading 6404, HTSUS, specifically in subheading 6404.19.90, HTSUS, which provides for "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: Footwear with outer soles of rubber or plastics: Other: Footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except...footwear having foxing or foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper: Other: Valued over \$12/pair, For men."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY N285624 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H299500, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

CRAIG T. CLARK,  
*Director*  
*Commercial and Trade Facilitation Division*

Attachments

HQ H299500  
OT:RR:CTF:FTM H299500 JER  
CATEGORY: Classification  
TARIFF NO.: 6404.19.9030

MS. KRISTI BROKAW  
11980 SE KNEE COURT  
HAPPY VALLEY, OR 97086

RE: Modification of NY N285624; tariff classification of a men's closed-toe, closed-heel, casual slip-on shoe with a foxing-like band.

DEAR MS. BROKAW:

On May 24, 2017, U.S. Customs and Border Protection ("CBP") issued New York Ruling Letter ("NY") N285624 to Mr. Richard Writsman of the James J. Boyle Company with respect to a ruling request filed on behalf of their client and importer, Marolina Outdoor Inc. NY N285624 pertained to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA") of four styles of men's footwear identified by their Style Numbers and Model, which included: Style # H8332000 (Model Flipster), Style # H8012000 (Model Brewster 2317), Style # H8011000 (Model Attack) and Style # H8331000 (Model Caruso).<sup>1</sup>

Subsequently to issuance of NY N285624, CBP has since received additional information pertaining to the construction and make-up of Style # H8012000. The new information makes clear that the decision in NY N285624 was incorrect as it pertains to the classification of Style # H8012000 (Model Brewster 2317). Accordingly, NY N285624 is hereby modified to reflect the proper classification of Style # H8012000.

**FACTS:**

In NY N285624, Style # H8012000 (Model Brewster 2317), the men's closed-toe, closed-heel, casual slip-on shoe was described as follows:

Style # H8012000 (Model Brewster 2317), is a men's closed-toe, closed-heel, below-the-ankle, casual slip-on shoe. The upper is made from 100 percent cotton textile material. Elastic gore is sewn on the lateral and medial sides of the vamp. The medial side of the shoe has two metal vent holes covered with a mesh. Embroidered onto the lateral side of the shoe is the word Huk and a textile material label with the word Huk and the phrase Performance Fishing is sewn onto the vamp. The outer sole is made from 100 percent rubber or plastics. The shoe is not protective nor does it have a foxing or foxing-like band. The shoe is valued over \$12/pair.

In NY N285624, CBP did not view the subject shoe to consist of any foxing or foxing-like band and thus classified Style # H8012000 (Model Brewster 2317), the men's closed-toe, closed-heel, casual slip-on shoe in subheading 6404.19.3940, HTSUSA, which provides for "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: Footwear with outer soles of rubber or plastics: Other: Footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other

<sup>1</sup> In NY N285624, CBP stated that additional information was necessary in order to classify Style # H8331000 (Model Caruso). Accordingly, the decision in NY N285624 did not address the classification of Style # H8331000 (Model Caruso). No further information is available regarding Style # H8331000.



fasteners, the foregoing except...footwear having foxing or foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper: Other: Other, For men.”

On May 24, 2018, you filed a request for reconsideration of NY N285624, on behalf of Marolina Outdoor, with respect to Style # H8012000 (Model Brewster 2317). In your request, you opine that the subject shoe should be classified under subheading 6404.19.9030, HTSUSA, as other footwear having a foxing or foxing-like band. Together with your request for reconsideration, you provided a sample of Style # H8012000 (Model Brewster 2317) along with a sample of the outer sole (detached from the upper). We note that the complete slip-on shoe has been cross-sectioned to reveal the manner in which the upper is attached to the outer sole. The additional detached outer sole has been measured to determine the composition of the alleged foxing.

**ISSUE:**

Whether the subject men’s closed-toe, closed-heel, casual slip-on shoe is classified under subheading 6404.19.3940, HTSUSA, as other footwear not having a foxing or foxing-like band, or under subheading 6404.19.9030, HTSUSA, as other footwear having a foxing or foxing-like band.

**LAW AND ANALYSIS:**

Classification under the HTSUSA 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 GRIs may then be applied.

The 2020 HTSUSA provisions under consideration are as follows:

|                   |   |
|-------------------|---|
| <b>6404</b>       | Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials:  |
| 6404.19           | Footwear with outer soles of rubber or plastics:  |
|                   | Other:  |
|                   | Footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except... footwear having foxing or foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper: |
|                   | Other:  |
| 6404.19.39        | Other...  |
|                   | Other...  |
| 6404.19.39.40     | For men....   |
|                   | * * * * *   |
| <b>6404.19.90</b> | Valued over \$12/pair...  |
| 6404.19.90.30     | For men....   |

Note 4 to Chapter 64, HTSUS, states as follows:  
 Subject to note 3 to this chapter:

- (a) The material of the upper shall be taken to be the constituent material having the greatest external surface area, no account being taken of accessories or reinforcements such as ankle patches, edging, ornamentation, buckles, tabs, eyelet stays or similar attachments;
- (b) The constituent material of the outer sole shall be taken to be the material having the greatest surface area in contact with the ground, no account being taken of accessories or reinforcements such as spikes, bars, nails, protectors or similar attachments.

You argue that Style # H8012000 (Model Brewster 2317) (*hereinafter*, “the Brewster”) should not have been classified under subheading 6404.19.3940, HTSUSA. Instead, you assert that the Brewster should be classified under subheading 6404.19.9030, HTSUSA. Specifically, you assert that the Brewster should be classified under subheading 6404.19.9030, HTSUSA, because it has a foxing-like band.

CBP has previously addressed the distinction between footwear featuring foxing or a foxing-like band as opposed to footwear without foxing. For example, in Headquarters Ruling Letter (“HQ”) 083120, dated February 6, 1990, CBP determined that a strip feature of an athletic shoes was a “bumper” rather than a foxing-like band. Moreover, in HQ 083120, we explained that CBP has set forth guidelines relating to characteristics of foxing and a foxing-like band in Treasury Decision (“T.D.”) 83–116, Cust. Bull. 229 (1983). In particular, the decision in HQ 083120 explained that the guidelines in T.D. 83–116 indicate that the following five (5) criteria are characteristics of foxing:

- 1). A foxing is a strip of material which is separate from the sole and upper;
- 2). A foxing secures the joint between the sole and upper;
- 3). A foxing must overlap the upper and the overlap must be readily discernible;
- 4). A foxing is a band, i.e. a strip serving to join, hold together or integrate two or more things. . . ;
- 5). A foxing must encircle or substantially encircle the entire shoe.

A more recent set of criteria was set forth by the Footwear Distributors and Retailers of America (“FDRA”). According to the FDRA a foxing-like band is defined as follows:

A foxing-like band—

1. has the same or nearly the same appearance, qualities or characteristics as a foxing<sup>2</sup>
2. does not have to be a separate component and is often part of the unit-molded sole
3. must be applied or molded at the sole, overlap the upper and substantially encircle the entire shoe
4. the overlap must be ¼ inch or more (measured vertically starting from where the upper material turns upward from the horizontal to the vertical plane) for footwear in American men’s, youths and boys sizes 11.5 and larger and American women’s and misses sizes 12.5

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<sup>2</sup> Foxing (as distinguished from foxing-like) is defined as being “a strip of material, separate from the sole and upper, that secures the joint where the upper and sole meet, usually attached by a vulcanization process; a foxing must be applied or molded at the sole and overlap the upper and substantially encircle the entire shoe.” Key Footwear Definitions, FDRA, at, <https://fdra.org/key-issues-and-advocacy/footwear-customs/key-footwear-definitions/>. (last visited, 11/21/2019).

and larger, 3/16 inch or more for American children's size 8.5 up to boys size 11 and girls size 12 and 1/8 inch or more for infants sizes 0 through 8

5. an encirclement of 40% or less of the shoes perimeter is not "substantial" and does not constitute a foxing-like band. An encirclement of 60% or more is "substantial" and is a foxing-like band. An encirclement between 41% and 59% may be a foxing-like band depending upon the type of shoe and placement, function and appearance of the overlap.

Similarly, in HQ 952307, dated August 17, 1992, CBP discussed the "Characteristics of a Foxing-Like Band" explaining that a foxing-like band has the same appearance or characteristics as the foxing appearing of a traditional sneaker or tennis shoe.

Under the present facts, Marolina Outdoors submitted a sample of Style # H8012000 ("the Brewster") along with a separate (detached) sample of the outer sole component. Upon review of the new information provided along with an assessment of the two samples submitted, it is our view that NY N285624 incorrectly determined that the Brewster did not have a foxing-like band. In particular, the outer sole which covers and overlaps the upper textile material of the shoe, measures ¼ (one-fourth) of an inch vertically around the entire perimeter. Also, unlike the footwear in HQ 083120 and HQ 952307, the foxing-like band of the subject Brewster encircles the entire shoe, including the front toe area and the heel area. It has the appearance and characteristic of the foxing on traditional tennis shoes. Likewise, the foxing-like band of the Brewster does not stem from a separate component but instead is molded into and is part of the outer-sole component.

#### **HOLDING:**

By application of GRI 1, we find that Style # H8012000 (Model Brewster 2317) is provided for in heading 6404, HTSUS, and is specifically classified under subheading 6404.19.9030, HTSUSA, which provides for: "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: Footwear with outer soles of rubber or plastics: Other: Footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except...footwear having foxing or foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper: Other: Valued over \$12/pair, For men." The 2019 column one, general rate of duty is 9% *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/](http://www.usitc.gov/tata/hts/).

#### **EFFECT ON OTHER RULINGS:**

NY N285624, dated May 24, 2018, is MODIFIED.

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

*Sincerely,*

CRAIG T. CLARK,

*Director*

*Commercial and Trade Facilitation Division*

N285624

May 24, 2017

CLA-2-64:OT:RR:NC:N3:447

CATEGORY: Classification

TARIFF NO.: 6402.99.3145; 6404.19.3940;  
6404.19.9030

MR. RICHARD L. WRITSMAN  
JAMES J. BOYLE CO.  
1200 CORPORATE CENTER DR.  
SUITE 350  
MONTEREY PARK, CA 91754

RE: The tariff classification of footwear from China

DEAR MR. WRITSMAN:

In your letter dated April 21, 2017 you requested a tariff classification ruling on behalf of Marolina Outdoor Inc. The submitted samples will be returned to you.

Style # H8332000 (Model Flipster), is a men's open-toe, open-heel, flip flop sandal. The "Y" shaped upper strap, with a thong between the first and second toe, is made from 100 percent rubber or plastics. The word Huk in a contrasting color appears on the lateral side of the strap as well as the foot bed. The outer sole is made from 100 percent rubber or plastics. It does not feature a separate insole, a foxing, or a foxing-like band.

We disagree with your suggested classification of Style # H8332000 (Model Flipster), under heading 6402.20.0000, Harmonized Tariff Schedule of the United States (HTSUS), as footwear with outer soles and uppers of rubber or plastics: footwear with upper straps or thongs assembled to the sole by means of plugs (zoris). In order for this sandal to be considered a zori, it must meet seven requirements defined in Treasury Decision (T.D.) 93-88, "Footwear Definitions" dated October 25, 1993, which states in pertinent part; "Zori" footwear must have a molded upper or plastic upper segment with plugs at the end of each segment that must penetrate all or part of the sole. The submitted sandal fails to meet this requirement of "zori" footwear as the upper is not assembled to the outer sole by means of plugs. It will be classified elsewhere.

Style # H8012000 (Model Brewster 2317), is a men's closed-toe, closed-heel, below-the-ankle, casual slip-on shoe. The upper is made from 100 percent cotton textile material. Elastic gore is sewn on the lateral and medial sides of the vamp. The medial side of the shoe has two metal vent holes covered with a mesh. Embroidered onto the lateral side of the shoe is the word Huk and a textile material label with the word Huk and the phrase Performance Fishing is sewn onto the vamp. The outer sole is made from 100 percent rubber or plastics. The shoe is not protective nor does it have a foxing or foxing-like band. The shoe is valued over \$12/pair.

Style # H8011000 (Model Attack), is men's closed-toe, closed-heel, below-the-ankle, lace-up shoe. The upper is made from nylon textile material. The upper features a textile overlay pattern along the perimeter of the shoe that extends upward to form an eyelet stay. It has a separate tongue with a sewn on strip of fabric through which the laces are threaded. There is a rubber or plastics piece at the top end of the tongue with the word Huk in a contrasting color. Embroidered onto the toe area on the lateral side of the shoe is the word Huk. Sewn onto the heel is a pull-on strap with the phrase Performance

Fishing. The outer sole made from rubber or plastics features drainage holes. The shoe is not protective, and does not feature a foxing, or a foxing-like band. The value of the shoe is over \$12/per pair.

The applicable subheading for Style # H332000 (Model Flipster) will be 6402.99.3145, HTSUS, which provides for footwear with outer soles and uppers of rubber or plastics: other footwear: other: other: having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): other: other: other: for women: other. The rate of duty will be 6 percent ad valorem.

The applicable subheading for Style # H8012000 (Model Brewster 2317) will be 6404.19.3940, HTSUS, which provides for footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: footwear with outer soles of rubber or plastics: not sports footwear; footwear not designed to be a protection against cold or inclement weather; footwear of the slip-on type; footwear that is not less than 10 percent by weight of rubber or plastics; other: other: for men. The rate of duty will be 37.5 percent ad valorem.

The applicable subheading for Style # H8011000 (Model Attack) will be 6404.19.9030, HTSUS, which provides for footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: footwear with outer soles of rubber or plastics: not sports or athletic footwear; other: valued over \$12/pair: for men. The rate of duty will be 9 percent ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <https://hts.usitc.gov/current>.

Your inquiry does not provide enough information for us to give a classification ruling on Style # H8331000 (Model Caruso). Your request for a classification ruling should include the external surface area measurements, by percentage, for all component materials comprising the upper of the submitted sample, excluding any accessories or reinforcements (as per Note 4(a) to Chapter 64, HTSUS). Specifically, what is the surface area occupied by the leather and textile? Include the specific fiber content of the textile portion (i.e. cotton, man-made, etc.). When this information is available, you may wish to consider resubmission of your request. We are returning any related sample, exhibits, etc. If you decide to resubmit your request, please include all of the material that we have returned to you.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stacey Kalkines at [stacey.kalkines@cbp.dhs.gov](mailto:stacey.kalkines@cbp.dhs.gov).

*Sincerely,*

STEVEN A. MACK

*Director*

*National Commodity Specialist Division*

**AGENCY INFORMATION COLLECTION ACTIVITIES:****Passenger List/Crew List**

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

**ACTION:** 30-Day notice and request for comments; extension of an existing collection of information.

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than May 11, 2020) to be assured of consideration.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to [dhsdeskofficer@omb.eop.gov](mailto:dhsdeskofficer@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email [CBP\\_PRA@cbp.dhs.gov](mailto:CBP_PRA@cbp.dhs.gov). Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (84 FR 67749) on December 11, 2019, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the

proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### **Overview of This Information Collection:**

**Title:** Passenger List/Crew List.

**OMB Number:** 1651-0103.

**Form Number:** CBP Form I-418.

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

**Type of Review:** Extension (without change).

**Abstract:** CBP Form I-418 is prescribed by CBP, for use by masters, owners, or agents of vessels in complying with Sections 231 and 251 of the Immigration and Nationality Act (INA). This form is filled out upon arrival of any person by commercial vessel at any port within the United States from any place outside the United States. The master or commanding officer of the vessel is responsible for providing CBP officers at the port of arrival with lists or manifests of the persons on board such conveyances. CBP is in the process of amending its regulations to allow for the electronic submission of the data elements required on CBP Form I-418. This form is provided for in 8 CFR 251.1 and 251.3. A copy of CBP Form I-418 can be found at <https://www.cbp.gov/newsroom/publications/forms?title=i-418&=Apply>.

**Affected Public:** Businesses.

**Estimated Number of Respondents:** 77,935.

**Estimated Number of Responses per Respondent:** 1.

**Estimated Time per Respondent:** 1 hour.

**Estimated Number of Total Annual Responses:** 77,935.

**Estimated Total Annual Hours:** 77,935.



Dated: April 6, 2020.

SETH D. RENKEMA,  
*Branch Chief,*  
*Economic Impact Analysis Branch,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, April 10, 2020 (85 FR 20286)]

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**AGENCY INFORMATION COLLECTION ACTIVITIES:**  
**NAFTA Regulations and Certificate of Origin**

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

**ACTION:** 30-Day notice and request for comments; extension of an existing collection of information.

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than May 11, 2020) to be assured of consideration.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov*.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email *CBP\_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at *https://www.cbp.gov/*.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (84 FR 68180) on December 13, 2019, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### Overview of This Information Collection

**Title:** NAFTA Regulations and Certificate of Origin.

**OMB Number:** 1651-0098.

**Form Number:** CBP Forms 434, 446, and 447.

**Abstract:** On December 17, 1992, the U.S., Mexico and Canada entered into an agreement, "the North American Free Trade Agreement" (NAFTA). The provisions of NAFTA were adopted by the U.S. with the enactment of the North American Free Trade Agreement Implementation Act. Public Law 103-182, 107 Stat. 2057 (1993).

CBP Form 434, *North American Free Trade Agreement Certificate of Origin*, is used to certify that a good being exported either from the United States into Canada or Mexico or from Canada or Mexico into the United States qualifies as an originating good for purposes of preferential tariff treatment under NAFTA. This form is completed by exporters and/or producers and furnished to CBP upon request. CBP Form 434 is provided for by 19 CFR 181.11, 181.22 and is accessible at: <https://www.cbp.gov/newsroom/publications/forms>.

CBP Form 446, *NAFTA Verification of Origin Questionnaire*, is a questionnaire that CBP personnel use to gather sufficient informa-

tion from exporters and/or producers to determine whether goods imported into the United States qualify as originating goods for the purposes of preferential tariff treatment under NAFTA as stated on the Certificate of Origin pertaining to the good. CBP Form 446 is provided for by 19 CFR 181.72 and is accessible at: <https://www.cbp.gov/newsroom/publications/forms>.

CBP Form 447, *North American Free Trade Agreement Motor Vehicle Averaging Election*, is used to gather information required by 19 CFR 181 Appendix § 11(2). This form is provided to CBP when a manufacturer chooses to average motor vehicles for the purpose of obtaining NAFTA preference. CBP Form 447 is accessible at: <https://www.cbp.gov/newsroom/publications/forms>.

**Current Actions:** This submission is being made to extend the expiration dates for CBP Forms 434, 446, and 447 with no change to the estimated burden hours or to the information collected.

**Type of Review:** Extension (without change).

**Affected Public:** Businesses.

*Form 434, NAFTA Certificate of Origin*

**Estimated Number of Respondents:** 40,000.

**Estimated Number of Responses per Respondent:** 3.

**Estimated Total Number of Responses:** 120,000.

**Estimated Time per Response:** 2 hours.

**Estimated Total Annual Burden Hours:** 240,000.

*Form 446, NAFTA Questionnaire*

**Estimated Number of Respondents:** 400.

**Estimated Number of Responses per Respondent:** 1.

**Estimated Total Number of Responses:** 400.

**Estimated Time per Response:** 2 hours.

**Estimated Total Annual Burden Hours:** 800.

*Form 447, NAFTA Motor Vehicle Averaging Election*

**Estimated Number of Respondents:** 11.

**Estimated Number of Responses per Respondent:** 1.28.

**Estimated Time per Response:** 1 hour.

**Estimated Total Annual Burden Hours:** 14.

Dated: April 6, 2020

SETH D. RENKEMA,  
Branch Chief,  
Economic Impact Analysis Branch,  
U.S. Customs and Border Protection.

**AGENCY INFORMATION COLLECTION ACTIVITIES:**

**Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers**

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

**ACTION:** 30-Day notice and request for comments; extension of an existing collection of information.

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than May 11, 2020) to be assured of consideration.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email [CBP\\_PRA@cbp.dhs.gov](mailto:CBP_PRA@cbp.dhs.gov). Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (84 FR 67750) on December 11, 2019, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should

address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### Overview of This Information Collection

**Title:** Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers.

**OMB Number:** 1651-0086.

**Form Number:** CBP Form 7401.

**Abstract:** This collection of information is used by CBP to make distributions of funds pursuant to the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA). 19 U.S.C. 1675c (repealed by the Deficit Reduction Act of 2005, Public Law 109-171, § 7601 (Feb. 8, 2006)). This Act prescribes the administrative procedures under which antidumping and countervailing duties assessed on imported products are distributed to affected domestic producers that petitioned for or supported the issuance of the order under which the duties were assessed. The amount of any distribution afforded to these domestic producers is based on certain qualifying expenditures that they incur after the issuance of the order or finding up to the effective date of the CDSOA's repeal, October 1, 2007. This distribution is known as the continued dumping and subsidy offset. The claims process for the CDSOA program is provided for in 19 CFR 159.61 and 159.63.

A notice is published in the **Federal Register** in June of each year in order to inform claimants that they can make claims under the CDSOA. In order to make a claim under the CDSOA, CBP Form 7401 may be used. This form is accessible at and can be submitted electronically through <https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=8776895>.

**Current Actions:** This submission is being made to extend the expiration date and to revise the burden hours as a result of updated estimates of the number of CDSOA claims prepared on an annual basis. There are no changes to the information collected.

**Type of Review:** Extension (with a change to the burden hours).

**Affected Public:** Businesses.

**Estimated Number of Respondents:** 1,200.

**Estimated Number of Responses per Respondent:** 2.

**Estimated Total Annual Responses:** 1,400.

**Estimated Time per Response:** 60 minutes.

**Estimated Total Annual Burden Hours:** 1,400.

Dated: April 6, 2020.

SETH D. RENKEMA,  
*Branch Chief,*  
*Economic Impact Analysis Branch,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, April 10, 2020 (85 FR 20289)]

## AGENCY INFORMATION COLLECTION ACTIVITIES:

### Foreign Assembler's Declaration

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

**ACTION:** 30-Day notice and request for comments; extension of an existing collection of information.

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than May 11, 2020) to be assured of consideration.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number

202–325–0056 or via email [CBP\\_PRA@cbp.dhs.gov](mailto:CBP_PRA@cbp.dhs.gov). Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at <https://www.cbp.gov/>.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (84 FR 67751) on December 11, 2019, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### Overview of This Information Collection

**Title:** Foreign Assembler's Declaration (with Endorsement by Importer).

**OMB Number:** 1651–0031.

**Abstract:** In accordance with 19 CFR 10.24, a Foreign Assembler's Declaration must be made in connection with the entry of assembled articles under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS). This declaration includes information such as the quantity, value and description of the imported merchandise. The declaration is made by the person who performed the assembly operations abroad and it includes an endorsement by the importer. The Foreign Assembler's Declaration is used by CBP to determine whether



the operations performed are within the purview of subheading 9802.00.80, HTSUS and therefore eligible for preferential tariff treatment.

19 CFR 10.24(d) requires that the importer/assembler maintain records for 5 years from the date of the related entry and that they make these records readily available to CBP for audit, inspection, copying, and reproduction. Instructions for complying with this regulation are posted on the CBP.gov website at: <http://www.cbp.gov/trade/trade-community/outreach-programs/trade-agreements/nafta/repairs-alterations/subchpt-9802>.

**Action:** 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.

*Foreign Assemblers Declaration (Reporting)*

**Estimated Number of Respondents:** 2,730.

**Estimated Number of Responses/ Recordkeeping per Respondent:** 128.

**Estimated Total Number of Responses:** 349,440.

**Estimated Time per Response/Recordkeeping:** 50 minutes.

**Estimated Total Annual Burden Hours:** 291,083.

*Foreign Assemblers Declaration (Record Keeping)*

**Estimated Number of Respondents:** 2,730.

**Estimated Number of Responses/ Recordkeeping per Respondent:** 128.

**Estimated Total Number of Responses:** 349,440.

**Estimated Time per Response/ Recordkeeping:** 5 minutes.

**Estimated Total Annual Burden Hours:** 29,004.

Dated: April 6, 2020.

SETH D. RENKEMA,  
Branch Chief,  
Economic Impact Analysis Branch,  
U.S. Customs and Border Protection.

**AGENCY INFORMATION COLLECTION ACTIVITIES:****Record of Vessel Foreign Repair or Equipment Purchase**

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

**ACTION:** 30-Day notice and request for comments; extension of an existing collection of information.

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than May 11, 2020) to be assured of consideration.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email [CBP\\_PRA@cbp.dhs.gov](mailto:CBP_PRA@cbp.dhs.gov). Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at <https://www.cbp.gov/>.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (84 FR 68181) on December 13, 2019, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the

proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### Overview of This Information Collection

**Title:** Record of Vessel Foreign Repair or Equipment Purchase.

**OMB Number:** 1651-0027.

**Form Number:** CBP Form 226.

**Abstract:** 19 U.S.C. 1466(a) provides for a 50 percent *ad valorem* duty assessed on a vessel master or owner for any repairs, purchases, or expenses incurred in a foreign country by a commercial vessel documented under the laws of the United States. CBP Form 226, Record of Vessel Foreign Repair or Equipment Purchase, is used by the master or owner of a vessel to declare and file entry on equipment, repairs, parts, or materials purchased for the vessel in a foreign country. This information enables CBP to assess duties on these foreign repairs, parts, or materials. CBP Form 226 is provided for by 19 CFR 4.7 and 4.14 and is accessible at: <https://www.cbp.gov/document/forms/form-226-record-vessel-foreign-repair-or-equipment-purchase>.

**Current Actions:** This submission is being made to extend the expiration date with no change to the burden hours or to the information collected on Form 226.

**Type of Review:** Extension (without change).

**Affected Public:** Businesses.

**Estimated Number of Respondents:** 100.

**Estimated Number of Responses per Respondent:** 11.

**Estimated Number of Total Annual Responses:** 1,100.

**Estimated Time per Response:** 2 hours.

**Estimated Total Annual Burden Hours:** 2,200.

Dated: April 6, 2020.

SETH D. RENKEMA,  
*Branch Chief,*  
*Economic Impact Analysis Branch,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, April 10, 2020 (85 FR 20287)]

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**AGENCY INFORMATION COLLECTION ACTIVITIES:**  
**Ship's Stores Declaration**

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

**ACTION:** 30-Day notice and request for comments; extension of an existing collection of information.

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than May 11, 2020) to be assured of consideration.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov*.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email *CBP\_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at *https://www.cbp.gov/*.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (84 FR 67749) on December 11, 2019, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### Overview of This Information Collection

**Title:** Ship's Stores Declaration.

**OMB Number:** 1651-0018.

**Form Number:** CBP Form 1303.

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

**Type of Review:** Extension (without change).

**Affected Public:** Businesses.

**Abstract:** Ship's Stores Declaration, CBP Form 1303, is used by the carriers to declare articles to be retained on board the vessel, such as sea stores, ship's stores (*e.g.* alcohol and tobacco products), controlled narcotic drugs or bunker fuel in a format that can be readily audited and checked by CBP. This form collects information about the ship, the ports of arrival and departure, and the articles on the ship. Ship's Stores Declaration, CBP Form 1303, is provided for by 19 CFR 4.7, 4.7a, 4.81, 4.85 and 4.87 and is accessible at: <https://www.cbp.gov/newsroom/publications/forms?title=1303&=Apply>.

**Estimated Number of Respondents:** 8,000.

**Estimated Number of Responses per Respondent:** 13.

**Estimated Number of Total Annual Responses:** 104,000.

**Estimated Time per Response:** 15 minutes.

**Estimated Total Annual Burden Hours:** 26,000.

Dated: April 6, 2020.

SETH D. RENKEMA,  
*Branch Chief,*  
*Economic Impact Analysis Branch.*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, April 10, 2020 (85 FR 20288)]



**AGENCY INFORMATION COLLECTION ACTIVITIES:**  
**General Declaration**

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

**ACTION:** 30-Day notice and request for comments; extension of an existing collection of information.

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than May 11, 2020) to be assured of consideration.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov*.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email *CBP\_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regard-

ing this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (84 FR 70561) on December 23, 2019, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

### Overview of This Information Collection

**Title:** General Declaration (Outward/Inward) Agriculture, Customs, Immigration, and Public Health.

**OMB Number:** 1651-0002.

**Form Number:** Form 7507.

**Action:** CBP proposes to extend the expiration date of this information collection with no change to the burden hours. There is no change to the information collected or CBP Form 7507.

**Type of Review:** Extension (without change).

**Abstract:** As provided in 19 CFR 122.43, an aircraft commander or agent must file CBP Form 7507, *General Declaration (Outward/Inward) Agriculture, Customs, Immigration, and Public Health* at the time of arrival for all aircraft required to enter pursuant to 19 CFR 122.41. As provided in 19 CFR 122.72 and 122.73, an aircraft commander or agent must file this form at the departure airport for all aircraft departing to a foreign area with commercial airport



cargo. As provided in 19 CFR 122.144, this form must be presented to CBP for signature by the inspecting officer in the U.S. Virgin Islands for flights from the U.S. Virgin Islands to the U.S. This form is used to document clearance and inspections by appropriate regulatory agency staffs. CBP Form 7507 collects information about the flight routing, the number of passengers embarking and disembarking, the number of crew members, a declaration of health for the persons on board, and details about disinfecting and sanitizing treatments during the flight. This form also includes a declaration attesting to the accuracy, completeness, and truthfulness of all statements contained in the form and in any document attached to the form.

CBP Form 7507 is authorized by 42 U.S.C 268, 19 U.S.C. 1431, 1433, and 1644a; and provided for by 19 CFR 122.43, 122.52, 122.54, 122.73, 122.144; and 42 CFR 71.21 and 71.32. This form is accessible at: <https://www.cbp.gov/newsroom/publications/forms?title=7507&=Apply>.

**Affected Public:** Businesses.

**Estimated Number of Respondents:** 500.

**Estimated Number of Responses per Respondent:** 2,644.

**Estimated Number of Total Annual Responses:** 1,322,000.

**Estimated Time per Response:** 5 minutes.

**Estimated Annual Burden Hours:** 110,123.

Dated: April 6, 2020.

SETH D. RENKEMA,  
*Branch Chief,*  
*Economic Impact Analysis Branch,*  
*U.S. Customs and Border Protection.*

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