

# Bureau of Customs and Border Protection

## *General Notices*

### **19 CFR PART 177**

#### **WITHDRAWAL OF RULING LETTERS RELATING TO INTELLECTUAL PROPERTY RIGHTS**

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

**ACTION:** Notice of withdrawal of ruling letters HQ 475073 and HQ 475468 pursuant to the Settlement Agreement effective May 11, 2004.

**SUMMARY:** Pursuant to the terms of a Settlement Agreement effective May 11, 2004, this notice advises interested parties that Customs is withdrawing two rulings concerning the admissibility of certain merchandise.

**EFFECTIVE DATE:** (Upon publication in the Customs Bulletin but no later than June 2, 2004)

**FOR FURTHER INFORMATION CONTACT:** Goli Gharib, Esq., Intellectual Property Rights Branch, (202) 572-8710.

#### **SUPPLEMENTARY INFORMATION:**

##### Background

A ruling letter dated January 12, 2004 was issued by the Intellectual Property Rights ("IPR") Branch in response to Pacific Cigar Company's ("Pacific Cigar") request for a binding ruling under 19 CFR Part 177 concerning the admissibility of certain merchandise bearing a label consisting of a "company logo" incorporating an image similar to that of the Great Seal of the United States. In that ruling, HQ 475073, the IPR Branch found that the merchandise would be subject to seizure and forfeiture.

Pacific Cigar requested expedited reconsideration of the ruling, which resulted in HQ 475468, dated March 9, 2004. In response to the request for reconsideration, the IPR Branch considered Pacific Cigar's arguments, but affirmed the original ruling.

Pacific Cigar brought action against the United States and U.S. Customs & Border Protection ("CBP") in the Court of International Trade ("CIT"), Court No. 04-00130, challenging the two rulings. Pursuant to a Settlement Agreement the parties agreed that the rulings would be withdrawn, and the case before the CIT would be dismissed. Accordingly, this notice and the attached letter to the importer's counsel operates as withdrawal of the above mentioned rulings, pursuant to the terms of the Settlement Agreement.

This withdrawal will cover only the issuance of the aforementioned rulings, and does not affect the substance of the rulings.

In accordance with the terms of the Settlement Agreement, this withdrawal will become effective upon publication in the *Customs Bulletin*.

Dated: May 19, 2004

LARRY BURTON,  
*Director,*  
*International Trade Compliance Division,*  
*Office of Regulations and Rulings,*  
*U.S. Customs and Border Protection.*

Attachment

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 476090  
May 19, 2004  
ENF 4-2 RR:IT:IP 476090 GG  
**CATEGORY: INTELLECTUAL PROPERTY RIGHTS**

MR. MICHAEL G. HODES, ESQ.  
HODES, KEATING & PILON  
39 South La Salle Street, Suite 1020  
Chicago, Illinois 60603

Re: Withdrawal of Ruling Letters HQ 475073 and HQ 475468

DEAR MR. HODES:

Pursuant to the Settlement Agreement entered into by the United States of America ("United States"), represented by the Department of Justice, and Pacific Cigar Company ("Pacific"), represented by you and the firm of Hodes Keating & Pilon effective May 11, 2004, regarding Court No. 04-00130 pending in the United States Court of International Trade, the above mentioned rulings are hereby withdrawn.

LARRY BURTON,  
*Director,*  
*International Trade Compliance Division,*  
*Office of Regulations and Rulings,*  
*U.S. Customs and Border Protection.*

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

*Washington, DC, May 19, 2004,*

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

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

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**19 CFR PART 177**

**REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF INDUSTRIAL SMOKING/COOKING APPARATUS**

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

**ACTION:** Notice of revocation of ruling letters and treatment relating to tariff classification of industrial smoking/cooking apparatus.

**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 (Customs) is revoking two rulings relating to the tariff classification of industrial smoking/cooking apparatus, and revoking any treatment Customs has previously accorded to substantially identical transactions. Notice of the proposed revocations was published on April 7, 2004, in the Customs Bulletin.

**EFFECTIVE DATE:** These revocations are effective for merchandise entered or withdrawn from warehouse for consumption on or after August 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** James A. Seal, Commercial Rulings Division (202) 572-8779.

**SUPPLEMENTARY INFORMATION:****Background**

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

Pursuant to Customs obligations, a notice was published on April 7, 2004, in the Customs Bulletin, Volume 38, Number 15, proposing to revoke HQ 959217, dated August 15, 1996, and HQ 959485, dated November 13, 1996. Both rulings classified industrial-type smoker/cookers or smokehouses as other industrial or laboratory furnaces and ovens, in subheading 8417.80.00, Harmonized Tariff Schedule of the United States (HTSUS). No comments were received in response to this notice.

As stated in the proposed notice, these modifications will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment it previously accorded to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning

the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C.1625(c)(1), Customs is revoking 959217 and 959485 to reflect the proper classification of industrial-type combination smoker/cookers or smokehouses in subheading 8419.81.90, HTSUS, as other cooking stoves, ranges and ovens, constituting machinery, whether or not electrically heated, for the treatment of materials by a process involving a change of temperature, such as heating, cooking, roasting . . . other than of a kind used for domestic purposes, in accordance with the analysis in HQ 966949 and HQ 966950, which are set forth as "Attachment A" and "Attachment B" to this document, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment it previously accorded to substantially identical transactions.

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

**DATED:** May 18, 2004

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 966949  
May 18, 2004  
CLA-2 RR:CR:GC 966949 JAS  
CATEGORY: Classification  
TARIFF NO.: 8419.81.90

WILLIAM L. GRIFFIN COMPANY  
7830 12th Ave. South  
Minneapolis, MN 55425

RE: VEMAG Aeromat, Smoker/Cooker for Industrial Preparation of Meat Products; HQ 959217 Revoked

DEAR SIRs:

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of HQ 959217 was published on April 7, 2004, in the Customs Bulletin, Volume 38, Number 15.

No comments were received in response to that notice. As previously stated, HQ 959217 represents the denial of Protest 3501-95-100086, which you filed with the Port Director of Customs, Minneapolis, MN, on behalf of Robert Reiser Company, Inc., Canton, MA. Any liquidation or reliquidation of the entry or entries in this protest will not be affected by this ruling, which sets forth the correct classification.

**FACTS:**

As described in HQ 959217, the VEMAG Aeromat, is a combined hot smoker/cooker used in the industrial preparation of turkey and other poultry meats. Submitted literature describes a walk-in chamber with sides, roof and door of polyurethane insulated base metal, and a chromium-nickel steel sheet floor. Utilizing a humidifier and air circulating fan with a range of between 10 degrees Celcius above ambient temperature and 95 degrees C, the apparatus heats the meat by means of steam passing through a heat exchanger. Apparatus of this type can also be equipped with a resistance heater powered by an electric current, but this type is not the subject of this protest. The VEMAG Aeromat is advertised for use in redding (browning), drying, smoking, boiling, spraying or hot air cooking, all in one operation. An optional heating system, that does not appear to be a part of this importation, permits baking at temperatures up to 140 degrees Celcius.

The provisions under consideration are as follows:

|            |  |
|------------|--|
| 8417       | Industrial or laboratory furnaces and ovens, including incinerators, nonelectric, and parts thereof:   |
| 8417.80.00 | Other  |
|            | * * * *  |
| 8419       | Machinery . . . whether or not electrically heated, for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting . . . other than of a kind used for domestic purposes . . . : |
| 8419.81    | Other machinery, plant or equipment:   |
| 8419.81.50 | Other cooking stoves, ranges and ovens   |
| 8419.81.90 | Other  |

**ISSUE:**

Whether the VEMAG Aeromat is a furnace or oven of heading 8417.

**LAW AND ANALYSIS:**

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

The 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 com-

mentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

HQ 959217 stated that the 8417 ENs were not helpful in clarifying the scope of that heading. It was further stated that the Aeromat appeared substantially similar to a kiln which was encompassed within the common and commercial meanings of the terms "furnace" and "oven" for tariff purposes. Thus, the conclusion followed that the Aeromat was also described by heading 8417. However, we note that the 8417 ENs do not distinguish between wet and dry heat, nor do they list operating temperatures for ovens of that heading. In addition, new and more precise sources of information now available to us indicates that as a class or kind smokehouses generally heat/cook using dry heat and wet heat produced by an external source of steam. The latter produces humidity which is necessary for fermentation, a curing process that liberates a culture which induces a chemical reaction in the meat. This appears to be part of the cooking process. Additionally, these sources also indicate that the term "oven" is restricted to apparatus that heat/cook using only dry heat. Upon careful consideration of all the available evidence, it now appears that the VERMAG Aeromat is not an oven, either under heading 8417 or heading 8419, but is other machinery of 8419.

**HOLDING:**

Under the authority of GRI 1, the VEMAG Aeromat is provided for in heading 8419. It is classifiable in subheading 8419.81.9080, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The current rate of duty under this provision 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](http://www.usitc.gov). HQ 959217, dated August 15, 1996, is revoked.

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

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

## [ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
 BUREAU OF CUSTOMS AND BORDER PROTECTION,  
 HQ 966950  
 May 18, 2004  
 CLA-2 RR:CR:GC 966950 JAS  
 CATEGORY: Classification  
 TARIFF NO.: 8419.81.90

THOMAS J. O'DONNELL  
 O'DONNELL, BYRNE & WILLIAMS  
 20 N. Wacker Drive, Suite 1416  
 Chicago, IL 60606

RE: Shroter Smokehouse, Smoker/Cooker for Industrial Preparation of  
 Meat Products; HQ 959485 Revoked

DEAR SIR:

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of HQ 959485 was published on April 7, 2004, in the *Customs Bulletin*, Volume 38, Number 15. No comments were received in response to that notice. As previously stated, HQ 959485 represents the denial of Protest 4104-96-100224. Any liquidation or reliquidation of the entry or entries in this protest will not be affected by this ruling, which sets forth the correct classification.

FACTS:

In HQ 959485, the Shroter Smokehouse was described as a steam-operated commercial oven used in large scale production of meat products such as sausage, pepperoni, prosciutto, etc. It is designed to operate at temperatures ranging from 70 degrees to 200 degrees Fahrenheit and is used in heating, cooking, roasting, evaporating, steaming, drying and cooling applications.

The claim you advanced in this protest under heading 8419, HTSUS, as other machinery for the treatment of materials by a process involving a change of temperature, was based on the assertion that notwithstanding the principal function of the smokehouse is to heat/cook foods because it is designed to maintain a temperature of between 50 and 200 degrees Fahrenheit (10 to 93 degrees Celsius), the unit also has the capability of completing the processing of food in the chamber by cooling at temperatures at or near freezing (32 degrees F). You argued this is not a function appropriate to industrial ovens of heading 8417.

The provisions under consideration are as follows:

8417 Industrial or laboratory furnaces and ovens, including incinerators, nonelectric, and parts thereof:

|            |         |
|------------|---------|
| 8417.80.00 | Other   |
|            | * * * * |



- 8419 Machinery . . . whether or not electrically heated, for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting . . . other than of a kind used for domestic purposes . . . :
- 8419.81 Other machinery, plant or equipment:
- 8419.81.50 Other cooking stoves, ranges and ovens
- 8419.81.90 Other

**ISSUE:**

Whether the Shroter Smokehouse is a furnace or oven of heading 8417.

**LAW AND ANALYSIS:**

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

The 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 System. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

HQ 959485 stated that the 8417 ENs were not helpful in clarifying the scope of that heading. It was further stated that the Shroter appeared substantially similar to a kiln which was encompassed within the common and commercial meanings of the terms “furnace” and “oven” for tariff purposes. Thus, the conclusion followed that the Shroter was also described by heading 8417. However, we note that the 8417 ENs do not distinguish between wet and dry heat, nor do they list operating temperatures for ovens of that heading. In addition, new and more precise sources of information now available to us indicates that as a class or kind smokehouses generally heat/cook using dry heat and wet heat produced by an external source of steam. The latter produces humidity which is necessary for fermentation, a curing process that liberates a culture which induces a chemical reaction in the meat. This appears to be part of the cooking process. Additionally, these sources also indicate that the term “oven” is restricted to apparatus that heat/cook using only dry heat. Upon careful consideration of all the available evidence, it now appears that the Shroter Smokehouse is not an oven, either under heading 8417 or heading 8419, but is other machinery of 8419.

**HOLDING:**

Under the authority of GRI 1, the Shroter Smokehouse is provided for in heading 8419. It is classifiable in subheading 8419.81.9080, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The current rate of duty under this provision is free. Duty rates are provided for your conve-

nience 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](http://www.usitc.gov). HQ 959485, dated November 13, 1996, is revoked.

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

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