

Bureau of Customs and Border Protection

General Notices

NOTICE OF WITHHOLDING OF CERTAIN DISTRIBUTIONS ON CONTINUED DUMPING AND SUBSIDY OFFSET TO AFFECTED DOMESTIC PRODUCERS

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

ACTION: Notice of the withholding of certain offset distributions for Fiscal Year 2006 and subsequent years.

SUMMARY: This document notifies the public that Customs and Border Protection (CBP), consistent with the Court of International Trade's recent decision in Canadian Lumber Trade Alliance et al. v. United States, will be withholding distributions under the Continued Dumping and Subsidy Offset Act of 2000 that derive from anti-dumping and countervailing duties assessed on goods from Canada or Mexico. Fiscal year 2006 CDSOA distributions that derive from antidumping or countervailing duties on other than Canadian or Mexican goods are not affected.

EFFECTIVE DATE: September 28, 2006.

FOR FURTHER INFORMATION CONTACT: Leigh Redelman, Revenue Division, Programs Branch, Office of Finance, (317) 614-4462.

SUPPLEMENTARY INFORMATION:

Background

The Court of International Trade (CIT) held in Canadian Lumber Trade Alliance et al. v. United States, Slip Op. 06-48 (April 7, 2006) (CLTA I) and Slip Op. 06-104 (July 14, 2006) (CLTA II), that pursuant to Section 408 of the North American Free Trade Agreement Implementation Act (codified at 19 U.S.C. 3438), the Continued Dumping and Subsidy Offset Act of 2000 (CDSOA) (codified at 19 U.S.C. 1675c) does not apply to antidumping and countervailing duties assessed on imports of goods from Canada or Mexico.

Specifically, the CIT held in CLTA I that the Commissioner of Customs and Border Protection (CBP) “has no authority either under an Act of Congress or under the Constitution” to make distributions that derive from antidumping and countervailing duties assessed on goods from Canada or Mexico, and that the Commissioner’s actions in having previously distributed such funds were “ultra vires and therefore unlawful.”

Consequently, pending the outcome of any appeal, CBP will withhold fiscal year 2006 and subsequent years’ CDSOA distributions to the extent they derive from duties assessed pursuant to countervailing duty orders, antidumping duty orders, or findings under the Antidumping Act of 1921, on imports of goods from Canada or Mexico. Any funds inadvertently distributed under these cases for fiscal year 2006 or subsequent years will be subject to immediate recovery under applicable statutes and regulations, including 19 CFR 159.64.

Fiscal year 2006 CDSOA distributions that derive from antidumping or countervailing duties on other than Canadian or Mexican goods will be made in accordance with established procedures in accordance with the “Notice of intent to distribute offset for Fiscal Year 2006,” as published in the **Federal Register** (71 FR 31336) on June 1, 2006.

Dated: September 22, 2006

DEBORAH J. SPERO,
*Acting Commissioner,
Customs and Border Protection.*

[Published in the Federal Register, September 28, 2006 (71 FR 57000)]

Docket No. USCBP- 2006-0116

Notice of Meeting of The Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (COAC)

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

ACTION: Notice of meeting.

SUMMARY: The Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection and Related Homeland Security Functions (popularly known as “COAC”) will meet in open session.

DATE: Thursday, November 9, 2006, 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at U.S. Customs and Border Protection, Office of Field Operations, One Penn Plaza, Suite 1100, New York, NY. If you desire to submit comments, they must be submitted by November 2, 2006. Comments must be identified by **USCBP-2006-0116** and may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **E-mail:** traderelations@dhs.gov. Include docket number in the subject line of the message.
- **Mail:** Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, Washington, DC 20229.
- **Facsimile:** 202-344-1969.

Instructions: All submissions received must include the words “Department of Homeland Security” and the docket number for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the COAC, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of Trade Relations, Customs and Border Protection, Department of Homeland Security, Washington, DC 20229, telephone 202-344-1440; facsimile 202-344-1969.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.), DHS hereby announces the meeting of the Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection and Related Homeland Security Functions (COAC). COAC is tasked with providing advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within DHS or the Department of Treasury. The eighth meeting of the ninth term of COAC will be held at the date, time and location specified above. A tentative agenda for the meeting is set forth below.

The meeting is open to the public¹. However, participation in COAC deliberations is limited to COAC members, Homeland Security and Treasury Department officials, and persons invited to at-

¹ Upon entry into One Penn Plaza, a photo identification must be presented to the security guards.

tend the meeting for special presentations. Since seating is limited, all persons attending this meeting should provide notice, preferably by close of business Thursday, November 2, 2006, to Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, Washington, DC 20229, telephone 202-344-1440; facsimile 202-344-1969.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate as soon as possible.

Tentative Agenda

1. Introductory Remarks.
2. Technology.
3. C-TPAT (Customs-Trade Partnership Against Terrorism).
4. CSI (Container Security Initiative).
5. Collection of Additional Data Elements for Cargo Security.
6. Office of Trade.
7. Port Security Legislation.

Dated: September 21, 2006

DEBORAH J. SPERO,
*Acting Commissioner,
Customs and Border Protection.*

[Published in the Federal Register, September 28, 2006 (71 FR 57000)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, September 27, 2006

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

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

19 CFR PART 177

MODIFICATION AND REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF ALLOY STEEL POWDER

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

ACTION: Modification and revocation of ruling letters and revocation of treatment relating to tariff classification of alloy steel powders.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP is modifying one ruling and revoking another ruling relating to the tariff classification of alloy steel powders under the Harmonized Tariff Schedule of the United States (HTSUS), and revoking any treatment CBP has previously accorded to substantially identical transactions. Notice of the proposed modification and revocation was published on August 9, 2006, in the *Customs Bulletin*, Vol. 40, No. 33. No comments were received in response to this notice.

EFFECTIVE DATE: This modification and revocation are effective for merchandise entered or withdrawn from warehouse for consumption on or after December 10, 2006.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Tariff Classification and Marking Branch (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 CBP 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 CBP 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 CBP to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to CBP's obligations, a notice was published on August 9, 2006, in the *Customs Bulletin*, Volume 40, Number 33, proposing to modify HQ 961028, dated November 13, 1998, which classified Wellmax NS-3 powder as powders of alloy steel, in subheading 7205.21.00, Harmonized Tariff Schedule of the United States (HTSUS). The notice also proposed to revoke HQ 965437, dated July 30, 2002, which classified synthetic iron oxide powder, referred to as Toda B-3, as other chemical products and preparations of the chemical or allied industries, not elsewhere specified or included, in subheading 3824.90.90, HTSUS. No comments were received in response to this notice.

As stated in the proposed notice, this modification and revocation 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 CBP during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment it previously accorded to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise is-

sues 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), CBP is modifying HQ 961028 to reflect the correct legal analysis and revoking HQ 965437 to reflect the proper classification of the merchandise in subheading 7205.21.00, HTSUS, as powders of alloy steel, in accordance with the analysis in HQ 968287 and HQ 968288, which are set forth as Attachments A and B, to this document, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment it previously accorded to substantially identical transactions.

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

DATED: September 26, 2006

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

Attachments



[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968287
September 26, 2006
CLA-2 RR:CTF:TCM 968287 JAS
CATEGORY: Classification
TARIFF NO.: 7205.21.0000

MR. ROBERT O. KECHIAN
NNR AIRCARGO SERVICE (USA) INC.
Hook Creek Blvd. & 145th Ave., Unit C-1A
Valley Stream, NY 11581

RE: HQ 961028 Modified; Wellmax NS-3 Powder

DEAR MR. KECHIAN:

In HQ 961028, which the U.S. Customs Service (now U.S. Customs and Border Protection (CBP)) Headquarters, issued to you on November 13, 1998, on behalf of Nissho Iwai American Corporation, Wellmax NS-3 powder was found to be classifiable as powders of alloy steel, in subheading 7205.21.00, Harmonized Tariff Schedule of the United States (HTSUS).

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 modification of HQ 961028 was published on August 9, 2006, in the *Customs Bulletin*, Volume 40, Number 33. No comments were received in response to this notice.

FACTS:

HQ 961028 described Wellmax NS-3 as being used in an injection molding machine to form bonded magnets. NS-3 is a combination of magnaquench crushed ribbon (isotropic powder) (MQ), composed of neodymium, iron, boron, and other minor constituents, plus polyphenylene sulfide. MQ is made by processing neodymium oxide and fluoride to yield neodymium-iron eutectic material. This is then combined with ferroboration, cobalt, and other elements in an inert atmosphere-controlled alloy furnace.

The alloy is melted then ejected onto a chilled rotating wheel in a jet cast process causing a rapid solidification process which produces flakes of neodymium-iron-boron (NdFeB). These flakes are then crushed to form MQ powder which is combined with polyphenylene sulfide at a ratio of 85%:15% to make Wellmax NS-3. The product is said to consist of 22-28% neodymium, 0.8% boron, > 35% iron, <18% cobalt, 0.9% carbon, and 10-15% polyphenylene sulfide. CBP Laboratory Report 2-97-21735-001, dated July 2, 1997, states that Wellmax NS-3 powder is a "mixture of metal alloy powder and over 5% aromatic resin." The product will be used in the production of magnets by injection molding.

The HTSUS provisions under consideration are as follows:

7205	Granules and powders, of pig iron, spiegeleisen, iron or steel:
7205.10.00	Granules Powders:
7205.21.00	Of alloy steel
7205.29.00	Other

ISSUE:

Whether Wellmax NS-3 is an alloy steel powder.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified 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 and, therefore not dispositive, 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. CBP believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

In confirming the classification of Wellmax NS-3 in subheading 7205.21.00, HTSUS, HQ 961028 revoked NY A88776, dated November 18, 1996, which classified the product as other chemical products and preparations of the chemical or allied industries, in subheading 3824.90.90, HTSUS. However, HQ 961028 relied, in large part, on Note 5(b) to Section XV, HTSUS, which governs the classification of alloys of base metal of Section

XV and elements not falling within Section XV. The ruling stated that “the combined weight of iron, and cobalt constitutes greater than 50 percent of the alloy and necessarily exceeds that of component *compounds* other than the base metals.” (Italics added). Since the term “elements” in Section XV, Note 5(b) refers to elements of the periodic table, and Wellmax NS-3 is composed of a steel powder and aromatic resin, a compound, Note 5(b) is not believed applicable in classifying this product.

A CBP Laboratory Report, dated July 2, 1997, describes a mixture of metal alloy powder and over 5% aromatic resin. Section XV, Note 7, HTSUS, states, in relevant part, that articles of mixed materials treated as articles of base metal under the General Rules of Interpretation containing two or more base metals are to be treated as articles of the base metal that predominates by weight over each of the other metals. HQ 961028 concluded that “steel predominates by weight over the other base metals, thus this product is a steel alloy . . . [h]owever, it does contain sufficient boron and cobalt to be considered an ‘other alloy steel.’” Lastly, for the reasons stated in HQ 961028, Wellmax NS-3 is a “powder” under Section XV, Note 8(b), HTSUS.

HOLDING:

Under the authority of GRI 1 and Section XV, Note 7, HTSUS, the Wellmax NS-3 powder is provided for in heading 7205 as powders of iron or steel. It is classifiable in subheading 7205.21.0000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as powders of alloy steel.

EFFECT ON OTHER RULINGS:

HQ 961028, dated November 13, 1998, is modified to reflect the correct legal analysis. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968288
September 26, 2006
CLA-2 RR:CTF:TCM 968288 JAS
CATEGORY: Classification
TARIFF NO.: 7205.21.0000

MR. WARREN WEBER
MANAGER, INTERNATIONAL TRADE SERVICES
IMATION ENTERPRISES CORP.
*1 Imation Place
Endeavor Building 301-2E-25
Oakdale, MN 55128*

RE: Synthetic Iron Oxide Powder B-3; HQ 965437 Revoked

DEAR MR. WEBER:

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 965437, dated July 30, 2002, was published on August 9, 2006, in the Customs Bulletin, Volume 40, Number 33. No comments were received in response to this notice.

As stated in the notice, because HQ 965437 represents a decision on a protest you filed with CBP, Long Beach, on behalf of Imation Enterprises Corp., the revocation of HQ 965437 will affect the legal principles in that decision but the liquidation or reliquidation of the underlying entries remains undisturbed. *San Francisco Newspaper Printing Co. v. United States*, 620 F. Supp. 738, 9 CIT 517 (1985).

FACTS:

The merchandise is described in HQ 965437 as synthetic iron oxide powder "B-3", also known as metal particles "B-3" (iron pellets) [hereinafter B-3], which is used in the manufacture of data storage tapes. Each of the B-3 particles contains thousands of similar particles and each particle consists of an inner metallic iron alloy core with an outer protective oxide shell. The metallic core is required to manufacture advanced data storage tapes. It is stated that the shell contributes nothing to the magnetic properties, but is necessary to prevent oxidation of the metallic core. Each B-3 particle is on the order of 0.15 microns in length and about 0.02 microns in diameter. For reasons of precaution, given the presence of significant amounts of elemental, finely-divided iron, these extremely fine particles are imported in five-gallon steel pails.

The HTSUS provisions under consideration are as follows:

3824 Chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:

3824.90	Other:
	Other:
	Other:
	Other:
3824.90.90 (now .91)	Other
	* * * *
7206	Granules and powders, of pig iron, spiegeleisen, iron or steel:
7206.10.00	Granules
	Powders:
7205.21.00	Of alloy steel
7205.29.00	Other

ISSUE:

Whether B-3 is an iron or steel powder of heading 7205.

LAW AND ANALYSIS:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

On protest, Toda B-3 was claimed to be classifiable in heading 7205, HTSUS, as granules of iron. CBP Laboratory Report LA20010992A (amended), dated December 4, 2001, found that a submitted sample of B-3 was a black pelletized powder containing only 76% iron, plus several other compounds. The laboratory further reported that the sample was a mixture of iron or its alloy and one or more inorganic compounds.

HQ 965437 noted that to be classified in heading 7205, HTSUS, a powder must be made of either pig iron, spiegeleisen, iron or steel. Because the B-3 powder contained only 76% iron plus several different compounds, it was concluded that the product did not meet the terms of heading 7205, HTSUS. Classification thus defaulted to heading 3824, HTSUS, because the B-3 powder was found to be "not elsewhere specified or included." Upon reconsideration, it appears that heading 7205, HTSUS, warrants further scrutiny.

The CBP Laboratory Report identified a "black palletized powder . . . a mixture of iron or its alloy and one or more inorganic compounds." Section XV, Note 7, HTSUS, states, in relevant part, that articles of mixed materials treated as articles of base metal under the General Rules of Interpretation containing two or more base metals are to be treated as articles of the base metal that predominates by weight over each of the other metals. Under GRI 3(b), HTSUS, mixtures consisting of different materials or made up of different components shall be classified as if consisting only of the material or component which gives the good its essential character, insofar as this criterion is applicable. Imation has attested that it buys B-3 for the superior magnetic quality of its metallic content which is necessary for making coatings for its data storage tapes. Lacking other evidence to contradict this assertion, we conclude that the iron alloy in the B-3 imparts the essential character to the product.

Because the B-3 powder has 0.01% carbon, by weight, it qualifies as Steel under Chapter 72, Note 1(d), HTSUS, and has the necessary alloying elements (i.e., aluminum, cobalt and manganese) to qualify as Other alloy steel under Chapter 72, Note 1(f), HTSUS.

HOLDING:

Under the authority of GRI 1 and Section XV, Note 7, HTSUS, the Toda 3-B powder is provided for in heading 7205. It is classifiable in subheading 7205.21.0000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as powders of alloy steel.

EFFECT ON OTHER RULINGS:

HQ 965437, dated July 30, 2002, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

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