

U.S. International Trade Commission

Washington, DC 20436

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Proposed Modifications to the Harmonized Tariff Schedule of the United States

Addendum

Investigation No. 1205-6



Publication 3945

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Recommendations

On June 12, 2007, the U.S. International Trade Commission (Commission) reopened Investigation No. 1205-6, *Proposed Modifications to the Harmonized Tariff Schedule of the United States*, Publication No. 3851, pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) (19 U.S.C. 3005). Notice of the action was published in the Federal Register on June 15, 2007 (see appendix A). The purpose of this action was to enable the Commission to re-examine the tariff treatment of certain products following the receipt of information that indicated their duty rates were changed by modifications recommended in Investigation No. 1205-6 and implemented, effective February 3, 2007, pursuant to Presidential Proclamation 8097. In addition, after the Commission's initial recommendations in this investigation were completed, U.S. Customs and Border Protection (Customs) requested certain changes in the Harmonized Tariff Schedule of the United States (HTS).

On the basis of this investigation, the Commission recommends that the President proclaim the modifications to the Harmonized Tariff Schedule of the United States (HTS) which are set forth in appendix B of this report. The changes in section 1 of appendix B are necessary and appropriate to correct the tariff treatment of certain goods in order to maintain "substantial rate neutrality," as required by section 1205(d)(1)(C) of the 1988 Act. The Commission recommends that the effective date of these changes be retroactive to February 3, 2007, in order to provide importers with the intended rate treatment to the greatest extent possible. Changes set forth in section 2 of appendix B are in response to additional issues raised by Customs subsequent to the original report in Investigation No. 1205-6. The Commission recommends that these changes be made effective no earlier than January 1, 2008. These modifications to the HTS are recommended pursuant to section 1205(a)(1) and (4) of the 1988 Act.

Statutory Authority

Subtitle B of title I of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) approved the United States' accession to the International Convention on the Harmonized Commodity Description and Coding System (HS), which was completed in Brussels on June 14, 1983, under the auspices of the Customs Cooperation Council, now known as the World Customs Organization (WCO). The Convention establishes a standardized tariff nomenclature, the purpose of which was, and is, to facilitate international trade through the use of a single nomenclature structure for the description, classification, and coding of imports and exports of the contracting parties. This nomenclature, under the requirements of the Convention, also assists in the collection, comparison, and analysis of international trade statistics. Article 3 of the HS Convention requires each contracting party to apply the HS nomenclature as the basis of its customs tariff nomenclature and publication of foreign trade statistics.

Under sections 1205 and 1206 of the 1988 Act, an administrative mechanism allows the President to proclaim certain types of modifications to the HTS, including changes needed to bring the HTS into conformity with proposed amendments of the HS nomenclature. The Commission is directed by section 1205(a) to keep the HTS under continuous review and to recommend appropriate modifications to the President whenever amendments to the HS nomenclature are adopted by the WCO and as warranted by particular circumstances:

“[The Commission] shall recommend to the President such modifications in the Harmonized Tariff Schedule as [it] considers necessary or appropriate–

- (1) to conform the [HTS] with amendments made to the Convention;
- (2) to promote the uniform application of the Convention and particularly the Annex thereto;
- (3) to ensure that the [HTS] is kept up-to-date in light of changes in technology or in patterns of international trade;
- (4) to alleviate unnecessary administrative burdens; and
- (5) to make technical rectifications.”

Section 1205(d) provides that the Commission cannot recommend a modification to the HTS unless the change (1) is “consistent with the [Harmonized System] Convention or any amendment thereto recommended for adoption;” (2) is “consistent with sound nomenclature principles;” and (3) “ensures substantial rate neutrality.” Any modification that would change a rate of duty must be consequent to, or necessitated by, recommended nomenclature changes. Finally, the recommended modifications “must not alter existing conditions of competition for the affected U.S. industry, labor, or trade.”

Section 1206 of the 1988 Act authorizes the President to proclaim modifications to the HTS, on the basis of recommendations by the Commission under section 1205, if he determines that the proposed changes are in conformity with U.S. obligations under the HS Convention and do not run counter to the national economic interest of the United States. The modifications can be proclaimed only after the expiration of a 60-day period¹ that begins on the date the President submits a report to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate; the report must enumerate the proposed modifications and the reasons for making them. Such proclaimed modifications cannot become effective before the 15th day after the text of the implementing proclamation is published in the *Federal Register*.

Proposed Modifications

Section 1

The bulk of the modifications recommended in Investigation No.1205-6 were based on a recommendation of the Council of the WCO. The HS is defined at the 6-digit level, and the WCO recommendations were made at that level. In accordance with the requirements of the 1988 Act, the Commission recommended new 8-digit nomenclature for the HTS, which was intended to provide for “substantial rate neutrality” for the affected goods. Following implementation of the modifications set out in Presidential Proclamation 8097, the Commission received information that, on or after February 3,

¹ This period is computed based on “legislative days” and therefore excludes Saturdays and Sundays (unless Congress is in session) and any other day on which either the House or the Senate is not in session.

2007, certain products were assessed higher rates of duty as a result of Customs' interpretation of the new nomenclature.

Certain bamboo products

In the course of USITC Investigation No. 1205-6, new subheading 4412.10.00 was created to reflect an amendment made to the HS to provide separately for products of bamboo in heading 4412. The column 1-general duty rate (8 percent *ad valorem*) assigned to the new subheading was derived from former HTS subheadings 4412.29.36 and 4412.29.46, which covered plywood products of bamboo. However, non-plywood bamboo products of subheading 4412.29.56 (including certain multi-layered flooring products), which were free of duty, were not taken into account.

The Commission did not receive any comments concerning this anomaly during the public comment period following the publication of the preliminary report on this investigation (USITC Publication 3764), nor at any other time prior to implementation of the amendment, which took effect on February 3, 2007. However, when importers found that certain products that had previously received duty-free treatment under HTS subheading 4412.29.56 were now subject to duty under new subheading 4412.10.00 or, in the case of certain multi-layered bamboo flooring panels, under new subheading 4418.72.90, they notified the Commission of the problem.

After consultation with Customs, the Commission proposed, in its Federal Register notice of June 15, 2007, to correct the problem with the creation of two new subheadings, i.e., 4412.10.90 and 4418.72.91 (see Appendix A), which would restore the former duty-free treatment to the products in question. However, in a letter dated July 6, 2007, the law firm of Steptoe & Johnson LLP (Washington, DC) expressed particular concern about "vertical" flooring panels composed of narrow bamboo strips glued together face-to-face, rather than edge-to-edge, with the floor panel surface displaying the edges of the strips (see excerpt of Steptoe's letter in Appendix C). According to Customs, such flooring would have been covered by former HTS subheading 4412.29.56, as long as the strips were 6 mm or less in thickness. Such panels would be covered by proposed new subheading 4412.10.90, thereby conserving their duty-free treatment. Similar panels with strips greater than 6 mm in thickness would have been classifiable, before February 3, 2007, in HTS subheading 4418.90.00; they would now fall in HTS subheading 4418.79.00, with no change in duty rate.

In a letter dated July 2, 2007, an importer of bamboo flooring products, Smith & Fong Company (San Francisco, CA), expressed "strong support" for the amendments to Chapter 44 proposed in the Commission's *Federal Register* notice of June 15, 2007. It also supported making the changes retroactive to February 3, 2007, and recommended that interest be paid to importers on duties paid since February 3 (see excerpt of Smith & Fong's letter in Appendix D). The Commission is not in a position either to support or to oppose such interest payments, if indeed it is even decided to make the changes retroactive.

On August 12, 2007, late comments were received from the Law Offices of George R. Tuttle (San Francisco), on behalf of Smith & Fong, concerning so-called "strand bamboo flooring" which is produced by aligning bamboo fiber strands, combining them with a resin binder, and applying heat and pressure to form flat panels that are subsequently finished (see Appendix D). In this context, Tuttle suggested language to define the term "unidirectional" for the purposes of proposed new subheading 4418.72.91 to include strand bamboo flooring. However, Customs has indicated that the product in question is not an assembled, multi-layer flooring panel for the purposes of subheading 4418.72.91, but

instead has classified it in subheading 4418.90.00, both before and after February 3, 2007. Customs further indicates that the term “unidirectional” applies to all kinds of wood, not just bamboo. For these reasons, Customs opposes any legal definition of the term for the purposes of this study.

Broadcast reception apparatus

One of the modifications to the HTS implemented as a result of HS changes for 2007 was the transfer of apparatus for the reception of radiotelephony and radiotelegraphy from heading 8527 to other headings. The apparatus remaining in heading 8527 was for the reception of radiobroadcast signals.

In 2006, the structure of heading 8527 at the international level was roughly divided between radiobroadcast receivers of various kinds and “other apparatus.” Each of these two subdivisions had a residual “other” category. The transfer proposed by the WCO for 2007 eliminated the “other apparatus” subdivision from heading 8527.

In recommending changes to the HTS, the Commission seeks information from Customs and the private sector for the purposes of ensuring that the requirement of rate neutrality is satisfied. Prior to February 3, 2007, the residual provision for “other” radiobroadcast receivers was dutiable at a general rate of 3 percent *ad valorem*, and the residual for “other apparatus” was dutiable at 6 percent *ad valorem*. New nomenclature that was intended to maintain rate neutrality and provide a product description similar to that of the existing tariff provisions appeared in the final report on investigation No. 1205-6.² In the provisions as originally recommended, certain apparatus capable of receiving signals on frequencies other than just the AM and FM broadcast bands, which had been in the residual for “other apparatus,” were described as “receivers” under a rate line with a 6 percent *ad valorem* duty rate. A residual “other” for the revised heading 8527 was created, with a 3 percent *ad valorem* rate of duty, and was expected to cover the goods that had been covered by the residual “other” for radiobroadcast receivers.

When the amendments were implemented in February 2007, the intended classification of these “other” radiobroadcast receivers in the residual for heading 8527 did not happen. In classifying radiobroadcast receivers under the new nomenclature for heading 8527, Customs determined that new HTS subheading 8527.99.20 for “receivers” was sufficiently broad to cover the “other” radiobroadcast receivers. As a result, the applicable rate of duty was 6 percent, rather than the expected 3 percent rate for the residual “other” rate line. Many members of the consumer electronics industry voiced their concerns, both individually and through industry associations, about the apparent increase in the duty rate.

In the proposed technical correction in section 1 of appendix B of this report, provision is made for a residual rate line for “other radio receivers” with a duty rate of 3 percent *ad valorem* and an “other” residual for the heading with a duty rate of 6 percent *ad valorem*. A single rate line for other radio receivers is expected to simplify administration by Customs.³

² Proposed Modifications to the Harmonized Tariff Schedule of the United States, Inv. No. 1205-6, USITC Pub. No. 3851, April 2006, Appendix B, section 85-31.

³ The Commission is advised that Customs follows a court decision, *Channel Master v. United States*, 10 C.I.T. 684, 648 F.Supp. 10 (Oct. 29, 1986), which contains the legal definition of a radio receiver and provides a bright line distinction between goods that are radio receivers and those that are “other” than a radio receiver.

The Commission notes that the principle of rate neutrality would not be strictly maintained with the proposed change, because to do so would present significant descriptive, administrative and compliance problems. It would be necessary to obtain precise physical characteristics of the products classified in the residual tariff categories prior to February 3 in order to provide for them separately and preserve prior rate treatment, but locating the entry documents would be extremely difficult and might still not provide enough information. Further, it is believed that doing so would result in multiple 8-digit tariff lines with criteria that might be difficult to administer. Thus, a small group of radio receivers that were dutiable at 6 percent before February 3 would likely be dutiable at 3 percent with the implementation of the Commission's recommendations. No products in the heading are expected to have a higher duty than they were assessed before February 3, 2007.

The proposed technical correction of the provisions implemented on February 3, 2007, has been reviewed by Customs and the industry. Both Customs and the Commission believe that this will address the problem currently faced by importers of radio receivers.

Festive articles

Another modification to the HTS implemented as a result of HS changes for 2007 was the addition of Chapter 95 Note 1(v):

“(v) Tableware, kitchenware, toilet articles, carpets and other textile floor coverings, apparel, bed linen, table linen, toilet linen, kitchen linen and similar articles having a utilitarian function (classified according to their constituent material).”

As noted in the primary report, Customs recognized that the addition of the note would result in the transfer of certain articles from Chapter 95 to other chapters where they would be classified based on their constituent material. In many cases, the transfer would result in a duty increase unless provision was made to preserve the duty-free treatment obtained in heading 9505.

Rather than creating numerous rate lines in the constituent materials chapters, in the absence of specific information received from importers during the original investigation about entries liquidated free of duty under the existing rate lines, special provisions (subheadings 9817.95.01 and 9817.95.05) were created to allow importers shipping goods that had previously entered without duty to continue to claim such treatment. In order to propose any remedial tariff provision(s), it would be necessary to know the precise nature of individual articles that are reported to have become subject to duty since February 3, 2007.

A letter was received from Barnes, Richardson & Colburn (excerpt in Appendix E), representing the British Ceramic Confederation, requesting that the Commission create several duty-free rate lines in Chapter 69 for ceramic articles with particular holiday motifs. With no information from importers and Customs to indicate that the goods covered by the submission could not qualify for duty-free entry under the new chapter 98 provisions, the Commission does not recommend further HTS change beyond the creation of the new subheadings cited above.

Section 2

Customs has notified the Commission of several parts of the HTS which it believes are not consistent with the Convention or that cause unnecessary administrative burdens.

Ceramic articles

Additional U.S. Note 1 to Chapter 69 was derived from a nearly identical note in the earlier *Tariff Schedule of the United States*. However, the U.S. note is more restrictive in defining “ceramic articles” than is Note 1 to HS Chapter 69. In the past, application of the U.S. Additional Note has forced Customs to issue rulings that were not consistent with uniform interpretation of the HS by our trading partners. In a letter to the Commission (see appendix F), Customs has therefore requested that the U.S. Additional Note be deleted.

Nickel foil

HTS subheadings 7506.10.60 and 7506.20.60 are defined as covering, respectively, “non-alloy” and “alloy” nickel foil greater than 0.15 mm in thickness. However, consistent with its interpretation of the Explanatory Notes of the WCO, Customs does not classify material thicker than 0.15 mm as “foil.” Therefore, existing subheadings 7506.10.60 and 7506.20.60 are empty provisions. The deletion of these subheadings would clarify the classification of goods in the heading.

U.S. Note 3, Chapter 82, on rates of duty for certain sets of tools

Additional U.S. Note 3 provides instruction for determining rates of duty applicable to sets provided for in heading 8205, 8211 or 8215. In practice, the instruction is applied by Customs to sets in heading 8206, as well as to sets in the headings now listed in the Note. Therefore, it is recommended that heading 8206 be added to the list for clarity.

Tools in subheading 8205.59.40

Subheading 8205.59.40 provides for “Agricultural, horticultural, or forestry tools, and parts thereof” in the heading for “Handtools . . . not elsewhere specified or included.” However, there is a more specific provision for such tools in subheading 8201.90.60. Therefore, subheading 8205.59.40 can be deleted. Both subheading 8205.59.40 and subheading 8201.90.60 are free of duty.

Manicure and pedicure sets

Although the article description for subheading 8214.20 provides for manicure or pedicure sets, the existing language for the following 8-digit subheading restricts the scope to sets “in leather cases or other containers of types ordinarily sold therewith in retail sales.” Customs has found the provision difficult to administer because of the uncertain meaning of “other containers” in this context. If the phrase is interpreted narrowly to mean only substantial containers similar to the named “leather cases,” the nomenclature has no place for the sets named in the heading description. In practice, manicure and pedicure sets not imported in some container for retail sale would not be considered to be a set. The proposed change would make clear that sets, other than those in leather cases, are classified in 8214.20.90.

APPENDIX A

**FEDERAL REGISTER NOTICE CONCERNING
THIS INVESTIGATION**

Applications received thereafter shall be considered in order of filing.

8. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: June 7, 2007.

David D. Morlan,

Chief Cadastral Surveyor, Nevada.

[FR Doc. E7-11585 Filed 6-14-07; 8:45 am]

BILLING CODE 4310-HC-P

INTERNATIONAL TRADE COMMISSION

Proposed Addendum to Investigation No. 1205-6; Harmonized Tariff Schedule of the United States

AGENCY: United States International Trade Commission.

ACTION: Request for comments.

SUMMARY: The Commission requests comments with respect to the proposed modifications set forth at the end of this notice. The Commission is investigating the tariff treatment of certain products that appear to be subject to higher tariffs as a result of modifications recommended in investigation No. 1205-6 and implemented pursuant to Presidential Proclamation 8097. In addition, U.S. Customs and Border Protection (Customs) has requested certain changes in the Harmonized Tariff Schedule of the United States (HTS). Recommendations from this investigation will be included in an addendum to the original investigation report.

DATES:

June 29, 2007: Initial deadline for filing written submissions and comments.

July 6, 2007: Extended deadline for filing written submissions and comments.

August 20, 2007: Transmittal of Commission report to the United States Trade Representative.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be

viewed on the Commission's electronic docket (EDIS) at <http://www.usitc.gov/secretary/edis.htm>.

FOR FURTHER INFORMATION CONTACT: David Beck, Director, Office of Tariff Affairs & Trade Agreements (O/TATA) (202 205-2603 or david.beck@usitc.gov); or Fred Schottman, Nomenclature Analyst, O/TATA, (202 205-2077 or fred.schottman@usitc.gov), U.S. International Trade Commission, Washington, DC 20436. The media should contact Margaret O'Laughlin, Office of External Relations (202-205-1819 or margaret.olaughlin@usitc.gov). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

BACKGROUND: The Commission issued an earlier version of this notice on May 31, 2007. The notice requested that persons with an interest in the matter file any written submissions by June 29, 2007. However, due to a technical difficulty, the notice was not published in the **Federal Register**. In view of the delay, the Commission has extended to the close of business, July 6, 2007, the due date for filing written submissions. Also, the Commission has corrected three errors in the discussion in subsection (c) regarding Chapter 82.

Section 1205 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3005) directs the Commission to periodically review the HTS and make recommendations on modifications to the HTS. The changes may be for purposes including: (a) Conformity to modifications made to the Harmonized System Convention (Convention) of the World Customs Organization (WCO), (b) promotion of uniform application of the Convention and, (c) alleviation of unnecessary administrative burdens. The recommended changes should ensure "substantial rate neutrality".

In April 2006, the Commission issued a report entitled Proposed Modifications to the Harmonized Tariff Schedule of the United States, investigation No. 1205-6, Publication No. 3851. The modifications recommended in the report were put into effect on February 3, 2007, pursuant to Presidential Proclamation 8097, which was published in the **Federal Register** on January 4, 2007. Annexes to Proclamation 8097 were published in

USITC Publication No. 3898 (December 2006) and can be found on the USITC Web site (<http://www.usitc.gov>).

Written Submissions: No public hearing is planned in connection with these proposed modifications. However, parties are invited to submit written statements concerning the proposed modifications. All written submissions should be addressed to the Secretary and should be filed not later than 5:15 p.m., July 6, 2007. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf). Persons with questions regarding electronic filing should contact the Secretary (202-205-2000).

Any submissions that contain confidential business information (CBI) must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the CBI be clearly identified by means of brackets. All written submissions, except for CBI, will be made available for inspection by interested parties.

The Commission may include some or all of the CBI it receives in the final report it sends to the President. However, the Commission will not publish CBI in the public version of the final report in a manner that could reveal the operation of the firm supplying the information. The public version of the final report will be made available to the public on the Commission Web site.

Issued: June 12, 2007.

By order of the Commission.
Marilyn R. Abbott,
Secretary to the Commission.
BILLING CODE 7020-02-P

PROPOSED MODIFICATIONS

Section 1. Following implementation of the modifications set out in Presidential Proclamation 8097, it was recognized that certain products experienced higher rates of duty as a result of the modifications that went into effect February 3, 2007. The proposed modifications in Section 1 of this notice would be effective retroactively to February 3, 2007.

In order to restore the rate of duty previously applied to certain bamboo wooden flooring and to certain broadcast receivers, the Commission proposes to recommend that the HTS be amended as follows:

(a) Subheading 4412.10.00 would be superseded by the following:

	[Plywood, veneered panels and similar laminated...]			
"4412.10	Of bamboo:			
4412.10.05	Plywood	8%	Free (A*,AU,BH, CA,CL,E,IL,J, JO,MA,MX,P, SG)	40%
4412.10.90	Other	Free		40%"

Subheading 4418.72.90 would be superseded by the following:

	[Builders' joinery and carpentry of wood,...]			
	[Assembled flooring panels:]			
	[Other, multilayer:]			
	"Other:			
"4418.72.91	Of unidirectional bamboo	Free		40%
4418.72.95	Other	8%	Free (A*,AU,BH, CA,CL,E,IL,J, JO,MA,MX,P, SG)	40%"

(b) Subheadings 8527.99.20 and 8527.99.50 would be superseded by the following:

	[Reception apparatus for radiobroadcasting, ...]			
	[Other:]			
	[Other:]			
" 8527.99.15	Other radio receivers	3%	Free(A,AU,B,BH,C,CA, CL,E,IL,J,JO,MA, MX,P,SG)	35%
8527.99.40	Other	6%	Free (A,B,BH,C, CA,CL,E,IL,J,JO, MA,MX,P,SG) 1.5% (AU)	35%"

Section 2. Customs has notified the Commission of several parts of the HTS which it believes are not consistent with the HS Convention or cause unnecessary administrative burdens. Accordingly, the Commission proposes to recommend the following changes to the HTS, with the changes to be effective January 1, 2008.

CHAPTER 69

Additional U.S. Note 1 would be deleted, and Additional U.S. Notes 2 through 4 would be renumbered as 1 through 3, respectively.

Discussion: Additional U.S. Note 1 is more restrictive in defining “ceramic articles” than is Note 1 to the international Harmonized System (HS) Chapter 69. In the past, application of the U.S. Additional Note has forced Customs to issue rulings that were not consistent with uniform interpretation of the HS by our trading partners. Customs has therefore requested that the U.S. Additional Note be deleted.

CHAPTER 75

Heading 7506 would be deleted and superseded by the following:

“7506	Nickel plates, sheets, strip and foil:		
7506.10	Of nickel, not alloyed:		
7506.10.05	Not exceeding 0.15 mm in thickness	2.5%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX, P,SG)
			45%
	Other:		
7506.10.10	Cold-formed	3%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX, P,SG)
			35%
7506.10.30	Not cold-formed	2.5%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX, P,SG)
			25%
7506.20	Of nickel alloys:		
7506.20.05	Not exceeding 0.15 mm in thickness	3%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX, P,SG)
			45%
	Other:		
7506.20.10	Cold-formed	3%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX, P,SG)
			35%
7506.20.30	Not cold-formed	2.5%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX, P,SG)
			25%

Discussion: Consistent with its interpretation of the Explanatory Notes of the WCO, Customs does not classify material thicker than 0.15 mm as “foil” in heading 7506. Therefore, existing subheadings

7506.10.60 and 7506.20.60 are empty provisions and the proposed structure clarifies classification in the heading.

CHAPTER 82

(a) Additional U.S. Note 3 would be modified by deleting “8205, 8211” and inserting “8205, 8206, 8211” in lieu thereof.

Discussion: Additional U.S. Note 3 provides instruction for comparing rates of duty for the determination of the rate applicable to sets; the instruction is applicable to sets in heading 8206, as well as sets in the headings now listed in the Note.

(b) Subheadings 8205.59.40 through 8205.59.80 would be deleted and superseded by the following:

	[Handtools (including glass cutters)....]				
	[Other handtools (including)]				
	[Other:]				
	[Other:]				
	“Of iron or steel:				
8205.59.45	Caulking guns	5.3%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX,P,SG)	40%	
8205.59.55	Other	5.3%	Free (A,BH,CA, CL,E,IL,J,JO, MA,MX,P,SG) 1.3% (AU)	40%	
8205.59.60	Of copper	Free		40%	
8205.59.70	Of aluminum	1.5¢/g + 3.5%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX, P,SG)	19¢/kg + 40%	
8205.59.80	Other	3.7%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX,P,SG)	40%	

Discussion: “Tools of a kind used in agriculture, horticulture or forestry” are provided for in heading 8201. Therefore, existing subheading 8205.59.40 is empty. The proposed changes delete that subheading and make conforming changes.

(c) The superior text to subheading 8214.20.60 would be replaced by the following:

“Manicure and pedicure sets, and combinations thereof.”

Discussion: Although the article description for subheading 8214.20 provides for manicure or pedicure sets, the existing language for the following eight-digit subheading restricts the scope to sets “in leather cases or other containers of types ordinarily sold therewith in retail sales”. Customs has found the provision difficult to administer because of the uncertain meaning of “other containers” in this context. The proposed change makes clear that sets, other than those in leather containers, are classified in 8214.20.90.

APPENDIX B

**PROPOSED MODIFICATIONS TO THE
HARMONIZED TARIFF SCHEDULE OF THE
UNITED STATES**

APPENDIX B

Section 1.

CHAPTER 44

(a) Subheading 4412.10.00 is superseded by the following:

	[Plywood, veneered panels and similar laminated...]			
"4412.10	Of bamboo:			
4412.10.05	Plywood	8%	Free (A*,AU,BH, CA,CL,E,IL,J, JO,MA,MX,P, SG)	40%
4412.10.90	Other	Free		40%"

(b) Subheading 4418.72.90 is superseded by the following:

	[Builders' joinery and carpentry of wood,...]			
	[Assembled flooring panels:]			
	[Other, multilayer:]			
	"Other:			
"4418.72.91	Of unidirectional bamboo	Free		40%
4418.72.95	Other	8%	Free (A*,AU,BH, CA,CL,E,IL,J, JO,MA,MX,P, SG)	40%"

CHAPTER 85

(a) Subheadings 8527.99.20 and 8527.99.50 is superseded by the following:

	[Reception apparatus for radiobroadcasting, ...]			
	[Other:]			
	[Other:]			
" 8527.99.15	Other radio receivers	3%	Free(A,AU,B,BH,C,CA, CL,E,IL,J,JO,MA, MX,P,SG)	35%
8527.99.40	Other	6%	Free (A,B,BH,C, CA,CL,E,IL,J,JO, MA,MX,P,SG) 1.5% (AU)	35%"

APPENDIX B (continued)

Section 2.

CHAPTER 69

(a) Additional U.S. Note 1 is deleted, and Additional U.S. Notes 2 through 4 is renumbered as 1 through 3, respectively.

CHAPTER 75

(a) Heading 7506 is deleted and superseded by the following:

“7506	Nickel plates, sheets, strip and foil:			
7506.10	Of nickel, not alloyed:			
7506.10.05	Not exceeding 0.15 mm in thickness	2.5%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX, P,SG)	45%
	Other:			
7506.10.10	Cold-formed	3%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX, P,SG)	35%
7506.10.30	Not cold-formed	2.5%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX, P,SG)	25%
7506.20	Of nickel alloys:			
7506.20.05	Not exceeding 0.15 mm in thickness	3%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX, P,SG)	45%
	Other:			
7506.20.10	Cold-formed	3%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX, P,SG)	35%
7506.20.30	Not cold-formed	2.5%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX, P,SG)	25%”

APPENDIX B (continued)

CHAPTER 82

(a) Additional U.S. Note 3 is modified by deleting “8205, 8211” and inserting “8205, 8206, 8211” in lieu thereof.

(b) Subheadings 8205.59.40 through 8205.59.80 is deleted and superseded by:

	[Handtools (including glass cutters)...:]			
	[Other handtools (including ...)]			
	[Other:]			
	[Other:]			
	“Of iron or steel:			
8205.59.45	Caulking guns	5.3%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX,P,SG)	40%
8205.59.55	Other	5.3%	Free (A,BH,CA, CL,E,IL,J,JO, MA,MX,P,SG)	40%
			1.3% (AU)	
8205.59.60	Of copper	Free		40%
8205.59.70	Of aluminum		1.5¢/g + Free	
(A,AU,BH,CA, 19¢/kg +				
		3.5%	CL,E,IL,J,JO, MA,MX, P,SG)	40%
8205.59.80	Other	3.7%	Free (A,AU,BH,CA, CL,E,IL,J,JO, MA,MX,P,SG)	40%”

(c) The immediately superior text to subheading 8214.20.60 is replaced by:

“Manicure and pedicure sets, and combinations thereof.”

APPENDIX C

**LETTER FROM
STEPTOE & JOHNSON LLP
ON BEHALF OF
WORLD FLOOR COVERING ASSOCIATION**

STEPTOE & JOHNSON^{LLP}

ATTORNEYS AT LAW

Gregory S. McCue
202.429.6421
gmccue@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Tel 202.429.3000
Fax 202.429.3902
steptoe.com

July 6, 2007

PUBLIC DOCUMENT

By Hand Delivery

Ms. Marilyn R. Abbott
Secretary
U.S. International Trade Commission
500 E Street, S.W.
Washington, D.C. 20436

**Re: Proposed Addendum to Investigation No. 1205-6;
Harmonized Tariff Schedule of the United States**

Dear Secretary Abbott:

On behalf of our client, the World Floor Covering Association (“WFC”), we hereby submit these comments on the proposed modifications to the Harmonized Tariff Schedule of the United States (“HTSUS”) proposed by the Commission in the above-referenced Proposed Addendum, published in the Federal Register on June 15, 2007 (72 Fed. Reg. 33,246). For almost 50 years, the WFC has worked for the advancement of the floor covering industry by contributing to the development of public and industry policy. The WFC and its 3,000-strong retailer membership are dedicated to providing consumers with the information, service and support needed to ensure a successful floor covering purchase experience. The WFC submits these comment in order express its support for the Commission’s proposal and to point out that one additional modification is necessary to comply with U.S. law.

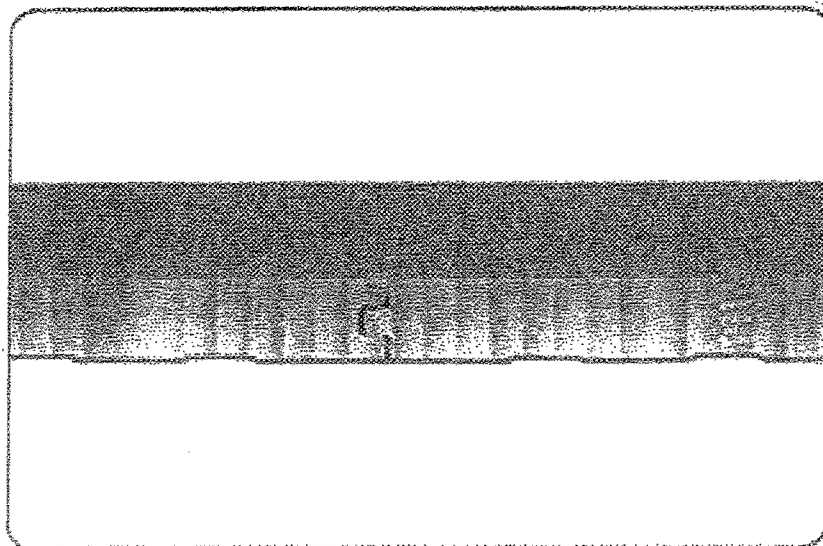
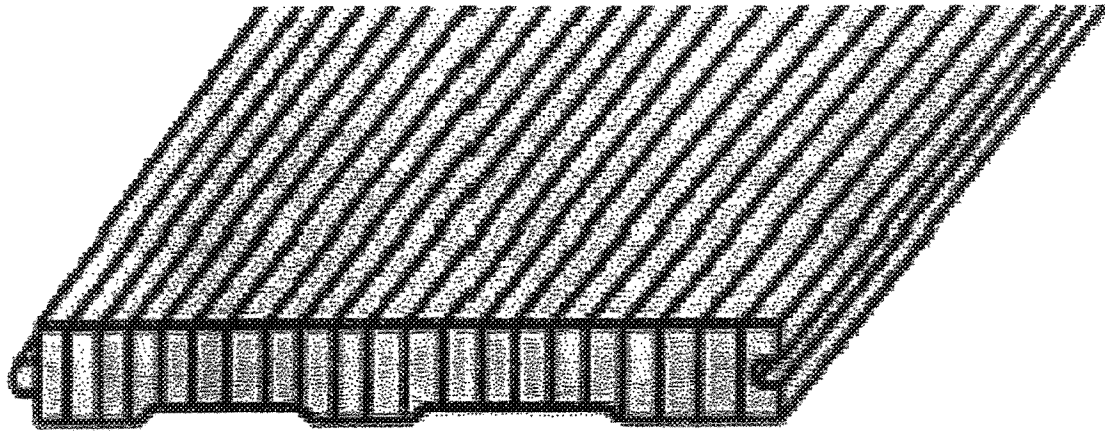
The Proposed Addendum includes additional modifications to the HTSUS for bamboo flooring products, among other products. These additional modifications are necessary because

some of the modifications recommended in Investigation No. 1205-6, and ultimately implemented by Presidential Proclamation, have turned out not to be neutral in application of duty rates. As the Commission is aware, U.S. law requires that any changes in HTSUS classification numbers generally must “ensure substantial rate neutrality.” Section 1205(d)(1)(C) of the Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. § 3005(d)(1)(C). Consistent with this statutory requirement, the Commission properly recognized that “certain products experienced higher rates of duty as a result of the modifications that went into effect February 3, 2007.” Thus, the Proposed Addendum is necessary “to restore the rate of duty previous applied to certain bamboo” flooring products, among other products. 72 Fed. Reg. at 33,248.

The WFCFA agrees with the modifications proposed by the Commission for subheadings 4412.10.00 and 4418.72.90, HTSUS, in order to ensure substantial rate neutrality for bamboo flooring products. On behalf of its members, the WFCFA greatly appreciates the Commission taking this action and specifying that the proposed revisions would be retroactive to February 3, 2007. This retroactivity is necessary because WFCFA members and other importers have been paying duties on imports of bamboo flooring products that did not apply prior to implementation of the modifications recommended in the original investigation.

As described in detail below, one additional modification is necessary to “ensure substantial rate neutrality,” as required by U.S. law. The needed modification is for a common type of bamboo flooring product using “vertical” construction. We respectfully request that the Commission include this additional modification in the report to be transmitted to the United States Trade Representative.

“Vertical” bamboo flooring is composed of multiple strips of bamboo glued together vertically on their wide surfaces. The strips are laminated so that the grains of all the strips run in the same direction. There is only one layer of depth with this vertical construction, and a person standing on the surface of the flooring will see multiple thin strips laid side-by-side. Illustrations showing the cross-section of typical vertical bamboo flooring products are included below.



In the version of the HTSUS in effect prior to February 3, 2007, vertical bamboo flooring products were classified under 4412.29.5600, HTSUS, which provided for “Plywood, veneered panels and similar laminated wood; Other, with at least one outer ply of nonconiferous wood; Other; Other.” The corresponding duty rate was free. Under the HTSUS structure, these products were considered “similar laminated wood” within the meaning of subheading 4412. They were classified as “other,” within the similar laminated wood category, because they did not meet the definition of “plywood” in the Explanatory Notes. This classification was repeatedly confirmed by U.S. Customs and Border Protection (“Customs”). See NY Customs Ruling M80889 (Mar. 29, 2006); NY Customs Ruling L87030 (Sept. 14, 2005); NY Customs Ruling K86546 (June 25, 2004); NY Customs Ruling J89044 (Oct. 31, 2003); NY Customs Ruling J88335 (Oct. 2, 2003); NY Customs Ruling I86366 (Oct. 10, 2002). Pre-2007 rulings included at Tab A.

In its original Proposed Modifications, the Commission confirmed that it “has always interpreted ‘substantial rate neutrality’ to mean that the rate proposed under section 1205 should reflect established U.S. Customs practice.” Proposed Modifications to the Harmonized Tariff Schedule of the United States, Inv. No. 1205-6, USITC Pub. No. 3851 at 9 (April 2006), excerpts included at Tab B.¹ Since these pre-2007 rulings unanimously confirm the established U.S. Customs practice of according duty free treatment to vertical bamboo flooring products, the end result of any HTSUS modifications must also be duty free treatment.

¹ See also *id.* at 16 (“The Commission considers the proposed modifications to be appropriate to provide for the goods concerned under the proper HS headings or subheadings without altering existing Customs tariff treatment. Furthermore, the modifications would not significantly alter existing conditions of competition for the affected U.S. industries, labor or trade. Consequently, the information collected by the Commission indicates that these modifications, if proclaimed, would ensure substantial rate neutrality and would have little or no effect on U.S. industry and labor.”) (emphasis added).

Under the current version of the HTSUS (in effect as of February 3, 2007), vertical bamboo flooring is classified under 4418.79.000, HTSUS, which provides for “Builders’ joinery and carpentry of wood, including cellular wood panels and assembled flooring panels, shingles and shakes; Assembled flooring panels; Other.” The corresponding duty rate is 3.2 percent. As an assembled flooring panel, vertical bamboo flooring products are now classified under heading 4418, HTSUS. However, this product does not have a multi-layer construction (in horizontal layers), and is therefore considered an “other” assembled flooring panel. This classification under the 2007 HTSUS structure already has been confirmed multiple times by Customs. See Customs Ruling N011396 (June 15, 2007); Customs Ruling N010868 (June 8, 2007); Customs Ruling N010035 (May 21, 2007); Customs Ruling N009461 (May 10, 2007). 2007 Rulings included at Tab C.

The attached rulings confirm that the 2007 HTSUS modifications resulted in an increase in the duty rate applied to vertical bamboo flooring from free to 3.2 percent. Because the Proposed Addendum does not address subheading 4418.79, HTSUS, an additional modification is required under § 3005(d)(1)(C). Therefore, WFCU urges the Commission to include an additional modification in its Addendum, in order to restore the duty free treatment required by law for vertical bamboo flooring panels.

In order to return vertical bamboo flooring panels to their prior duty free treatment, we submit that subheading 4418.79.00 should be divided into two subheadings. One should apply to bamboo products and carry a duty rate of free, while the other subheading should apply to all other products and continue the existing duty rate of 3.2 percent. This modification would be as follows:

Subheading 4418.79.00 would be superseded by the following:

	[Builders' joinery and carpentry of wood,...]	
	[Assembled flooring panels:]	
	Other:	
4418.79.05	Of bamboo.....	Free
4418.79.90	Other.....	3.2%

This modification is necessary to restore the previous duty free treatment for vertical bamboo flooring panels, as confirmed by numerous U.S. Customs rulings, so that the recommended tariff modifications of Investigation 1205-6 ensure substantial rate neutrality as required by law.

Vertical bamboo flooring panels are an important product for the wood floor covering industry and the increase in duty rate has had a significant impact on U.S. importers and consumers.

Please do not hesitate to contact the undersigned if you have any questions regarding this submission.

Respectfully submitted,



Gregory S. McCue
Michael T. Gershberg

Counsel to the World Floor Covering Association

TAB A

RE: The tariff classification of bamboo flooring from China

NY M80889

March 29, 2006

CLA-2-44:RR:NC:2:230 M80889

CATEGORY: Classification

TARIFF NO.: 4412.29.5600 ADD/CVD (EN)

Mr. Frank Gomez
World Exchange, Inc.
8840 Bellanca Ave.
Los Angeles, CA 90045

RE: The tariff classification of bamboo flooring from China

Dear Mr. Gomez:

In your letter dated February 21, 2006, on behalf of D & M Bamboo Flooring Co., you requested a tariff classification ruling.

The ruling was requested on several types of wood flooring. The types are identified as "Oak Wood Flooring" (Product Codes - DM Oak ML-0011-O, DM Oak ML-0010-O), "Walnut Wood Flooring" (Product Codes - DM Maple ML-0010-M, DM Maple ML-0011-M, DM Maple ML-0012-M) and "Bamboo Wood Flooring" (Product Codes - DM Bamboo TL-0011-B, DM Bamboo S-0010-B, DM Bamboo S-0012-B). Representative samples were submitted, including an additional sample of bamboo flooring (Product Code - DM Bamboo TC-0011-B).

The "Oak Wood Flooring" samples and the "Walnut Wood Flooring" samples are laminated wood boards consisting of seven plies of wood, each under 6 mm in thickness. The plies are laminated together so that the grain of each ply runs at an angle to the grain of the adjacent ply.

The "Bamboo Wood Flooring" samples consist of laminated bamboo boards measuring approximately 3-3/4" wide x 9/16" thick. The boards are tongued and grooved along the edges and have two shallow grooves running lengthwise down the bottom surface. The top surface is finished with a clear hard material.

Two of the bamboo flooring samples (TL-0011-B and TC-0011-B) consist of three "horizontal" layers of bamboo. Each layer is composed of edge-glued strips of bamboo and is under 6 mm in thickness. The grains of the layers run in the same direction. One sample is composed of natural light bamboo strips; the other sample is composed of carbonized dark bamboo strips.

The other two bamboo flooring samples (S-0010-B and S-0012-B) consist of multiple "vertical" layers of narrow strips of bamboo, each under 6 mm in thickness. The strips have been laminated together on their wide surfaces, with all of the grains running in the same direction. One sample is composed of natural light bamboo strips; the other sample is composed of carbonized dark bamboo strips.

The applicable subheading for the "Bamboo Wood Flooring", represented by the four samples described above, will be 4412.29.5600 (EN), Harmonized Tariff Schedule of the United States (HTSUS), which provides for: Plywood, veneered panels and similar laminated wood: Other, with at least one outer ply of nonconiferous wood: Other: Other (than plywood). The rate of duty will be free.

Your inquiry does not provide enough information to give a classification ruling for the "Oak Wood Flooring" or the "Walnut Wood Flooring". Your request for a classification of these plywood flooring products should include the common and botanical names of the species of wood of each ply. Identify which species is the face ply and which is the other outer ply. When this information is available, you may wish to consider resubmission of your request. The samples submitted will be retained in our office for 60 days pending resubmission of your ruling request. If you decide to resubmit your request, please include a copy of

this letter.

The holding set forth above applies only to the specific factual situation and merchandise description as identified in the ruling request. This position is clearly set forth in 19 CFR 177.9(b)(1). This section states that a ruling letter is issued on the assumption that all of the information furnished in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the assumption that the subject goods, in their condition as imported into the United States, conform to the facts and the description as set forth both in the ruling request and in this ruling. In the event that the facts or merchandise are modified in any way, you should bring this to the attention of U.S. Customs and Border Protection (CBP) and you should resubmit for a new ruling in accordance with 19 CFR 177.2. You should also be aware that the material facts described in the foregoing ruling may be subject to periodic verification by the CBP.

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 Paul Garretto at 646-733-3035.

Sincerely,


Robert B. Swierupski

Director,

National Commodity

Specialist Division


RE: The tariff classification of laminated bamboo flooring from China

NY L87030 

September 14, 2005

CLA-2-44:RR:NC:2:230 L87030 

CATEGORY: Classification

TARIFF NO.: 4412.29.5600 ADD/CVD  (EN)

Mr. Hung Tran
FloorEx International LLC
1711 Pierce Street
Philadelphia, PA 19145-2116

RE: The tariff classification of laminated bamboo flooring from China


Dear Mr. Tran:

In your letter dated August 16, 2005 you requested a tariff classification ruling.

The ruling was requested on four representative samples of bamboo flooring. The samples consist of flooring boards measuring 3-5/8" wide x 5/8" thick made of laminated bamboo strips. The boards have tongued and grooved edges and ends and shallow grooves running down the length of the bottom surface.

The samples labeled "Bamboo Vertical Natural Prefinished Solid" and "Bamboo Vertical Carbonized Prefinished Solid" consist of multiple strips of bamboo, each 5/8" wide and 6 mm or under in thickness, laminated together on their wide surfaces. The grains of all the strips or layers run in the same direction. The two samples differ only in their color; one has a light natural finish and the other has a dark carbonized finish. | | *

The samples labeled "Bamboo Horizontal Natural Prefinished Solid" and "Bamboo Horizontal Carbonized Prefinished Solid" consist of three layers of edge-glued strips of bamboo, each less than 6 mm in thickness. The grains of all the layers run in the same direction. The two samples differ only in their color; one has a light natural finish and the other has a dark carbonized finish.

The applicable subheading for the four samples of bamboo flooring described above will be 4412.29.5600  (EN), Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for: Plywood, veneered panels and similar laminated wood: Other, with at least one outer ply of nonconiferous wood: Other: Other (than plywood). The rate of duty will be free. | | *

The holding set forth above applies only to the specific factual situation and merchandise description as identified in the ruling request. This position is clearly set forth in 19 CFR 177.9(b)(1). This section states that a ruling letter is issued on the assumption that all of the information furnished in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the assumption that the subject goods, in their condition as imported into the United States, conform to the facts and the description as set forth both in the ruling request and in this ruling. In the event that the facts or merchandise are modified in any way, you should bring this to the attention of U.S. Customs and Border Protection (CBP) and you should resubmit for a new ruling in accordance with 19 CFR 177.2. You should also be aware that the material facts described in the foregoing ruling may be subject to periodic verification by the CBP.

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 Paul Garretto at 646-

733-3035.

Sincerely,



Robert B. Swierupski

Director,

National Commodity

Specialist Division


RE: The tariff classification of laminated bamboo flooring from China

NY K86546  

June 25, 2004

CLA-2-44:RR:NC:2:230 K86546 

CATEGORY: Classification

TARIFF NO.: 4412.29.5600 ADD/CVD  (EN)

Ms. Gloria I. Aviles-Cole
Wood Flooring International
1810 Underwood Blvd.
Delran, NJ 08075

RE: The tariff classification of laminated bamboo flooring from China

Dear Ms. Aviles-Cole:


In your letter dated May 25, 2004 you requested a tariff classification ruling.

The ruling was requested on four bamboo flooring products. Representative sample sections of boards were submitted.

The samples labeled "Vertical Natural Finished" and "Vertical Carbonized Finished" consist of multiple narrow strips of bamboo, each approximately 3 to 5 mm thick, laminated together on their wide surfaces. The strips are laminated together so that the grain of all the strips run in the same direction. The laminated boards measure 3-1/2" wide and 9/16" thick and are tongued and grooved on the edges and ends. The two boards differ only in their color; one has a light natural finish and the other has a dark carbonized finish. *

The sample labeled "Horizontal Carbonized Finished" consists of three layers of bamboo, each under 6 mm in thickness, laminated together so that the grain of all the layers run in the same direction. Each layer is composed of edge-glued strips of bamboo. The laminated board measures 3-1/2" wide and 9/16" thick and has tongued and grooved edges and ends.

The sample labeled "Engineered Carbonized Finished" consists of a top layer of bamboo, approximately 4 mm thick, laminated with a core of lumber strips and a back ply of wood veneer. The grains of the layers run at angles to each other. The cross-grained laminated board measures approximately 7-1/2" wide and 9/16" thick and has tongued and grooved edges.

The applicable subheading for the bamboo flooring products labeled "Vertical Natural Finished", "Vertical Carbonized Finished" and "Horizontal Carbonized Finished" will be 4412.29.5600  (EN), Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for Plywood, veneered panels and similar laminated wood: Other, with at least one outer ply of nonconiferous wood: Other (than plywood). The rate of duty will be free. *

Your inquiry does not provide enough information for us to give a classification ruling on the bamboo plywood flooring product labeled "Engineered Carbonized Finished". Your request for a classification ruling should include the specific identity by common and botanical name of the lumber core and the back ply. When this information is available, you may wish to consider resubmission of your request. If you decide to resubmit your request for a ruling for this product, please include a copy of this letter. The sample will be retained in our office for 60 days pending resubmission of your request.

The holding set forth above applies only to the specific factual situation and merchandise description as identified in the ruling request. This position is clearly set forth in 19 CFR 177.9(b)(1). This section states that a ruling letter is issued on the assumption that all of the information furnished in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the assumption that the subject goods, in their condition as imported into the United States, conform to the facts and the description as set forth both in the ruling request and in this ruling. In the event that the facts or merchandise are modified in any way, you should bring this to the attention of U.S. Customs and Border Protection (CBP) and you should resubmit for a new ruling in accordance with 19 CFR 177.2. You should also be aware that the material facts described in the foregoing ruling may be subject to periodic verification by the CBP.

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 Paul Garretto at 646-733-3035.

Sincerely,

Robert B. Swierupski

Director,

National Commodity

Specialist Division

Re: The tariff classification of laminated bamboo flooring planks from China.

NY J89044

October 31, 2003

CLA-2-44:RR:NC:SP:230 J89044

CATEGORY: Classification

TARIFF NO.: 4412.29.5600 ADD/CVD (EN)

Mr. Azeem Subhani
Profreight Brokers, Inc.
177-25 Rockaway Blvd.
Jamaica, NY 11434

RE: The tariff classification of laminated bamboo flooring planks from China.

Dear Mr. Subhani:

In your letter dated October 14, 2003, you requested a tariff classification ruling on behalf of Mannington Mills, Inc.

A sample was submitted for our examination. It is a flooring plank composed of numerous strips of bamboo (each 6 mm thick by 14 mm wide) which have been laminated together on their wide surfaces so as to create a board measuring 14 mm thick by 9½ cm wide by 95 cm long. The grain of all the strips runs in the same direction. The plank is tongued and grooved along the edges and ends, and in addition the bottom surface has two broad, parallel grooves running lengthwise. The product is also coated with a clear finishing material.

The applicable subheading for the bamboo flooring planks represented by the above-described sample will be 4412.29.5600 (EN), Harmonized Tariff Schedule of the United States (HTS), which provides for other (than certain enumerated) veneered panels and similar laminated wood, with at least one outer ply of nonconiferous wood. The rate of duty will be free.

The holding set forth above applies only to the specific factual situation and merchandise description as identified in the ruling request. This position is clearly set forth in 19 CFR 177.9(b)(1). This section states that a ruling letter is issued on the assumption that all of the information furnished in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the assumption that the subject goods, in their condition as imported into the United States, conform to the facts and the description as set forth both in the ruling request and in this ruling. In the event that the facts or merchandise are modified in any way, you should bring this to the attention of Customs and you should resubmit for a new ruling in accordance with 19 CFR 177.2. You should also be aware that the material facts described in the foregoing ruling may be subject to periodic verification by the Bureau of Customs and Border Protection.

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 Paul Garretto at 646-733-3035.

Sincerely,

Robert B. Swierupski

Director,

National Commodity Specialist Division

Re: The tariff classification of laminated bamboo flooring planks from China.

NY J88335

October 2, 2003

CLA-2-44:RR:NC:SP:230 J88335

CATEGORY: Classification

TARIFF NO.: 4412.29.5600 ADD/CVD (EN)

Ms. Kathy Reed
Page & Jones Inc.
52 N. Jackson Street
Post Office Drawer J
Mobile, Alabama 36601

RE: The tariff classification of laminated bamboo flooring planks from China.

Dear Ms. Reed:

In your letter dated August 22, 2003, you requested a tariff classification ruling on behalf of your client, M. Martin & Associates Corp. (Destin, FL). Samples representing two types of bamboo flooring planks were submitted for our examination.

The first sample is a section of a flooring plank measuring approximately 13½ mm thick by 9 cm wide. It consists of three layers of bamboo, each about 4 to 5 mm

thick, that have been laminated together. Each layer is made up of several edge-glued strips of bamboo. The grain of all the strips in the plank runs in the same direction. The plank is tongued and grooved along the edges, and in addition the bottom surface has two broad, parallel grooves running lengthwise. The product appears to be coated with a clear finishing material.

The second sample is a section of a flooring plank composed of numerous strips of bamboo (each approximately 6 mm or less in thickness by 13½ mm wide) which have been laminated together on their wide surfaces so as to create a board measuring approximately 13½ mm thick by 10 cm wide. The grain of all the strips runs in the same direction. The plank is tongued and grooved along the edges, and in addition the bottom surface has two broad, parallel grooves running lengthwise. The product is also coated with a clear finishing material.

The applicable subheading for the both of the above-described types of bamboo flooring will be 4412.29.5600 (EN), Harmonized Tariff Schedule of the United States (HTS), which provides for other (than certain enumerated) veneered panels and similar laminated wood, with at least one outer ply of nonconiferous wood. The rate of duty will be free.

The holding set forth above applies only to the specific factual situation and merchandise description as identified in the ruling request. This position is clearly set forth in 19 CFR 177.9(b)(1). This section states that a ruling letter is issued on the assumption that all of the information furnished in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the assumption that the subject goods, in their condition as imported into the United States, conform to the facts and the description as set forth both in the ruling request and in this ruling. In the event that the facts or merchandise are modified in any way, you should bring this to the attention of Customs and you should resubmit for a new ruling in accordance with 19 CFR 177.2. You should also be aware that the material facts described in the foregoing ruling may be subject to periodic verification by the Bureau of Customs and Border Protection.

*

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 Paul Garretto at 646-733-3035.

Sincerely,

Robert B. Swierupski

Director,

National Commodity Specialist Division

Re: The tariff classification of bamboo wood flooring from China

NY 186366

October 10, 2002

CLA-2-44:RR:NC:2:230 186366

CATEGORY: Classification

TARIFF NO.: 4412.29.5600 ADD/CVD (EN); 4412.14.3170 ADD/CVD (EN)

Mr. Thomas J. O'Donnell
Rodriguez O'Donnell Ross Fuerst
Gonzalez & Williams, P.C.
20 North Wacker Dr, Suite 1416
Chicago, IL 60606

RE: The tariff classification of bamboo wood flooring from China

Dear Mr. O'Donnell:

In your letter dated September 10, 2002, on behalf of Wood Floor Imports, you requested a tariff classification ruling.

The ruling was requested on four flooring products identified as "Natural Horizontal," "Carbonized Horizontal," "Natural Vertical" and "Carbonized Vertical." A sample book containing sections of the four products and several additional products was submitted. This ruling concerns only the four products described. A separate ruling request should be submitted along with sufficient information for any additional products such as the "Strand Woven" bamboo flooring.

"Natural Horizontal" is described as a flooring plank measuring 36" or 72" long by 3-5/8" wide by 5/8" thick. There are two samples labeled "Natural Horizontal" in the sample book. The first sample is, as described by you, composed of three layers of edge-glued strips of bamboo each 6 mm or under in thickness. The grains of all the layers run in the same direction. The second sample is also composed of three layers of edge-glued strips of bamboo each 6 mm or under in thickness. However, the grain of the middle layer runs at an angle to the grains of the adjacent layers. The sample book states that "All 72" Horizontal Flooring Has Crossply Core." Both samples are tongued and grooved on the edges and have a clear hard finish on the face. The first sample also has three grooves running lengthwise on the back surface. The second sample is also tongued on one end in addition to being tongued and grooved on the edges.

"Carbonized Horizontal" is the same as the "Natural Horizontal" except for the color. The carbonized bamboo flooring has a caramel brown color with a dark grain.

"Natural Vertical" is described as a flooring plank measuring 36" or 72" long by 3-5/8" wide by 5/8" thick. It consists of multiple strips of bamboo each 5/8" wide and 6 mm or under in thickness. The strips are laminated together on their wide surfaces. The grains of all the strips run in the same direction. The laminated plank is tongued and grooved on the edges and has three grooves running lengthwise on the back surface.

"Carbonized Vertical" is the same as the "Natural Vertical" except for the color. The color is caramel brown with a dark grain.

The applicable subheading for the "Natural Horizontal" and the "Carbonized Horizontal" with the grains of the layers running in the same direction and for the "Natural Vertical" and the "Carbonized Vertical" as described above will be 4412.29.5600 (EN), Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for plywood, veneered panels and similar laminated wood; other, with at least one outer ply of nonconiferous wood; other, other (than plywood). The rate of duty will be free.

✱

The applicable subheading for the "Natural Horizontal" and the "Carbonized Horizontal" with the crossply core will be 4412.14.3170 (EN), HTSUSA, which provides for plywood consisting solely of sheets of wood, each ply not exceeding 6 mm in thickness; other, with at least one outer ply of nonconiferous wood, not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply; other, other, other. The rate of duty will be 8 percent ad valorem.

The holding set forth above applies only to the specific factual situation and merchandise description as identified in the ruling request. This position is clearly set forth in 19 CFR 177.9(b)(1). This section states that a ruling letter is issued on the assumption that all of the information furnished in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the assumption that the subject goods, in their condition as imported into the United States, conform to the facts and the description as set forth both in the ruling request and in this ruling. In the event that the facts or merchandise are modified in any way, you should bring this to the attention of Customs and you should resubmit for a new ruling in accordance with 19 CFR 177.2. You should also be aware that the material facts described in the foregoing ruling may be subject to periodic verification by the Customs Service.

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 Paul Garretto at 646-733-3035.

Sincerely,

Robert B. Swierupski

Director,

National Commodity

Specialist Division

TAB B

U.S. International Trade Commission

Washington, DC 20436

www.usitc.gov

Proposed Modifications to the Harmonized Tariff Schedule of the United States

Investigation No. 1205-6



Publication 3851

April 2006

Modifications to bring the HTS into conformity with amendments to the HS Nomenclature

Multilayer flooring panels

In a letter dated November 30, 2004 (appendix E), the law firm of Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt L.L.P. opined that the Commission proposal to provide for multilayer flooring panels in new subheading 4418.72.90 at a column 1-general duty rate of 8 percent ad valorem was not revenue neutral. As indicated above (see section on *Executive authority*), proposals under section 1205 of the 1988 Act are to be “substantially rate neutral.” Grunfeld, et al. argued that the HSC had recently taken a decision to classify such flooring panels in existing subheading 4418.30, which in the HTS is duty free, and that the new subheading 4418.72.90 should therefore also be free of duty. However, the Commission has always interpreted “substantial rate neutrality” to mean that the rate proposed under section 1205 should reflect established U.S. Customs practice. In this case, Customs would normally have classified the subject goods in subheading 4412.22.31 or 4412.29.36. The Commission used the general rate from these subheadings for proposed new subheading 4418.72.90.

Hockey pants

In a late submission dated December 30, 2004 (appendix F), the law firm of Sidley Austin Brown & Wood L.L.P., on behalf of Bauer Nike Hockey, USA, expressed concern that new note 1(v) to chapter 95 might contradict a recent U.S. court case concerning the classification in the HTS of certain imported hockey pants (*Bauer Nike Hockey USA, Inc. v. United States*). In the *Bauer* case, the U.S. Court of Appeals for the Federal Circuit held that the subject hockey pants were classified as sports equipment in subheading 9506.99.25.

New note 1(v), which was adopted by the Harmonized System Committee in different context, specifically excludes from chapter 95 “...apparel...having a utilitarian function...” In its submission, Sidley et al. suggested that the ITC propose modified wording for new note 1(v) to chapter

PROBABLE ECONOMIC EFFECTS OF PROPOSED MODIFICATIONS

The Commission considers the proposed modifications to be appropriate to provide for the goods concerned under the proper HS headings or subheadings without altering existing Customs tariff treatment. Furthermore, the modifications would not significantly alter existing conditions of competition for the affected U.S. industries, labor or trade. Consequently, the information collected by the Commission indicates that these modifications, if proclaimed, would ensure substantial rate neutrality and would have little or no economic effect on U.S. industry or labor.

*

TAB C

RE: The tariff classification of bamboo flooring from China

NY N011396

June 15, 2007

CLA-2-44:RR:NC:2:230

CATEGORY: Classification

TARIFF NO.: 4418.72.9000 ADD/CVD (EN); 4418.79.0000 ADD/CVD (EN); 4418.90.4690 ADD/CVD (EN)

Ms. Naiyana McCaffrey
Unique Fusion, inc.
5320 N. Sheridan Rd., Suite 2209
Chicago, IL 60640

RE: The tariff classification of bamboo flooring from China

Dear Ms. McCaffrey:

In your letter, which was received on May 17, 2007, you requested a tariff classification ruling.

The ruling was requested on various types of bamboo, wood and cork flooring. Representative samples of nine different types of flooring were submitted. This ruling addresses the five types of bamboo flooring.

The "Solid Bamboo Horizontal" (not a "solid" piece of bamboo) consists of three layers of bamboo strips laminated together with the grains of all the layers running in the same direction. Each layer is approximately 5 mm thick and consists of bamboo strips (each approximately 5 mm thick x 20 mm wide) glued together on their edges. The strips may be natural in color or carbonized. The dimensions of the flooring, in the condition it will be imported in, are 960 mm x 96 mm x 15 mm. The edges and ends are tongued and grooved and the surface is finished with seven coats of sealers and anti-scratch coatings.

The "Solid Bamboo Vertical" (not a "solid" piece of bamboo) consists of multiple strips of bamboo (each approximately 14 mm wide x 5 mm thick) laminated together on their wide surfaces. The strips may be natural in color or carbonized. The dimensions of the flooring, in the condition it will be imported in, are 960 mm x 96 mm x 15 mm. The edges and ends are tongued and grooved and the surface is finished with seven coats of sealers and anti-scratch coatings. *

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUS) is in accordance with the General Rules of Interpretation (GRI), taken in order. GRI 1 requires that classification be determined according to the terms of the headings and any relative section or chapter notes. Where goods cannot be classified solely on the basis of GRI 1, the remaining GRI will be applied, in the order of their appearance.

Additional U.S. Note 4 (b) of Chapter 44, HTSUS, (a chapter note added in 2007) states that multilayer assembled flooring panels having a face ply 4 mm or more in thickness are included in Heading 4418.

The applicable subheading for the "Solid Bamboo Horizontal," consisting of a multilayer flooring panel having a face ply of 4 mm or more in thickness, will be 4418.72.9000 (EN), Harmonized Tariff Schedule of the United States (HTSUS), which provides for builders' joinery and carpentry of wood: other multilayer assembled flooring panels. The rate of duty will be 8 percent ad valorem.

The applicable subheading for the "Solid Bamboo Vertical," consisting of a flooring panel, composed of glued vertical strips of bamboo, not having a multilayer construction, will be 4418.79.0000 (EN), HTSUS, which provides for builders' joinery and carpentry of wood: other assembled flooring panels. The rate of duty will be 3.2 percent ad valorem. *

The "Engineered Bamboo Horizontal – With Seven Plies of Poplar/Birch," consists of a multilayer (8 layers) flooring panel with a 4 mm to 5 mm thick face layer of edge-glued strips of bamboo. The bamboo strips may be natural or carbonized. Beneath the face layer are seven plies of 1 mm to 2 mm thick veneers of alternating species of poplar and birch. The grains of the layers run at angles to each other. The flooring will be imported in dimensions of 1200 mm x 127 mm x 14 mm. The edges and ends of the flooring are tongued and grooved with a "click-lock" feature. The surface is finished with seven coats of sealers and anti-scratch coatings.

The "Engineered Bamboo Horizontal – With a Core of Poplar Lumber Strips," consists of a multilayer (3 layers) flooring panel with a 4 mm thick face layer of edge-glued strips of bamboo. The bamboo strips may be natural or carbonized. The face layer is laminated to a core of poplar lumber strips approximately 8 mm thick. The back layer consists of a 2 mm thick veneer of wood (assumed to be poplar). The layers are laminated together so that their grains run at angles to each other. The flooring will be imported in dimensions of 1900 mm x 190 mm x 14 mm. The edges and ends of the flooring are tongued and grooved with a "click-lock" feature. The surface is finished with seven coats of sealers and anti-scratch coatings.

The applicable subheading for both types of "Engineered Bamboo Horizontal," described above, consisting of multilayer flooring panels having a face ply of 4 mm or more in thickness, will be 4418.72.9000 (EN), HTSUS, which provides for builders' joinery and carpentry of wood: other multilayer assembled flooring panels. The rate of duty will be 8 percent ad valorem.

The "Bamboo Strand Woven" consists of a board composed of agglomerated bamboo strands. Long strands (shredded strips) of bamboo, which may be natural or carbonized, are combined with resin and pressed together under high heat and pressure. The board does not consist of glued or laminated, assembled strips or layers of bamboo. The agglomerated bamboo flooring board is tongued and grooved on the edges and its surface finished with sealers and anti-scratch coatings. It will be imported in dimensions of 915 mm x 96 mm x 15 mm.

The applicable subheading for the "Bamboo Strand Woven" flooring, described above, will be 4418.90.4690 (EN), HTSUS, which provides for other builders' joinery and carpentry of wood. The rate of duty will be 3.2 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/>.

Your inquiry does not provide enough information for us to give a classification ruling for the other flooring types. Your request for a ruling for the engineered wood flooring should include the identity of the species of the back ply. In addition, please clarify how the different thicknesses of the wear layers (2 mm, 3 mm and 4 mm) for each engineered wood flooring product are distinguished when bought and sold. Your request for a ruling for the cork flooring and cork wall tiles should include a detailed description of the construction of the products. In addition, please describe the edges and ends of the products in the condition they will be imported in. When this information is available, you may wish to resubmit your ruling request for these products. Please submit separate ruling requests for different classes of merchandise.

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 Paul Garretto at 646-733-3035.

The engineered bamboo flooring with the "click-lock" tongue and grooves may be subject to an ITC exclusion order dealing with certain laminated floor panels. For further information on admissibility please contact your local Customs (CBP) office prior to importation of the goods. This ruling applies to the classification of the merchandise and not to its admissibility under the terms of the exclusion order.

Sincerely,

Robert B. Swierupski

Director,

National Commodity

Specialist Division

RE: The tariff classification of bamboo flooring from China

NY N010868

June 8, 2007

CLA-2-44:RR:E:NC:2:230

CATEGORY: Classification

TARIFF NO.: 4418.72.9000 ADD/CVD (EN); 4418.79.0000 ADD/CVD (EN)

Mr. Robert Doyle
Affiliated Customs Brokers Ltd.
411, rue des Récollets
Montreal, Quebec H2Y 1W3
Canada

RE: The tariff classification of bamboo flooring from China

Dear Mr. Doyle:

In your letter dated May 8, 2007, on behalf of your client, J. Sonic Services Inc., you requested a tariff classification ruling.

The ruling was requested on four types of bamboo flooring, identified as "horizontal non-engineered flooring, vertical non-engineered flooring, horizontal engineered flooring and vertical engineered flooring". Descriptive literature was submitted.

All four types of bamboo flooring consist of glued and/or laminated boards measuring 15 mm thick, 86 mm to 150 mm wide. The edges and ends are tongued and grooved and the surface is finished with polyurethane and aluminum oxide.

The "horizontal non-engineered flooring" consists of three layers of bamboo strips laminated together. Each layer is over 4 mm and under 6 mm thick and is composed of bamboo strips edge-glued together on their narrow edges.

The "vertical non-engineered flooring" consists of multiple strips of bamboo glued together on their wide surfaces. This flooring is referred to as having an "edge grain" which runs throughout the thickness of the board. This flooring does not have a multilayer construction. *

The "horizontal engineered flooring" consists of three layers laminated together. The face ply, which is over 4 mm and under 6 mm thick, is composed of bamboo strips edge-glued together. The middle ply and the bottom ply are composed of poplar wood.

The "vertical engineered flooring" consists of three layers laminated together. The face ply, which is over 4 mm and under 6 mm thick, is composed of narrow bamboo strips glued together. The middle ply and the bottom ply are composed of poplar wood.

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUS) is in accordance with the General Rules of Interpretation (GRI), taken in order. GRI 1 requires that classification be determined according to the terms of the headings and any relative section or chapter notes. Where goods cannot be classified solely on the basis of GRI 1, the remaining GRI will be applied, in the order of their appearance.

Additional U.S. Note 4 (b) of Chapter 44, HTSUS, (a chapter note added in 2007) states that multilayer assembled flooring panels having a face ply 4 mm or more in thickness are included in Heading 4418.

The applicable subheading for the "horizontal non-engineered flooring," the "horizontal engineered flooring" and the "vertical engineered flooring," all of which consist of multilayer bamboo flooring panels having a face ply 4 mm or more in thickness, will be 4418.72.9000 (EN), Harmonized Tariff Schedule of the United States (HTSUS), which provides for builders' joinery and carpentry of wood: other multilayer assembled flooring panels. The rate of duty will be 8 percent ad valorem.

The applicable subheading for the "vertical non-engineered flooring," which consists of bamboo flooring panels, composed of glued vertical strips of bamboo, not having a multilayer construction, will be 4418.79.0000 (EN), HTSUS, which provides for builders' joinery and carpentry of wood: other assembled flooring panels. The rate of duty will be 3.2 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 Paul Garretto at 646-733-3035.

Sincerely,

Robert B. Swierupski

Director,

National Commodity

Specialist Division

RE: The tariff classification of bamboo flooring from China

NY N010035

May 21, 2007

CLA-2-44:RR:NC:2:230

CATEGORY: Classification

TARIFF NO.: 4418.72.9000 ADD/CVD (EN); 4418.79.0000 ADD/CVD (EN); 4418.90.4690 ADD/CVD (EN)

Mr. David Starnes
Lumber Liquidators, Inc.
3000 John Deere Road
Toano, VA 23168

RE: The tariff classification of bamboo flooring from China

Dear Mr. Starnes:

In your letter dated March 30, 2007, which was supplemented on April 18, 2007, you requested a tariff classification ruling.

The ruling was requested on four bamboo flooring products, referred to as (A) "Horizontal" construction, (B) "Vertical" construction, (C) "Strand" construction and (D) "Engineered" construction. The flooring products may be either natural or carbonized. Representative samples were submitted.

The "Horizontal" bamboo flooring (sample A) is a laminated board, 3-3/4" wide x 5/8" thick, composed of three layers. Each layer, including the face layer, consists of edge-glued strips of bamboo, each approximately 20 mm wide x 5 mm thick. The grains of all the strips and all the layers run in the same direction. The edges and ends of the laminated flooring board are tongued and grooved; and the top layer is finished with several coats of polyurethane with aluminum oxide.

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUS) is in accordance with the General Rules of Interpretation (GRI), taken in order. GRI 1 requires that classification be determined according to the terms of the headings and any relative section or chapter notes. Where goods cannot be classified solely on the basis of GRI 1, the remaining GRI will be applied, in the order of their appearance.

Additional U.S. Note 4 (b) of Chapter 44, HTSUS, (a chapter note added in 2007) states that multilayer assembled flooring panels having a face ply 4 mm or more in thickness are included in Heading 4418.

The applicable subheading for the "Horizontal" bamboo flooring (sample A) will be 4418.72.9000 (EN), HTSUS, which provides for builders' joinery and carpentry of wood: other multilayer assembled flooring panels. The rate of duty will be 8 percent ad valorem.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and General Rules of Interpretation. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

The ENs to heading 44.18 state as follows:

This heading also covers **solid blocks, strips, friezes, etc., assembled into flooring panels (including parquet panels) or tiles**, with or without borders. It also includes flooring panels or tiles consisting of blocks, strips, friezes, etc., assembled on a

support of one or more layers of wood, known as "multilayer" parquet flooring panels. The top layer (wear layer) is commonly made from two or more rows of strips making up the panel.

The "Vertical" bamboo flooring (sample B) is a board, 3-3/4" wide x 5/8" thick, composed of multiple narrow strips of bamboo, each approximately 4 mm wide x 5/8" thick, glued together "vertically" on their wide surfaces. The edges of the glued flooring board are tongued and grooved; and the top surface is finished with polyurethane and aluminum oxide. Although this flooring board is an assembled flooring panel, it does not have the construction of a "multilayer" assembled flooring panel.

The applicable subheading for the "Vertical" bamboo flooring (sample B) will be 4418.79.0000 (EN), HTSUS, which provides for builders' joinery and carpentry of wood: other assembled flooring panels. The rate of duty will be 3.2 percent ad valorem.

The "Strand" bamboo flooring (sample C) is a board, 3-3/4" wide x 5/8" thick, composed of agglomerated strips of bamboo. The material is produced by soaking sterilized, shredded strips (or strands) of bamboo in a resin and pressing (and crushing) the strips together under high heat and pressure. The bamboo strand material is then milled into flooring boards having the dimensions stated and with tongued and grooved edges. The surface of the flooring is finished with polyurethane and aluminum oxide. A cross-section view of the sample board shows an agglomerated mass of bamboo with no strips or layers apparent. Although the product is recognizable as flooring, it does not have the construction of an assembled flooring panel. (See EN 44.18, cited above).

The applicable subheading for the "Strand" bamboo flooring (sample C) will be 4418.90.4690 (EN), HTSUS, which provides for other builders' joinery and carpentry of wood. The rate of duty will be 3.2 percent ad valorem.

The "Engineered" bamboo flooring (sample D) is a laminated board, 7-1/2" wide x 9/16" thick, constructed of three layers. The face layer is a 4 mm thick veneer of bamboo composed of "horizontal" edge-glued strips, each approximately 20 mm wide x 4 mm thick. (You state that the bamboo face layer may also be composed of "vertical" glued strips, each approximately 4 mm wide x 4 mm thick. However, since the thickness of the layer is still 4 mm, the classification would be the same.) The middle layer is composed of 8 mm thick edge-glued strips of lumber of an unspecified wood species. The bottom layer is a 2 mm thick veneer of an unspecified wood. The layers are laminated together so that their grains run at angles to each other. The edges of the laminated flooring board are tongued and grooved and the surface is finished with polyurethane and aluminum oxide.

The "Engineered" bamboo flooring (sample D) is a multilayer assembled flooring panel with a face ply 4 mm in thickness. Additional U.S. Note 4 (b) of Chapter 44, noted above, is applicable.

The applicable subheading for the "Engineered" bamboo flooring (sample D) will be 4418.72.9000 (EN), HTSUS, which provides for builders' joinery and carpentry of wood: other multilayer assembled flooring panels. The rate of duty will be 8 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 Paul Garretto at 646-733-3035.

Sincerely,

Robert B. Swierupski

Director,

National Commodity

Specialist Division

RE: The tariff classification of bamboo flooring from China

NY N009461

May 10, 2007

CLA-2-44:RR:NC:2:230

CATEGORY: Classification

TARIFF NO.: 4412.10.0000 ADD/CVD (EN); 4418.72.9000 ADD/CVD (EN); 4418.79.0000 ADD/CVD (EN)

Ms. Lisa Yang
Hawa Bamboo Flooring Corp.
4000 Bordentown Ave., Suite 8
Sayreville, NJ 08872

RE: The tariff classification of bamboo flooring from China

Dear Ms. Yang:

In your letter dated March 29, 2007 you requested a tariff classification ruling.

Representative samples of different types of bamboo flooring were submitted to be classified. The samples were divided into two main types, referred to as "solid" and "engineered."

The "solid" type, which in fact is not solid, consists of strips of bamboo laminated together either horizontally or vertically. Four samples of the "solid" type were submitted. The samples each measure 3-5/8" wide x 5/8" thick and will be imported in lengths of 36-1/4". The edges are tongued and grooved and the bottom layer has two shallow grooves running lengthwise. The surfaces are finished with a hard clear material.

Classification of merchandise under the Harmonized Tariff Schedule of the United States (HTSUS) is in accordance with the General Rules of Interpretation (GRI), taken in order. GRI 1 requires that classification be determined according to the terms of the headings and any relative section or chapter notes. Where goods cannot be classified solely on the basis of GRI 1, the remaining GRI will be applied, in the order of their appearance.

Additional U.S. Note 4 (b) of Chapter 44, HTSUS, states that multilayer assembled flooring panels having a face ply 4 mm or more in thickness are included in Heading 4418.

The sample marked "AMF803 Natural Horizontal" consists of three laminated layers having a face layer measuring approximately 4 mm in thickness. Each layer consists of strips of bamboo edge-glued "horizontally" together. The grains of the layers run in the same direction. The face layer has a natural light color.

The applicable subheading for the "AMF803 Natural Horizontal" bamboo flooring, described above, will be 4418.72.9000 (EN), HTSUS, which provides for builders' joinery and carpentry of wood: other multilayer assembled flooring panels. The rate of duty will be 8 percent ad valorem.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and General Rules of Interpretation. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

The ENs to heading 44.18 state as follows:

This heading also covers **solid blocks, strips, friezes, etc., assembled into flooring panels (including parquet panels) or tiles**, with or without borders. It also includes flooring panels or tiles consisting of blocks, strips, friezes, etc., assembled on a support of one or more layers of wood, known as **"multilayer" parquet flooring panels**. The top layer (wear layer) is commonly made from two or more rows of strips making up the panel.

The sample marked "AMF807 Natural Vertical" consists of about 23 narrow strips of bamboo glued together "vertically" on their wide surfaces. Although this flooring is an assembled flooring panel, it does not have the construction of a "multilayer" assembled flooring panel. The sample marked "AMF808 Carbonized Vertical" is identical to AMF807 except that it has a carbonized dark color. *

The applicable subheading for the "AMF807 Natural Vertical" and the "AMF808 Carbonized Vertical" bamboo flooring will be 4418.79.0000 (EN), HTSUS, which provides for builders' joinery and carpentry of wood: other assembled flooring panels. The rate of duty will be 3.2 percent ad valorem.

The ENs to heading 44.18 further state as follows:

The heading **does not cover:**

(a) Plywood panels or veneered panels, used as flooring panels, which have a thin veneer of wood affixed to the surface, so as to simulate a flooring panel made up of parquet strips (**heading 44.12**).

The sample marked "AMF801 Carbonized Horizontal" consists of three laminated layers having a face layer measuring approximately 3 mm in thickness. Each layer consists of strips of bamboo edge-glued together "horizontally". The grains of the layers run in the same direction. The face layer is carbonized and has a dark color.

The applicable subheading for the "AMF801 Carbonized Horizontal" bamboo flooring will be 4412.10.0000 (EN), Harmonized Tariff Schedule of the United States (HTSUS), which provides for plywood, veneered panels and similar laminated wood, of bamboo. The rate of duty will be 8 percent ad valorem.

The "engineered" type consists of a face layer of bamboo laminated to a seven-layer plywood. Four samples of the "engineered" type were submitted. The samples each measure 5-3/8" wide x 5/8" thick and will be imported in lengths of 74". The edges are tongued and grooved and the bottom has shallow grooves running across the width. The surfaces are finished with a hard clear material.

The "engineered" sample marked "HBF-EF1001 – Carbonized Horizontal" consists of a 3 mm thick face layer of bamboo laminated to seven plies of wood veneers. The grains of the layers are at angles to each other. The bamboo face layer is composed of carbonized edge-glued strips, each approximately 3/4" wide x 3 mm thick. The "engineered" sample marked "HBF-EF1003 – Natural Horizontal" is identical to HBF-EF 1001, except for the color.

The "engineered" sample marked "HBF-EF1007 – Natural Vertical" consists of a 3 mm thick face layer of bamboo laminated to seven plies of wood veneer. The grains of the layers are at angles to each other. The bamboo face layer is composed of multiple edge-glued strips of bamboo, each about 1/4" wide x 3 mm thick. The "engineered" sample marked "HBF-EF1008 – Carbonized Vertical" is identical to HBF-EF1007, except for the carbonized color.

The applicable subheading for the four "engineered" bamboo flooring products, "HBF-EF1001 – Carbonized Horizontal", "HBF-EF1003 – Natural Horizontal", "HBF-EF1007 – Natural Vertical" and "HBF-EF1008 – Carbonized Vertical", will be 4412.10.0000 (EN), HTSUS, which provides for plywood, veneered panels and similar laminated wood, of bamboo. The rate of duty will be 8 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 Paul Garretto at 646-733-3035.

Sincerely,

Robert B. Swierupski

Director,

National Commodity

Specialist Division

APPENDIX D

**SUBMISSIONS FROM
SMITH & FONG COMPANY
AND
LAW OFFICES OF GEORGE R. TUTTLE**



375 Oyster Point Blvd, Suite 3
 So. San Francisco
 CA 94080
 tel 650.872.1184
 toll free 866.835.9859
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RECEIVED
 OFC OF INT'L TRADE
 US IHTL
 2007 JUL -5 PM 3:43

July 2, 2007

Secretary
 U.S. International Trade Commission
 Suite 404
 500 E Street
 Washington, DC 20436

Re: Proposed Addendum to Investigation No. 1205-6; Harmonized Tariff Schedules of The United States

Dear Sir or Madam:

Pursuant to the Federal Register Notice ("Notice") dated June 15, 2007 (72 Fed. Reg. 33246-33250), Smith & Fong Company, with a principal place of business at 375 Oyster Pt. Blvd., #3, South San Francisco, CA, 94080, hereby submits its comments with regard to certain proposed changes to the Harmonized Tariff Schedules of the United States (HTSUS). Specifically, our company wishes to register our strong support for the proposed changes to Subheadings 4412.10.00 and 4418.72.90 pertaining to bamboo flooring. These proposed changes provide as follows:

(a) Subheading 4412.10.00 would be superseded by the following:

[Plywood, veneered panels and similar laminated wood...]

4412.10	Of bamboo:	
4412.10.05	Plywood	8% 4412.10.90
	Other	Free

Subheading 4418.72.90 would be superseded by the following:

[Builders' joinery and carpentry of wood....]

	Assembled flooring panels:		
	Other, multilayer:		
	Other:		
4418.72.91	Of unidirectional bamboo	Free	
4418.72.95	Other	8%	

Background On Smith & Fong

Smith & Fong Company is an importer of various Plyboo® bamboo and Durapalm® coconut palm products, both registered trademarks. The types of products imported and offered for sale include bamboo and coconut palm flooring, trim molding, plywoods, panelings, and veneers. The company is also known in three different ways, including Smith & Fong (most frequently), Smith & Fong Plyboo, or Smith & Fong Durapalm.

Summary of Smith & Fong's Comments In Support of The Proposed Changes Involving Bamboo Flooring:

In April 2006, the Commission issued a report entitled "Proposed Modifications to the Harmonized Tariff Schedule of the United States," Investigation No. 1205-6, Publication No. 3851. The modifications recommended in the report were put into effect on February 3, 2007, pursuant to Presidential Proclamation 8097, which was published in the Federal Register on January 4, 2007.

In the Federal Register Notice dated June 15, 2007, the ITC indicates that the proposed changes are designed to restore the rate of duty previously applied to certain bamboo wooden flooring prior to the changes that went into effect on February 3, 2007.

Under the *Executive Authority* of the Proposed Modifications to the Harmonized Tariff Schedule of The United States (Investigation No. 1205-6 (Final) (USITC Publication 3851) April

2006, proposals under section 1205 of the 1988 Act are to be "substantially rate neutral." Thus, the proposed changes in the Notice are intended to carry out the "substantially rate neutral" policy.

Prior to the changes that went into effect on February 3, 2007, bamboo flooring comprised of veneered or laminated wood that was not considered "plywood" by U.S. Customs and Border Protection (CBP) was classified as veneered panels and similar laminated wood. See CBP Ruling PD C87960 dated June 10, 1998, directed to Smith & Fong on their multi-layer bamboo flooring, a true and correct copy of which is attached hereto as Exhibit A. CBP classified this flooring under 4412.29.5000 as veneered panels and similar laminated wood: other, with at least one outer ply of nonconiferous wood; other, other (than plywood) at the duty rate of 3.2%. This tariff item was subsequently changed to HTS 4412.29.5600, and the duty rate was eventually reduced to free of duty. See also CBP rulings NY 807421, also directed to Plyboo on a similar product with an identical conclusion, a true and correct copy of which is attached hereto as Exhibit B, as well as CBP ruling NY K80976 dated January 20, 2004, which ruled that a 3-layer bamboo flooring panel was classifiable under HTS 4412.29.5600, HTSUSA, a true and correct copy of which is attached hereto as Exhibit C, providing for plywood, veneered panels and similar laminated wood; other, with at least one outer ply of nonconiferous wood; other (than plywood), free of duty. Furthermore, the proposed change to Subheading 4418.72.90 would carry-over the duty free treatment afforded to other types of bamboo flooring by CBP in the past, such as unidirectional bamboo flooring.

Smith & Fong has relied on the duty rates that have been established in the Harmonized Tariff System over the prior years, and as the tariff provisions have been interpreted by CBP, in order to price the company's merchandise. Knowing what the duty rate is going to be for an imported product is crucial in arriving at a selling price for the goods and to account for an estimated profit. However, the inadvertent failure to carry over the duty free rate for bamboo flooring into the 2007 HTSUS has severely disrupted the pricing structure of Smith & Fong's imported products and its competitive position in the market. A significant portion of Smith &

Fong's business is geared to long-term contracts on major commercial and architectural projects. These contracts were negotiated, including a final price term, in reliance upon the previous customs rulings and tariffs. As a result of the recent tariff adjustments Smith & Fong's margin on these contracts has been all but eliminated, without any concomitant ability to pass these any costs to the end purchaser.

In summary, the proposed changes to bamboo flooring are urgently needed in order to help restore Smith & Fong to its previous competitive position.

**Recommendation That Interest Be Paid If
The Proposed Changes Are Made Retroactive**

The Notice indicates that the proposed changes, if accepted, will be retroactive to February 3, 2007. It is our recommendation that in addition to being retroactive, the final Notice should indicate that any refunds issued as a result of the liquidation or reliquidation of applicable entries will be entitled to interest under 19 USC § 1505 (b) and (c), as revised by the Customs Modernization Act in 1993. Sections 1505 (b) and(c) provide in pertinent part,

Sec. 1505. Payment of duties and fees

(b) Collection or refund of duties, fees, and interest due upon liquidation or reliquidation

The Customs Service shall collect any increased or additional duties and fees due, together with interest thereon, or refund any excess moneys deposited, together with interest thereon, as determined on a liquidation or reliquidation. Duties, fees, and interest determined to be due upon liquidation or reliquidation are due 30 days after issuance of the bill for such payment. Refunds of excess moneys deposited, together with interest thereon, shall be paid within 30 days of liquidation or reliquidation.

(c) Interest

Interest assessed due to an underpayment of duties, fees, or interest shall accrue, at a rate determined by the Secretary, from the date the importer of record is required to deposit estimated duties, fees, and interest to the date of liquidation or reliquidation of the applicable entry or reconciliation. Interest on excess moneys deposited shall accrue, at a rate determined by the Secretary, from the date the importer of record deposits estimated duties, fees, and interest or, in a case in which a claim

is made under section 1520(d) of this title, from the date on which such claim is made, to the date of liquidation or reliquidation of the applicable entry or reconciliation.

The Secretary may prescribe an alternative mid-point interest accounting methodology, which may be employed by the importer, based upon aggregate data in lieu of accounting for such interest from each deposit data provided in this subsection.

If the proposed changes become final, it is unclear as to whether CBP would pay interest on the liquidation or reliquidation of any entries that contained merchandise that is the subject of this Notice. Thus, the Notice is silent on whether interest will be paid. Further, it might be discretionary on the part of CBP as to whether interest will be paid.

Clearly, interest should be paid on the refund of any duties now being deposited on bamboo flooring. This would be consistent with the requirement that CBP issue interest on the refund by CBP of any duties that are protested by the importer. If the ITC clearly states in the final Notice that interest is to be paid, then there would be no question on the issue. Including such language would alleviate any confusion that might ensue on this issue.

Summary

In summary, in order to achieve the ITC's policy of duty rate neutrality, Smith & Fong strongly recommends that the proposed changes to Subheadings 4412.10.00 and 4418.72.90 be adopted.

If you have any questions with regard to this, please do not hesitate to contact us.

Sincerely,

By:


Daniel G. Smith
President, Smith & Fong Company

Attachments

Exhibit A

Smith & Fong Company
Comment on Proposed Addendum
to Investigation No. 1205-6

PD C87960

June 10, 1998

CLA-2.1B:CO:E14

CATEGORY: Classification

TARIFF NO.: 4412.29.5500

Ms. Debra A. Maloney

KAT Import Brokers, Incorporated

514 Eccles Avenue

South San Francisco, California 94080

RE: The tariff classification of bamboo flooring from China and Taiwan
Dear Ms. Maloney:

In your letter dated May 11, 1998, you requested a tariff classification ruling on behalf of Smith & Fong Company. Descriptive literature and three sample pieces were submitted.

The submitted literature describes the product as "Genuine Plyboo Flooring." The specifications indicate the construction is 100% bamboo laminate, three-ply. The samples are made up of layers of bamboo which have been laminated together. The layers consists of flat, horizontally oriented, edge-glued strips. The edges of the samples are tongued and grooved. One sample is composed of three layers and the other two are essentially the same, except they are composed of only two layers of bamboo.

The applicable subheading for the bamboo flooring will be 4412.29.5500, Harmonized Tariff Schedule of the United States (HTS), which provides for other veneered panels and similar laminated wood, with at least one outer ply of non-coniferous wood. The rate of duty will be 0.8% 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.

Sincerely,

Jon A. Batt
Port Director
Detroit, Michigan

Exhibit B

Smith & Fong Company
Comment on Proposed Addendum
to Investigation No. 1205-6

NY 807421

March 23, 1995

CLA-2-44:S:N:N8:230 807421

CATEGORY: Classification

TARIFF NO.: 4412.29.5000

Ms. Lisa C. Schneider Associated Customhouse Brokers, Inc.

1099 Jay St., Bldg C-5 P.O. Box 22670 Rochester, NY 14692-2670

RE: The tariff classification of bamboo flooring from China or the Netherlands

Dear Ms. Schneider:

In your letter dated February 9, 1995, which was received in our office on March 2, 1995, you requested a tariff classification ruling. The request was made on behalf of the importer, Plyboo America Inc.

A sample of the product to be classified was submitted. It is a plank or board measuring 3-3/4 inches wide by 23-1/2 inches long by 9/16 inch thick. It consists of three layers of bamboo laminated together each measuring 3/16 inch thick. Each layer is composed of edge-glued strips of bamboo and the grain of each layer runs in the same direction. The bamboo board is tongued and grooved on the edges and on the ends. The bottom surface of the board has two broad grooves running down the length and the top surface is varnished. The bamboo board is sold and used as flooring.

This manufactured bamboo product is not classifiable in chapter 14 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) because the material in this chapter has to be basically in a raw form. In addition, it is not classifiable in chapter 46 of the HTSUSA because it is not "plaiting material" as the expression is defined in Note 1 of Chapter 46. For tariff classification purposes, bamboo may be considered wood, according to chapter Note 6 of Chapter 44, HTSUSA. In the condition as imported, the bamboo flooring falls within the description of heading 4412, HTSUSA, which includes laminated wood similar to plywood and veneered panels.

The applicable subheading for the bamboo flooring will be 4412.29.5000, HTSUSA, which provides for plywood, veneered panels and similar laminated wood; other, with at least one outer ply of nonconiferous wood; other; other (than plywood). The rate of duty will be 3.2 percent ad valorem.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have

been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

Sincerely,

Jean F. Maguire Area Director New York Seaport

Exhibit C

Smith & Fong Company
Comment on Proposed Addendum
to Investigation No. 1205-6

NY K80976

January 20, 2004 CLA-2-44:RR:NC:2:230 K80976

CATEGORY: Classification

TARIFF NO.: 4408.90.0198; 4412.29.5600

Mr. Mike Ryan Schenker of Canada Ltd.

159-17735-1 Ave.

Surrey, BC V3S 9S1 Canada

RE: The tariff classification of bamboo veneer and laminated bamboo flooring from China

Dear Mr. Ryan:

In your letter dated December 17, 2003, on behalf of the importer Welco Lumber Corp., you requested a tariff classification ruling.

The ruling was requested on three groups of products, described in your letter as (1) bamboo plaiting material, (2) bamboo and other wood laminated flooring, and (3) bamboo laminated flooring. Two representative samples of each group were submitted.

The bamboo plaiting material (Group 1) consists of thin sheets of bamboo veneer less than 0.5 mm in thickness. The veneer is composed of strips of bamboo placed edge to edge. It is backed with a thin sheet of a material which appears to be paper. One sample consists of natural light colored bamboo, and the other sample consists of natural bamboo with a dark carbonized finish.

The applicable subheading for both samples of bamboo veneer (Group 1) will be 4408.90.0198, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for sheets for veneering (including those obtained by slicing laminated wood), for plywood or for similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm; other (than coniferous or tropical wood specified in subheading note 1 to chapter 44), reinforced or backed, other. The rate of duty will be free.

The bamboo and other wood laminated flooring (Group 2) consists of tongued and grooved flooring boards composed of bamboo and wood. The two samples submitted are representative lengths of a 2 ply flooring board and a 3 ply flooring plank.

The 2 ply flooring board measures approximately 3-1/4" wide and 9/16" thick. The face ply is composed of 2 mm thick strips of bamboo

placed edge to edge. The back ply is composed of 12 mm thick strips of wood (stated to be pine). The bamboo ply has a dark carbonized finish and a clear coating.

The applicable subheading for the 2 ply flooring board (Group 2) will be 4412.29.5600, HTSUSA, which provides for plywood, veneered panels and similar laminated wood; other, with at least one outer ply of nonconiferous wood; other (than plywood). The rate of duty will be free.

The 3 ply flooring plank measures approximately 8-3/8" wide by 9/16" thick. The face ply is composed of 3 mm thick strips of bamboo veneer placed edge to edge. The middle ply or core is composed of 9 mm thick strips of lumber placed edge to edge. The bottom ply is a 2 mm thick continuous sheet of wood veneer. The grains of the three plies run at angles to each other.

Litigation involving this type of lumbercore plywood flooring is currently pending before the United States Court of International Trade, (Boen Hardwood Flooring, Inc. v. United States, Court No. 96-08-02006). Thus, in accordance with Section 177.7(b) of the Customs Regulations [19 C.F.R. 177.7(b)], a ruling cannot be issued for the 3 ply flooring plank (Group 2). When all litigation has been concluded on the case referenced above, you may resubmit your request for a ruling. Please include the species of wood and thickness of each ply for this product.

The bamboo laminated flooring (Group 3) consists of tongued and grooved flooring boards composed solely of strips of bamboo not exceeding 6 mm in thickness. Both samples submitted measure approximately 3-3/4" wide and 9/16" thick. One sample is composed of three layers of bamboo strips. Each layer is composed of bamboo strips placed side by side. The grains of all the layers run in the same direction. The other sample is composed multiple layers of bamboo strips laminated together on their wide surfaces. The grains of all the strips run in the same direction.

The applicable subheading for both samples of unidirectional laminated bamboo flooring (Group 3) will be 4412.29.5600, HTSUSA, which provides for plywood, veneered panels and similar laminated wood; other, with at least one outer ply of nonconiferous wood; other (than plywood). The rate of duty will be free.

The holding set forth above applies only to the specific factual situation and merchandise description as identified in the ruling request. This position is clearly set forth in 19 CFR 177.9(b)(1). This section states that a ruling letter is issued on the assumption that all of the information furnished in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the assumption that the subject

goods, in their condition as imported into the United States, conform to the facts and the description as set forth both in the ruling request and in this ruling. In the event that the facts or merchandise are modified in any way, you should bring this to the attention of Customs and you should resubmit for a new ruling in accordance with 19 CFR 177.2. You should also be aware that the material facts described in the foregoing ruling may be subject to periodic verification by the Customs Service.

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 Paul Garretto at 646-733-3035.

Sincerely,
Robert B. Swierupski

Director, National Commodity
Specialist Division

APPENDIX E

**LETTER FROM
BARNES, RICHARDSON & COLBURN
ON BEHALF OF
BRITISH CERAMIC CONFEDERATION**

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7th Floor
Washington, DC 20005

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Fax: 202 628-0735
www.barnesrichardson.com

475 Park Avenue South
New York, NY 10016
Tel: 212 725-0200
Fax: 212 889-4135

303 East Wacker Drive
Suite 1100
Chicago, IL 60601
Tel: 312 565-2000
Fax: 312 565-1782

July 6, 2007

Ms. Marilyn Abbott, Secretary
United States International Trade Commission
500 E Street, S.W.
Washington, D.C. 20436

PUBLIC DOCUMENT
Investigation No. 1205-6

RE: Comments relating to Proposed Addendum to ITC
Investigation No. 1205-6; Modifications to the HTSUS

Dear Ms. Abbott,

On behalf of the British Ceramic Confederation ("BCC"), we are filing this letter in response to the Notice published by the United States International Trade Commission ("ITC") in the Federal Register on June 15, 2007 soliciting public comment on certain proposed modifications to the Harmonized Tariff Schedule of the United States ("HTSUS"). *See* 72 Fed. Reg. 33246 (June 15, 2007).

We understand that the ITC is investigating the tariff treatment of certain products that appear to be subject to higher tariffs as a result of the modifications recommended in Investigation No. 1205-6 and implemented by Presidential Proclamation 8097 on February 3,

2007. As 19 U.S.C. § 3005(d)(1)(C) indicates, modifications made to the Harmonized Tariff Schedule (HTSUS) as a result of multilateral agreements or unilateral changes, must ensure “substantial rate neutrality.”

As a result of the February 3, 2007 modifications, a headnote has been added to Chapter 95 of the HTS which excludes tableware, kitchenware, toilet articles, textiles and linens having a utilitarian function from classification as duty-free “festive” articles. *See* Note 1(v) to Chapter 95. The language of Note 1(v) provides that Chapter 95 does not cover:

Tableware, kitchenware, toilet articles, carpets and other textile floor coverings, apparel, bed linen, table linen, toilet linen, kitchen linen and similar articles having a utilitarian function (classified according to their constituent material).

Id. Absent the establishment of appropriate break-outs, this modification is not “rate-neutral,” as mandated by U.S. law, in that it eliminates the duty-free eligibility of several products that were, until February 3, 2007, classifiable upon importation into the United States as festive articles, under HTSUS Subheadings 9505.10 and 9505.90. The implementation of this new chapter note requires that the United States make certain adjustments at the eight-digit national line item level of the HTSUS, to avoid increasing tariffs on bound rates for certain festive articles, and to achieve rate neutrality in adopting the new notes.

Discussion

BCC’s member companies have been exporting ceramic and porcelain tableware pieces to the United States which are decorated with distinctive holiday motifs, and as such, prior to February 3, 2007, qualified for a U.S. duty rate of “zero” as “festive articles” under HTSUS

Subheading 9505.10 or 9505.90 (e.g., Spode Christmas tree dinnerware). The first provision covers "festive, carnival, or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: articles for Christmas festivities and parts and accessories thereof: other than ornaments or Nativity scenes: other than glass, plastic, or wood." The second provision covers festive articles for holidays other than Christmas. As we have previously discussed with staff in your office, we have compiled a list of the festive symbols which have been recognized by Customs through its administrative process over several years. A copy of this list is attached to this letter. *See Attachment 1.*

In a U.S. appellate court decision, *Midwest of Cannon Falls, Inc. v. United States*, 122 F.3d 1423 (Fed. Cir. 1997), the Court of Appeals for the Federal Circuit ruled that numerous articles, including earthenware and ceramic mugs with holiday decorations, were classifiable as **festive articles in HTS 9505** due to their limited use associated with a particular, recognized holiday. Furthermore, the General HTS Chapter Notes to Chapter 69 state that "This chapter does not cover. . . (k) articles of Chapter 95. . ." Therefore, the Court rejected Customs' administrative rationale that articles with a "utilitarian function" should be classified in accordance with their component materials rather than according to an obvious holiday decorative use. Consequently, European exporters of holiday ceramic articles have enjoyed the zero duty rate classification in HTSUS 9505, which many of their importers have been claiming (and some receiving under individual rulings) since well before the completion of the Uruguay Round Agreements.

The U.S. administration has apparently sought to overturn this judicial ruling by seeking a WCO-sanctioned modification of the Headnotes to Chapter 95, which was proposed by

the Canadian Administration and approved by the HS Review Committee for implementation in 2007. This modification, as referenced above, has added a new chapter note to Chapter 95 stating that articles of “tableware, kitchenware, toilet articles, . . . and similar articles having a utilitarian function (classified according to their constituent material)” are *precluded from classification in Chapter 95* and will be classified according to their constituent materials. As far as we are aware, no other country has such a concern about the classification of festive articles.

In fact, U.S. Customs and Border Protection (“Customs”) has previously “acknowledge[d] that there is a conflict in regard to a limited class of merchandise.” In its comment to the ITC on these proposed modifications, Customs stated that “Note 1(v) appears to conflict with the implementation of the holding in *Midwest* by specifically excluding all tableware and kitchenware having a utilitarian function from Chapter 95.” Letter from M. Harmon, Commercial Rulings Division, U.S. Customs & Border Protection to Secretary Abbott, U.S. International Trade Commission (February 25, 2005), at 2-3. As a result, Customs suggested:

to ensure substantial rate neutrality . . . that breakouts for [utilitarian/functional tableware and kitchenware that are three-dimensional representations of an accepted symbol for a recognized holiday should] be inserted in the provisions in the HTS covering tableware and kitchenware.

Id., at 3.

As you are aware, before any modifications may be made to the HTSUS, they must be reviewed and recommended pursuant to the Omnibus Trade and Competitiveness Act of 1988 (codified at 19 U.S.C. § 3005). Section 3005(d) specifically requires that the ITC may not

recommend any modification *unless the modification "ensure[s] substantial rate neutrality."* (emphasis added). The incorporation of the new Chapter 95 note language has already effected significant tariff rate changes to the detriment of importers of EU-origin ceramic tableware, since ceramics, linens, glassware, and other so-called "utilitarian" articles will no longer be accorded the duty free treatment of festive articles, but much higher rates will be applied under their constituent materials provisions in Chapter 69, 70 and elsewhere.¹


The underlying reason for the requirement of "rate-neutrality" in HTSUS nomenclature changes, is to prevent just such results as will occur here. As noted above, Customs' position on classification of goods as "festive" articles has been debated in and decided by the courts. When a particular tariff classification position is taken and the judicial process has affirmed it, importers, exporters, and US trading partners should have a right to rely upon negotiated tariff commitments made with respect to those tariff headings in multilateral tariff negotiations. Otherwise, a WTO participant could easily negate its prior tariff commitments by implementing nomenclature or headnote revisions which change the classifications and applicable rates after the negotiations have been completed. If such repudiation of tariff bindings were to be done directly, without a change in classification, it would be a clear violation of WTO requirements and would subject the WTO member to compensatory tariff adjustments by its affected trading partners. To do so as a function of nomenclature modification – even under the cover of WCO HS sanction – is simply a transparent way of repudiating tariff bindings through indirect means.

¹ Kitchenware, tableware and other household articles (*i.e.*, ceramic, china or porcelain) are generally classified under HTSUS Chapter 69. Glassware products are classified under HTSUS Chapter 70.

Therefore, we respectfully request that the ITC recommend, in its report to the United States Trade Representative (USTR), the adoption of line item nomenclature that will assure rate neutrality, the need for which clearly has been acknowledged by Customs in its past comments to the ITC. In support of this request, BCC proposes that the ITC adopt the breakouts described in *Attachment 2* for insertion in the HTS in an effort to specifically address the festiveness classification issue. Furthermore, BCC suggests that these proposed modifications be made effective retroactively to February 3, 2007.

Please do not hesitate to contact us, should you have any questions or require additional information. We greatly appreciate your assistance in this matter.

Sincerely,


Matthew T. McGrath
Cortney O'Toole Morgan

Barnes, Richardson & Colburn
Counsel to BCC

APPENDIX F

**LETTER FROM
U.S. CUSTOMS AND BORDER PROTECTION**

1/10/07

U.S. Department of Homeland Security
Washington, DC 20229



U.S. Customs and
Border Protection

JAN 09 2007

RR:CTF:TCM
968005 BtB

Marilyn R. Abbot, Secretary
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

Re: Request to amend the tariff regarding Additional U.S. Note 1 to Chapter 69, HTSUS

Dear Ms. Abbot,

Pursuant to Section 1205 of the Omnibus Trade and Competitiveness Act of 1988, codified at 19 U.S.C. § 3005, U.S. Customs and Border Protection ("CBP") requests the deletion of Additional U.S. Note 1 to Chapter 69 of the Harmonized Tariff Schedule of the United States ("HTSUS"). As discussed below, in our view, application of this note narrows the scope of the term "ceramic article" under the HTSUS and results in modification to the scope of the headings in Chapter 69 of the Harmonized Commodity Description and Coding System ("HS").¹ It therefore renders the classification of certain articles by the U.S. inconsistent with the classification of such articles by other contracting parties to the Convention. In addition, it is our view that the note is administratively burdensome to CBP. For these reasons, we ask that the U.S. International Trade Commission ("ITC") recommend to the President that this note be deleted from the HTSUS as soon as possible.

19 U.S.C. § 3005(a), regarding Commission review of, and recommendations regarding the HTSUS in general, states in relevant part that:

The Commission shall keep the Harmonized Tariff Schedule under continuous review and periodically, ... and as other circumstances warrant, shall recommend to the President such modifications in the Harmonized Tariff Schedule as the Commission considers necessary and appropriate—

(2) to promote the uniform application of the Convention [on

¹ Under Article 2 of the Convention, the U.S. is bound to apply the General Rules for the interpretation of the HS and all the Section, Chapter and Subheading Notes, and not modify the scope of the Sections, Chapters, headings or subheadings of the HS. See Article 3(a)(ii).

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the Harmonized Commodity Description and Coding System] and particularly to the annex thereto the Nomenclature]; ...

(4) to alleviate unnecessary administrative burdens.

19 U.S.C. § 3005(b), regarding agency and public views regarding recommendations to the HTSUS, states in relevant part that, “[I]n formulating recommendations under subsection (a), the Commission shall solicit, and give consideration to, the views of interested Federal agencies

Chapter 69, HTSUS, covers ceramic products. Additional U.S. Note 1 to Chapter 69, HTSUS, reads:

For the purposes of this chapter, a “ceramic article” is a shaped article having a glazed or unglazed body of crystalline or substantially crystalline structure, the body of which is composed essentially of inorganic nonmetallic substances and is formed and subsequently hardened by such heat treatment that the body, if reheated to pyrometric cone 020, would not become more dense, harder, or less porous, but does not include any glass articles.

The note does not provide guidance on how to perform the comparative “before” and “after” test that it requires. Additional U.S. Note 1 to Chapter 69, HTSUS, was converted, near identically, from the Tariff Schedule of the United States (“TSUS”), Ch. 5, Part 2, Note 2(a)(“Headnote 2(a)”)².

As you know, Additional U.S. Note 1 to Chapter 69, HTSUS, is not part of the HS Convention. While “ceramic” or “ceramic article” is not defined in the HS Nomenclature, the General Explanatory Note (“EN”) to Chapter 69 does describe “ceramic products” and the manufacturing processes that these products undergo (See EN, pages 1139-1140). The General EN describes ceramic products as products obtained:

- (A) By firing inorganic, non-metallic materials which have been prepared and shaped previously at, in general, room temperature. Raw materials comprise, inter alia, clays, siliceous materials, materials with a high melting point, such as oxides, carbides, nitrides, graphite or other carbon, and in some cases binders such as refractory clays or phosphates.
- (B) From rock (e.g., steatite), fired after shaping.

² The ASTM test method designated C 373 (“ASTM C-373”) has consistently been used by CBP in the administration of this note because the TSUS specified this test as the sole acceptable method to test for water absorption in conjunction with reheating to pyrometric cone 020. The C-373 test method covers procedures for determining water absorption, bulk density, apparent porosity, and apparent specific gravity of fired unglazed whiteware products.

In our view, this General EN sets forth a description of “ceramic products” that accurately reflects common and commercial designations of such products on an international basis. We recognize that the ENs are not legally binding or dispositive, but in this case we find them to mirror widely accepted, mainstream definitions of ceramic articles, including the American Society for Testing and Material’s definition, which defines “ceramic article” as: “[a]n article having a glazed or unglazed body of crystalline structure, or of glass, which body is produced from essentially inorganic, non-metallic substances and either is formed from a molten mass which solidifies on cooling, or is formed and simultaneously or subsequently matured by the action of heat.”

Generally, definitions (like the one above) describe ceramic articles by their compositional or structural materials and emphasize that these materials are “fired after shaping.” These definitions and the ENs make no mention of a pyrometric cone 020 reheating test or any similar test. In fact, under these definitions and the ENs, whether an article becomes denser, harder or less porous after reheating to pyrometric cone 020 is irrelevant. There are many types of ceramic articles (structural, whitewares, refractories, etc.) with a wide-range of properties and it is our understanding that it is likely that many of these types of ceramics will exhibit minor changes in density, hardness and/or porosity when tested under the mandated reheating test. While these changes are enough to preclude these articles from being classified as “ceramic articles” in Chapter 69, HTSUSA, these articles remain commonly and commercially designated as ceramic on an international basis.

To the best of our knowledge, Additional U.S. Note 1 to Chapter 69, HTSUS, has not been judicially interpreted by U.S. Courts. However, Headnote 2(a) was interpreted in Dal-Tile Corporation v. United States, 2004 Ct. Intl. Trade LEXIS 24 (Ct. Int’l Trade 2004), aff’d, 424 F.3d 1286 (Fed. Cir. 2005). In that case, the Court of International Trade (“CIT”) remarked that while “the history of the reason for promulgation of the note [was] not clear,” Headnote 2(a) was to be given its plain meaning. See 2004 Ct. Int’l Trade 24 at 24, 37. Under this strict interpretation, even extremely minor changes after reheating can prevent articles from being “ceramic articles” under the note.³ The CIT also found that “the statutory language was clearly and deliberately inserted, the application of the plain meaning is not absurd, and the government fails to propose a workable alternative.” See 2004 Ct. Int’l Trade 24 at 24. As a result of this interpretation, certain wall tile from Mexico, commonly and commercially recognized as “ceramic,” was classified in item 523.94, TSUS (“other articles of stone or of other mineral substances ... not elsewhere specified”) because they became denser, harder or less porous after reheating.

³ While the C-373 test method does set thresholds for accuracy (+/-0.2% water absorption in interlaboratory testing, +/-0.1% water absorption on measurements made by a single experienced operator), we posit that changes outside these thresholds may nevertheless be minor.

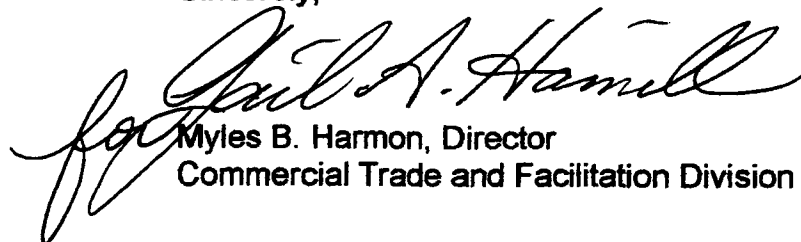
Strictly speaking, articles, commonly and commercially recognized and classified as ceramic products under the HS, cannot be classified in Chapter 69, HTSUS, when they are imported into the United States if they become denser, harder or less porous after reheating to pyrometric 020. Consequently, articles that are classified in the headings of Chapter 69 as ceramic articles by other contracting parties to the Convention, are classified in headings outside the Chapter when classified in the United States.

As a result, the conditions imposed by the Additional U.S. Note create an additional criterion for classification in Chapter 69, thereby narrowing the scope of the headings in the Chapter. The note frustrates one of the HS's essential purposes, which is to "establish a standard product descriptor to provide a basis for trade concessions and predictability for international commerce. See GATT, Analytical Index: Guide to GATT Law and Practice 1010 (6th ed. 1994). The note, in current form, causes only confusion and unpredictability in international commerce, forcing importers and CBP to consider a criterion that is irrelevant to the classification of merchandise in the HS and not predicated on commercial standards or reality. For these reasons, it is our view that the note should not remain in the HTSUS.

For the foregoing reasons, CBP requests that the ITC recommend to the President that Additional U.S. Note 1 to Chapter 69, HTSUS, be deleted. If the note is deleted, there would be no definition set forth in the HTSUS and ceramic articles could be classified pursuant to the HS Nomenclature and the EN, which in our view accurately describe products commonly and commercially identified as ceramic articles. We believe that this deletion would result in a more workable alternative to the note as it stands, resulting in a clearer, simplified description of ceramic products and a more uniform application of the Convention.

If the ITC cannot outright recommend deletion of the note, CBP asks that the matter be further studied by the ITC. We are eager to work with your staff further in this matter. We request that your staff contact Brian Barulich in the Tariff Classification and Marking Branch at (202) 572-8883 with any questions.

Sincerely,



Myles B. Harmon, Director
Commercial Trade and Facilitation Division