

# U.S. Customs Service

## *General Notices*

### TREASURY ADVISORY COMMITTEE ON COMMERCIAL OPERATIONS OF THE U.S. CUSTOMS SERVICE

AGENCY: Departmental Offices, Treasury.

ACTION: Solicitation of applications for membership in the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

SUMMARY: This notice establishes criteria and procedures for the selection of members and provides public notice of the Department's intent to file a Charter for the committee's eighth two year term.

*Title:* The Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

*Purpose:* The purpose of the Committee is to provide advice to the Secretary of the Treasury on all matters involving the commercial operations of the U.S. Customs Service and to submit an annual report to Congress describing its operations and setting forth any recommendations. The Committee provides a critical and unique forum for distinguished representatives of diverse industry sectors to present their views and advice directly to senior Treasury and Customs officials. This is done on a regular basis in an open and candid atmosphere.

#### SUPPLEMENTARY INFORMATION:

##### BACKGROUND

In the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), Congress directed the Secretary of the Treasury to create an Advisory Committee on Commercial Operations of the U.S. Customs Service. The Committee is to consist of 20 members drawn from industry sectors affected by Customs commercial operations with balanced political party affiliations. The Committee's first two-year charter was filed on October 17, 1988 and six additional charters have been filed for two-year terms. The current charter will expire on October 6, 2002. The Treasury Department plans to file a new charter by that date, renewing the Committee for an eighth two-year term.

##### OBJECTIVE, SCOPE AND DESCRIPTION OF THE COMMITTEE

The Committee's objectives is to advise are to advise the Secretary of the Treasury on issues relating to the commercial operations of the Cus-

toms Service. It is expected that, during its eighth two-year term, the Committee will consider issues relating to enhanced border and cargo supply chain security, Customs modernization and automation, informed compliance and compliance assessment, account based processing, commercial enforcement and uniformity, international efforts to harmonize customs practices and procedures, strategic planning, northern border and southern border issues, and the relationships with foreign Customs authorities. As directed by Congress, the Committee will be presided over chaired by the Assistant Secretary of the Treasury for Enforcement. During the two-year charter, the Committee will meet approximately eight times (quarterly). Additional special meetings of the full Committee or a subcommittee thereof may be convened if necessary. The meetings will generally be held in the Treasury Department, Washington, D.C. However, typically, one or two meetings per year are held outside of Washington at a Customs port.

The meetings are open to public observers, including the press, unless special procedures have been followed to close a meeting. During the last two-year term none of the Committee meetings were have been closed.

The members shall be selected by the Secretary of the Treasury from representatives of the trade or transportation community that do business with Customs, the general public, or others who are directly affected by Customs commercial operations. In addition, members shall represent major regions of the country, and, by statute, not more than ten members may be affiliated with the same political party. No person who is required to register under the Foreign Agents Registration Act as an agent or representative of a foreign principal may serve on an this advisory committee. Members shall not be paid compensation nor shall they be considered Federal Government employees for any purpose. No per diem, transportation, or other expenses are reimbursed for the cost of the public service of attending Committee meetings at any location.

Membership on the Committee is personal to the appointee. Under the Charter, a member may not send an alternate to represent him or her at a Committee meeting. However, since Committee meetings are open to the public, another person from a member's organization may attend and observe the proceedings in a nonparticipating capacity. Regular attendance is essential; the Charter provides that a member who is absent for two consecutive meetings or two meetings in a calendar year shall lose his or her seat on the Committee. Members who are serving on the Committee during its expiring two-year term are eligible to reapply for membership provided that they are not in their second consecutive term and that they have met attendance requirements. A new application letter and updated resume are required.

## APPLICATION FOR ADVISORY COMMITTEE APPOINTMENT

Any interested person wishing to serve on the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service must provide the following:

- Statement of interest and reasons for application;
- Complete professional biography or resume;
- Political affiliation, in order to ensure balanced representation. (Mandatory. If no party registration or allegiance exists, indicate “independent” or “unaffiliated”).

In addition, applicants must state in their applications that they agree to submit to pre-appointment security background and tax checks. (Mandatory). However, a national security clearance is not required for the position.

There is no prescribed format for the application. Applicants may send a letter describing their interest and qualifications and enclose a resume.

The application period for interested candidates will extend to June 17, 2002. Applications should be submitted in sufficient time to be received by the close of business on the closing date by Gordana S. Earp, Office of Regulatory, Tariff and Trade Enforcement, Office of the Under Secretary (Enforcement), Room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, ATT: COAC 2002.

Dated: April 22, 2002.

TIMOTHY E. SKUD,  
*Deputy Assistant Secretary,  
Regulatory, Tariff, and Trade Enforcement.*

[Published in the Federal Register, April 25, 2002 (67 FR 20577)]

DEPARTMENT OF THE TREASURY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS,  
*Washington, DC, April 24, 2002.*

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

JOHN DURANT,  
(for Douglas M. Browning, Acting Assistant Commissioner,  
Office of Regulations and Rulings.)

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WITHDRAWAL OF PROPOSED REVOCATION OF RULING  
LETTER AND TREATMENT RELATING TO CLASSIFICATION  
OF DIGITAL SOUND PROCESSORS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of withdrawal of proposed revocation of ruling letter and treatment relating to tariff classification of digital sound processors.

SUMMARY: This notice advises interested parties that Customs is withdrawing its proposal to revoke a ruling letter pertaining to the classification of digital sound processors and revoking any treatment previously accorded by the Customs Service of substantially identical transactions. Notice of the proposed revocation was published in the CUSTOMS BULLETIN of April 10, 2002, Vol. 36, No. 15, pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057).

EFFECTIVE DATE: May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Tom Peter Beris, General Classification Branch, 202-927-1726.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published in the CUS-

TOMS BULLETIN on April 10, 2002, proposing to revoke NY C85943, dated April 27, 1998, which classified certain digital sound processors under subheading 8525.20.9080, HTSUS, which provides for transmission apparatus for radiotelephony, radiotelegraphy, radiobroadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras; still moving image cameras or other video camera recorders: transmission apparatus incorporating reception apparatus: other: other. Subsequent to the publication of the notice, we have had an opportunity to re-examine the reasoning for the proposed revocation, and now find that the original analysis was correct.

Therefore, this notice advises interested parties that Customs is withdrawing its proposed revocation of the ruling set forth above.

NY C85943 will remain in full force and effect.

Dated: April 19, 2002.

MARVIN AMERNICK,  
(for John Durant, Director,  
Commercial Rulings Division.)

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RECEIPT OF AN APPLICATION FOR  
“LEVER-RULE” PROTECTION

AGENCY: U.S. Customs Service, Department of the Treasury.

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

SUMMARY: Pursuant to 19 CFR 133.2(f), this notice advises interested parties that Customs has received an application filed on behalf of Frito-Lay<sup>1</sup> seeking “Lever-Rule” protection.

FOR FURTHER INFORMATION CONTACT: George F. McCray, Esq., Intellectual Property Rights Branch, Office of Regulations & Rulings, (202) 927-2387.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 CFR 133.2(f), this notice advises interested parties that Customs has received an application filed on behalf of Frito-Lay seeking “Lever-Rule” protection. Protection is sought against importations of certain snack foods (specifically described as corn chips and potato chips) produced in, and intended for sale in, Mexico which bear the

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<sup>1</sup> Recot, Inc., a wholly owned company of PepsiCo, Inc., recorded with U.S. Customs certain marks that it owns and licenses to its related affiliate, Frito-Lay Inc. For the purposes of this notice, the various parties are referred to as “Frito-Lay.”

following trademarks: RUFFLES (U.S. Patent & Trademark Office Registration No. 582,149; U.S. Customs Recordation No. TMK02-00045), SMILING FACE DEVICE (SLANTED)—NO. 2 (U.S. Patent & Trademark Office Registration No. 2,285,979; U.S. Customs Recordation No. TMK01-00122), FRITOS (U.S. Patent & Trademark Office Registration No. 689,601; U.S. Customs Recordation No. TMK01-00117); TOSTITOS (U.S. Patent & Trademark Office Registration No. 1,100,909; U.S. Customs Recordation No. TMK01-00124); and SABRITAS (U.S. Patent & Trademark Office Registration No. 739,115; U.S. Customs Recordation No. TMK01-00110). Pursuant to 19 CFR 133.2(f), Customs will publish an additional notice in the CUSTOMS BULLETIN indicating which trademark(s) and which specific products will receive Lever-rule protection relative to specific products in the event that it determines that the subject snack food products are physically and materially different from the products authorized for sale in the U.S.

Dated: April 19, 2002.

JOANNE ROMAN STUMP  
*Chief, Intellectual Property Rights Branch,  
Office of Regulations and Rulings.*

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REVOCATION OF RULING LETTER AND TREATMENT  
RELATING TO TARIFF CLASSIFICATION OF A CUTTLEBONE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of a ruling letter and treatment relating to tariff classification of a cuttlebone.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of a cuttlebone or a cuttlefish bone under the Harmonized Tariff Schedule of the United States (HTSUS). Customs also is revoking any treatment previously accorded by Customs to substantially identical transactions. A notice was published on March 20, 2002, in Vol. 36, No. 12, of the CUSTOMS BULLETIN, proposing to revoke NY B80733 and to revoke the treatment pertaining to cuttlebones used in birdcages. No comments were received in response to the notice.

DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 8, 2002.

FOR FURTHER INFORMATION CONTACT: John G. Black, General Classification Branch, (202) 927-1317.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057), (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are “**informed compliance**” and “**shared responsibility.**” These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community’s responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published on March 20, 2002, in Vol. 36, No. 12, of the CUSTOMS BULLETIN, proposing to revoke NY B80733 and to revoke the treatment pertaining to cuttlebones used in birdcages. No comments were received in response to the notice.

As stated in the proposed notice, although in this notice Customs is specifically referring to New York Ruling Letter (NY) B80733, dated January 7, 1997, this notice covers any rulings on this merchandise that may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer’s failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the

part of the importer or its agents for importations of merchandise subsequent to the effective date of this final notice.

In NY B80733, dated January 7, 1997, Customs classified a cuttlebone under subheading 2309.90.95, HTSUS, which provides for "Preparations of a kind used in animal feeding: Other: Other: Other: Other: Other."

Since the issuance of this ruling, Customs has reexamined the competing tariff provisions and has determined that the original classification is in error. The product is provided for by name in heading 0508, HTSUS, providing it meets additional terms of the heading. Because the product meets those terms, it is correctly classified in heading 0508, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY B80733 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 965481. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. HQ 965481 is set forth as the attachment to this document.

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

Dated: April 23, 2002.

MARVIN AMERNICK,  
(for John Durant, Director,  
Commercial Rulings Division.)

[Attachment]

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[ATTACHMENT]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
*Washington, DC, April 23, 2002.*  
CLA-2 RR:CR:GC 965481JGB  
Category: Classification  
Tariff No. 0508.00

MR. KIM YOUNG  
BDP INTERNATIONAL, INC.  
2721 Walker, NW  
Grand Rapids, MI 49504

Re: NY B80733 revoked; cuttlebone.

DEAR MR. YOUNG:

Customs has reviewed the decision in New York Ruling Letter (NY) B80733, dated January 7, 1997, issued to you on behalf Meijer Inc., concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a cuttlebone and has determined that the classification is in error. Therefore, the classification of the merchandise provided in NY B80733 no longer reflects the view of Customs.



Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title IV (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published on March 20, 2002, in Vol. 36, No. 12 of the CUSTOMS BULLETIN, proposing to revoke NY B80733 and to revoke the treatment pertaining to cuttlebones used in birdcages. No comments were received in response to the notice.

*Facts:*

The merchandise is described in NY B80733 was a 5 inch by 6 inch cuttlebone with a metal holder for installation in a bird cage. The item supplies calcium and mineral nutrition for birds kept in cages. The article is derived from the cuttlefish, a mollusk. During manufacture they are commonly cleaned with water, trimmed to various sizes (4-7 inches in length and 1-3 inches in width), soaked in hydrogen peroxide for whitening and to kill bacteria, and dried in ovens.

*Issue:*

Whether the cuttlebone is classified in subheading 2309.90.95, HTSUS, as preparations of a kind used in animal feeding; in heading 0508 which provides for cuttlebone, unworked or simply prepared but not cut to shape, or in heading 9601, HTSUS, which provides for ivory, bone, tortoise-shell, horn antlers, coral, mother-or-pearl, and other animal carving material, and articles of these materials.

*Law and Analysis:*

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

In interpreting the HTSUS, the Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, may be used. The ENs, although not dispositive or legally binding, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings. Customs believes the ENs should always be consulted. See T.D. 89-90, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

The HTSUS provisions under consideration are as follows:

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|-------------|--|
| 0508:       | Coral and similar materials, unworked or simply prepared but not otherwise worked; shells of molluscs, crustaceans or echinoderms and cuttlebone, unworked or simply prepared but not cut to shape, powder and waste thereof |
| 2309.90.95: | Preparations of a kind used in animal feeding: Other: Other: Other: Other.   |
| 9601:       | Worked ivory, bone, tortoise-shell, horn, antlers, coral, mother-of-pearls and other animal carving material, and articles of these materials (including articles obtained by molding)                                       |

This article is a composite good consisting of a cuttlebone and a metal clip, and, as such, cannot be classified by GRI 1, in that no single heading describes the article. The cuttlebone portion imported alone would be classified under one of the headings indicated *supra*. The metal clip component alone would be classified under heading 7326, HTSUS, the provision for other articles of iron or steel. Under the provisions of GRI 2, "the classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." GRI 3 provides, in pertinent part, "When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows: \* \* \* when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods \* \* \* those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods." GRI 3(b) provides that " \* \* \* composite goods consisting of different materials or made up of different components, shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable."

The ENs to GRI 3(b) at paragraph (VIII) lists, as factors to help determine the essential character of such goods, the nature of the materials or components, their bulk, quantity, weight or value, and the role of a constituent material in relation to the use of the goods.

The cuttlebone component of the article is the most prominently featured aspect in the marketing and packaging. The metal clip merely holds the article up against the birdcage enabling the bird easily to reach the cuttlebone with its beak. The clip represents a minor portion of the good and does not represent the reason for purchasing the good in that the function of the good appears to be to provide minerals to the bird. The cuttlebone component is the predominant feature of the article. It constitutes the largest and most visible portion of the article. Therefore, in considering the relationship or role of the cuttlebone component to the use of the entire article, we conclude that the cuttlebone component represents the essential character.

Heading 0508, HTSUS, provides by name for cuttlebone, provided it is "unworked or simply prepared but not cut to shape." This office has determined through investigation and sampling that the cuttlebone has typically been subjected to some cutting operation along the exterior edges. This process raises the question whether they have been "worked" or "cut to shape." Samples provided by another importer demonstrate that the raw cuttlebone which has been whitened and disinfected in a hydrogen peroxide bath, but not cut or otherwise processed consists of the same, or very similar shape as the "finished" article. In the unfinished article, the cuttlebone remains embedded in a mantle, a thin, brittle cartilaginous material that covers one face of the cuttlebone, extending out beyond the edge of the natural cuttlebone in a band of varying widths, measuring as little as a few millimeters in width up to approximately two centimeters. Customs learned from an ichthyologist at the Smithsonian Institution that this mantle consists primarily of a proteinaceous material. The cuttlebone, in contrast, is primarily calcium carbonate. Thus, while the two components in the untrimmed product are of different materials, it is the calcium carbonate portion of the cuttlebone which presents the desirable commercial entity. In preparing the cuttlebone for commercial sale, the cartilaginous mantle, which readily snaps off by application of finger pressure, appears to be trimmed off the cuttlebone either with a knife blade or by some abrasive process. The trimming process, itself, yields a natural cuttlebone of the same size and shape as contained embedded in the untrimmed mantle. The cuttlebone, *per se*, has not been cut to a new shape or size. Therefore, the cuttlebone is no more than "unworked or simply prepared cuttlebone, not cut to shape." It has not been processed beyond simple cleaning and disinfecting in the hydrogen peroxide bath, which incidentally whitens the product, nor does the removal of the cartilaginous mantle constitute more than a simple preparation necessary to bring the crude cuttlebone into a saleable condition.

Heading 2309 provides for preparations of a kind used in animal feeding. The ENs to heading 2309 state that the heading covers "sweetened forage" and "prepared animal feeding stuffs consisting of a mixture of several nutrients designed: (1) to provide the animal with a rational and balanced daily diet (complete feed); (2) to achieve a suitable daily diet by supplementing the basic farm-produced feed with organic or inorganic substances (supplementary feed); or (3) for use in making complete or supplementary feeds." The cuttlefish bone or cuttlebone is neither "sweetened forage" nor "prepared animal feeding stuffs consisting of a mixture of several nutrients" as described in the ENs and, therefore, cannot qualify for classification in heading 2309.

Heading 9601 provides for ivory, bone, tortoise-shell, horn, antlers, coral, mother-of-pearl, and other animal carving material, and articles of these materials (including articles obtained by molding.) The ENs to the heading state:

This heading relates to worked animal material (other than those referred to in heading 96.02). These materials are mainly worked by carving or cutting. Most of them may also be moulded.

For the purposes of this heading, the expression "worked" refers to materials which have undergone processes extending beyond the simple preparations permitted in the heading for the raw material in question (see the Explanatory Notes to heading 05.05 to 05.08). The heading therefore covers pieces of ivory, bone tortoise-shell, horn, antlers, coral, mother-of-pearl, etc, in the form of sheets, plates, rods, etc., cut to shape (including square or rectangular) or polished or otherwise worked by grinding, drilling, milling, turning, etc. \* \* \*

Provided they are worked or in the form of articles, the heading includes the following:

\* \* \* \* \*

(X) Shells of crustaceans and molluscs."

The cuttlebones examined by Customs for similar uses appear not to be worked, because the trimming away of the proteinaceous mantle does not alter the natural shape of the cuttlebone and does not constitute more than a simple preparation of the cuttlebone for its use as a dietary supplement and honing block for birds. Therefore, classification in heading 9601, HTSUS, is precluded.

*Holding:*

The cuttlebone is classifiable under heading 0508, HTSUS, as cuttlebone, unworked or simply prepared but not cut to shape.

NY B80733 dated January 7, 1997, is hereby REVOKED.

MARVIN AMERNICK,  
(for John Durant, Director,  
Commercial Rulings Division.)