What Every Member of the Trade Community Should Know About:

Classification of Cooking Ranges, Stoves and Ovens

AN INFORMED COMPLIANCE PUBLICATION

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U.S. CUSTOMS and BORDER PROTECTION

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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or "Mod" Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are "informed compliance" and "shared responsibility," which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's rights and responsibilities under customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record's failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

Regulations and Rulings (RR) of the Office of International Trade has been given a major role in meeting the informed compliance responsibilities of U.S. Customs and Border Protection. In order to provide information to the public, CBP has issued a series of informed compliance publications on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the National Commodity Specialist Division of Regulations and Rulings is entitled "Classification of Cooking Ranges, Stoves and Ovens." It provides guidance regarding the classification of these items. We sincerely hope that this material, together with seminars and increased access to rulings of U.S. Customs and Border Protection, will help the trade community to improve voluntary compliance with customs laws and to understand the relevant administrative processes.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Regulations of U.S. Customs and Border Protection, 19 C.F.R. Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant.

Comments and suggestions are welcomed and should be addressed to U.S. Customs and Border Protection, Office of International Trade, Executive Director, Regulations and Rulings, 799 9th Street N.W. 7th floor, Washington, D.C. 20229-1177.

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HISTORY

Until a few thousand years ago, food was cooked by placing it near an open fire or on a hot flat rock. The very first oven appears to have been a rock-lined pit containing a wood fire. After the ashes were removed, the food was placed inside the pit and covered until cooked. One of the earliest known ovens can be traced back to the 3rd millennium B.C. in ancient Sumerian temple kitchens. These were large, beehive-shaped clay ovens used to bake bread. A fire was built in the oven's single chamber, the coals removed, the dough placed within, and the chamber opening closed off. The heat stored inside the thick walls of the oven would bake the bread.

Prior to the advent of the kitchen range in the late 18th Century, food cooking generally occurred above or before an open hearth in the home. The hearth was located in a wall under an archway with a flue for smoke release. Large andirons held the burning logs and rested upon a brick or stone floor. Vessels of various sizes were suspended above the fire to boil, stew, and simmer food. These containers were made of earthenware or metals such as iron, bronze, brass, and copper. The vessels had handles, and occasionally, fitted lids. Rounded bottoms promoted even heat distribution. The chimney crane was devised to suspend the pots over the fire, the earliest of which were simply iron bars and hooks mounted on a chimney wall. Later, three-motion cranes were developed where a horizontal bar extending from a vertical post was installed beside the hearth. The bar could swing in a ninety-degree arc and a mechanism permitted the height of the pot to be adjusted.

Revolving spits of iron or steel were used to roast food in front of the fire. Besides the common straight spit, pronged spits and basket spits were used to hold meat securely. The spits were supported by cob-irons or cobbards which could also be adjusted for height. Drip pans trapped the fat drippings below. Through the Middle Ages, men and boys called "turnspits" supplied the power for continuously turning the spit. From the 16th to the 19th Century, dogs replaced humans as turnspits. Specially bred short-legged dogs would walk around the inside of a wooden wheel, powering a chain and pulley to rotate the spit. Eventually, this canine treadmill was replaced by a gravity driven system of weights and gears known as a mechanical jack.

Other improvements in the roasting process in the 19th Century were the hastener and the bottle jack. The hastener was a large metal screen in the shape of a half cylinder on legs. Placed in front of the hearth with its open side facing the fire, meat was hung from the hastener to cook. Heat reflected by the metal shield improved the cooking process, and a small door on the closed side enabled the cook to baste the meat. The bottle jack was a small, spring-driven, brass cylinder. When wound and hung from the hastener or mantel, the bottle jack rotated a roast for a prescribed amount of time.

Another early innovation, known as a "Dutch Oven", was merely a backless metal box with a front door and shelves within. The box was positioned with its open side facing the fire. Direct heat cooked part of the food, while reflected heat from the oven's shiny walls cooked the rest. Later, thick-walled metal kettles with tight lids would come to be

called Dutch ovens. American colonists used this basic design to produce the first cooking stoves in Lynn, Massachusetts in 1642. Essentially, they were cast iron boxes with lids.

Over the years, it became clear that improved fuel economy and temperature control could be achieved by enclosing the fire for cooking purposes. Ovens began to be built into the wall beside the open hearth, thereby sharing the same chimney flue. These ovens had a brick or stone floor, an inner lining of bricks, and a metal door. The fuel was inserted onto the oven floor and ignited. Once heated, the ashes were removed and the food placed inside.

Several individuals contributed to the evolution and refinement of the successfully functioning kitchen range. In the second half of the 18th Century, a British statesman and inventor, Count Rumford, born Benjamin Thompson, invented the first practical cooking oven. His device consisted of a fully enclosed cubic metal box with a door. It was heated by an external fire through a bottom or side wall. All other walls, including the door, were insulated for maximum heat retention. This design would evolve into the cast iron range of the 19th Century with the addition of a coal or wood burning firebox and a stovetop. Our ovens today are basically updated versions of Rumford's box.

DESCRIPTION—CLASSIFICATION

A range is an appliance that supplies heat for cooking purposes. A range has a cooktop surface with several heating areas and one or two ovens. Ranges are often called stoves. An oven is a heated enclosure for baking and roasting food by dry heat at temperatures usually no greater than 450 degrees Fahrenheit (230 degrees Celsius). Ovens may have a separate broiler compartment used primarily to broil foods. In a standard domestic oven, food is heated mainly by radiation from the hot walls and partly by convection of hot air. The radiant heat is absorbed in a very thin surface layer of the solid food, whose interior then slowly heats by conduction. The two chief types of household ranges used in the United States are the gas range and the electric range.

GAS

Gas ranges typically have four burners on the cooktop and one in each oven. One cooktop burner is likely high-powered today. A burner combines air with natural gas, synthetic natural gas or liquefied petroleum gas. The resulting mixture flows through small holes in the burner. A spark created by a built-in electrical device or by a pilot light ignites the mixture. A pilot light is a small, continuously burning flame. The amount of gas that flows to the burner will determine how much heat is produced. The gas flow is controlled by a valve. Most cooktop burners are regulated by hand-operated valves. Thermostats generally control the valves of oven burners, as well as some cooktop burners. The power on gas ranges nowadays is approximately 16,000 BTU per hour.

Subheading 7321.11.3000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), provides for non-electric, domestic cooking appliances, stoves or ranges, for gas fuel, or for both gas and other fuels, non-portable. The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) to Section XV, 73.21(3) state that this heading includes kitchen ranges, stoves and cookers. However, the EN specifically excludes appliances that also use electricity for heating purposes, as in the case of combined gas-electric cookers (heading 8516). For example, dual fuel ranges pair a gas cooktop with an electric oven, and would be classified under subheading 8516.60.4080, HTSUSA. See NY 884533 dated April 13, 1993 on an electric and gas range/oven and NY K81288 dated December 8, 2003 on another duel fuel range. The ENs for heading 7321 further limit the cooking appliances to those of a domestic type, normally used in the household, including the backyard. Appliances classified here cannot operate at a level in excess of household requirements. Thus, professional gas ranges used in restaurants and cooking schools would not be classified under heading 7321, HTSUS.

ELECTRIC

Electric ranges have heating units that use an electric current to produce heat. Most electric ranges have four circular heating units on a cooktop and one or two rectangular units in each oven. Typically, one of the circular units will have an expandable electric element with two or three size settings. These heating units have an exterior shell in the form of a metal tube in two parts. Each section is shaped like a spiral and encases a coil of wire. Electricity travels through the coil, thereby heating the coil and the metal tube. The heat generated by a cooktop unit can be regulated in several ways. Controls can determine which one of two possible electric voltages passes through the coil. The higher the voltage, the hotter the coil. Other controls offer the choice of heating one or two coils. Another type of control varies the heat supplied to the cooktop unit by turning the current on and off at intervals. The heat increases with the length of time that the current flows through the unit. Thermostats usually regulate the oven heating units in electric ranges, as well as in some cooktop units.

Electric ranges with metal coils on a porcelain enamel cooktop, while still available, are becoming rare. The most popular electric ranges now have smooth tops that have heating elements hidden below a glass ceramic surface. These elements are as much as 3,000 watts today, up from about 500 watts only five years ago.

Subheading 8516.60.4080, HTSUSA, provides for electro-thermic appliances of a kind used for domestic purposes, cooking stoves, ranges, and ovens, non-portable. The ENs to Heading 85.16 (E) state that the heading excludes any thermo-electric appliances that are not normally used in the household. So again, professional electric ranges used in restaurants and cooking schools would not be classified under heading 8516, HTSTUS. See NY A80412, dated March 4, 1996, which classified a side-by-side double residential electric oven and an over/under double electric oven both in subheading 8516.60.4080, HTSUSA. Also, note NY K87292, dated July 1, 2004, where

a water oven that uses superheated steam was classified under subheading 8516.60.4080, HTSUSA.

Higher end gas and electric ranges offer additional features, such as heavier construction, a griddle, a grill, or a warming element on the cooktop, extra burners, continuous cast iron grates, split racks, a warming drawer, a second oven or a convection oven, digital displays, and widths greater than the standard 30 inches. The average new range also uses touchpad controls for the oven instead of dials. Prices range from $550 to $750 for electric models and $650 to $1200 for gas models.

HALOGEN

Relatively new to the industry is an oven that uses the power of light (three 1500-watt halogen bulbs) to cook food in one quarter of the time of conventional ovens. It can brown, crisp, bake and broil. The technology cooks the food from the outside like traditional radiant heat, but also penetrates the surface to cook the inside simultaneously. No preheating is necessary. This type of oven mimics the microwave in terms of speed, while maintaining the texture and quality of food as cooked in conventional ovens. One model requires a dedicated 240-volt, 30-amp line and another, a standard 120-volt, 15-amp outlet. The 240V oven cooks up to eight times faster than a conventional oven. Both styles are equipped with microwave capability (electromagnetic waves) that can be used along with or alternating with the high intensity halogen bulbs, or used alone. And a fourth cooking method available in this oven is a combination microwave plus convection (heating element with fan).

Tariff classification of this revolutionary light powered oven would be under subheading 8516.60.4080, HTSUSA, which provides for other electro-thermic appliances of a kind used for domestic purposes, cooking stoves, ranges and ovens, non-portable. See NY G82687, dated November 2, 2000, on classification of the General Electric Advantium oven.

INDUCTION

Reintroduced to the home market recently, induction cooktops provide the most energy efficient, environmentally sound, safe and rapid methods of preparing food. They are also currently more expensive than their gas and electric counterparts, with a starting price of about $2,000. Induction cooktops operate by means of glass-covered electromagnetic elements. Typically, an induction cooktop has four hobs, each containing coils made of ferromagnetic material. A magnetic field is created as an alternating current passes through the coils. This magnetic field induces a current in the pan, and the internal resistance of the pan dissipates the heat. The cooktop surface remains cool, and only the pan becomes hot to cook the food. Remove the pan and the energy transfer stops. There is minimal heat loss, other than the warmth generated onto the cooktop by the reflected heat of the pan, thereby creating a cooler working environment. Special cookware designed to absorb magnetic energy and spread heat quickly and evenly is required for induction cooking. The cookware must be made of

materials that allow an induced current to flow through them, such as cast iron, enameled steel, and certain stainless steels.

Induction cooktops are classified under subheading 8516.60.4080, HTSUSA, which provides for other electro-thermic appliances of a kind used for domestic purposes, cooking stoves, ranges and ovens, non-portable.

RELATED RULINGS

PAPER GRILL

The classification of a "Paper Grill" was addressed in NY I89775, dated January 16, 2003. This product consisted of a portable, disposable barbecue grill, a steel tray holding a layer of charcoal, plastic plates and utensils, paper napkins, salt, pepper, and a disposal bag. To construct the grill, one unfolded a foil-lined, cardboard frame and inserted two steel rods in an "X" pattern. The two rods supported the charcoal-covered, steel tray. The actual cooking rack, a metal grill, was placed on top of the frame. The "Paper Grill" constituted a set for Customs tariff purposes, with its essential character imparted by the charcoal-fueled, steel, cooking components. Classification was held to be under subheading 7321.19.0040, HTSUSA, which provides for stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas rings, plate warmers and similar nonelectric domestic appliances, and parts thereof, of iron or steel, cooking appliances and plate warmers, for solid fuel, portable, other.

DEEP FRYER

In NY H88686, dated February 22, 2002, a deep fryer used to cook whole turkeys was classified under subheading 7321.11.1060, HTSUSA. This heading provides for stoves, ranges, grates, cookers…barbecues, braziers, gas rings, plate warmers and similar nonelectric domestic appliances, and parts thereof, of iron or steel, cooking appliances and plate warmers, for gas fuel or for both gas and other fuels, portable, other. The deep fryer was composed of a steel container to hold the turkey and cooking oil with a metal stand incorporating a burner, gas hose and regulator. The deep fryer was fueled by propane gas.

ROTISSERIE

In HQ 963678, dated September 11, 2000, the Ronco Showtime Rotisserie and BBQ was held to be an "oven" under subheading 8516.60.40, HTSUS, rather than a "roaster" under subheading 8516.60.60, HTSUS. (NY F80083 revoked.) This decision was based upon the fact that the principal use of the rotisserie was to cook food like an oven does. The rotisserie met the basic parameters of an oven as "a chamber used for baking, heating or drying", and "an enclosed compartment supplied with heat and used for cooking food". The ruling concluded that the Ronco Showtime Rotisserie and BBQ has a "radiant heat element, an oven cavity, and is principally used to cook meats and

vegetables in the home". Also taken into account was NY F80111, dated December 1, 1999, in which U.S. Customs and Border Protection (CBP) classified an 18-quart, portable "NESCO Roaster Oven" with cookwell, lid, and heating element inside an enclosed compartment under subheading 8516.60.40, HTSUS, as an oven. It too met the common meaning of the word "oven", an enclosed compartment capable of cooking food.

COMBINATION MICROWAVE AND CONVECTION OVEN

In HQ 962387, dated May 8, 2000, CBP reviewed the proper classification of the General Electric JTP95WW two-cavity combination microwave and convection ovens. This model was composed of a 27-inch, 1.5- cubic inch capacity microwave oven mounted atop a 30-inch, 3.8-cubic foot capacity convection oven. Both oven components were housed together, but each had its own cooking cavity and keypad. CBP considered the product to be a composite machine, that is, two or more machines fitted together to form a whole, which is to be classified as if consisting of the machine which performs the principal function (Section XVI, Note 3, HTSUS). The question was, can a principal function be determined for the two-cavity combination microwave and convection oven? The competing headings were as microwave ovens under subheading 8516.50.00, HTSUS, or as other cooking stoves, ranges and ovens under subheading 8516.60.40, HTSUS. CBP acknowledged that both components could operate simultaneously, and each had its own cooking cavity, controls and timer. CBP also recognized that although the convection oven could accommodate larger meals than the microwave oven, the microwave might very well be used more frequently. Also noted was the fact that the convection oven had resistance or radiant heating capability, typical of a conventional floor-standing oven. Thus, CBP concluded that a principal function for the two-cavity, combination microwave and convection oven could not be determined. Under GRI 3(c), HTSUS, applied at the subheading level by GRI 6, classification was found in the subheading last in numerical order among those which equally merit consideration. The GE JTP95WW two-cavity combination microwave and convection oven was therefore classified in subheading 8516.60.40, HTSUS.

PROPANE

Heading 7321 classifies domestic cooking appliances according to the type of fuel used, namely gas, gas and other fuels, including liquid or solid. HQ 964803, dated January 10, 2002, resolved the question of whether the propane used in the Char-Broil Backyard Barbecue Grills was a gas fuel or a liquid fuel. Referring to chemical and standard dictionaries and encyclopedias, the wording of subheading 2711.12.00, HTSUS (propane), and the language of the ENs, CBP concluded propane was a colorless, flammable gas. Note also the following precedents. HQ 964976, dated January 8, 2002, held that a portable, propane camping stove used propane, a gas fuel, and was classified in subheading 7321.11.10, HTSUS (DD 815332 revoked). And finally, in HQ 965297, dated January 8, 2002, CBP decided that propane was a gas fuel in classifying certain propane heaters under subheadings 7321.81.10 and 7321.81.50, HTSUS (NY 803374 revoked).

PORTABILITY

Both headings 7321 and 8516 differentiate between portable and non-portable cooking appliances. The HTSUS has never definitively addressed the issue of portability. The court has relied on dictionary definitions of the term in two cases, Neco Electrical Products v. United States, 14 CIT 181, 184 (1990) and United Import Sales, Inc. v. United States, 66 Cust. Ct. 355, 360 (1971). Generally, the meaning of the word "portable" is considered to be "easily carried or conveyed by hand". In HQ 964803, dated January 10, 2002, CBP examined the subject of portability in relation to the Char-Broil Burner 4 System and Stainless Steel Backyard Barbecue Grills. These large grills ranged in weight from 175 to 300 pounds, not including the weight of the filled propane tanks. Despite the presence of castors or wheels, an industry representative stated that the grills were designed for "relatively fixed patio use". Further, the trade did not market such large and heavy grills as "portable". "Portable" represents a separate category of grills that are more appropriate for "tailgating, beach, camping and other away-from-home activities", according to the Barbecue Industry Association spokesperson. CBP agreed and classified the Char-Broil Barbecue Grills as not portable, under subheading 7321.11.60, HTSUS.

ADDITIONAL INFORMATION

The Internet

The home page of U.S. Customs and Border Protection on the Internet's World Wide Web, provides the trade community with current, relevant information regarding CBP operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site also links to the home pages of many other agencies whose importing or exporting regulations that U.S. Customs and Border Protection helps to enforce. The web site also contains a wealth of information of interest to a broader public than the trade community. For instance, the "Know Before You Go" publication and traveler awareness campaign is designed to help educate international travelers.

The web address of U.S. Customs and Border Protection is http://www.cbp.gov

Customs Regulations

The current edition of Customs and Border Protection Regulations of the United States is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 512-1800. A bound edition of Title 19, Code of Federal Regulations is also available for sale from the same address. All proposed and final regulations are published in the Federal Register, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the Federal Register may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly Customs Bulletin described below.

Customs Bulletin

The Customs Bulletin and Decisions ("Customs Bulletin") is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the Customs Bulletin. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

Importing into the United States

This publication provides an overview of the importing process and contains general information about import requirements. The current edition of Importing Into the United States contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and U.S. Customs and Border Protection by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The current edition contains a section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between U.S. Customs and Border Protection and the import community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided accurate and timely data pertaining to his or her importation.

Single copies may be obtained from local offices of U.S. Customs and Border Protection, or from the Office of Public Affairs, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the CBP web site. Importing into the United States is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054.

Informed Compliance Publications

U.S. Customs and Border Protection has prepared a number of Informed Compliance publications in the "*What Every Member of the Trade Community Should Know About:…"* series. Check the Internet web site http://www.cbp.gov for current publications.

Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, CBP Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054. This publication is also available on the Internet web site of U.S. Customs and Border Protection.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under CBP Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from U.S. Customs and Border Protection ports of entry. Please consult your telephone directory for an office near you. The listing will be found under U.S. Government, Department of Homeland Security.

"Your Comments are Important"

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs and Border Protection, call 1-888-REG-FAIR (1-888-734-3247).

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