

and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer
[FR Doc. 96-31022 Filed 12-5-96; 8:45 am]

BILLING CODE 4810-31-P

Customs Service

Tariff Classification of Hydraulic Mine Roof Shield Supports

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

ACTION: Proposed change of practice;
solicitation of comments.

SUMMARY: This notice advises the public that Customs proposes a change of practice regarding the classification of hydraulic mine roof shield supports under the Harmonized Tariff Schedule of the United States (HTSUS). Customs has a uniform and established practice of classifying shield supports under subheading 8430.50.50, HTSUS, which provides for other self-propelled excavating machinery. Customs intends to change this practice to reflect the proper classification of the shield supports under subheading 8479.89.95, HTSUS, which provides for other machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter.

If this proposed change is adopted, those rulings which are inconsistent with our current practice would be revoked. We believe such action would affect only the classification of the hydraulic mine roof shield supports. Before adopting this proposed change, consideration will be given to any written comments timely submitted in response to publication of this document.

DATES: Comments must be received on or before February 4, 1997.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to U.S. Customs Service, Office of Regulations and Rulings, 1301 Constitution Avenue, N.W., (Franklin Court), Washington, D.C. 20229. Comments submitted may be inspected at the Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT:
Larry Ordet, Tariff Classification
Appeals Division, (202) 482-7030.

SUPPLEMENTARY INFORMATION:

Background

Self-propelled, hydraulic mine roof shield supports are used in underground coal mining. They are one of three machines of a long wall mining system. The system consists of: (1) A cutting device (shearer) which removes coal as it moves along the face of a coal deposit; (2) a face conveyor, located underneath the cutting tool, which transports the coal as it is removed; and (3) an advancing mechanism and shield support which serve as a platform for (1) and (2). The shield supports are installed side by side along the face of an underground coal seam to form a continuous overhead canopy which cantilevers over the shearer and face conveyor. The supports prevent the mine roof from collapsing onto these machines as the coal is removed. The supports also move the entire system forward. No single component can function as coal cutting machinery without the other two components.

Customs position with regard to the classification of self-advancing, hydraulic mine roof shield supports under the Tariff Schedules of the United States (TSUS), the precursor to the HTSUS, was expressed in C.I.E. 227-67, dated February 28, 1967. In C.I.E. 227-67, we stated that "[t]here is a uniform and established practice of classifying equipment similar to the mechanized roof supports and the hydraulic roof supports, Mk III, under the provision for extracting machinery, whether or not stationary or mobile, for minerals or ores, in item 664.05 * * *." Item 664.05, TSUS, provided for "mechanical shovels, coal-cutters, excavators, scrapers, bulldozers and other excavating, levelling, boring and extracting machinery * * * for earth, minerals or ores." This position was later followed in New York Ruling Letter (NY) 802700, dated April 19, 1982, and NY 803104, dated June 16, 1982 (then, under item 664.08, TSUS).

Customs position with regard to the classification of shield supports under the HTSUS was expressed in Headquarters Ruling Letter (HQ) 084855, dated September 13, 1989. In HQ 084855, we held that the shield supports were classifiable under subheading 8479.89.90 (now, 8479.89.95), HTSUS, which provides for other machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter. This decision was later affirmed, in HQ 950218 and HQ 950220, both dated April 17, 1992.

However, in *Hemscheidt Corporation v. United States*, 858 F.Supp. 223 (CIT

1994), the U.S. Court of International Trade determined that the uniform and established practice of classifying the shield supports as "extracting" machinery, established under the TSUS, survived implementation of the HTSUS. The Court pointed out that Customs did not publish notice in the Federal Register, in accordance with 19 U.S.C. 1315(d), of its intention to classify shield supports under heading 8479, HTSUS. Accordingly, the Court held that the shield supports were properly classifiable under subheading 8430.50.50, HTSUS, which provides for other self-propelled excavating or extracting machinery. This decision was affirmed in *Hemscheidt Corporation v. United States*, 72 F.3d 868 (Fed. Cir. 1995).

It is Customs position that the shield supports cannot be classified as excavating or extracting machinery under heading 8430, HTSUS. The terms "excavate" and "extract" are not defined in the HTSUS. When terms are not so defined, they are construed in accordance with their common and commercial meaning. *Nippon Kogasku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982).

"Excavate" is defined in Webster's Ninth New Collegiate Dictionary, pg. 431 (1990), as follows: "1: to form a cavity or hole in 2: to form by hollowing 3: to dig out and remove 4: to expose to view by or as if by digging away a covering." "Extract" is defined, pg. 440, as follows: "1 a: to draw forth * * * b: to pull or take out forcibly * * * c: to obtain by much effort from someone unwilling * * * 2: to withdraw (as a juice or fraction) by physical or chemical process. * * *."

As coal is removed, the self-propelled shield supports prevent the mine roof from collapsing onto the system's shearer and face conveyor. The supports also move the entire system forward. They do not, however, form a cavity or hole, dig out or remove, nor pull, take out, or withdraw, any material. While the supports form a portion of a system designed to excavate coal, the shield supports cannot, by themselves, be considered "excavating" or "extracting" machinery.

This determination is supported by Harmonized Commodity Description and Coding System Explanatory Note (EN) 84.30, pg. 1203, which states, in pertinent part, that heading 8430, HTSUS, covers machinery "for

'attacking' the earth's crust (e.g., for cutting and breaking down rock, earth, coal, etc.; earth excavation, digging, drilling, etc.), or for preparing or compacting the terrain (e.g., scraping, levelling, grading, tamping or rolling)." The shield supports do not "attack" the earth's crust, nor do they prepare or compact the terrain. Accordingly, based on the common meaning of the terms "excavating" and "extracting," and the guidance of EN 84.30, the shield supports cannot be classified under heading 8430, HTSUS.

Proposed Change of Practice

Customs believes that the shield supports are classifiable under heading 8479, HTSUS, which provides for machines and mechanical appliances having individual functions, not specified or included elsewhere in the chapter. The function performed by the shield supports is not described by any heading in the tariff schedule.

The shield supports prevent the mine roof from collapsing onto the system's shearer and face conveyor. This function is distinct and separable from that which is performed by the other components of the long wall mining system, which is designed to cut and then transport coal. While the supports also move the entire system forward, they do not perform a cutting or (coal) transportation function. See EN 84.79 (for examples of devices having "individual functions"). Accordingly, the shield supports are classifiable under heading 8479, HTSUS, specifically under subheading 8479.89.95, HTSUS.

Authority

This notice is published in accordance with section 177.10, Customs Regulations (19 CFR 177.10).

Comments

Before adopting this proposed change in practice, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), section 1.4, Treasury Department Regulations (31 CFR 1.4) and section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

Approved: November 7, 1996.
John P. Simpson,
Deputy Assistant Secretary of the Treasury.
George J. Weise,
Commissioner of Customs.
[FR Doc. 96-31010 Filed 12-5-96; 8:45 am]
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Internal Revenue Service

[CO-24-96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing regulation, CO-24-96 (TD 8677), Consolidated Returns—Limitations on the Use of Certain Losses and Deductions (§ 1.1502-21T(b)).

DATES: Written comments should be received on or before February 4, 1997 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Consolidated Returns—Limitations on the Use of Certain Losses and Deductions.

OMB Number: 1545-1237.

Regulation Project Number: CO-24-96.

Abstract: Section 1.1502-21T(b)(3) of the regulation contains a collection of information which permits a consolidated group of corporations to elect to relinquish a carryback period with respect to a consolidated net operating loss. The common parent of the group must file a statement evidencing the election with the income tax return of the group. The statement is required to assure that an election to

relinquish a carryback period is properly documented.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 6,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 2, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96-31131 Filed 12-5-96; 8:45 am]

BILLING CODE 4830-01-U

Joint Board for the Enrollment of Actuaries; Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Conference Room 5718 of the Main Internal Revenue Service Building, 1111