

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, October 30, 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.

MICHAEL T. SCHMITZ,
*Assistant Commissioner,
Office of Regulations and Rulings.*

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF THE “TRACHORSE” VEHICLE

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

ACTION: Notice of revocation of classification ruling letter relating to the classification of the TracHorse self-propelled vehicle.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of the TracHorse self-propelled vehicle and any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed action was published in the CUSTOMS BULLETIN on September 25, 2002. No comments were received in response to the notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn for consumption on or after January 13, 2002.

FOR FURTHER INFORMATION CONTACT: Bill Conrad, Regulations Branch, (202) 572–8764.

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 which 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 to 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)(1)), as amended by section 623 of Title VI, a notice was published on September 25, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 39, proposing to revoke Headquarters Ruling Letter (HQ) 964163, dated January 29, 2001. No comments were received in response to this notice.

As stated in the proposed notice, the revocation will also cover any rulings on the subject merchandise which may exist but have not been specifically identified. 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 of this notice should have advised the Customs Service during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions that is contrary to the position set forth in this notice. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling letter 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 the comment period. An importer’s reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its

agents for importations of merchandise subsequent to the effective date of this final decision.

In Customs ruling HQ 964163, a protest decision dated January 29, 2001 (Protest 2904-00-100030), Customs classified a product referred to as the TracHorse, a self-propelled vehicle for transporting various loads (which also provides a hydraulic power source for tools) in subheading 8704.90.00, HTSUS, which provides for: Motor vehicles for the transport of goods: Other. Since the issuance of that ruling, Customs has reconsidered the ruling and determined that the classification should be changed. It is now Customs position that the subject article is classifiable under subheading 8709.19.0060, HTSUS, as a self-propelled works truck of the type used in factories, warehouses, dock areas, or airports for short distance transport of goods; * * *: Vehicles: Other, Other.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking HQ 964163 and any other ruling not specifically identified to reflect the proper classification of the subject merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 965702 (*see* "Attachment A" to this document). 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.

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

Dated: October 29, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

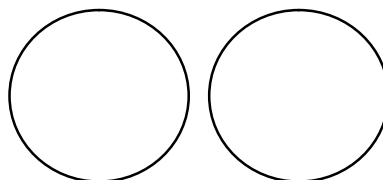
DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, October 29, 2002.
CLA-2 RR:CR:GC 965702 bc
Category: Classification
Tariff No. 8709.19.0060

RICHARD H. ABBEY, ESQ.
MILLER & CHEVALIER
*655 Fifteenth Street, N.W., Suite 900
Washington, DC 20005*

Re: TracHorse; HQ 964163 revoked.

DEAR MR. ABBEY:

This concerns Headquarters Ruling (HQ) 964163, a protest decision issued on January 29, 2001 (Protest 2904-00-100030) regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a self-propelled tracked vehicle called the TracHorse.



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. 103-82, 107 Stat. 2057, 2186), a notice was published on September 25, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 39, proposing to revoke HQ 964163. No comments were received during the comment period.

As further explained below, in HQ 964163, Customs classified the TracHorse vehicle at issue as a motor vehicle for the transport of goods under subheading 8704.90.00, HTSUS. In response to your letter of May 24, 2002, requesting reconsideration of HQ 964163 on behalf of your client The Stanley Works (Stanley), we reviewed that protest decision and find it to be inconsistent with the HTSUS requirements for classification of such merchandise. It is now Customs position that the TracHorse vehicle is properly classifiable as a works truck under subheading 8709.19.00, HTSUS. For the reasons stated below, this ruling revokes HQ 964163.

Facts:

In HQ 964163, Customs described the TracHorse as a self-propelled mobile hydraulic power unit, a manually operated, tracked vehicle with a front-mounted 20 hp. engine and a rear-mounted hydraulic tilt bed with drop-down removable side panels. The ruling pointed out that the TracHorse can climb up to a 60-degree incline, turn 360 degrees on its center, and has a 1,000 lb. rated load capacity. It can operate hydraulic tools and is advertised primarily for use by the railroad industry to transport tools and equipment to and from job sites and to remove debris. Based on this description and Customs finding that the TracHorse's rear-mounted hydraulic tilt bed and 1,000 lb. load rating indicate a primary transport capability, Customs determined that the TracHorse was classifiable as a motor vehicle for the transport of goods under subheading 8704.90.00, HTSUS, and denied the protest.

In your May 24, 2002, letter, you requested reconsideration of the ruling and contended that the TracHorse should be classified under either heading 8479, HTSUS, or heading 8709, HTSUS.

Issue:

Is the TracHorse vehicle classifiable as a machine or mechanical appliance under heading 8479, HTSUS, as a motor vehicle for the transport of goods under heading 8704, HTSUS, or as a works truck under heading 8709, HTSUS?

Law and Analysis:

Classification of goods under the HTSUS is made in accordance with the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relevant 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.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See Treasury Decision 89-80.

The HTSUS provisions under consideration are as follows:

- 8479 Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof:
- 8704 Motor vehicles for the transport of goods:
- 8709 Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles:

In HQ 964163, Customs considered headings 8701 (tractors other than those of heading 8709) and 8704, HTSUS (as above) for classification of the TracHorse. In the ruling, Customs determined that the primary purpose of the TracHorse was to transport goods. Customs also determined that heading 8701, HTSUS, provides for tractors (pedestrian controlled or otherwise) that are designed to drag, push, or pull and that any capability of such tractor to transport goods and operate working tools is subsidiary. Thus, Customs

concluded that the TracHorse is not classifiable in heading 8701, HTSUS, and that it is classifiable as a motor vehicle for transporting goods in heading 8704, HTSUS.

In reconsidering this case, Customs is presented with two classification possibilities not considered in the prior ruling: headings 8479 and 8709, HTSUS.

First, Customs agrees with the finding of HQ 964163 that the TracHorse is primarily designed to transport and carry goods. Thus, Customs considers the TracHorse to be a vehicle of Chapter 87, HTSUS. As such, the TracHorse is precluded from classification under Chapter 84, HTSUS, by virtue of Note 1(l) of Section XVI (which encompasses Chapter 84, HTSUS). Consequently, Customs concludes that the TracHorse is not classifiable under heading 8479, HTSUS.

Second, concerning classification under either heading 8704 or 8709, HTSUS, both applicable to vehicles, Customs finds the ENs for heading 8709, HTSUS, to be instructive. The EN provides as follows:

This heading covers a group of self-propelled vehicles of the types used in factories, warehouses, dock areas or airports for the short distance transportation of various loads (goods or containers) * * *

Such vehicles are of many types and sizes. They may be driven by either an electric motor with current supplied by accumulators or by an internal combustion piston engine or other engine. The main features common to the vehicles of this heading which generally distinguish them from the vehicles of heading 87.01, 87.03, or 87.04 may be summarized as follows:

- (1) Their construction and, as a rule, their special design features make them unsuitable for the transport of passengers or for the transport of goods by road or other public ways.
- (2) Their top speed when laden is generally not more than 30 to 35 km/h.
- (3) Their turning radius is approximately equal to the length of the vehicle itself.

Vehicles of this heading do not usually have a closed driving cab * * * The vehicles of this heading may be pedestrian controlled.

Works trucks are self-propelled trucks for the transport of goods which are fitted with, for example, a platform or container on which the goods are loaded.

An examination of the TracHorse's features shows that it meets the EN's description. The TracHorse is employed for the short distance transport of various loads. Its engine meets the EN's description. It is unsuitable for transporting passengers or goods by public roads. Its top speed when laden is within the EN's range. Its turning radius also meets the EN description. It does not have an enclosed driving cab and may be pedestrian controlled. It is fitted with a platform on which various loads may be transported. While it hasn't been identified as a vehicle employed in a factory, warehouse, dock, or airport, it is a vehicle of this general type, and Customs has held that similar vehicles used in other environments belong to the class or kind of vehicles principally used as works trucks of heading 8709, HTSUS. (See HQ 964598 and 965246.)

Based on the foregoing, Customs concludes that the TracHorse is classifiable under GRI 1 as a works truck of heading 8709, HTSUS. This ruling is limited to the TracHorse unit that Stanley specifically referred to as its most sophisticated version of its hydraulic power units, the unit described hereinabove that possesses the capacity to transport loads/goods.

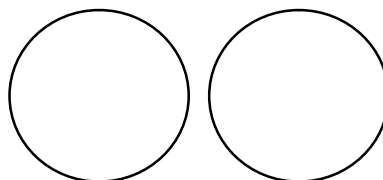
Holding:

HQ 964163, dated January 29, 2001, is hereby REVOKED.

The TracHorse vehicle described in this ruling is classifiable in subheading 8709.19.00.60, HTSUS, which provides for: Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; * * *. Vehicles: Other, Other.

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

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)



REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF “TALKING”
PHOTOGRAPH ALBUMS

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

ACTION: Notice of revocation of ruling letter and revocation of treatment relating to the tariff classification of “talking” photograph albums under the Harmonized Tariff Schedule of the United States (“HTSUS”).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling and is revoking any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of “talking” photograph albums. Notice of the proposed revocation was published on September 25, 2002, in Vol. 36, No. 39 of the CUSTOMS BULLETIN. No comments were received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 13, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich,
General Classification Branch: (202) 572–8776.

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, which 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 Customs obligations, notice proposing to revoke New York Ruling Letter (NY) H81886, dated June 8, 2001, which pertains to the tariff classification of “talking” photograph albums, was published on September 25, 2002, in Vol. 36, No. 39 of the CUSTOMS BULLETIN. No comments were received in response to this notice.

As stated in the proposed notice, the revocation action will cover any rulings on this merchandise that may exist but have not been specifically identified. 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 this notice 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 HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer’s reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to the effective date of this final decision.

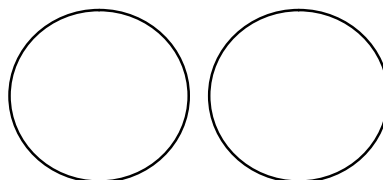
Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking NY H81886, and any other ruling not specifically identified, to reflect the proper classification of “talking” photograph albums under subheading 8520.90.00, HTSUS, which provides for other magnetic recording devices, pursuant to the analysis in Headquarters Ruling Letter (HQ) 965483, which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

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

Dated: October 29, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachment]



[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
 U.S. CUSTOMS SERVICE,
 Washington, DC, October 29, 2002.
 CLA-2 CO:RR:CR:GC 965483 AML
 Category: Classification
 Tariff No. 8520.90.00

MR. TAYLOR PILLSBURY
 MEEKS, SHEPPARD & PILLSBURY, LLP
 100 Newport Center Drive
 Suite 220
 Newport Beach, CA 92660

Re: Reconsideration of NY H81668; “talking photo album”.

DEAR MR. PILLSBURY:

This is in reference to your letter, dated November 27, 2001, to the National Commodity Specialist Division, New York, on behalf of the Gerson Company, requesting reconsideration of New York Ruling Letter (NY) H81668, issued to a customs broker on behalf of Gerson on June 8, 2001, which concerned the classification of a “talking photo album” under the Harmonized Tariff Schedule of the United States (HTSUS). NY H61668 classified the “talking photo album” under subheading 3924.90.55, HTSUS, which provides for other articles of plastic. We regret the delay in responding.

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), notice of the proposed revocation of NY H81668 was published on September 25, 2002, in Vol. 36, No. 39 of the CUSTOMS BULLETIN. No comments were received in response to this notice.

Facts:

The item at issue was described in NY H81668 as follows:

The submitted sample is identified as item number 98510. It is a photo album that is composed of hard paperboard covered with plastic. This album contains 12 plastic pages that can store 24 pictures. Each page is electronically attached to a digital voice recorder. The recorder is used to store up to 10 seconds of messages relating to each individual picture. The digital voice recorder operates on two “AA” size batteries.

Issue:

Whether the “talking photo album is classifiable under subheading 3924.90.55, HTSUS, which provides for other household articles of plastics; or under subheading 8520.90.00, HTSUS, which provides for other magnetic tape recorders and other sound recording apparatus?

Law and Analysis:

The General Rules of Interpretation (GRIs) to the HTSUS govern the classification of goods in the tariff schedule. GRI 1 states in pertinent part that “for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes[.]”

The 2001 HTSUS headings and subheadings under consideration are as follows:

3924	Tableware, kitchenware, other household articles and toilet articles, of plastics:
3924.90	Other:
3924.90.55	Other.
*	*
8520	Magnetic tape recorders and other sound recording apparatus, whether or not incorporating a sound reproducing device:
8520.90.00	Other.

An article is to be classified according to its condition as imported. See *XTC Products, Inc. v. United States*, 771 F.Supp. 401, 405 (1991). See also *United States v. Citroen*, 223

U.S. 407 (1911). In its condition as imported, the “talking photo album” is *prima facie* classifiable under two separate headings of the tariff: heading 3924, HTSUS, as a household article of plastic and under heading 8520, HTSUS as a recording device. Thus, the article is not classifiable at GRI 1. GRI 2 (b) provides in pertinent part that “the classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.” GRI 3(b) provides that “mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.”

Thus, under GRI 3(b), classification of the composite article is determined on the basis of the component that gives it its essential character. EN Rule 3(b)(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.

We are unable to determine the “indispensable function” (See *Better Home Plastics v. United States*, 916 F. Supp. 1265 (CIT 1996), *affirmed* 119 F.3d 969 (Fed. Cir. 1997)) of the “talking photo albums”; that is, we conclude that the components in tandem impart the essential character to the article. In this matter, both the recording device and the photo holders perform complimentary functions for the whole. Therefore, we are unable to determine the essential character of the article pursuant to GRI 3(b) and must resort to GRI 3(c), *i.e.*, the goods shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Heading 8520, HTSUS, which provides for other magnetic recording devices, is the heading that appears last in numerical order among those being considered. The articles will be so classified.

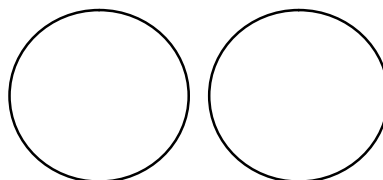
Holding:

The “talking photo albums” are classifiable under subheading 8520.90.00, HTSUS, which provides for other magnetic recording devices.

Effect on Other Rulings:

NY H81668 is revoked. In accordance with 19 U.S.C. §1625 (c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)



PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO TARIFF CLASSIFICATION OF A
COMPACT TUNABLE LASER SOURCE MODULE

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

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to the tariff classification of a compact tunable laser source module.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a compact tunable laser source module and to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before December 13, 2002.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW, Washington, D.C during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, Commercial Rulings Division, (202) 572-8782.

SUPPLEMENTARY INFORMATION:

BACKGROUND

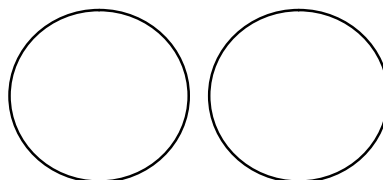
On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which 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 re-

quirements. 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)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a compact tunable laser source module. Although in this notice Customs is specifically referring to one ruling, HQ 964451, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. 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 advise the Customs Service during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service 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 advise Customs during this notice period. An importer's failure to advise the Customs Service 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 their agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In HQ 964451, dated March 8, 2001, set forth as "Attachment A" to this document, Customs found that the subject compact tunable laser source module was classified in subheading 9013.80.90, HTSUS, as an other optical instrument, not specified or included elsewhere in chapter 90, HTSUS. Customs has reviewed the matter and determined that the correct classification of the compact tunable laser source module is in subheading 9027.90.54, HTSUS, as a part of an instrument or apparatus for measuring or checking quantities of heat, sound or light; other instruments and apparatus using optical radiations (ultraviolet, visible, infrared); electrical.



Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke HQ 964451 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 965906 (see "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: October 24, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, March 8, 2001.

CLA-2 RR:CR:GC 964451 KBR
Category: Classification
Tariff No. 9013.80.90

MR. AL LOW
IMPORT OPERATIONS MANAGER
AGILENT TECHNOLOGIES, INC.
395 Page Mill Road, MS A2-04A
Palo Alto, CA 94303-0870

Re: Tunable Laser Sources.

DEAR MR. LOW:

In a letter dated July 14, 2000, you requested a binding ruling under the Harmonized Tariff Schedule of the United States (HTSUS), from the Director, Customs National Commodity Specialist Division, in New York, for the classification of two laser sources and a compact tunable laser source. Your request was forwarded to this office for reply concerning the compact tunable laser source.

Facts:

The article is a compact tunable laser source, model #81689A. It is part of a lightwave multimeter mainframe and modules consisting of seven components: the mainframe, the power sensors, the optical heads, the return loss, laser sources (standard and high power) and compact laser sources. You originally requested a classification ruling for three components: the compact tunable laser source, #81689A; the laser sources (standard), #81650A, 81651A, 81652A, 81653A, 81654A and 81655A; and the laser sources (high power), #81656A and 81657A. On August 9, 2000, the National Commodity Specialist Division advised you that your request for a ruling on the laser sources (standard) and laser sources (high power), could not be addressed for lack of sufficient information upon which to base the ruling. This ruling concerns only the compact tunable laser source.

The Agilent 8163A lightwave multimeter series is a fiber-optic multipurpose measurement tool used for testing optical components and systems. The system measures quantities of light by use of optical radiation. It is capable of measuring basic fiber-optic

parameters and replaces stand alone instruments such as optical power meters, dedicated loss test sets, return loss meters and stable optical sources. The lightwave multimeter is used in test applications such as the Dense WDM (Wavelength Division Multiplexing) test, the classic EDFA (Erbium Doped Fiber Amplifier) test, the classic component test and the CD/PMD (Chromatic Dispersion/Polarization Mode Dispersion) test. This system replaces Hewlett Packard Company's 8153 lightwave multimeter series. Agilent Technology, Inc., is a former business unit of Hewlett Packard Company.

The compact tunable laser, the only component subject to this ruling, provides a laser output at a particular laser wavelength that is tunable over a specific wavelength range. It contains a Fabry-Perot laser diode, features an external cavity and incorporates various other elements like a printed circuit board and a coupler. The physical composition is:

- 3 printed circuit assemblies (PCA)
- 1 laser chip
- 1 inline isolator/taped coupler
- 1 grating
- 1 prism
- 1+ collimating lens
- 1+ focusing lens
- 1 stepper motor
- 1 fiber optic cable assembly
- Cavity machine parts
- Chassis sheetmetal parts
- Plastic front panel

You describe the compact tunable laser source as capable of being controlled remotely or from the front panel of the mainframe in which it is housed. The compact tunable laser source does not stand alone but must be inserted into a slot in the mainframe. It is used in DWDM (Dense-WDM), WDM, EDFA and Passive Component Test applications. Its continuous modehop free-tuning permits setting complex configurations to the target wavelength.

You state that the article is built specifically to work with the Agilent 8163A Lightwave Multimeter Mainframe, 8164A Lightwave Multimeter Mainframe, 8164A Lightwave Measurement System Mainframe and 8166A Lightwave Multichannel System Mainframe.

You claim that the tunable laser source should be classified in the provision for instruments and apparatus for measuring or checking quantities of heat, sound or light; other instruments and apparatus using optical radiations (ultraviolet, visible, infrared); electrical, under subheading 9027.50.40, HTSUS; or in the provision for diodes, transistors and similar semiconductor devices, light-emitting diodes (LED's), under subheading 8541.40.20, HTSUS.

Issue:

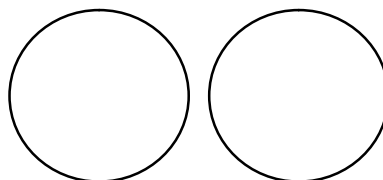
What is the proper classification under the HTSUS for a tunable laser source?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI.

The HTSUS provisions under consideration are as follows:

8541	Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof:
8541.40	Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes:
8541.40.20	Light-emitting diodes (LED's)
9013	Liquid crystal devices not constituting articles provided for more specifically in other headings; lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in this chapter; parts and accessories thereof:



9013.80	Other devices, appliances and instruments:
9013.80.90	Other.
9027	Instruments and apparatus for physical or chemical analysis for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound, or light (including exposure meters); microtomes; parts and accessories thereof:
9027.50	Other instruments and apparatus using optical radiations (ultra-violet, visible, infrared):
9027.50.40	Electrical:
9031	Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof:
	Other optical instruments and appliances:
9031.49	Other:
9031.49.90	Other

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 8541 includes diodes, transistors and similar semiconductor devices, and light-emitting diodes. EN 85.41(C) defines light-emitting diodes as "devices which convert electric energy into visible, infra-red or ultra-violet rays. They are used, e.g., for displaying or transmitting data in control systems." EN 85.41(C) also defines laser diodes as an article which will "emit a coherent light beam and are used, e.g., in detecting nuclear particles, in altimetering or in telemetering equipment, in communication systems using fibre optics."

In *NEC Electronics, Inc. v. U.S.*, 144 F.3d 788 (CAFC May 19, 1998), the court in upholding the Customs Service decision, found that laser diode modules were classifiable under subheading 8541.40.20, HTSUS. In this case the court found that pursuant to GRI 3(b), the laser diode component gave the laser diode module its essential character. Customs has since followed this finding for similar products. See HQ 960815 (July 1, 1998).

However, the subject tunable laser diode instruments are not similar to the article in *NEC*. In this case the articles are not simply a 'component' as was the situation in *NEC*, but finished plug in modules. The tunable laser diode instruments before us are more complex articles. The laser diode is tunable containing more optical components than incorporated in the article in *NEC*, including focusing lenses, collimating lenses, prisms, diffraction grating mirrors, isolators, etc. The optical components are not merely subsidiary components. Further, in reviewing the sales materials you submitted and viewed from your website, the materials often reference the optical components, obviously demonstrating their importance and non-subsidiary nature.

In HQ 957966 (October 31, 1995), a case involving laser diodes and optical elements, Customs found that "the evidence does not support classification as a laser." Customs found that the optical elements were "a critical component" and "cannot be considered subsidiary". *Id.*

Further, heading 8541, HTSUS, is inappropriate where the article is complex and combined with goods of other headings. Customs, in HQ 962957 (October 23, 2000), held that heading 8541, did "not include combinations of goods from two or more distinct groups enumerated in heading 8541, or combinations of goods of heading 8541 and another heading, when the combination of goods do not contribute to a single function covered by a single group enumerated in heading 8541. Thus, [the combined components] are excluded from classification in heading 8541." (citing *ABB Transmission v. United States*, 19 CIT 1044, 896 F. Supp. 1279 (1995)). In this case optics and a laser diode are combined to create an article outside the scope of heading 8541, a testing device for optical cable. Therefore, we find that heading 8541 does not apply.

Note 1(m) of Section XVI of the HTSUS, provides that "this section [which includes chapter 85 and thus subheading 8541.40.20, HTSUS] does not cover * * * Articles of chapter 90 [including subheading 9013.80.90, HTSUS and subheading 9031.49.90, HTSUS]." Note 1(m) thus states a rule of interpretation that articles which are described in chapter

90 cannot be classified in chapter 85. See *Sharp Microelectronics Technology, Inc. v. United States*, 20 C.I.T. 793; 932 F. Supp. 1499; (July 1, 1996).

Additional U.S. Note 3 to chapter 90 limits the definition of “optical appliance” and “optical instrument” for purposes of the chapter to those which “incorporate one or more optical elements, but do not include any appliances or instruments in which the incorporated optical element or elements are solely for viewing a scale or for some other subsidiary purpose.” As discussed above, we find that the optical elements in the tunable laser diode device are not subsidiary. Therefore, this article should be classified in chapter 90.

Three headings within chapter 90 are under consideration, heading 9013, 9027 and heading 9031. Heading 9013, in pertinent part, includes lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in chapter 90. Heading 9027, in pertinent part, includes instruments and apparatus for measuring or checking quantities of heat, sound, or light. Heading 9031, in pertinent part, includes measuring or checking instruments, appliances and machines, not specified or included elsewhere in chapter 90.

In part, EN 90.13 (p. 1600) states that:

[L]asers are classified in this heading not only if they are intended to be incorporated in machines or appliances but also if they can be used independently, as compact lasers or laser systems, for various purposes such as research, teaching, or laboratory examinations.

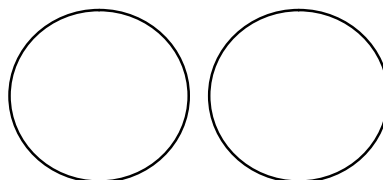
However, the heading excludes lasers which have been adapted to perform quite specific functions by adding ancillary equipment consisting of special devices (e.g., worktables, work-holders, means of feeding and positioning workpieces, means of observing and checking the progress of the operation, etc.) and which, therefore, are identifiable as working machines, medical apparatus, control apparatus, measuring apparatus, etc. Machines and appliances incorporating lasers are also excluded from the heading. Insofar as their classification is not specified in the Nomenclature, they should be classified with the machines or appliances having a similar function.

In construing heading 9013, Customs has determined that where a light source contains optical components other than a laser, but was not provided for more specifically elsewhere in chapter 90, such a good was classifiable within heading 9013. See HQ 956919 (December 12, 1994), and HQ 957966 (October 31, 1995).

Customs previously found in HQ 956919 that tunable laser diode modules were classified under subheading 9013.80.60, HTSUS (now subheading 9013.80.90, HTSUS). Because the merchandise contained a laser diode chip, the light source could not be classified under subheading 9013.20.00, HTSUS, as a laser, other than a laser diode. Customs found that even if the light source contained a laser other than a laser diode, that component would still be just one of many optical components contained within the light source. Therefore, because the light source, which contained various optical components, was not classifiable elsewhere under chapter 90, HTSUS, it was classifiable under subheading 9013.80.60, HTSUS (now subheading 9013.80.90, HTSUS). See NY 873993 (May 27, 1992).

In this situation, the Agilent tunable laser diode module is similar to the aforementioned tunable laser decisions. In another recent Customs decision, HQ 962893 (March 5, 2001), Customs found that a tunable laser diode device was classified under subheading 9013.80.90, HTSUS, even though the instrument was not only a component in a larger unit, but was a self-contained instrument. In this case, Agilent’s tunable laser diode module is not a self contained unit but only a removable module which must be plugged into a slot in the mainframe. Although the article may be used in conjunction with modules of the Lightwave Multimeter to perform measurements of light, the tunable laser source by itself is classifiable as an optical device or instrument in subheading 9013.80.90, HTSUS.

In support of the contention that the tunable laser diode sources should be classified in subheading 9027.50.40 as measuring instruments, you cite HQ 961882 (August 3, 1998), which concerns signal generators, devices used in testing communications equipment. The signal generators are electronic instruments that produce periodic voltage or current waveforms, signals or pulses that are used in testing and calibration applications. Customs determined that the correct classification was under subheading 9030.89.00, HTSUS. The ENs to heading 90.30 state as follows: “[a]part from the above mentioned types of instruments or apparatus which generally effect direct measurements, the heading also includes those which supply the operator with certain data from which the quantity to be measured can be calculated.” HQ 961882 held that heading 9030 encompassed



instruments and apparatus which directly perform a measuring or checking function as well as articles which generate electrical signals utilized by other instruments and apparatus that perform such measuring and checking functions. Agilent argues that the same reasoning should apply to the tunable laser diode sources since they are used in conjunction with other instruments which measure quantities of light.

The terms “measuring” or “checking” are not defined in the HTSUS nor in the ENs. In *United States v. Corning Glass Works*, 66 CCPA 25,27, 586 F.2d 822, 825 (1978), the court quoted *Webster’s Third New International Dictionary*, 381 (1971), “‘Check’ is defined as ‘to inspect and ascertain the condition of, especially in order to determine that the condition is satisfactory; * * * investigate and insure accuracy, authenticity, reliability, safety, or satisfactory performance of * * *; to investigate and make sure about conditions or circumstances * * *.’”

The term “measure” is defined as follows: “[t]o ascertain the quantity, mass, extent, or degree of in terms of a standard unit or fixed amount * * *; measure the dimensions of; take the measurements of * * *; to compute the size of * * * from dimensional measurements.” *Webster’s Third New International Dictionary*, 1400 (1971). See HQ 954682 (July 14, 1994); HQ 950196 (January 8, 1992); 960429 (August 19, 1998); HQ 088025 (January 17, 1991).

Here, we find that the article does not “measure” or “check,” but rather the device produces light. Therefore, headings 9027, HTSUS, and 9031, HTSUS, are not appropriate.

We find that the correct classification of the Agilent compact tunable laser source is an optical appliance and instrument, not specified or included elsewhere in chapter 90, in subheading 9013.80.90, HTSUS.

Holding:

The Tunable Laser Source is classifiable under subheading 9013.80.90, HTSUS, as an other optical instrument, not specified or included elsewhere in chapter 90, HTSUS.

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

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 965906 KBR
Category: Classification
Tariff No. 9027.90.54

MR. AL LOW
IMPORT OPERATIONS MANAGER
AGILENT TECHNOLOGIES, INC.
395 Page Mill Road, MS A2-04A
Palo Alto, CA 94303-0870

Re: Reconsideration of HQ 964451; Compact Tunable Laser Source Modules.

DEAR MR. LOW:

This is in reference to Headquarters Ruling Letter (HQ) 964451, dated March 8, 2001, issued to you regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of compact tunable laser source modules. We have reviewed that ruling and determined that the classification set forth is in error.

In HQ 964451, Customs found that the compact tunable laser source module for the Lightwave Multimeter Measuring System was classified in subheading 9013.80.90, HTSUS, as an other optical instrument, not specified or included elsewhere in chapter 90, HTSUS. Since HQ 964451 was issued Customs has issued two other rulings involving tunable laser source modules for the Lightwave Multimeter system, HQ 965639 (September 12, 2002) and HQ 965640 (September 12, 2002). Customs has reviewed the matter and

determined that, pursuant to HQ 965639 and HQ 965640, the correct classification of the compact tunable laser source module is in subheading 9027.50.40, HTSUS, as an incomplete instrument or apparatus for measuring or checking quantities of heat, sound or light; other instruments and apparatus using optical radiations (ultraviolet, visible, infrared); electrical. For the reasons stated below, this ruling revokes HQ 964451.

Facts:

HQ 964451 concerned a compact tunable laser source module, model # 81689A. It is one part of a Lightwave Multimeter mainframe and modules consisting of seven components: the mainframe, the power sensors, the optical heads, the return loss, laser sources (standard and high power) and compact laser sources.

The compact tunable laser provides a laser output at a particular laser wavelength that is tunable over a specific wavelength range. It contains a Fabry-Perot laser diode, features an external cavity and incorporates various other elements like a printed circuit board and a coupler. The physical composition is:

- 3 printed circuit assemblies (PCA)
- 1 laser chip
- 1 inline isolator/taped coupler
- 1 grating
- 1 prism
- 1+ collimating lens
- 1+ focusing lens
- 1 stepper motor
- 1 fiber optic cable assembly
- Cavity machine parts
- Chassis sheetmetal parts
- Plastic front panel

You described the compact tunable laser source as capable of being controlled remotely or from the front panel of the mainframe in which it is housed. The compact tunable laser source module does not stand alone but must be inserted into a slot in the mainframe.

The article is built specifically to work with the Agilent 8163A Lightwave Multimeter Mainframe, 8164A Lightwave Multimeter Mainframe, 8164A Lightwave Measurement System Mainframe and 8166A Lightwave Multichannel System Mainframe. The Agilent 8163A/8164A/8166A Lightwave Multimeter series are fiber-optic multipurpose measurement tools used for testing optical components and systems. The system measures quantities of light by use of optical radiation. It is capable of measuring basic fiber-optic parameters and replaces stand alone instruments such as optical power meters, dedicated loss test sets, return loss meters and stable optical sources. The Lightwave Multimeter is used in test applications such as the Dense WDM (Wavelength Division Multiplexing) test, the classic EDFA (Erbium Doped Fiber Amplifier) test, the classic component test and the CD/PMD (Chromatic Dispersion/Polarization Mode Dispersion) test.

The system sends light to the device being tested and measures the light that is returned to the Lightwave Multimeter measurement system mainframe. The measurement system characterizes the effects of the device on the lightwave and displays those effects on the cathode ray tube monitor contained within the mainframe. The measurement system is used principally to test optical components such as multiplexers, demultiplexers, optical switches, isolators, connectors and amplifiers, during their manufacture, fiber bragg gratings or thin film filters.

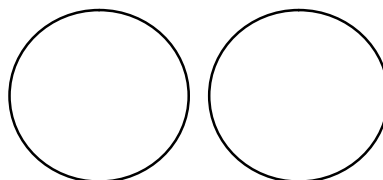
The measurement system can be used to measure the absorption of light by the tested device, effects on light wavelength, effects on chromatic dispersion (the color of light), cross talk (such as when you hear another conversation on the telephone), and signal power. The mainframe unit has a plug-in port or slots where tunable laser sources may be inserted and four slots for hosting power modules, return loss modules, compact tunable lasers or fixed laser sources. It has a color display and a 3.5 inch floppy drive.

Issue:

What is the classification under the HTSUS for the compact tunable laser source module?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that classification is determined according



to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI.

The HTSUS provisions under consideration are as follows:

9013	Liquid crystal devices not constituting articles provided for more specifically in other headings; lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in this chapter; parts and accessories thereof:
9013.80	Other devices, appliances and instruments:
9013.80.90	Other.
9027	Instruments and apparatus for physical or chemical analysis for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus; instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound, or light (including exposure meters); microtomes; parts and accessories thereof:
9027.50	Other instruments and apparatus using optical radiations (ultraviolet, visible, infrared):
9027.50.40	Electrical:
9027.90	Microtomes; parts and accessories: Parts and accessories: Other:
9027.90.54	Of instruments and apparatus of subheading 9027.20, 9027.30, 9027.40, 9027.50 or 9027.80

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Two headings within chapter 90 are under consideration, heading 9013 and heading 9027. Heading 9013, in pertinent part, includes lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in chapter 90. Heading 9027, in pertinent part, includes instruments and apparatus for measuring or checking quantities of heat, sound, or light.

The article involved in the instant decision is a compact tunable laser source module intended to be incorporated into Agilent's Lightwave Multimeter mainframe unit. In HQ 965639 (September 12, 2002), Customs found that the Lightwave Multimeter measurement system was classified in subheading 9027.50.40, HTSUS, as instruments and apparatus for measuring or checking quantities of heat, sound, or light. However, this decision involves only the compact tunable laser source module.

In part, EN 90.13 (p. 1600) states that:

[L]asers are classified in this heading not only if they are intended to be incorporated in machines or appliances but also if they can be used independently, as compact lasers or laser systems, for various purposes such as research, teaching, or laboratory examinations.

However, the heading excludes lasers which have been adapted to perform quite specific functions by adding ancillary equipment consisting of special devices (e.g., worktables, work-holders, means of feeding and positioning workpieces, means of observing and checking the progress of the operation, etc.) and which, therefore, are identifiable as working machines, medical apparatus, control apparatus, measuring apparatus, etc. Machines and appliances incorporating lasers are also excluded from the heading. Insofar as their classification is not specified in the Nomenclature, they should be classified with the machines or appliances having a similar function.

In construing heading 9013, Customs has determined that where a light source contains optical components other than a laser, but was not provided for more specifically elsewhere in chapter 90, such a good was classifiable within heading 9013. See HQ 956919 (December 12, 1994), and HQ 957966 (October 31, 1995).

Customs previously found that stand alone, bench-top tunable laser diode sources were classified under subheading 9013.80.90, HTSUS. See HQ 962947 (March 12, 2001), HQ

962890 (March 5, 2001), HQ 962893 (March 5, 2001), HQ 956919 (December 12, 1994)(classified under subheading 9013.80.60, HTSUS, now subheading 9013.80.90, HTSUS). Because, the merchandise contained a laser diode chip, the light source could not be classified under subheading 9013.20.00, HTSUS, as a laser, other than a laser diode. Customs found that even if the light source contained a laser other than a laser diode, that component would still be just one of many optical components contained within the light source. Therefore, because the light source, which contained various optical components, was not classifiable elsewhere under chapter 90, HTSUS, it was classifiable under subheading 9013.80.90, HTSUS. *See* NY 873993 (May 27, 1992).

The instant compact tunable laser sources are only modules. They must be inserted into the mainframe unit and cannot stand alone. The compact tunable laser source module does not have a power source, a central processing unit (CPU), controls, application software, or displays. The design and connections of the compact tunable laser source allow it to be incorporated only into the Lightwave Multimeter mainframe unit. In very similar situations involving the same Lightwave Multimeter testing systems but a different plug-in module, Customs found that the tunable laser source module was classified in subheading 9027.90.54, HTSUS, citing note 2(b) to chapter 90 which states:

Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013, or 9031) are to be classified with the machines, instruments or apparatus of that kind

See HQ 965640 (September 12, 2002); HQ 965639 (September 12, 2002).

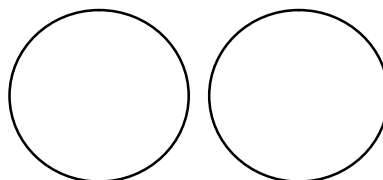
Therefore, because the compact tunable laser source module cannot function outside of the mainframe unit, we find that the compact tunable laser source module is a part for use solely with the Lightwave Multimeter measurement system. Therefore, pursuant to the discussion above, we find that the correct classification of the Agilent compact tunable laser source module is as a part of an instrument or apparatus for measuring or checking quantities of heat, sound or light; classifiable in subheading 9027.90.54, HTSUS.

Holding:

The compact tunable laser source module is classifiable in subheading 9027.90.54, HTSUS, as a part of an instrument or apparatus for measuring or checking quantities of heat, sound or light.

HQ 964451 dated March 8, 2001, is REVOKED.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.



REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF RHODORSIL®
HYDROFUGENT 68

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

ACTION: Notice of revocation of ruling letter and treatment relating to the tariff classification of Rhodorsil® Hydrofugent 68.

SUMMARY: 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), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of Rhodorsil® Hydrofugent 68, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocations was published on September 18, 2002, in Volume 36, Number 38, of the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after January 13, 2002.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch, (202) 572-8784.

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, which 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 to 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)(1)), as amended by section 623 of Title VI (Customs Moderniza-

tion) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), Customs published a notice in the September 18, 2002, CUSTOMS BULLETIN, Volume 36, Number 38, proposing to revoke New York Ruling Letter (NY) 829883, dated May 20, 1988, and to revoke any treatment accorded to substantially identical merchandise. No comments were received in response to this notice.

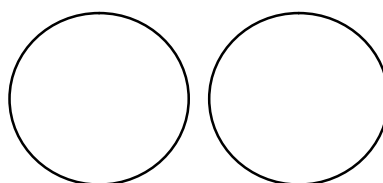
In NY 829883 it was determined that Rhodorsil® Hydrofugent 68 products were classifiable in subheading 3809.91.00, HTSUS, which provides for “[f]inishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs and other products and preparations (for example, dressings and mordants), of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included: [o]ther: [o]f a kind used in the textile or like industries.”

The instant merchandise, 100% siloxane polymer, is a liquid silicone used in the manufacture of paper coatings, cylinder head gaskets and as a water repellent. It is specifically provided for in subheading 3910.00.00, HTSUS, as “[s]ilicones in primary forms” and is therefore excluded from classification in heading 3809, HTSUS.

As stated in the proposed notice, this revocation will cover any rulings on this issue which may exist but have not been specifically identified. 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 issue subject to this notice, should have advised Customs during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been 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 involving the same or similar merchandise, or the importer’s or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer’s reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking NY 829883, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 965738 set forth as an attachment to this notice. Additionally, pursuant to section 625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.



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

Dated: October 28, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, October 28, 2002.
CLA-2 RR:CR:GC 965738 AM
Category: Classification
Tariff No. 3910.00.00

MS. NORA H. BAHR
RHODIA, INC.
CN 7500
Cranbury, NJ 08512

Re: NY 829883 revoked: Rhodorsil® Hydrofugent 68.

DEAR MS. BAHR:

This is in reference to New York Ruling Letter (NY) 829883, dated May 20 1988, addressed to Rhone-Poulenc Inc., concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of Rhodorsil® Hydrofugent 68. Rhone-Poulenc Inc. underwent a name change to Rhodia, Inc. in 1998. In NY 829883, it was determined that Rhodorsil® Hydrofugent 68 was classifiable in subheading 3809.91.00, HTSUS, which provides for “[f]inishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs and other products and preparations (for example, dressings and mordants), of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included: [o]ther: [o]f a kind used in the textile or like industries.”

We have reconsidered NY 829883, and find the classification for the subject merchandise in NY 829883 to be incorrect.

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. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY 829883 was published on September 18, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 38. No comments were received in response to this notice.

Facts:

The subject merchandise, Rhodorsil® Hydrofugent 68, is a clear liquid silicone resin composed of polymethylhydrogensiloxane (CAS 63148-57-2) with a molecular weight range of 2500-3200. Rhodorsil® Hydrofugent 68 is used as used in the manufacture of paper coatings, cylinder head gaskets and as a water repellent.

Issue:

Is the instant merchandise classifiable as a silicone in primary form or as a textile agent?

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional

U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUSA. See T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

The following HTSUS provisions are relevant to the classification of this product:

3809 Finishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs and other products and preparations (for example, dressings and mordants), of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included:

* * * * *

3910 Silicones in primary forms:

EN 38.09 states that the heading includes, *inter alia*, "(A)(13) [w]ater-repellent agents, generally consisting of aqueous emulsions of water-repellent products (such as waxes or lanolin) stabilised by cellulose ethers, gelatin, glue, organic surface-active agents, etc., and containing added soluble salts of, for example, aluminium or zirconium. This group of products also includes preparations based on silicones and on fluorine derivatives." Furthermore, the heading explicitly excludes "(g) [e]mulsions, dispersions or solutions of polymers (heading 32.09 or Chapter 39)."

EN 39.10 states, in pertinent part, the following:

The silicones of this heading are non-chemically defined products containing in the molecule more than one silicon-oxygen-silicon linkage, and containing organic groups connected to the silicon atoms by direct silicon-carbon bonds.

They have a high stability and may be either liquid, semi-liquid or solid. The products include silicone oils, greases, resins and elastomers.

(1) Silicone oils and greases are used as lubricants remaining stable at high or low temperatures, as water-repellent impregnating products, as dielectric products, as foam inhibitors, as mould release agents, etc. * * *

(2) Silicone resins are used mainly in the manufacture of varnishes, insulating or waterproof coatings, etc., where stability at high temperature is required. They are also used in the preparation of laminates with glass fibre, asbestos or mica as the reinforcing material, as flexible moulds and for electrical encapsulation.

The instant product is 100% siloxane polymer. It is not like the products described in EN 38.09 *supra*. It is not an aqueous emulsion, it is not stabilized and it does not contain soluble salts. Moreover, if classifiable as a silicone polymer of Chapter 39, HTSUS, it is specifically excluded from classification in heading 3809, HTSUS.

The instant merchandise is a liquid silicone used in the manufacture of paper coatings, cylinder head gaskets and as a water repellent. EN 39.10 specifies such products as classifiable in heading 3910, HTSUS, the provision for "[s]ilicones in primary forms."

Holding:

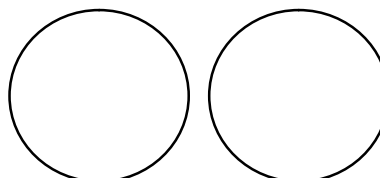
Rhodorsil® Hydrofugent 68 is classified in subheading 3910.00.00, HTSUS, the provision for "[s]ilicones in primary forms."

Effect on Other Rulings:

NY 829883 is revoked.

In accordance with 19 U.S.C. §1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)



PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
BULK LIP MAKE-UP PREPARATIONS

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to tariff classification of bulk lip make-up preparations.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is proposing to revoke a ruling letter pertaining to the tariff classification of bulk lip make-up preparations under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, Customs is proposing to revoke any treatment previously accorded by Customs to substantially identical transactions. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before December 13, 2002.

ADDRESS: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW, Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Deborah Stern, General Classification Branch (202) 572-8785.

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 which 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

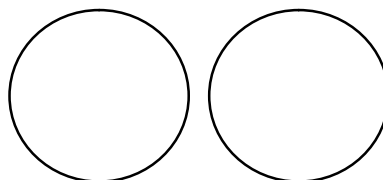
amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of bulk lip make-up preparations. Although in this notice Customs is specifically referring to one ruling (NY B84855), this notice covers any rulings on this merchandise which 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 additional 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 advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke 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 to the importer's or Customs' previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should advise 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 the final notice of the proposed action.

In NY B84855, dated June 24, 1997 (Attachment A), bulk lipstick was classified as a chemical preparation not elsewhere specified or included in subheading 3824.90.90, HTSUS. It is now Customs position that bulk lip make-up preparations are classifiable in subheading 3304.10.00, HTSUS. The scope of heading 3304, HTSUS, covers cosmetics imported in bulk, so long as the goods contain all essential ingredients and are produced as cosmetics, because "make-up preparations" are goods produced for the specific purpose of making oneself up. Thus, bulk lipstick containing the essential elements of lipstick and that needs only be molded or have minor constituents added is a lip make-up preparation.

Further, Chapter 33, Note 3, HTSUS, which states that "[h]eadings 3303 to 3307 apply, *inter alia*, to products, whether or not mixed * * * suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use," cannot be read to exclude from classification in heading 3304, HTSUS, goods that are not put up in packings for retail sale because of the use of *inter alia*, which means "among other



things.” Therefore, bulk lipstick is classifiable in heading 3304, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY B84855 and any other ruling not specifically identified, to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analysis set forth in HQ 965977 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Before taking this action, we will give consideration to any written comments timely received.

Dated: October 28, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, July 24, 1997.
CLA-2-38:RR:NC:2:239 B84855
Category: Classification
Tariff No. 3824.90.9050

MR. DAVID A. EISEN
SIEGEL, MANDELL & DAVIDSON
*One Astor Plaza
1515 Broadway
New York, NY 10036-8901*

Re: The tariff classification of bulk lipstick from France.

DEAR MR. EISEN:

In your letter dated May 1, 1997, on behalf of your client Christian Dior Perfumes Inc., you requested a tariff classification ruling for bulk lipstick with a composition as follows: castor oil, isostearate, myristyl lactate, microcrystalline wax, cetyl acetate, butyl stearate, ceresin, mineral oil, carnauba, acetelated linolin alcohol, synthetic beeswax, canoelilla wax, octylmethoxy cinnamate, tocopherol, titanium oxide, iron oxide, FD&C yellow, D&C red and traces of other organic compounds.

The applicable subheading will be 3824.90.9050, Harmonized Tariff Schedule of the United States (HTS), which provides for prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included: other. The rate of duty will be 5 percent 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. If you have any questions regarding the ruling, contact National Import Specialist Thomas Brady at (212) 466-5747.

GWENN KLEIN KIRSCHNER,
*Chief, Special Products Branch,
National Commodity Specialist Division.*

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2: RR:CR:GC 965977 DBS
Category: Classification
Tariff No. 3304.10.00

MR. DAVID A. EISEN
TOMKINS & DAVIDSON
One Astor Plaza, 1515 Broadway
New York, NY 10036-8901

Re: Bulk cosmetic preparations; NY B84855 revoked.

DEAR MR. EISEN:

On June 24, 1997, this office issued to you on behalf of your client, Christian Dior Perfumes Inc., New York (NY) B84855, classifying bulk lipstick as a chemical preparation not elsewhere specified or included under subheading 3824.90.90, Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered NY B84855 and have determined the classification to be incorrect.

Facts:

In a letter dated May 1, 1997 you had requested a binding classification ruling from Customs National Commodity Specialist Division, New York, (NCSD) for bulk lipstick with a composition as follows: castor oil, isostearate, myrisryl lactate, microcrystalline wax, cetyl acetate, butyl stearate, ceresin, mineral oil, carnuaba, acetelated linolin alcohol, synthetic beeswax, canoelilla wax, octylmethoxy cinnamate, tocopherol, titanium oxide, iron oxide, FD&C yellow, D&C red and traces of other organic compounds.

Issue:

Whether the scope of heading 3304, HTSUS, includes make-up preparations imported in bulk.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that 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.

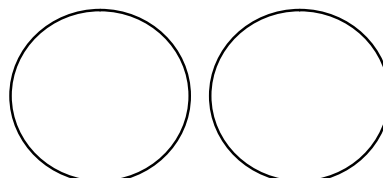
In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

- 3304** Beauty or make-up preparations and preparations for the care of skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations:
- * * * * *
- 3824** Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included

GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note.

Section VI, Note 2, HTSUS, provides, in pertinent part, as follows: “* * * [G]oods classifiable in heading * * * 3304 * * * by reason of being put up in measured doses or for retail sale are to be classified in [this heading] and in no other heading of the tariff schedule.”



Chapter 33, Note 3, HTSUS, states that “[h]eadings 3303 to 3307 apply, *inter alia*, to products, whether or not mixed * * * suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use.”

The issue before Customs is the scope of heading 3304, HTSUS. Beauty and make-up preparations imported ready for retail sale are classifiable in heading 3304, HTSUS. However, we must consider whether the legal note excludes from classification in those headings goods imported in bulk that are not put up in packings for retail sale.

Heading 3304, HTSUS, is an *eo nomine* provision. An *eo nomine* provision is one that describes a commodity by a specific name, as opposed to use. Absent limiting language or indicia of contrary legislative intent, an *eo nomine* provision covers all forms of the article. See *National Advanced Sys. v. United States*, 26 F.3d 1107, 1111 (Fed. Cir. 1994). An *eo nomine* provision may be limited by use, but such use limitation should not be read into an *eo nomine* provision unless the name itself inherently suggests a type of use. See *United States v. Quon Quon Co.*, 46 C.C.P.A. 70, 72–73 (1959), cited by *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1379 (Fed. Cir. 1999).

The term “preparations” is not defined in the HTSUS, and the exemplars of beauty or make-up preparations and preparations for the care of the skin in the ENs do not provide clear guidance with regard to the bulk product at issue. To determine the proper meaning of tariff terms as contained in the statute, the terms are “construed in accordance with their common and popular meaning, in the absence of contrary legislative intent.” *E.M. Chemicals v. United States*, 920 F.2d 910, 913 (Fed. Cir. 1990). “To assist it in ascertaining the common meaning of a tariff term, the court may rely upon its own understanding of the terms used, and it may consult lexicographic and scientific authorities, dictionaries, and other reliable information sources.” *Brookside Veneers, Ltd. v. United States*, 847 F.2d 786, 789, 6 Fed. Cir. (T) 121, 125 (Fed. Cir.) cert. denied, 488 U.S. 943, (1988).

We consulted several lexicographic sources. The relevant definition of “preparation,” found in the Oxford English Dictionary, 2281 (compact ed. 1987), is: “6. A substance specially prepared, or made up for its appropriate use or application, e.g. as food or medicine, or in the arts or sciences.” Webster’s Third New International Dictionary, 1790 (unabridged 1986), states: “5. Something that is prepared: something made, equipped, or compounded for a specific purpose.” In the Random House Unabridged Dictionary (2d ed. 1993) “preparation” is, in pertinent part: “5. Something prepared, manufactured or compounded: *a special preparation for sunbathers.*”

Each definition specifically states or denotes that a “preparation” is made for a specific purpose. Therefore, the *eo nomine* provision is limited by use. As the terms of heading 3304, HTSUS, provide for beauty and make-up preparations, goods of the heading must be substances made for the specific purpose of making oneself up.

It is axiomatic that classification is based on goods in the condition in which they are imported. See, e.g., *United States v. P. John. Hanrahan, Inc.*, 45 CCPA 120, 124, C.A.D. (1958). In *Aceto Chemical Co., Inc. v. United States*, 59 CCPA 212, C.A.D. 1069 (1972), the appellate court held that the chemical mixture at issue in its condition as imported contained the essential elements that impart the function of shampoo, and was thus a completed shampoo for tariff purposes, even though water, perfume and coloring agents were added after importation. Similarly, though not packaged for retail sale, the product at issue contains all essential components of lipstick and is produced only for use as a lip make-up preparation. Therefore, it is a completed lip make-up preparation for tariff purposes, and thus provided for by the terms of heading 3304, HTSUS.

Accordingly, Note 3 to Chapter 33, HTSUS, cannot be read to exclude a good specifically provided for in the heading text. Moreover, neither of the relevant legal notes use exclusionary or limiting language. On the contrary, the use of *inter alia*, meaning “among other things,” in Note 3 signifies that the heading covers more than products “suitable for use as goods of the heading and put up in packings of a kind sold by retail for such use.” The language of Section VI, Note 2 merely requires that goods that are put up for retail sale must be classified in those headings.

The scope of the heading is buttressed by the decisions of the Nomenclature Committee of the Customs Co-Operation Council under the Brussels Tariff Nomenclature (BTN), predecessors to the Harmonized System Committee (HSC) and the Harmonized System (HS) of the World Customs Organization, respectively. The BTN may be treated as legislative history to the tariff provisions where the language of the tariff provision and a Brussels section is very similar. See *S.G.B. Steel Scaffolding & Shoring Co., Inc. v. United*

States, 82 Cust. Ct. 197, Cust. Dec. 4802 (1979); Sturm, *Customs Laws & Administration*, § 52.2 at 16, 17 (3d ed. 1988), and cases cited therein.

Heading 33.06 of the BTN provided for "Perfumery, cosmetics and toilet preparations." It is the predecessor provision for heading to 3304, HTSUS. The language is similar, as cosmetic preparations are beauty and make-up preparations, so we may consider the BTN as legislative history. Further, the classification from the following decision was retained in the conversion to the HTS. See Annex H/3 to Doc. 33.250, NC/56/May 86, IHSC/6/May 86.

The Nomenclature Committee determined that bulk lipstick matter, not packaged for retail sale but containing all of the ingredients, including coloring matter, which needed only to be molded into lipstick was classifiable in heading 33.06. See 8500/315 E, NC/6/Sept. 61. In a classification opinion published in the Compendium of Classification Opinions, the HSC determined that lipstick base containing no coloring matter or perfume was not classifiable in Chapter 33 as an unfinished cosmetic preparation by application of GRI 2(a) because of the absence of coloring matter, an essential component of lipstick. See Doc. 37.202, HSC/9/Jan. 92; see also Doc. 37.302, HSC/8/Oct. 91 for full discussion. This lipstick base was classified as a chemical mixture in subheading 3823.90, HTS (now subheading 3824.90, HTS, pursuant to Doc. 38.960, Annex L/8, HSC/14/Nov. 94).

Heading 3824, HTSUS, provides for chemical preparations not elsewhere specified or included. As the instant product is provided for in heading 3304, HTSUS, heading 3824, HTSUS, is inapplicable.

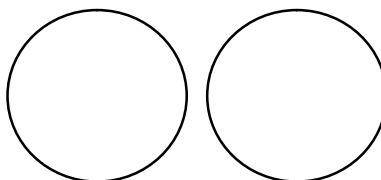
Holding:

Bulk lipstick is classifiable in subheading 3304.10.00, HTSUS, which provides for, "Beauty or make-up preparations and preparations for the care of skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: lip make-up preparations."

Effect on Other Rulings:

NY B84855, dated June 24, 1997 is hereby REVOKED.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.



PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF BOROL® SOLUTION, A LIQUID SODIUM BOROHYDRIDE PRODUCT

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the tariff classification of Borol® solution, a liquid sodium borohydride (LSBH) product.

SUMMARY: 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), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of Borol® solution, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before December 13, 2002.

ADDRESS: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations & Rulings. Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Comments submitted may be inspected at the U.S. Customs Service, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch, (202) 572-8784.

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, which 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

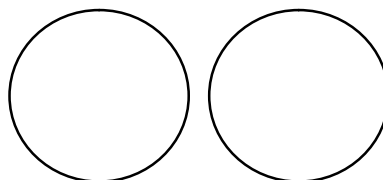
the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any 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)(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), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of Borol[®] solution. Although in this notice Customs is specifically referring to New York ruling (NY) D88824, dated April 8, 1999, this notice covers any rulings on this merchandise which 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. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. 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 advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke 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 importation 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 advise 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 his agents for importation of merchandise subsequent to this notice.

In NY D88824 it was determined that Borol[®] solution was classifiable in subheading 3824.90.39, HTSUS, which provides "[p]repared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: [r]esidual products of the chemical or allied industries, not elsewhere specified or included: [o]ther." NY D88824 is set forth as Attachment A.

We now believe the merchandise is classified in subheading 3809.92.50, HTSUS, the provision for "[f]inishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs and other products and



preparations (for example, dressings and mordants), of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included: [o]f a kind used in the paper or like industries: [o]ther, because it is more specifically described by its use in the paper industry.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY D88824, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed HQ 965797 (Attachment B to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: October 25, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, April 8, 1999.
CLA-2-38:RR:NC:2:239 D88824
Category: Classification
Tariff No. 3824.90.3900

MR. JAMES W. LAWLESS
C.H. POWELL COMPANY
*1 Intercontinental Way
Peabody, MA 01960*

Re: The tariff classification of "Borol" from the Netherlands and Canada.

DEAR MR. LAWLESS:

In your letter dated February 26, 1999, you requested a tariff classification ruling for "Borol" which is a chemical intermediate used to produce a bleach for use in the paper industry. The product is composed of sodium hydroxide, sodium borohydride, and water.

The applicable subheading will be 3824.90.3900, Harmonized Tariff Schedule of the United States (HTS), which provides for prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included: mixtures of two or more inorganic compounds: other. This provision is duty free.

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 Thomas Brady at 212-637-7063.

ROBERT B. SWIERUPSKI,
*Director,
National Commodity Specialist Division.*

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 965797 AM
Category: Classification
Tariff No. 3809.92.50

MR. JAMES W. LAWLESS
C.H. POWELL COMPANY
1 Intercontinental Way
Peobody, MA 01960

Re: Proposed Revocation of NY D88824; Borol[®] solution, a liquid sodium borohydride product.

DEAR MR. LAWLESS:

This is in reference to New York Ruling Letter (NY) D88824, issued to you on April 8, 1999, by the Customs Service National Commodity Specialist Division, concerning the classification, under the Harmonized Tariff Schedule of the United States, (HTSUS), of Borol[®], a liquid sodium borohydride (LSBH) product.

In NY D88824, the merchandise was classified in subheading 3824.90.39, HTSUS, the provision for “[p]repared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: [r]esidual products of the chemical or allied industries, not elsewhere specified or included: [o]ther.” We have reviewed this ruling and consider it to be incorrect.

Facts:

Borol[®] consists of 12 % sodium borohydride, CAS 16940-66-2, 40% Sodium Hydroxide, CAS 1310-73-2, and water. Borol[®] belongs to a class of products known as LSBH products. *The Kirk-Othmer Concise Encyclopedia of Chemical Technology*, 4th edition, (John Wiley & Sons, Inc., p.284) states, in pertinent part, “[t]he predominant use for sodium borohydride is in wood pulp (qv) bleaching. The next largest commercial use is as a reducing agent of functional groups in organic synthesis. A significant application in pharmaceutical synthesis is the stereospecific and selective reduction in steroid production.”

Customs Laboratory report 2-1999-20932, dated March 23, 1999, states, in pertinent part, that the sample is used as an “intermediate to produce a bleach used in the paper industry” and consists of a “mixture of inorganic chemicals.”

After entry, Borol[®] solution and a 38% sodium bisulphite solution are simultaneously mixed in the pulp stream to form a 100% active hydrosulfite bleach. “Bleaching,” as it applies to the paper making industry, is “the process of chemically treating pulp to alter the coloring matter so that the pulp has a higher brightness. This is usually accompanied by partial removal of noncellulosic materials. The two classes of chemicals used are oxidizing agents * * * and reducing agents (such as sulfur dioxide and hydrosulfites).” *The Dictionary of Paper*, Third Edition, American Paper and Pulp Association, (New York, 1965) p. 70.

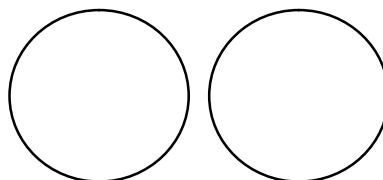
Issue:

What is the classification of Borol[®] solution, a liquid sodium borohydride product, under the HTSUS?

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.



Additional U.S. Rule of Interpretation 1(a) states that “a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.”

In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUSA. See T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

The following HTSUS headings are relevant to the classification of this product:

- 3809 Finishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs and other products and preparations (for example, dressings and mordants), of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included:
- 3824 Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:

EN 38.09 states, in pertinent part, the following:

This heading covers a wide range of products and preparations, of a kind generally used during processing or finishing of yarns, fabrics, paper, paperboard, leather or similar materials, not specified or included elsewhere in the Nomenclature.

They may be identified as falling in this heading because of their composition and presentation which give them a specific use in the industries cited in the heading and like industries, e.g., the textile floor carpeting industry, the vulcanised fibre manufacturing industry and the fur industry. Such products and preparations (e.g., textile softening agents) destined for domestic rather than industrial use are also covered by the heading.

Included here are:

- * * * * *
- (B) Products and preparations used in the paper, paperboard or like industries :
- (1) Binders used to bind the pigment particles in the coating mixture. They are preparations based on natural products such as casein, starch, starch derivatives, soya protein, animal glue, alginates or cellulose derivatives.
 - (2) Sizing agents or sizing additives used in paper processing to improve printability, smoothness and gloss and to impart writing properties to the paper. These preparations may be based on rosin soaps, fortified resins, wax dispersions, paraffin dispersions, acrylic polymers, starch and carboxymethylcellulose or vegetable gum.
 - (3) Wet-strengthening agents. These preparations are used to increase tensile strength, tearing strength, bursting strength and resistance to abrasion of wet paper or nonwovens.

Heading 3809, HTSUS, is a principal use provision covering a wide range of products. The court in *E.M. Chemicals v. United States*, 20 C.I.T. 382, 923 F. Supp. 202 (1996) explained the application of principal use provisions thus: “[w]hen applying a “principal use” provision, the Court must ascertain the class or kind of goods which are involved and decide whether the subject merchandise is a member of that class. See, *supra*, Additional U.S. Rule of Interpretation 1 to the HTSUS.” EN 38.09 specifically includes binders, sizing agents and wet-strengthening agents as those products “of a kind used in the paper industry.”

Kirk-Othmer, *supra*, contains a description of papermaking additives. It characterizes such additives as either process aids, functional internal additives, or functional surface treatments. *Id.* at 1447-9. Binders are listed as functional surface treatments and wet-strengthening agents and sizing agents are listed as functional internal additives. Bleach or LSBH products are not listed, but appear to be process aids. HQ 950801, dated April 9, 1992, classified a defoamer, listed as a process aid in Kirk-Othmer, in heading 3809, HTSUS. Hence, LSBH products such as Borol® solution, belong to the class or kind of goods that are used in the paper industry. As such, Borol® solution is more specifically provided for in heading 3809 than in heading 3824, HTSUS.

Holding:

Boral® solution is classified in subheading 3809.92.50, HTSUS, the provision for “[f]inishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs and other products and preparations (for example, dressings and mordants), of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included: [o]f a kind used in the paper or like industries: [o]ther.”

 Effect on Other Rulings:

NY D88826 is revoked.

MYLES B. HARMON,
 Acting Director,
 Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTERS AND
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
ALUMINUM FOIL

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

ACTION: Notice of proposed revocation of ruling letters and treatment relating to tariff classification of aluminum foil.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke three ruling letters pertaining to the tariff classification of certain aluminum foil under the Harmonized Tariff Schedule of the United States (“HTSUS”). Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before December 13, 2002.

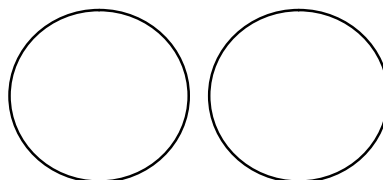
ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the U.S. Customs Service, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Gerry O’Brien, General Classification Branch, (202) 572-8780.

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 which 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, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke three ruling letters pertaining to the classification of certain aluminum foil. Although in this notice Customs is specifically referring to three rulings, HQ 965610, NY H87523, and NY C85578, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the three 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 advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke 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. Any person involved in substantially identical transactions should advise 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 the final notice of this proposed action.

In HQ 965610 dated September 20, 2002, NY H87523 dated January 25, 2002, and NY C85578 dated March 24, 1998, set forth as Attachments A, B, and C to this document, respectively, Customs classified cer-

tain aluminum foil in subheading 7607.11.60, HTSUS, as: "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm: Not backed: Rolled but not further worked: Of a thickness not exceeding 0.15 mm: * * * Of a thickness exceeding 0.01 mm."

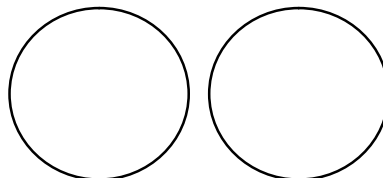
It is now Customs position that the subject aluminum foil is classified in subheading 7607.19.60, HTSUS, as: "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm: Not backed: * * * Other: * * * Other: * * * Other." Proposed HQ 965976 revoking HQ 965610, proposed HQ 965999 revoking NY H87523, and proposed HQ 966004 revoking NY C85578 are set forth as Attachments D, E, and F respectively.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke HQ 965610, NY H87523, NY C85578, and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 965976, HQ 965999, and HQ 966004. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: October 29, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]



[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
 U.S. CUSTOMS SERVICE,
 Washington, DC, September 20, 2002.
 CLA-2 RR:CR:GC 965610 HEF
 Category: Classification
 Tariff No. 7607.11.60

MR. MICHAEL A. JOHNSON
 RODRIGUEZ O'DONNELL ROSS FUERST GONZALEZ & WILLIAMS
 20 North Wacker Drive
 Suite 1416
 Chicago, IL 60606

Re: Reconsideration of NY H87523; Aluthene® aluminum foil.

DEAR MR. JOHNSON:

This is in response to your letter dated April 5, 2002, requesting reconsideration of NY ruling letter H87523, issued to ICS Customs Service, Inc. on January 25, 2002, on behalf of Vaw Flexible Packaging, which classified top peel® aluminum foil under subheading 7607.11.60, Harmonized Tariff Schedule of the United States (HTSUS), as aluminum foil, not backed. A teleconference was held with you on August 30, 2002, and a submission dated September 17, 2002 was also considered in preparing this ruling. We have thoroughly reconsidered the classification of these articles and believe NY H87523 is correct.

Facts:

The merchandise at issue is aluminum foil known as “top peel”® or “Aluthene”®. Three types of Aluthene®, Aluthene® 40 II E 133/6, Aluthene® 50 II E 133/6 and 12, are the subject of this reconsideration. The merchandise is used as a peelable closure or operculum, (i.e., a non-permeable and sterilized lid or seal), for bottles and cups in the food packing industry. The product has two layers. The outer layer of Aluthene® 40 II E 133/6 is formed of an aluminum foil with a thickness of 0.038mm. The outer layers of Aluthene® 50 II E 133/6 and 12 are made of an aluminum foil with a thickness of 0.048 mm. According to your submission, the foil has a second layer—“a co-extruded plastic sealing layer (a plastic film) laminated to one side, namely, the side which forms the inside of the packaging top for which the foil is used—the side which will face the food product being packaged.” This layer has a thickness of 0.030 mm in all three products, and is used for heat sealing to different types of plastics, glass or metal.

Issue:

Whether the top peel® aluminum foil is classified under subheading 7607.11.60, HTSUS, which provides for aluminum foil, not backed, of a thickness exceeding 0.01mm, or under subheading 7607.20.50, HTSUS, which provides for backed aluminum foil.

Law and Analysis:

Classification under the 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 understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

7607	Aluminum foil (whether or not printed, or backed with paper, paper-board, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2mm: Not backed:
9607.11	Rolled but not further worked

76011.60	Of a thickness exceeding 0.01mm
*	*
7607.20	Backed:
7607.20.50	Other.

There is no dispute that the subject aluminum foil is described in heading 7607, HTSUS. The issue here is whether or not the aluminum foil is “backed.” If the aluminum foil is backed, it is classified in subheading 7607.20.50, HTSUS. If the aluminum foil is not backed, it is classified in subheading 7607.11.60, HTSUS.

EN 76.07 does not provide any information with respect to what “backed” means in this context. However, it instructs that EN 74.10, which pertains to copper foil, apply, mutatis mutandis, to heading 7607. EN 74.10 provides in pertinent part as follows: “Other foil * * * is often backed with paper, paperboard, plastics or similar backing materials, either for convenience of handling or transport, or in order to facilitate subsequent treatment, etc.”

In the current case, the plastic layer bonds the foil to the container and provides a barrier between the foil and the contents of the container. You argue that the foil is backed with plastic to facilitate this bonding.

The Random House Dictionary of the English Language (unabridged ed.; 1973) provides the following definitions: “backing” is defined in pertinent part as follows: “* * * 3. That which forms the back or is placed at or attached to the back of anything to support, strengthen, or protect it * * *”; “backed” is defined in pertinent part as follows: “1. having a back, setting, or support (often used in combination) * * *”; “coating” is defined in pertinent part as follows: “* * * 3. A layer of anything that covers a surface * * *.”

In HQ 960276, dated August 1, 1997, we stated in pertinent part as follows:

According to information obtained from the aluminum industry, the term “Backed foil” is defined as a “lamination composed of foil and a coherent substrate. The substrate or backing may be either self-adherent or bonded to the foil by means of an interposed adhesive. Paper, woven fabrics, cellophane, polyethylene film and the like are typical examples of such backings or substrates.

The common and commercial meaning of “backed” as outlined above shows that the material to be backed is strengthened, for reasons such as those given in the Explanatory Notes. The instant plastic layer facilitates the subsequent treatment of the foil by forming the link or adhesive between the foil and the plastic cup. Nonetheless, it does not strengthen the foil, in fact, it melts into the plastic cup. See HQ 965210, dated March 20, 2002, for a similar result.

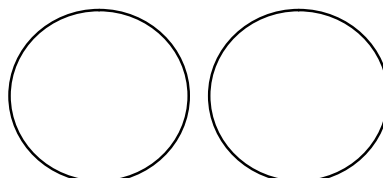
After careful reconsideration of this matter, we have determined that the subject aluminum foil is not backed. Therefore it is classified in subheading 7607.11.60, HTSUS, as “Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2mm: Not backed: Of a thickness exceeding 0.01mm.”

Holding:

The subject merchandise is classifiable in subheading 7607.11.60, HTSUS, which provides for, “Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2mm: Not backed: Of a thickness exceeding 0.01mm.” *NY H87523* is affirmed.

MARVIN AMERNICK,

(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)



[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, January 25, 2002.
CLA-2-76:RR:NC:1:118 H87523
Category: Classification
Tariff No. 7607.11.6000

MR. TIM MICHAELY
ICS CUSTOMS SERVICE INC.
812 Thorndale Ave.
Bensenville, IL 60106

Re: The tariff classification of aluminum foil from France and Germany.

DEAR MR. MICHAELY:

In your letter dated January 15, 2002, on behalf of your client Vaw Flexible Packaging, you requested a tariff classification ruling.

You have described the two samples that you have submitted as aluminum foil to be used as packaging. Sample #1, called top peel[®], is to be used as a peelable closure for bottles and cups. It will be made in France. Sample #2, called Hermetalu[®], is to be used as a lidding aluminum with a heat seal lacquer. It will be made in Germany. Each foil is rolled, then coated with plastic. The thickness will vary from .03 mm to .06 mm. The product comes in three layers with the outside-coated layer to be used for surface printing. The middle layer is for oxygen and U.V. protection, stiffness and strength. The inside layer is for heat sealing to different types of plastics, glass or metal.

The applicable subheading for the aluminum foils will be 7607.11.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm: not backed: rolled but not further worked: of a thickness not exceeding 0.15 mm: of a thickness exceeding 0.01 mm. The rate of duty will be 5.3% 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. If you have any questions regarding the ruling, contact National Import Specialist Kathy Campanelli at 646-733-3021.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, March 24, 1998.
CLA-2-76:RR:NC:1:118 C85578
Category: Classification
Tariff No. 7607.11.6000

MR. NED H. MARSHAK
SHARRETT'S, PALEY, CARTER & BLAUVELT, P.C.
Sixty-seven Broad Street
New York, NY 10004

Re: The tariff classification of aluminum fin stock from Japan.

DEAR MR. MARSHAK:

In your letter dated March 17, 1998, you requested a tariff classification ruling, on behalf of your client, Nissho Iwai American Corporation, NY, NY.

The subject merchandise is aluminum fin stock, item KS203, designed for use in heat exchangers for air conditioners. In its imported condition, the aluminum fin stock is 0.14mm thick x 346 mm wide (0.0055" thick x 13.62" wide) in material lengths. This product's surface is treated with a double layer pre-coating of a silicate film and a hydrophilic coating for the prevention of rust. After importation, the aluminum fin stock is cut to fit individual air conditioners.

The classification of merchandise under the Harmonized Tariff Schedule of the United States (HTS) is governed by the General Rules of Interpretation (GRI'S). GRI 1, HTS, states in part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes * * *". This Rule applies to your product.

The applicable subheading for the aluminum fin stock imported in material lengths, needing further processing, will be 7607.11.6000, HTS, which provides for aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2mm: not backed: rolled but not further worked: of a thickness not exceeding 0.15mm: of a thickness exceeding 0.01mm. The duty rate will be 5.3% ad valorem.

Consideration was given to classifying this product under subheading 8415.90.80 or 7607.19.60, HTS, as you have suggested. However, as the material is imported in material lengths and the fact that the product is rolled but not further worked, your two classification suggestions are deemed inappropriate.

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 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 Kathy Campanelli at 212-466-5492.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 965976 GOB
Category: Classification
Tariff No. 7607.19.60

MICHAEL A. JOHNSON
RODRIGUEZ O'DONNELL ROSS FUERST GONZALEZ & WILLIAMS
20 North Wacker Drive
Suite 1416
Chicago, IL 60606

Re: Revocation of HQ 965610; Aluminum Foil.

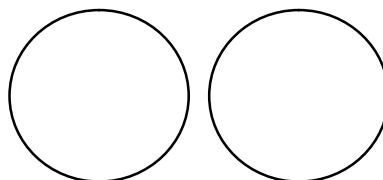
DEAR MR. JOHNSON:

This letter is with respect to HQ 965610 issued to you on behalf of Vaw Flexible Packaging on September 20, 2002. HQ 965610 affirmed NY H87523 dated January 25, 2002, with respect to the merchandise the subject of HQ 965610 and this ruling. We have reviewed the classification in HQ 965610 and have determined that it is incorrect. This ruling sets forth the correct classification.

Facts:

In HQ 965610, the subject merchandise was described as follows:

The merchandise at issue is aluminum foil known as "top peel"® or "Aluthene"®. Three types of Aluthene, Aluthene® 40 II E 133/6, Aluthene® 50 II E 133/6 and 12 are



the subject of this reconsideration. The merchandise is used as a peelable closure or operculum (i.e., a non-permeable and sterilized lid or seal) for bottles and cups in the food packing industry. The product has two layers. The outer layer of Aluthene 40 II E 133/6 is formed of an aluminum foil with a thickness of 0.038mm. The outer layers of Aluthene® 50 II E 133/6 and 12 are made of an aluminum foil with a thickness of 0.048mm. According to your submission, the foil has a second layer—"a co-extruded plastic sealing layer (a plastic film) laminated to one side, namely, the side which forms the inside of the packaging top for which the foil is used—the side which will face the food product being packaged." The layer has a thickness of 0.030mm in all three products, and is used for heat sealing to different types of plastics, glass or metal.

In HQ 965610, we classified the subject aluminum foil in subheading 7607.11.60, HTSUS. We have reviewed that classification and have determined that it is incorrect. This ruling sets forth the correct classification.

Issue:

What is the classification under the HTSUS of the subject foil?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). 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 GRI's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

The HTSUS provisions under consideration are as follows:

7607	Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm:
	Not backed:
7607.11	Rolled but not further worked:
	Of a thickness not exceeding 0.15 mm:
7607.11.60	Of a thickness exceeding 0.01 mm
*	* * * * *
7607.19	Other:
	Other:
7607.19.60	Other

In HQ 965610, the crucial issue addressed was whether or not the aluminum foil was "backed." We concluded that the aluminum foil was not "backed" and classified it in subheading 7607.11.60, HTSUS. The issue of whether the foil was "further worked" was not examined. See the language of subheading 7607.11, HTSUS. If the aluminum foil is "further worked," it is not described in subheading 7607.11.60, HTSUS, and is described in subheading 7607.19.60, HTSUS.

In *Winter-Wolff Inc. v. United States*, 22 CIT 70 (1998), in finding that certain laser-treated aluminum capacitor foil was classified in subheading 7607.19.60, HTSUS, the court held that "further worked" should be defined in accordance with its common, dictionary meaning for the purpose of subheading 7607.11, HTSUS. From two dictionaries, the court interpreted the common dictionary meaning of "further worked" to be as follows: " * * * to subject an existing product to some process of development, treatment, or manufacture to a greater degree or extent * * * to form, fashion or shape an existing product to a greater extent." *Id.* at 78.

In your letter of April 5, 2002, requesting reconsideration of NY H87523, you stated in pertinent part as follows:

The product is not merely coated. It has a co-extruded plastic sealing layer (a plastic film) laminated to one side, namely, the side which will form the inside of the packaging top for which this foil is used—the side which will face the food product being packaged. It also has a printable lacquer coating on the outside surface * * *

We now conclude that the work performed on the subject aluminum foil (i.e., coatings) constitutes a "further working" based upon the definitions in *Winter-Wolff, supra*, i.e., the original product of the aluminum foil was developed, treated or manufactured to a greater extent. Because the aluminum foil is further worked, it is classified in subheading 7607.19.60, HTSUS, as: "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm: Not backed: * * * Other: * * * Other: * * * Other."

Holding:

The subject aluminum foil is classified in subheading 7607.19.60, HTSUS, as: "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm: Not backed: * * * Other: * * * Other: * * * Other."

Effect on Other Rulings:

HQ 965610 is revoked.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 965999 GOB
Category: Classification
Tariff No. 7607.19.60

TIM MICHAELY
ICS CUSTOMS SERVICE INC.
812 Thorndale Ave.
Bensenville, IL 60106

Re: Revocation of NY H87523; Aluminum Foil.

DEAR MR. MICHAELY:

This letter is with respect to NY H87523 issued to you on behalf of Vaw Flexible Packaging on January 25, 2002. We have reviewed the classification in NY H87523 and have determined that it is incorrect. This ruling sets forth the correct classification.

Facts:

In NY H87523, the subject merchandise was described as follows:

Sample #1, called top peel®, is to be used as a peelable closure for bottles and cups. It will be made in France. Sample #2, called Hermetalu®, is to be used as a lidding aluminum with a heat seal lacquer. It will be made in Germany. Each foil is rolled, then coated with plastic. The thickness will vary from .03 mm to .06 mm. The product comes in three layers with the outside-coated layer to be used for surface printing. The middle layer is for oxygen and U.V. protection, stiffness and strength. The inside layer is for heat sealing to different types of plastics, glass or metal.

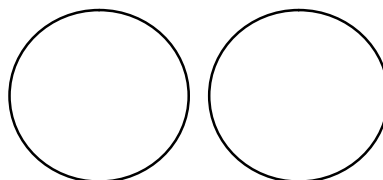
In NY H87523, Customs classified both samples in subheading 7607.11.60, HTSUS. We have reviewed that classification and have determined that it is incorrect. This ruling sets forth the correct classification.

Issue:

What is the classification under the HTSUS of the subject aluminum foil?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). 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 GRI's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

The HTSUS provisions under consideration are as follows:

7607	Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm: Not backed:
7607.11	Rolled but not further worked: Of a thickness not exceeding 0.15 mm:
7607.11.60	Of a thickness exceeding 0.01 mm
*	*
*	*
*	*
*	*
*	*
*	*
7607.19	Other: Other:
7607.19.60	Other

In *Winter-Wolff Inc. v. United States*, 22 CIT 70 (1998), in finding that certain laser-treated aluminum capacitor foil was classified in subheading 7607.19.60, HTSUS, the court held that "further worked" should be defined in accordance with its common, dictionary meaning for the purpose of subheading 7607.11, HTSUS. From two dictionaries, the court interpreted the common dictionary meaning of "further worked" to be as follows: " * * * to subject an existing product to some process of development, treatment, or manufacture to a greater degree or extent * * * to form, fashion or shape an existing product to a greater extent." *Id.* at 78.

We now conclude that the work performed on the subject aluminum foil (i.e., coatings) constitutes a "further working" based upon the definitions in *Winter-Wolff, supra*, i.e., the original product of the aluminum foil was developed, treated or manufactured to a greater extent. Because the aluminum foil is further worked, it is classified in subheading 7607.19, HTSUS, specifically in subheading 7607.19.60, HTSUS, as: "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm: Not backed: * * * Other: * * * Other: * * * Other."

Holding:

The subject aluminum foil (both samples) is classified in subheading 7607.19.60, HTSUS, as: "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm: Not backed: * * * Other: * * * Other: * * * Other."

Effect on Other Rulings:

NY H87523 is revoked.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 966004 GOB
Category: Classification
Tariff No. 7607.19.60

NED H. MARSHAK
SHARRETT, PALEY, CARTER & BLAUVELT, P.C.
75 Broad Street, 26th Floor
New York, NY 10004

Re: Revocation of NY C85578; Aluminum Fin Stock.

DEAR MR. MARSHAK:

This letter is with respect to NY C85578 issued to you on behalf of Nissho Iwai American Corporation on March 24, 1998. We have reviewed the classification in NY C85578 and have determined that it is incorrect. This ruling sets forth the correct classification.

Facts:

In NY C85578, the subject merchandise was described as follows:

The subject merchandise is aluminum fin stock, item KS203, designed for use in heat exchangers for air conditioners. In its imported condition, the aluminum fin stock is 0.14 mm thick x 346 mm wide (0.0055" thick x 13.62" wide) in material lengths. This product's surface is treated with a double layer pre-coating of a silicate film and a hydrophilic coating for the prevention of rust. After importation, the aluminum fin stock is cut to fit individual air conditioners.

In NY C85578, Customs classified the subject merchandise in subheading 7607.11.60, HTSUS. We have reviewed that classification and have determined that it is incorrect. This ruling sets forth the correct classification.

Issue:

What is the classification under the HTSUS of the subject aluminum fin stock?

Law and Analysis:

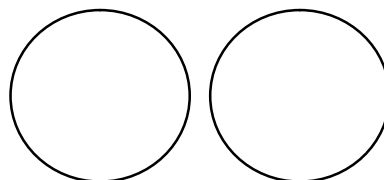
Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods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

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

The HTSUS provisions under consideration are as follows:

- 7607 Aluminum foil (whether or not printed, or backed with paper, paper-board, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm:
 - Not backed:
 - 7607.11 Rolled but not further worked:
 - Of a thickness not exceeding 0.15 mm:
 - 7607.11.60 Of a thickness exceeding 0.01 mm
- * * * * *
- 7607.19 Other:
 - Other:
 - 7607.19.60 Other

In *Winter-Wolff Inc. v. United States*, 22 CIT 70 (1998), in finding that certain laser-treated aluminum capacitor foil was classified in subheading 7607.19.60, HTSUS, the



court held that “further worked” should be defined in accordance with its common, dictionary meaning for the purpose of subheading 7607.11, HTSUS. From two dictionaries, the court interpreted the common dictionary meaning of “further worked” to be as follows: “* * * to subject an existing product to some process of development, treatment, or manufacture to a greater degree or extent * * * to form, fashion or shape an existing product to a greater extent.” *Id.* at 78.

We now conclude that the work performed on the subject aluminum fin stock (i.e., coatings) constitutes a “further working” based upon the definitions in *Winter-Wolff, supra*, i.e., the original product was developed, treated or manufactured to a greater extent. Because the aluminum fin stock is further worked, it is classified in subheading 7607.19, HTSUS, specifically in subheading 7607.19.60, HTSUS, as: “Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm: Not backed: * * * Other: * * * Other.”

Holding:

The subject aluminum fin stock is classified in subheading 7607.19.60, HTSUS, as: “Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm: Not backed: * * * Other: * * * Other: * * * Other.”

Effect on Other Rulings:

NY C85578 is revoked.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.