

Bureau of Customs and Border Protection

General Notices

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, April 9, 2003.

The following documents of the Bureau of Customs and Border Protection (“CBP”), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP 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 AN INDUSTRIAL COOLING FAN ASSEMBLY

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of revocation of a ruling letter and treatment relating to tariff classification of an industrial cooling fan assembly.

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 revoking one ruling letter pertaining to the tariff classification of industrial cooling fan assemblies 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 revocation was published on February 12, 2003, in the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 23, 2003.

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)), notice was published on February 12, 2003 in the CUSTOMS BULLETIN, Volume 37, Number 7, proposing to revoke NY E89795, dated December 8, 1999, which classified an industrial cooling fan assembly in subheading 8414.90.00, HTSUS, as parts of fans. No comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover 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. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or 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 have advised Customs during this notice period. An importer's failure to advise Customs

of substantially identical transactions or of a specific ruling concerning merchandise covered by this notice which was not identified, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

In NY E89795, dated December 8, 1999, an industrial cooling fan assembly, consisting of a matching set of blades, hub and fasteners, imported unassembled, was classified as parts of fans under subheading 8414.90.00, HTSUS. It is now Customs position that this industrial cooling fan assembly constitutes an incomplete fan, classifiable according to General Rule of Interpretation (GRI) 2(a), applied, *mutatis mutandis*, through GRI 6, as a fan under subheading 8414.59.00, HTSUS.

The Harmonized Commodity and Coding System Explanatory Notes (ENs) to Section XVI also provide that incomplete machines are classifiable as complete machines when the assembly of parts is so far advanced that it has the main essential features of the complete machine. The instant assembly is imported without a drive shaft or motor because the shaft is a part of the pre-existing motor or gearbox to which the fan assembly is attached. This is common within the industrial cooling fan industry. Further, neither the ENs to Section XVI, HTSUS, nor to heading 8414, HTSUS, require that a machine of heading 8414, HTSUS, be fitted with a motor for classification in that heading and/or section. All other components are present and ready for assembly. Therefore, Customs concluded that the import possessed the main essential features of a complete fan. Accordingly, the industrial fan assembly is classifiable in subheading 8414.59.00, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY E89795 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 the attached ruling HQ 965993. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN

Dated: April 1, 2003.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
Washington, DC, April 1, 2003.
CLA-2 RR: CR: GC 965993 DBS
Category: Classification
Tariff No. 8414.59.60

MR. ROBERT E. BURKE, ESQ.
BARNES, RICHARDSON & COLBURN
*303 East Wacker Dr., Suite 1100
Chicago, IL 60601*

Re: Revocation of NY E89795; axial cooling fan; GRI 2(a).

DEAR MR. BURKE:

This is in response to your letter dated October 16, 2002, requesting reconsideration of NY E89795, which was issued to your client, Ventilatoren Sirocco Howden, on December 8, 1999, classifying a fan assembly in subheading 8414.90.10, Harmonized Tariff Schedule of the United States (HTSUS), as parts of fans. We have reviewed NY E89795, the supplemental information and arguments provided in your letters of January 6 and January 8, 2003, and the discussion from the teleconference conducted with you and your client's representatives on January 8, 2003. We have found the ruling to be incorrect.

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, 2186 (1993), notice of the proposed revocation of the above identified ruling was published on February 12, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 7. No comments were received in response to the notice.

Facts:

The product at issue was described in NY E89795 as a "fan assembly" for an industrial axial cooling fan, and was classified as parts of a fan. It consists of a matching set of a steel hub, a set of fasteners (consisting of aluminum support blocks and U-bolts) and a number of reinforced polyester fan blades. The components will be shipped unassembled due to the very large size of the good once assembled. The fan assemblies are custom-made for use in heat exchanger systems. Once assembled and mounted to an existing motor or gearbox, the fan cools condensers in large gas-fueled electric power generation units.

Your client stated that the assembly is generally imported without a drive shaft because in most cases the custom-made assembly is designed to be mounted onto an existing driving shaft mechanism (gearbox) which is the output shaft for the motor. The assembly may be attached to the mating drive shaft via a coupling flange, which is included with the imported assembly as needed. You furnished Customs with advertising materials from other companies within the cooling fan industry to further illustrate this point and demonstrate trade custom.

Issue:

Whether the imported fan assembly is classifiable as a part of a fan in subheading 8414.90.10, HTSUS, or an incomplete or unassembled fan, classifiable as a fan in subheading 8414.59.60, HTSUS, according to GRI 2(a).

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:

8414	Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters; parts thereof:
	Fans:
8414.59	Other:
	Other:
8414.59.60	Other.
*	* * * * * *
8414.90	Parts
8414.90.10	Of fans.

When the subheadings, rather than the headings, are at issue, GRI 6 is applied. GRI 6 provides that, “for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to [rules 1 through 5] on the understanding that only subheadings at the same level are comparable for the purposes of this rule and the relative section and chapter notes also apply, unless the context otherwise requires.”

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). While the blades, hub and fasteners may individually constitute parts of a fan, these components are imported unassembled, but together. GRI 2(a) provides that goods imported in an unassembled condition are to be classified as the assembled article. Further, the ENs to Section XVI state, in part, the following:

(V) UNASSEMBLED MACHINES

(See General Interpretive Rule 2 (a))

For convenience of transport many machines and apparatus are transported in an unassembled state. Although in effect the goods are then a collection of parts, they are classified as being the machine in question and not in any separate heading for parts. The same applies to an incomplete machine 0 presented unassembled (see also in this connection the General Explanatory Notes to Chapters 84 and 85). However, unassembled components in excess of the number required for a complete machine or for an incomplete machine having the characteristics of a complete machine, are classified in their own heading.

The unassembled components are shipped as such due to size, and are not in excess of those required for the complete machine. Thus, an assembly is not classifiable as parts but as the complete machine. *See NY F82265*, dated February 24, 2000. However, the instant assembly is not imported with a drive shaft or motor. Thus, we must determine whether the assembly is an incomplete machine.

The ENs to heading 8414, HTSUS, which describe fans, state, in pertinent part, as follows:

These machines, **which may or may not be fitted with integral motors**, are designed either for delivering large volumes of air or other gases at relatively low pressure or merely for creating a movement of the surrounding air (emphasis added).

Those of the first kind may act as air extractors or as blowers (e.g., industrial blowers used in wind tunnels). They consist of a propeller or blade-type impeller revolving in a casing or conduit, and function on the principle of rotary or centrifugal compressors.

The second type are of more simple construction, and consist merely of a driven fan rotating in free air * * *.

It is clear from the ENs that a fan may be imported *sans* motor and still be a fan for tariff purposes. However, fans are machines. For a fan to perform its function as a machine for delivering large volumes of air or moving surrounding air, it must be able to rotate the fan blades. This import lacks the mechanism to rotate the blades. Rather, the imported pieces are assembled and attached to an existing gearbox and/or motor, which contains the drive shaft (discussed below). Since the import does not contain such a mechanism, it is not classifiable according to GRI 1 as a complete fan, and we turn again to GRI 2(a).

In addition to unassembled or disassembled goods, GRI 2(a) covers unfinished or incomplete goods. It states as follows:

Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfin-

ished article has the essential character of the complete or finished article. It shall also include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), entered unassembled or disassembled.

We must now determine whether the assembly imparts the essential character of a complete fan. The ENs to GRI 2(a) direct us to the General ENs to Section XVI, HTSUS, which provide, in pertinent part, as follows:

(IV) INCOMPLETE MACHINES
(See General Interpretative Rule 2 (a))

Throughout the Section any reference to a machine or apparatus covers not only the complete machine, but also an incomplete machine (i.e., an assembly of parts so far advanced that it already has the main essential features of the complete machine). Thus a machine lacking only a flywheel, a bed plate, calender rolls, tool holders, etc., is classified in the same heading as the machine, and not in any separate heading providing for parts. Similarly a machine or apparatus normally incorporating an electric motor (e.g., electro-mechanical hand tools of heading 85.08) is classified in the same heading as the corresponding complete machine even if presented without that motor.

The instant assembly lacks only a shaft and a motor to be a complete fan. We have already concluded that the ENs do not require that a fan of heading 8414, HTSUS, be fitted with an integral motor. The ENs to Section XVI regarding GRI 2(a) reiterate this by stating that a machine or apparatus normally incorporating a motor may be classified as the complete machine without the motor. You have demonstrated that in the large industrial cooling fan industry, “fans” do not often incorporate their own drive shaft because it is a part of the motor or gearbox.¹ As the shaft is a part of the motor, and the motor is not required for classification purposes, we can only conclude that, in this case, the shaft and motor are not “main essential features” for purposes of tariff classification.

The massive hub and blades, which are imported ready for assembly with fasteners, comprise the main essential features of an industrial cooling fan. In fact, it is the blade size, curvature, and the quantity of blades that makes each of these types of fans suited for their intended purpose, as they are specially designed to deliver or move air in such a way that they cool the industrial machinery to which they attach.

We note EN(VI) to GRI 2(a) states that the rule also applies to incomplete or unfinished articles presented unassembled or disassembled provided that they are to be treated as complete or finished articles by virtue of the first part of the rule. As we have determined that the imported merchandise is classifiable as a complete fan by virtue of the first part of GRI 2(a), applied, *mutatis mutandis*, through GRI 6, the instant assembly is an incomplete, unassembled fan of subheading 8414.59, HTSUS.

For the reasons above, we find NY E89795 to be incorrect.

Holding:

The fan assembly is classifiable in subheading 8414.59.60, HTSUS, which provides for “Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters; parts thereof: fans: other: other: other.”

Effect on Other Rulings:

NY E89795, dated December 8, 1999, is hereby REVOKED. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

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

¹ Whether the fans of this type attach either directly to a motor or attach to a gearbox, the imported assembly is comprised of the same components. Thus, we have no reason to distinguish between the two.

WITHDRAWAL OF PROPOSED REVOCATION RULING LETTER
AND REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF CYLINDRICAL AIR FILTERS

AGENCY: Bureau of Customs and Border Protection, Dept. of Homeland Security.

ACTION: Notice of withdrawal of proposed revocation of a ruling letter and revocation of treatment relating to the classification of cylindrical air filters.

SUMMARY: This notice advises interested parties that Customs & Border Protection (CBP) is withdrawing its proposal to revoke a ruling letter pertaining to the tariff classification of cylindrical air filters and revoking any treatment previously accorded by CBP Customs Service to substantially identical transactions. Notice of the proposed revocation was published in the CUSTOMS BULLETIN of March 26, 2003, Vol. 37, No.13, pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057).

EFFECTIVE DATE: April 23, 2003.

FOR FURTHER INFORMATION CONTACT: Joe Shankle, Textiles Branch, 202-572-8824.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published on March 26, 2003, in the CUSTOMS BULLETIN, Vol. 37, No.13, proposing to revoke New York Ruling Letter (NY), I86458, dated October 1, 2002, pertaining to the tariff classification of air filters under subheading 5911.90.0080, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). This notice was in error because CBP incorrectly published NY I86458 instead of NY I84014, dated July 18, 2002. Accordingly, CBP is withdrawing the notice of proposed revocation.

Concurrent with this withdrawal, CBP is issuing a notice of proposed revocation of NY I84014, dated July 18, 2002, classifying cylindrical air filters in subheading 8421, HTSUSA.

NY I86458, will remain in full force and effect.

Dated: April 8, 2003.

GAIL A. HAMILL,
(for Myles B. Harmon, Director,
Commercial Rulings Division.)

PROPOSED REVOCATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF CYLINDRICAL AIR FILTERS

AGENCY: Bureau of Customs & Border Protection; Department of Homeland Security.

ACTION: Notice of proposed revocation of a tariff classification ruling letter and revocation of any treatment relating to the classification of cylindrical air filters.

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 & Border Protection (CBP) intends to revoke one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of cylindrical air filters. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before May 23, 2003.

ADDRESS: Written comments are to be addressed to Customs & Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at Customs & Border Protection, 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: Joe Shankle, Textiles Branch, at (202) 572-8824.

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 CBP 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 CBP 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 CBP 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 CBP intends to revoke one ruling letter relating to the tariff classification of certain cylindrical air filters. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) I84014, dated July 18, 2002, (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP 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, CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved with substantially identical merchandise should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical merchandise 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 decision on this notice.

In NY I84014, CBP classified cylindrical air filters that are referred to as Synfil™ Synthetic HEPA™ Circular Air Filters. The filters are cylindrical in shape, are non-fiberglass and non-PTFE, and are used in household air purifiers. The internal filter medium is composed of extruded polypropylene filaments forming a non-woven material that is folded into a circular accordion shape. The filter medium is inserted into a circular plastic mesh housing and secured in place by means of rubber rings placed on each end of the housing. The sample submitted measures approximately 10¾ inches in diameter. CBP classified the filters in subheading 8421.39.8015, HTSUSA, which provides for "Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof: Filtering or purifying ma-

chinery and apparatus for gases: Other: Other, Dust collection and air purification equipment: Other.”

Based on our analysis of the scope of the terms of headings 8421, HTSUSA, and 5911, HTSUSA, the Legal Notes, and the Explanatory Notes, the cylindrical air filters subject to this notice, are classified in subheading 5911.90.0080, HTSUSA, which provides for “Textile products and articles, for technical uses, specified in note 7 to this chapter: Other: Other.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY I84014 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter 966083 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

Dated: April 8, 2003.

GAIL A. HAMILL,
(for Myles B. Harmon, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
New York, NY, July 18, 2002.
CLA-2-84:RR:NC:1:104 I84014
Category: Classification
Tariff No. 8421.39.8015

MS. HILDA L. FONTECCHIO
V. ALEXANDER & CO., INC.
3286 North Park Blvd., Suite D
Alcoa, TN 37701-3255

Re: The tariff classification of a HEPA™ circular air filter from Taiwan.

DEAR MS. FONTECCHIO:

In your letter dated June 24, 2002 on behalf of Synfil Technologies of Knoxville, Tennessee you requested a tariff classification ruling.

The Synfil™ Synthetic HEPA™ Circular Air Filters are filters used in household air purifiers. The filters are non-fiberglass and non-PTFE. They are available in different sizes and can be custom made to meet customer needs. A representative sample was submitted for examination. The internal filter media is composed of extruded polypropylene filaments folded into a circular accordion shape. The filter media is inserted into a circular plastic mesh housing and secured in place by means of rubber rings placed on either end of the housing. The sample measures approximately 10¾" in diameter. Said sample will be retained by this office.

The applicable subheading for the Synfil™ Synthetic HEPA™ Circular Air Filter will be 8421.39.8015, Harmonized Tariff Schedule of the United States (HTS), which provides for Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof: Filtering or purifying machinery and apparatus for gases: Other: Other * * * Dust collection and air purification equipment: Other. The rate of duty will be 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 Robert Losche at 646-733-3011.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
Washington, DC.

CLA-2:RR:CR:TE 966083 JFS
Category: Classification
Tariff No. 5911.90.0080

MR. SANJIV R. MALKAN
PRESIDENT AND CEO
SYNFL TECHNOLOGIES
P.O. Box 31486
Knoxville, TN 37930-1486

Re: Request for Reconsideration of NY I86458; Revocation of NY I84014; Cylindrical Air Filters; Textile Articles for Technical Use; Heading 5911, HTSUSA.

DEAR MR. MALKAN:

This is in response to your request for reconsideration of New York Ruling Letter (NY) I86458, dated October 1, 2002, wherein Customs classified flat panel air filters in heading 5911, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). In your request for reconsideration, you request that Customs classify the flat panel air filters consistent with Customs ruling in NY I84014, dated July 18, 2002, wherein Customs classified cylindrical air filters in heading 8421, HTSUSA. Customs has considered both rulings. For the reasons that follow, this ruling revokes NY I84014.

Facts:

The sample considered in NY I84014, is a representative sample of a line of filters referred to as Synfil™ Synthetic HEPA™ Circular Air Filters. The filters are cylindrical in shape, are non-fiberglass and non-PTFE, and are used in household air purifiers. The internal filter medium is composed of extruded polypropylene filaments forming a non-woven material that is folded into a circular accordion shape. The filter medium is inserted into a circular plastic mesh housing and secured in place by means of rubber rings placed on each end of the housing. The sample measures approximately 10¾ inches in diameter.

In NY I84014, Customs classified the filters in subheading 8421.39.8015, HTSUSA, which provides for “Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof: Filtering or purifying machinery and apparatus for gases: Other: Other, Dust collection and air purification equipment: Other. The general column one rate of duty is Free.

Issue:

Whether the subject cylindrical air filters composed of a textile filter medium that is enclosed in a plastic mesh housing and has rubber rings on each end are classified in heading 5911, HTSUSA, as articles of textile for technical use?

Law and Analysis:

Classification under the HTSUSA 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 may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN's) represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The EN's, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUSA, and are generally indicative of the proper interpretation of these headings.

You assert that the subject merchandise is properly classified in heading 8421, HTSUSA, as a part of purifying or filtering machinery, rather than in heading 5911, HTSUSA, as other textile products for technical uses. Heading 8421, HTSUSA, specifically provides for "Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof."

Note 1(e) to Section XVI provides that the section does not cover "[t]ransmission or conveyor belts or belting of textile material (heading 5910) or other articles of textile material for technical uses (heading 5911)." The General EN to Chapter 84, page 1393, also excludes from classification in Chapter 84, articles of textile material for technical uses (heading 5911). The EN's to heading 8421, HTSUSA, further provide that textile filtering elements are to be classified according to their constituent material. The EN's further state that heading 8421 excludes textile articles such as those classifiable in heading 5910 or 5911. Therefore, the merchandise is excluded from heading 8421, HTSUSA.

Moreover, the ENs for heading 8421, HTSUSA, state, in pertinent part, that:

PARTS

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), the heading covers parts for the above-mentioned types of filters and purifiers. * * *

It should be noted, however, that filter blocks of paper pulp fall in heading 48.12 and that many other filtering elements (ceramics, *textiles*, felts, etc.) are classified according to their constituent material. (Emphasis added).

In addition, the General EN to Section XVI, at page 1385, state:

This section does not, however, cover * * * (c) Textiles articles, e.g. transmission or conveyor belts (heading 5910), felt pads and polishing discs (heading 5911).

Furthermore, Additional U.S. Rule of Interpretation 1(c), provides:

In the absence of special language or context which otherwise requires a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for "parts" or "parts and accessories" shall not prevail over a specific provision for such part or accessory.

Customs does not believe that the subject merchandise should be classified as a part of a filtering machine in heading 8421, HTSUSA. Customs notes that the parts provision of heading 8421, HTSUSA, is less specific than the heading for textile materials for technical purposes (discussed *infra*). Furthermore, Customs notes that the subject merchandise is imported separately from the filtering machinery. Even if considered a "part" of the filtering machinery, the subject merchandise is excluded from this heading due to the textile composition from which it is constructed by operation of Note 1(e), which excludes textile materials for technical uses (heading 5911).

Heading 5911, HTSUSA, provides for textile products and articles for technical uses so long as they are specified in Note 7 to Chapter 59, HTSUSA. Note 7 to Chapter 59 reads:

Heading 5911 applies to the following goods, which do not fall in any other heading of section XI:

(a) Textile products in the piece, cut to length or simply cut to rectangular (including square) shape (other than those having the character of the products of headings 5908 to 5910), the following only:

(i) Textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for card cloth-

ing, and similar fabrics of a kind used for other technical purposes, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams);

- (ii) Bolting cloth;
- (iii) Straining cloth of a kind used in oil presses or the like, of textile material or human hair;
- (iv) Flat woven textile fabrics with multiple warp or weft, whether or not felted, impregnated or coated, of a kind used in machinery or for other technical purposes;
- (v) Textile fabric reinforced with metal, of a kind used for technical purposes;
- (vi) Cords, braids and the like, whether or not coated, impregnated or reinforced with metal, of a kind used in industry as packing or lubricating materials;

(b) Textile articles (other than those of headings 5908 to 5910) of a kind used for technical purposes (for example, textile fabrics and felts, endless or fitted with linking devices, of a kind used in papermaking or similar machines (for example, for pulp or asbestos-cement), gaskets, washers, polishing discs and other machinery parts).

The EN to heading 5911, HTSUSA, state that “textile products and articles of this heading present particular characteristics which identify them as being for use in various types of machinery, apparatus, equipment or instruments or as tools or parts of tools.”

Furthermore, Section B to the EN’s for heading 5911 specifically addresses textile articles of a kind used for technical purposes. The EN’s state in pertinent part:

All textile articles of a kind used for technical purposes (other than those of headings 59.08 to 59.10) are classified in this heading and not elsewhere in Section XI (see Note 7(b) to the Chapter); for example:

- (1) Any of the fabrics of (A) above which have been made up (cut to shape, assembled by sewing, etc.) for example straining cloths for oil presses made by assembly of several pieces of fabric; bolting cloth cut to shape and trimmed with tapes or furnished with metal eyelets or cloth mounted on a frame for use in screen printing.

* * * * *

- (9) Bags for vacuum cleaners, filter bags for air filtration plant, oil filters for engines, etc.

The EN’s further state that “the textile articles of this heading may incorporate accessories in other material provided the articles remain essentially articles of textile.” The instant filters consist of the textile filter medium that is encased with plastic mesh housing and secured by rings at each end. It is the textile material, by filtering out the unwanted particles in the air, that serves as the unifying component of the filters. Accordingly, the plastic mesh housing and rubber rings do not preclude classification of the subject merchandise within heading 5911, HTSUSA.

In NY I86458, Customs classified a filter that was 16 inches square and approximately 1¼ inches thick. The filter medium was identical to the filter medium used in the instant cylindrical filter. The filter medium was housed in a cardboard frame. Customs classified the filter in subheading 5911, HTSUSA. Likewise, in Headquarters Ruling Letter (HQ) 965820, dated October 3, 2002, Customs classified filters designed to be used in domestic forced air heating and cooling systems in heading 5911, HTSUSA. The filters were described as follows:

The subject merchandise is an air filter for use in domestic forced air furnaces. The filters are ready to use when purchased and are available in several standard sizes: 16 inches by 25 inches; 20 inches by 20 inches; and 20 inches by 25 inches. The filters consist of Filtrete™ filter medium, a metal mesh support and a cardboard frame. The Filtrete™ medium is described as a nonwoven filter cloth comprised of a nonwoven web of electrostatically charged polypropylene fibers weighing 20 to 70 grams per meter squared (“g/m²”).

Customs conducted the same analysis as above and concluded that the cardboard frame and metal mesh did not preclude the classification of the filters in heading 5911, HTSUSA.

The instant cylindrical filters are substantially similar to those filters considered in HQ 965820 and NY I86458. Although, the instant filters have a more substantial housing, the primary function of the filters is still carried out by the textile material. Accordingly, the

addition of the non-textile materials is not substantial enough to keep them from being essentially articles of textile. For rulings classifying filters and filter media in heading 5911, HTSUSA, see HQ 954138, dated June 15, 1993; HQ 956909, dated January 31, 1995; HQ 955244, dated April 4, 1994; and NY 863512, dated June 11, 1991.

Holding:

NY I86458, dated October 1, 2002, is hereby revoked. The subject merchandise is classified in subheading 5911.90.0080, HTSUSA, which provides for "Textile products and articles, for technical uses, specified in note 7 to this chapter: Other: Other." The general column one duty rate is 4.2 percent *ad valorem*.

MYLES HARMON,
Director,
Commercial Rulings Division.