

# Bureau of Customs and Border Protection

## *General Notices*

**DEPARTMENT OF TREASURY**

**19 CFR PARTS 10 AND 178**

**(CBP Dec. 04-36)**

**RIN 1505-AB32**

### **PROTOTYPES USED SOLELY FOR PRODUCT DEVELOPMENT, TESTING, EVALUATION, OR QUALITY CONTROL PURPOSES**

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

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs and Border Protection Regulations in order to establish rules and procedures under the Product Development and Testing Act of 2000 (PDTA). The purpose of the PDTA is to promote product development and testing in the United States by allowing the duty-free entry of articles, commonly referred to as prototypes, that are to be used exclusively in product development, testing, evaluation or quality control. The final regulations set forth the procedures for both the identification of those prototypes properly entitled to duty-free entry, as well as the permissible sale of such prototypes, following use in the United States, as scrap, waste, or for recycling.

**EFFECTIVE DATE:** This final rule is effective on December 2, 2004.

**FOR FURTHER INFORMATION CONTACT:** Richard Wallio, Office of Field Operations, 202-344-2556.

**SUPPLEMENTARY INFORMATION:**

#### **BACKGROUND**

The Product Development and Testing Act of 2000 (PDTA) was enacted on November 9, 2000, as part of the Tariff Suspension and

Trade Act of 2000 (Act) (Pub. L. 106-476). The provisions of the PDTA are found in sections 1431-1435 of the Act.

The purpose of the PDTA, as set forth in section 1432(b) of the Act, is to promote product development and testing in the United States by allowing the importation on a duty-free basis of articles commonly referred to as "prototypes" that are to be used exclusively for product development, testing, evaluation or quality control.

Until the enactment of the PDTA, prototype articles had generally been subject to customs duty when imported, unless the articles were eligible for duty-free treatment under a special trade program, such as the North American Free Trade Agreement (NAFTA) (19 U.S.C. 3301 et seq.), or unless they were entered under a temporary importation bond (TIB) (subheading 9813.00.30, Harmonized Tariff Schedule of the United States (HTSUS)). Furthermore, the value of these prototypes had to be included in the dutiable value of any imported production merchandise that resulted from the same design and development efforts to which the prototype articles themselves were dedicated. In effect, duty on a prototype good was assessed twice, once when the prototype was imported and a second time as part of the dutiable value of the related imported production merchandise.

Consequently, to expedite and encourage the use of prototypes in the United States, section 1433 of the Act amended the Harmonized Tariff Schedule of the United States (HTSUS) by inserting a new subheading 9817.85.01 in Subchapter XVII of Chapter 98, HTSUS, to provide for the duty-free entry of prototype articles. Section 1433 of the Act also included a new U.S. Note 6 in Subchapter XVII of Chapter 98, HTSUS, to define the term "prototypes" as used in HTSUS subheading 9817.85.01.

### **CBP Rulemaking**

By a document published in the **Federal Register** (67 FR 10636) on March 8, 2002, Customs (which has been renamed Customs and Border Protection (CBP) after being transferred to the Department of Homeland Security) proposed to amend the Customs Regulations (now the CBP Regulations) to add a new § 10.91, in accordance with the requirements of the PDTA, that would: (1) establish procedures regarding the identification of prototypes at the time of their importation into the United States; and (2) establish procedures regarding the sale of prototypes as scrap, waste, or for recycling, after their intended use in product development, testing, and evaluation, provided that all applicable duties were tendered following the sale, at the rate of duty in effect for such scrap, waste, or recycled materials at the time of importation of the prototype articles. These latter procedures relating to the sale of the used prototypes also included prototypes and parts of prototypes that were incorporated into other products that were sold as scrap, waste, or recycled materials.

### **Discussion of Comments**

Twelve commenters responded to the notice of proposed rulemaking. A description of the issues that are raised by these commenters together with CBP's response to these issues is set forth below.

#### **General; Duty-Free Entry**

##### **COMMENT:**

Proposed § 10.91 does not create simplified procedures and impose only minimal burdens, as Congress intended in enacting the PDTA, regarding the entry of prototype articles for use under HTSUS subheading 9817.85.01, and the possible recovery and sale of the used prototypes thereafter as scrap, waste, or for recycling.

##### **CBP RESPONSE:**

CBP disagrees. It is CBP's view that the proposed procedures as further developed in this final rule will efficiently and expeditiously promote product development and testing in the United States, as contemplated under the PDTA, while, at the same time, ensuring that the subject tariff provision is used only for the purposes intended, and that any duty that is due on the sale of scrap, waste or recycled material is correctly reported and paid, as the PDTA also requires.

##### **COMMENT:**

The heading for proposed § 10.91 should add a reference to product evaluation and quality control as purposes for which prototypes may be entered duty-free under HTSUS subheading 9817.85.01.

##### **CBP RESPONSE:**

CBP finds that this is unnecessary. Section headings and titles are nothing more than reference guides and cannot limit or restrict the plain meaning of the regulatory text itself. In accordance with the PDTA, § 10.91(b)(1) fully addresses the purposes for which prototype articles may be entered duty-free under HTSUS subheading 9817.85.01.

##### **COMMENT:**

It is observed that proposed § 10.91 inadvertently omits a paragraph (d), although it does contain paragraphs (e) and (f).

##### **CBP RESPONSE:**

While this observation is correct, CBP is adding a paragraph (d) in the final rule. The new paragraph (d) describes the obligations of an importer of a prototype to CBP regarding a used prototype if the used prototype is not sold. Because a paragraph (d) is added, para-

graphs (e) and (f) in proposed rule § 10.91 may retain their respective designations. However, because the proposed rule incorrectly cross-referenced paragraph (d) in § 10.91(b)(2)(ii) and § 10.91(c)(3), these cross-references are corrected in the final rule.

**COMMENT:**

Proposed § 10.91(a) should provide that goods entered as prototypes under HTSUS subheading 9817.85.01 may be exported or scrapped prior to being used for the required purposes.

**CBP RESPONSE:**

CBP disagrees. One of the purposes of the PDTA was to encourage the trade to do its testing and research in the United States without having to pay duty. Accordingly, CBP believes that goods that benefit under the PDTA must be used for testing and research. Proposed § 10.91(d) reflects this.

**COMMENT:**

Proposed § 10.91(a)(1) should include specific guidelines for the preparation of the CF 7501 (now CBP Form 7501) when an importer is entering prototypes under HTSUS subheading 9817.8501. In particular, no other HTSUS subheading should be required on the CBP Form 7501.

**CBP RESPONSE:**

CBP disagrees that this regulation needs to include specific guidelines. The statistical note to Chapter 98, HTSUS, provides sufficient guidance. In addition, operational instructions will be issued covering all aspects of the preparation of the CBP Form 7501 for articles sought to be entered, duty-free, as prototypes under HTSUS subheading 9817.85.01.

**Importer Declaration; Proof of Actual Use;  
Liquidation of Entry**

**COMMENT:**

Proposed § 10.91 should include specific requirements regarding the certification of the prototypes, such as a statement from the importer indicating that the material is for testing or evaluation under HTSUS subheading 9817.85.01.

**CBP RESPONSE:**

CBP believes that § 10.91(a)(2)(i) will adequately address this issue in the context of the importer declaration.

**COMMENT:**

It is pointed out that proposed § 10.91(a)(2) does not make any provision for the liquidation of a prototype entry under HTSUS subheading 9817.85.01.

**CBP RESPONSE:**

CBP agrees that a time frame for liquidation of a prototype entry should be provided, especially in relation to § 10.91(a)(2)(ii), which authorizes the port director to request proof of actual use. In this respect, proposed § 10.91(a)(2)(ii) is amended in this final rule to provide that liquidation of the entry will be extended until the requested proof of actual use is received, or until the three-year period from the date of entry allowed for its receipt has expired; and that if proof of actual use is requested and not timely received, the entry will be liquidated as dutiable under the tariff provision that would otherwise apply to the imported article.

**COMMENT:**

It is contended, under proposed § 10.91(a)(2)(ii), that the PDTA does not envision permitting the port director to request proof of actual use of the articles following their entry under HTSUS subheading 9817.85.01, and that CBP should not impose such a requirement. It is declared that the life of a prototype may easily span many years and that this would be inconsistent with requiring proof of use, which must usually be submitted within three years of the date of entry. One company asked that it be specifically exempted from any requirement to submit proof of actual use of the articles following entry.

**CBP RESPONSE:**

CBP believes that it has the discretion to ask for proof of actual use under HTSUS subheading 9817.85.01. To be entitled to duty-free entry under that HTSUS subheading, the imported articles must qualify as prototypes that are to be used exclusively for development, testing, product evaluation or quality control purposes. In this latter vein, CBP has a responsibility and an obligation under the PDTA to follow up, on occasion, and require post-entry proof of actual use as specified in § 10.91(a)(2)(ii), in order to effectively monitor and ensure the proper employment of this tariff provision for the purposes intended. To this end, the port director is accorded the discretion to require such proof in those cases where it is believed to be warranted.

In those instances where the port director requests proof of actual use, while such proof of use must be given to CBP within three years of the date of entry, the prototype may, of course, continue to be used thereafter for the purposes enumerated in HTSUS subheading 9817.85.01. Proposed § 10.91(a)(2)(ii) is modified in this final rule to

make this clear. Also, in relation to this, proposed § 10.91(a)(2)(ii)(A) is recast in this final rule to provide that the proof of use, if requested, must include a description of the use that is being and/or that has been made of the articles so as to enable the port director to confirm that the articles have been entitled to entry as claimed.

**COMMENT:**

Proposed § 10.91(a)(2)(ii) should make clear what type of statements would be acceptable for the proof or declaration of actual use. Also, the statement required in proposed § 10.91(a)(2)(ii)(B) that prototype articles not be put to any other use than as specified in HTSUS subheading 9817.85.01 seems contradictory in that the articles may be sold for use as scrap, waste, or for recycling under the PDTA.

**CBP RESPONSE:**

CBP agrees in part. To further sharpen the focus of this provision, proposed § 10.91(a)(2)(ii)(B) is revised in this final rule to reflect that the prototype articles may not be put to any other use than as specified in HTSUS subheading 9817.85.01 after their entry or withdrawal from warehouse for consumption and prior to the completion of their use under HTSUS subheading 9817.85.01. Further, a reference to paragraphs (c) and (d) is added to § 10.91(a)(2)(ii)(B) in this final rule, indicating the permissible dispositions to which the articles may be subject following the completion of their use as prescribed in HTSUS subheading 9817.85.01.

As thus revised, CBP finds that § 10.91(a)(2)(ii)(A)–(C) sets forth the information required for the proof (declaration) of actual use with ample clarity and detail, and, along these same lines, proposed § 10.91(e)(1) is changed in this final rule to reference those records which would be necessary to support the proof of actual use.

**COMMENT:**

Proposed § 10.91(a)(2)(ii)(C) provides that a declaration of actual use must include a statement that neither the articles nor any parts of the articles will be sold, or be incorporated into other products that are sold, after the articles have been entered or withdrawn from warehouse for consumption and prior to the completion of their use as provided in HTSUS subheading 9817.85.01. This paragraph seems unnecessary in light of proposed § 10.91(a)(2)(ii)(B), which provides that the declaration of actual use must also include a statement that articles are not to be put to any other use after the articles have been entered or withdrawn from warehouse for consumption and prior to the completion of their use under HTSUS 9817.95.01.

**CBP RESPONSE:**

CBP disagrees. The statement required in § 10.91(a)(2)(ii)(C) represents an acknowledgment by the importer that the prototype articles may not be sold after importation and prior to their use as prototypes under HTSUS subheading 9817.85.01. A sale of the prototype articles does not constitute a use of those articles as contemplated under § 10.91(a)(2)(ii)(B).

**Articles Classifiable as Prototypes under the PDTA****COMMENT:**

Proposed § 10.91(b)(1) should be revised essentially to state that an article may be presumed to be entitled to duty-free entry as a prototype under HTSUS subheading 9817.85.01, if the article is otherwise eligible for entry under a temporary importation bond (TIB) pursuant to HTSUS subheading 9813.00.30 (articles intended solely for testing, experimental or review purposes).

**CBP RESPONSE:**

CBP disagrees. Articles that may be entitled to free entry as prototypes under HTSUS subheading 9817.85.01 are defined in U.S. Note 6(a) to Subchapter XVII of Chapter 98, HTSUS. This definition is essentially mirrored in § 10.91(b)(1). Not all articles entitled to entry under TIB pursuant to HTSUS subheading 9813.00.30 would necessarily meet the stated definition for “prototypes,” as required for duty-free entry under HTSUS subheading 9817.85.01.

**COMMENT:**

Proposed § 10.91(b)(1) should expressly state that prototypes may encompass articles from all industries, and are not restricted to articles of certain industries.

**CBP RESPONSE:**

CBP agrees. The introductory text of proposed § 10.91(b)(1) is changed in this final rule to affirm that articles classifiable as prototypes under HTSUS subheading 9817.85.01 may encompass articles that pertain to any industry as long as such articles meet the requirements set forth in § 10.91(b)(1)(i) and (b)(1)(ii).

**COMMENT:**

The definition of prototypes should be revised to show that certain motor vehicles and parts of motor vehicles would qualify as “original” articles under proposed § 10.91(b)(1). Additionally, concerning proposed § 10.91(b)(1)(i), it is suggested that a definition be added for the term “preproduction” to explicitly include research and development efforts expended on prototypes that may never result in com-

mercial production; and that the phrase “development, testing, product evaluation or quality control” be further defined to include, among other things, “manufacturing of the imported [prototype] articles with any foreign or domestic materials, and further processing.”

**CBP RESPONSE:**

CBP is of the opinion that the definition of prototypes in U.S. Note 6(a) to Subchapter XVII, Chapter 98, HTSUS, as adopted in § 10.91(b)(1)(i) and (b)(1)(ii), should not be further expanded within the framework of this rulemaking. In this regard, whether given merchandise or particular activities or operations would fall within the scope of the definition for prototypes under the PDTA would more suitably be determined on a case-by-case basis as the need arises, taking into account the precise facts and circumstances of each case, through the administrative ruling process in accordance with the requirements of part 177, CBP Regulations (19 CFR part 177).

**COMMENT:**

In proposed § 10.91(b)(2)(i), the importation of prototypes is limited to noncommercial quantities based on industry practice. The exact limits on the numbers of prototypes that may be imported should be included in the regulation.

**CBP RESPONSE:**

CBP disagrees. It is not possible to establish rigid limitations on the numbers of prototypes that may be entered under HTSUS subheading 9817.85.01, in view of the multifarious industries potentially affected and the myriad purposes among those industries for which prototypes might be used in testing, evaluation, product development or quality control. In certain cases, an entry may be rejected if CBP should conclude that an importer seeks to enter a commodity under HTSUS subheading 9817.85.01 in numbers that are considered to be excessive in light of the purposes intended and based on the practice of the specific industry involved.

**COMMENT:**

Proposed § 10.91(b)(2)(ii) should be revised to provide that the general restriction on the sale of prototypes or parts of prototypes after their importation into the United States does not apply to sales for export. It is stated that the same principle applies in the case of temporary importations under bond (TIBs).

**CBP RESPONSE:**

CBP believes that it is sufficient in the context of this rulemaking to generally restate the prohibition imposed in U.S. Note 6(b)(ii) to



Subchapter XVII, Chapter 98, HTSUS, on the sale of prototypes or parts of prototypes into the commerce of the United States after their importation into the United States, including their incorporation into other products that are sold. The prohibition on the sale of prototypes or parts of prototypes does not apply to sales for export.

Analogously, the TIB provisions and attendant regulations are to the same effect. Specifically, articles entitled to entry under TIB may not be imported for sale or for sale on approval (U.S. Note 1(a) to Subchapter XIII, Chapter 98, HTSUS); and the implementing CBP Regulations for TIBs merely reiterate this requirement (§ 10.31(a)(3)(iii), CBP Regulations (19 CFR 10.31(a)(3)(iii))).

**COMMENT:**

Clarification is sought as to proposed § 10.91(b)(2)(iii) (“Articles excluded from being prototypes”), which excludes articles from being classified as prototypes if they are subject to quantitative restrictions, antidumping orders or countervailing duties. It is asked whether this provision would exclude all textile and apparel products, as opposed to those that are in fact subject to quantitative restrictions at the time of entry.

**CBP RESPONSE:**

Based upon U.S. Note 6(c) to Subchapter XVII of Chapter 98, HTSUS, articles that are in fact subject at the time of entry to quantitative restrictions, antidumping orders or countervailing duty orders are precluded from being classifiable as prototypes entitled to free entry under HTSUS subheading 9817.85.01. Proposed § 10.91(b)(2)(iii), entitled, “Articles excluded from being prototypes,” is revised in this final rule to make this clear, and, furthermore, for purposes of editorial integrity, the provision is redesignated in this final rule as § 10.91(b)(2)(iv). Also, the introductory text of proposed § 10.91(b)(2) is revised in this final rule to add a reference to U.S. Note 6(c).

**Sale of Prototypes Following Use; Alternative Dispositions**

**COMMENT:**

It is asserted, in connection with proposed § 10.91(c), that articles imported as prototypes under HTSUS subheading 9817.85.01 do not have to be sold as scrap, waste or for recycling; that such articles may instead be exported, destroyed, donated to charity, otherwise given away to another party, or be retained and/or put to any other use by the importer. It is suggested that § 10.91 should make reference to these possible alternative dispositions of the articles, and state that such alternative dispositions of the used prototype articles need not be reported to CBP.

**CBP RESPONSE:**

CBP agrees. Except for sale, section 1434(b) of the PDTA is not concerned with any other disposition of the prototypes following their use pursuant to HTSUS subheading 9817.85.01. Hence, other than sale to the extent authorized under section 1434(b), no other disposition of the used prototype articles need be reported to CBP. A paragraph (d) is added to proposed § 10.91 in this final rule to address this issue.

**COMMENT:**

With respect to proposed § 10.91(c), the regulation should set out a comprehensive definition of recycling.

**CBP RESPONSE:**

CBP has determined, as with the definition for prototypes discussed previously, that the meaning of recycling for purposes of the PDTA would more aptly be elucidated on a case-by-case basis through the administrative ruling process pursuant to part 177, CBP Regulations (19 CFR part 177). The concept of recycling may have different meanings depending upon the merchandise concerned or the particular industry involved.

**COMMENT:**

Under proposed § 10.91(c)(1), the provision that the used prototypes or parts may be sold as scrap, waste, or for recycling upon payment of applicable duty appears to erroneously imply that duty must be paid before the articles may be sold.

**CBP RESPONSE:**

To avoid this misperception, proposed § 10.91(c)(1) is revised in this final rule to make clear that duty is payable after the sale of the used prototypes or their parts. Furthermore, in § 10.91(c)(1), a reference is added in this final rule to § 10.91(c)(3), which sets forth the timing and the manner in which the applicable duty must be paid.

**COMMENT:**

Proposed § 10.91(c)(2) should not require the submission of a notice of sale if the used prototype that is sold as scrap, waste, or for recycling is not subject to any duty.

**CBP RESPONSE:**

CBP disagrees. The report of sale under § 10.91(c)(2) is needed so that CBP may readily confirm that the used prototype material has been sold as scrap, waste, or for recycling, as authorized under the PDTA, and that the importer is correct in concluding that the scrap, waste or recycled material that is sold is duty-free.

For editorial consistency, the last sentence of proposed § 10.91(c)(2) is recast in this final rule to advise that the notice of sale, if applicable, should not be submitted to CBP prior to the submission of proof of actual use, in the event that such proof should be requested by the port director; likewise, the reference to paragraph (c)(1) in the last sentence of proposed § 10.91(c)(2) is changed in this final rule to paragraph (a)(2)(ii).

**COMMENT:**

Proposed § 10.91(c)(2) and (c)(3) should be amended to allow the notice of sale to be filed quarterly, instead of within 10 business days of each sale. A requirement that a separate notice of sale be filed for each prototype or part of a prototype that is scrapped or recycled and subsequently sold would impose an undue burden on the importer. At the same time, lengthening the reporting period would have no appreciable impact on customs revenue since most scrap, waste and recycled materials are duty-free.

**CBP RESPONSE:**

CBP agrees. Paragraphs (c)(2) and (c)(3) of proposed § 10.91 are changed in this final rule to permit an importer to file a blanket notice of sale covering all sales of prototypes and parts that occur during a quarterly (3-month) calendar period. This blanket notice must be filed within 10 business days following the end of the related quarterly calendar period in which the sale(s) occurred.

**COMMENT:**

A question is posed as to whether the notice of sale in proposed § 10.91(c)(3) constitutes a new entry, an amended entry, or a voluntary disclosure.

**CBP RESPONSE:**

The notice of sale is neither an import entry, nor is it a voluntary disclosure. The notice of sale is basically the required report that is made to CBP regarding those prototypes and parts of prototypes that are sold as scrap, waste, or for recycling following their use under HTSUS subheading 9817.85.01. The employment of an import entry form (a CBP Form 7501), modified as appropriate, as provided in § 10.91(c)(3), is simply a convenient administrative means for making the required report of sale to CBP.

**COMMENT:**

It is asked, regarding proposed § 10.91(c)(3)(I), whether the description requested by CBP of the condition of a prototype following its use for the purposes specified in HTSUS subheading 9817.85.01 relates to an article immediately following its use as a prototype or the article after it has been scrapped (i.e., crushed and shredded).

**CBP RESPONSE:**

CBP is interested in any damage, degradation or deterioration to the prototype articles resulting from their use for the specified purposes and resulting from any other cause before their sale as scrap, waste or for recycling. Proposed § 10.91(c)(3)(i) is thus clarified in this final rule. Also, a corresponding change is made to proposed § 10.91(e)(2) in this final rule pertaining to the valuation of the used prototypes or their parts for purposes of proper duty assessment.

**Entry Bond; Liquidated Damages for  
Failure to Report Sale/Pay Duty****COMMENT:**

Under proposed § 10.91(c)(4), the failure to file a notice of sale or to deposit appropriate duty following the sale of a used prototype as scrap, waste, or for recycling constitutes a breach of the importer's entry bond that will result in the assessment of liquidated damages under the bond. The question is presented as to what action CBP would take, for example, assuming the applicability of 19 U.S.C. 1504(b), should the import entry of a prototype article be liquidated by operation of law (4 years from the date of entry), with the underlying import bond being cancelled, before the used prototype article is sold as scrap, waste, or for recycling.

**CBP RESPONSE:**

CBP has decided to delete proposed § 10.91(c)(4) in this final rule. The import entry bond referred to in proposed § 10.91(c)(4) covers the performance of those conditions (19 CFR 113.62(h)) that are associated with the duty-free entry of a prototype as defined in the PDTA that is to be used exclusively under HTSUS subheading 9817.85.01. As such, the duty-free entry of the prototype under HTSUS subheading 9817.85.01 is not concerned with or conditioned upon any liability for duty that might thereafter accrue pursuant to section 1434(b) of the PDTA due to the subsequent sale of the prototype as scrap, waste, or for recycling. In sum, the payment of applicable duty on scrap, waste or recycled material under the PDTA is an entirely separate and distinct transaction that is not subsumed within the duty-free entry of the prototype article.

Consequently, since duty to the extent payable on scrap, waste, or recycled material that is sold under section 1434(b) of the PDTA would not be assessed or collected under the import entry for the prototype, liquidated damages under the associated import entry bond would not apply with respect to such a sale.

### **Recordkeeping Requirements**

#### **COMMENT:**

In proposed § 10.91(e)(1), the record retention period for documents supporting the notice of sale of a used prototype as scrap, waste or for recycling should be five years from the date of the entry of the prototype article under HTSUS subheading 9817.85.01.

#### **CBP RESPONSE:**

CBP disagrees. As explained above, the possible sale of the used prototype as scrap, waste, or recycled material is not related to the entry of the prototype under HTSUS subheading 9817.85.01. Should a sale of the used prototype as scrap, waste, or for recycling in fact occur, § 10.91(e)(1) mandates that records supporting the notice of sale be retained for five years from the date of filing the notice of sale in complete and proper form under § 10.91(c)(3). This is governed by § 163.4(a), CBP Regulations (19 CFR 163.4), which is referenced in § 10.91(e)(1).

#### **COMMENT:**

Proposed § 10.91(e)(2) should make clear that the market value of any prototypes sold as scrap, waste, or for recycling will be based upon their selling price.

#### **CBP RESPONSE:**

Section 10.91(e)(2) already makes this amply clear.

### **Conversion of TIB Entry to Duty-Free Prototype Entry**

#### **COMMENT:**

Proposed § 10.91(f) should be expanded to permit temporary importation bond (TIB) entries under HTSUS subheading 9813.00.05 to be converted to duty-free entries under HTSUS subheading 9817.85.01.

#### **CBP RESPONSE:**

CBP disagrees. Section 1435(2) of the PDTA expressly allows only TIB entries under HTSUS subheading 9813.00.30 to be converted to duty-free entries under HTSUS subheading 9817.85.01, if those TIB entries otherwise qualify for such conversion.

### **Conclusion**

In view of the foregoing, and following careful consideration of the comments received and further review of the matter, CBP has concluded that the proposed regulations with the modifications discussed above should be adopted as a final rule.

### **REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866**

This final rule amends the CBP Regulations to implement the terms and requirements of the PDTA, which went into effect on November 9, 2000. These regulations benefit the public by allowing the duty-free importation of prototypes that are to be used exclusively for development, testing, product evaluation or quality control purposes, thereby promoting such activities in the United States, rather than overseas. Accordingly, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that these regulations will not have a significant economic impact on a substantial number of small entities. Nor do these regulations meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

### **PAPERWORK REDUCTION ACT**

The collections of information encompassed within this final rule document have previously been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Numbers 1651-0032 (Importers of merchandise subject to actual use provisions); and 1651-0038 (Proof of use for duty rates dependent on actual use). These collections encompass a claim for duty-free entry for prototype articles imported for use exclusively for development, testing, product evaluation or quality control purposes. This final rule does not present any material change to the existing approved information collections.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

Part 178, CBP Regulations (19 CFR part 178), containing the list of approved information collections, is revised to make reference to the new § 10.91.

### **SIGNING AUTHORITY**

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).

### **LIST OF SUBJECTS**

#### **19 CFR PART 10**

Customs duties and inspection, Imports, Preference programs, Reporting and recordkeeping requirements, Shipments.

**19 CFR PART 178**

Administrative practice and procedure, Collections of information, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

**AMENDMENTS TO THE REGULATIONS**

Parts 10 and 178, CBP Regulations (19 CFR parts 10 and 178), are amended as set forth below.

**PART 10 - ARTICLES CONDITIONALLY FREE,  
SUBJECT TO A REDUCED RATE, ETC.**

1. The general authority citation for part 10 continues to read as follows, and the specific sectional authority for § 10.91 is added in appropriate numerical order to read as follows:

**AUTHORITY:** 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

\* \* \* \* \*

10.91 also issued under Pub. L. 106-476 (114 Stat. 2101), sections 1434, 1435;

\* \* \* \* \*

2. Part 10 is amended by adding after § 10.90 a new center heading entitled "Prototypes" followed by a new § 10.91 to read as follows:

**Prototypes****§ 10.91 Prototypes used exclusively for product development and testing.**

(a) Duty-free entry; declaration of use; extension of liquidation.

(1) Entry or withdrawal for consumption. Articles defined as "prototypes" and meeting the other requirements prescribed in paragraph (b) of this section may be entered or withdrawn from warehouse for consumption, duty-free, under subheading 9817.85.01, Harmonized Tariff Schedule of the United States (HTSUS), on CBP Form 7501 or an electronic equivalent. A separate entry or withdrawal must be made for a qualifying prototype article each time the article is imported/reimported to the United States.

(2) Importer declaration. (i) Entry accepted as declaration. Entry or withdrawal from warehouse for consumption under HTSUS subheading 9817.85.01 may be accepted by the port director as an ef-

factive declaration that the articles will be used solely for the purposes stated in the subheading.

(ii) Proof (Declaration) of Actual Use. If it is believed the circumstances so warrant, the port director may request the submission of proof of actual use, executed and dated by the importer. The title of the party executing the proof of actual use must be set forth. If proof of actual use is requested, the importer must provide it within three years after the date the article is entered or withdrawn from warehouse for consumption. Liquidation of the related entry may be extended until the requested proof or declaration of actual use is received or until the three-year period from the date of entry allowed for the receipt of such proof has expired. While requested proof of use must be given to CBP within three years of the date of entry, the prototype may continue to be used thereafter for the purposes enumerated in HTSUS subheading 9817.85.01. If requested proof of use is not timely received, the entry will be liquidated as dutiable under the tariff provision that would otherwise apply to the imported article. While there is no particular form for this declaration, it may either be submitted in writing, or electronically as authorized by CBP, and must include the following:

(A) A description of the use that is being and/or that has been made of the articles set forth in sufficient detail so as to enable the port director to determine whether the articles have been entitled to entry as claimed;

(B) A statement that the articles have not and are not to be put to any other use after the articles have been entered or withdrawn from warehouse for consumption and prior to the completion of their use under HTSUS 9817.85.01 (also see paragraphs (c) and (d) of this section concerning the disposition(s) to which the articles may be put following their use under HTSUS subheading 9817.85.01); and

(C) A statement that the articles or any parts of the articles have not been and are not intended to be sold, or incorporated into other products that are sold, after the articles have been entered or withdrawn from warehouse for consumption and prior to the completion of their use as provided in HTSUS subheading 9817.85.01 (see paragraph (b)(2)(ii) of this section).

(b) Articles classifiable as prototypes. (1) Prototypes defined. In accordance with U.S. Note 6(a) to Subchapter XVII of Chapter 98, HTSUS, applicable to subheading 9817.85.01, the term "prototypes" means originals or models of articles pertaining to any industry that:

(i) Are either in the preproduction, production or postproduction stage and are to be used exclusively for development, testing, product evaluation, or quality control purposes (not including automobile racing for purse, prize or commercial competition); and



(ii) In the case of originals or models of articles that are either in the production or postproduction stage, are associated with a design change from current production (including a refinement, advancement, improvement, development or quality control in either the product itself or the means of producing the product).

(2) Additional requirements. In accordance with U.S. Note 6(b) and (c) to Subchapter XVII of Chapter 98, HTSUS, applicable to subheading 9817.85.01, the following additional restrictions apply to articles that may be classified as prototypes:

(i) Importations limited. Prototypes may be imported pursuant to this section only in limited noncommercial quantities in accordance with industry practice.

(ii) Sale prohibited after entry and prior to use. Prototypes or parts of prototypes may not be sold, or be incorporated into other products that are sold into the commerce of the United States, after the prototypes have been entered or withdrawn from warehouse for consumption under HTSUS subheading 9817.85.01, except that, after having been used for the purposes for which they were entered or withdrawn from warehouse under HTSUS subheading 9817.85.01, such prototypes or any part(s) of the prototypes may be sold as scrap, waste, or for recycling, as prescribed in paragraph (c) of this section.

(iii) Articles subject to laws of another agency. Articles that are subject to licensing requirements, or that must comply with laws, rules or regulations administered by an agency other than CBP before being imported, may be entered as prototypes pursuant to this section if they meet all applicable provisions of law and otherwise meet the definition of prototypes in paragraph (b)(1) of this section.

(iv) Articles excluded from being prototypes. Articles that are in fact subject at the time of entry to quantitative restrictions, anti-dumping orders or countervailing duty orders are excluded from being classified as prototypes under this section.

(c) Sale of prototype following use. (1) Sale. Prototypes or any part(s) of prototypes, after having been used for the purposes for which they were entered or withdrawn under HTSUS subheading 9817.85.01, may only be sold as scrap, waste, or for recycling. This includes a prototype or any part thereof that is incorporated into another product, as scrap, waste, or recycled material. If sold as scrap, waste, or for recycling, applicable duty must be paid on the prototypes or parts as provided in paragraph (c)(3) of this section, at the rate of duty in effect for such scrap, waste, or recycled materials at the time the prototypes were entered or withdrawn for consumption.

(2) Notice of sale required. If, after a prototype has been used for the purposes contemplated in HTSUS subheading 9817.85.01, the prototype or any part(s) of the prototype (including a prototype or

any part that is incorporated into another product) is sold as scrap, waste, or for recycling, the importer must provide notice of such sale to the port director where the entry or withdrawal of the prototype was made. A notice, in the manner authorized in paragraph (c)(3) of this section, must be submitted in connection with the sale, whether or not duty is payable. The notice should not be submitted prior to the submission of proof of actual use, should such proof of actual use be requested by the port director (see paragraph (a)(2)(ii) of this section).

(3) Form and content of notice; tender of duty. While no particular form is required for the notice of sale, a consumption entry (CBP Form 7501), appropriately modified, or an electronic equivalent as authorized by CBP, may be used for this purpose. The notice may be a blanket notice covering all those sales described in paragraph (c)(2) of this section that occur over a quarterly (3-month) calendar period. Such notice must be filed within 10 business days of the end of the related quarterly period in which the sale(s) occurred. If an article sold is dutiable, the payment of any duty due must be forwarded together with the notice (see paragraph (c)(1) of this section). If the notice is filed electronically, payment of any duty owed will be handled through the Automated Clearinghouse (see § 24.25 of this chapter). The notice of sale must be executed by the importer, or other person having knowledge of the facts surrounding the sale, and must include the following:

(i) The identity of the prototype; the consumption entry number under which it was imported; a copy of the declaration of actual use, if proof of actual use was requested under paragraph (a)(2)(ii) of this section; and a detailed description of the condition of the prototype following use for the intended permissible purposes, including any damage, degradation or deterioration to the article resulting from such use and/or otherwise resulting to the article from any other cause prior to its sale for scrap, waste, or recycling;

(ii) The name and address of the party to whom the article was sold, and (if known) the use to which the party intends to put the article;

(iii) The HTSUS subheading number for scrap, waste, or recycled material, as applicable, claimed in connection with the sale of the prototype, together with the corresponding rate of duty in effect at the time the prototype was originally imported for consumption;

(iv) The value of the prototype article (if dutiable and the duty owed is based upon value) (see paragraph (e)(2) of this section); and

(v) The title of the party executing the declaration and the date of execution.

(d) Prototypes not sold following use. As to those prototypes or parts of prototypes that, after having been used as prescribed under HTSUS subheading 9817.85.01, are disposed of otherwise than by sale (see paragraph (c)(1) of this section), there is no requirement that the importer notify CBP of any such alternative disposition. Nor are there any dutiable consequences that ensue from any disposition of the merchandise after the merchandise's use under HTSUS subheading 9817.85.01 other than sale to the extent authorized under paragraph (c)(1) of this section.

(e) Recordkeeping; retention and production. (1) Recordkeeping. The importer must be prepared to submit to the CBP officer, if requested, any information, including any supporting documents, reports and records, as was necessary for the preparation of the declaration of use, if the declaration of use was requested under paragraph (a)(2)(ii) of this section, and the notice of sale, if applicable under paragraph (c)(3) of this section. The notices, together with any related supporting evidence, may be subject to such verification as the port director reasonably deems necessary. Supporting documentary evidence must be made available to the CBP officer, upon request, for a period of five years (see § 163.4(a) of this chapter) from the date of filing in complete and proper form, the declaration of use, if requested, and, if applicable, the notice of sale. The supporting records must be made available to the CBP officer upon request in accordance with § 163.6 of this chapter.

(i) Documents supporting the proof (declaration) of actual use must:

(A) Establish that the identity and description of the prototype article is the same article that the consumption entry was made for under subheading 9817.85.01, HTSUS; and

(B) Describe the circumstances of the use of the article; the operations, testing, review, manipulation, experimentation, and/or other exercises that are being and/or that have been conducted in connection with the prototype; and the location, such as the plant or production facility, where these activities occurred, sufficient to demonstrate that the purposes enumerated in HTSUS subheading 9817.85.01 are taking and/or have actually taken place.

(ii) Documents supporting the notice of sale must establish that:

(A) The identity of the prototype sold is the same article for which a consumption entry was made under subheading 9817.85.01 HTSUS when it was imported, and that the article was in the condition described in the notice of sale;

(B) The article was sold to the party identified in the notice of sale;

(C) The HTSUS subheading number for scrap, waste, or recycled material, as applicable, claimed in connection with the sale of the prototype is accurate;

(D) The date that the prototype was originally imported for consumption, and the corresponding rate of duty in effect at the time for the applicable HTSUS subheading; and

(E) The value of the prototype article (if dutiable and the duty owed is based upon value) (see paragraph (e)(2) of this section) as claimed in the notice of sale is accurate.

(2) Relevant value for used prototype or parts sold. For purposes of this section, with respect to any duty owed on prototypes or parts of prototypes that are sold as scrap, or waste, or for recycling, where the duty owed is based upon value, the relevant value is the market value of the prototypes or parts, based upon their character and condition following use for the purposes prescribed in HTSUS subheading 9817.85.01. The relevant value should take into consideration any damage, degradation or deterioration to the prototypes or parts resulting from their use as a prototype and/or otherwise resulting to the articles from any other cause prior to their sale as scrap, waste, or for recycling. The market value will generally be measured by the selling price. Should a prototype or part of a prototype become a component of another product that is sold as scrap, waste, or recycled material, the relevant market value would be that portion of the selling price attributable to the component (prototype or part) as provided in this paragraph.

(f) Articles admitted under TIB. (1) Duty-free entry available. Under the procedure presented in paragraph (f)(2) of this section, an entry of an article made under a temporary importation bond (TIB) solely for testing, experimental or review purposes under HTSUS subheading 9813.00.30 may be converted into a duty-free entry under HTSUS subheading 9817.85.01, if the following conditions exist:

(i) The article meets the definition for “prototypes” in paragraph (b) of this section (U.S. Note 6(a) to Subchapter XVII, Chapter 98, HTSUS); and

(ii) The TIB entry for the article was in effect and had not been closed, and the TIB period for the article had not expired, as of November 9, 2000.

(2) Procedure for converting TIB entry to duty-free entry. (i) Importer request. The importer must submit a written request, or an electronic equivalent as authorized by CBP, that a TIB entry made under HTSUS subheading 9813.00.30, which was in effect and had not been closed, and for which the TIB period had not expired, as of November 9, 2000, be converted instead into a duty-free consumption entry under HTSUS subheading 9817.85.01.

(ii) **Action by CBP.** CBP will convert the TIB entry under HTSUS subheading 9813.00.30 to a duty-free entry under HTSUS subheading 9817.85.01, provided that the port director is satisfied that the conditions set forth in paragraphs (f)(1)(i) and (f)(1)(ii) of this section have been met. When the TIB entry is converted, the bond will be cancelled and the entry closed. Once the conversion is complete, the port director will provide a courtesy acknowledgment to this effect to the importer in writing or electronically.

**PART 178 – APPROVAL OF INFORMATION  
COLLECTION REQUIREMENTS**

1. The authority citation for part 178 continues to read as follows:

**AUTHORITY:** 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 et seq.

2. Section 178.2 is amended by adding the following in appropriate numerical sequence according to the section number under the columns indicated:

**§ 178.2 Listing of OMB control numbers.**

19 CFR Section	Description	OMB Control No.
*	*	*
§ 10.91	Importers of merchandise subject to actual use provisions; proof of use for duty rates dependent on actual use	1651–0032 and 1651–0038
*	*	*

ROBERT C. BONNER,  
*Commissioner,*  
*Customs and Border Protection.*

Approved: October 27, 2004

TIMOTHY E. SKUD,  
*Deputy Assistant Secretary of the Treasury.*

[Published in the Federal Register, November 2, 2004 (69 FR 63445)]

(CBP Dec. 04-38)

## FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY  
LIST FOR OCTOBER, 2004

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): October 13, 2004

European Union euro:

October 1, 2004.....	\$1.240000
October 2, 2004.....	1.240000
October 3, 2004.....	1.240000
October 4, 2004.....	1.227400
October 5, 2004.....	1.231600
October 6, 2004.....	1.229800
October 7, 2004.....	1.228600
October 8, 2004.....	1.241800
October 9, 2004.....	1.241800
October 10, 2004.....	1.241800
October 11, 2004.....	1.241800
October 12, 2004.....	1.232000
October 13, 2004.....	1.227100
October 14, 2004.....	1.239300
October 15, 2004.....	1.247800
October 16, 2004.....	1.247800
October 17, 2004.....	1.247800
October 18, 2004.....	1.252000
October 19, 2004.....	1.251500
October 20, 2004.....	1.262700
October 21, 2004.....	1.262200
October 22, 2004.....	1.263900
October 23, 2004.....	1.263900
October 24, 2004.....	1.263900
October 25, 2004.....	1.278300
October 26, 2004.....	1.275800
October 27, 2004.....	1.272500
October 28, 2004.....	1.275900
October 29, 2004.....	1.274600
October 30, 2004.....	1.274600
October 31, 2004.....	1.274600

South Korea won:

October 1, 2004.....	\$0.000870
October 2, 2004.....	0.000870
October 3, 2004.....	0.000870
October 4, 2004.....	0.000870

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly  
list for October 2004 (continued):

South Korea won: (continued):

October 5, 2004.....	0.000870
October 6, 2004.....	0.000867
October 7, 2004.....	0.000869
October 8, 2004.....	0.000870
October 9, 2004.....	0.000870
October 10, 2004.....	0.000870
October 11, 2004.....	0.000870
October 12, 2004.....	0.000873
October 13, 2004.....	0.000870
October 14, 2004.....	0.000873
October 15, 2004.....	0.000873
October 16, 2004.....	0.000873
October 17, 2004.....	0.000873
October 18, 2004.....	0.000874
October 19, 2004.....	0.000873
October 20, 2004.....	0.000876
October 21, 2004.....	0.000877
October 22, 2004.....	0.000877
October 23, 2004.....	0.000877
October 24, 2004.....	0.000877
October 25, 2004.....	0.000882
October 26, 2004.....	0.000884
October 27, 2004.....	0.000890
October 28, 2004.....	0.000889
October 29, 2004.....	0.000893
October 30, 2004.....	0.000893
October 31, 2004.....	0.000893

Taiwan N.T. dollar:

October 1, 2004.....	\$0.029551
October 2, 2004.....	0.029551
October 3, 2004.....	0.029551
October 4, 2004.....	0.029507
October 5, 2004.....	0.029472
October 6, 2004.....	0.029477
October 7, 2004.....	0.029477
October 8, 2004.....	0.029638
October 9, 2004.....	0.029638
October 10, 2004.....	0.029638
October 11, 2004.....	0.029638
October 12, 2004.....	0.029503
October 13, 2004.....	0.029481
October 14, 2004.....	0.029507
October 15, 2004.....	0.029516
October 16, 2004.....	0.029516
October 17, 2004.....	0.029516
October 18, 2004.....	0.029621
October 19, 2004.....	0.029525
October 20, 2004.....	0.029577
October 21, 2004.....	0.029603
October 22, 2004.....	0.029744

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly list for October 2004 (continued):

Taiwan N.T. dollar: (continued):

October 23, 2004.....	0.029744
October 24, 2004.....	0.029744
October 25, 2004.....	0.029674
October 26, 2004.....	0.029691
October 27, 2004.....	0.029780
October 28, 2004.....	0.029882
October 29, 2004.....	0.029945
October 30, 2004.....	0.029945
October 31, 2004.....	0.029945

Dated: November 1, 2004

MARGARET T. BLOM,  
*Acting Chief,*  
*Customs Information Exchange.*



(CBP Dec. 04–39)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR OCTOBER, 2004

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in CBP Decision 04–35 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): October 13, 2004

South Africa rand:

October 28, 2004.....	\$0.164609
October 29, 2004.....	0.162986
October 30, 2004.....	0.162986
October 31, 2004.....	0.162986

Dated: November 1, 2004

MARGARET T. BLOM,  
*Acting Chief,*  
*Customs Information Exchange.*



**COPYRIGHT, TRADEMARK, AND TRADE NAME  
RECORDATIONS**

**(No. 9 2004)**

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

SUMMARY: Presented herein are the copyrights, trademarks, and trade names recorded with U.S. Customs and Border Protection during the month of September 2004. The last notice was published in the CUSTOMS BULLETIN on October 13, 2004.

Corrections or updates may be sent to: Department of Homeland Security, U.S. Customs and Border Protection, Office of Regulations and Rulings, IPR Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: George Frederick McCray, Esq., Chief, Intellectual Property Rights Branch, (202) 572-8710.

Dated: 27 October 2004

GEORGE FREDERICK MCCRAY.

10/26/2004  
15:29:16

U.S. CUSTOMS SERVICE  
IPR RECORDATIONS ADDED IN SEPTEMBER 2004

PAGE 1  
DETAIL

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COP0400111	20040920	20240920	6 SECOND ABS FAT BURNING CARDIO	SAVVIER, LLP.	N
COP0400112	20040920	20240920	6 SECOND ABS ROCK HARD ABS	SAVVIER, LLP.	N
COP0400113	20040920	20240920	6SECONDABS.COM	SAVVIER, LLP.	N
COP0400114	20040920	20240920	6 SECOND ABS PROGRAM PRODUCT LITERATURE	SAVVIER, LLP.	N
COP0400115	20040920	20240920	6 SECOND ABS TOTAL BODY	SAVVIER, LLP.	N
COP0400116	20040928	20240928	DISNEY'S BROTHER BEAR - SPRING 2004	DISNEY ENTERPRISES INC.	N
COP0400117	20040929	20240929	VINTAGE COSMETICS DESIGN 1993 SERIES 1	VINTAGE GROUP INC.	N
COP0400118	20040929	20240929	VINTAGE COSMETICS DESIGN 1993 SERIES 2	VINTAGE GROUP INC.	N
COP0400119	20040929	20240929	HOME ON THE RANGE STYLE GUIDE	DISNEY ENTERPRISES INC.	N
SUBTOTAL RECORDATION TYPE 9					
THK0400775	20040909	20130103	KINGSFORD AND DESIGN	THE KINGSFORD PRODUCTS COMPANY	N
THK0400776	20040913	20110123	ENERGIZER & DESIGN	EVEREADY BATTERY COMPANY, INC.	N
THK0400777	20040914	20091215	SUBARU	FUJII JUKOGYO KABUSHIKI KAISHA	N
THK0400778	20040914	20100815	CORBEAU	CORBEAU SEATS LTD.	N
THK0400779	20040914	20080922	PANASONIC	MATSUSHITA ELECTRIC INDUSTRIAL	N
THK0400780	20040914	20120312	DOUBLE DOOR LOGO	SECURE CARE PRODUCTS INC.	N
THK0400781	20040914	20140608	SKAI JACOBS	KONRAD HORNSTRUCHER AG	N
THK0400782	20040914	20070316	MARC JACOBS	MARC JACOBS TRADEMARKS, L.L.C.	N
THK0400783	20040914	20081007	MARC JACOBS	MARC JACOBS TRADEMARKS, L.L.C.	N
THK0400784	20040914	20070311	ULTRA BUY	MARC JACOBS TRADEMARKS, L.L.C.	N
THK0400785	20040914	20140517	CHARLIE CHAPLIN	PREMIER MANUFACTURING INC.	N
THK0400786	20040914	20051010	SHIELD	BUBBLES INCORPORATED S.A.	N
THK0400787	20040914	20140821	T STYLIZED	PREMIER MANUFACTURING INC.	N
THK0400788	20040914	20140821	JOSEPH ABBROUD ENVIRONMENTS & DESIGN	TEXAS RANGERS BASEBALL PARTNERS	N
THK0400789	20040914	20131223	KINDER SURPRISE	FERRERO S.P.A.	N
THK0400790	20040914	20130819	MAGIC U.S.A.	JA APPAREL CORPORATION	N
THK0400791	20040914	20130211	JOSEPH ABBROUD & DESIGN	VINTAGE GROUP INC.	N
THK0400792	20040915	20110123	NINTENDO GAMECUBE	NINTENDO CO., LTD.	N
THK0400793	20040915	20131202	NINTENDO GAMECUBE	NINTENDO CO., LTD.	N
THK0400794	20040915	20131216	NINTENDO GAMECUBE	NINTENDO CO., LTD.	N
THK0400795	20040916	20140510	NBA	NBA PROPERTIES, INC.	N
THK0400796	20040916	20140510	NBA	NBA PROPERTIES, INC.	N
THK0400797	20040916	20140426	NBA	NBA PROPERTIES, INC.	N
THK0400798	20040920	20120421	ACCESSORI BICICLETTA DI LUCIANO	PAUL'S BICYCLE PARTS LTD.	Y
THK0400799	20040920	20130715	LUCKY BRAND	TRUCK-LITE CO.	N
THK0400800	20040920	20120528	LUCKY YOU LUCKY BRAND	TRUE BLUE INCORPORATED	N
THK0400801	20040920	20131216	LUCKY BRAND & DESIGN	LUCKY BRAND DUNGAREES, INC.	N
THK0400802	20040920	20120618	LUCKY BRAND & DESIGN	LUCKY BRAND DUNGAREES, INC.	N
THK0400803	20040920	20120910	LUCKY YOU LUCKY BRAND	LUCKY BRAND DUNGAREES, INC.	N
THK0400804	20040920	20130401	LUCKY BRAND BLUE JEANS	LUCKY BRAND DUNGAREES, INC.	N
THK0400805	20040920	20130518	LUCKY YOU LUCKY BRANCH & DESIGN	LUCKY BRAND DUNGAREES, INC.	N
THK0400806	20040920	20130610	LUCKY BRAND LUCKY YOU & DESIGN	LUCKY BRAND DUNGAREES, INC.	N
THK0400807	20040920	20121216	LUCKY BRAND	LUCKY BRAND DUNGAREES, INC.	N
THK0400808	20040920	20130118	LUCKY BRAND	LUCKY BRAND DUNGAREES, INC.	N
THK0400809	20040920	20130118	DESIGN ONLY	LUCKY BRAND DUNGAREES, INC.	N
THK0400810	20040920	20090530	CERTIGRADE	CEDAR SHAKE & SHINGLE BUREAU	N
THK0400811	20040920	20130805	60	TRUCK-LITE CO.	N

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
THK0400812	20040920	20090613	CERTI-SAWN	CEDAR SHAKE & SHINGLE BUREAU	N
THK0400813	20040920	20051019	C & DESIGN	CEDAR SHAKE & SHINGLE BUREAU	N
THK0400814	20040920	20110828	COMPANY ELLEN TRACY	ELLEN TRACY, INC.	N
THK0400815	20040920	20130218	LINDA ALLARD ELLEN TRACY	ELLEN TRACY, INC.	N
THK0400816	20040920	20130325	J.H. COLLECTIBLES	L.C. LICENSING, INC.	N
THK0400817	20040920	20130902	LAUNDRY BY SHELLI SEGAL	L.C. LICENSING, INC.	N
THK0400818	20040920	20140323	SIGRID OLSEN SPORT	SEGRETS, INC.	N
THK0400819	20040920	20131209	SIGRID OLSEN SPORT	SEGRETS, INC.	N
THK0400820	20040920	20131216	CC	SEGRETS, INC.	N
THK0400821	20040920	20140327	SWANSON SPEED	CHANEL, INC.	N
THK0400822	20040920	20111229	SPEED	SWANSON TOOL CO., INC.	N
THK0400823	20040920	20091212	ATHENS 2004 & DESIGN	SWANSON TOOL COMPANY, INC.	N
THK0400824	20040920	20121022	TAGGIES	UNITED STATES OLYMPIC COMMITTEE	N
THK0400825	20040920	20120618	TAGGIES	TAGGIES INC.	N
THK0400826	20040920	20121231	MIRACLE WAVE	TAGGIES INC.	N
THK0400827	20040920	20120312	PHILLIPS PLUS	SAYA WAVE/TECH INC.	N
THK0400828	20040920	20140918	SECURE CARE SYSTEMS	SECURE PRODUCTS INC.	N
THK0400829	20040920	20140224	SAMUEL R GUARD	SECURE PRODUCTS INC.	N
THK0400830	20040920	20140224	DANIEL M DANA BUCHMAN	SECURE PRODUCTS INC.	N
THK0400831	20040920	20130923	ELLEN TRACY	L.C. LICENSING INC.	N
THK0400832	20040920	20140719	MARCO BOTTLE DESIGN	L.C. LICENSING INC.	N
THK0400833	20040920	20140719	DANA BUCHMAN	L.C. LICENSING INC.	N
THK0400834	20040920	20140713	LUCKY BRAND	LUCKY BRAND DUNGAREES INC.	N
THK0400835	20040920	20140629	LUCKY SOUNDS	LUCKY BRAND DUNGAREES INC.	N
THK0400836	20040920	20140706	ZENTH	LUCKY BRAND DUNGAREES INC.	N
THK0400837	20040920	20121230	SCHEPPES LABEL	ORTHOTEC LLC.	N
THK0400838	20040921	20101121	SIGRID OLSEN	SCHEPPES INTERNATIONAL LTD.	N
THK0400839	20040921	20140727	WARNER'S	SEGRETS INC.	N
THK0400840	20040921	20140205	PORTLAND BLAZERS AND DESIGN	WARNACO INC.	N
THK0400841	20040921	20140629	ATHENS 2004	TAIL BLAZERS INC.	N
THK0400842	20040921	20110130	AZIZA	UNITED STATES OLYMPIC COMMITTEE	N
THK0400843	20040923	20051210	KNOX ARMORY	JEAN PHILIPPE FRAGRANCES, INC.	N
THK0400844	20040923	20070311	LUCKY BRAND	ALPHA INDUSTRIES, INC.	N
THK0400845	20040923	20140705	ROOTS AND DESIGN	LUCKY BRAND DUNGAREES, INC.	N
THK0400846	20040923	20050212	KANGAROO AND DESIGN	UNITED STATES OLYMPIC COMMITTEE	N
THK0400847	20040923	20050319	KANGAROO	ASCO GROUP LIMITED	N
THK0400848	20040923	20050305	DESIGN (KANGAROO)	ASCO GROUP LIMITED	N
THK0400849	20040923	20060225	VILLAGER	ASCO GROUP LIMITED	N
THK0400850	20040923	20140403	VILLAGER A LIZ CLAIBORNE COMPANY	L.C. LICENSING, INC.	N
THK0400851	20040923	20140525	12SPORT	L.C. LICENSING, INC.	N
THK0400852	20040923	20140601	RUSS	L.C. LICENSING, INC.	N
THK0400853	20040923	20140601		L.C. LICENSING, INC.	N
THK0400854	20040923	20140606		L.C. LICENSING, INC.	N
THK0400855	20040923	20140606		L.C. LICENSING, INC.	N
THK0400856	20040923	20140606		L.C. LICENSING, INC.	N
THK0400857	20040923	20140606		L.C. LICENSING, INC.	N
THK0400858	20040923	20140606		L.C. LICENSING, INC.	N
THK0400859	20040923	20140606		L.C. LICENSING, INC.	N
THK0400860	20040923	20140606		L.C. LICENSING, INC.	N

U.S. CUSTOMS SERVICE  
IPR RECORDATIONS ADDED IN SEPTEMBER 2004

10/04/2004  
15:29:16

REC. NUMBER	EFF. DT	EXP. DT	NAME OF COP. TMK. TMK OR MSK	OWNER NAME	RES
TKH0400861	20040923	20140511	KYLIE	L. C. LICENSING, INC.	N
TKH0400862	20040923	20140525	MY BEST FRIEND & DESIGN	L. C. LICENSING, INC.	N
TKH0400863	20040923	20140224	LACIO LACIO	STAR PRODUCTS, S.A.	N
TKH0400864	20040923	20140622	ROLAIDS	WARNER-LAMBERT COMPANY LLC	N
TKH0400865	20040923	20141225	STUMPJUMPER	SPECIALIZED BICYCLE COMPONENTS	N
TKH0400866	20040923	20080616	PRINCIPESCO	CANTINE LEONARD VINCI S.C.R.L.	N
TKH0400867	20040923	20091123	DESIGN	ALPHA INDUSTRIES, INC.	N
TKH0400868	20040924	20140302	SMI	SWISS WATCH INTERNATIONAL	N
TKH0400869	20040927	20060218	DESIGN (KANGAROO ON A SHIELD)	ASCO GROUP LIMITED	N
TKH0400870	20040928	20110508	PLAY ALONG	JPI/V ACQUISITION CORPORATION	N
TKH0400871	20040928	20140823	NASCAR (& SPEEDBAR DESIGN)	NATIONAL ASSOCIATION FOR STOCK	N
TKH0400872	20040928	20130218	CONFIGURATION OF THE SHAP OF A FLASHLIGHT	MAG INSTRUMENT, INC.	N
TKH0400873	20040928	20140723	VIBRAM	VIBRAM S.P.A.	N
TKH0400874	20040928	20120611	MILLENNIUM 2000	JJ HOLLAND LIMITED	N
TKH0400875	20040928	20130408	PX	BENIKO INC.	N
TKH0400876	20040928	20070512	POINT ZERO	BENIKO INC.	N
TKH0400877	20040928	20070225	ZERO TOLERANCE	BENIKO INC.	N
TKH0400878	20040928	20131230	POINT X	BENIKO INC.	N
TKH0400879	20040928	20140601	PRIDE & JOY	LUCKY BRAND DUNGAREES INC.	N
TKH0400880	20040928	20130415	LIZ CLAIRBORNE WOMAN	L. C. LICENSING INC.	N
TKH0400881	20040928	20130624	COME DANCE WITH ME	L. C. LICENSING INC.	N
TKH0400882	20040928	20140622	LIZ & CO (STYLIZED)	L. C. LICENSING INC.	N
TKH0400883	20040928	20120602	LIZ CLAIRBORNE	L. C. LICENSING INC.	N
TKH0400884	20040928	20140111	LIZ SLIM	L. C. LICENSING INC.	N
TKH0400885	20040928	20140111	HAPPY MEAL	MCDONALD'S CORPORATION	N
TKH0400886	20040928	20100610	ARCH DESIGN	SEARS BRANDS, LLC	N
TKH0400887	20040928	20100623	STRUCTURE	AMERICAN PROMOTIONAL EVENTS	N
TKH0400888	20040930	20091121	WHISTLING PETE	AMERICAN PROMOTIONAL EVENT	N
TKH0400889	20040930	20110915	PICCOLO PETE	LOUIS VUITTON MALLETTIER	N
TKH0400890	20040930	20140628	DESIGN ONLY	THE BILTRITE CORPORATION	N
TKH0400891	20040930	20091018	DESIGN ONLY	THE BILTRITE CORPORATION	N
TKH0400892	20040930	20090104	DESIGN ONLY	THE BILTRITE CORPORATION	N
TKH0400893	20040930	20090927	DESIGN ONLY	THE BILTRITE CORPORATION	N
TKH0400894	20040930	20140525	DESIGN ONLY	BURBERRY LIMITED	N
TKH0400895	20040930	20060421	CAT'S PAW	THE BILTRITE CORPORATION	N
TKH0400896	20040930	20140106	NUALA	PUMA AG RUDOLF DASSLER SPORT	N
TKH0400897	20040930	20131216	D & DESIGN	PUMA AG RUDOLF DASSLER SPORT	N
TKH0400898	20040930	20131216	DESIGN ONLY	PUMA AG RUDOLF DASSLER SPORT	N
TKH0400899	20040930	20130322	PUMA & DESIGN	PUMA AG RUDOLF DASSLER SPORT	N
TKH0400900	20040930	20120709	BRAWN	PEGASUS INTERNATIONAL INC.	N
TKH0400901	20040930	20140606	BRAWN	PEGASUS INTERNATIONAL INC.	N
TKH0400902	20040930	20140606	BRAWN	PEGASUS INTERNATIONAL INC.	N

SUBTOTAL RECORDATION TYPE 128

TOTAL RECORDATIONS ADDED THIS MONTH 137

SENIOR EXECUTIVE SERVICE  
PERFORMANCE REVIEW BOARD

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

**SUMMARY:** Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of the members of the U.S. Customs and Border Protection Performance Review Board (PRB). The purpose of this PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions for incumbents of SES positions for which the Commissioner, U.S. Customs and Border Protection, is the appointing authority. The Board will perform PRB functions for other U.S. Department of Homeland Security SES positions if requested.

**COMPOSITION OF DEPARTMENTAL PRB:** The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. The names and titles of the PRB members are as follows:

Cresencio S. Arcos, Jr., Director, Office of International Affairs, Office of the Secretary, U.S. Department of Homeland Security;

Marc S. Hollander, Deputy Director, Laboratory Facilities and Management, Office of Under Secretary for Science and Technology, U. S. Department of Homeland Security;

Gregory D. Rothwell, Chief Procurement Executive, Office of the Under Secretary for Management, U.S. Department of Homeland Security;

James A. Williams, Director, US-VISIT Program, Office of the Under Secretary for Border and Transportation, U.S. Department of Homeland Security;

William R. Yates, Associate Director of Operations, U.S. Citizenship and Immigration Services; and the following Assistant Commissioners, U.S. Customs and Border Protection:

David V. Aguilar, Border Patrol

Jayson P. Ahern, Field Operations

Richard L. Balaban, Finance

William A. Keefer, Internal Affairs

Michael T. Schmitz, Regulations and Rulings

Robert M. Smith, Human Resources Management

E. Keith Thomson, International Affairs.

**EFFECTIVE DATE:** Membership is effective on November 3, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Smith, Assistant Commissioner, Human Resources Management, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Room 2.4-A, Washington, D.C. 20229. Telephone (202) 344-1250.

This notice does not meet the U.S. Customs and Border Protection criteria for significant regulations.

DATED: October 29, 2004

ROBERT C. BONNER,  
*Commissioner,*  
*Bureau of Customs and Border Protection.*

[Published in the Federal Register, November 3, 2004 (69 FR 64084)]

DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS.

*Washington, DC, November 2, 2004,*

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.

Sandra L. Bell for MICHAEL T. SCHMITZ,  
*Assistant Commissioner,  
Office of Regulations and Rulings.*

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**REVOCATION OF A RULING LETTER AND REVOCATION  
OF TREATMENT RELATING TO TARIFF CLASSIFICATION  
OF ORTHODONTIC CERVICAL NECK PADS**

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

**ACTION:** Notice of revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of orthodontic cervical neck pads.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is revoking one ruling letter relating to the tariff classification of orthodontic cervical neck pads under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on August 25, 2004, in Vol. 38, No. 35, of the *Customs Bulletin*. No comments were received in response to the notice.

**DATE:** This action is effective for merchandise withdrawn from warehouse for consumption on or after January 16, 2005.

**FOR FURTHER INFORMATION CONTACT:** Kelly Herman,  
Textiles Branch: (202) 572-8713.

**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, a notice proposing to revoke one ruling letter pertaining to the tariff classification of orthodontic cervical neck pads was published in the August 25, 2004, *Customs Bulletin*, Vol. 38, No. 35. No comments were received in response to the notice.

As stated in the notice of proposed revocation, the notice covered 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 have advised CBP 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 section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP 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, 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 in substantially identical transactions should have advised CBP during the 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 im-



porter or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In HQ 965623, dated September 25, 2002, CBP ruled that an orthodontic cervical neck pad was classified in subheading 6307.90.9889, HTSUSA, which provides for "Other made up articles, including dress patterns: Other: Other: Other: Other: Other." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error. We have determined that the article is properly classified in subheading 9021.10.0090, HTSUSA, which provides for "[O]rthopedic or fracture appliances, and parts and accessories thereof, Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ 965623 and revoking or modifying any other ruling not specifically identified, to reflect the proper classification of orthodontic cervical neck pads according to the analysis contained in HQ 967116, set forth as an Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP 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:** October 28, 2004

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

Attachment

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967116  
October 28, 2004  
CLA-2 RR:CR:TE 967116 KSH  
TARIFF NO.: 9021.10.0090

MARIA E. CELIS, ESQ.  
NEVILLE PETERSON LLP  
17 State Street, 19th Floor  
New York, NY 10004

RE: Revocation of Headquarters Ruling Letter (HQ) 965623, dated September 25, 2002; Classification of cervical neck pads.

DEAR MS. CELIS:

This is in response to your letter of April 28, 2004, on behalf of your client, Sybron Dental Specialists (Sybron), and its subsidiary Ormco Corporation (Ormco), in which you request reconsideration of Headquarters Ruling Letter (HQ) 965623, issued to your client on September 25, 2002, concerning

the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of cervical neck pads. The cervical neck pads were classified in subheading 6307.90.9889, HTSUS, which provides for "Other made up articles, including dress patterns: Other: Other: Other: Other: Other." You assert that the cervical neck pads are specially dedicated for use as cervical headgear designed to exert the appropriate amount of tension to prevent malocclusion. Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error.

We note that in HQ 966754, dated December 30, 2003, this office issued your client a ruling classifying certain plastic release modules and textile high pull straps to be used in conjunction with the cervical neck pads in subheading 9021.10.0090, HTSUS, which provides for, among other things, parts of orthopedic appliances.

Pursuant to section 625(c)(1), Tariff Trade 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 HQ 965623 was published on August 25, 2004, in Vol. 38, No. 35, of the *Customs Bulletin*. No comments were received in response to the notice.

**FACTS:**

Ormco, is a manufacturer of orthodontic and related dental products, including orthodontic headgear systems. When in use on a patient, Ormco's headgear systems are made up of a metal facebow and a Break-Away Release Module System. Each of the components are imported separately. The facebow's outer arch hooks into a Break-Away Release Module System, which fastens around the user's neck. The Break-Away Release Module System consists of a cervical neck pad or a high pull head cap with a spring release module and plastic straps attached at each end by means of a plastic clasp assembly. The plastic straps attached to each end of the facebow are adjustable. Each of the two straps has twelve holes along it. The ends of the facebow are inserted into the appropriate holes to exert the appropriate amount of tension to treat malocclusion. The cervical neck pads and high pull head caps also hold the facebow in place in the patient's mouth and together with the plastic straps, exert the appropriate amount of tension to treat the patient.<sup>1</sup> The cervical neck pads measure 7 ½" by 1 ½" and are made from textile and foam padding with a nylon band sewn into one side of the pad.

**ISSUE:**

Whether the subject cervical neck pads are classifiable as other made up articles under subheading 6307.90.9889, HTSUS, or as parts and accessories of orthopedic appliances under subheading 9021.10.0090, HTSUS.

**LAW AND ANALYSIS:**

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and

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<sup>1</sup> We note that in the prior submission upon which HQ 965623 was based, your client indicated that the cervical neck pad's primary function was to provide comfort and support to the user's neck. Your client further stated that while the neck pad does encourage downward jaw growth, it is not the neck pad in particular that accomplishes this.

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), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings.

Heading 6307, HTSUS, covers other made up articles of textile materials. The EN to heading 6307, HTSUSA, indicate that the heading covers made up articles of any textile material which are not included more specifically in other headings of Section XI or elsewhere in the Nomenclature.

Thus, a determination must be made whether the cervical neck pads are included more specifically in the other headings of Section XI or elsewhere in the Nomenclature before classifying them in heading 6307, HTSUS.

Heading 9021, HTSUS, provides for, "orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof." According to the EN to the heading, an article may be classifiable as an orthopedic appliance within heading 9021 if it either:

- (a) Prevents or corrects bodily deformities; or
- (b) Supports or holds parts of the body following an illness operation or injury.

EN 90.21 states that orthopedic appliances include "[d]ental appliances for correcting deformities of the teeth (braces, rings, etc.)."

Chapter Note 2(b) states, in pertinent part: "Subject to note 1 above, parts and accessories for machines, apparatus, instruments or articles of this chapter are to be classified according to the following rules:"

- (b) 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[.]

A device may be considered a "part" of an article even though the device is not necessary to the operation of the article, provided that once the device is installed the article cannot function properly without it. Clipper Belt Lacer Co., Inc. v. United States, 14 C.I.T. 146, 738 F.Supp. 528 (1990), aff'd 923 F.2d 835 (1991).

The cervical neck pad is a part of the cervical headgear that, as your client States, when combined with the facebow, "provide[s] a vector force either straight backward from the teeth towards the back of the bottom of the head, or upward and backward from the teeth towards the crown of the head" and "without the neck pad/ Breakway Release Module System, the cervical headgear would not effectively correct such malocclusions." Given these facts, the cervical neck pad is a part of appliances of heading 9021, HTSUSA.

**HOLDING:**

HQ 965623, dated September 25, 2002, is hereby revoked.

The cervical neckpad is classified in subheading 9021.10.0090 HTSUS, which provides for "Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof: Orthopedic or fracture appliances, and parts and accessories thereof, Other." The applicable rate of duty is free.

HQ 965623 is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective sixty days after publication in the *Customs Bulletin*.

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

**19 CFR PART 177**

**PROPOSED REVOCATION OF RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO TARIFF  
CLASSIFICATION OF TENNIS BALLS**

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** Notice of proposed revocation of ruling letter, and revocation of treatment relating to tariff classification of tennis balls.

**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 CBP intends to revoke a ruling letter pertaining to the tariff classification of tennis balls under the Harmonized Tariff Schedule of the United States ("HTSUS"). CBP also intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed action.

**DATE:** Comments must be received on or before December 17, 2004.

**ADDRESS:** Written comments (preferably in triplicate) are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at Customs and Border Protection, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrange-

ments to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572-8768.

**FOR FURTHER INFORMATION CONTACT:** Neil S. Helfand, General Classification Branch, (202) 572-8791.

**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, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the classification of tennis balls. Although in this notice CBP is specifically referring to NY J82455, 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 data bases 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, as amended (19 U.S.C. 1625(c)(2)), CBP intends to revoke any treatment previously accorded by CBP 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, 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 interpreta-

tion of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP 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 NY J82455, dated April 21, 2003, set forth as Attachment A to this document, CBP classified tennis balls under subheading 4016.99.2000, Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"), as: "Other articles of vulcanized rubber other than hard rubber: Other: Other: Toys for pets."

It is now the CBP position that the tennis balls are classified under subheading 9506.61.0000, HTSUSA, as "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Balls, other than golf balls and table-tennis balls: Lawn-tennis balls."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY J82455, 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 967293, which is set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

**DATED:** October 27, 2004

John Elkins for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

Attachments

## [ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
NY J82455  
April 21, 2003  
CLA-2-40:RR:NC:SP:221 J82455  
CATEGORY: Classification  
TARIFF NO.: 4016.99.2000

MS. CARI GREGO  
DOLLAR TREE STORES, INC.  
500 Volvo Parkway  
Chesapeake, VA 23320

RE: The tariff classification of pet toys from China.

DEAR MS. GREGO:

In your letter dated March 26, 2003, you requested a classification ruling. The submitted sample is identified as item number SKU 132044, pet toys. The sample consists of three multicolored tennis balls that are decorated with paw prints. In a telephone conversation with this office you stated that the pet toy tennis balls are made of natural rubber.

Your letter of inquiry suggests that the tennis balls (pet toys) would be classified under subheading 9506.61.0000. Heading 9506 of the Tariff Schedules of the United States (HTS) includes, in part, equipment used in physical activities that are designed to train, develop or condition the body and improve physical fitness. The tennis balls (pet toys) are designed to amuse animals in playful activities. They are not considered to be exercise equipment for physical fitness. Therefore, the tennis balls (pet toys) would not be classified in Heading 9506. Articles identifiable as intended exclusively for animals, such as "pet toys," are classifiable in their own appropriate heading.

The applicable subheading for the pet toys will be 4016.99.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of vulcanized rubber other than hard rubber: Other: Toys for pets. The rate of duty will be 4.3 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 Joan Mazzola at 646-733-3023.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

**HQ 967293**  
**CLA-2 RR:CR:GC 967293**  
**CATEGORY:** Classification  
**TARIFF NO.:** 9506.61.0000

MS. CARI GREGO  
DOLLAR TREE STORES, INC.  
*500 Volvo Parkway*  
*Chesapeake, VA 23320*

**RE:** Revocation of J82455; tennis balls

DEAR MS. GREGO:

This is in response to an internal request for the reconsideration of NY J82455, dated April 21, 2003, on three multicolored balls under the Harmonized Tariff Schedule of the United States (HTSUS). This ruling letter sets forth the correct classification of the subject merchandise.

**FACTS:**

In describing the subject merchandise, NY J82455 provided as follows:

The submitted sample is identified as item number SKU 132044, pet toys. The sample consists of three multicolored tennis balls that are decorated with paw prints. In a telephone conversation with this office you stated that the pet toy tennis balls are made of natural rubber.

**ISSUE:**

Whether the three multicolored balls are dog toys under heading 4016, HTSUS, or tennis balls under heading 9506, HTSUS?

**LAW AND ANALYSIS:**

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs.

Additional Rule of Interpretation (ARI) 1(a) states that in the absence of special language or context which otherwise requires, 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.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. The ENs, although neither dispositive or legally binding, facilitate classification by providing 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:

4016	Other articles of vulcanized rubber other than hard rubber:
	Other:
4016.99	Other:
4016.99.20	Toys for pets
*	*                  *                  *                  *
9506	Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:
	Balls, other than golf balls and table-tennis balls:
9506.61.00	Lawn-tennis balls

In NY J82455, CBP classified three multicolored balls with paw prints on them under subheading 4016.99.20, HTSUS, which provides for “Other articles of vulcanized rubber, other than hard rubber: Other: Other: Toys for pets.” In that ruling, CBP held that the merchandise, because they are intended for use by pets, cannot be considered equipment for use by human beings in physical activities designed to train, develop or condition the body and improve physical fitness. As a result, they were not classified under heading 9506, HTSUS.

GRI 3(a) states, in pertinent part, that when goods are *prima facie* classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. We note initially that heading 4016, HTSUS, is a basket provision and applies only if the merchandise is not more specifically described elsewhere. Therefore, inasmuch as the merchandise at issue is an article of rubber that is covered by the heading text of 4016, HTSUS, we must first examine any other provision, which, if applicable, would take precedence for purposes of classification.

Heading 9506, HTSUS, applies to articles and equipment for general physical exercise, such as for sports and outdoor games. EN 95.06 states in pertinent part:

This heading covers:

...

(B) **Requisites for other sports and outdoor games (other than toys presented in sets, or separately, of heading 95.03), e.g.:**

...

(6) Balls, other than golf balls and table-tennis balls, such as **tennis balls** . . . [Emphasis added].

Heading 9506, HTSUS, is a principal use provision and, therefore, subject to Additional U.S. Rule of Interpretation 1(a), HTSUS. In *Primal Lite v. United States*, 15 F. Supp. 2d 915 (CIT 1998); *aff'd* 182 F. 3d 1362 (CAFC 1999), the Court of International Trade addressed ARI 1(a), providing that the purpose of principal use provisions in the HTSUS is to classify particu-

lar merchandise according to the ordinary use of such merchandise, even though particular imported goods may be put to some atypical use. Therefore, classification under the heading is controlled by the principal use in the United States of goods of that class or kind to which the imported goods belong at or immediately prior to the date of the importation. *Lenox v. Coll. v. United States*, 20 CIT, Slip Op. 96-30 (February 2, 1996). It is equally important to note that we are not examining the actual use of the instant merchandise in making our determination, but rather examining whether the pertinent characteristics of the instant merchandise are substantially similar to those of the typical merchandise falling within the class.

To be classified under heading 9506, HTSUS, the ball at issue would have to be part of the class or kind of ball that is considered a "tennis ball." In determining the class or kind of goods to which an article belongs, CBP may consider a variety of factors including: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchaser; (3) the channels of trade in which the merchandise moves; (4) the environment of sale (accompanying accessories, manner of advertisement and display); and (5) the usage of the merchandise. *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), *cert. denied*, 429 U.S. 979.

Regarding the instant merchandise, the balls are visually identical to recognized tennis balls in their shape, size, and the felt material used to cover them. Other than the fact that the balls have paw prints on the surface of the felt material, there is no obvious indication that they will be marketed for use by pets and they are, in fact, dissimilar to any type of recognized pet toy. In addition, regardless of the fact that the balls may ultimately be used as pet toys, our examination of the available information leads us to conclude that, upon importation, they are of the class or kind of ball that is considered a tennis ball. We additionally note that in NY J82455, CBP described the merchandise as "tennis balls," but did not classify them under heading 9506, HTSUS, only because they were intended for use by animals. As previously stated, their ultimate use by pets is not determinative for purposes of classification.

Finally, CBP has previously classified substantially similar merchandise under heading 9506, HTSUS. In NY J89264, dated September 25, 2003, CBP determined that the Fetch Tote™ was a "tennis ball" and therefore should be classified under subheading 9506.61.00, HTSUS. The Fetch Tote™ consisted of two components, a ball and accompanying belt pouch. The ball was non-pressurized and was identical to a tennis ball due to its size, shape; and the fact that it was covered in blue and white felt of the same configuration as recognized tennis balls; the ball also had the word "Chuckit!" printed on it. In addition, the ball was produced by a tennis ball manufacturer. Because that ball was seemingly identical to recognized tennis balls in both appearance and construction, and therefore dissimilar to any type of pet toy, CBP determined that classification was proper under heading 9506, HTSUS. CBP notes that the merchandise at issue is seemingly identical to the Fetch Tote™.

In view of the foregoing, the merchandise at issue is classified under the more specific heading, 9506, HTSUS, and more specifically under subheading 9506.61.00, HTSUS, as a tennis ball.

**HOLDING:**

The ball is classified under subheading 9506.61.0000, Harmonized Tariff Schedule of the United States Annotated, as, "Articles and equipment for

general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Balls, other than golf balls and table-tennis balls: Lawn-tennis balls." The general, column one rate of duty is *Free*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

NY J82455, dated April 21, 2003 is REVOKED.

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

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**19 CFR PART 177**

**PROPOSED MODIFICATION OF TWO RULING LETTERS  
AND REVOCATION OF TREATMENT RELATING TO  
TARIFF CLASSIFICATION OF PREPARED SLIDES**

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** Notice of proposed modification of two ruling letters, and revocation of treatment relating to tariff classification of prepared slides.

**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 CBP intends to modify two ruling letters pertaining to the tariff classification of prepared slides under the Harmonized Tariff Schedule of the United States ("HTSUS"). CBP also intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed action.

**DATE:** Comments must be received on or before December 17, 2004.

**ADDRESS:** Written comments (preferably in triplicate) are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at Customs and Border Protection, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrange-

ments to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572-8768.

**FOR FURTHER INFORMATION CONTACT:** Neil S. Helfand, General Classification Branch, (202) 572-8791.

**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, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that CBP intends to modify two ruling letters pertaining to the classification of prepared slides. Although in this notice CBP is specifically referring to NY J81103 and NY D87557, 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 data bases 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, as amended (19 U.S.C. 1625(c)(2)), CBP intends to revoke any treatment previously accorded by CBP 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, 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 interpreta-

tion of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP 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 NY J81103, dated February 28, 2003, and NY D87557, dated February 29, 1999, set forth as Attachments A and B to this document, respectively, CBP classified prepared slides under subheading 5402.41.9030, Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"), as: "Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex: Other yarn, single, untwisted or with a twist not exceeding 50 turns/m: Of nylon or other polyamides: Other," and subheading 9705.00.0090, HTSUSA, as "Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest."

It is now the CBP position that the prepared slides are classified under subheading 9023.00.0000, HTSUSA, as "Instruments, apparatus and models, designed for demonstrational purposes (for example, in education or exhibitions), unsuitable for other uses, and parts and accessories thereof."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY J81103 and NY D87557, 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 967296 and proposed HQ 967297, which are set forth as Attachments C and D to this document, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

**DATED:** October 29, 2004

John Elkins for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY J81103

February 28, 2003

CLA-2-90:RR:NC:MM:114 J81103

CATEGORY: Classification

TARIFF NO.: 0511.91.0000; 2501.00.0000;  
3204.12.5000; 3204.13.8000; 3926.90.9810;  
3926.90.9880; 4821.90.2000; 5402.41.9030;  
8506.10.0000; 8524.39.4000; 8539.29.3060;  
9005.80.4040; 9005.90.8000; 9011.20.4000;  
9011.20.8000; 9011.80.0000; 9013.80.2000;  
9503.90.0080; 9705.00.0090

MR. DENNIS AHERN  
BOWEN HILL, LTD.  
2032 Nottingham Way  
Hamilton, NJ 08619

RE: The tariff classification of the Edu Science Die Cast Microscope Lab, Deluxe Microscope Set, Die Cast Microscope/Telescope Set, Starter Microscope Set, and Two Way Microscope Set made in China

DEAR MR. AHERN:

In your letter dated January 16, 2003, you requested a tariff classification ruling on the Edu Science Die Cast Microscope Lab, Deluxe Microscope Set, Die Cast Microscope/Telescope Set, Starter Microscope Set, and Two Way Microscope Set made in China. Samples of the Edu Science Die Cast Microscope Lab, Deluxe Microscope Set, Die Cast Microscope/Telescope Set, Starter Microscope Set, and Two Way Microscope Set were submitted with the ruling request.

The submitted item number 36931 is identified as the Edu Science Die Cast Microscope Lab. The submitted Die Cast Microscope Lab consists of a microscope with 100 power - 1000 power zoom magnification with light projector and die cast body, a micro slicer, four prepared slides, twelve blank slides, twelve blank labels, twelve cover glasses, twelve statical slide covers, one vial of methylene blue, one vial of eosin, two collecting vials, one stirring rod, one petri dish, one scalpel, one needle, one tweezers, one spare bulb, two graduated cylinders, two AA batteries, goggles, instruction manual and instructional CD. The items will be imported packaged together in a closed window display cardboard box ready for retail sale.

The submitted item number 36938 is identified as the Edu Science Deluxe Microscope Set. The submitted Deluxe Microscope Set consists of a microscope with 100 - 200 power, 300 - 600 power, and 600 - 1200 power zoom magnification, two prepared slides, ten blank slides, twelve blank labels, twelve cover glasses, twelve statical slide covers, 3 power and 6 power magnifier, one vial of methylene blue, one vial of eosin, one vial of sodium chloride, one vial of shrimp eggs, two collecting vials, one stirring rod, one petri dish, one scalpel, one needle, one tweezers, one spatula, one dropper, one spare bulb, three graduated cylinders, one micro hatchery, one scissors, one micro slicer, two AA batteries, goggles, instruction manual and instructional

CD packaged together in a plastic carry case. The microscope features a microviewer, projector, drawing device, and microphoto (uses 110 film, not included). The plastic carry case is packed in a cardboard box ready for retail sale.

The submitted item number 36934 is identified as the Edu Science Microscope Starter Kit. The submitted Microscope Starter Kit consists of a plastic microscope with 100, 450 and 750 power magnification, two micro slides, six blank slides, twelve blank labels, twelve statical slide covers, 3 power and 6 power magnifier, two collecting vials, one stirring rod, one petri dish, one tweezers, one spare bulb, two AA batteries, instruction manual and instructional CD. The measurement of the eyepiece diameter and the tube-length of the plastic microscope do not meet the requirements for classification as a microscope. The items will be imported packaged together in a closed window display cardboard box ready for retail sale.

The submitted item number 36937 is identified as the Edu Science Two Way Microscope Set. The submitted Edu Science Two Way Microscope Set consists of a plastic microscope with 100, 450 and 1200 power magnification, six prepared slides, twelve blank slides, twelve blank labels, twelve cover glasses, twelve statical slide covers, 3 power and 6 power magnifier, one vial of methylene blue, one vial of eosin, one vial of sodium chloride, one vial of shrimp eggs, four collecting vials, one stirring rod, one petri dish, one scalpel, one needle, one tweezers, one spatula, one dropper, one spare bulb, two graduated cylinders, one micro hatchery, goggles, instruction manual and instructional CD. The plastic microscope features a microviewer, projector, drawing device, and microphoto (uses 110 film, not included). The measurement of the eyepiece diameter and the tube-length of the plastic microscope do not meet the requirements for classification as a microscope. The items will be imported packaged together in a closed window display cardboard box ready for retail sale.

The submitted item number 36939 is identified as the Edu Science Die Cast Microscope/ Telescope Set. The submitted Die Cast Microscope/ Telescope Set consists of one die cast microscope with 100 - 1000 power zoom magnification, one telescope with tripod, two prepared slides, ten blank slides, twelve blank labels, twelve cover glasses, twelve statical slide covers, 3 power and 6 power magnifier, one vial of methylene blue, one vial of eosin, one vial of sodium chloride, one vial of shrimp eggs, two collecting vials, one stirring rod, one tweezers, one dropper, one spare bulb, two graduated cylinders, one micro hatchery, goggles, two AA batteries, instruction manual and instructional CD. The telescope features 3 power lens eyepiece tubes including 20, 30 and 40 power magnification. The items will be imported packaged together in a closed window display cardboard box ready for retail sale. For tariff classification purposes the articles in the Edu Science Die Cast Microscope/Telescope Set are not considered to be a set and will be classified accordingly.

The General Rules of Interpretation (GRIs) set forth the legal framework in which merchandise is to be classified under the Harmonized Tariff Schedule of the United States Annotated (HTS). GRI 1 requires that classification be determined first according to the terms of the headings of the tariff and any relative section or chapter notes. Goods that cannot be classified in accordance with GRI 1 are to be classified in accordance with subsequent GRIs taken in order.

The Edu Science Die Cast Microscope Lab, Deluxe Microscope Set, Starter Microscope Set, Two Way Microscope Set and Die Cast Microscope/Telescope Set are each a single retail package containing items that are classifiable under several separate headings or subheadings of the tariff. The Explanatory Notes represent the official interpretation of the HTS at the international level. GRI 3 applies when goods are put up for sale collectively and are classifiable under two or more headings of the tariff. GRI 3(b) covers goods put up in sets for retail sale. Explanatory Note X to GRI 3(b) defines "goods put up in sets for retail sale". Such goods: (a) consist of at least two different articles that are classifiable in different headings, (b) consist of products put up together to meet a particular need or carry out a specific activity, and (c) are put up in a manner suitable for sale directly to users without repacking.

The subject articles in the Edu Science Die Cast Microscope Lab, the Deluxe Microscope Set, the Starter Microscope Set, and the Two Way Microscope Set in our opinion, each meet the criteria for sets as the terms are defined in the cited Explanatory Notes. For the purposes of the HTS, the merchandise constitutes a set. Having determined that the items constitute a set for tariff classification purposes, we must decide the essential character. According to the Explanatory Notes to GRI 3(b), essential character may be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods. The microscope imparts the essential character to the Edu Science Die Cast Microscope Lab and the Deluxe Microscope Set. The toy plastic microscope imparts the essential character to the Edu Science Starter Microscope Set and the Two Way Microscope Set.

The Edu Science Die Cast Microscope/Telescope Set is a single retail package containing articles that are classifiable under several separate headings or subheadings of the tariff. The articles packaged together in a window display cardboard box ready for retail sale fail, in our opinion, to constitute a set for tariff classification purposes. They meet the criteria of elements (a) and (c) above. The retail package does not consist of products put up together to meet a particular need or carry out a common specific activity. Having failed as a set in accordance with GRI 3(b), each of the articles in the Edu Science Die Cast Microscope/Telescope Set must be classified separately.

The applicable subheading for the Edu Science Die Cast Microscope Lab will be 9011.20.8000, HTS, which provides for compound optical microscopes; other microscopes, for photomicrography, cinemicrography or microprojection; other. The rate of duty will be 7.2 percent ad valorem.

The applicable subheading for the Edu Science Deluxe Microscope Set will be 9011.20.4000, HTS, which provides for compound optical microscopes; other microscopes, for photomicrography, cinemicrography or microprojection; provided with a means for photographing the image. The rate of duty will be 3.9 percent ad valorem.

The applicable subheading for the Edu Science Starter Microscope Set and the Two Way Microscope Set will be 9503.90.0080, HTS, which provides for other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof; other. The rate of duty will be free.

The applicable subheading for the microscope contained in the Die Cast Microscope/Telescope Set will be 9011.80.0000, HTS, which provides for com-



pound optical microscopes; other microscopes. The rate of duty will be 6.4 percent ad valorem.

The applicable subheading for the telescope contained in the Die Cast Microscope/Telescope Set will be 9005.80.4040, HTS, which provides for other instruments; optical telescopes; other. The rate of duty will be 8 percent ad valorem

The applicable subheading for the telescope tripod contained in the Die Cast Microscope/Telescope Set will be 9005.90.8000, HTS, which provides for other optical telescopes; parts and accessories (including mountings); other. The rate of duty will be 8 percent ad valorem.

The applicable subheading for the hand magnifier contained in the Die Cast Microscope/Telescope Set will be 9013.80.2000, HTS, which provides for hand magnifiers, magnifying glasses, loupes, thread counters and similar apparatus. The rate of duty will be 6.6 percent ad valorem.

The applicable subheading for the instructional CD-ROM contained in the Die Cast Microscope/Telescope Set will be 8524.39.4000, HTS, which provides for records, tapes and other recorded media for sound or other similarly recorded phenomena, including matrices and masters for the production of records, but excluding products of chapter 37; discs for laser reading systems; other; for reproducing representations of instructions, data, sound, and image, recorded in a machine readable binary form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine; proprietary format recorded discs. The rate of duty will be free.

The applicable subheading for the tweezers, dropper, micro hatchery, stirring rod and collecting vials contained in the Die Cast Microscope/Telescope Set will be 3926.90.9880, HTS, which provides for other articles of plastic; other; other; other. The rate of duty will be 5.3 percent ad valorem.

The applicable subheading for the blank slides with plastic cover glasses, statical slide covers and graduated cylinders contained in the Die Cast Microscope/Telescope Set will be 3926.90.9810, HTS, which provides for other articles of plastic; other; other; laboratory ware. The rate of duty will be 5.3 percent ad valorem.

The applicable subheading for the prepared slide with grasshopper specimens contained in the Die Cast Microscope/Telescope Set will be 9705.00.0090, HTS, which provides for collections and collectors' pieces of anatomical interest; other. The rate of duty will be free.

The applicable subheading for the prepared slide with textiles contained in the Die Cast Microscope/Telescope Set will be 5402.41.9030, HTS, which provides for synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex; other yarn, single, untwisted or with a twist not exceeding 50 turns/m; of nylon or other polyamides; other; monofilament; other. The rate of duty will be 8.2 percent ad valorem.

The applicable subheading for the blank paper labels (pressure-sensitive) contained in the Die Cast Microscope/Telescope Set will be 4821.90.2000, HTS, which provides for paper and paperboard labels of all kinds, whether or not printed; other (than printed); self-adhesive. The rate of duty will be 0.6 percent ad valorem.

The applicable subheading for the methylene blue, Chemical Abstracts Registration (CAS) number 61-73-4, contained in the Die Cast Microscope/

Telescope Set will be 3204.13.8000, HTS, which provides for basic dyes and preparations based thereon; other; other. The rate of duty will be 7.8 percent ad valorem.

The applicable subheading for the eosin contained in the Die Cast Microscope/Telescope Set will be 3204.12.5000, HTS, which provides for synthetic organic coloring matter, whether or not chemically defined; preparations as specified in note 3 to this chapter based on synthetic organic coloring matter; synthetic organic products of a kind used as fluorescent brightening agents or as luminophores, whether or not chemically defined; acid dyes; other; other. The rate of duty will be 7.8 percent ad valorem.

The applicable subheading for the shrimp eggs contained in the Die Cast Microscope/Telescope Set will be 0511.91.0000, HTS, which provides for animal products not elsewhere specified or included; dead animals of chapter 1 or 3, unfit for human consumption; other; products of fish or crustaceans, molluscs or other aquatic invertebrates; dead animals of chapter 3. The rate of duty will be free.

The applicable subheading for sodium chloride contained in the Die Cast Microscope/Telescope Set will be 2501.00.0000, HTS, which provides for salt (including table salt and denatured salt) and pure sodium chloride, whether or not in aqueous solution or containing added anticaking or free-flowing agents; sea water. The rate of duty will be free.

The applicable subheading for the spare light bulb contained in the Die Cast Microscope/Telescope Set will be 8539.29.3060, HTS, which provides for electrical filament or discharge lamps; other filament lamps, excluding ultraviolet or infrared lamps; other; designed for a voltage not exceeding 100 V; other; other; other. The rate of duty will be free.

The applicable subheading for the AA batteries contained in the Die Cast Microscope/Telescope Set will be 8506.10.0000, HTS, which provides for primary cells and primary batteries; manganese dioxide. The rate of duty will be 2.7 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 tariff classification ruling for the Edu Science Die Cast Microscope Lab, Deluxe Microscope Set and Die Cast Microscope/Telescope Set, contact National Import Specialist Barbara Kiefer at 646-733-3019. If you have any questions regarding the Edu Science Starter Microscope Set and Two Way Microscope Set, contact National Import Specialist Alice Wong at 646-733-3026.

ROBERT B. SWIERUPSKI,

*Director;*

*National Commodity Specialist Division.*

## [ATTACHMENT B]

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

NY D87557

February 22, 1999

CLA-2-90:RR:NC:MM:114 D87557

CATEGORY: Classification

TARIFF NO.: 3204.13.8000; 3926.90.9810;  
3926.909880; 8211.92.4060; 8215.99.5000;  
9005.10.10.0080; 9005.80.4040; 9005.90.0000;  
9011.80.0000; 9013.80.2000; 9705.00.0090

MS. STACEY L. KAPUSHY  
TASCO SALES, INC.  
2889 Commerce Parkway  
Miramar, Florida 33025

RE: The tariff classification of The Kids' Collection from Taiwan

DEAR MS. KAPUSHY:

In your letter dated January 14, 1999, you requested a tariff classification ruling. A sample of Tasco The Kids' Collection was submitted with the ruling request.

The submitted sample number 80-600-30-3, identified as The Kids' Collection, consists of a microscope, binocular, telescope, telescope tripod, magnifier, two test tubes, five blank deep well slides, five cover slips, one prepared slide with specimen, dipping tool, scalpel, spatula, tweezers, two collecting vials, three vials containing the chemical elements eosin, gum media and methylene blue, and a Kids' Collection instruction sheet. The items are packaged in a window display cardboard box for retail sale.

The plastic microscope with adjustable focus has 100 to 600 power magnification. The microscope has a lighted magnifier and requires two AA batteries to operate the bulb. The batteries are not included. The plastic binocular features a 3 power magnification and has a textile neck cord. The plastic telescope has 30 power magnification and is focussed by pushing and pulling on the eyepiece until the image is clear. The telescope extends to 16 inches in length. The telescope features a compass for directional guidance. The compass is located on the top of the focus tube. Three plastic telescope tripod legs are included in the retail package. The plastic hand magnifier has up to 600 power magnification and helps prepare small objects for mounting on slides. The plastic test tubes are used to contain, mix and measure liquids. The plastic cover slips are cemented in place over mounted specimens and protect the specimens. The plastic collecting vials hold the live or dead specimens until ready for viewing. Eosin colors specimens for observation, gum media permanently mounts a specimen under a cover slip and methylene blue colors specimens for observation. The plastic scalpel is approximately 5 inches in length and has a fixed blade. The scalpel is used to slice specimens for mounting. The plastic dipping tool is approximately 7 inches in length and is used to add water or stains to a slide. The spatula is approximately 5 1/2 inches in length and is used to spread objects. The tweezers are approximately 4 inches in length and make handling small objects easier. For tariff

classification purposes the items are not considered to be a set and will be classified accordingly.

The Explanatory Notes represent the official interpretation of the Harmonized Tariff Schedule of the United States Annotated (HTS) at the international level. The Explanatory Notes for 9503.70 state that "Subject to substantiated classification in heading 95.03 and for the purpose of this subheading: (I) Sets are two or more different types of articles (principally for amusement), put up in the same packing for retail sale without repacking. Simple accessories or objects of minor importance intended to facilitate the use of the articles may also be included." The goods are not designed to amuse, but as optical products.

The General Rules of Interpretation (GRIs) set forth the legal framework in which merchandise is to be classified under the HTS. GRI 1 requires that classification be determined first according to the terms of the headings of the tariff and any relative section or chapter notes. Goods that cannot be classified in accordance with GRI 1 are to be classified in accordance with subsequent GRIs taken in order. Using GRI 1 at the four digit level, the goods cannot be classified as toys. The goods are not designed to amuse. This retail package supplies a number of optical tools, each used in a different learning area.

The Kids' Collection is a single retail package containing items that are classifiable under several separate headings or subheadings of the tariff. GRI 3 applies when goods are put up for sale collectively and are classifiable under two or more headings of the tariff. GRI 3(b) covers goods put up in sets for retail sale. Explanatory Note X to GRI 3(b) defines "goods put up in sets for retail sale." Such goods: (a) consist of at least two different articles that are classifiable in different headings, (b) consist of products put up together to meet a particular need or carry out a specific activity, and (c) are put up in a manner suitable for sale directly to users without repacking. The items in The Kids' Collection fail, in our opinion, to constitute a set for tariff classification purposes. They meet the criteria of elements (a) and (c) above. The Kids Collection does not consist of products put up together to meet a particular need or carry out a common specific activity. Having failed as a set in accordance with GRI 3(b), the items in The Kids' Collection must be classified separately.

The applicable subheading for the binoculars will be 9005.10.0080, Harmonized Tariff Schedule of the United States (HTS) which provides for binoculars, monoculars, other optical telescopes, and mountings thereof; binoculars; other. The rate of duty of the binoculars will be free.

The applicable subheading for the microscope will be 9011.80.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for compound optical microscopes; other microscopes. The rate of duty will be 6.4 percent ad valorem.

The applicable subheading for the telescope will be 9005.80.4040, Harmonized Tariff Schedule of the United States (HTS), which provides for other instruments; optical telescopes; other. The rate of duty will be 8 percent ad valorem.

The applicable subheading for the telescope tripod will be 9005.90.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for other optical telescopes; parts and accessories (including mountings); other. The rate of duty will be 8 percent ad valorem.

The applicable subheading for the hand magnifier will be 9013.80.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for hand magnifiers, magnifying glasses, loupes, thread counters and similar apparatus. The rate of duty will be 6.6 percent ad valorem.

The applicable subheading for the tweezers, dipping tool and collecting vials will be 3926.90.9880, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of plastic; other; other. The rate of duty will be 5.3 percent ad valorem.

The applicable subheading for the test tubes and blank slides with cover glasses will be 3926.90.9810, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of plastic; other; laboratory ware. The rate of duty will be 5.3 percent ad valorem.

The applicable subheading for the spatula will be 8215.99.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware; and base metal parts thereof; other; other; other (including parts). The rate of duty will be 5.3 percent ad valorem.

The applicable subheading for the scalpel will be 8211.92.4060, Harmonized Tariff Schedule of the United States (HTS), which provides for other knives having fixed blades; with rubber or plastic handles; other; other. The rate of duty will be 1 cent each plus 4.6 percent ad valorem.

The applicable subheading for the prepared slide with specimen will be 9705.00.0090, Harmonized Tariff Schedule of the United States (HTS), which provides for collections and collectors' pieces of anatomical interest; other. The rate of duty will be free.

The applicable subheading for the methylene blue, Chemical Abstracts Registration (CAS) number 61-73-4, will be 3204.13.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for basic dyes and preparations based thereon; other; other. The rate of duty will be 13.2 percent ad valorem.

We are unable to give a classification ruling for the eosin and gum. Additional information is required as indicated below. You may resubmit your request for a ruling when the information is available.

Regarding the tariff classification of the eosin, there are several eosin dyes, most of them acid dyes. For this product, please provide the Chemical Abstracts Registration (CAS) number for this particular compound, the Color Index Name and a list, with percent by weight, of any other constituents added to the eosin dye.

Regarding the tariff classification of the gum, gum is the generic term. Please provide the CAS number of the product, the chemical name and the source material.

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 Barbara Kiefer at 212-637-7058.

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

[ATTACHMENT C]

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

**HQ 967296**  
**CLA-2 RR:CR:GC 967296 NSH**  
**CATEGORY:** Classification  
**TARIFF NO.:** 9023.00.0000

MR. DENNIS AHERN  
BOWEN HILL, LTD.  
*2032 Nottingham Way*  
*Hamilton NJ, 98619*

**RE:** Prepared Slides; NY J81103, modified

DEAR MR. AHERN:

This is in response to an internal request for reconsideration of NY J81103, dated February 28, 2003, on the classification of prepared slides under the Harmonized Tariff Schedule of the United States (HTSUS). NY J81103 classified prepared slides under subheadings 5402.41.90, HTSUS, and 9705.00.00, HTSUS. However, in researching a related issue, Customs and Border Protection (CBP) determined that NY J81103 should be modified only with respect to its classification of prepared slides. This ruling letter sets forth the correct classification of the subject merchandise.

**FACTS:**

The merchandise at issue are two prepared slides for microscopic study. More specifically, one of the slides contains a textile sample and the remaining slide contains a specimen of grasshopper; both are included as part of the Die Cast Microscope/Telescope Set. Although termed a "set" by the importer, NY J81103 determined that the merchandise did not meet the criteria to qualify as a GRI 3(b) set. As such, all of the individual articles, including the prepared slides, were separately classified.

The one prepared slide with a textile sample was classified under subheading 5402.41.90, HTSUS as "Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex: Other yarn, single, untwisted or with a twist not exceeding 50 turns/m: Of nylon or other polyamides: Other."

The one prepared slide containing a specimen of grasshopper was classified under subheading 9705.00.00, HTSUS, as "Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest."

**ISSUE:**

Whether the prepared slides for microscopic study are classified as synthetic filament yarn under subheading 5402.41.90, HTSUS, or as collections and collectors' pieces of zoological interest under subheading 9705.00.00, HTSUS, or as instruments, apparatus and models, designed for educational purposes, under subheading 9023.00.00, HTSUS?

**LAW AND ANALYSIS:**

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative sec-

tion or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. The ENs, although neither dispositive nor legally binding, facilitate classification by providing 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:

5402	Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex:
	Other yarn, single, untwisted or with a twist not exceeding 50 turns/m:
5402.41	Of nylon or other polyamides:
5402.41.90	Other
*	* * * * *
9023.00.00	Instruments, apparatus and models, designed for demonstrational purposes (for example, in education or exhibitions), unsuitable for other uses, and parts and accessories thereof
*	* * * * *
9705.00.00	Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest

Subheading 9705.00.00, HTSUS, applies to collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest. In addition, EN 97.05 states, in pertinent part, that:

These articles are very often of little intrinsic value but derive their interest from their rarity, their grouping or their presentation. The heading includes:

- (A) **Collections and collectors' pieces of zoological, botanical, mineralogical or anatomical interest**, such as:
- (1) Dead animals of any species, preserved dry or in liquid; stuffed animals for collections.
  - (2) Blown or sucked eggs; insects in boxes, frames, etc. (**other than** mounted articles constituting imitation jewelry or trinkets); empty shells, **other than** those of a kind suitable for industrial use.
  - (3) Seeds or plants, dried or preserved in liquid; herbariums.
  - (4) Specimens of minerals (**not being** precious or semi-precious stones falling in **Chapter 71**); specimens of petrification.

(5) Osteological specimens (skeletons, skulls, bones).

(6) Anatomical and pathological specimens

Regarding the prepared slide containing a grasshopper sample and classified under subheading 9705.00.00, HTSUS, there is no information that would indicate it constitutes a rare sample that would be of any interest in a collection and to a collector, as required by the heading text. Rather, it appears to contain a microscopic sample of no distinction, on the same type of slide that is typically included with a microscope. Although we note that EN 97.05 (A)(2) refers specifically to insects, we further note that it indicates the insects are preserved in whole as opposed to the mere preservation of a microscopic sample. In addition, CBP notes that prior rulings classifying items under subheading 9705.00.00, HTSUS, invariably pertain to rare examples of merchandise, or merchandise that would appropriately be part of a collection, and therefore important to a collector for purposes of display. See NY J89338, dated October 15, 2003 (reproductions of historically significant tiles found in famous churches, museums and private villas throughout Italy), HQ 966030, dated January 28, 2003 (ancient Egyptian figurine resembling a miniature sarcophagus with hieroglyphic writing), HQ 962234, dated July 17, 2000 (various collectible automobiles or racing cars), HQ 960986, dated February 24, 1999 (rock and roll memorabilia, including gold and platinum albums, collectible clothing, instruments, photos, lobby cards, pictures, toys and autographs, all of which are associated with various entertainers), HQ 961279, dated November 5, 1998 (collection of approximately 40 rare automobiles produced from the late 1920's through the 1950's, which may be shown at exhibitions for rare automobiles, or in museums), HQ 957664, dated March 13, 1996 (various mounted animals, mounted fish and various animal racks and traps), HQ 952687, dated April 30, 1993 (mounted game fish preserved by a taxidermist), and HQ 083869, dated June 14, 1989 (glass display case containing butterflies of various types, sizes and colors; glass display case containing South American spiders). Unlike the products in these rulings, the merchandise at issue cannot be displayed in such a fashion. In view of the foregoing, we find that the prepared slide containing a sample of grasshopper is not described under subheading 9705.00.00, HTSUS.

Heading 5402, HTSUS, provides for synthetic filament yarn. See HQ 966892, dated January 26, 2004 (monofilament nylon sutures classified under heading 5402, HTSUS), HQ 966676, dated December 1, 2003 (monofilament nylon sutures classified under heading 5402, HTSUS), HQ 562298, dated February 21, 2002 (nylon filament yarn for the production of apparel articles classified under heading 5402, HTSUS). The merchandise at issue is a slide for microscopic study that happens to contain a small sample of synthetic filament yarn. Because heading 5402, HTSUS, does not apply to slides for microscopic study, the merchandise at issue, pursuant to GRI 1, is precluded from classification therein.

Subheading 9023.00.00, HTSUS, applies to models designed for demonstrational purposes, for example in educational settings, which are unsuitable for other uses. In addition, EN 90.23 provides, in pertinent part, that:

This heading covers a wide range of instruments, apparatus and models designed for demonstrational purposes (e.g., in schools, lecture rooms, exhibitions) and unsuitable for other uses.



**Subject** to this proviso, the heading includes:

...

(5) Show-cases and exhibit panels, etc., displaying samples of raw materials (textile fibres, woods, etc.), or showing the various stages of manufacture or processing of a product (for instruction in technical schools).

...

(7) **Prepared slides** for microscopic study [Emphasis added].

The prepared slides at issue are exclusively used for demonstrational purposes, most often in an educational setting. The slides must be used in concert with a microscope to be viewed in any detail, making it readily apparent that they are incapable of being put to another type of use. As a result, they are completely and accurately described by the text to subheading 9023.00.00, HTSUS. In addition, EN 90.23 specifically names prepared slides for microscopic study. In view of the foregoing, the prepared slides are classified under subheading 9023.00.00, HTSUS.

**HOLDING:**

Both the prepared slide containing textile materials and the prepared slide containing a sample of grasshopper are classified under subheading 9023.00.0000, Harmonized Tariff Schedule of the United States Annotated, as "Instruments, apparatus and models, designed for demonstrational purposes (for example, in education or exhibitions), unsuitable for other uses, and parts and accessories thereof." The 2004 general, column one rate of duty is *Free*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

NY J81103, dated February 28, 2003 is MODIFIED.

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

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

**HQ 967297**  
**CLA-2 RR:CR:GC 967297 NSH**  
**CATEGORY:** Classification  
**TARIFF NO.:** 9023.00.0000

MS. STACEY L. KAPUSHY  
TASCO SALES, INC.  
*2889 Commerce Parkway*  
*Miramar, FL 33025*

**RE:** Prepared Slides; NY D87557, modified

DEAR MS. KAPUSHY:

This is in response to an internal request for reconsideration of NY D87557, dated February 29, 1999, on the classification of a prepared slide under the Harmonized Tariff Schedule of the United States (HTSUS). NY D87557 classified a prepared slide under subheading 9705.00.00, HTSUS. However, in researching a related issue, Customs and Border Protection (CBP) determined that NY D87557 should be modified only with respect to its classification of the prepared slide. This ruling letter sets forth the correct classification of the subject merchandise.

**FACTS:**

The merchandise at issue is one prepared slide for microscopic study. More specifically, the slide contains an animal specimen and is included as part of The Kids' Collection, an assortment of instruments for use by children. NY D87557 determined that the assortment of merchandise did not meet the criteria to qualify as a GRI 3(b) set. As such, all of the individual articles, including the prepared slide, were separately classified. The prepared slide was classified under subheading 9705.00.00, HTSUS, as "Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest."

**ISSUE:**

Whether the prepared slide for microscopic study is classified as collections and collectors' pieces of zoological interest under subheading 9705.00.00, HTSUS, or as instruments, apparatus and models, designed for educational purposes, under subheading 9023.00.00, HTSUS?

**LAW AND ANALYSIS:**

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. The ENs, although neither dispositive nor legally binding, facilitate classification by providing 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:

9023.00.00 Instruments, apparatus and models, designed for demonstrational purposes (for example, in education or exhibitions), unsuitable for other uses, and parts and accessories thereof

\* \* \* \* \*

9705.00.00 Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest

Subheading 9705.00.00, HTSUS, applies to collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest. In addition, EN 97.05 states, in pertinent part, that:

These articles are very often of little intrinsic value but derive their interest from their rarity, their grouping or their presentation. The heading includes:

(A) **Collections and collectors' pieces of zoological, botanical, mineralogical or anatomical interest**, such as:

- (1) Dead animals of any species, preserved dry or in liquid; stuffed animals for collections.
- (2) Blown or sucked eggs; insects in boxes, frames, etc. (**other than** mounted articles constituting imitation jewelry or trinkets); empty shells, **other than** those of a kind suitable for industrial use.
- (3) Seeds or plants, dried or preserved in liquid; herbariums.
- (4) Specimens of minerals (**not being** precious or semi-precious stones falling in **Chapter 71**); specimens of petrification.
- (5) Osteological specimens (skeletons, skulls, bones).
- (6) Anatomical and pathological specimens

Regarding the prepared slide containing an animal specimen and classified under subheading 9705.00.00, HTSUS, there is no information that would indicate it constitutes a rare sample that would be of any interest in a collection and to a collector, as required by the heading text. Rather, it appears to contain a microscopic sample of no distinction, on the same type of slide that is typically included with a microscope. In addition, CBP notes that prior rulings classifying items in subheading 9705.00.00, HTSUS, invariably pertain to rare examples of merchandise, or merchandise that would appropriately be part of a collection, and therefore important to a collector for purposes of display. *See* NY J89338, dated October 15, 2003 (reproductions of historically significant tiles found in famous churches, museums and private villas throughout Italy), HQ 966030, dated January 28, 2003 (ancient Egyptian figurine resembling a miniature sarcophagus with hieroglyphic writing), HQ 962234, dated July 17, 2000 (various collectible automobiles or racing cars), HQ 960986, dated February 24, 1999 (rock and roll memorabilia, including gold and platinum albums, collectible clothing, in-

struments, photos, lobby cards, pictures, toys and autographs, all of which are associated with various entertainers), HQ 961279, dated November 5, 1998 (collection of approximately 40 rare automobiles produced from the late 1920's through the 1950's, which may be shown at exhibitions for rare automobiles, or in museums), HQ 957664, dated March 13, 1996 (various mounted animals, mounted fish and various animal racks and traps), HQ 952687, dated April 30, 1993 (mounted game fish preserved by a taxidermist), and HQ 083869, dated June 14, 1989 (glass display case containing butterflies of various types, sizes and colors; glass display case containing South American spiders). Unlike the products in these rulings, the merchandise at issue cannot be displayed in such a fashion. In view of the foregoing, we find that the prepared slide containing an animal specimen is not described under subheading 9705.00.00, HTSUS.

Subheading 9023.00.00, HTSUS, applies to models designed for demonstrational purposes, for example in educational settings, which are unsuitable for other uses. In addition, EN 90.23 provides, in pertinent part, that:

This heading covers a wide range of instruments, apparatus and models designed for demonstrational purposes (e.g., in schools, lecture rooms, exhibitions) and unsuitable for other uses.

**Subject** to this proviso, the heading includes:

...

(7) **Prepared slides** for microscopic study [Emphasis added].

The prepared slide at issue is exclusively used for demonstrational purposes, most often in an educational setting. The slide must be used in concert with a microscope to be viewed in any detail, making it readily apparent that it is incapable of being put to another type of use; a microscope is one of the instruments included in The Kids' Collection. As a result, the prepared slide is completely and accurately described by the text to subheading 9023.00.00, HTSUS. In addition, EN 90.23 specifically names prepared slides for microscopic study. In view of the foregoing, the prepared slides are classified under subheading 9023.00.00, HTSUS.

**HOLDING:**

The prepared slide containing an animal specimen is classified under subheading 9023.00.0000, Harmonized Tariff Schedule of the United States Annotated, as "Instruments, apparatus and models, designed for demonstrational purposes (for example, in education or exhibitions), unsuitable for other uses, and parts and accessories thereof." The 2004 general, column one rate of duty is *Free*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

NY D87557, dated February 29, 1999 is MODIFIED.

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

**19 CFR PART 177****REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF TRUCK ENGINE FAN CLUTCHES**

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

**ACTION:** Notice of revocation of tariff classification of nine rulings and treatment with respect to the tariff classification of truck engine fan clutches

**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 and Border Protection (CBP) is revoking nine rulings relating to the tariff classification, under the Harmonized Tariff Schedule of the United States, (HTSUS), of truck engine fan clutches. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed actions was published in the Customs Bulletin on August 18, 2004. One comment was received in response to the notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 16, 2005.

**FOR FURTHER INFORMATION CONTACT:** Robert Dinerstein, General Classification Branch, at (202) 572–8721.

**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 im-

porter 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, as amended (19 U.S.C. § 1625(c)(1)), on August 18, 2004, a notice was published in the Customs Bulletin Volume 38, No.34 proposing to revoke nine rulings relating to the tariff classification of truck engine fan clutches. One comment was received in response to the notice.

As stated in the proposed notice, although CBP is specifically referring to New York Ruling Letters (“NY”) I88480 dated December 6, 2002, NY I88481 dated December 6, 2002, NY I88482 dated December 6, 2002, NY I88483 dated December 6, 2002, NY I88484 dated December 6, 2002, NY I89250, dated December 11, 2002, NY I89251 dated December 11, 2002, NY I89252 dated December 11, 2002 and NY I89253 dated December 11, 2002, this notice covers any rulings on this merchandise that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625 (c)(2)), CBP is revoking any treatment previously accorded by CBP 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, 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 HTSUS. Any person involved with substantially identical merchandise should have advised CBP. 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.

Based on the information and material available in the proposed notice, CBP determined that the engine fan clutch is an integral part of an internal combustion engine, and thus under Section XVII, Note 2(e), it is excluded from being classified in heading 8708, as a part of a motor vehicle. CBP also concluded that under Section XVI Note 2(a), HTSUS, the engine fan clutches fall within an *eo nomine* provision for clutches, Heading 8483, HTSUS.

The comment that was submitted questioned whether the fan clutches are integral parts of truck engines. It also pointed out that

there were inaccuracies in the description of the product that was provided in the facts section of the proposed ruling. According to the comment, a truck will operate without a fan clutch but it will run at higher temperatures. The fan clutches allow trucks to operate at lower temperatures and thereby save fuel. The comment inquires why is a radiator not considered integral to an engine when it is also involved in the cooling process of an engine. The comment further points out that a truck cannot function without a radiator, and so it raises the question of what is considered integral to an engine in order make it operate as an engine.

The submitted comment has been fully considered and as explained in HQ 966972, (attached). In our judgment, motor vehicle radiators are not analogous to the fan clutches. Consequently, CPB continues to believe that a fan clutch is an integral part of a truck/bus engine. Although we acknowledge that the proposed ruling contained some imprecise information regarding the size of truck fan clutches and how they are attached to an engine, we believe that this information does not affect the analysis regarding how they should be classified in the HTSUS. Consequently, for the reasons explained in HQ 966972, CBP's position remains that the truck/bus engine fan clutches are classified in subheading 8483.60.4040, HTSUS, which provides for "Transmission shafts . . . Clutches and universal joints".

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY I88480, NY I88481, NY I88482, NY I88483, NY I88484, NY I89250, NY I89251 NY I89252, and NY I89253. CBP also is revoking any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 966972. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice.

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, 2004

John Elkins for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

Attachment

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

**HQ 966972**  
October 28, 2004  
**CLA-RR:CR:GC 966972 RSD**  
**CATEGORY:** Classification  
**TARIFF NO.** 8483.60.4040

MR. THOMAS SCHILLINGER  
MATERIALS MANAGER  
HORTON, INC.  
10840 423rd Avenue  
Britton, South Dakota 57430

**RE:** Truck Engine Cooling Fan Clutches; Revocation of NY I88480, NY I88481, NY I88482, NY I88483, NY I88484, NY I89250, NY I89251, NY I89252, and NY I89253

DEAR MR. SCHILLINGER:

This is in regards to your letter dated November 8, 2002, requesting a ruling concerning the classification of a cooling fan clutch for a internal combustion engine of a medium and heavy-duty truck under the Harmonized Tariff Schedule of the United States ("HTSUS"). In response to this request, on December 6, 2002 and December 11, 2002, the National Commodity Specialist Division ("NCSD"), New York issued a series of rulings, NY I88480, NY I88481, NY I88482, NY I88483, NY I88484, NY I89250, NY I89251, NY I89252, and NY I89253. In these rulings, Customs and Border Protection (CPB) ruled that engine cooling fan clutches were classified in subheading 8708.99.8080, HTSUS. We now believe that the classification of the engine fan clutches indicated in these rulings is incorrect. This ruling sets forth the correct classification of engine cooling fan clutches.

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 I88480, NY I88481, NY I88482, NY I88483, NY I88484, NY I89250, NY I89251, NY I89252, and NY I89253 was published on August 18, 2004, in the *Customs Bulletin* Volume 38 No.34. One comment was received in response to this notice.

**FACTS:**

In response to the notice, you submitted additional information that corrects some of the factual description of the product that was set forth in our proposed ruling. It is not disputed that the engine fan clutches that are under consideration are used to assist in the cooling of internal combustion engines that are installed in mostly medium and heavy-duty trucks and buses. They utilize the rotational energy of the engine either directly or indirectly via a drive belt to rotate a cooling fan. The cooling fan and the fan clutch draw air through the engine-cooling package. They are capable of engaging and disengaging the fan from the rotational motion of the engine under the direction of sensors that signal the need for cooling.

In your submission, you describe several different types of fan clutches. The drivemaster and the HTS/S are cooling fan clutches that are mounted on the engine and are belt driven. The drivemaster fan has a friction inter-



face and is spring engaged and pneumatically disengaged. It is activated via temperature sensors in the engine cooling system. The HTS/S cooling fan has a friction interface and is pneumatic engaged and is spring disengaged. It is activated via temperature sensors and pneumatic valves. The Drive hub is an engine-mounted bracket with a pulley for direct drive belt engagement and a mounting surface for the fan clutch. The viscous fan clutch is mounted on either a drive hub or the water pump, and it has a viscous fluid interface. A bi-metal strip or electromagnetic solenoid activates it.

When the engine temperature becomes too high, the switch will trigger the fan clutch. This causes the fan clutch to turn the fan, drawing air through the radiator and cool the engine air. The fan clutch ensures that the fan will rotate at just the right speed to keep the engine from overheating and reduces the drive to the fan when it is no longer needed. Without the fan clutch, the fan would not spin at an adequate speed. Thus, the engine would not be sufficiently cooled and it could overheat rather quickly and be damaged.

You have advised us that the description of the product under consideration in the proposed ruling contains certain incorrect information. In the proposed ruling, we stated that the engine cooling fan clutch is a small fluid coupling with a thermostatic device that controls a variable-speed fan. You have advised us that this is incorrect. In your comment, you state that the fan clutch for trucks and buses is large and weighs between fifty and sixty pounds. Furthermore, you explain that it is not mounted directly to the engine crankshaft. Instead, the fan clutch is mounted on the top of the engine, although we correctly indicated that it is belt driven in much the same way the air conditioner is driven.

Previously, Customs and Border Protection (CBP) has issued rulings that classified fan clutches used in motor vehicles in different headings of the HTSUS. In the rulings issued to Horton Inc. concerning engine fan clutches, NY I88480 dated December 6, 2002, NY I88481 dated December 6, 2002, NY I88482 dated December 6, 2002, NY I88483 dated December 6, 2002, NY I88484 dated December 6, 2002, NY I89250 dated December 11, 2002, NY I89251 dated December 11, 2002, NY I89252 dated December 11, 2002, and NY I89253, dated December 11, 2002, CBP classified the engine fan clutches in subheading 8708.99.80, HTSUS, as other, other parts of motor vehicles. In NY A84377 dated July 3, 1996, and NY J88108 dated September 16, 2003, CBP classified fan clutches in subheading 8483.60.40, HTSUS, as clutches.

**ISSUE:**

Whether the engine cooling fan clutches are classified in heading 8409, as parts suitable for use solely or principally with the engines of heading 8407 or 8408, in heading 8483, as clutches and couplings (including universal joints) or in heading 8708 as parts and accessories of the motor vehicles of heading 8701 to 8705 under the HTSUS.

**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 GRIs may then be applied.

The Harmonized Commodity Description And Coding System Explanatory Notes (EN's) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the EN's provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system. CPB believes the EN's should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The HTSUS provisions under consideration are as follows:

8409 Parts suitable for use solely or principally with the engines of heading 8407 or 8408:

Other:

8409.91 Suitable for use solely or principally with spark-ignition internal combustion piston engines (including rotary engines):

8409.91.50 Other.

\* \* \* \* \*

8483 Transmission shafts (including camshafts and crankshafts) and cranks: bearing housings, housed bearing and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints):

8483.60 Clutches and shaft couplings (including universal joints):

8483.60.40 Clutches and universal joints.

\* \* \* \* \*

8708 Parts and accessories of the motor vehicles of heading 8701 to 8705:

8708.99 Other:

Other:

8708.99.80 Other.

EN 84.83 (H) states the following:

**(H) CLUTCHES**

These are used to connect to disconnect the drive at will. They include:

Friction clutches in which rotating discs, rings, cones, etc. with friction surfaces, can be engaged or disengaged; dog (claw) clutches in which the opposing members have projections and corresponding slots; automatic centrifugal clutches which engage or disengage according to the speed of rotation; compressed air clutches; hydraulic clutches; etc.

It is undisputed that the subject merchandise are clutches. The question that must be considered is how the fan clutches that will be attached to

truck or bus engines are classified. One of the competing headings 8483, HTSUS, is included in Section XVI. Section XVI Note 1(l) excludes articles of Section XVII from classification in Section XVI. Section XVII provides for “parts and accessories” of motor vehicles in Heading 8708, HTSUS. However, Section XVII, Note 2(e), limits the scope of the terms “parts” and “parts and accessories” by excluding articles of heading 8483 from classification in a heading in Section XVII provided they constitute integral parts of engines or motors. In other words, if the fan clutch is an integral part of an engine, it cannot be classified in heading 8708, HTSUS.

There is no dispute that the fan clutch is a part of the engine because it is dedicated to use solely with the engine, and it has no independent function. Although the fan clutch is a part, the issue that arises is whether it is an “integral part” within the meaning of Section XVII Note 2(e). Neither the HTSUS nor the EN’s provide a definition for the term “integral”. The Merriam-Webster On Line Dictionary gives the following definition for the word integral:

- 1 a** : essential to completeness : **Constituent** <an *integral* part of the curriculum> . . .
- 2** : composed of integral parts
- 3** : lacking nothing essential

You question whether the fan clutch should be considered an integral part of the engine. You point out that a truck will operate without a fan clutch but it will run at higher temperatures and that the Horton fan clutches allow trucks to operate at lower temperatures and thereby save fuel. You argue that a truck will not operate without a radiator so the question really is what is considered integral to an engine in order to make it operate as an engine. We believe that the automotive radiators are not analogous to the fan clutches under consideration. Unlike the fan clutches, automotive radiators are not directly mounted onto engines, but are usually connected to an engine through the tubes and engine. Even more significantly, there is a specific provision in the HTSUS in which motor vehicles radiators are classified, subheading 8708.91, HTSUS. In contrast, the HTSUS does not contain a specific provision for fan clutches. Although the proposed ruling provided an imprecise description of the fan clutches regarding their size and how they are mounted to an engine, we believe that this description does not affect the analysis regarding how the fan clutches operate and how they are classified.

We have once again reviewed the information available and we continue to believe that fan clutches are necessary to complete motor vehicle engines. By regulating the speed of the engine fan, the fan clutch ensures that there is a proper airflow to the engine’s cooling system, and thus it helps maintain a proper engine temperature. The engine fan must rotate at the right speed to ensure that the engine reaches an adequate temperature, so that the engine can work efficiently. Even more significantly, if the fan does not rotate at a sufficient speed, the inadequate airflow could quickly cause the engine to overheat, which would severely damage it. In other words, the fan clutch is essential for the engine to function properly.

Although the fan clutch is not an internal part of the engine block, it is our understanding that it is still permanently mounted onto the engine. In HQ 087166, dated November 1, 1990, we ruled that the language of Section XVII Note 2(e) does not require an integral part of an engine be an internal

part of the engine block. Based on the fact that the fan clutch is essential to the function of an engine, we conclude that it is necessary to complete an engine and thus it is an integral part of an engine. Therefore, Section XVII, Note 2(e) precludes the fan clutches from being classified in a heading of Section XVII, HTSUS. This means that the fan clutches cannot be classified in Heading 8708, HTSUS, as parts for a motor vehicle. Consequently, we find that NY I 88480, NY I88481, NY I88482, NY I88483, NY I88484, NY I89250, NY I89251, NY I89252, and NY I89253 incorrectly determined that the fan clutches were classified in heading 8708.

In classifying the fan clutches, which are integral parts of internal combustion engines, we apply Section XVI Note 2, which states in pertinent part that parts of machines are to be classified according to the following rules:

- (a) Parts which are goods included in any of the headings of chapters 84 and 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8455, 8503 8522, 8529, 8538 and 8548) *are in all cases to be classified in the respective headings* [Emphasis added];
- (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate . . .

In considering Note 2(a) and Note 2(b), respectively, it is necessary to determine whether the fan clutches at issue can be classified by themselves, or only as parts suitable for use solely or principally with spark-ignition internal combustion piston engines. If the fan clutches are separately classifiable as a product of chapter 84 or 85, Note 2(a) is applicable and they will be classified in their respective heading, regardless of the fact that they are a part of an internal combustion engine. If the fan clutches cannot be classified separately as a product of chapter 84 or 85, then Note 2(b) is applicable and they will be classified under heading 8409, HTSUS as a part of a spark-ignition internal combustion piston engine. Clutches are provided for *eo nomine* in heading 8483, HTSUS. The engine fan clutches at issue are clutches, and thus, Section XVI Note 2(a) is applicable. Therefore, by application of Section XVI Note 2(a), classification as a part of a motor vehicle engine in heading 8409, is precluded and the engine fan clutches are classified in heading 8483, HTSUS, a heading for clutches. This position is consistent with CBP's determination in NY A84377 and NY J88108 which correctly determined that the engine fan clutches are classified in subheading 8483.60.40, HTSUS, as clutches.

**HOLDING:**

The truck engine cooling fan clutches are classified in subheading 8483.60.4040, Harmonize Tariff Schedule of the United States Annotated (HTSUSA) as: Transmission shafts (including camshafts and crankshafts) cranks: bearing housings . . . ; clutches and shaft couplings (including universal joints): Clutches and shaft couplings (including universal joints): Clutches and universal joints: Clutches. The general, column one rate of duty for the fan clutches is 2.8 percent *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

NY I 88480 dated December 6, 2002, NY I88481 dated December 6, 2002, NY I88482 dated December 6, 2002, NY I88483, dated December 6, 2002, NY I 88484 dated December 6, 2002, NY I89250, dated December 11, 2002, NY I89251 dated December 11, 2002, NY I89252 dated December 11, 2002, and NY I89253, dated December 11, 2002 are revoked.

John Elkins for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

