

Bureau of Customs and Border Protection

General Notices

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, December 1, 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.

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

19 CFR PART 177

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF A FEATHER “DUSTER” TICKLER

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

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to tariff classification of a feather “duster” tickler.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a feather “duster” tickler and to revoke any treatment previously accorded by the Bureau of Customs and Border Protection (“CBP”) to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin* on September 29, 2004. No comments were received in response to this notice.

EFFECTIVE DATE: This modification and revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 13, 2005.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, General Classification Branch, (202) 572-8782.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with CBP 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 CBP 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 was published on September 29, 2004, in the *Customs Bulletin* Vol. 38, No. 40, proposing to modify NY J89913, dated November 19, 2003. This ruling pertained, in part, to the tariff classification of a feather "duster" tickler. No comments were received in response to this notice.

As stated in the proposed notice, this modification will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by 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 Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Any person involved in substantially identical transactions should have advised 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 their agents for importations of merchandise subsequent to the effective date of this final notice.

In NY J89913, dated November 19, 2003, CBP found that a feather "duster" tickler was classified in subheading 9603.90.4000, HTSUSA, as a "feather duster."

CBP has reviewed the matter and determined that the correct classification of the feather "duster" tickler is in subheading 6701.00.3000, HTSUSA, which provides for skins and other parts of birds with their feathers or down, feathers, parts of feathers, down and articles thereof (other than goods of heading 0505 and worked quills and scrapes); articles of feathers or down.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY J89913, and any other ruling on this merchandise not specifically identified which is inconsistent with this modification, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 967294, attached 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 transactions.

Dated: November 22, 2004

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

Attachment

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

HQ 967294
November 22, 2004
CLA-2 RR:CR:GC 967294 KBR
CATEGORY: Classification
TARIFF NO.: 6701.00.3000

TED YOUNGS
ORO DESIGN
503 W. Mt. Pleasant Ave.
Philadelphia, PA 19119

RE: Modification of NY J89913; Feather "Duster" Tickler

DEAR MR. YOUNGS:

This is in reference to New York Ruling Letter (NY) J89913, issued to you by the Customs and Border Protection ("CBP"), National Commodity Specialist Division, New York, on November 19, 2003. That ruling concerned the classification of a sensual travel kit under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). In NY J89913, we determined that the sensual travel kit was not a set and, therefore, the components must be classified individually. One component, a feather "duster" tickler was classified as a "feather duster". We have reviewed NY J89913 and determined that the classification provided for the feather "duster" tickler is incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published on September 29, 2004, in Vol. 38, No. 40 of the *Customs Bulletin*, proposing to modify NY J89913. No comments were received in response to this notice.

FACTS:

NY J89913, concerned an incomplete sensual travel kit which included a feather "duster" tickler. The feather "duster" tickler was classified in sub-heading 9603.90.4000, HTSUSA, as a feather duster. We have reviewed that ruling and determined that the classification of the feather "duster" tickler is incorrect. This ruling sets forth the correct classification for the feather "duster" tickler.

ISSUES:

What is the correct classification of the feather "duster" tickler?

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) in accordance with the General Rules of Interpretation (GRIs). Under GRI 1, merchandise is classifiable 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 on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In interpreting the headings and subheadings, CBP looks to the Harmonized Commodity Description and Coding System Explanatory Notes (EN). Although not legally binding, they provide a commentary on the scope of

each heading of the HTSUSA. It is CBP's practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUSA provisions under consideration are as follows:

6701	Skins and other parts of birds with their feathers or down, feathers, parts of feathers, down and articles thereof (other than goods of heading 0505 and worked quills and scrapes):
6701.00.3000	Articles of feathers or down
9603	Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees):
	* * * * *
9603.90	Other:
9603.90.4000	Feather dusters

At issue is the classification of the feather "duster" tickler in an incomplete sensual travel kit. NY J89913 classified the article as a "feather duster" in subheading 9603.90.4000, HTSUSA. However, EN 96.03 (D) describes "Feather dusters" as consisting "of a bundle of feathers mounted on a handle and are used for dusting furniture, shelves, shop windows, etc." The instant feather article is not used for "dusting". The instant feather article is used to "tickle" the body. Therefore, because the EN includes only articles used for cleaning purposes, we find that subheading 9603.90.4000, HTSUSA, is not appropriate. The feather tickler is more properly classified in subheading 6701.00.3000, HTSUSA, as an article of feathers or down.

HOLDING:

In accordance with the above discussion, the feather "duster" tickler is classified under subheading 6701.00.3000, HTSUSA, as skins and other parts of birds with their feathers or down, feathers, parts of feathers, down and articles thereof (other than goods of heading 0505 and worked quills and scrapes); articles of feathers or down. The 2004 column one, general rate of duty is 4.7% *ad valorem*. 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.

EFFECT ON OTHER RULINGS:

NY J89913 dated November 19, 2003, is modified as to the classification under the HTSUSA of the feather "duster" tickler. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective sixty (60) days after publication in the *Customs Bulletin*.

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

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF TUNGSTEN CARBIDE RODS

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

ACTION: Notice of proposed revocation of tariff classification ruling letter and revocation of treatment relating to the classification of tungsten carbide rods.

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 the Bureau of Customs and Border Protection (CBP) intends to revoke a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of tungsten carbide rods. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before January 14, 2005.

ADDRESS: Written comments 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. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: David Salkeld, General Classification Branch, at (202) 572-8781.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal

obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke a ruling letter relating to the tariff classification of tungsten carbide rods. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) 897163, dated April 29, 1994 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUS. Any person involved with 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 decision on this notice.

In NY 897163, CBP classified tungsten carbide rods under subheading 8113.00.0000, HTSUSA, which provides for "Cermets and articles thereof, including waste and scrap."

Based on our analysis of the scope of the terms of headings 8113 and 8209, HTSUS, the Legal Notes, and the Explanatory Notes, we now believe the rods are classified under subheading 8209.00.0030, which provides for, "Plates, sticks, tips and the like for tools, unmounted, of cermets: Of sintered metal carbides."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY 897163 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 967405 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that is contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

DATED: November 22, 2004

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

[ATTACHMENT A]

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

NY 897163
April 29, 1994
CLA-2-81:S:N:N3:115 897163
CATEGORY: Classification
TARIFF NO.: 8113.00.0000

MR. WILLIAM J. MALONEY
RODE & QUALEY
295 Madison Avenue
New York, NY 10017

RE: The tariff classification of ceramic metal composites from Japan.

DEAR MR. MALONEY:

In your letter dated April 14, 1994, you requested a tariff classification ruling, on behalf of your client, Tulon Inc.

The products consist of sintered ceramic-metal composites (cermets) in the form of rods approximately 1 1/2" in length with round cross-sections of approximately 1/8" diameter. They are further described as follows:

1. Exhibit A - carbide grade HTI10 - comprised of 93% tungsten carbide, 6% cobalt and 1% tantalum carbide
2. Exhibit B - carbide grade MF10 - comprised of 92% tungsten carbide and 8% cobalt
3. Exhibit C - carbide grade UF20 - comprised of 88% tungsten carbide and 12% cobalt Cermets contain both a ceramic constituent (resistant to heat and with a high melting point) and a metallic constituent. Manufacturing processes used in the production of these products, and also their physi-

cal and chemical properties, are related both to their ceramic and metallic constituents, hence their name cermets.

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

The applicable subheading for all of the ceramic metal composites will be 8113.00.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for cermets and articles thereof. The duty rate will be 5.5% ad valorem.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAQUIRE
Area Director New York Seaport.

[ATTACHMENT B]

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

HQ 967405
CLA-2 RR:CR:GC 967405 DSS
CATEGORY: Classification
TARIFF NO.: 8209.00.0030

MR. WILLIAM J. MALONEY
RODE & QUALEY
295 Madison Avenue
New York, NY 10017

RE: Tungsten carbide rods from Japan; NY 897163 Revoked

DEAR MR. MALONEY:

This letter is pursuant to the Bureau of Customs and Border Protection (CBP) reconsideration of New York Ruling Letter (NY) 897163, dated April 29, 1994, which was issued to you on behalf of Tulon, Inc. by the Director, National Commodity Specialist Division, New York, with respect to the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of certain tungsten carbide rods. After review of NY 897163, CBP has determined that the classification of the rods under subheading 8113.00.0000, HTSUSA, was incorrect.

FACTS:

In NY 897163, we classified what were termed "ceramic composite rods" (rods) under heading 8113, HTSUS, as cermets. We described the rods as follows:

The products consist of sintered ceramic-metal composites (cermets) in the form of rods approximately 1 1/2" in length with round cross-sections of approximately 1/8" diameter. They are further described as follows:

1. Exhibit A - carbide grade HTI10 - comprised of 93% tungsten carbide, 6% cobalt and 1% tantalum carbide
2. Exhibit B - carbide grade MF10 - comprised of 92% tungsten carbide and 8% cobalt
3. Exhibit C - carbide grade UF20 - comprised of 88% tungsten carbide and 12% cobalt

Cermets contain both a ceramic constituent (resistant to heat and with a high melting point) and a metallic constituent. Manufacturing processes used in the production of these products, and also their physical and chemical properties, are related both to their ceramic and metallic constituents, hence their name cermets. . . .

Based upon this language it is apparent that the instant rods are tungsten carbide rods. Based upon their description, these rods fall under heading 8209, HTSUSA, as plates, sticks, tips and the like for tools, unmounted, of cermets.

ISSUE:

Whether the instant tungsten carbide rods are classified under heading 8209.

LAW AND ANALYSIS:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the System. CBP believes the ENs should always be consulted. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUSA provisions under consideration are as follows:

- 8113.00.0000 Cermets and articles thereof, including waste and scrap
* * * *
- 8209.00.00 Plates, sticks, tips and the like for tools, unmounted, of cermets:
- 8209.00.0030 Of sintered metal carbides

Section XV, Note 4, HTSUS, defines the term "cermets" as products containing a microscopic heterogeneous combination of a metallic component and a ceramic component. The term includes sintered metal carbides (metal carbides sintered with a metal). As we stated in HQ 951642, dated May 1, 1992:

The tungsten carbide used in certain cutting tools is made by sintering a mixture of tungsten carbide powder and powdered cobalt. The resulting mixture maximizes the wear resistance and strength necessary to resist the shock involved in cutting tool and rock drilling applications. . . .

Sintered tungsten metal carbide articles such as the instant articles do not fall under heading 8101, HTSUSA, as articles of tungsten. Indeed, there is not a question whether the rods are properly considered cermets under the HTSUSA. The issue is whether they are classified under heading 8113, as articles of cermets, or as plates, sticks, tips, and the like for tools, unmounted, of cermets, under heading 8209.

Relevant ENs state that heading 8113 covers cermets, whether unwrought or in the form of articles not elsewhere specified in the Nomenclature. The referenced EN specifically excludes from heading 8113 plates, sticks, tips and the like, of cermets with a basis of metal carbides agglomerated by sintering (heading 8209). The issue, then, is whether the tungsten carbide rods are goods of heading 8209. EN 82.09 states:

The products of this heading are usually in the form of plates, sticks, tips, rods, pellets, rings, etc . . . [I]n view of their special properties these plates, tips, etc. are welded, brazed or clamped onto lathe tools, milling tools, drills, dies, or other high-speed cutting tools used for working metal or other hard materials. They fall in [heading 8209] whether sharpened or not, or otherwise prepared, but not if already mounted on tools; in the latter case they fall in the headings for tools, particularly heading 8207 (emphasis added).

We believe that the instant rods fall under heading 8209. Heading 8209 states that articles of that heading will be cermets to be used for the tools of heading 8207 and will be in the shape of plates, sticks, tips or similar forms, including rods. The tungsten carbide rods at issue are clearly described by the heading 8209 ENs. CBP's position on classifying tungsten carbide under subheading 8209.00.00, HTSUS, has been both longstanding and consistent. See HQ 084271, dated August 8, 1989, and NY 807394, dated March 2, 1995. Moreover, the available information indicates that the instant rods are designed for tooling applications.

Based on the foregoing analysis, the instant tungsten carbide rods are classified under subheading 8209.00.0030, HTSUSA.

HOLDING:

The instant merchandise is provided for in heading 8209, HTSUSA. It is classified under subheading 8209.00.0030, HTSUSA, as "Plates, sticks, tips and the like for tools, unmounted, of cermets: Of sintered metal carbides." The 2004 column one, general rate of duty is 4.6 percent ad valorem.

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.

EFFECT ON OTHER RULINGS:

NY 897163 is REVOKED.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF A RADIO ALARM CLOCK INCORPORATING A CD PLAYER

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 a radio alarm clock incorporating a CD player.

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 a radio alarm clock incorporating a CD player 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 January 14, 2005.

ADDRESS: Written comments 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, NW., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: 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 obli-

gations. 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 a radio alarm clock incorporating a CD player. Although in this notice CBP is specifically referring to NY J83164, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, 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 interpretation 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 J83164, dated April 10, 2003, set forth as Attachment A to this document, CBP classified a radio alarm clock incorporating a CD player under subheading 8527.39.0040, Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"), as: "Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock: Other radiobroadcast receivers, including apparatus capable of receiving also radiotelephony or radiotelegraphy: Other"

It is now the CBP position that the device is classified under sub-heading 8527.31.6040, HTSUSA, as "Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock: Other radiobroadcast receivers, including apparatus capable of receiving also radiotelephony or radiotelegraphy: Combined with sound recording or reproducing apparatus: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY J83164, 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 967274, 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: November 30, 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 J83164
April 10, 2003
CLA-2-85:RR:NC:1:108 J83164
CATEGORY: Classification
TARIFF NO.: 8527.39.0040

MS. AASHA DESLOGE-KURR
BEST BUY
7601 Penn Ave. S, Bldg. D4
Richfield, MN 55423

RE: The tariff classification of clock radios from China.

DEAR MS. DESLOGE-KURR:

In your letter dated April 3, 2003 you requested a tariff classification ruling.

The two items in question are denoted as the CD Clock Radio, model MCR220BK and the CD AM/FM stereo Clock Radio, model CR4955.

Model MCR220BK is an AM/FM radiobroadcast unit with a clock, a CD player, without recording capability, a dual alarm and a LCD display. The clock radio is not capable of operating without an external source of power.

Model CR4955 is an AM/FM radiobroadcast unit with a clock, a CD player, without recording capability, a sleep timer, an LED display, dual alarm, 20 memory programs, and an optional wake feature of either the radio, a buzzer or the CD player. It employs a 9-volt battery as a backup only for the clock. This clock radio cannot operate without an external source of power.

The applicable subheading for the AM/FM clock radios, models MCR220BK and CR4955 will be 8527.39.0040, Harmonized Tariff Schedule of the United States (HTS), which provides for Reception apparatus for radiotelephony, radiotelegraphy and radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock: Other radiobroadcast receivers, including apparatus capable of receiving also radiotelephony or radiotelegraphy; Other . . . Other. The rate of duty will be 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 Michael Contino at 646-733-3014.

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



[ATTACHMENT B]

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

HQ 967274
CLA-2 RR:CR:GC 967274 NSH
CATEGORY: Classification
TARIFF NO.: 8527.31.6040

MS. AASHA DESLOGE-KURR
BEST BUY
7601 Penn Avenue S, Bldg. D4
Richfield, MN 55423

RE: NY J83164 revoked; CD alarm clock radios

DEAR MS. DESLOGE-KURR:

This is in response to an internal request for reconsideration of NY J83164, dated April 10, 2003, a ruling issued to you, on the classification of two models of radio alarm clock, each incorporating a compact disc (CD) player, under the Harmonized Tariff Schedule of the United States

(HTSUS). NY J83164 classified the merchandise under subheading 8527.39.00, HTSUS. However, in researching a related issue, Customs and Border Protection (CBP) determined that NY J83164 should be revoked. This ruling letter sets forth the correct classification of the subject merchandise.

FACTS:

NY J83164 described the merchandise as follows:

The two items in question are denoted as the CD Clock Radio, model MCR220BK and the CD AM/FM stereo Clock Radio, model CR 4955.

Model MCR220BK is an AM/FM radiobroadcast unit with a clock, a CD player, without recording capability, a dual alarm and a LCD display. The clock radio is not capable of operating without an external source of power.

Model CR4955 is an AM/FM radiobroadcast unit with a clock, a CD player, without recording capability, a sleep timer, an LED display, dual alarm, 20 memory programs, and an optional wake feature of either the radio, a buzzer or the CD player. It employs a 9-volt battery as a backup only for the clock. This clock radio cannot operate without an external source of power.

ISSUE:

Whether the terms of subheading 8527.31, HTSUS, provide for a radio incorporating both a clock and CD player, such as the merchandise at issue, or whether such a device must be classified under subheading 8527.39.00, 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.

GRI 6 states that the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

The HTSUS provisions under consideration are as follows:

- 8527 Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with a sound recording or reproducing apparatus or a clock:
 - Other radiobroadcast receivers, including apparatus capable of receiving also radiotelephony or radiotelegraphy:
- 8527.31 Combined with sound recording or reproducing apparatus:
 - Other:

8527.31.60 Other

* * * * *

8527.39.00 Other

Heading 8527, HTSUS, applies to reception apparatus for radiobroadcasting, whether or not combined with sound recording or reproducing apparatus or a clock and, therefore, applies to the instant merchandise, a radio alarm clock incorporating a CD player. Because two competing subheadings within heading 8527, HTSUS, are at issue, GRI 3(a) is applied through GRI 6. GRI 3(a) states that when, by application of rule 2(b) or for any other reason, goods are *prima facie* classifiable under two or more subheadings, the subheading which provides the most specific description shall be preferred to a subheading providing a more general description. In *Orlando Food Corp. v. US*, 140 F.3d 1437, 1441 (Fed. Cir. 1998) (quoting, *United States v. Siemens Am., Inc.*, 653 F.2d 471, 478 (CCPA 1981)), the court addressed GRI 3(a), holding that under the rule of relative specificity, the subheading with requirements more difficult to satisfy will prevail and be applied over a more general subheading because it describes the article with the greatest degree of accuracy and certainty. Additionally, with regard to classification when a “basket” provision is being considered, classification therein is appropriate “only when there is no tariff category that covers the merchandise more specifically.” See *Apex Universal, Inc. v. United States*, 22 CIT 465 (1998).

CBP notes that subheading 8527.31, HTSUS, is a more specific provision than subheading 8527.39, HTSUS, providing as it does for merchandise “[c]ombined with sound recording or reproducing apparatus,” as opposed to “[o]ther.” Within subheading 8527.31, HTSUS, CBP has previously classified a clock radio incorporating a cassette player and telephone, specifically under subheading 8527.31.40, HTSUS. See HQ 954412, dated August 18, 1993 and NY DD 885222, dated May 12, 1993. Thus, notwithstanding the telephone incorporated into that merchandise, a radio combined with both a sound reproducing device and a clock was classified within subheading 8527.31, HTSUS. These rulings support the conclusion that, because the word “clock” is specifically mentioned in the text to heading 8527, HTSUS, it is not necessary that the word “clock” be specifically mentioned again within subheading 8527.31, HTSUS, in order to classify an item incorporating a clock therein.

The merchandise at issue is similar to that classified in HQ 954412 and NY DD 885222, with respect to both being a radio combined with a sound reproducing device, in this case a CD player, and a clock. As a result, subheading 8527.31, HTSUS, the more specific provision, shall apply. Within that subheading, both models of CD alarm clock radio are classified under 8527.31.60, HTSUS.

HOLDING:

The AM/FM clock radios incorporating CD players, models MCR220BK and CR4955, are classified under subheading 8527.31.6040, Harmonized Tariff Schedule of the United States Annotated, as “Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock: Other radiobroadcast receivers, including apparatus capable of

receiving also radiotelephony or radiotelegraphy: Combined with sound recording or reproducing apparatus: Other." The column one, general 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.

EFFECT ON OTHER RULINGS:

NY J83164 is REVOKED.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF TATTOO NEEDLES

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

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of tattoo needles.

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 U.S. Customs and Border Protection (CBP) is revoking a ruling relating to the tariff classification of tattoo needles, and revoking any treatment CBP has previously accorded to substantially identical transactions. Notice of the proposed revocation was published on October 13, 2004, in the Customs Bulletin.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 13, 2005.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 572-8779.

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), 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 based on the

premise 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 rights and responsibilities 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, 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 declare value on imported merchandise, and to provide other necessary information to enable CBP to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to CBP's obligations, a notice was published on October 13, 2004, in the Customs Bulletin, Volume 38, Number 42, proposing to revoke NY J84902, dated June 6, 2003, which classified tattoo needles as parts of machines and mechanical appliances, in subheading 8479.90.9495, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretative 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 comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment it previously accorded 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 in substantially identical transactions should have advised CBP during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY J84902 to reflect the proper classification of tattoo needles in subheading 8207.90.6000, HTSUSA, as other interchangeable tools for handtools and parts thereof, in accordance with the analysis in HQ 967262, which is set forth as the Attachment to this document. Additionally,

pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment it previously accorded to substantially identical transactions.

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

DATED: November 30, 2004

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

Attachment

HQ 967262
November 30, 2004
CLA-2 RR:CR:GC 967262 JAS
CATEGORY: Classification
TARIFF NO.: 8207.90.6000

PETER D. ALBERDI
A.J. ARANGO, INC.
P.O. Box 75062
Tampa, FL 33675-5062

RE: Tattoo Needles; NY J84902 Revoked

DEAR MR. ALBERDI:

In NY J84902, which the Director of Customs National Commodity Specialist Division, New York, issued to you on June 6, 2003, on behalf of Creative Sourcing and Development, Ltd., Tampa, FL, certain needles for tattoo machines were found to be classifiable as other parts of machines and mechanical appliances, in subheading 8479.90.94, Harmonized Tariff Schedule of the United States (HTSUS).

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY J84902 was published on October 13, 2004, in the Customs Bulletin, Volume 38, Number 42. No comments were received in response to that notice.

FACTS:

Samples of the tattoo needles submitted for our review are identical to the ones in NY J84902, except for length. They have a rubber sleeve on one end and may be either a single-tipped needle or, more typically, a group of several very small needles called sharps soldered to a needle bar. They are dipped in ink and used with hand-held, electrically operated tattoo machines which cause a vibratory action that drives the needle in an up-and-down fashion between 50 to 3,000 times a minute. This causes the needle tips to pierce the top layer of skin and deposit the ink into the second or dermal skin layer.

The HTSUS provisions under consideration are as follows:

8207	Interchangeable tools for handtools, whether or not power-operated, or for machine-tools . . .; base metal parts thereof:
8207.90	Other interchangeable tools, and parts thereof:
	Other:
	Not suitable for cutting metal, and parts thereof:
8207.90.6000	For handtools, and parts thereof
*	* * * *
8479	Machines and mechanical appliances, having individual functions, not specified or included elsewhere in [chapter 84], parts thereof:
8479.90	Parts:
8479.90.9495	Other

ISSUE:

Whether needles for electrically operated tattoo machines are interchangeable tools for power-operated handtools.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

Initially, heading 8479 is in Section XVI, HTSUS. Section XVI, Note 1(k) excludes articles of chapter 82 and 83. Thus, if the tattoo needles at issue are goods of chapter 82 or 83, they cannot be classifiable in heading 8479. The classification expressed in NY J84902 was based on erroneous information that the tattoo machine which utilized the needles did not have a self-contained electric or non-electric motor. In fact, it is now apparent that the tattoo machines are DC coil and spring point machines. In these devices, the coils become electromagnetic by means of current flowing from a DC power supply, via wires, in two directions, through the coils to the adjustable contact screw, and through the frame to the contact spring. Devices that operate in this fashion are known variously as linear electric motors or electrical reciprocating motors. The tattoo machines therefore qualify under heading 8467, HTSUS, as tools for working in the hand, with self-contained electric motor. See NY K87620, dated August 5, 2004. It necessarily follows that tattoo needles solely or principally used with such machines qualify as interchangeable tools for power-operated handtools, of heading 8207.

HOLDING:

Under the authority of GRI 1, tattoo needles for electro-magnetically powered hand-held tattoo machines are provided for in heading 8207. They are classifiable in subheading 8207.90.6000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The current rate of duty under this provision is 4.3 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.

EFFECT ON OTHER RULINGS:

NY J84902, dated June 3, 2003, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

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

**MODIFICATION OF RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF CLASSIFI-
CATION OF DRINK MIX KITS**

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to the classification of drink mix kits imported from China.

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 modifying a ruling concerning the tariff classification of drink mix kits, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed revocation of the ruling was published on October 13, 2004, in Volume 38, Number 42, of the *Customs Bulletin*. No comments were received in response to this notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after February 13, 2005.

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

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “informed compliance” and “shared responsibility.” These concepts are premised on the idea that in order to maximize voluntary compliance with CBP 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, CBP published a notice in the October 13, 2004, *Customs Bulletin*, Volume 38, Number 42, proposing to modify New York Ruling Letter (NY) J89555, dated October 28, 2003, and to revoke any treatment accorded to substantially identical merchandise. No comments were received in response to this notice.

In NY J89555, CBP classified the cylinder-shaped glass article in subheading 7013.99.50, HTSUS, which provides for glassware of a kind used for . . . toilet, office, indoor decoration and similar purposes . . . other glassware: other: other: other: valued over thirty cents but not over three dollars each. We now believe that the glass article packaged in the drink mix kit is classifiable as a drinking glass in subheading 7013.29.20, HTSUS.

As stated in the proposed notice, this modification will cover any rulings on this issue which may exist but have not been specifically identified. Any party, who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised 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 Title VI, Customs is revoking any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer’s reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer’s or

CBP previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Customs, pursuant to section 625(c)(1), is modifying NY J89555, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 967004, set forth as an attachment to this notice. Additionally, pursuant to section 625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: November 30, 2004

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

Attachment

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

HQ 967004
November 30, 2004
CLA-2 RR:CR:GC 967004AM
CATEGORY: CLASSIFICATION
TARIFF NO.: 7013.29.20

MR. PETER W. KLESTADT
GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN AND KLESTADT LLP
399 Park Avenue, 25th Floor
New York, NY 10022-4877

RE: New York Ruling Letter J89555; drink mix kits from China

DEAR MR. KLESTADT:

This is our decision regarding your letter, dated December 15, 2003, addressed to the Director, National Commodity Specialist Division, on behalf of your client, Shonfeld's USA, Inc., requesting reconsideration of New York Ruling Letter (NY) J89555, dated October 28, 2003, regarding the tariff classification, pursuant to the Harmonized Tariff Schedule of the United States (HTSUS), of drink mix kits imported from China. Your letter was forwarded to this office for reply.

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, CBP published a notice in the October 13, 2004, *Customs Bulletin*, Volume 38, Number 42, proposing to modify New York Ruling Letter (NY) J89555, dated October 28, 2003, and to revoke any treatment accorded to substantially identical merchandise. No comments were received in response to this notice.

FACTS:

The merchandise consists of a margarita mix kit and a strawberry daiquiri mix package. Item no. DM-205586A is comprised of a bottle of margarita mix, a test tube of colored salt, and a decorated cylinder-shaped glass article. The Margarita mix consists of high fructose corn syrup, water, citric acid, natural and artificial flavor, sucrose acetate, iso-butyrate, and coloring.

Item no. DM-205586B is made up of a bottle of daiquiri mix, a test tube of colored sugar, and a decorated cylinder-shaped glass article. The daiquiri mix consists of water, sugar, fructose corn sweeteners, natural flavor, citric acid, sodium benzoate, and coloring. Instructions on the labels direct the consumer to combine the mixes with rum, tequila, or cointreau, add ice, shake, strain, and pour into a glass with a salt or sugar coated rim.

Both glass articles in the package measure approximately 6 inches high and 2 1/4 inches in diameter. They are frosted cylindrical articles with blending instructions for a margarita or daiquiri and a picture of one or the other of these drinks in the usual shaped drinking glass used for these beverages. The glass article in the package is valued between \$0.30 and \$3.

In NY J89555, CBP classified the daiquiri sugar in subheading 1701.91.10, HTSUS, which provides for cane or beet sugar and chemically pure sucrose in solid form . . . other . . . containing added coloring but not containing added flavoring matter. CBP classified the margarita and daiquiri mixes in subheading 2106.90.99, HTSUS, which provides for food preparations not elsewhere specified or included . . . other . . . other . . . preparations for the manufacture of beverages . . . containing sugar derived from sugar cane and/or sugar beets. CBP classified the margarita salt in subheading 2501.00.00, HTSUS, 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. Lastly, CBP classified the cylinder-shaped glass articles in subheading 7013.99.50, HTSUS, which provides for glassware of a kind used for . . . toilet, office, indoor decoration and similar purposes . . . other glassware: other: other: other: valued over thirty cents but not over three dollars each.

ISSUE:

Whether hollow cylinder shaped glass articles packaged in a margarita and daiquiri kit are classified as drinking glasses in the HTSUS.

LAW AND ANALYSIS:

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

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

The HTSUS headings and subheadings under consideration are as follows:

7013	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):
	Drinking glasses, other than of glass-ceramics:
7013.29	Other:
	Other:
7013.29.20	Valued over \$0.30 but not over \$3 each
	Other glassware:
7013.99	Other:
	Other:
	Other:
7013.99.50	Valued over \$0.30 but not over \$3 each

The dispute here arises at the subheading level as between drinking glasses and other glassware. An internet search reveals many tall cylindrical shaped glasses called an iced tea or Tom Collins glass for the drinks most often served in them. While the usual glass for a daiquiri or margarita is shaped quite differently, and is even pictured on the glass itself, the glass enclosed in these drink mix kits is recognizable as a drinking glass. It is referred to on the packaging as a "novelty glass" and it is quite clearly intended to be used as a drinking glass. Applying GRI 6, the product is more specifically described in subheading 7013.29, HTSUS, as a drinking glass.

HOLDING:

The glass article in the margarita and daiquiri packages is classified in subheading 7013.29.2000, HTSUSA (annotated) the provision for "[G]lassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): Drinking glasses, other than of glass-ceramics: Other: Other: Valued over \$0.30 but not over \$3 each." The duty rate for the drinking glass is 22.5%.

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.

EFFECT ON OTHER RULINGS:

NY J89555 is MODIFIED to reflect the proper classification of the glass articles as stated above. The drink mixes, salt and sugar remain classified as they were in NY J89555.

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

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

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PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO CLASSIFICATION OF A RETICULATED FOAM FILTER RING

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

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to tariff classification of a reticulated foam filter ring.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs & Border Protection ("CBP") intends to revoke a ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a reticulated foam filter ring and 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 January 14, 2005.

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. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, NW, Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, General Classification Branch, (202) 572-8782.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with CBP 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 CBP and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the tariff classification of a reticulated foam filter ring. Although in this notice CBP is specifically referring to one ruling, NY K80327, 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 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical 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 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 their agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY K80327, dated November 21, 2003, set forth as "Attachment A" to this document, CBP found that a reticulated foam filter ring was classified in subheading 8421.39.8015, HTSUSA, as centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof: filtering or purifying machinery and apparatus for gases: other: other: other.

CBP has reviewed the matter and determined that the correct classification of the reticulated foam filter ring is in subheading 8421.31.0000, HTSUSA, which provides for centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof: filtering or purifying machinery and apparatus for gases: intake air filters for internal combustion engines.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY K80327, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 966942, as set forth in "Attachment B" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: November 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 K80327
November 21, 2003
CLA-2-84:RR:NC:1:104 K80327
CATEGORY: Classification
TARIFF NO.: 8421.39.8015

MR. KARL KRUEGER
DANZAS AEI
2660 20th Street
Port Huron, MI 48060

RE: The tariff classification of reticulated foam filter rings from Canada

DEAR MR. KRUEGER:

In your letter dated October 17, 2003 on behalf of Purolator Filters, a division of Arvin Meritor of Dexter, Missouri you requested a tariff classification ruling.

A sample of a radial air filter with a reticulated foam filter ring wrapped around the outside has been provided. The ring, also referred to as a foam wrap, is formed by sewing the ends of the foam material together. It has a circumference of approximately 3'9" with a width of 4" and a thickness of just under 1/2". The filter with the ring is placed in an automotive air filter housing. A drawing of the foam filter ring has also been provided.

You suggest that classification should be under HTS subheading 8421.99.0080 which provides for parts of filtering or purifying machinery and apparatus. The foam filter ring by itself however functions as a filter. Also known as a prefilter, it removes larger and coarser particles thus extending the life of the primary filter element which is composed of a pleated cellulose, resin impregnated paper.

The applicable subheading for the reticulated foam filter ring will be 8421.39.8015, Harmonized Tariff Schedule of the United States (HTS), which provides for filtering or purifying machinery and apparatus, for gases: other: other. The rate of duty will be free.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert Losche at 646-733-3011.

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

[ATTACHMENT B]

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

HQ 966942
CLA-2 RR:CR:GC 966942 KBR
CATEGORY: Classification
TARIFF NO.: 8421.31.0000

KARL F. KRUEGER
DANZAS AEI INTERCONTINENTAL
29200 Northwestern Highway
Southfield, MI 48034

RE: Revocation of NY K80327; Reticulated Foam Filter Ring

DEAR MR. KRUEGER:

This is in reference to New York Ruling Letter (NY) K80327, issued to you by the Customs and Border Protection ("CBP"), National Commodity Specialist Division, New York, on November 21, 2003, on behalf of Purolator Filters, a division of Arvin Meritor of Dexter, Missouri. That ruling concerned the classification of a reticulated foam filter ring, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reviewed NY K80327 and determined that the classification provided for the reticulated foam filter ring is incorrect.

FACTS:

In NY K80327, it was determined that the reticulated foam filter ring was classifiable in subheading 8421.39.8015, HTSUSA, as centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof: filtering or purifying machinery and apparatus for gases: other: other: other. The reticulated foam filter ring is also referred to as a "foam wrap" and a "pre-filter." The article is a piece of open cell polyurethane foam approximately three feet, nine inches long with a width of four inches and a thickness of just under 1/2 inch. The four inch ends of the foam are sewn together to create a ring. The reticulated foam filter ring is intended to fit around the outside of a primary radial air filter element ring which is composed of a pleated cellulose, resin impregnated paper inside a plastic and metal-screen casing. The combined air filter is intended for installation in an automotive engine. The reticulated foam filter ring is intended to act as a pre-filter to remove larger and coarser particles, extending the life of the primary air filter element. The reticulated foam filter rings are sold in conjunction with the primary air filter element as well as sold separately as replacements. A sample of the reticulated foam filter ring with a primary air filter element was submitted for our review.

We have reviewed that ruling and determined that the classification of the reticulated foam filter ring is incorrect. This ruling sets forth the correct classification.

ISSUE:

What is the correct classification under the HTSUSA of a reticulated foam filter ring for use with a primary air filter element in an automotive engine?

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) in accordance with the General Rules of Interpretation (GRIs). Under GRI 1, merchandise is classifiable 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 on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In interpreting the headings and subheadings, CBP looks to the Harmonized Commodity Description and Coding System Explanatory Notes (EN). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUSA. It is CBP's practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUSA provisions under consideration are as follows:

8421	Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof:
*	* * * * *
	Filtering or purifying machinery and apparatus for gases:
8421.31.0000	Intake air filters for internal combustion engines
8421.39	Other:
8421.39.80	Other:
8421.39.8015	Other
*	* * * * *
	Parts:
*	* * * * *
8421.99.00	Other:
8421.99.0080	Other

The article at issue is a reticulated foam filter ring for use with a primary air filter in an automotive engine. The ENs for heading 8421, HTSUSA, in pertinent part, describe articles in this heading:

(II)(B) Filtering or purifying machinery, etc., for gases.

These gas filters and purifiers are used to separate solid or liquid particles from gases, either to recover products of value . . . , or to eliminate harmful materials (e.g., dust extraction, removal of tar, etc., from gases or smoke fumes, removal of oil from steam engine vapours).

They include:

- (1) **Filters and purifiers acting solely by mechanical or physical means;** these are of two types. In the first type, . . . the separating element consists of a porous surface or mass (felt, cloth, metallic

sponge, glass wool, etc.). In the second type, separation is achieved by suddenly reducing the speed of the particles drawn along with the gas, so that they can then be collected by gravity, trapped on an oiled surface, etc. Filters of these types often incorporate fans or water sprays.

Filters of the first type include:

- (i) **Intake air filters for internal combustion engines.** These often combine the two systems described above.

CBP has previously found that an air filter for an automobile engine is classified in subheading 8421.31.0000, HTSUSA. *See* NY B89510 (October 9, 1997). However, the instant article is a “pre-filter” for an automobile air filter. The instant article is reticulated foam which wraps around the primary air filter element. Section XVI Note 2(a), HTSUSA, states:

Parts which are goods included in any of the headings of chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 9473, 8485, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

Section XVI Note 2(b), HTSUSA, states:

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. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;

The ENs for Section XVI at General, (II) Parts (Section Note 2), states that “parts which in themselves constitute an article covered by a heading of this Section . . . ; these are in all cases classified in their own appropriate heading even if specially designed to work as part of a specific machine.” The EN language for Section XVI Note 2 was cited by the court in *Nidec Corp. v. United States*, 861 F. Supp. 136 (CIT 1994), *aff’d*. 68 F.3d 1333 (Fed. Cir. 1995). The court, applying the EN for Section XVI Note 2, determined that if a good can be classified in its own heading in accordance with Legal Note 2(a), then classification as a part under Legal Note 2(b) is inappropriate. *See also* HQ 962946 (May 1, 2000), HQ 952026 (July 23, 1992), HQ 963219 (February 5, 2001). Therefore, applying Note 2(a) and the court’s reasoning to the instant reticulated foam filter ring, directs classification of the article in its own appropriate subheading, 8421.31.0000, HTSUSA, and not as a part. *See* HQ 962623 (July 22, 1999)(finding that an air filter drum element for an automobile air conditioning/heat filter was not a filter “part” of subheading 8421.99.00, HTSUSA, but should be classified as a filter article itself).

CBP has previously found that pre-filters are classified in heading 8421, HTSUSA, as filters, not as parts of filters. *See* NY 898762 (June 29, 1994) and NY 898508 (June 28, 1994). In particular, CBP found that a pre-filter intended for automotive use was classified in subheading 8421.31.0000, HTSUSA, as an intake air filter for internal combustion engines. *See* NY 899838 (August 4, 1994). Therefore, we agree with the decision you received in NY K80327, that the instant reticulated foam filter ring should not be classified as a “part”, but should be classified in its own right.

Air filters have long been made from foam and have been classified in heading 8421, HTSUSA. See NY 815060 (September 28, 1995), NY I86500 (October 18, 2002), and NY 810649 (June 8, 1995). The instant reticulated foam filter ring acts as a pre-filter for the primary air filter element. However, although it is considered a “pre-filter”, the reticulated foam filter ring is itself a “filter”. The reticulated foam filter ring actually removes unwanted particles from the air prior to reaching the primary air filter element and the automotive engine, thus, protecting the engine and extending the life of the primary air filter element. In the instant case, NY K80327 classified the pre-filter in the general “basket” provision of subheading 8421.39.8015, HTSUSA. However, as discussed above, the instant article is itself an air filter. Pursuant to GRI 1, the pre-filter is classified in subheading 8421.31.0000, HTSUSA, as intake filters for internal combustion engines, and not in the “basket” “other” provision of subheading 8421.39.8015, HTSUSA. See, e.g., *Apex Universal, Inc. v. United States*, CIT Slip Op. 98–69 (May 21, 1998) (“Classification of imported merchandise in a basket provision is appropriate only when there is no tariff category that covers the merchandise more specifically. [citations omitted]”); HQ 966659 (December 15, 2003); HQ 962759 (November 10, 1999). Therefore, although called a “pre-filter”, the instant reticulated foam filter ring for use in automobile engines for tariff purposes is a filter classified under subheading 8421.31.0000, HTSUSA, as an intake air filter for internal combustion engines.

HOLDING:

The reticulated foam filter ring is classified under subheading 8421.31.0000, HTSUSA, as centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof; filtering or purifying machinery and apparatus for gases; intake air filters for internal combustion engines. The 2004 column one, general duty rate is 2.5% *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.

EFFECT ON OTHER RULINGS:

NY K80327 dated November 21, 2003, is **revoked**.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF FRUITS IN ACETIC ACID

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

ACTION: Notice of proposed modification of ruling letter and revocation of treatment relating to the classification of a mixture of fruits and edible plant parts in acetic acid.

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 U.S. Customs and Border Protection (CBP) intends to modify a ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a mixture of fruits and edible plant parts in acetic acid and 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 January 14, 2005.

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

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, General Classification Branch, 202-572-8778.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. 1484) the importer of record is responsible for using reasonable care to enter,

classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify a ruling letter pertaining to the tariff classification of a mixture of fruits and edible plant parts in acetic acid. Although in this notice CBP is specifically referring to one ruling, New York Ruling Letter (NY) J87437, dated October 27, 2003, 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 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical 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 CBPs previous interpretation of the HTSUS. 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 their agents for importations of merchandise subsequent to this notice.

In NY J87437, dated October 27, 2003, the classification of a product identified by the importer as Item No. OV-204296B containing cranberries, apricots and rosemary in liquid containing acetic acid was determined to be in heading 2001.90.3800, HTSUS, which provides for other vegetables prepared or preserved by vinegar or acetic acid. This ruling letter is set forth in "Attachment A" to this document. Since the issuance of that ruling, CBP has had a chance to review the classification of this merchandise and has determined that the classification is in error. None of the articles contained in the product are vegetables. Cranberries and apricots are fruits, and rosemary is an herb. Fruits and other edible parts of plants prepared or preserved by vinegar or acetic acid are classified in subheading 2001.90.60, HTSUS.

CBP, pursuant to 19 U.S.C. 1625(c)(1), intends to modify NY J87437, and revoke any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 967015 (see "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, consideration will be given to any written comments timely received.

Dated: November 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 J87437

October 27, 2003

CLA-2-20:RR:NC:2:228 J87437

CATEGORY: Classification

TARIFF NO.: 2001.90.3800, 2103.90.8000

MR. SHACHAR GAT
SHONFELD'S USA, INC.
16871 Noyes Avenue
Irvine, CA 92606

RE: The tariff classification of preserved vegetables and fruit from China.

DEAR MR. GAT:

In your letter dated July 14, 2003, you requested a tariff classification ruling.

Samples and illustrative literature were submitted with your letter. One of the samples was forwarded to the Customs laboratory for analysis. The other sample was examined and disposed of. Item no. OV-204296A contains strawberries and rosemary in canola oil. Item no. OV-204296B consists of cranberries, rosemary, and apricots, in a liquid medium. The products are put up in glass bottles measuring 12 inches tall and 2 inches wide at the base. Laboratory analysis found item no. OV-204296B contained 4.96 percent acetic acid.

The applicable subheading for item no. OV-204296B will be 2001.90.3800, Harmonized Tariff Schedule of the United States (HTS), which provides for

vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid . . . other . . . vegetables . . . other. The rate of duty will be 9.6 percent ad valorem.

The applicable subheading for item no. OV-204296A will be 2103.90.8000, HTS, which provides for Mixed condiments and mixed seasonings: Other: Mixed condiments and mixed seasonings . . . other. The rate of duty will be 6.4 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 Stanley Hopard at 646-733-3029.

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

[ATTACHMENT B]

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

HQ 967015
CLA-2 RR:CR:GC 967015ptl
Category: Classification
TARIFF NO.: 2101.90.6000

MR. SHACHAR GAT
SHONFELD'S USA, INC.
16871 Noyes Avenue
Irvine, CA 92606

RE: Fruit and Herbs Preserved in Acetic Acid; Modification of NY J87437

DEAR MR. GAT:

On October 27, 2003, the National Commodity Specialist Division of Customs and Border Protection (CBP) in New York, issued ruling J87437 which contained the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of two articles. The articles were identified using your product item number. According to NY J87437, Item # OV-204296A contained strawberries and rosemary in canola oil and was classified in subheading 2103.90.8000, HTSUS, which provides for mixed condiments and mixed seasonings . . . other. The other article, Item # OV-204296B contains cranberries, rosemary, and apricots in a 4.96 percent acetic acid liquid. That article was classified in subheading 2001.90.3800, HTSUS, which provides for vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid . . . other . . . vegetables . . . other. Since NY J87437 was issued, CBP has reviewed the classification of Item # OV-204296B and determined that it is incorrect for the reasons stated below.

The classification of the other article classified in NY J87437, OV-204296A, is not affected by this letter.

FACTS:

You have described Item # OV-204296B as being a 500 ml bottle containing cranberries, rosemary, and apricots in a 4.96 percent acetic acid liquid. CBP Laboratory Report NY20031265, dated September 26, 2003, reports that the article contains 4.96 percent acetic acid by weight. Cranberries and apricots are fruits. Rosemary is an herb.

ISSUE:

What is the classification of fruits and an herb prepared or preserved in a solution that is 4.96 percent acetic acid by weight?

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

The HTSUS subheadings under consideration are as follows:

2001 Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid:

* * *

2001.90 Other:

Other:

Vegetables:

* * *

2001.90.3800 Other

2001.90.6000 Other

The CBP Laboratory analysis performed on the product indicates that it consists of ingredients that have been prepared or preserved by acetic acid. Therefore, the product is a good of heading 2001, HTSUS. The ingredients that have been prepared or preserved by the acetic acid are cranberries and apricots. These are fruits, products of chapter 8. The additional ingredient, rosemary, is an herb, an edible plant which would, if alone, be classified in chapter 12. Because none of the ingredients of the product are vegetables, the product itself cannot be classified in a subheading which provides for vegetables. Instead, the product is classified in the residual subheading 2001.90.60, HTSUS, which provides for other products.

HOLDING:

The article in NY J87437, identified as Item # OV-204296B containing cranberries, apricots and rosemary, in a 4.96 percent acid liquid is classified in subheading 2001.90.6000, HTSUSA, which provides for: Vegetables, fruit,

nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid, other, other, other. The 2004 duty rate will be 14 percent *ad valorem*. 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.

NY J87437, dated October 27, 2003, is modified in accordance with this decision.

MYLES B. HARMON,
Director,
Commercial Rulings Division.