

U.S. Customs and Border Protection



NOTICE OF AVAILABILITY OF THE DRAFT PROGRAMMATIC ENVIRONMENTAL ASSESSMENT FOR THE DEPLOYMENT AND OPERATION OF HIGH ENERGY X-RAY INSPECTION SYSTEMS AT SEA AND LAND PORTS OF ENTRY

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

ACTION: Notice of Availability of Draft Programmatic Environmental Assessment and Request for Comments.

SUMMARY: U.S. Customs and Border Protection (CBP) is advising the public that a draft Programmatic Environmental Assessment (PEA) for High Energy X-Ray Inspection Systems (HEXRIS) at sea and land ports of entry has been prepared and is available for public review. The draft PEA analyzes the potential environmental impacts due to the use of HEXRIS. CBP seeks public comment on the draft PEA. CBP will consider comments before issuing a final PEA.

DATES: The draft PEA will be available for public review and comment for a period of 30 days beginning on the date this document is published in the **Federal Register**. To ensure consideration, comments must be received by June 24, 2010. Comments regarding the draft PEA may be submitted as set forth in the **ADDRESSES** section of this document.

ADDRESSES: Copies of the draft PEA may be obtained by accessing the following Internet address: <http://ecso.swf.usace.army.mil/Pages/Publicreview.cfm>, or by sending a request to Guy Feyen of CBP by telephone (202-344-1531), by fax (202-344-1418), by email to guy.feyen@dhs.gov or by writing to: CBP, Attn: Guy Feyen, 1300 Pennsylvania Avenue, NW, Suite 1575, Washington, DC 20229.

You may submit comments on the draft PEA by mail or email. Comments are to be addressed to CBP, Attention: Guy Feyen, 1300 Pennsylvania Avenue, NW, Suite 1575, Washington, DC 20229, or sent to guy.feyen@dhs.gov.

Substantive comments received during the comment period will be addressed in, and included as an appendix to, the final PEA. The final PEA will be made available to the public through a Notice of Availability in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Antoinette DiVittorio, Environmental and Energy Division, U.S. Customs and Border Protection, telephone (202) 344-3131.

SUPPLEMENTARY INFORMATION:

Background

A draft Programmatic Environmental Assessment (PEA) for the deployment and operation of High Energy X-Ray Inspection Systems (HEXTRIS) at sea and land ports of entry has been completed by the U.S. Customs and Border Protection (CBP), Office of Information and Technology, Laboratories and Scientific Services, Interdiction Technology Branch. The draft PEA is available for public comment.

HEXTRIS is a non-intrusive inspection technology that is used to aid in inspecting high-density cargo containers for contraband such as illicit drugs, currency, guns, and weapons of mass destruction. To assist in meeting CBP's mission requirements of securing the borders of the United States while simultaneously facilitating legitimate trade and travel, HEXTRIS units are proposed to be deployed and operated at both sea and land ports of entry across the U.S. and Puerto Rico. HEXTRIS fills a unique niche in the types of inspection tools used by CBP at the nation's ports of entry. HEXTRIS is capable of penetrating dense cargo loads that cannot otherwise be examined with other technologies such as gamma imaging systems or low-energy X-ray systems. HEXTRIS will also assist in fulfilling the requirement for the 100% scanning of containers entering the U.S. as directed in the Security and Accountability for Every (SAFE) Port Act of 2006. Pub. L. 109-347 (Oct. 13, 2006).

The draft PEA addresses the potential impacts from the installation and operation of HEXTRIS at various ports throughout the United States for the purpose of conducting non-intrusive inspections of high density cargo containers. Evaluations were conducted on various resources present at the ports, including: climate, soils, water quality, air quality, vegetation, wildlife, noise, infrastructure, aesthetics, and radiological health and safety.

Next Steps

This process is being conducted pursuant to the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental

Quality Regulations for Implementing the NEPA (40 CFR parts 1500–1508), and Department of Homeland Security Management Directive 5100.1, *Environmental Planning Program of April 19, 2006*.

Substantive comments concerning environmental impacts received from the public and agencies during the comment period will be evaluated to determine whether further environmental impact review is needed in order to complete the final PEA. Should CBP determine that the implementation of the proposed action would not have a significant impact on the environment, it will prepare a Finding of No Significant Impact (FONSI). The FONSI would be published in the **Federal Register**.

Should CBP determine that significant environmental impacts exist due to the action, CBP will prepare a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS). This NOI to prepare an EIS would be published in the **Federal Register**.

Dated: May 18, 2010

GREGORY GIDDENS
Executive Director
Facilities Management and Engineering
Office of Administration

[Published in the Federal Register, May 25, 2010 (75 FR 29357)]



NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING CERTAIN COMMODITY-BASED CLUSTERED STORAGE UNITS

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of certain Commodity-based Clustered Storage Units. Based upon the facts presented, CBP has concluded in the final determination that the United States is the country of origin of Commodity-based Clustered Storage Units for purposes of U.S. government procurement.

DATES: The final determination was issued on May 11, 2010. A copy of the final determination is attached. Any party-at-interest, as defined in 19 C.F.R. § 177.22(d), may seek judicial review of this final determination within 30 days from date of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Alison Umberger, Valuation and Special Programs Branch: (202) 325-0267.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on May 11, 2010, pursuant to subpart B of part 177, Customs Regulations (19 C.F.R. part 177, subpart B), CBP issued a final determination concerning the country of origin of Commodity-based Clustered Storage Units which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, in HQ H082476, was issued at the request of Scale Computing under procedures set forth at 19 C.F.R. part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511-18). In the final determination, CBP has concluded that, based upon the facts presented, the Commodity-based Clustered Storage Units, assembled in the United States from parts made in China, Taiwan, India, Thailand, and Malaysia, and programmed in the United States using software developed in the United States, is substantially transformed in the United States, such that the United States is the country of origin of the finished article for purposes of U.S. government procurement.

Section 177.29, Customs Regulations (19 C.F.R. § 177.29), provides that notice of final determinations shall be published in the Federal Register within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 C.F.R. § 177.30), provides that any party-at-interest, as defined in 19 C.F.R. § 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the Federal Register.

Dated: May 11, 2010

WILLIAM G. ROSSOFF
for

SANDRA L. BELL
Executive Director
Regulations and Rulings
Office of International Trade

Attachment

HQ H082476

May 11, 2010

OT:RR:CTF:VS H082476 ARU

CATEGORY: Marking

MR. JOSHUA HOLZER
WILSON, SONSINI, GOODRICH & ROSATI
1700 K STREET, NW, FIFTH FLOOR
WASHINGTON, DC 20006-3817

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511); Subpart B, Part 177, CBP Regulations; ICS Units

DEAR MR. HOLZER:

This is in response to your request dated October 15, 2009, made on behalf of Scale Computing (“Scale”). You ask for a country of origin marking decision and final determination relating to government procurement pursuant to subpart B of Part 177, Customs and Border Protection (“CBP”) Regulations (19 C.F.R. § 177.21 *et seq.*). Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of Scale’s SN1000, SN2000, and SN4000 Commodity-based Clustered Storage (“ICS”) Units. We note that Scale is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

Scale Computing produces storage appliances that offer a multi-protocol, multi-density suite of non-controller-based, unified NAS/SAN, enterprise-class storage solutions. Scale’s SN1000, SN2000, and SN4000 ICS Units are mass data storage devices similar in function to Storage Area Network (“SAN”) or Network Attached Storage (“NAS”) devices (*i.e.*, special-purpose networks that interconnect different kinds of data storage devices — such as tape libraries and disk arrays — with associated data servers on behalf of a larger network of users).¹ Their software architecture uses both proprietary and licensed technologies to create a grid storage system from multiple clustered “nodes” (small, commodity-based hardware devices).² The models at issue differ only in their storage capacity; the SN1000 holds 1 Terabyte worth of data, the SN2000 holds 2 Terabytes, and the SN4000 holds 4 Terabytes.

The ICS Units consist of the following components:

¹See Newton’s Telecom Dictionary (23rd Ed., 2007).

² Each node contains a number of physical hard disk drives. It is the underlying software technology, rather than the proprietary hardware and controllers, which manages the distribution of data across both individual drives and across in the grid. See ICS White Paper 2009, available at www.scalecomputing.com.

A. *Hardware*

- (1) A Central Processing Unit (“CPU”), which is used to provide the computing power;
- (2) An Application Specific Integrated Circuit (“ASIC”) that provides the proper processing speeds;
- (3) A capacitor and resistors;
- (4) Electrically erasable programmable read-only memory (“EEPROM”) to retain data in the event of power loss;
- (5) A “motherboard”, which is a printed circuit board populated by transistors, diodes, capacitors, and communication board;
- (6) Additional motherboard components that provide additional data throughput;
- (7) A Western Digital brand Hard Disk Drive (“HDD”) that stores data;
- (8) A memory module, which enhances overall throughput;
- (9) An air shroud, which helps with system cooling;
- (10) A heat sink that protects internal components from heat;
- (11) Two five foot patch cables, which connect to backplane for communication; and
- (12) A chassis that encloses all of the above listed components.

The components listed above are manufactured in several countries including China, India, Malaysia, Taiwan, and Thailand. (Significantly, the motherboard, which is the most expensive hardware component, is manufactured in China.) They are assembled in the U.S. upon importation “through a build and verification process that includes approximately 112 steps [summarized below].”

B. *Software*

The ICS Units also contain proprietary application software and firmware.³ Together, they enable the ICS Units to (1) create a cluster of nodes which act in unison, and (2) independently control the entire cluster.⁴

The application software and the firmware were developed in the U.S. by Scale. You indicated that the development process entailed: (1) a requirements analysis; (2) product design; (3) code writing; (4) quality assurance testing; (5) bug fixing and maintenance; and (5) support. By your estimation,

³ “Firmware” is a category of memory chips that hold their content without electrical power and include ROM, PROM, EPROM, and EEPROM technologies. Firmware becomes “hard software” when holding program code. See Alan Freedman’s *The Computer Glossary* (9th Ed., 2001).

⁴ You claim that, without the software, the ICS Units would behave like a standard, off-the-shelf rack storage unit.

“at least 12,480 hours were invested in the development of the firmware and application software in question” with “at least 10,400 more hours invested each year in continued development and maintenance.”

C. Assembly

The ICS Units are made from components manufactured in China, India, Malaysia, Taiwan, and Thailand. They are ultimately assembled in the U.S., according to the following process:

- (1) *Initial Quality Control*: personnel take component inventory and visually inspect each component. Serial numbers from each component are scanned into inventory and grouped with a particular ICS Unit. Serial numbers are verified for compatibility with other components in the group.
- (2) *Preparation of the System Chassis*: after clearing the system board area, the motherboard is secured to the chassis.
- (3) *The Serial Advanced Technology Attachment (“SATA”) backplane cabling is attached*: after lining up the appropriate markings, the SATA cable is connected to the SATA Backplane by using a SATA cable tree.
- (4) *The molex connector and intrusion detectors are attached to the SATA backplane.*
- (5) *Preparation of the system board*: The CPU, CPU Cooler, and Random Access Memory (“RAM”) are attached to the system board.
- (6) *Integration of the system board*: the system board is integrated into the chassis by aligning it with the mounting holes and ensuring proper alignment with the I/O shield. The system board, main power harness, and power connector are then secured to the chassis. The main power harness is attached to the system board.
- (7) *Fan kit assembly*: Fan connectors are plugged into internal ports.
- (8) *Routing and bundling of the front panel connectors*: Front panel connectors are appropriately routed and connected.
- (9) *Air shroud integration*: air shroud is positioned and attached to power cable.
- (10) *Signal Cables*: signal cables are connected to the system board in the appropriate order, from SATA 0 through SATA 3.
- (11) *Verify and ensure the cable routing and connections*: the intrusion detection cable is bundled and secured, and the “Chassis Intrusion” is attached next to the SATA connectors.
- (12) *Hard drive Integration*: hard drive fillers are removed from chassis.

- (13) *Install hard drives (parts from Bill of Materials) and secure:* the capacity of all hard drives is verified to ensure they are either 500 GB or 1000GB. The hard drives are the systematically distributed on all order systems.
- (14) *Verify hardware integration:* the hardware is verified to ensure that the system boards with CPU, Heat sink, and RAM has been properly mounted; the heat sink has proper orientation and is properly mounted; the cable routing and connections are correctly implemented; the air-duct (black shroud) is properly attached to the system board; the hard drives are properly assembled in carrier and lock in place; and that the Intrusion Detection Switch and Connector has been properly integrated.
- (15) *Secure chassis:* the lid of chassis is secured with screws.
- (16) *First power on:* the system is connected to a power source. The Network Interface Card (“NIC”) is connected to the “Staging Services”. The keyboard and mouse are plugged in. The power system is turned and checked for any abnormalities. The boot process is checked. The POST of system is tested to verify that there are no acoustical warnings.
- (17) *BIOS Configuration:* each system is booted into BIOS and all of the BIOS variables are reset to their defaults. The BIOS is then customized to run Scale’s firmware and application software by adjusting fifteen separate settings.
- (18) *Diagnostic Testing:* after the system is rebooted, a technician performs a general diagnostic test and reboots again.
- (19) *Scale Image Loading:* on this reboot, a technician connects the ICS Unit to power and checks that the system’s configuration is correct. After connecting the ICS Unit to a network, the technician loads the Company’s proprietary Operating System (“OS”) application software image, which enables the ICS Unit to act as part of a Scale system. The technician must observe the entire load process to ensure that the ICS Unit is properly configured and accepts the OS load.
- (20) *Verification:* the technician now runs an MD5 Check-Sum program to confirm that the OS image on the ICS Unit is identical to Scale’s proprietary OS image.
- (21) *Complete Integration and Verify:* the technician now reboots the ICS Unit again to verify the BIOS settings are correctly implemented. The ICS Unit is then shut down.

It takes approximately one hour to assemble each ICS Unit.

ISSUE:

What is the country of origin of the ICU Units for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to subpart B of Part 177, 19 C.F.R. § 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (“TAA”; 19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth at 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also, 19 C.F.R. § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Procurement Regulations restrict the U.S. Government’s purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 C.F.R. § 25.403(c)(1).

In order to determine whether a substantial transformation occurs when components of various origins are assembled to form completed articles, CBP considers the totality of the circumstances and makes such decisions on a case-by-case basis. The country of origin of the article’s components, the extent of the processing that occurs within a given country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, facts such as resources expended on product design and development, extent and nature of post-assembly inspection procedures, and worker skill required during the actual manufacturing process will be considered when analyzing whether a substantial transformation has occurred; however, no one such factor is determinative.

In *Data General v. United States*, 4 CIT 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States, the programming of a foreign PROM (Programmable Read-Only Memory chip) substantially transformed the PROM into a U.S. article. In programming the imported PROMs, the U.S. engineers systematically caused various distinct electronic interconnections to be formed within each integrated circuit. The programming bestowed upon each circuit its electronic function. That is, its “memory” which could be retrieved. A distinct physical change was effected in the PROM by the opening or closing

of the fuses, depending on the method of programming. This physical alteration, not visible to the naked eye, could be discerned by electronic testing of the PROM. The court noted that the programs were designed by a project engineer with many years of experience in “designing and building hardware.” While replicating the program pattern from a “master” PROM may be a quick one-step process, the development of the pattern and the production of the “master” PROM required much time and expertise. The court noted that it was undisputed that programming alters the character of a PROM. The essence of the article, its interconnections or stored memory, was established by programming. The court concluded that altering the non-functioning circuitry comprising a PROM through technological expertise in order to produce a functioning read only memory device possessing a desired distinctive circuit pattern was no less a “substantial transformation” than the manual interconnection of transistors, resistors and diodes upon a circuit board creating a similar pattern.

In *Texas Instruments v. United States*, *supra*, the court observed that the substantial transformation issue is a “mixed question of technology and customs law.”

In C.S.D. 84–86, CBP stated:

We are of the opinion that the rationale of the court in the Data General case may be applied in the present case to support the principle that the essence of an integrated circuit memory storage device is established by programming [W]e are of the opinion that the programming (or reprogramming) of an EPROM results in a new and different article of commerce which would be considered to be a product of the country where the programming or reprogramming takes place.

Accordingly, the programming of a device that changes or defines its use generally constitutes substantial transformation. *See also* HQ 733085, dated July 13, 1990; and HQ 558868, dated February 23, 1995 (programming of SecureID Card substantially transforms the card because it gives the card its character and use as part of a security system and the programming is a permanent change that cannot be undone); HQ 735027, dated September 7, 1993 (programming blank media (EEPROM) with instructions on it that allows it to perform certain functions of preventing piracy of software constituted substantial transformation); *but see* HQ 732870, dated March 19, 1990 (formatting a blank diskette did not constitute substantial transformation because it did not add value, did not involve complex or highly technical operations and did not create a new or different product); HQ 734518, dated June 28, 1993 (concluding that motherboards were not substantially transformed by the implanting of the central processing unit on the board because, whereas in *Data General* use was being assigned to the PROM, the use of the motherboard had already been determined when the importer imports it).

You claim that Scale takes several individual components and combines them in the United States to make otherwise dormant electronic components into a usable customized data storage device. The motherboard is imported from China with integrated circuits, an EEPROM, transistors, diodes, a capacitor, resistors and communication buses. From the information provided, the board is solely or principally used with an ADP storage unit. Once

imported, the motherboard will be installed in a chassis from China, along with various other non-originating components including a CPU from Malaysia, HDD from Thailand, memory module, air shroud, cables, and heat sink from China, to complete a rack mounted server. Each of these components is made into a rack mounted storage device, classifiable under 8471.70.40, Harmonized Tariff Schedule (“HTSUS”).

The device does not have pairing capability until the U.S.-made software is downloaded to it, which enables the device to function as a cloud computing device similar to a network storage RAID array (HDDs strung together to allow redundancy in different locations). The software completes a network storage function instead of just a HDD found in a rack mounted storage device. The RAID array storage subsystem components and HDD canisters usually include a disk array controller frame which effects the interface between the subsystem’s storage units and a CPU. In this case, the software effects the interconnection between the CPU and the storage units, and the classification of the finished item becomes 8471.80.10, HTSUS. Thus, the imported components become a new product with a new name and classification.

In summary, Scale imports several components of foreign-origin, including a blank storage medium in the form of a hard disk drive, combines them into a finished product and loads propriety software using skilled technical effort. The customization and installation of firmware and application software make what would otherwise be a non-functioning rack storage unit, into Scale’s proprietary clustered technology. As a result of the U.S. processing, we find that the imported component parts are substantially transformed and therefore, the country of origin of the ICS Units is the United States.

Please be advised, however, that whether the ICS Units may be marked “Made in the U.S.A.” or with similar words, is an issue under the authority of the Federal Trade Commission (“FTC”). We suggest that you contact the FTC, Division of Enforcement, 6th and Pennsylvania Avenue, NW, Washington, DC 20508, on the propriety of markings indicating that articles are made in the United States.

HOLDING:

Based on the facts provided, the processing operations performed in United States impart the essential character to the ICS Units. As such, the ICS Units will be considered products of the United States for the purpose of government procurement.

Notice of this final determination will be given in the Federal Register as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Any party-at-interest may, within 30 days after publication of the Federal Register notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

WILLIAM G. ROSOFF
*Acting Executive Director
Regulations and Rulings
Office of International Trade*

**APPROVAL OF SGS NORTH AMERICA, INC., AS A
COMMERCIAL GAUGER**

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

ACTION: Notice of approval of SGS North America, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, SGS North America, Inc., 2301 Brazosport Blvd., Suite A 915, Freeport, TX 77541, has been approved to gauge petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The approval of SGS North America, Inc., as commercial gauger became effective on February 17, 2010. The next triennial inspection date will be scheduled for February 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: May 12, 2010

IRA S. REESE
Executive Director
Laboratories and Scientific Services

[Published in the Federal Register, May 19, 2010 (75 FR 28052)]

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

(No. 4 2010)

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

SUMMARY: Presented herein are the copyrights, trademarks, and trade names recorded with U.S. Customs and Border Protection during the month of April 2010. The last notice was published in the CUSTOMS BULLETIN on April 28, 2010.

Corrections or updates may be sent to: Department of Homeland Security, U.S. Customs and Border Protection, Office of Regulations and Rulings, IPR Branch, 1300 Pennsylvania Avenue, N.W., Mail Stop 1179, Washington, D.C. 20229-1179

FOR FURTHER INFORMATION CONTACT: Delois Johnson, Paralegal, Intellectual Property Rights Branch, (202) 325-0088.

Dated: May 20, 2010

CHARLES R. STEUART
Chief,
Intellectual Property Rights & Restricted
Merchandise Branch

CBP IPR RECORDATION — APRIL 2010

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 06-00412	4/2/2010	5/29/2020	SOX	CHICAGO WHITE SOX, LIMITED	No
TMK 97-00882	4/6/2010	9/4/2017	LUCKY STRIKE	REYNOLDS INNOVATIONS INC.	No
TMK 96-00630	4/6/2010	4/17/2016	TAREYTON	REYNOLDS INNOVATIONS INC.	No
TMK 06-00741	4/6/2010	4/2/2013	KOOL	REYNOLDS INNOVATIONS INC.	No
COP 82-00164	4/13/2010	4/13/2030	GAME & WATCH: OIL PANIC	NINTENDO OF AMERICA, INC.	No
COP 83-00063	4/13/2010	4/13/2030	GAME & WATCH: DONKEY KONG JR.	NINTENDO OF AMERICA INC.	No
TMK 01-00151	4/2/2010	4/6/2020	PALL MALL	REYNOLDS INNOVATIONS INC	No
TMK 00-00367	4/6/2010	3/21/2020	XPANDREL	MICHAEL J. PALMER	No
TMK 01-00027	4/27/2010	2/29/2020	DESIGN (SPROUT)	GENERAL MILLS MARKETING, INC.	No
TMK 01-00384	4/23/2010	5/29/2020	KID'S KITCHEN	HORMEL FOODS LLC.	No
TMK 01-00355	4/9/2010	2/13/2020	DUNE	PARFUMS CHRISTIAN DIOR, S.A.	No
TMK 01-00358	4/9/2010	1/13/2020	EAU SAUVAGE	PARFUMS CHRISTIAN DIOR, S.A.	No
TMK 01-00561	4/27/2010	9/5/2020	CHANEL CLASSIC BOTTLE	CHANEL, INC.	No
TMK 02-00431	4/9/2010	1/10/2020	BULOVA	BULOVA CORPORATION	No
TMK 03-00262	4/6/2010	12/1/2012	GPC	REYNOLDS INNOVATIONS INC.	No
TMK 03-00851	4/2/2010	1/25/2020	C B & DESIGN	CUTTER & BUCK INC.	No
TMK 04-00010	4/6/2010	8/27/2013	CARLTON	REYNOLDS INNOVATIONS INC.	No
TMK 04-00345	4/6/2010	6/6/2020	CRYOLABEL	ELECTRONIC IMAGING MATERIALS INC	No
TMK 04-00269	4/13/2010	3/13/2020	DKNY	GABRIELLE STUDIO, INC.	No

CBP IPR RECORDATION — APRIL 2010

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 10-00345	4/9/2010	2/3/2019	STRAPWORKS	DONNA FOSTER	No
TMK 05-00256	4/6/2010	5/26/2016	LUCKIES	REYNOLDS INNOVATIONS INC.	No
TMK 05-00652	4/2/2010	1/12/2021	LAY'S	FRITO-LAY NORTH AMERICA, INC.	No
TMK 05-00430	4/9/2010	5/30/2020	BUGABOOTOO	COLUMBIA SPORTSWEAR NORTH AMERICA INC.	No
TMK 05-00751	4/27/2010	7/10/2020	ORIOLES (STYLIZED)	BALTIMORE ORIOLES LIMITED	No
TMK 10-00418	4/29/2010	9/15/2019	DESIGN (KOMODO DRAGON)	NENG FENG WANG	No
TMK 03-00263	4/6/2010	11/3/2018	GPC LABEL	REYNOLDS INNOVATIONS INC.	No
TMK 07-00604	4/9/2010	2/22/2020	CABRIO	DOONEY & BOURKE, INC.	No
TMK 08-00265	4/9/2010	5/30/2020	HALLMARK	HALLMARK LICENSING, INC.	No
TMK 08-00253	4/23/2010	3/7/2020	BROADCOM AND DESIGN	BROADCOM CORPORATION	No
TMK 10-00431	4/29/2010	7/9/2012	CRUMPLER AND DESIGN	DAVID ROPER, WILLIAM MILLER, STU-ART CRUMPLER	No
TMK 10-00434	4/30/2010	1/18/2020	MASTER DISTRIBUTOR REGO PRODUCTS AUTHORIZED SALES, SERVICE, & SUPPORT AND DESIGN	ENGINEERED CONTROLS INTERNATIONAL, INC.	No
TMK 10-00394	4/23/2010	7/15/2018	JOHN DEERE	DEERE & COMPANY	No
TMK 10-00410	4/27/2010	1/5/2020	VIRTUAL CONSOLE	NINTENDO OF AMERICA INC.	No
TMK 10-00409	4/27/2010	7/15/2018	JOHN DEERE	DEERE & COMPANY	No
TMK 10-00432	4/30/2010	1/12/2020	CHOPPERS	JAY-Y ENTERPRISE CO., INC.	No

CBP IPR RECORDATION — APRIL 2010

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 10-00380	4/15/2010	4/13/2020	SNUGGIE	ALLSTAR MARKETING GROPU, LLC	No
TMK 10-00413	4/27/2010	18/27/2018	NUTELLA	FERRERO S.P.A.	No
TMK 10-00419	4/29/2010	3/9/2020	MISTER STEAMY	MERCHANT MEDIA, LLC	No
TMK 10-00395	4/23/2010	7/15/2018	JOHN DEERE	DEERE & COMPANY	No
TMK 09-00345	4/9/2010	11/20/2010	SKIN SUCCESS	E.T. BROWNE DRUG CO., INC.	No
TMK 10-00411	4/27/2010	2/23/2020	CXGBS AND LOGO	HARRY JAY ENCK CEO OF COMMIS- SIONING & GREEN BUILDING SOLU- TIONS, INC.	No
COP 10-00096	4/27/2010	4/27/2030	BENDAROOS ANIMALS	MERCHANT MEDIA, LLC.	No
TMK 10-00339	4/6/2010	9/10/2016	ENERGY STAR	US ENVIRONMENTAL PROTECTION AGENCY	No
TMK 10-00340	4/6/2010	12/3/2015	BODY BY JAKE	BODY BY JAKE, INC.	No
TMK 10-00338	4/6/2010	2/13/2011	ATHLETA	ATHLETA, INC.	No
TMK 10-00337	4/6/2010	5/26/2019	A AND DESIGN	APPLE INC.	No
TMK 10-00336	4/6/2010	9/4/2011	GERI-FIT	GERI-FIT COMPANY, LTD.	No
TMK 10-00343	4/6/2010	12/22/2019	ANDREW MARC	G-III LEATHER FASHIONS, INC.	No
COP 10-00076	4/2/2010	4/2/2030	HIPPO PILLOW PET	CJ PRODUCTS, LLC.	No
COP 10-00074	4/2/2010	4/2/2030	ZEBRA PILLOW PET	CJ PRODUCTS, LLC.	No
TMK 10-00331	4/2/2010	10/23/2017	DRACULA	MICHAEL MACHAT	No
TMK 10-00412	4/27/2010	3/9/2020	DYNASONICS	RACINE FEDERATED, INC.	No

CBP IPR RECORDATION — APRIL 2010

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 10-00389	4/23/2010	11/22/2014	BAYTRIL	BAYER AG	No
TMK 10-00361	4/13/2010	10/15/2016	STIFNECK	LAERDAL MEDICAL CORP.	No
TMK 10-00379	4/15/2010	10/27/2019	SHAKE WEIGHT	FITNESS IQ, LLC	No
TMK 10-00378	4/15/2010	11/7/2015	FINIS TERRAE	INVERSIONES COUSINO MACUL SA	No
TMK 10-00435	4/30/2010	8/1/2016	X LOOP	JAY-Y ENTERPRISE CO., INC.	No
TMK 10-00416	4/27/2010	6/16/2019	XO CAFE	PATRON SPIRITS INTERNATIONAL AG	No
TMK 10-00393	4/23/2010	2/23/2020	READYCADDY	DANIEL, NATHAN, HORWITZ	No
COP 10-00098	4/27/2010	4/27/2030	TOPSY TURVY HUMMINGBIRD HANG- OUT PLANTER PACKAGING.	ALLSTAR MARKETING GROUP, LLC.	No
COP 10-00097	4/27/2010	4/27/2030	TOPSY TURVY STRAWBERRY PLANTER PACKAGING	ALLSTAR MARKETING GROUP, LLC	No
TMK 10-00433	4/30/2010	10/5/2019	YOUR BABY CAN READ!	YOUR BABY CAN, LLC.	No
TMK 10-00400	4/27/2010	3/16/2020	HAGAFEN	HAGAFEN CELLARS	No
TMK 06-01295	4/27/2010	4/11/2020	PLUMB	COOPER BRANDS, INC.	No
TMK 10-00390	4/23/2010	9/28/2013	BETASERON	BAYER SCHERING PHARMA AG	No
TMK 10-00391	4/23/2010	3/29/2014	CLIMARA	BAYER SCHERING PHARMA AG	No
TMK 10-00392	4/23/2010	5/25/2014	CLIMARA PRO	BAYER SCHERING PHARMA AG	No

CBP IPR RECORDATION — APRIL 2010

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 10-00100	4/27/2010	4/27/2030	BANANA COSTUME.	SILVERTOP ASSOCIATES, INC. D.B.A. RASTA IMPOSTA. ADDRESS: PO BOX 7, 600 EAST CLEMENTS BRIDGE ROAD, RUNNEMEDE, NJ 08078, UNITED STATES.	No
TMK 10-00369	4/15/2010	12/15/2010	MOTRIN	JOHNSON & JOHNSON	No
COP 10-00099	4/27/2010	4/27/2030	COLOR COPY OF TOMATO TREE PACKAGING	ALLSTAR MARKETING GROUP, LLC	No
TMK 10-00415	4/27/2010	12/8/2019	DESIGN	THE SEABERG COMPANY, INC.	No
TMK 10-00436	4/30/2010	8/1/2016	XL X-LOOK	SUNBEAM INTERNATIONAL INC.	No
TMK 10-00428	4/29/2010	8/29/2015	ALKA-SELTZER	BAYER HEALTHCARE LLC	No
TMK 10-00429	4/29/2010	2/18/2019	ALKA-SELTZER PLUS	BAYER HEALTHCARE LLC	No
TMK 10-00368	4/15/2010	8/2/2015	BENADRYL-D	JOHNSON & JOHNSON	No
TMK 10-00342	4/6/2010	2/27/2017	LOLL	LOLL DESIGNS, INC.	Yes
TMK 10-00332	4/2/2010	6/2/2019	MOZO	DECKERS OUTDOOR CORPORATION	No
TMK 10-00370	4/15/2010	12/12/2010	PERRY ELLIS AMERICA & DESIGN	PEI LICENSING INC	No
TMK 10-00414	4/27/2010	3/16/2013	REGO	ENGINEERED CONTROLS INTERNATIONAL, INC.	No
TMK 10-00341	4/6/2010	3/23/2020	DESIGN (TEAL MIXING TIP)	SULZER MIXPAC AG	No
TMK 10-00333	4/2/2010	12/22/2019	ZAFRA	ZAFRA RUM LLC	No

CBP IPR RECORDATION — APRIL 2010

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 00-00398	4/2/2010	12/12/2019	DOONEY & BOURKE ALL-WEATHER LEATHER (PLUS DESIGN)	DOONEY & BOURKE, INC.	No
COP 10-00075	4/2/2010	4/2/2030	UNTITLED (BUMBLEBEE PILLOW PET)	CJ PRODUCTS, LLC	No
TMK 10-00335	4/2/2010	4/12/2015	CA CLASSIC ARMY	YICK FUNG INDUSTRIAL INTERNATIONAL, LTD	No
TMK 10-00334	4/2/2010	8/18/2019	ECO/SOLAR	HINSILBLON, LTD.	No
TMK 10-00372	4/15/2010	11/11/2016	PERRY ELLIS	PEI LICENSING, INC.	No
COP 10-00069	4/2/2010	4/2/2030	BIG BOSS GRILL BOOKLET	E. MISHAN & SONS, INC.	No
TMK 10-00373	4/15/2010	11/6/2017	360°	PEI LICENSING, INC.	No
TMK 10-00329	4/2/2010	1/8/2018	THE ONE TOUCH JAR OPENER	STALEX HOLDINGS, LLC	No
COP 10-00081	4/13/2010	4/13/2030	BENDAROOS OCEAN CREATURES	MERCHANT MEDIA, LLC	No
TMK 10-00374	4/15/2010	5/29/2017	PERRY ELLIS 18	PEI LICENSING, INC.	No
TMK 10-00322	4/2/2010	12/15/2018	DESIGN	REYNOLDS INNOVATIONS INC.	No
TMK 05-00399	4/6/2010	1/8/2016	PALL MALL & DESIGN	REYNOLDS INNOVATIONS INC.	No
TMK 10-00352	4/13/2010	12/8/2012	MAURO ARMELLINI	MUKENBRUN,CEM	No
TMK 10-00359	4/13/2010	1/10/2016	MISCELLANEOUS DESIGN	JAYY ENTERPRISE CO., INC.	No
TMK 10-00385	4/23/2010	9/25/2010	KOGENATE	BAYER AG	No
TMK 10-00354	4/13/2010	5/14/2012	AUTONOMY	LIQUID KNITS CORPORATION	No
TMK 10-00355	4/13/2010	6/18/2012	AATHEROS AND LOGO	AATHEROS COMMUNICATIONS, INC.	No

CBP IPR RECORDATION — APRIL 2010

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 10-00328	4/2/2010	12/22/2019	BELLISIMO	STEVEN NOBLE LEDSON DBA LEDSON WINERY AND VINEYARDS	No
TMK 05-00258	4/9/2010	5/15/2015	L.S./M.F.T.	REYNOLDS INNOVATIONS INC.	No
TMK 10-00353	4/13/2010	3/19/2012	CHEVRON DESIGN	BROOKS SPORTS, INC	No
COP 10-00077	4/6/2010	4/6/2030	BENDAROOS ZOO ANIMALS	MERCHANT MEDIA, LLC	No
TMK 10-00376	4/15/2010	9/1/2019	PORTFOLIO	PEI LICENSING, INC.	No
TMK 05-00666	4/9/2010	10/12/2014	COLOR WHITE WOODWORKING/METAL MACHINES	WALTER MEIER (MANUFACTURING) INC.	No
TMK 10-00347	4/9/2010	4/29/2018	PLANTRONICS VOYAGER	PLANTRONICS, INC	No
TMK 10-00346	4/9/2010	4/28/2020	RUSKIN	RUSKIN COMPANY	No
COP 10-00079	4/9/2010	14/9/2030	BENDAROOS HEARTS, STARS & RAIN-BOWS.	MERCHANT MEDIA, LLC.	No
TMK 10 00381	4/15/2010	3/14/2020	COM-PAC TINTERNATIONAL	COM-PAC TINTERNATIONAL, INC.	No
TMK 10-00356	4/13/2010	10/4/2015	X LOOP	JAY-Y ENTERPRISE CO., INC.	No
TMK 10-00430	4/29/2010	7/8/2013	DIGITAL CONCEPTS	SAKAR INTERNATIONAL, INC.	No
TMK 03-00659	4/23/2010	3/6/2020	SAN DIEGO PADRES BASEBALL CLUB AND DESIGN	PADRES L.P.	No
TMK 10-00417	4/27/2010	4/18/2020	DESIGN (MOUNTAIN LANDSCAPE)	VIADER VINEYARDS	No
TMK 10-00408	4/27/2010	10/3/2015	POROUS-CAPSICUM-PLASTER AND DESIGN	ASTRABON (S) PTE LTD.	No

CBP IPR RECORDATION — APRIL 2010

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 10-00080	4/13/2010	4/13/2030	BENDAROOS SPORTS & PLAY	MERCHANT MEDIA, LLC	No
TMK 10-00348	4/9/2010	6/25/2018	PLAYTEX	PLAYTEX MARKETING CORPORATION	No
COP 10-00070	4/2/2010	4/2/2030	PANDA PILLOW PET	CJ PRODUCTS, LLC	No
COP 10-00072	4/2/2010	4/2/2030	WHALE PILLOW PET	CJ PRODUCTS, LLC	No
COP 10-00071	4/2/2010	4/2/2030	BUNNY PILLOW PET	CJ PRODUCTS, LLC	No
TMK 10-00326	4/2/2010	12/18/2018	MES TROIS AMOUR	STEVEN NOBLE LEDSON DBA LEDSON WINERY AND VINEYARDS	No
TMK 10-00344	4/6/2010	12/9/2018	SWEET IDA MAE	STEVEN NOBLE LEDSON DBA LEDSON WINERY AND VINEYARDS	No
COP 10-00085	4/15/2010	4/15/2030	BENDAROOS SWEETS & TREATS.	MERCHANT MEDIA, LLC. .	No
COP 10-00095	4/27/2010	4/27/2030	BENDAROOS CREATIVITY CENTER	MERCHANT MEDIA, LLC.	No
TMK 10-00377	4/15/2010	6/20/2016	SUDAFED PE	JOHNSON & JOHNSON	No
TMK 10-00325	4/2/2010	7/27/2019	VAMPIRE	MICHAEL MACHAT	No
TMK 10-00399	4/27/2010	6/2/2017	PRIMA	GERAWAN FARMING INC.	No
TMK 10-00375	4/15/2010	2/29/2020	360° PERRY ELLIS	PEI LICENSING, INC.	No
TMK 01-00482	4/15/2010	7/19/2020	DIORISSIMO	PARFUMS CHRISTIAN DIOR, S.A.	No
TMK 10-00358	4/13/2010	3/2/2020	Q AND DESIGN	ALLIANCE LAUNDRY SYSTEMS LLC	No
TMK 10-00324	4/2/2010	2/26/2018	AHNU	DECKERS OUTDOOR CORPORATION	No
TMK 10-00327	4/2/2010	3/23/2020	DESIGN (YELLOW MIXING TIP)	SULZER MIXPAC AG	No
TMK 10-00323	4/2/2010	2/9/2015	VANTAGE	REYNOLDS INNOVATIONS INC.	No

CBP IPR RECORDATION — APRIL 2010

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 10-00330	4/2/2010	8/18/2019	CLEAR/SCENT	HINSILBLON, LTD.	No
COP 10-00073	4/2/2010	4/2/2030	BIG BOSS GRILL USER MANUAL	E. MISHAN & SONS, INC.	No
TMK 10-00382	4/15/2010	10/6/2018	VIVITAR	SAKAR ACQUISITION LLC	No
TMK 10-00401	4/27/2010	3/27/2017	CHOPPERS EYEWEAR	JAY-Y ENTERPRISE CO., INC.	No
TMK 10-00402	4/27/2010	2/13/2011	CALPROX	ROBELL RESEARCH, INC.	No
TMK 10-00357	4/13/2010	8/29/2020	I CONCEPTS	SAKAR INTERNATIONAL, INC.	No
TMK 10-00406	4/27/2010	1/27/2016	REGO	ENGINEERED CONTROLS INTERNATIONAL, INC.	No
TMK 10-00350	4/13/2010	1/23/2017	VISTA	PLANTRONICS, INC	No
TMK 10-00360	4/13/2010	9/30/2018	CALISTO	PLANTRONICS, INC	No
TMK 10-00351	4/13/2010	3/23/2020	SAVI	PLANTRONICS, INC	No
TMK 10-00362	4/15/2010	1/12/2020	CHOPPERS AND DESIGN	JAY-Y ENTERPRISE CO., INC.	No
TMK 10-00367	4/15/2010	4/12/2018	VIVITAR	SAKAR ACQUISITION LLC	No
TMK 10-00407	4/27/2010	12/17/2012	DG	JAY-Y ENTERPRISE CO., INC.	No
COP 10-00083	4/15/2010	4/15/2030	EMERY CAT PACKAGING.	ALLSTAR MARKETING GROUP, LLC.	No
COP 10-00101	4/27/2010	4/27/2030	EMERY CAT RFFILL PACKAGING	ALLSTAR MARKETING GROUP, LLC.	No
COP 10-00084	4/15/2010	4/15/2030	MISTER STEAMY PACKAGING	MERCHANT MEDIA, LLC	No
TMK 10-00365	4/15/2010	10/13/2019	BENADRYL & DESIGN	JOHNSON & JOHNSON	No
TMK 10-00366	4/15/2010	7/29/2013	SUDAFED	JOHNSON & JOHNSON	No
TMK 10-00364	4/15/2010	4/13/2020	DOLLAR SYMBOL DESIGN	G2G LLC	No

CBP IPR RECORDATION — APRIL 2010

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tm	Owner Name	GM Restricted
TMK 08-00143	4/9/2010	7/3/2020	SAMSARA	GUERLAIN, INC.	No
COP 10-00078	4/9/2010	4/9/2030	BENDAROOS PUPPIES & KITTENS	MERCHANT MEDIA LLC.	No
COP 10-00082	4/13/2010	4/13/2030	BENDAROOS SPACE & SKY.	MERCHANT MEDIA, LLC.	No
TMK 10-00349	4/9/2010	12/5/2016	LARIS	NOVARTIS AG	No
TMK 10-00386	4/23/2010	5/3/2018	VIVITAR	SAKAR ACQUISITION LLC.	No
TMK 10-00363	4/15/2010	10/2/2017	TIC TAC & DESIGN	FERRERO S.P.A.	No
TMK 10-00388	4/23/2010	11/11/2016	VIVITAR	SAKAR ACQUISITION LLC	No
COP 10-00091	4/27/2010	4/27/2030	POKEMON MYSTERY DUNGEON: BLUE RESCUE TEAM	NINTENDO OF AMERICA INC	No
COP 10-00094	4/27/2010	4/27/2030	BENDAROOS ENCHANTED FOREST.	MERCHANT MEDIA, LLC.	No
COP 10-00087	4/23/2010	4/23/2030	AMERICAN RETRO MUSEUM AR- CHIVE 2006	AMERICAN RETRO MUSEUM, INC.	No
TMK 10-00371	4/15/2010	4/20/2014	PERRY	PEI LICENSING, INC.	No
COP 10-00086	4/23/2010	4/23/2030	DIDDY KONG RACING DS.	NINTENDO OF AMERICA INC.,	No
COP 10-00089	4/27/2010	4/27/2030	DONKEY KONG COUNTRY 3.	NINTENDO OF AMERICA INC.	No
COP 10-00090	4/27/2010	4/27/2030	HOT DOG COSTUME	SILVERTOP ASSOCIATES, INC. D.B.A. RASTA IMPOSTA	No
TMK 10-00404	4/27/2010	12/12/2019	OFFICIAL NINTENDO SEAL AND DE- SIGN	NINTENDO OF AMERICA INC.	No
COP 10-00092	4/27/2010	4/27/2030	METROID PRIME 3: CORRUPTION	NINTENDO OF AMERICA INC.	No

CBP IPR RECORDATION — APRIL 2010

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 10-00387	4/23/2010	9/22/2019	GRAEPEL	FRIEDRICH GRAEPEL AKTIENGESELL-SCHAFT	No
TMK 10-00403	4/27/2010	11/30/2019	POKEMON	NINTENDO OF AMERICA INC.	No
TMK 10-00384	4/23/2010	11/13/2017	NUDRED	BRUCE BOYD	No
COP 10-00093	4/27/2010	4/27/2030	METROID PRIME 3: CORRUPTION	NINTENDO OF AMERICA INC.	No
TMK 10-00405	4/27/2010	12/15/2019	WII FIT	NINTENDO OF AMERICA INC.	No
TMK 00-00614	4/27/2010	4/22/2020	POR LARRANAGA	CUBAN CIGAR BRANDS, N.V.	No
TMK 10-00383	4/23/2010	4/18/2020	MAGNACHEK	RELYCO SALES, INC.	No
TMK 10-00398	4/27/2010	10/20/2019	NEEDS SELLING SOLUTIONS	JEFFREY F. ALLEN AND GARY MCGUGAN A PARTNERSHIP	No
TMK 10-00396	4/27/2010	1/19/2012	MAZDA	MAZDA MOTOR CORPORATION	No
COP 10-00088	4/27/2010	4/27/2030	PERSON UNDER TREE II	AMAZON TECHNOLOGIES, INC.	No
TMK 10-00397	4/27/2010	3/9/2020	DYNASONICS	RACINE FEDERATED, INC.	No
TMK 10-00420	4/29/2010	4/27/2015	BRONKAID	BAYER HEALTHCARE LLC	No
TMK 10-00421	4/29/2010	11/6/2011	BACTINE	BAYER HEALTHCARE LLC	No
TMK 10-00422	4/29/2010	9/20/2013	CAMPHO-PHENIQUE	BAYER HEALTHCARE LLC	No
TMK 10-00423	4/29/2010	9/17/2015	CITRACAL	BAYER HEALTHCARE LLC	No
TMK 10-00424	4/29/2010	10/13/2012	FERGON	BAYER CORPORATION	No
TMK 10-00425	4/29/2010	10/29/2010	DOMEBORO	BAYER HEALTHCARE PHARMACEUTI-CALS INC.	No

CBP IPR RECORDATION — APRIL 2010

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 10-00426	4/29/2010	1/26/2019	DESIGN	MAZDA MOTOR CORPORATION	No
TMK 10-00427	4/29/2010	4/18/2014	NEO-SYNEPHRINE	BAYER HEALTHCARE LLC	No

Total Records: 185

Date as of: 5/6/2010

**REVOCAION OF RULING LETTER AND REVOCAION OF
TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF A PLASMA TELEVISION MOUNT**

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to tariff classification of a plasma television mount.

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 letter relating to the tariff classification of a plasma television mount 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 action was published in the *Customs Bulletin*, Vol. 44, No. 14, on March 31, 2010. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 9, 2010.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

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 to 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), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI, this notice advises interested parties that CBP is modifying a ruling letter relating to the tariff classification of a plasma television mount. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) R03515, dated April 19, 2006, 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 rulings identified above. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625 (c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. 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 its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY R03515 in order to reflect the proper classification of a plasma television mount according to the analysis contained in Headquarters Ruling Letter (HQ) H017937, which is 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.

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

Dated: May 17, 2010

GAIL A. HAMILL
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H017937

May 17, 2010

CLA-2 OT:RR:CTF:TCM H017937 TNA

CATEGORY: Classification

TARIFF NO.: 8479.89.98

ANTHONY JOHNSON, PRESIDENT
ANTHONY JOHNSON, III- CHB
100 W. IMPERIAL AVENUE, UNIT J
EL SEGUNDO, CA 90245

RE: Revocation of NY R03515; Classification of X-arm moveable plasma television mount from South Korea

DEAR MR. JOHNSON:

This letter is in reference to New York Ruling Letter (“NY”) R03515, issued to you on April 19, 2006, concerning the tariff classification of the X-Arm moveable TV wall mount from South Korea. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under subheading 8543.89.96, Harmonized Tariff Schedule of the United States (“HTSUS”), as “electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other: Other.” We have reviewed NY R03515 and found it to be in error. For the reasons set forth below, we hereby revoke NY R03515.

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, notice proposing to revoke NY R03515 was published on March 31, 2010, in Volume 44, Number 14, of the *Customs Bulletin*. CBP received no comments in response to this notice.

FACTS:

The X-Arm is a motorized, moveable, robotic arm that is affixed to a vertical wall and is designed to mount a plasma or flat-screened television (“TV”). It contains a base plate that measures 26.57 inches in length by 22.64 inches in height. The mount measures 4.6 inches when collapsed and 12 inches when expanded. It is telescopic to twelve inches and can tilt seven degrees up and twenty degrees down, and swivels 56 degrees to the right and left. The X-Arm moves via a combination of motorized robotic arms and rollers.

In NY R03515, dated April 19, 2006, CBP classified the X-Arm under 8543.89.9695, HTSUS, as: “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other: Other.” As such, the rate of duty is 2.6% *ad valorem*.

ISSUE:

Whether the X-Arm TV mount is properly classified under heading 8543, HTSUS, under “electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter,” or under heading 8479, HTSUS, as “machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter”?

LAW AND ANALYSIS:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

- | | |
|------|---|
| 8543 | Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: |
| 8479 | Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: |

In NY R03515, CBP classified the X-Arm under Heading 8543 as an electrical machine. However, the EN for Heading 8543 explains that:

Most of the appliances of this heading consist of an assembly of electrical goods or parts (valves, transformers, capacitors, chokes, resistors, etc.) operating wholly electrically. However, the heading also includes electrical goods incorporating mechanical features provided that such features are subsidiary to the electrical function of the machine or appliance.

While the X-Arm contains both electrical features, such as the remote control, and mechanical features, such as the X-Arm itself, the mechanical features are not subsidiary to the electrical functioning of the product. As a result, the terms of the heading do not describe the good.

Heading 8479, HTSUS, provides for “machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof.” The EN to heading 8479, HTSUS, states, in pertinent part, the following:

This heading is **restricted** to machinery having individual functions, which:

- | | | | | |
|---|---|--|---|---|
| | (a) Is not excluded from this Chapter by the operation of any Section or Chapter Note. | | | |
| and | (b) Is not covered more specifically by a heading in any other Chapter of the Nomenclature. | | | |
| and | (c) Cannot be classified in any other particular heading of this Chapter since: <table border="0" style="margin-left: 20px;"> <tr> <td>(i) No other heading covers it by reference to its method of functioning, description or type.</td> </tr> <tr> <td>and (ii) No other heading covers it by reference to its use or to the industry in which it is employed.</td> </tr> <tr> <td>or (iii) It could fall equally well into two (or more) other such headings (general purpose machines)</td> </tr> </table> | (i) No other heading covers it by reference to its method of functioning, description or type. | and (ii) No other heading covers it by reference to its use or to the industry in which it is employed. | or (iii) It could fall equally well into two (or more) other such headings (general purpose machines) |
| (i) No other heading covers it by reference to its method of functioning, description or type. | | | | |
| and (ii) No other heading covers it by reference to its use or to the industry in which it is employed. | | | | |
| or (iii) It could fall equally well into two (or more) other such headings (general purpose machines) | | | | |

For this purpose the following are to be regarded as having individual functions:

(A) Mechanical devices, with or without motors or other driving force, whose function can be performed distinctly from and independently of any other machine or appliance.

CBP has long classified motorized machines that could not be classified elsewhere in heading 8479, HTSUS. This has been true even where the machine in question has incorporated some electrical features, as long as the mechanized function is not subsidiary to the electrical function of the machine or appliance (EN 8543). In NY G86267, dated February 2, 2001, for example, CBP classified a motorized, illuminated advertising module into heading 8479, HTSUS. There the unit could be placed either on a counter or mounted on a wall, and, while it used a light to illuminate three different advertisements, it also used a motor to rotate the display. In HQ 089831, dated October 4, 1991, CBP classified a music box that incorporated both mechanical and electrical features to play the national anthem as an American flag was mechanically raised up a flag pole. These items were all classified under heading 8479, HTSUS, because their mechanical features were not subsidiary to their electrical functions, and they were all mechanical devices whose function was performed distinctly from and independently of any other machine or appliance. In HQ 953671, dated July 2, 1993, CBP classified a mechanical billboard display under the same heading.

The X-Arm is similar to the products at issue in HQ 089831, HQ 953671, and NY G86267 in that its function is an electronically controlled mechanical function. In addition, classification in heading 8479, HTSUS, is consistent with the description in the EN to that heading. As a result, the X-Arm is classified under subheading 8479.89.98, HTSUS, for “machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances, other.”

HOLDING:

Under the authority of GRI 1, the X-Arm Full-Motion Motorized Mount is provided for in heading 8479, HTSUS. Specifically, it is classified under subheading 8479.89.98, as “machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances, other.” The column one general rate of duty is 2.5% *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 internet at www.usitc.gov/tata/hts/.

Sincerely,

GAIL A. HAMILL

For

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**REVOCAION OF A RULING LETTER AND REVOCAION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION AND STATUS UNDER THE CARIBBEAN
BASIN TRADE PARTNERSHIP ACT (CBTPA) OF GIRLS'
GARMENTS FROM GUATEMALA**

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the tariff classification and status under the Caribbean Basin Trade Partnership Act (CBTPA) of girls' garments from Guatemala.

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 CPB is revoking a ruling concerning the tariff classification and status under the Caribbean Basin Trade Partnership Act (CBTPA) of girls' garments from Guatemala. Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published on March 31, 2010, Vol. 44, No. 14, of the *Customs Bulletin*. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 9, 2010.

FOR FURTHER INFORMATION CONTACT: Jacinto P. Juarez, Jr., Tariff Classification and Marking Branch: (202) 325–0027.

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 commu-

nity'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 to 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, notice proposing to revoke a New York Ruling letter (NY) L86713, dated August 18, 2005, pertaining to the tariff classification and status of girls' garments under the CBTPA was published in the March 31, 2010, Vol. 44, No. 14, of the *Customs Bulletin*. No comments were received.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. 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 decision on this notice.

In NY L86713, CBP classified a girl's skirt under subheading 6204.52.2080, of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Skirts and divided skirts: Of cotton: Other: Other: Girls' (342)" and a girl's jumper under subheading 6211.42.0060, HTSUS, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton. Jumpers (359)".

In NY L86713, CBP also determined that the girls' garments met the requirements of the "NAFTA short supply" provision of the CBTPA contained in subheading 9820.11.24, HTSUS, and qualified for preferential, duty free treatment under the CBTPA, based on the

tariff shift rules in General Note 12(t) for subheadings 6204.52 and 6211.42, HTSUS. It is now CBP's position that the applicable provision is Note 2 to Chapter 62 of GN 12(t) and the girls' garments may meet the requirements for "short supply" fabric under subheading 9820.11.24 of the HTSUS, and may be eligible for preferential, duty free treatment under the CBTPA, provided that they are imported directly into the customs territory of the United States from a CBTPA beneficiary country and the apparel garments meet the requirements of the relevant subheading.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY L86713, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letter (HQ) H081216, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(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: May 20, 2010

GAIL A. HAMILL

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachment

HQ H081216

May 20, 2010

CLA-2 OT:RR:CTF:TCM H081216 JPJ

CATEGORY: Classification

TARIFF NO.: 6204.52.2080, 6211.42.0060

Ms. PRISCILLA ROYSTER
THE IRWIN BROWN COMPANY
14092 CUSTOMS BLVD.
GULFPORT, MS 39503

RE: Classification and status under the Caribbean Basin Trade Partnership Act (CBTPA) of girls' garments from Guatemala; Revocation of NY L86713

DEAR Ms. ROYSTER:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling letter (NY) L86713, issued to you on August 18, 2005.

In NY L86713, CBP classified a girl's skirt under subheading 6204.52.2080, of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Skirts and divided skirts: Of cotton: Other: Other: Girls'" and a girl's jumper under subheading 6211.42.0060, HTSUS, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton. Jumpers".

In NY L86713, CBP also determined that the girls' garments met the requirements of the "North American Free Trade Agreement ("NAFTA") short supply" provision of the Caribbean Basin Trade Partnership Act ("CBTPA") contained in subheading 9820.11.24, HTSUS, and qualified for preferential, duty free treatment under the CBTPA.

CBP has determined that NY L86713 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, a notice of proposed action was published on March 31, 2010, in the *Customs Bulletin*, Vol. 44, No. 14. No comments were received.

FACTS:

In NY L86713, the merchandise was described as follows:

The pleated skirt [Style GG5403] has a flat front waistband and an elasticized rear waistband. It has non-functional pocket flaps that are set into seams between the waistband and the skirt body. It also has a fabric lining with separate contrast color netting fabric that extends below the lining hemline and forms an extension to the garment silhouette.

The dropped waist jumper [Style GG5405] has a back zipper opening extending from the rear waist to the nape of the neck and a skirt portion composed of pleated fabric. It has a lightweight, contrast color, sheer fabric belt that secures to the waist by means of five belt loops. It also has a fabric lining with separate contrast color netting fabric that extends below the lining hemline and forms an extension to the garment silhouette.

You state that the garment shells are made of cotton velveteen fabric from China and that the woven polyester lining is from China and the polyester netting extensions and belt fabric are from Taiwan. The fabric will be sent to Guatemala where it will be cut and sewn into the completed garments. The submitted samples are girls' size 5.

The outer shell fabric, i.e., the cotton velveteen, imparts the essential characteristic of both garments.

ISSUE:

Whether the girls' garments qualify for preferential tariff treatment under the "NAFTA short supply" provision of the CBTPA contained in subheading 9820.11.24, HTSUS.

LAW AND ANALYSIS:

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

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

The CBTPA provides certain specified trade benefits for countries of the Caribbean region. The Act extends NAFTA duty treatment standards to non-textile articles that previously were ineligible for preferential treatment under the Caribbean Basin Economic Recovery Act (CBERA) and provides duty-free and quota-free treatment for certain textile and apparel articles which meet the requirements set forth in Section 211 of the CBTPA (amended 213(b) of the CBERA, codified at 19 U.S.C. 2703(b)).

Beneficiary countries are designated by the President of the United States after having met eligibility requirements set forth in the CBPTA. Eligibility for benefits under the CBTPA is contingent on designation as a beneficiary country by the President of the United States and a determination by the United States Trade Representative (USTR), published in the Federal Register, that a beneficiary country has taken the measures required by the Act to implement and follow, or is making substantial progress toward implementing and following, certain customs procedures, drawn from Chapter 5 of the NAFTA, that allow the United States to verify the origin of products. Once both these designations have occurred, a beneficiary country is entitled to preferential treatment provided for by the CBTPA.

Guatemala was designated a beneficiary country by Presidential Proclamation 7351 on October 2, 2000, published in the Federal Register (65 *Fed. Reg.* 59329). It was determined to have met the second criteria concerning customs procedures by the USTR and thus eligible for benefits under the CBTPA effective October 2, 2000. *See* 65 *Fed. Reg.* 60236.

The provisions implementing the textile provisions of the CBTPA in the Harmonized Tariff Schedule of the United States (HTSUS) are contained, for the most part, in subchapter XX, Chapter 98, HTSUS (two provisions may be found in subheading 9802.00.80, HTSUS). The regulations pertinent to the textile provisions of the CBTPA may be found at §§10.221 through 10.228 of the CBP Regulations (19 CFR 10.221 through 10.228).

The provision, commonly referred to as the “NAFTA short supply” provision, is contained in subheading 9820.11.24, HTSUS.

Subheading 9820.11.24, HTSUS, provides as follows:

Articles imported from a designated beneficiary Caribbean Basin Trade Partnership country enumerated in general note 17(a) to the tariff schedule: Apparel articles both cut (or knit-to-shape) and sewn or otherwise assembled in one or more such countries from fabrics or yarn not formed in the United States or in one or more such countries, provided that such apparel articles of such fabrics or yarn would be considered an originating good under the terms of general note 12(t) to the tariff schedule without regard to the source of the fabric or yarn if such apparel article had been imported from the territory of Canada or the territory of Mexico directly into the customs territory of the United States.

None of the fabric used in the manufacture of the girls’ garments is formed in the U.S. or in a CBTPA beneficiary country. Thus, in order to determine whether the goods are eligible for preferential treatment under the CBTPA, we must determine whether the garments would be considered originating goods under the terms of General Note 12(t), HTSUS.

General Note 12(t), HTSUS, sets forth the applicable tariff shift rules under the North American Free Trade Agreement (NAFTA) for determining whether non-originating materials used in the production of a good transform the good into an originating good under the NAFTA.

The outer shell of the garments is said to be constructed of cotton velveteen fabric classifiable in subheading 5801.23, HTSUS, which provides for “Woven pile fabrics and chenille fabrics, other than fabrics of heading 5802 or 5806: Of cotton: Other weft pile fabrics (224).”

Chapter rule 2 to Chapter 62 of General note 12(t) states, in relevant part:

Apparel goods of this chapter shall be considered to originate if they are both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties and if the fabric of the outer shell, exclusive of collars or cuffs, is wholly of one or more of the following:

(A) Velveteen fabrics of subheading 5801.23, containing 85 per cent or more by weight of cotton; . . .

Therefore, as long as the girls’ garments are both cut and sewn in a CBTPA beneficiary country and the outer shell, exclusive of collars and cuffs, is wholly of velveteen fabric, the girls’ garments may qualify as originating goods under the terms of General note 12(t).

HOLDING:

Provided that all the requirements of the subheading are satisfied, the apparel articles are classifiable under subheading 9820.11.24 of the HTSUS, and are eligible for preferential, duty free treatment under the CBTPA,

provided they are imported directly into the customs territory of the U.S. from a CBTPA beneficiary country and all other documentary requirements are satisfied.

EFFECT ON OTHER RULINGS:

NY L86713, dated August 18, 2005, 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*.

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

GENERAL NOTICE
19 CFR PART 177

**Proposed Modification and Revocation of Ruling Letters
and Proposed Revocation of Treatment Relating to
Classification of Electric Christmas Light Sets From China**

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

ACTION: Notice of proposed modification and revocation of ruling letters and treatment relating to the classification of electric Christmas light sets 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 CPB proposes to modify two ruling letters and revoke three ruling letters concerning the classification of electric Christmas light sets under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB intends to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor, Washington, D.C. 20229–1179. Comments submitted may be inspected at 799

9th St., N.W., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325-0036.

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 (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 proposes to modify one ruling letter and revoke four ruling letters pertaining to the classification of electric Christmas light sets from China. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) I83131, dated July 10, 2002 (Attachment A), NY I83130, dated July 3, 2002 (Attachment B), NY R03451, dated March 27, 2006 (Attachment C), NY H80773, dated June 5, 2001 (Attachment D), and NY I88935, dated December 9, 2002 (Attachment E), 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. This notice will cover any rulings on this merchandise that

may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise 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. 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 his agents for importations of merchandise subsequent to this notice.

In NY I83131, NY I83130, NY R03451, NY H80773, and NY I88935, CBP classified electric Christmas light sets from China in subheading 9405.40.00, HTSUS, which provides for: "Other electric lamps and lighting fittings: Other." It is now CBP's decision that the electric light sets at issue are of the kind used on Christmas trees and are therefore classified as such in subheading 9405.30.00, HTSUS, which provides for: "Lighting sets of a kind used for Christmas trees."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY I83131 and NY I83130, and revoke NY R03451, NY H80773, and NY I88935 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 H070667 (*see* Attachment "F" to this document); Proposed Headquarters Ruling Letter H095410 (Attachment "G" to this document), Proposed Headquarters Ruling Letter H072441 (Attachment "H" to this document), Proposed Headquarters Ruling Letter H070671 (Attachment "I" to this document), and Proposed Headquarters Ruling Letter H070673 (Attachment "J" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes 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: May 25, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

NY I83131
July 10, 2002
CLA-2-94:RR:NC:2:227 I83131
CATEGORY: Classification
TARIFF NO.: 9405.40.8000

MS. JENNY DAVENPORT
WAL-MART STORES, INC.
MAIL STOP #0410-L-32
601 N. WALTON
BENTONVILLE, AR 72716-0410

RE: The tariff classification of electric light sets from China.

DEAR MS. DAVENPORT:

In your letter dated June 13, 2002, you requested a tariff classification ruling. Samples are being returned as requested.

The samples submitted consist of the following electric light sets for use during the Christmas season:

style number 76-756M, an electrical net-shaped green wire harness that measures approximately 7 ½ feet in length by 8 inches in width and possesses 150 plastic sockets with multicolored light bulbs; style number 82505WM, an electrical green wire harness that measures approximately 83 feet in length and possesses 200 plastic sockets with miniature multicolored light bulbs;

style number 78-971M, two electrical green wire harnesses which together measure about 18 feet in length and possess 400 plastic sockets with miniature multicolored light bulbs in three-piece clusters;

style number 66-596M, three electrical green wire harnesses which together measure about 114 feet in length and possess 450 plastic sockets with miniature multicolored light bulbs.

It is stated that the light sets, styles 76-756M and 82505WM, will be primarily used to decorate the outside area of the home in noting that they can also be used to decorate the mantelpieces or stairways inside the home. Moreover, it is stated that the light sets, style numbers 78-971M and 66-596M, can be used to decorate Christmas trees as well as the outside area of the home such as the windows and fences.

The applicable subheading for these electric light sets will be 9405.40.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for other electric lamps and lighting fittings, other than of base metal. The rate of duty will be 3.9 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 George Kalkines at 646-733-3028.

Sincerely,

ROBERT B. SWIERUPSKI
Director,

National Commodity Specialist Division

[ATTACHMENT B]

NY I83130
July 3, 2002
CLA-2-94:RR:NC:2:227 I83130
CATEGORY: Classification
TARIFF NO.: 9405.40.8000

MS. JENNY DAVENPORT
WAL-MART STORES, INC.
MAIL STOP #0410-L-32
601 N. WALTON
BENTONVILLE, AR 727160-0410

RE: The tariff classification of electric Halloween light sets from China.

DEAR MS. DAVENPORT:

In your letter dated June 13, 2002, you requested a tariff classification ruling. Samples are being returned as requested.

The samples submitted consist of the following electric Halloween light sets:

style number 65-420, an electrical black wire harness that measures approximately 17 feet in length and possesses 50 plastic sockets with miniature multicolored light bulbs in noting light sets with orange bulbs and light sets with purple bulbs will also be imported; style number 65-500, an electrical black wire harness that measures approximately 32 feet in length and possesses 100 plastic sockets with miniature purple light bulbs in noting light sets with orange bulbs will also be imported;

style number 93487, an electrical black wire harness that measures about 16 feet in length and possesses 50 plastic sockets with miniature green light bulbs which are inserted into three-dimensional plastic slime-shaped covers;

style number 93101, an electrical black wire harness that measures about 9 feet in length and possesses 150 plastic sockets with miniature orange light bulbs (noting light sets with purple bulbs will also be imported) which are extended outward in three-piece clusters along the wire harness.

The applicable subheading for these electric light sets will be 9405.40.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for other electric lamps and lighting fittings, other than of base metal. The rate of duty will be 3.9 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 George Kalkines at 646-733-3028.

Sincerely,

ROBERT B. SWIERUPSKI
Director,

National Commodity Specialist Division

[ATTACHMENT C]

NY R03451
March 27, 2006
CLA-2-94:RR:NC:1:108 R03451
CATEGORY: Classification
TARIFF NO.: 9405.40.8000

MR. TROY D. CRAGO
ATICO INTERNATIONAL (USA), INC/
501 SOUTH ANDREWS AVENUE
FORT LAUDERDALE, FL 33301

RE: The tariff classification of a Halloween light set from China.

DEAR MR. CRAGO:

In your letter dated March 14, 2006, you requested a tariff classification ruling.

The subject merchandise, based on the submitted information, is a Halloween Light Set, item number W079AA00843, that has an electrical black-wire harness with sockets for the insertion of 70 orange-colored miniature light bulbs. This light set, which functions with flashing and steady lights, is stated to be utilized for both indoor or outdoor use.

The applicable subheading for this Halloween light set will be 9405.40.8000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other electric lamps and lighting fittings, other than of base metal. The rate of duty will be 3.9 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

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.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT D]

NY H80773
June 5, 2001
CLA-2-94:RR:NC:2:227 H80773
CATEGORY: Classification
TARIFF NO.: 9405.40.8000

MS. LINDA C. PEARSON
SEASONAL SPECIALTIES
11455 VALLEY VIEW RD.
EDEN PRAIRIE, MN 55344

RE: The tariff classification of electric light sets from China.

DEAR MS. PEARSON:

In your letter dated May 16, 2001, you requested a tariff classification ruling.

The subject merchandise consists of the following articles:

two electric light sets for indoor/outdoor use (style numbers 79832-F and 79836-F — samples submitted) that feature electrical wire harnesses possessing 50 and 100 sockets respectively with miniature purple-colored light bulbs.

two electric light sets for indoor/outdoor use (style numbers 79831-F and 79835-F — samples submitted) that feature electrical wire harnesses possessing 50 and 100 sockets respectively with miniature orange-colored light bulbs.

an electric light set, style number 79872 (sample submitted), that features an electrical wire harness possessing 25 sockets with C9 bulbs for the illumination of black light. It is stated that these light sets are sold only during the Halloween season. Although this merchandise is sold only during the above season, it is not considered to be festive for tariff purposes.

The applicable subheading for these electric lights sets will be 9405.40.8000, HTS, which provides for other electric lamps and lighting fittings of other than base metal. The rate of duty will be 3.9 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 George Kalkines at 212-637-7073.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT E]

NY I88935
December 9, 2002
CLA-2-94:RR:NC:2:227 I88935
CATEGORY: Classification
TARIFF NO.: 9405.40.8000

MS. MICHELLE ANGELINA
EXPEDITORS INTERNATIONAL OF WASHINGTON, INC.
870 ASHLAND AVENUE
FOLCROFT, PA 19032

RE: The tariff classification of an electric Halloween light set from China.

DEAR MS. ANGELINA:

In your letter dated November 15, 2002, on behalf of Silvine, Inc., you requested a tariff classification ruling. Sample is being returned as requested.

The submitted sample is an electric Halloween light set that is known as the Pumpkin-Colored Halloweenies (item number 2). It consists of an electrical black wire harness, measuring about 20 feet in length, that incorporates 80 miniature orange bulbs, as well as an eight-function control box.

The applicable subheading for this Halloween light set will be 9405.40.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for other electric lamps and lighting fittings, other than of base metal. The rate of duty will be 3.9 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 George Kalkines at 646-733-3028.

Sincerely,

ROBERT B. SWIERUPSKI
Director,

National Commodity Specialist Division

[ATTACHMENT F]

HQ H070667
CLA-2 OT:RR:CTF:TCM H070667 TNA
CATEGORY: Classification
TARIFF NO.: 9405.30.00

JENNY DAVENPORT
WAL-MART STORES, INC.
MAIL STOP #0410-L-32
601 N. WALTON
BENTONVILLE, AR 72716-0410

RE: Modification of NY I83131; Classification of electric Christmas light sets from China

DEAR Ms. DAVENPORT:

This letter is in reference to New York Ruling Letter (“NY”) I83131, issued to Wal-mart Stores, Inc. (“Wal-mart”) on July 10, 2002, concerning the tariff classification of electric light sets from China. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under subheading 9405.40.8000, Harmonized Tariff Schedule of the United States (“HTSUS”), as other electric lamps and lighting fittings: of base metal. We have reviewed NY I83131 and found it to be partly in error. For the reasons set forth below, we hereby modify NY I83131.

FACTS:

The subject merchandise consists of four different styles of light sets, each with electrical green wire harnesses and plastic sockets that contain miniature light bulbs. Style number 76-756M consists of a net-shaped wire harness that measures 7 1/2 feet in length by 8 inches in width and contains 150 plastic sockets with multicolored light bulbs. It is primarily used to decorate the outside area of the home, but could also be used to decorate the mantelpieces or stairways inside the home.

Style number 82505WM consists of an electrical green wire harness that measures approximately 83 feet in length and contains 200 plastic sockets with miniature multicolored light bulbs. It is primarily used to decorate the outside area of the home, but could also be used to decorate the mantelpieces or stairways inside the home.

Style number 78-971M consists of two electrical green wire harnesses which together measure about 18 feet in length and contains 400 plastic sockets with miniature multicolored light bulbs in three-piece clusters. It could be used to decorate Christmas trees as well as the outside area of the home, such as windows and fences.

Style number 66-596M consists of three electrical green wire harnesses which together measure about 114 feet in length and contains 450 plastic sockets with miniature multicolored light bulbs. It could be used to decorate Christmas trees as well as the outside area of the home, such as windows and fences.

In NY I83131, dated June 13, 2002, CBP classified the light sets under 9405.40.8000, HTSUS, as: “other electric lamps and lighting fittings: of base metal: other.”

ISSUE:

Whether the subject electric light sets should be classified under subheading 9405.40.80, HTSUS, as “other electric lamps,” or under subheading 9405.30, HTSUS, as “lighting sets of a kind used for Christmas trees”?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. 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 GRIs 1 through 5.

The HTSUS provisions under consideration are as follows:

9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
9405.30.00	Lighting sets of a kind used for Christmas trees
9405.40	Other electric lamps and lighting fittings: Of base metal:
9405.40.80	Other

In examining the competing subheadings within heading 9405, HTSUS, we note that subheading 9405.30.00, HTSUS, is a “principal use” provision within the meaning ascribed in *Primal Lite v. United States*, 15 F. Supp. 2d 915 (CIT 1998); *aff’d* 182 F. 3d 1362 (Fed. Cir. 1999). In *Primal Lite*, the court concluded that because subheading 9405.30.00, HTSUS, is a principal use provision, it is therefore subject to Additional U.S. Rule of Interpretation 1(a), HTSUS, which states as follows:

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

Additionally, the *Primal Lite* court, in discussing principal use, held that “it is the use of the class or kind of goods being imported that is controlling, rather than the specific use to which the importation itself is put,” i.e. goods need not be actually used in the same manner as the entire class or kind in order to be recognized as part of that class or kind. CBP has repeatedly upheld this analysis by defining principal use as the use of the class or kind of the merchandise at issue that exceeds any other use. *See, e.g.*, HQ 964954, dated April 18, 2002; HQ 963264, dated May 4, 2001; HQ 963032, dated July 24, 2000; and HQ 083885, dated July 18, 1989. Therefore, to classify the subject

merchandise, it is necessary to determine whether it belongs to the class or kind of goods that are recognized as being principally used for the decoration of Christmas trees.

Courts have provided several factors to apply when determining whether merchandise falls within a particular class or kind of good. They include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g. the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *See United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976).

Each of the subject light sets is designed to be used at Christmas. As evidenced by statements in the filing request, style numbers 78–971M and 66–596M are designed for the decoration of Christmas trees, as well as the outside of homes. Style numbers 78–971M, 66–596M, and 82505WM have green wire that is many feet long and contain many multicolored bulbs. They are intended to be used to decorate the outside and the inside of the home during the Christmas season. CBP has consistently held that the ability to use these types of light sets outdoors is not a barrier to classification in subheading 9405.30, HTSUS, when it was determined that they were of the class or kind of merchandise that was principally used for decorating Christmas trees. *See, e.g.*, HQ 967008, dated June 29, 2004 (“Because of this dual indoor and outdoor use, as well as the statements regarding the potential for varied indoor use, it is asserted the [subject merchandise] are not limited to decorating only Christmas trees. Regarding this dual indoor and outdoor use, CBP does not believe that this factor by itself is determinative for finding the lights at issue are part of a class or kind of light that is principally used for decorative purposes other than Christmas trees.”) *See also* HQ 966882, dated March 10, 2004; NY I83154, dated July 17, 2002; NY I83156, dated July 17, 2002; NY J89048, dated November 7, 2003; NY I83157, dated July 10, 2002; NY I82127, dated July 1, 2002; and NY I82362, dated July 1, 2002.

Finally, because of these lights’ packaging, CBP believes that the ultimate expectation of the purchaser is that these lights are intended for use on Christmas trees. Although CBP recognizes that many consumers may purchase these lights for use on objects other than Christmas trees, CBP believes that the principal use of light sets of this type is for Christmas trees and notes that substantially similar merchandise has repeatedly been classified under subheading 9405.30.00, HTSUS. *See, e.g.*, HQ 966882; HQ 966962, dated February 9, 2005; HQ 967008; HQ 967408, dated February 9, 2005; NY J89048; NY J83867, dated May 7, 2003; NY I85459, dated September 12, 2002; NY I83664, dated July 17, 2002; NY I82126, dated July 1, 2002; and NY I83133, dated July 10, 2002. As a result, CBP finds that style numbers 78–971M, 66–596M, and 82505WM are classified under subheading 9405.30.00, HTSUS, which provides for “Lighting sets of a kind used for Christmas trees.”

By contrast, light sets that are classified under subheading 9405.40.80, HTSUS, because of certain physical characteristics are recognized as not being of the class or kind of merchandise that is principally used for Christmas trees. Net light sets, of which style number 76–756M is a kind, falls into

this category. *See, e.g.*, NY I83486, dated August 5, 2002. As a result, style number 76–756M remains classified under subheading 9405.40.80, HTSUS, which provides for “Other electric lamps and lighting fittings: Other.”

HOLDING:

Under the authority of GRI 1, the electric light sets, style numbers 82505WM, 78–971M, and 66–596M, are classified in subheading 9405.30.00, HTSUS, which provides for “Lighting sets of a kind used for Christmas trees.” The 2010 column one general rate of duty is 8% *ad valorem*.

Style number 76–756M continues to be classified under subheading 9405.40.80, HTSUS, which provides for “Other electric lamps and lighting fittings: Other.” The 2010 column one general rate of duty is 3.9% *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 internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY I83131, dated July 10, 2002, is MODIFIED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT G]

HQ H095410
CLA-2 OT:RR:CTF:TCM H095410 TNA
CATEGORY: Classification
TARIFF NO.: 9405.30.00

Ms. JENNY DAVENPORT
WAL-MART STORES, INC.
MAIL STOP #0410-L-32
601N. WALTON BENTONVILLE, AR 72716-0410

RE: Modification of NY I83130; Classification of electric Halloween light sets from China

DEAR Ms. DAVENPORT:

This letter is in reference to New York Ruling Letter (“NY”) I83130, issued to Wal-Mart Stores, Inc. on July, 3, 2002, concerning the tariff classification of electric Halloween light sets from China. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under subheading 9405.40.8000, Harmonized Tariff Schedule of the United States (“HTSUS”), as other electric lamps and lighting fittings: of base metal. We have reviewed NY I83130 and found it to be partly in error. For the reasons set forth below, we hereby modify NY I83130.

FACTS:

The merchandise at issue consists of two types of electric light sets.¹ Style Number 65-420 is an electric black wire harness that measures approximately 17 feet in length. It contains 50 plastic sockets with miniature multi-colored light bulbs. Light sets in the same style with orange bulbs, and sets with purple bulbs, were also imported.

Style Number 65-500 is an electrical black wire harness that measures approximately 32 feet in length. It contains 100 plastic sockets with miniature purple light bulbs. Light sets in the same style with orange light bulbs were also imported.

In NY I83130, CBP classified Style Numbers 65-420 and 65-500 under subheading 9405.40.80, HTSUS, as: “other electric lamps and lighting fittings: of base metal: other.”

ISSUE:

Whether the subject electric light sets should be classified under subheading 9504.40.80, HTSUS, as “other electric lamps,” or under subheading 9504.30, HTSUS, as “lighting sets of a kind used for Christmas trees”?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). 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

¹ NY I83130 classified four different types of electric light sets. Only two of those, Style Numbers 65-420 and 65-500, are at issue in this ruling.

otherwise require, the remaining GRI may then be applied. 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 sub-heading notes and, *mutatis mutandis*, to GRIs 1 through 5.

The HTSUS provisions under consideration are as follows:

9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
9405.30.00	Lighting sets of a kind used for Christmas trees
9405.40	Other electric lamps and lighting fittings:
9405.40.80	Other

In examining the competing subheadings within heading 9405, HTSUS, we note that subheading 9405.30.00, HTSUS, is a “principal use” provision within the meaning ascribed in *Primal Lite v. United States*, 15 F. Supp. 2d 915 (CIT 1998); *aff’d* 182 F. 3d 1362 (Fed. Cir. 1999). In *Primal Lite*, the court concluded that because subheading 9405.30.00, HTSUS, is a principal use provision, it is therefore subject to Additional

U.S. Rule of Interpretation 1(a), HTSUS, which states as follows:

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

The merchandise at issue in *Primal Lite* consisted of 14-foot long lengths of wire set with 10 light bulbs and with two extra light bulbs attached. Plastic shapes in the form of objects such as fruits, vegetables, hearts, rearing horses, guitars and American flags were included to be fitted over the lights. CBP originally classified the merchandise in subheading 9405.30, HTSUS, but the court sided with the plaintiff, classifying it in subheading 9405.40, HTSUS. *See Primal Lite*, 15 F. Supp. 2d 915, 916.

In addition, the *Primal Lite* court, in discussing principal use, held that “it is the use of the class or kind of goods being imported that is controlling, rather than the specific use to which the importation itself is put,” i.e., goods need not be actually used in the same manner as the entire class or kind in order to be recognized as part of that class or kind. CBP has repeatedly upheld this analysis by defining principal use as the use of the class or kind of the merchandise at issue that exceeds any other use. *See, e.g.*, HQ 964954, dated, April 18, 2002, HQ 963264, dated May 4, 2001, HQ 963032, dated July 24, 2000 and HQ 083885, dated July 18, 1989. Therefore, to classify the subject merchandise, it is necessary to determine whether it belongs to the class or kind of goods that are recognized as being principally used for the decoration of Christmas trees or for other purposes not necessarily relating to Christmas trees.

Courts have also provided several factors to apply when determining whether merchandise falls within a particular class or kind of good. They include: (1) the general physical characteristics of the merchandise; (2) the

expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g. the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *See United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976).

In NY I83130, CBP classified the subject merchandise under subheading 9405.40.80, HTSUS. Upon reconsideration, however, CBP notes first that the subject merchandise is distinguishable from the merchandise at issue in *Primal Lite*. There, the lights sets came with plastic coverings in the shape of various figures such as fruits, vegetables, hearts, rearing horses, guitars and American flags, and was classified under subheading 9405.40.80, HTSUS. *Primal Lite*, 22 C.I.T. 697. CBP rulings that have followed *Primal Lite* in classifying light sets under subheading 9405.40.80, HTSUS, have done so where the merchandise contains both light sets and similar plastic figures in shapes such as ghosts and jack-o-lanterns. *See, e.g.*, HQ 962770, dated September 24, 1999; NY N025581, dated April 25, 2008.

In the present case, the subject merchandise contains electrical wire harnesses that incorporate 50 or 100 orange and purple miniature light bulbs. They are sold during the Halloween season, but there is nothing to distinguish them from other light sets that CBP has classified under subheading 9405.30, HTSUS. Orange and purple lights, in themselves, are not exclusive to Halloween, and consumers can use light sets such as the subject merchandise as decoration during the Christmas season as well. This conclusion is supported by the fact that Style Number 65-420 also comes with multi-colored lights. Although CBP recognizes that many consumers will likely purchase these lights for use on objects other than Christmas trees, CBP believes that the principal use of light sets of this type is for Christmas trees and notes that substantially similar merchandise has repeatedly been classified under subheading 9405.30.00, HTSUS. *See, e.g.*, HQ 966882, dated March 10, 2004; NY J89048, dated November 7, 2003, NY J83867, dated May 7, 2003; NY I85459, dated September 12, 2002; NY I83664, dated July 17, 2002; NY I82126, dated July 1, 2002; NY I83133, dated July 10, 2002; NY N027262, dated May 20, 2008.

HOLDING:

Under the authority of GRI 1, the electric light sets from China are provided for in subheading 9405.30.00, HTSUS. The applicable duty rate is 8% *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 internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY I83130, dated July 3, 2002, is MODIFIED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT H]

HQ H072441
CLA-2 OT:RR:CTF:TCM H072441 TNA
CATEGORY: Classification
TARIFF NO.: 9405.30.00

TROY D. CRAGO
ATICO INTERNATIONAL (USA), INC.
501 SOUTH ANDREWS AVENUE
FORT LAUDERDALE, FL 33301

RE: Revocation of NY R03451; Classification of a Halloween light set from China

DEAR MR. CRAGO:

This letter is in reference to New York Ruling Letter (“NY”) R03451, issued to Atico International (USA), Inc. (“Atico International”) on March 27, 2006, concerning the tariff classification of a Halloween light set from China. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under subheading 9405.40.8000, Harmonized Tariff Schedule of the United States (“HTSUS”), as other electric lamps and lighting fittings: of base metal. We have reviewed NY R03451 and found it to be in error. For the reasons set forth below, we hereby revoke NY R03451.

FACTS:

The subject merchandise consists of item number W079AA00843, which contains an electrical black-wire harness with sockets for the insertion of 70 orange-colored miniature light bulbs. The light set, which contains both flashing and steady lights, is designed for both indoor and outdoor use.

In NY R03451, CBP classified the light sets under 9405.40.8000, HTSUS, as: “other electric lamps and lighting fittings: of base metal: other.”

ISSUE:

Whether the subject electric light set should be classified under subheading 9405.40.80, HTSUS, as “other electric lamps,” or under subheading 9405.30.00, HTSUS, as “lighting sets of a kind used for Christmas trees”?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. 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 sub-heading notes and, *mutatis mutandis*, to GRIs 1 through 5.

The HTSUS provisions under consideration are as follows:

9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
9405.30.00	Lighting sets of a kind used for Christmas trees
9405.40	Other electric lamps and lighting fittings: Of base metal:
9405.40.80	Other

In examining the competing subheadings within heading 9405, HTSUS, we note that subheading 9405.30.00, HTSUS, is a “principal use” provision within the meaning ascribed in *Primal Lite v. United States*, 15 F. Supp. 2d 915 (CIT 1998); aff’d 182 F. 3d 1362 (Fed. Cir. 1999). In *Primal Lite*, the court concluded that because subheading 9405.30.00, HTSUS, is a principal use provision, it is therefore subject to Additional U.S. Rule of Interpretation 1(a), HTSUS, which states as follows:

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

The merchandise at issue in *Primal Lite* consisted of 14-foot long lengths of wire set with 10 light bulbs and with two extra light bulbs attached. Plastic shapes in the form of objects such as fruits, vegetables, hearts, rearing horses, guitars and American flags were included to be fitted over the lights. CBP originally classified the merchandise in subheading 9405.30, HTSUS, but the court sided with the plaintiff, classifying it in subheading 9405.40, HTSUS. See *Primal Lite*, 15 F. Supp. 2d 915, 916.

Additionally, the *Primal Lite* court, in discussing principal use, held that “it is the use of the class or kind of goods being imported that is controlling, rather than the specific use to which the importation itself is put,” i.e., goods need not be actually used in the same manner as the entire class or kind in order to be recognized as part of that class or kind. CBP has repeatedly upheld this analysis by defining principal use as the use of the class or kind of the merchandise at issue that exceeds any other use. See, e.g., HQ 964954, dated April 18, 2002; HQ 963264, dated May 4, 2001; HQ 963032, dated July 24, 2000; and HQ 083885, dated July 18, 1989. Therefore, to classify the subject merchandise, it is necessary to determine whether it belongs to the class or kind of goods that are recognized as being principally used for the decoration of Christmas trees or for other purposes not necessarily relating to Christmas trees.

Courts have also provided several factors to apply when determining whether merchandise falls within a particular class or kind of good. They include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g. the manner in which

the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. See *United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976).

In NY R03451, CBP classified the subject merchandise under subheading 9405.40.80, HTSUS, because they were marketed for sale during the Halloween season. Upon reconsideration, however, CBP notes first that the subject merchandise is distinguishable from the merchandise at issue in *Primal Lite*. There, the light sets came with plastic coverings in the shape of various figures such as fruits, vegetables, hearts, rearing horses, guitars and American flags, and was classified under subheading 9405.40.80, HTSUS. *Primal Lite*, 22 C.I.T. 697. CBP rulings that have followed *Primal Lite* in classifying light sets under subheading 9405.40.80, HTSUS, have done so where the merchandise contains both light sets and similar plastic figures in shapes such as ghosts and jack-o-lanterns. See, e.g., HQ 962770, dated September 24, 1999; NY N025581, dated April 25, 2008.

In the present case, the subject merchandise has an electrical black-wire harness with sockets for 70 orange-colored miniature light bulbs, and functions with flashing and steady lights. There is nothing to distinguish it from other light sets that CBP has classified under subheading 9405.30.00, HTSUS. Orange lights, in themselves, are not exclusive to Halloween, and consumers can use light sets such as the subject merchandise as decoration during the Christmas season as well. Although CBP recognizes that many consumers may purchase these lights for use on objects other than Christmas trees, CBP believes that the principal use of light sets of this type is for Christmas trees and notes that substantially similar merchandise has repeatedly been classified under subheading 9405.30.00, HTSUS. See, e.g., HQ 966882, dated March 10, 2004; NY J89048, dated November 7, 2003, NY J83867, dated May 7, 2003; NY I85459, dated September 12, 2002; NY I83664, dated July 17, 2002; NY I82126, dated July 1, 2002; NY I83133, dated July 10, 2002; and NY N027262, dated May 20, 2008.

In addition, the subject merchandise is designated for both indoor and outdoor use, but CBP has consistently held that the ability to use these types of light sets outdoors is not a barrier to classification in subheading 9405.30.00, HTSUS, when it was determined that they were of the class or kind of merchandise that was principally used for decorating Christmas trees. See, e.g., HQ 967008, dated June 29, 2004 (“Because of this dual indoor and outdoor use, as well as the statements regarding the potential for varied indoor use, it is asserted the [subject merchandise] are not limited to decorating only Christmas trees. Regarding this dual indoor and outdoor use, CBP does not believe that this factor by itself is determinative for finding the lights at issue are part of a class or kind of light that is principally used for decorative purposes other than Christmas trees.”) See also HQ 966882; NY I83154, dated July 17, 2002; NY I83156, dated July 17, 2002; NY J89048 ; NY I83157, dated July 10, 2002; NY I82127, dated July 1, 2002; and NY I82362, dated July 1, 2002. As a result, CBP finds that Atico International’s Halloween light set is classified under subheading 9405.30.00, HTSUS.

HOLDING:

Under the authority of GRI 1, the Halloween light set from China is provided for in subheading 9405.30.00, HTSUS. The applicable duty rate is 8% *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 internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY R03451, dated March 27, 2006, is REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT I]

HQ H070671
CLA-2 OT:RR:CTF:TCM H070671 TNA
CATEGORY: Classification
TARIFF NO.: 9405.30.00

LINDA C. PEARSON
SEASONAL SPECIALTIES
11455 VALLEY VIEW RD.
EDEN PRAIRIE, MN 55344

RE: Revocation of NY H80773; Classification of electric light sets from China

DEAR Ms. PEARSON:

This letter is in reference to New York Ruling Letter (“NY”) H80773, issued to Seasonal Specialties on June 5, 2001, concerning the tariff classification of electric light sets from China. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under subheading 9405.40.8000, Harmonized Tariff Schedule of the United States (“HTSUS”), as other electric lamps and lighting fittings: of base metal. We have reviewed NY H80773 and found it to be in error. For the reasons set forth below, we hereby revoke NY H80773.

FACTS:

The merchandise at issue consists of five different sets of electric lights, which are sold only during the Halloween season.

Style numbers 79832–F and 79836–F, contain electrical wire harnesses possessing 50 and 100 sockets, respectively, with miniature purple-colored light bulbs. They are designed for both indoor and outdoor use.

Style numbers 79831–F and 79835–F contain an electrical wire harness possessing 50 and 100 sockets, respectively, with miniature orange-colored light bulbs. They are also designed for both indoor and outdoor use.

Style number 79872, contains an electric wire harness possessing 25 C9 light bulbs for the illumination of black light.

In NY H80773, dated June 5, 2001, CBP classified all five light sets under subheading 9405.40.8000, HTSUS, as: “other electric lamps and lighting fittings: of base metal: other.”

ISSUE:

Whether the subject electric light sets should be classified under subheading 9504.40.80, HTSUS, as “other electric lamps,” or under subheading 9504.30, HTSUS, as “lighting sets of a kind used for Christmas trees”?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. 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 sub-heading notes and, *mutatis mutandis*, to GRIs 1 through 5.

The HTSUS provisions under consideration are as follows:

9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
9405.30.00	Lighting sets of a kind used for Christmas trees
9405.40	Other electric lamps and lighting fittings:
9405.40.80	Other

In examining the competing subheadings within heading 9405, HTSUS, we note that subheading 9405.30.00, HTSUS, is a “principal use” provision within the meaning ascribed in *Primal Lite v. United States*, 15 F. Supp. 2d 915 (CIT 1998); *aff’d* 182 F. 3d 1362 (Fed. Cir. 1999). In *Primal Lite*, the court concluded that because subheading 9405.30.00, HTSUS, is a principal use provision, it is therefore subject to Additional U.S. Rule of Interpretation 1(a), HTSUS, which states as follows:

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

The merchandise at issue in *Primal Lite* consisted of 14-foot long lengths of wire set with 10 light bulbs and with two extra light bulbs attached. Plastic shapes in the form of objects such as fruits, vegetables, hearts, rearing horses, guitars and American flags were included to be fitted over the lights. CBP originally classified the merchandise in subheading 9405.30, HTSUS, but the court sided with the plaintiff, classifying it in subheading 9405.40, HTSUS. *See Primal Lite*, 15 F. Supp. 2d 915, 916.

In addition, the *Primal Lite* court, in discussing principal use, held that “it is the use of the class or kind of goods being imported that is controlling, rather than the specific use to which the importation itself is put,” i.e., goods need not be actually used in the same manner as the entire class or kind in order to be recognized as part of that class or kind. CBP has repeatedly upheld this analysis by defining principal use as the use of the class or kind of the merchandise at issue that exceeds any other use. *See, e.g.*, HQ 964954, dated, April 18, 2002, HQ 963264, dated May 4, 2001, HQ 963032, dated July 24, 2000 and HQ 083885, dated July 18, 1989. Therefore, to classify the subject merchandise, it is necessary to determine whether it belongs to the class or kind of goods that are recognized as being principally used for the decoration of Christmas trees or for other purposes not necessarily relating to Christmas trees.

Courts have provided several factors to apply when determining whether merchandise falls within a particular class or kind of good. They include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g. the manner in which the mer-

chandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. See *United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976).

In NY H80773, CBP classified the subject merchandise under subheading 9405.40.80, HTSUS. Upon reconsideration, however, CBP notes first that the subject merchandise is distinguishable from the merchandise at issue in *Primal Lite*. There, the lights sets came with plastic coverings in the shape of various figures such as fruits, vegetables, hearts, rearing horses, guitars and American flags, and was classified under subheading 9405.40.80, HTSUS. *Primal Lite*, 22 C.I.T. 697. CBP rulings that have followed *Primal Lite* in classifying light sets under subheading 9405.40.80, HTSUS, have done so where the merchandise contains both light sets and similar plastic figures in shapes such as ghosts and jack-o-lanterns. See, e.g., HQ 962770, dated September 24, 1999; NY N025581, dated April 25, 2008.

In the present case, the subject merchandise contains electrical wire harnesses that incorporate 25, 50, or 100 orange and purple miniature light bulbs. They are only sold during the Halloween season, but there is nothing to distinguish them from other light sets that CBP has classified under subheading 9405.30, HTSUS. Orange and purple lights, in themselves, are not exclusive to Halloween, and consumers can use light sets such as the subject merchandise as decoration during the Christmas season as well. Although CBP recognizes that many consumers will likely purchase these lights for use on objects other than Christmas trees, CBP believes that the principal use of light sets of this type is for Christmas trees and notes that substantially similar merchandise has repeatedly been classified under subheading 9405.30.00, HTSUS. See, e.g., HQ 966882, dated March 10, 2004; NY J89048, dated November 7, 2003, NY J83867, dated May 7, 2003; NY I85459, dated September 12, 2002; NY I83664, dated July 17, 2002; NY I82126, dated July 1, 2002; NY I83133, dated July 10, 2002; NY N027262, dated May 20, 2008.

In addition, four out of the five light sets at issue here are designated for both indoor and outdoor use, but CBP has consistently held that the ability to use these types of light sets outdoors is not a barrier to classification in subheading 9405.30, HTSUS, when it was determined that they were of the class or kind of merchandise that was principally used for decorating Christmas trees. See, e.g., HQ967008 (“Because of this dual indoor and outdoor use, as well as the statements regarding the potential for varied indoor use, it is asserted the [subject merchandise] are not limited to decorating only Christmas trees. Regarding this dual indoor and outdoor use, CBP does not believe that this factor by itself is determinative for finding the lights at issue are part of a class or kind of light that is principally used for decorative purposes other than Christmas trees.”) See also HQ 966882; NY I83154, dated July 17, 2002; NY I83156, dated July 17, 2002; NY J89048; NY I83157, dated July 10, 2002; NY I82127, dated July 1, 2002; and NY I82362, dated July 1, 2002. As a result, CBP finds that Seasonal Specialties’ electric light sets are classified under subheading 9405.30.00, HTSUS.

HOLDING:

Under the authority of GRI 1, the electric light sets from China are provided for in subheading 9405.30.00, HTSUS. The applicable duty rate is 8% *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 internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY H807735, dated June 5, 2001, is REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT J]

HQ H070673
CLA-2 OT:RR:CTF:TCM H070673 TNA
CATEGORY: Classification
TARIFF NO.: 9405.30.00

MICHELLE ANGELINA
EXPEDITERS INTERNATIONAL OF WASHINGTON, INC.
870 ASHLAND AVENUE
FOLCROFT, PA 19032

RE: Revocation of NY I88935; Classification of an electric Halloween light set from China

DEAR Ms. ANGELINA:

This letter is in reference to New York Ruling Letter (“NY”) I88935, issued to Expeditors International of Washington (“Expeditors International”) on December 9, 2002, concerning the tariff classification of an electric Halloween light set from China. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under subheading 9405.40.8000, Harmonized Tariff Schedule of the United States (“HTSUS”), as other electric lamps and lighting fittings: of base metal. We have reviewed NY I88935 and found it to be in error. For the reasons set forth below, we hereby revoke NY I88935.

FACTS:

The merchandise at issue is an electric light set called “Pumpkin-Colored Halloweenies.” It consists of an electric black wire harness that measures about 20 feet in length and incorporates 80 miniature orange light bulbs and an eight-function control box.

In NY I88935, CBP classified the light sets under subheading 9405.40.8000, HTSUS, as: “other electric lamps and lighting fittings: of base metal: other.”

ISSUE:

Whether the “Pumpkin-Colored Halloweenies” are classified under heading 9405.40.80, HTSUS, as “other electric lamps,” or under heading 9405.30, HTSUS, as “lighting sets of a kind used for Christmas trees”?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. 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 GRIs 1 through 5.

The HTSUS provisions under consideration are as follows:

9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
9405.30.00	Lighting sets of a kind used for Christmas trees
9405.40	Other electric lamps and lighting fittings: Of base metal:
9405.40.80	Other

In examining the competing subheadings within heading 9405, HTSUS, we note that subheading 9405.30.00, HTSUS, is a “principal use” provision within the meaning ascribed in *Primal Lite v. United States*, 15 F. Supp. 2d 915 (CIT 1998); aff’d 182 F. 3d 1362 (Fed. Cir. 1999). In *Primal Lite*, the court concluded that because subheading 9405.30.00, HTSUS, is a principal use provision, it is therefore subject to Additional U.S. Rule of Interpretation 1(a), HTSUS, which states as follows:

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

The merchandise at issue in *Primal Lite* consisted of 14-foot long lengths of wire set with 10 light bulbs and with two extra light bulbs attached. Plastic shapes in the form of objects such as fruits, vegetables, hearts, rearing horses, guitars and American flags were included to be fitted over the lights. CBP originally classified the merchandise in subheading 9405.30, HTSUS, but the court sided with the plaintiff, classifying it in subheading 9405.40, HTSUS. See *Primal Lite*, 15 F. Supp. 2d 915, 916.

Additionally, the *Primal Lite* court, in discussing principal use, held that “it is the use of the class or kind of goods being imported that is controlling, rather than the specific use to which the importation itself is put,” i.e. goods need not be actually used in the same manner as the entire class or kind in order to be recognized as part of that class or kind. CBP has repeatedly upheld this analysis by defining principal use as the use of the class or kind of the merchandise at issue that exceeds any other use. See, e.g., HQ 964954, dated, April 18, 2002, HQ 963264, dated May 4, 2001, HQ 963032, dated July 24, 2000, and HQ 083885, dated July 18, 1989. Therefore, to classify the subject merchandise, it is necessary to determine whether it belongs to the class or kind of goods that are recognized as being principally used for the decoration of Christmas trees or for other purposes not necessarily relating to Christmas trees.

Courts have provided several factors to apply when determining whether merchandise falls within a particular class or kind of good. They include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g. the manner in which the mer-

chandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. See *United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976).

In NY I88935, CBP classified the subject merchandise under subheading 9405.40.80, HTSUS. Upon reconsideration, however, CBP notes first that the subject merchandise, although it is called a "Halloween light set," is distinguishable from the merchandise at issue in *Primal Lite*. There, the lights sets came with plastic coverings in the shape of various figures such as fruits, vegetables, hearts, rearing horses, guitars and American flags, and was classified under subheading 9405.40.80, HTSUS. *Primal Lite*, 22 C.I.T. 697. CBP rulings that have followed *Primal Lite* in classifying light sets under subheading 9405.40.80, HTSUS, have done so where the merchandise contains both light sets and similar plastic figures in shapes such as ghosts and jack-o-lanterns. See, e.g., HQ 962770, dated September 24, 1999; NY N025581, dated April 25, 2008.

In the present case, by contrast, the subject merchandise lacks the plastic shapes discussed above. Instead, it has an electrical black wire harness that is 20 feet long and incorporates 80 orange miniature light bulbs. There is nothing to distinguish it from other light sets that CBP has classified under subheading 9405.30, HTSUS. Orange lights, in themselves, are not exclusive to Halloween, and consumers can use light sets such as the subject merchandise as decoration during the Christmas season. Although CBP recognizes that many consumers may purchase these lights for use on objects other than Christmas trees, CBP believes that the principal use of light sets of this type is for Christmas trees and notes that substantially similar merchandise has repeatedly been classified under subheading 9405.30.00, HTSUS. See, e.g., HQ 966882, dated March 10, 2004; HQ 966962, dated February 9, 2005; HQ 967008, dated June 29, 2004; HQ 967408, dated February 9, 2005; NY J89048, dated November 7, 2003; NY J83867, dated May 7, 2003, NY I85459, dated September 12, 2002; NY I83664, dated July 17, 2002; NY I82126, dated July 1, 2002; NY I83133, dated July 10, 2002; and NY N027262, dated May 20, 2008. As a result, CBP finds that the Pumpkin-Colored Halloweenies are classifiable under subheading 9405.30.00, HTSUS.

HOLDING:

Under the authority of GRI 1, the light set from China is classified in subheading 9405.30.00, HTSUS. The applicable duty rate is 8% *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 internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY I88935, dated December 9, 2002, is REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF CERTAIN TENTS**

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

ACTION: Notice of proposed modification of a ruling letter and proposed revocation of treatment relating to the tariff classification of tents.

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 CPB is proposing to modify a ruling letter concerning the tariff classification of tents. Similarly, CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Albenia Peters, Penalties Branch: (202) 325–0321.

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 to 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 is proposing to modify one ruling letter pertaining to the tariff classification of tents. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) N035900, dated August 20, 2008 (Attachment A), this notice covers 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., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. 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 decision on this notice.

In NY N035900, CBP determined in relevant part that tents, made of 50% cotton and 50% polyester, are classified under subheading 6306.22.9030, HTSUS. It is now CBP's position that the tents are classified under subheading 6306.29.1100, HTSUS.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY N035900, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H043009, set forth as Attachment B to this notice.

Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing 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: May 25, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N035900

August 20, 2008

CLA-2-63:OT:RR:NC:N3:351

CATEGORY: Classification

TARIFF NO.: 6306.22.9030, 6307.90.9889

DENISE DIEBOLD
D & L CHB, LLC
1500 MIDWAY COURT, W201
ELK GROVE VILLAGE, IL 60007

RE: The tariff classification of canvas tents and screens from Australia

DEAR Ms. DIEBOLD:

In your letter dated July 30, 2008, you requested a tariff classification ruling on behalf of your client, Bushwakka Australia, of Australia.

The items in question are identified as canvas tents and screens. The only sample submitted was a piece of the textile fabric that is used in the construction of these items. You state that it is 50% polyester and 50% cotton.

You submitted pictures of the tents, which the website refers to as swags. They are used for sleeping purposes. Sizes are not given, but they are for one or two people to lie down and sleep in; there is no room to sit up if the top is zipped. They roll up like a sleeping bag. Each tent has a collapsible metal frame, stakes, and ropes. The one-person tent, called the Lite-Rider, requires a padded bottom layer such as an air mattress; the two-person tents (Roy-I-dual and Trav-ler) have padded bottoms.

Due to the fact that the tents are to be constructed of a 50/50 blend of fibers, they are classified using Note 2(A) to Section XI, Harmonized Tariff Schedule of the United States (HTSUS), and Subheading Note 2(A). The tents will be classified as if they consisted wholly of that one textile material which is covered by the heading which occurs last in numerical order among those which equally merit consideration. Even a slight change in the fiber content may result in a change of classification. The tents may be subject to Customs laboratory analysis at the time of importation, and if the fabric is other than a 50/50 blend it may be reclassified by Customs at that time.

The applicable subheading for the tents will be 6306.22.9030, HTSUS, which provides for tents, of synthetic fibers, other, other. The rate of duty will be 8.8% ad valorem.

You submitted a picture of the screen. You state that the screen can be used for any exterior application such as privacy or protection from the elements. It has a metal frame and appears to roll up like a window shade. It is not essential for camping, not typically associated with goods used in camping, nor specially designed for camping. In addition, the screen has uses other than camping, such as in a garden or yard, as it is shown in the picture.

The applicable subheading for the canvas screens will be 6307.90.9889, HTSUS, which provides for other made up textile articles, other. The rate of duty will be 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

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 Mitchel Bayer at (646) 733-3102.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H043009
 CLA-2 OT:RR:CTF:TCM H043009 AP
 CATEGORY: Classification
 TARIFF NO.: 6306.29.1100

Ms. LISA MCGOWAN
 SENIOR LICENSED CUSTOMS BROKER
 47 LAMBECK DRIVE, TULLAMARINE
 VICTORIA 3043 AUSTRALIA

RE: Modification of NY N035900; Classification of tents

DEAR Ms. MCGOWAN:

This is in response to your letter dated October 7, 2008, in which you requested that U.S. Customs and Border Protection (“CBP”) reconsider New York Ruling Letter (“NY”) N035900, issued to you on August 20, 2008, with respect to the classification of tents under the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”).¹ In NY N035900, we determined, in relevant part, that tents made of 50% polyester and 50% cotton were classified under subheading 6306.22.9030, HTSUSA, as tents of synthetic fibers. CBP has determined that NY N035900 is incorrect as it applies to the classification of the tents. Therefore, this ruling modifies NY N035900.

The items at issue are identified as canvas tents, which are constructed of a blend of 50% cotton and 50% polyester fibers.

ISSUE:

Whether tents constructed of a 50/50 blend of cotton/polyester are classifiable under subheading 6306.22.9030, HTSUSA, as “Tents: Of synthetic fibers: Other: Other” or under subheading 6306.29.1100, HTSUSA, as “Tents: Of other textile materials: Of cotton.”

LAW AND ANALYSIS:

Classification under the HTSUSA is governed by the General Rules of Interpretation (“GRIs”), which need to be applied in numerical order. 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. The provisions at issue are the following:

6306	Tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; camping goods:
	* * *
	Tents:
	* * *
6306.22	Of synthetic fibers:
	* * *
6306.22.90	Other
	* * *
6306.22.9030	Other

¹ The classification of the canvas screens is not at issue herein.

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF BBQ SHAKE
SEASONING**

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

ACTION: Notice of proposed modification of a ruling letter and proposed revocation of treatment relating to the tariff classification of BBQ Shake seasoning.

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 CPB intends to modify a ruling concerning the tariff classification of BBQ Shake seasoning. Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Alaina Van Horn, Intellectual Property Rights and Restricted Merchandise Branch: (202) 325–0083.

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 to 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 is proposing to modify one ruling letter pertaining to the tariff classification of BBQ Shake seasoning. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) NY M83880, dated June 28, 2006 (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., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. 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 decision on this notice.

In NY M83880, CBP determined that BBQ Shake seasoning from China composed of 30 percent sugar, 20 percent paprika, 10 percent red chili flake, 5 percent black pepper corn, 5 percent mustard seed, and less than 1 percent coloring was classified under subheading

2103.90.8000, HTSUS, as “mixed condiments and mixed seasonings . . . other . . . other . . . other.” It is now CBP’s position that the BBQ Shake seasoning is classified under subheading 2103.90.7400 and 2103.90.7800, HTSUS, the in- and over-quota provisions for mixed condiments and mixed seasonings described in additional U.S. note 3 to chapter 21.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY M83880, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H030205, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing 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: May 25, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY M83880

June 28, 2006

CLA-2-21:RR:NC:2:228 M83880

CATEGORY: Classification

TARIFF NO.: 2103.90.8000, 2103.90.9091, 7323.99.9060, 7615.19.7060

MR. SHACHAR GAT

SHONFELD'S USA, INC.

3100 S. SUSAN STREET

SANTA ANA, CA 92704

RE: The tariff classification of a bottle of marinade, two metal shakers containing seasoning, and a metal rack from China.

DEAR MR. GAT:

In your letters dated April 12, 2006, and May 8, 2006, you requested a tariff classification ruling.

A sample and pictorial literature were submitted with your first letter. Ingredients breakdowns accompanied your second letter. The sample was examined and disposed of. Item no. BBQ-218995 is comprised of a 250 ml bottle of BBQ Marinade sauce, two small metal shakers containing BBQ Shake, and a metal rack. The BBQ Shake seasoning is a dry mix consisting of 30 percent salt, 30 percent sugar, 20 percent paprika, 10 percent red chili flake, 5 percent black pepper corn, 5 percent mustard seed, and less than one percent coloring, put up in a metalized pouch. The pouch containing seasoning is placed into an aluminum shaker measuring 3 inches tall, 2-1/2 inches in diameter, with a perforated lift-off cap, and an aluminum handle. The BBQ Marinade is a thick liquid consisting of 57.2 percent water, 18 percent tomato paste, 7.4 percent white distilled vinegar, 3 percent corn starch, 3 percent dextrose, 2.8 percent sugar, 2.5 percent salt, 2.4 percent canola oil, 1.75 percent spices, and less than one percent each of caramel color, mustard paste, xanthan gum, citric acid, soy sauce, and smoke flavor. The marinade is put up in a 250-ml bottle measuring 9 inches tall. The bottle of marinade and two filled shakers are contained in a steel wire rack.

The applicable tariff provision for the BBQ Shake seasoning will be 2103.90.8000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for mixed condiments and mixed seasonings... other...other...other. The rate of duty will be 6.4 percent ad valorem.

The applicable subheading for the BBQ Marinade will be 2103.90.9091, HTSUS, which provides for sauces and preparations therefor... other...other...other. The rate of duty will be 6.4 percent.

The applicable subheading for the rack will be 7323.99.9060, HTSUS, which provides for table, kitchen or other household articles and parts thereof, of iron or steel...other... other...not coated or plated with precious metal...other...other... other. The rate of duty will be 3.4 percent ad valorem.

The applicable subheading for the aluminum shakers will be 7615.19.7060, HTSUS, which provides for table, kitchen or other household articles and parts thereof, of aluminum...other...cooking and kitchenware...not enameled or glazed and not containing nonstick interior finishes...other...other. The general rate of duty will be 3.1 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides, in general, that all articles of foreign origin imported into the United States must be legibly, conspicuously, and permanently marked to indicate the English name of the country of origin to an ultimate purchaser in the United States. The implementing regulations to 19 U.S.C. 1304 are set forth in Part 134, Customs Regulations (CFR Part 134). The sample you have submitted does not appear to be properly marked with the country of origin. You may wish to discuss the matter of country of origin marking with the Customs import specialist at the proposed port of entry.

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at telephone number (301) 575-0156, or at the Web site www.fda.gov/oc/bioterrorism/bioact.html.

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.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H030205
CLA-2 OT:RR:CTFD:TCM H030205 AvH
CATEGORY: CLASSIFICATION
TARIFF NO.:

MR. SHACHAR GAT
SHONFELD'S USA, INC.
3100 S. SUSAN STREET
SANTA ANA, CA 92704

RE: Classification of BBQ Shake Seasoning from China; Modification of NY M83880

DEAR MR. GAT:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling letter (NY) M83880, issued to you on June 28, 2006. In NY M83880, we determined that BBQ Shake seasoning was classified under subheading 2103.90.8000, of the Harmonized Tariff Schedule of the United States (HTSUS), as "mixed condiments and mixed seasonings . . . other . . . other . . . other." CBP has determined that NY M83880 is incorrect.

FACTS:

NY M83880 concerned item no. BBQ-218995, which was comprised of a 250 ml bottle of BBQ Marinade sauce, two small metal shakers containing a BBQ Shake seasoning, and a metal rack. However, only the BBQ Shake seasoning is at issue in this reconsideration.

The BBQ Shake seasoning was described in NY M83880 as follows:

The BBQ Shake seasoning is a dry mix consisting of 30 percent salt, 30 percent sugar, 20 percent paprika, 10 percent red chili flake, 5 percent black pepper corn, 5 percent mustard seed, and less than 1 percent coloring, put up in a metalized pouch.

ISSUE:

Is the BBQ Shake seasoning classifiable under subheading 2103.90.8000, HTSUS, or subheading 2103.90.7400 and 2103.90.7800, the in- and over-quota provisions for mixed condiments and mixed seasonings described in additional U.S. note 3 to chapter 21?

LAW AND ANALYSIS:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (EN's) represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI. The EN's, although not

dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings.

The HTSUS provisions under consideration in this case are as follows:

2103	Sauces and preparations therefore; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard: * * *
2103.90	Other: * * *
	Other: Mixed condiments and mixed seasonings: Mixed condiments and mixed seasonings described in additional U.S. note 3 to this chapter * * *
2103.90.74	Described in additional U.S. note 4 to this chapter and entered pursuant to its provisions
2103.90.78	Other
2103.90.80	Other

The subject BBQ Shake seasoning was originally classified under subheading 2103.90.8000, HTSUS, as “mixed condiments and mixed seasonings . . . other . . . other . . . other.” Subheading 2103.90.7400 is the in-quota provision and 2103.90.7800 is the over-quota provisions for mixed condiments and mixed seasonings described in additional U.S. note 3 to chapter 21. This means that if the goods meet the description provided for in note 3, the goods will be classified in 2103.90.7400 or 2103.90.7800, depending on whether the quota provided for in additional note 4 has been filled. Additional U.S. note 3 describes “mixed condiments and mixed seasonings” as

. . . articles containing over 10 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, except (a) articles not principally of crystalline structure or not in dry amorphous form, prepared for marketing to the ultimate consumer in the identical form and package in which imported . . .

The BBQ Shake seasoning meets the description provided for in additional U.S. note 3. It is a mixed condiment or seasoning containing over 10 percent by dry weight of cane or beet sugar, and although prepared for marketing to the ultimate consumer (i.e. retail packed), the seasoning is in powder or granular state. The “retail packing” exception provided for in the note is directed to products *not* in dry amorphous form.

Goods are to be classified under the heading that most specifically describes them. Subheadings 2103.90.7400 and 2103.90.7800 more specifically describe the BBQ Shake seasoning than 2103.90.8000, which provides for “other” mixed condiments and seasonings. Accordingly, the applicable subheading for this product is 2103.90.7400 and 2103.90.7800, the in- and over-quota provisions for mixed condiments and mixed seasonings described in additional U.S. note 3 to chapter 21.

HOLDING:

Pursuant to GRI 1, the BBQ Shake seasoning is classified in subheading 2103.90.7400 and 2103.90.7800, HTSUS, which provide for the in- and over-quota provisions for mixed condiments and mixed seasonings described in additional U.S. note 3 to chapter 21. The general column one duty rate is 7.5 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 for on the World Wide Web at <http://www.usitc.gov/tata/hts/>.

EFFECT ON OTHER RULINGS:

NY M83880, dated June 23, 2006, is hereby modified.

Sincerely,

MYLES HARMON,
Director

Commercial Rulings Division


GENERAL NOTICE**19 CFR PART 177****Proposed Revocation of a Ruling Letter and Revocation of Treatment Relating to Classification of Mixed Xylidines (CAS 1300-73-8)**

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

ACTION: Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the classification of mixed xylidines (CAS 1300-73-8).

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 (“CPB”) is proposing to revoke a ruling concerning the classification of mixed xylidines (CAS 1300-73-8), under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB is proposing to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade—Regulation and Rulings, Attn: Mr. Joseph Clark, 799 9th Street N.W. -5th Floor, Washington D.C. 20229–1179. Comments submitted may be inspected at 799 9th St. N.W. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, Tariff Classification and Marking Branch (202) 325–0029.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (CBP 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 to 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 (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 proposes to revoke a ruling pertaining to the classification of mixed xylydines (CAS 1300–73–8). Although in this notice CBP is specifically referring to Headquarter’s Ruling Letter HQ 955644 (Attachment “A”), dated March 6, 1995, 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 ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should 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 is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. 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 his agents for importations of merchandise subsequent to this notice.

In HQ 955644, CBP classified the merchandise in subheading 2921.49.50, HTSUS, which provides for: "Amine-function compounds: Aromatic monoamines and their derivatives; salts thereof: Other: Other: Other: Other." The referenced ruling is incorrect because the merchandise is not listed in the Chemical Appendix to the HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke HQ 955644, 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 H073927. (Attachment "B"). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing 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: May 25, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

HQ 955644

March 6, 1995

CLA-2 CO:R:C:F 955644 ASM

CATEGORY: Classification

TARIFF NO.: 2921.49.5000

MR. EDWARD K. WALDINGER
TRAFFIC MANAGER
B.I. CHEMICALS, INC.
HENLEY DIVISION
50 CHESTNUT RIDGE ROAD
MONTVALE, NJ 07645

RE: Request for tariff classification of mixed xylidines (CAS 1300-73-8)

DEAR MR. WALDINGER:

This letter is in response to your request for a ruling regarding the classification of mixed xylidines (CAS 1300-73-8).

FACTS:

Mixed xylidines (CAS 1300-73-8), is the name given to a mixture of isomeric xylidines (dimethylaniline isomers) which also contains ethylaniline. This commercial product results from the nitration of "xylene" followed by a reduction reaction. The product is also known as "mixed dimethylanilines" and "ar, ar-dimethyl Benzenamine" and is used in the rubber processing industry as an intermediate for dyestuffs and antioxidants.

The products that are manufactured from the mixed xylidines for the dye and rubber processing industries also include products of ethylaniline (mixed xylidines containing 85 percent xylidine isomers and up to 15 percent ethylaniline). However, it appears that neither industry isolates and purifies the reaction product to eliminate the ethylaniline derivatives, and these derivatives play a role in the final products. As such, mixed xylidines can be considered a crude grade since the individual isomers of xylidines are commercially available.

ISSUE:

What is the correct tariff classification for mixed xylidines (CAS 1300-73-8)?

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI's). The systematic detail of the harmonized system is such that virtually all 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 GRI's may then be applied. The Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI's.

This product contains 85 percent xylidine isomers and up to 15 percent of ethylaniline. In determining the correct classification of this product, it is first necessary to ascertain if the presence of ethylaniline presents an acceptable “impurity” within the meaning of headnote 1(b), Chapter 29, HTSUSA. The language in headnote 1(b) of chapter 29, states as follows:

1. Except where the context otherwise requires, the headings of this chapter apply only to:
 - (A) Separate chemically defined organic compounds, whether or not containing impurities;
 - (B) Mixtures of two or more isomers of the same organic compound (whether or not containing impurities), except mixtures of acyclic hydrocarbon isomers (other than stereoisomers), whether or not saturated (chapter 27) ;

The EN’s state that generally, Chapter 29 is restricted to separate chemically defined compounds, i.e. “A separate chemically defined compound is a compound of known structure, which does not contain other substances deliberately added during or after its manufacture (including purification).” See EN’s, Section VI, General Note (A) (Chapter Note 1), pgs. 326–327. The EN’s note that the separate chemically defined compounds of Chapter 29 may contain “impurities.” The definition for “impurities” is provided in the EN’s (pgs. 326–327) as, among other things, a substance whose presence in the single chemical compound results solely and directly from the manufacturing process (including purification).

Chapter 29 does not provide for a minimum purity for individual xylidines or for xylidines isomeric mixtures. In addition, the importer states that the ethylaniline generated during the production process is not purposely added to the product and that the ethylaniline does not serve a specific purpose. Thus, we are of the opinion that ethylaniline is an “impurity” within the meaning of headnote 1(b) of chapter 29, HTSUSA. This is based on the fact that ethylaniline is not added to the xylidines mixture, it is produced simultaneously with the xylidines isomers. Furthermore, the final product is a mixture of xylidines having the same function group. Finally, ethylaniline has been left in the resultant mixture for the purpose of making a product with a character suitable for general applications rather than for a specific use. Of course, this rationale would not apply to those mixed xylidines which have been manufactured according to buyers specifications making them suitable for a specific application; such a product would not be classifiable in chapter 29, HTSUSA.

HOLDING:

The product identified as, mixed xylidines (CAS 1300–73–8), is properly classifiable within subheading 2921.49.5000, HTSUSA, which provides for: “Amine-function compounds: Aromatic monoamines and their derivatives; salts thereof: Other: Other: Other: Other.” The general column one rate of duty is 2.2 cents/kg. plus 17.6 percent *ad valorem*. However, merchandise produced using buyers specifications is suitable for a specific application and, therefore, would not be classified in chapter 29, HTSUSA.

Sincerely,
JOHN DURANT,
Director
Commercial Rulings Division

[ATTACHMENT B]

HQ H073927
CLA-2 OT:RR:CTF:TCM H073927 ARM
CATEGORY: Classification
TARIFF NO.: 2921.49.45

MR. EDWARD K. WALDINGER
B.I. CHEMICALS, INC.
HENLEY DIVISION
50 CHESTNUT RIDGE ROAD
MONTVALE, NJ 07654

RE: Revocation of HQ 955644; Mixed Xylidines (CAS 1300–73–08)

DEAR MR. WALDINGER:

This is to inform you that Customs & Border Protection (CBP) has reconsidered Headquarter's Ruling (HQ) letter 955644, dated March 6, 1995, regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of mixed xylidines (CAS 1300–73–08). CBP classified the product in subheading 2921.49.50, HTSUS, which provides for: "Amine-function compounds: Aromatic monoamines and their derivatives; salts thereof: Other: Other: Other: Other." We have determined that HQ 955644 is in error because the merchandise is not listed in the Chemical Appendix. Therefore, this ruling revokes HQ 955644.

FACTS:

The instant merchandise is a liquid containing 2,6-Xylidine (CAS 87–62–7), 2,4-Xylidine (CAS 95–68–1) and 2,5-Xylidine (CAS 95–78–3) with less than 10% ethylaniline and diaminoxylenes byproducts of the starting material. In HQ 955644, CBP described the product as follows:

Mixed xylidines (CAS 1300–73–8), is the name given to a mixture of isomeric xylidines (dimethylaniline isomers) which also contains ethylaniline. This commercial product results from the nitration of "xylene" followed by a reduction reaction. The product is also known as "mixed dimethylanilines" and "ar, ar-dimethylbenzenamine" and is used in the rubber processing industry as an intermediate for dyestuffs and antioxidants. The products that are manufactured from the mixed xylidines for the dye and rubber processing industries also include products of ethylaniline (mixed xylidines containing 85 percent xylidine isomers and up to 15 percent ethylaniline).

In that ruling, CBP classified the product in subheading 2921.49.50, HTSUS, which provides for: "Amine-function compounds: Aromatic monoamines and their derivatives; salts thereof: Other: Other: Other: Other."

CAS 1300–73–8 is not listed in the Chemical Appendix to the HTSUS.

ISSUE:

Whether mixed xylidines are classified in 2921.49.45, HTSUS, as products not listed in the Chemical Appendix, or in subheading 2921.49.50, as products listed in the Chemical Appendix to 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 1 through 5.

The HTSUS provisions under consideration are the following:

2921:	Amine-function compounds: Aromatic monoamines and their derivatives; salts thereof:
	Other:
	Other:
2921.49	Other:
2921.49.45	Products described in Additional U.S. note 3 to section VI
2921.49.50	Other
* * *	* *
9902.22.36:	Mixed xylydines (CAS No. 1300-73-8) (provided for in subheading 2921.49.50)

Additional U.S. note 3 to section VI, HTSUS, states the following:

The term 'products described in Additional U.S. Note 3 to section VI' refers to any product not listed in the Chemical Appendix to the Tariff Schedule and—[F]or which the importer furnishes the Chemical Abstracts Service (C.A.S.) registry number and certifies that such registry number is not listed in the Chemical Appendix to the Tariff Schedule; . .

The Chemical Appendix Note 1 to the HTSUS states the following:

This appendix enumerates those chemicals and products which the President has determined were imported into the United States before January 1, 1978, or were produced in the United States before May 1, 1978. For convenience, the listed articles are described (1) by reference to their registry number with the Chemical Abstracts Service (C.A.S.) of the American Chemical Society, where available, or (2) by

reference to their common chemical name or trade name where the C.A.S. registry number is not available. For the purpose of the tariff schedule, any reference to a product provided for in this appendix includes such products listed herein, by whatever name known.

There is no dispute that the merchandise is classified in heading 2921.49, HTSUS, as an amine-function compound. At issue is the applicable eight-

digit subheading. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings.

In accordance with Additional U.S. note 3 to section VI, HTSUS, the CAS number of the instant merchandise (1300-73-08) does not appear in the Chemical Appendix. Therefore, the mixed xylydines must be classified as such in subheading 2921.49.45, HTSUS.

HOLDING:

Mixed xylydines, CAS No. 1300-73-8, are classified in heading 2921, HTSUS. Specifically, the merchandise is classified in subheading 2921.49.45, HTSUS, the provision for "Amine function compounds: Aromatic monoamines and their derivatives; salts thereof: Other: Other: Other: Products described in Additional U.S. note 3 to section VI". The column one, general rate of duty is 6.5% *ad valorem*.

Duty rates are provided for the protestant's 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:

HQ 955644, dated March 6, 1995, is revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial Rulings Division

**PROPOSED MODIFICATION OF A RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
COUNTRY OF ORIGIN OF KNIT-TO-SHAPE BRASSIERES**

AGENCY: United States Customs and Border Protection; Department of Homeland Security.

ACTION: Proposed modification of a classification ruling letter and revocation of treatment relating to the country of origin of knit-to-shape brassieres.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is proposing to modify one ruling letter relating to the country of origin of knit-to-shape brassieres. CBP is also proposing to revoke any treatment previously accorded by it to substantially identical merchandise.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade,

Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street N.W., Washington, D.C. 20229-1179. Submitted comments may be inspected at the offices of 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) 325-0118.

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Tariff Classification and Marking Branch: (202) 325-0026.

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 to 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 is proposing to modify one ruling letter pertaining to the country of origin of knit-to-shape brassieres. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) L89596, dated February 8, 2006, (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 ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or

protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. 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 decision on this notice.

In NY L89596, CBP determined, in relevant part, that the country of origin of the knit-to-shape brassieres was China. Since the issuance of that ruling, CBP has reviewed that ruling and found it to be in error as it pertains to the country of origin of the knit-to-shape brassieres.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to modify NY L89596, dated February 8, 2006, and revoke or modify any other ruling not specifically identified, to reflect the country of origin of the knit-to-shape brassieres according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H039056, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing 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: May 25, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY L89596
February 8, 2006
CLA 2-RR:NC:TAB:354 L89596
CATEGORY: Classification

MS. ELEANORE KELLY-KOBYASHI
RODE & QUALEY
55 WEST 39TH STREET
NEW YORK, N.Y. 10018

RE: Classification and country of origin determination for brassieres; 19 CFR 102.21(c)(2); tariff shift

DEAR MS. KELLY-KOBYASHI:

This is in reply to your letter dated January 4, 2006, written on behalf of your client, AC Carpi Apparel Manufacturing Ltd., requesting a classification and country of origin determination for brassieres, which will be imported into the United States.

FACTS:

You have submitted samples of two styles of sports bras, both made of 88% nylon and 12% spandex knitted fabric, with scooped front necklines, elasticized arm and neck openings and elasticized bottom bands measuring approximately one inch. Style #500-6088 features an adjustable hook and eye closure at the rear of the garment and style #500-6008 features a racer back.

The manufacturing operations for the brassieres are as follows:

Style #500-6088

Hong Kong Tubular knit fabric is made with a self-start bottom and lines of demarcation Garment is dyed China Tubular knit fabric is cut along the lines of demarcation, forming neck openings and one inch wide shoulder straps Straps are sewn closed Hook and eye closure tab is sewn to back of garment Elasticized trim is sewn to top edge of garment and along edges of shoulder straps

Style #500-6008

Hong Kong Tubular knit fabric is made with a self start bottom and lines of demarcation Garment is dyed China Tubular knit fabric is cut along the lines of demarcation, forming the neck openings and one-inch wide shoulder straps Shoulder straps are sewn closed Elasticized trim is sewn to top edge of garment and shoulder straps

ISSUE:

What are the classification and country of origin of the subject merchandise? CLASSIFICATION:

The applicable subheading for both styles will be 6212.10.9020, Harmonized Tariff Schedule of the United States (HTSUS), which provides for brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted: other: other...of man-made fabrics. The general rate of duty will be 16.9% 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

COUNTRY OF ORIGIN — LAW AND ANALYSIS:

Section 334 of the Uruguay Round Agreements Act (codified at 19 U.S.C. 3592), enacted on December 8, 1994, provided rules of origin for textiles and apparel entered, or withdrawn from warehouse for consumption, on and after July 1, 1996. Section 102.21, Customs Regulations (19 C.F.R. 102.21), published September 5, 1995, in the Federal Register, implements Section 334 (60 FR 46188). Section 334 of the URAA was amended by section 405 of the Trade and Development Act of 2000, enacted on May 18, 2000, and accordingly, section 102.21 was amended (68 Fed. Reg. 8711). Thus, the country of origin of a textile or apparel product shall be determined by the sequential application of the general rules set forth in paragraphs (c)(1) through (5) of Section 102.21.

Paragraph (c)(1) states “The country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced.” As the subject merchandise is not wholly obtained or produced in a single country, territory or insular possession, paragraph (c)(1) of Section 102.21 is inapplicable.

Paragraph (c)(2) states that “Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each of the foreign materials incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section.”

Paragraph (e) in pertinent part states that “The following rules shall apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section”:

HTSUS Tariff shift and/or other requirements

6210–6212 (1) If the good consists of two or more component parts, a change to an assembled good of heading 6210 through 6212 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

Paragraph (b)(6) defines “wholly assembled” as:

The term “wholly assembled” when used with reference to a good means that all components, of which there must be at least two, preexisted in essentially the same condition as found in the finished good and were combined to form the finished good in a single country, territory, or insular possession. Minor attachments and minor embellishments (for example, appliqués, beads, spangles, embroidery, buttons) not appreciably affecting the identity of the good, and minor subassemblies (for example, collars, cuffs, plackets, pockets) will not affect the status of a good as “wholly assembled” in a single country, territory, or insular possession.

As the brassieres consist of two or more parts that are wholly assembled in a single country, that is, China, as per the terms of the tariff shift requirement, country of origin is conferred in China.

HOLDING:

The country of origin of the brassieres is China.

The brassieres fall within textile category designation 649. Quota and visa status are the result of international agreements that are subject to frequent

renegotiations and changes. To obtain the most current information as to whether quota and visa requirements apply to this merchandise, we suggest that you check, close to the time of shipment, the “Textile Status Report for Absolute Quotas” available at our web site at www.cbp.gov. In addition, you will find current information on textile import quotas, textile safeguard actions and related issues at the web site of the Office of Textiles and Apparel, at otexa.ita.doc.gov.

The holding set forth above applies only to the specific factual situation and merchandise identified in the ruling request. This position is clearly set forth in section 19 CFR 177.9(b)(1). This section states that a ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177). Should it be subsequently determined that the information furnished is not complete and does not comply with 19 CFR 177.9(b)(1), the ruling will be subject to modification or revocation. In the event there is a change in the facts previously furnished, this may affect the determination of country of origin. Accordingly, if there is any change in the facts submitted to Customs, it is recommended that a new ruling request be submitted in accordance with 19 CFR 177.2.

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 Deborah Marinucci at 646-733-3054.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H039056
 CLA-2 OT:RR:CTF:TCM H039056 KSH
 CATEGORY: Classification
 TARIFF NO.: 6212.10.9020

ELEANOR KELLY-KOBAYASHI, Esq.
 RODE & QUALEY
 55 WEST 39TH STREET
 NEW YORK, NY 10018

RE: Modification of NY L89596; country of origin of knit-to-shape brassieres.

DEAR MS. KELLY-KOBAYASHI:

This letter is to inform you that the U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) L89596, issued to you on February 8, 2006, on behalf of your client AC Carpi Apparel Manufacturing Ltd., concerning, in relevant part, the country of origin of knit-to-shape brassieres. In NY L89596, CBP determined that the country of origin of the knit-to-shape brassieres was China. We have reviewed that ruling and found it to be in error as it pertains to the country of origin of the knit-to-shape brassieres. Therefore, this ruling modifies NY L89596.

FACTS:

The merchandise at issue is described in L89596 as follows:

You have submitted samples of two styles of sports bras, both made of 88% nylon and 12% spandex knitted fabric, with scooped front necklines, elasticized arm and neck openings and elasticized bottom bands measuring approximately one inch. Style #500–6088 features an adjustable hook and eye closure at the rear of the garment and style #500–6008 features a racer back.

The manufacturing operations for the brassieres are as follows:

- Style #500–6088
Hong Kong
- Tubular knit fabric is made with a self-start bottom and lines of demarcation
 - Garment is dyed
- China*
- Tubular knit fabric is cut along the lines of demarcation, forming neck openings and one inch wide shoulder straps
 - Straps are sewn closed
 - Hook and eye closure tab is sewn to back of garment
 - Elasticized trim is sewn to top edge of garment and along edges of shoulder straps
- Style #500–6008
Hong Kong
- Tubular knit fabric is made with a self start bottom and lines of demarcation
 - Garment is dyed
- China*
- Tubular knit fabric is cut along the lines of demarcation, forming the neck openings and one-inch wide shoulder straps
 - Shoulder straps are sewn closed
 - Elasticized trim is sewn to top edge of garment and shoulder straps

ISSUE:

What is the country of origin of the knit-to-shape brassieres?

LAW AND ANALYSIS:

Section 334 of the Uruguay Round Agreements Act (URAA) (codified at 19 U.S.C. 3592), enacted on December 8, 1994, provides rules of origin for textiles and apparel entered, or withdrawn from warehouse for consumption, on and after July 1, 1996. Section 102.21, CBP Regulations (19 C.F.R. 102.21), published September 5, 1995, in the Federal Register, implements Section 334 (60 FR 46188). Section 334 of the URAA was amended by section 405 of the Trade and Development Act of 2000, enacted on May 18, 2000. Accordingly, section 102.21, CBP Regulations was amended (68 Fed. Reg. 8711). Thus, the country of origin of a textile or apparel product shall be determined by the sequential application of the general rules set forth in paragraphs (c)(1) through (5) of Section 102.21.

Paragraph (c)(1) states “The country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced.” As the subject merchandise is not wholly obtained or produced in a single country, territory or insular possession, paragraph (c)(1) of Section 102.21 is inapplicable.

Paragraph (c)(2) states that “Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each of the foreign materials incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section.”

As noted in L89596, the knit-to-shape brassieres are classified in subheading 6212.10.9020, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted: other: other...of man-made fabrics.”

The relevant tariff change rules set forth in 19 C.F.R. §102.21(e) is as follows:

<i>HTSUS</i>	<i>Tariff shift and/or other requirements</i>
6210–6212	<p>(1) If the good consists of two or more component parts, a change to an assembled good of heading 6210 through 6212 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.</p> <p>(2) If the good does not consist of two or more component parts, a change to heading 6210 through 6212 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, 6001 through 6006, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.</p>

Paragraph (b)(6) defines “wholly assembled” as:

The term “wholly assembled” when used with reference to a good means that all components, of which there must be at least two, preexisted in essentially the same condition as found in the finished good and were combined to form the finished good in a single country, territory, or

insular possession. Minor attachments and minor embellishments (for example, appliqués, beads, spangles, embroidery, buttons) not appreciably affecting the identity of the good, and minor subassemblies (for example, collars, cuffs, plackets, pockets) will not affect the status of a good as “wholly assembled” in a single country, territory, or insular possession.

The brassieres, having only one component and several minor attachments, are not “wholly assembled,” nor does their production involve a “fabric-making process.” Therefore, we are unable to invoke a country of origin determination under 102.21(c)(2).

Section 102.21(c)(3) states,

Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) or (2) of this section:

(i) If the good was knit to shape, the country of origin of the good is the single country, territory, or insular possession in which the good was knit; or

(ii) Except for goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90, and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

Section 102.21(b)(3) defines knit to shape as:

The term “knit to shape” applies to any good of which 50 percent or more of the exterior surface area is formed by major parts that have been knitted or crocheted directly to the shape used in the good, with no consideration being given to patch pockets, appliqués, or the like. Minor cutting, trimming, or sewing of those major parts will not affect the determination of whether a good is “knit to shape.”

The term “major parts” means “integral components of a good but does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts.” *See* Section 102.21(b)(4), CBP Regulations.

In this case, the subject tubular knit fabric components have a self start bottom edge and clear and continuous lines of demarcation that outlines the brassieres. Thus the subject tubular fabric components are considered “knit to shape.” The assembly of the hook and eye closure and elasticized trim will not affect the determination of whether the brassieres are knit to shape as they each have only one integral component (i.e., the knit to shape tubular knit portions.) In this regard, the brassieres are considered to be “knit to shape” under 19 C.F.R. 102.21(c)(3). *See* HQ 968186, dated July 7, 2006.

In this case, the brassieres were knit-to-shape in Hong Kong. By application of section 102.21(c)(3)(i), the country of origin is Hong Kong, the single territory where the brassieres were knit-to-shape.

HOLDING:

Pursuant to section 19 C.F.R. §102.21(c)(3)(i), the country of origin of the brassieres is Hong Kong.

EFFECT ON OTHER RULINGS:

NY L89596, dated February 8, 2006, is modified.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division


GENERAL NOTICE**19 CFR PART 177****Proposed Revocation of a Ruling Letter and Revocation of Treatment Relating to Classification of Articles of Magnesium Oxide Board**

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

ACTION: Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the classification of articles of magnesium oxide board.

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 (“CPB”) is proposing to revoke a ruling concerning the classification of magnesium oxide (MgO) board, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB is proposing to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade—Regulation and Rulings, Attn: Mr. Joseph Clark, 799 9th Street N.W. -5th Floor, Washington D.C. 20229–1179. Comments submitted may be inspected at 799 9th St. N.W. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, Tariff Classification and Marking Branch (202) 325-0029.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (CBP 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 to 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 (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 proposes to revoke a ruling pertaining to the classification of MgO board. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) L87670 (Attachment "A"), dated February 24, 2006, 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 ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should 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 is proposing to revoke any treatment previously accorded by CBP to

substantially identical transactions. 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 his agents for importations of merchandise subsequent to this notice.

In NY L87670, CBP ruled that the merchandise was an article of other mineral substances, classified in heading 6815, HTSUS. The referenced ruling is incorrect because the mixture is more specifically described as an article of cement in heading 6811, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke NY L87670, 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 H047138. (Attachment "B"). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing 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:

GAIL A. HAMILL

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

NY L87670
February 24, 2006
CLA-2-68:RR:NC1:126: L87670
TARIFF NO.: 6815.99.4000

MR. EDWARD GILBERT
GILBERT HOLDINGS, INC.
46615 TENNIS ISLAND ROAD
WELLESLEY ISLAND, NEW YORK 13640

RE: The tariff classification of articles of mineral substances from China

DEAR MR. GILBERT:

In your letter, dated September 17, 2005, you requested a tariff classification ruling regarding two boards.

Samples of these boards were submitted with your ruling request.

The samples were sent to our Customs and Border Protection Laboratory for analysis. Our laboratory has now completed its analysis.

You stated that the products consist of magnesium oxide plus magnesium chloride, plant fiber and other components.

Analysis of the samples by our laboratory confirms your description of their composition.

The applicable subheading for the boards consisting of magnesium oxide and other materials will be 6815.99.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for articles...of other mineral substances...not elsewhere specified or included: other articles: other: other. The rate of duty will be 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

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 Jacob Bunin at 646-733-3027.

Sincerely,

ROBERT B. SWIERUPSKI
Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H047138
CLA-2 OT:RR:CTF:TCM H047138 ARM
CATEGORY: Classification
TARIFF NO.: 6811.82.00

MR. EDWARD GILBERT
GILBERT HOLDINGS, INC.
46615 TENNIS ISLAND ROAD
WELLESLEY ISLAND, NY 13640

RE: Revocation of NY L87670; mineral substance boards from China.

DEAR MR. GILBERT:

This is to inform you that Customs & Border Protection (CBP) has reconsidered New York Ruling Letter (NY) L87670, dated February 24, 2006, regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of magnesium oxide (MgO) boards from China. The boards were classified as an other mineral article of subheading 6815.99.40, HTSUS. We have determined that NY L87670 is in error. Therefore, this ruling revokes NY L87670.

FACTS:

The instant merchandise consists of boards composed predominately of magnesium oxide and magnesium chloride with plant fiber, talcum powder, glass fiber sheet and perlite used for dry-wall, ceiling, floors, doors and furniture. The merchandise is produced by blending the ingredients in an industrial mixer. The mixture is poured onto a plate with fiberglass mesh and dried in an air-circulating oven. The board is sawn to length and sanded to finished thickness.

In NY L87670, CBP confirmed your description of the composition of samples of two boards of 6mm and 8mm thickness, as consisting of magnesium oxide plus magnesium chloride, plant fiber and other components.

Customs Laboratory and Scientific Services Report #NY20051858, dated February 2, 2006, states, in pertinent part, the following:

The bulk of the material is a solid white mass. Plant fibers are embedded throughout the white mass and a cross-woven inorganic mesh material is embedded just below the surface on the top and bottom faces. . . .The white mass appears to be formed from the reaction of magnesium oxide and other materials with water. Based on technical information, once all components are mixed and set, a product is formed which has characteristics different from that of the starting materials. . . . In our opinion, the product is an article of other mineral substances.

On September 30, 2009, CBP Laboratory Report #NY20051858A, amended the conclusion in the previous report to state "in our opinion, the product is an article of magnesium oxychloride cement."

ISSUE:

Whether boards containing magnesium oxide plus magnesium chloride, plant fiber and other components are classified as articles of cellulose fiber cement, of heading 6811, HTSUS, or as other mineral articles of heading 6815, 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. In the event that the goods cannot be classified solely on the basis of GRI 1, HTSUS, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

The HTSUS subheadings under consideration are as follows:

6811	Articles of asbestos-cement, of cellulose fiber-cement or the like: Not containing asbestos:
6811.82.00	Other sheets, panels, tiles and similar articles . . . * * * * *
6815	Articles of stone or of other mineral substances (including carbon fibers, articles of carbon fibers and articles of peat), not elsewhere specified or included:
6815.99:	Other:
6815.99.40	Other. . . .

The ENs to heading 6811, HTSUS, state, in pertinent part, the following:

This heading covers hardened articles consisting essentially of an intimate mixture of fibres (for example, asbestos, cellulose or other vegetable fibres, synthetic polymer, glass or metallic fibres) and cement or other hydraulic binders, the fibres acting as strengthening agents. These articles may also contain asphalt, tar, etc.

These products are generally manufactured by pressing together thin layers of a mixture of fibres, cement and water or by moulding (possibly under pressure), by pressing or by extruding.

The heading includes sheets of all sizes and thicknesses, obtained as described above, and also articles made by cutting these sheets or by pressing, moulding or bending them before they have set, e.g., roofing, facing or partition sheets and tiles; sheets for making furniture; window sills; sign-plates, letters and numbers; barrier bars; corrugated sheets; reservoirs, troughs, basins, sinks; tubing joints; packing washers and joints; panels imitating carving; ridge tiles, gutters, window frames; flower-pots; ventilation or other tubing, cable conduits; chimney cowl, etc.

All these articles may be coloured in the mass, varnished, printed, enamelled, decorated, drilled, filed, planed, smoothed, polished or otherwise worked; they may also be reinforced with metal, etc.

The ENs to heading 6815, HTSUS, state, in pertinent part, the following:

This heading covers articles of stone or of other mineral substances, **not covered** by the earlier headings of this Chapter and **not included** elsewhere in the Nomenclature; it therefore **excludes**, for example, ceramic products of **Chapter 69**.

By the terms of the headings and EN 68.15, if the merchandise is described in heading 6811, HTSUS, then it cannot be classified in heading 6815, HTSUS.

The merchandise at issue is formed by combining MgO and MgCl together with plant fiber, talc, glass and perlite. The description and sample of the instant merchandise, as analyzed by CBP Laboratory, is consistent with a magnesium oxychloride cement combined with fiber and shaped into a board. As such, it meets the terms of heading 6811, HTSUS, as illustrated by the EN's to that heading. Because it meets the terms of heading 6811, HTSUS, the instant merchandise is excluded from classification in heading 6815, HTSUS.

HOLDING:

Pursuant to GRI 1, mineral article board is classified in heading 6811, HTSUS. It is provided for in subheading 6811.82.00, HTSUS, which provides for articles of asbestos-cement, of cellulose fiber-cement or the like: not containing asbestos: other articles. The rate of duty will be 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 L87670, dated February 24, 2006, is revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



**PROPOSED REVOCATION OF RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF A CERTAIN ROLLING
COOLER BAG WITH DETACHABLE TOTE BAG**

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 rolling cooler bag with detachable tote bag.

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) proposes to revoke one ruling letter relating to the tariff classification of a rolling cooler bag with detachable tote bag under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke

any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W. – 5th Floor, Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., Washington, D.C. 20001 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Greg Connor, Tariff Classification and Marking Branch: (202) 325-0025

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 to 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 tariff classification of a rolling cooler bag with detachable tote bag. Although in this notice, CBP is specifically referring to the revocation of New York

Ruling Letter (NY) N022627, February 27, 2008 (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, as amended (19 U.S.C. 1625 (c)(2)), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. 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 N022627, set forth as Attachment A to this document, CBP determined that the subject rolling cooler bag and the detachable tote bag were classified as two separate products in heading 4202, HTSUS. The rolling cooler bag was classified under subheading 4202.92.0807, HTSUS (2008), which provides for, in pertinent part: "...traveling bags, insulated food or beverage bags... of textile materials...: Other: With outer surface of sheeting of plastic or textile materials: Insulated food or beverage bags: With outer surface of textile materials: Other... Of man-made fibers". The tote bag was separately classified under subheading 4202.92.3031, HTSUS (2008), which provides for, in pertinent part: "...traveling bags... and similar containers... of textile materials...: Other: With outer surface of sheeting of plastic or textile materials: Travel, sports and similar bags: With outer surface of textile materials: Other... Other: Of man-made fibers: Other". It is now CBP's position that the subject merchandise is classified together by operation of General Rules of Interpretation 6 and 3(b) under subheading 4202.92.1000, HTSUS, which provides for, in pertinent part: "...traveling bags, insulated food or beverage bags... of textile materials...: Other: With outer surface of sheeting of plastic or textile materials: Insulated food or beverage bags: Other..."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke N022627 and revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the subject rolling cooler

bag with detachable tote bag according to the analysis contained in proposed Headquarters Ruling Letter H025873, 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, consideration will be given to any written comments timely received.

Dated: May 25, 2010

GAIL A. HAMILL

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N022627

February 27, 2008

CLA-2-42:OT:RR:NC:N3:341

CATEGORY: Classification

TARIFF NO.: 4202.92.0807; 4202.92.3031

NEIL S. HELFAND

SERKO SIMON GLUCK & KANE LLP

1700 BROADWAY, 31ST FLOOR

NEW YORK, NY 10019

RE: The tariff classification of a rolling insulated cooler bag and a tote bag

DEAR MR. HELFAND:

In your letter dated January 29, 2008 on behalf of California Innovations, you requested a classification ruling. The samples which you submitted are being returned as requested.

The sample submitted is a soft-sided insulated cooler bag with wheels. It is principally used to maintain the temperature of food and/or beverage during travel or temporary storage. A style number was not provided. The outer surface of the bag is constructed of both man-made textile material and polyvinyl chloride (PVC) plastic sheeting. The essential character of the bag is given by the man-made textile material as it is the majority of the total outer surface area. The interior of the bag has a main insulated compartment with a removable plastic lining. The top section of the cooler bag has a zippered storage compartment with a removable nylon tote bag that attaches by means of four hook-and-loop fasteners. The tote bag has a drawstring closure, webbed shoulder straps and two plastic clips that can hook onto the handle. The top of the bag is secured by means of a zippered closure along three sides of the bag. It can be carried by webbed carrying straps or pulled by the retractable handle. The front exterior of the bag has a zippered insulated compartment and two pockets with hook-and-loop fasteners. It measures approximately 14" (W) x 14" (H) x 11" (D).

In your letter, you suggested that the insulated cooler bag with the tote bag is a composite good with the essential character imparted by the cooler bag. You suggested classification under subheading 4202.92.1000, Harmonized Tariff Schedule of the United States (HTSUS). However, the cooler bag and tote bag are not considered a composite good because they do not form a whole that would not normally be offered for sale in separate parts. The cooler bag and tote bag are capable of functioning independently. Therefore, the cooler bag and tote bag are considered separate articles, and are classified separately.

The applicable subheading for the cooler bag will be 4202.92.0807, Harmonized Tariff Schedule of the United States (HTSUS), which provides for insulated food or beverage bags, with outer surface of textile materials, other, of man-made fibers. The duty rate will be 7 percent ad valorem.

The applicable subheading for the tote bag will be 4202.92.3031, HTSUS, which provides for travel, sports and similar bags, with outer surface of textile materials, other, of man-made fibers, other. The duty rate will be 17.6 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

HTSUS 4202.92.0807 and 4202.92.3031 fall within textile category 670. With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

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 Vikki Lazaro at 646-733-3041.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H025873
CLA-2 OT:RR:CTF:TCM H025873 GC
CATEGORY: Classification
TARIFF NO.: 4202.92.1000

DANIEL GLUCK, Esq.
SERKO, SIMON, GLUCK AND KANE, LLP
1700 BROADWAY, 31ST FLOOR
NEW YORK CITY, NEW YORK 10019

RE: Request for reconsideration of NY N022627; Tariff classification of a rolling cooler bag with detachable tote bag

DEAR MR. GLUCK:

This letter is in reference to your request, dated April 3, 2008, on behalf of California Innovations, Inc. (California Innovations), for reconsideration of NY N022627, dated February 27, 2008, concerning the classification of a rolling cooler bag with a detachable tote bag under the Harmonized Tariff Schedule of the United States (HTSUS).

In NY N022627, the National Commodity Specialist Division of U.S. Customs and Border Protection (CBP) classified the rolling cooler bag under subheading 4202.92.0807, HTSUS (2008), which provides for, in pertinent part: "...traveling bags, insulated food or beverage bags... of textile materials...: Other: With outer surface of sheeting of plastic or textile materials: Insulated food or beverage bags: With outer surface of textile materials: Other... Of man-made fibers". The tote bag was separately classified under subheading 4202.92.3031, HTSUS (2008), which provides for, in pertinent part: "...traveling bags... and similar containers... of textile materials...: Other: With outer surface of sheeting of plastic or textile materials: Travel, sports and similar bags: With outer surface of textile materials: Other... Other: Of man-made fibers: Other". The provisions are unchanged in the 2010 version of the HTSUS. Pursuant to your reconsideration request and your supplemental submission of April 15, 2008, we have reviewed NY N022627 and find it to be in error.

FACTS:

In NY N022626, CBP described the rolling cooler bag, in pertinent part, as a soft-sided insulated cooler bag with wheels, the outer surface of which is constructed of both man-made textile material and polyvinyl chloride (PVC) plastic sheeting. The ruling states that the man-made textile material covers the majority of the total outer surface area of the rolling cooler bag. You have since clarified that the rolling cooler bag is not composed of a man-made textile material, but of vinyl. Consequently, the rolling cooler bag would be independently classified under subheading 4202.92.1000, HTSUS, which provides for, in pertinent part: "...traveling bags, insulated food or beverage bags... of textile materials...: Other: With outer surface of sheeting of plastic or textile materials: Insulated food or beverage bags: Other".

The cooler bag measures approximately 14 inches (width) by 14 inches (height) by 11 inches (depth), and features an insulated interior with a removable plastic lining. There are also two pockets on the side of the cooler bag, the flaps of which are closed via hook-and-loop strips. It can be lifted using two handles, which are connected by a padded strap, or it can be rolled

using the retractable handle. The top section of the cooler bag has a zippered storage compartment for storing a removable nylon tote bag.

The nylon tote bag, when removed from its compartment, has approximately the same measurements as the rolling cooler bag and features a drawstring closure and webbed shoulder straps. When used to carry other materials, the tote bag can be carried separately by the shoulder straps or attached to the cooler by means of four hook-and-loop strips, which attach the bottom of the tote bag to the top of the cooler, and two plastic "S" clips, which attach to two hooks located on the cooler's retractable handle.

In your request to reconsider NY N022627, you argue that the cooler and tote bag are classifiable together as a composite good, with the cooler imparting the merchandise with its essential character.

ISSUE:

Are the rolling cooler bag and detachable tote bag classified together as a composite good or a set per GRI 3? If so, which component, if any, imparts the whole with its essential character?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

4202 Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:

Other:

4202.92 With outer surface of sheeting of plastic or of textile materials:

Insulated food and beverage bags:

4202.92.1000 Other...

*
* *

Travel sports and similar bags:

With outer surface of textile materials:

4202.92.30 Other...

4202.92.3031 Other

Initially we note that both the rolling cooler bag and the detachable tote bag fit within the scope of heading 4202, HTSUS. The cooler bag is *eo nomine*

provided for in the heading. See Headquarters Ruling Letter (HQ) H018503, dated January 31, 2008; HQ 962817, dated January 14, 2002. Because the outer surface of the rolling cooler bag is composed of vinyl and not of a man-made woven textile material, the tariff classification of the rolling cooler bag in NY N022627 is incorrect. Accordingly, if imported separately, the rolling cooler bag would be classified in subheading 4202.92.1000, HTSUS, which provides for, in pertinent part: "...traveling bags, insulated food or beverage bags... of textile materials...: Other: With outer surface of sheeting of plastic or textile materials: Insulated food or beverage bags: Other".

The tote bag is similar to the travel and sports bags described in heading 4202, HTSUS, in that it is designed to organize, store, protect and carry various items. See HQ 957116, dated February 23, 1995 and HQ 960201, dated February 20, 1997. If imported separately, it would be classified under subheading 4202.92.3031, HTSUS, which provides for, in pertinent part: "...traveling bags... and similar containers... of textile materials...: Other: With outer surface of sheeting of plastic or textile materials: Travel, sports and similar bags: With outer surface of textile materials: Other... Other: Of man-made fibers: Other".

Classification of merchandise within heading 4202, HTSUS, implicates GRI 6, which states:

For legal purposes, the classification of goods in the subheading 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.

GRI 3, which governs the classification of composite goods and sets, states, in pertinent part:

When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings [or subheadings], classification shall be effected as follows:

- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), constitute the official interpretation of the tariff at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

Section (IX) of the EN to GRI 3 states the following:

For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, **provided** these components are adapted one to the other and are mutually complementary and that

together they form a whole which would not normally be offered for sale in separate parts. (Emphasis in original)

The fact that the cooler bag and tote bag are separable raises the issue of whether they are sufficiently adapted to each other and mutually complementary so as to form a composite good within the meaning of GRI 3. The two items are adapted to one another in the sense that when not in use, the tote bag is stored in zippered pocket located on the top of the lid of the rolling cooler bag. Likewise, the rolling cooler bag and tote bag are designed to be used together through the hook and loop strips and “S” clips, which attach the tote bag to the top of the rolling cooler bag and the hooks on the retractable handle. This serves as an indication that the tote bag is intended to be used to carry items complementary to the food preserved in the cooler bag (i.e. non-perishable food, beach supplies, tailgating items, etc.). While a rolling cooler bag and tote bag could generally be sold separately, the fact that these particular items are particularly adapted to be used in conjunction with one another leads to the conclusion that they combine to form a whole that would not normally be offered for sale in separate parts. *See* HQ 962297, dated April 5, 2002 (where CBP found that a cooler bag and a detachable seat cushion of a similar size and with special features indicating simultaneous use formed a composite good); *see also* HQ 953523, dated April 22, 1993 and HQ 953705, dated March 2, 1993. Accordingly, we find that the subject merchandise is a composite good described by GRI 3.

As stated in GRI 3(b), a composite good is to be classified according to the material or component that imparts the good with its essential character. In its discussion concerning “essential character,” the EN to GRI 3(b) states that:

The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

While we were not provided with information on the value of each component, the complex construction of the rolling cooler bag in relation to the tote bag indicates that its value predominates. These same features, such as the sturdy frame, insulated layer and removable plastic lining, cause the rolling cooler bag to be bulkier and heavier than the tote bag component. Finally, due to its capability to preserve food for a period of time, the rolling cooler bag performs the most important role of the two components with respect to overall use of the composite good. The fact that the tote bag is designed to collapse within a compartment of the rolling cooler bag and then attach to the rolling cooler bag when desired evinces an ancillary role. Thus, we find that the rolling cooler bag component imparts the subject merchandise with its essential character.

HOLDING:

By application of GRI 1, the rolling cooler bag and detachable tote bag are classified in heading 4202, HTSUS, which provides for, in pertinent part: “...traveling bags, insulated food or beverage bags... and similar containers... of textile materials”. By application GRI 6 and GRI 3(b), the subject merchandise is specifically provided for in subheading 4202.92.1000, HTSUS,

which provides for, in pertinent part: "...traveling bags, insulated food or beverage bags... of textile materials...: Other: With outer surface of sheeting of plastic or textile materials: Insulated food or beverage bags: Other". The column one, general rate of duty is 3.4 percent *ad valorem*.

Duty rates are provided for your convenience and 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 N022627, February 27, 2008, is hereby REVOKED.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division



GENERAL NOTICE

19 CFR PART 177

Proposed Revocation of Ruling Letter and Proposed Revocation of Treatment Relating to Classification of a Cooktop Scraper from China

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the classification of a cooktop scraper 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 CPB proposes to revoke a ruling concerning the classification of a cooktop scraper under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB intends to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulation and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor Washington, D.C. 20229-1179. Comments submitted may be inspected at 799

9th St. N.W. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325-0036.

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 (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 proposes to revoke a ruling pertaining to the classification of a cooktop scraper. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) N018967, dated November 1, 2007 (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 data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest

review decision) on the merchandise subject to this notice, should advise 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 proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. 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 his agents for importations of merchandise subsequent to this notice.

In NY N018967, CBP ruled that a cooktop scraper is classified in subheading 8205.59.55.10, HTSUS, which provides for: "handtools (including glass cutters) not elsewhere specified or included: other handtools (including glass cutters) and parts thereof: other: other: of iron or steel: other: edged handtools: other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N018967, 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 H020853. (see Attachment "B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes 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: May 25, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

N018967

November 1, 2007

CLA-2-82:OT:RR:NC:N1:118

CATEGORY: Classification

TARIFF NO.: 8205.59.5510

MR. JOSEPH DELAHANTY
PANALPINA INC.
1776 ON-THE-GREEN
67 PARK PLACE
MORRISTOWN, NJ 07960

RE: The tariff classification of a razor blade scraper from China.

DEAR MR. DELAHANTY:

In your letter dated October 23, 2007, on behalf of your client, Delta Carbona, L.P., you requested a tariff classification ruling. The sample which you submitted is being returned as you requested.

The item is described as a Carbona Cooktop Scraper. It is used to clean glass ceramic cooktops by scraping. The scraper handle is plastic and holds a single retractable steel razor blade that operates with a sliding thumb control. The scraper also includes three replacement blades which are stored within the tool handle.

The applicable subheading for the razor scraper will be 8205.59.5510, Harmonized Tariff Schedule of the United States (HTSUS), which provides for handtools (including glass cutters) not elsewhere specified or included; blow torches and similar self-contained torches; vises, clamps and the like, other than accessories for and parts of machine tools; anvils; portable forges; hand- or pedal-operated grinding wheels with frameworks; base metal parts thereof: other handtools (including glass cutters) and parts thereof: other: other: other: of iron or steel: other: edged handtools: other. The rate of duty will be 5.3% *ad valorem*.

Consideration was given to the suggested classification of subheading 8212.10.00, HTSUS, which provides for razors. In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive nor legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). Examples of tools noted within the ENs that are classified within heading 8205 are scrapers and stripping knives. The cooktop razor scraper is a hand tool found within heading 8205. The razors and razor blades noted within heading 8212 are intended for hair removal.

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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kathy Campanelli at 646-733-3021.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H020853
CLA-2- OT:RR:CTF:TCM H020853 TNA
CATEGORY: Classification
TARIFF NO.: 8205.51.30

JOSEPH DELAHANTY, LICENSED CUSTOMS BROKER
PANALPINA, INC.
1776 ON-THE-GREEN
67 PARK PLACE
MORRISTOWN, NJ 07960

RE: Revocation of NY N018967; Tariff Classification of a Ceramic Cooktop Scraper from China

DEAR MR. DELAHANTY:

This is in response to your request, made on behalf of your client, Delta Carbona, L.P., dated December 10, 2007, for reconsideration of New York Ruling Letter (“NY”) N018967, dated November 1, 2007, which pertains to the classification of a Ceramic Cooktop Scraper under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed that ruling and have found it to be in error. Therefore, this ruling revokes NY N018967.

FACTS:

The merchandise at issue is a Ceramic Cooktop Scraper (“scraper”), consisting of a plastic handle with a steel razor blade on one end. The razor blade is retractable and operated by a sliding thumb tool. You state that the tool’s “functional purpose” is to remove burnt-on crust from glass ceramic cooktops, and it is being marketed, packaged and sold as such.

The scraper comes packaged as one scraper with three replacement blades. Its packing bears such descriptors as “glass ceramic cooktop scraper,” and “use to remove burnt on crust.” Directions on the package indicate that the merchandise is for “use only on cold surfaces. After removing burnt crust or food particles, clean cooktop with Carbona Glass Ceramic Cooktop Cleaner.” In addition, the product’s listing on Delta Carbona’s website and other similar sites also indicates that the merchandise is intended to complement other types of ceramic cleaners. According to this marketing material, the subject merchandise can be used “without scratching your class ceramic cooktop.” A sample was received and examined by this office.

In NY N018967, the subject merchandise was classified in subheading 8205.59.5510, HTSUS, which provides for handtools (including glass cutters) not elsewhere specified or included: other handtools (including glass cutters) and parts thereof: other: other: other: of iron or steel: other: edged handtools: other.

ISSUE:

Whether the Ceramic Cooktop Scraper is classified under subheading 8205.51, HTSUS, as a household tool, or under subheading 8205.59, HTSUS, as an “other” type of tool?

LAW AND ANALYSIS:

Merchandise is classifiable under the 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 2 through 6 may then be applied 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 sub-heading notes and *mutatis mutandis*, to the GRIs 1 through 5.

The HTSUS provisions under consideration are as follows:

8205	Handtools (including glass cutters) not elsewhere specified or included; blow torches and similar self-contained torches; vises, clamps and the like, other than accessories for and parts of machine tools; anvils; portable forges; hand- or pedal-operated grinding wheels with frameworks; base metal parts thereof
	Other handtools (including glass cutters) and parts thereof:
8205.51	Household tools, and parts thereof:
	Of iron or steel:
8205.51.30	Other (including parts)
8205.59	Other:
	Other:
	Of iron or steel:
8205.59.55	Other:
	Edged handtools

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the HTSUS at the international level, 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 EN to heading 8205, HTSUS, states, in pertinent part, the following:

This heading covers all hand tools **not included** in other headings of this Chapter or elsewhere in the Nomenclature (see the General Explanatory Notes to this Chapter), together with certain other tools or appliances specifically mentioned in the title.

It includes a large number of hand tools (including some with simple hand-operated mechanisms such as cranks, ratchets or gearing). This group of tools includes:...

(E) Other hand tools (including glaziers' diamonds).

This group includes:

(1) A number of household articles, including some with cutting blades but **not including** mechanical types (see the Explanatory Note to **heading 82.10**), having the character of tools and accordingly not proper to heading 73.23, such as :

Flat irons (gas, paraffin (kerosene), charcoal, etc., types, but **not** electric irons which fall in **heading 85.16**), curling irons; bottle openers, cork screws, simple can openers (including keys); nut-crackers; cherry stoners

(spring type); button hooks; shoe horns; “steels” and other knife sharpeners of metal; pastry cutters and jagers; graters for cheese, etc.; “lightning” mincers (with cutting wheels); cheese slicers, vegetable slicers; waffling irons; cream or egg whisks, egg slicers; butter curlers; ice picks; vegetable mashers; larding needles; pokers, tongs, rakers and cover lifts for stoves or fire places...

(7) Miscellaneous hand tools such as farriers’ paring knives, toeing knives, hoof pickers and hoof cutters, cold chisels and punches; riveters’ drifts, snaps and punches; non-plier type nail lifters, case openers and pin punches; tyre levers; cobblers’ awls (without eyes); upholsterers’ or bookbinders’ punches; soldering irons and branding irons; metal scrapers; non-plier type saw sets; mitre boxes; cheese samplers and the like; earth rammers; grinding wheel dressers; strapping appliances for crates, etc., **other than** those of heading 84.22 (see the relevant Explanatory Note); spring operated “pistols” for stapling packages, paperboard, etc.; cartridge operated riveting, wall-plugging, etc., tools; glass blowers’ pipes; mouth blow pipes; oil cans and oilers (including those with pump or screw mechanisms), grease guns.

In your request for reconsideration, you argue that the scraper should be classified in subheading 8205.51, HTSUS, based on its use as a household tool, primarily in the kitchen to clean a certain type of surface within the kitchen. In Headquarters Ruling Letter (HQ) 959568, dated July 11, 1997, CBP classified a six-piece kitchen set in subheading 8205.51, HTSUS. In so doing, we stated the following:

The U.S. Court of International Trade (CIT) has noted Webster’s New World Dictionary of American English 654 (3d College ed. 1988)’s definition of the term “household” as “of a household or home; domestic.” The Court determined that when “household” is used with the term “articles” a use provision is created. *Hartz Mountain Corp. v. United States*, 903 F.Supp. 57, 59, CIT Slip Op. 95–154 (Sept. 1, 1995). The Court found the phrase “household articles” to be a use provision within the context of subheading 3924.90.50, HTSUS. Similarly, we believe that, within the context of subheading 8205.51, HTSUS, when “household” is used with the term “tools” a use provision is created.

Additional U.S. Rule of Interpretation 1(a) states that “a tariff classification controlled by use is determined in accordance with the principal use of the class or kind of goods to which the imported goods belong.” Courts have also provided several factors to apply when determining whether merchandise falls within a particular class or kind of good. They include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g. the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. See *United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976).

In the present case, there is nothing in the subject merchandise’s general physical characteristics that would indicate that its principal use is for countertops made of glass ceramic. However, Delta Carbona’s marketing materials, including the product’s packaging and the company’s website,

market the scraper for use as a cleaning tool in the kitchen. Furthermore, online product reviews indicate that consumers primarily use this tool as it is marketed- to clean their kitchens. *See, e.g.,* <http://www.thriftyfun.com/tf28361339.tip.html>. As a result, we find that the scraper's principal use is as a household tool. As a result, it is classified in subheading 8205.51.30, HTSUS, which provides for "household tools and parts thereof: of iron or steel."

HOLDING:

Under the authority of GRI 1, the razor blade scraper is provided for in heading 8205, HTSUS, and specifically in subheading 8205.51.30, which provides for "Handtools (including glass cutters) not elsewhere specified or included; blow torches and similar self-contained torches; Other handtools (including glass cutters) and parts thereof: Household tools, and parts thereof: Of iron or steel: Other (including parts)." As such, the duty rate is 3.7%.

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 internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY N018967, dated November 1, 2007, is REVOKED.

Sincerely,

MYLES B. HARMON

Director,

Commercial and Trade Facilitation Division



**PROPOSED REVOCATION OF RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF A CERTAIN
COMBINATION HAND CART AND FOLD-OUT
STEPLADDER**

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 combination hand cart and fold-out stepladder.

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) ("Title VI"), this notice advises interested parties that U.S. Customs and Border Protection ("CBP") proposes to revoke one ruling letter relating to the tariff classification of a combination hand cart and fold-out stepladder

under the Harmonized Tariff Schedule of the United States (“HTSUS”). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor, Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street N.W., Washington, D.C. 20229 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Saskia Fronabarger, Penalties Branch: (202) 325-0324

SUPPLEMENTARY INFORMATION:

Background

Title VI came into effect on December 8, 1993. 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 to 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) of the 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 tariff classification of a combination hand cart and fold-out ladder. Although this notice specifically refers to the revocation of New York Ruling Letter (NY) N021149 (January 9, 2008), set forth as Attachment A to this

document, this notice also 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) of the Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. 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 N021149, CBP determined that the subject combination hand cart and fold-out ladder was classified under subheading 8716.80.5010, HTSUS (2008), which provides for "Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof: Other vehicles: Other, Industrial hand trucks." It is now CBP's position that the subject merchandise is classified by operation of General Rules of Interpretation 3(c) and 6 under subheading 8716.80.5090, HTSUS, which provides for "Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof: Other vehicles: Other, Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP proposes to revoke NY N021149 and revoke or modify any other ruling not specifically identified herein, in order to reflect the proper classification of the subject combination hand cart and fold-out ladder according to the analysis contained in proposed Headquarters Ruling Letter H037541, 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, consideration will be given to any written comments timely received.

Dated: May 25, 2010

GAIL A. HAMILL
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N021149

January 9, 2008

CLA-2-87:OT:RR:E:NC:N1:101

CATEGORY: Classification

TARIFF NO.: 8716.80.5010

KATHY TROTTA, ADMINISTRATIVE ASSISTANT
CONAIR CORPORATION
150 MILFORD ROAD
EAST WINDSOR, NJ 08520-6124

RE: The tariff classification of a multi-function item from China

DEAR Ms. TROTTA,

In your letter dated December 19, 2007, you requested a tariff classification ruling.

The item under consideration is the Flat Folding, Heavy-Duty Stepladder/Full-Utility Hand Truck (Model TSM-31LHT); it is a hand truck combined with a fold-out stepladder. No sample was provided with your Ruling Request, although a photograph and literature were included.

The Flat Folding, Heavy-Duty Stepladder/Full-Utility Hand Truck (Model TSM-31LHT) is constructed of aluminum and weighs approximately 14 lbs. The ladder configuration of the item has a 300-lb. weight capacity and the platform of the hand truck configuration has a 250-lb. weight capacity. The hand truck configuration rolls on 4-inch rubber wheels and the stepladder configuration is equipped with three polypropylene steps measuring 11 inches wide by 9 inches deep.



Classification of goods in the Harmonized Tariff Schedule of the United States (HTSUS) is governed by the General Rules of Interpretation (GRIs). GRI 3. states, “When ... goods are ... classifiable under two or more headings, classification shall be effected as follows: ... (c) ... they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

General Note 3. (h) (vi) to the HTSUS states, “ ... a reference to “headings” encompasses subheadings indented thereunder.” Subheading 7616.99.5030 of the HTSUS provides for “Other articles of aluminum: Other: Other: Other: Ladders”. Subheading 8716.80.5010 of the HTSUS provides for “ ... other vehicles, not mechanically propelled ... : Other vehicles: Other: Industrial hand trucks”

The applicable classification subheading for the Flat Folding, Heavy-Duty Stepladder/Full-Utility Hand Truck (Model TSM-31LHT) will be 8716.80.5010, HTSUS, which provides for “ ... other vehicles, not mechanically propelled ... : Other vehicles: Other: Industrial hand trucks”. The rate of duty will be 3.2%.

Duty rates are provided for your convenience and are subject to change. The text of the most recent Harmonized Tariff Schedule of the United States and the accompanying duty rates are provided on the World Wide Web at <http://www.usitc.gov/tata/hts/>.

The Flat Folding, Heavy-Duty Stepladder/Full-Utility Hand Truck (Model TSM-31LHT) may be subject to antidumping duties or countervailing duties. Written decisions regarding the scope of AD/CVD orders are issued by the Import Administration in the Department of Commerce and are separate from Tariff Classification Rulings issued by U.S. Customs and Border Protection; you can contact them at <http://www.trade.gov/ia/> (click on "Contact Us"). For further information, you can view a list of current AD/CVD cases at the United States International Trade Commission website at <http://www.usitc.gov> (click on "Antidumping and countervailing duty investigations"), and you can search AD/CVD deposit and liquidation messages using the AD/CVD Search tool at <http://www.cbp.gov> (click on "Import" and "AD/CVD").

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 Richard Laman at 646-733-3017.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H037541
OT: RR: CTF: TCM: H037541 SF
CATEGORY: Classification
TARIFF NO.: 8716.80.5090

JOHN DEMILT, ASSOCIATE COUNSEL
CONAIR CORPORATION
1 CUMMINGS POINT ROAD
STAMFORD, CT 06904

RE: Classification of Stepladder/Hand Truck Combination from China; NY N021149 Revoked

DEAR MR. DEMILT:

This is in response to your August 11, 2008 request for reconsideration of New York Ruling Letter (“NY”) N021149, made on behalf of Conair Corporation (“Conair”). The National Commodity Specialist Division of U.S. Customs and Border Protection (“CBP”) issued NY N021149 to Conair on January 9, 2008.

The issues addressed by this ruling originated in a request for a ruling made by Conair on December 19, 2007 on the tariff classification of the Flat Folding, Heavy-Duty Stepladder/Full-Utility Hand Truck (Model TSM-31LHT)¹ (“LadderKart”) from China. In NY N021149, CBP classified the LadderKart under subheading 8716.80.5010 of the Harmonized Tariff Schedule of the United States (HTSUS) which provides for “Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof: Other vehicles: Other, Industrial hand trucks.”

You indicate that Conair believes that the correct tariff classification of the LadderKart is subheading 7616.99.5030, HTSUS which provides for “Other articles of aluminum: Other: Other: Other, Ladders” and request reconsideration of NY N021149.

FACTS:

The LadderKart is a hand cart combined with a fold-out stepladder made of aluminum and weighing approximately 14 pounds. The stepladder configuration has a 300 pound weight capacity and is equipped with three polypropylene steps measuring 11 inches wide by 9 inches deep. The hand cart configuration has a 250 pound weight capacity and rolls on wheels of 4 inches in diameter.

The LadderKart is marketed on the Conair website as a travel cart and its marketing materials indicate, among other things, that it is a “[g]reat value as a 2-for-1 item.”² Various online vendors note that the LadderKart could be particularly useful for homeowners, contractors and photographers. Specifically, online vendors describe the LadderKart as a “Contractor Grade Stepladder & Folding Luggage Cart/Hand Truck Combination,”³ indicate that the LadderKart is “Fabulous For The Homeowner As Well As The Contractor,”⁴

¹ Conair has indicated that Model TSM-31LHT is the same product as Model TS-31LHT.

² Conair, <http://www.conair.com/travel-smart-ladderkart-professional-grade-stepladder-hand-cart-p-540.html>

³ Amazon, <http://www.amazon.com/Ladderkart-Step-Ladder-Hand-Truck/dp/B000GD3K5I>

⁴*Id.*

and market the LadderKart as a “dual purpose solution for ... [photographers] various hauling and shooting needs.”⁵

ISSUE:

What is the classification of the LadderKart under the HTSUS?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (“GRIs”). GRI 1 provides, in part, that classification decisions are to be “determined according to the terms of the headings and any relative section or chapter notes.” If 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 Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level (for the four digit headings and the six digit subheadings) and facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs. While neither legally binding nor dispositive of classification issues, the ENs provide commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. See T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

In classifying the merchandise, we bear in mind that a product’s classification is determined by first looking to the headings and section or chapter notes. See *Orlando Food Corp. v. United States*, 140 F.3d 1437 (Fed. Cir. 1998). Only after determining that a product is classifiable under the heading should one look to the subheadings to find the correct classification for the merchandise.

Id. We also keep in mind that absent contrary definitions in the HTSUS or legislative history, we construe HTSUS terms according to their common and commercial meanings. See *Medline Indus. Inc. v. United States*, 62 F.3d 1407 (Fed. Cir. 1995); See also *Len-Ron Mfg. Co., Inc. v. United States*, 334 F.3d 1304, 1309 (Fed. Cir. 2003).

In NY N021149, CBP classified the merchandise at issue under subheading 8716.80.5010, HTSUS. Conair asserts that the merchandise is classified under subheading 7616.99.5030, HTSUS. Before turning to classification of the LadderKart at the subheading levels, it is necessary to resolve classification of the product at the heading level. Heading 8716, HTSUS, provides for: “Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof” while heading 7616, HTSUS provides for: “Other articles of aluminum.”

The ENs to heading 8716 state, in pertinent part:

This heading covers a group of **non-mechanically** propelled vehicles (**other than** those of the preceding headings) equipped with one or more wheels and constructed for the transport of goods or persons.

* * * * *

⁵ B&H Photo, Video, Pro Audio, http://www.bhphotovideo.com/c/product/620515-REG/Travel_Smart_by_Conair_TS31LHT_Travel_Smart_LadderKart_Combination.html

The vehicles of this heading are designed to be towed by other vehicles (tractors, lorries, trucks, motorcycles, bicycles, etc.), to be pushed or pulled by hand, to be pushed by foot or to be drawn by animals.

This heading includes:

* * * * *

(B) **Hand- or foot-propelled vehicles.**

* * * * *

(2) Wheelbarrows, luggage-trucks, hopper-trucks and tipping-trucks.

* * * * *

(4) Hand-carts, e.g., for waste disposal.

Meanwhile, the ENs to heading 7616 state, in pertinent part:

This heading covers all articles of aluminum **other than** those covered by the preceding heading of this Chapter, or by Note 1 to Section XV, or articles specified or included in **Chapter 82 or 83**, or more specifically covered elsewhere in the Nomenclature.

The LadderKart is in part a hand cart and in part a stepladder made of aluminum. Because headings 8716 and 7616, HTSUS both describe the LadderKart in part, those parts of the product are *prima facie* classifiable under headings 8716 and 7616, HTSUS. However, the LadderKart as a whole is not *prima facie* classifiable under either heading. As a result, the LadderKart cannot be classified pursuant to GRI 1 and it is necessary to consider the succeeding GRIs in numerical order.

GRI 2(a) provides guidance for the classification of incomplete or unfinished products. Because the LadderKart is a finished article, GRI 2(a) is inapplicable. GRI 2(b) provides, in pertinent part, that the classification of goods consisting of more than one material or substance shall be according to the principles of GRI 3. The LadderKart consists of more than one substance inasmuch as it is comprised of a hand cart and a stepladder both made primarily of aluminum. Consequently, we turn to GRI 3.

GRI 3 provides that when, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows: (a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods; (b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable; and (c) when goods cannot be classified by reference to 3(a) or 3(b), they

shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

You contend that pursuant to GRI 3(a), the LadderKart should be classified under heading 7616, HTSUS, because the LadderKart is primarily a stepladder whose hand cart feature is secondary to its principle use. In support of this assertion, you state that (1) the hand cart function is ill-suited to serve as an industrial hand cart because its tubular frame cannot slide under heavy objects and cannot carry a load of greater than 250 pounds; (2) Conair does not market the LadderKart for industrial uses; (3) the LadderKart is frequently stocked with other ladders; and (4) internet retailers emphasize the stepladder functions.

Your first and second points imply that while the LadderKart is a hand cart, it should not be classified under heading 8716, HTSUS because it is not “industrial.” We emphasize that whether the LadderKart is “industrial” has no bearing on its classification at the heading level and only affects its classification at the statistical (10-digit) level.

GRI 3(a) is inapplicable here because that GRI only “comes into play when a good, as a whole, is *prima facie* classifiable under two or more headings.” *Conair Corp. v. United States*, 29 Ct. Int’l Trade 888, 894 (2005) (citing *Bauer Nike Hockey USA, Inc. v. United States*, 393 F.3d 1246, 1252 (Fed. Cir. 2004)). Here, headings 7616 and 8716, HTSUS each only describe the product in part.

In applying GRI 3(b), we must determine which component is indispensable to the merchandise in order to determine the essential character of this composite good. *See Oak Laminates Div. of Oak Materials Group v. United States*, 8 Ct. Int’l Trade 175, 628 F. Supp. 1577, 1581 (1984). Essential character can be determined based upon a variety of factors including the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

Here, we find that no material or component imparts essential character to the LadderKart. You contend that the LadderKart’s principle function is as a stepladder because the LadderKart is frequently stocked in stores with other ladders and because internet retailers emphasize the stepladder functions. However, Conair itself includes the LadderKart in the “travel carts” section of its website which indicates that the hand cart aspect of the merchandise is just as important as that of the stepladder.

Similarly, both Conair and online vendors emphasize the dual use of the LadderKart as a stepladder and hand cart. The complete name of the LadderKart consistently includes the phrase “Stepladder/Hand Cart” calling attention to the product’s dual uses. In addition, Conair and online vendors provide detailed specifications for both the stepladder and hand cart uses including the weight capacity of each without suggesting that either element of the product is more useful than the other. The fact that some stores may stock the LadderKart in the ladder department does not indicate that its principle function is that of a stepladder; stocking decisions may be made on criteria other than an item’s principle function and the LadderKart’s marketing consistently highlights its dual use.

Consequently, neither the stepladder nor the hand cart function constitutes the essential character of the overall product and the LadderKart cannot be classified pursuant to GRI 3(b).

As a result, we progress to GRI 3(c), by which the LadderKart is classified under heading 8716, HTSUS, as it occurs last in numerical order when compared to heading 7616, HTSUS.

To resolve classification of the merchandise at the subheading level, we turn to GRI 6, which provides in pertinent part:

[f]or legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules [GRI 1 to 5], on the understanding that only subheadings at the same level are comparable.

Pursuant to GRI 6, the classification principles enunciated in GRIs 1 through 5 apply to the subheadings of heading 8716, HTSUS. By application of GRI 1, the first subheading within heading 8716, HTSUS to accurately describe the hand cart portion⁶ of the LadderKart is subheading 8716.80.50 providing for “Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof: Other vehicles: Other.” Consequently, at the ten-digit classification level, we must determine whether the hand cart portion of the LadderKart is classified under subheading 8716.80.5010, HTSUS providing for industrial hand trucks, subheading 8716.80.5020, HTSUS providing for portable luggage carts, or 8716.80.5090, HTSUS providing for all other merchandise.

Beginning with subheading 8716.80.5010, HTSUS, you contend that the LadderKart is not suited for industrial use because its tubular frame cannot slide under heavy objects and cannot carry a load of great than 250 pounds. The term “industrial” is not defined in the HTSUS or in the ENs and therefore must be construed in accordance with its common and commercial meaning. *Nippon Kogaku (USA) Inc. v. United States*, 69 CCPA 89, 92, 673 F.2d 380, 382 (1982). Conair’s website indicates that the stepladder’s 300 pound weight capacity is rated “industrial heavy”⁷ but the hand cart, with a 250 pound weight capacity, is not rated for industrial use. Because the hand cart portion of the LadderKart is not rated for industrial use, in accordance with the commercial meaning of the term “industrial,” we find that the LadderKart is not an “industrial hand truck” and, therefore, does not meet the terms of subheading 8716.80.5010, HTSUS.

Subheading 8716.80.5020, HTSUS provides for portable luggage carts. Although Conair markets the LadderKart as a “travel cart,” it is also marketed for use by homeowners, contractors, and photographers. Con-

⁶ At the subheading level of classification we are solely concerned with determining the classification of the hand cart portion of the LadderKart because the merchandise as a whole is classified under heading 8716, HTSUS pursuant to GRI 3(c).

⁷ Conair, <http://www.conair.com/travel-smart-ladderkart-professional-grade-stepladder-hand-cart-p-540.html>

sequently, the entire hand cart portion of the LadderKart cannot be classified as a portable luggage cart. Having exhausted all other subheadings, we now turn to subheading 8716.80.5090, HTSUS which provides for other items and under which the LadderKart is classified.⁸

HOLDING:

By application of GRI 3(c), the LadderKart is classified under heading 8716, HTSUS and by application of GRI 1 applied *mutatis mutandis* through GRI 6, it is specifically classified under subheading 8716.80.5090, HTSUS, which provides for: “Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof: Other vehicles: Other, Other: Other.” The column one, general rate of duty is 3.2 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 N021149, dated January 9, 2008, is hereby REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



GENERAL NOTICE

19 CFR PART 177

Proposed Revocation of Ruling Letter and Proposed Revocation of Treatment Relating to Classification of Steel Winches from China

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the classification of steel winches 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 CPB proposes to revoke a ruling concerning the classification of steel winches under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB proposes to revoke any

⁸ We note that NY K86887 (June 22, 2004) classified a very similar item under the same subheading.

treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulation and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor Washington, D.C. 20229–1179. Comments submitted may be inspected at 799 9th St. N.W. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

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 (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 proposes to revoke a ruling pertaining to the classification of steel winches from China. Although in this notice CBP is

specifically referring to Headquarters Ruling Letter (HQ) 950334, dated January 24, 1992 (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 data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise 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 proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. 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 his agents for importations of merchandise subsequent to this notice.

In HQ 950334, CBP ruled that steel winches are classified in heading 8479, HTSUS, which provides for: "[o]ther machines and mechanical appliances having individual functions not specified or included elsewhere in [chapter 84]." The referenced ruling is incorrect because the steel winches at issue are classified *eo nomine* in heading 8425, HTSUS, which provides for: "Pulley tackle and hoists other than skip hoists."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke HQ 950334, 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 H031587. (*see* Attachment "B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes 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: May 25, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

HQ 950334

JANUARY 24, 1992

CLA-2:CO:R:C:M 950334 JAS

CATEGORY: Classification

TARIFF NO.: 8479.89.90, HTSUS

ANDREW P. VANCE, Esq.
BARNES, RICHARDSON & COLBURN
475 PARK AVENUE SOUTH
NEW YORK, NEW YORK 10016

RE: Flatbed Trailer Winch; Load Binder; Cargo Tie-Down Mechanism; Headings 8425, 8479

DEAR MR. VANCE:

In your letter of August 19, 1991, on behalf of Omni USA Inc., Del Mar, California, you inquire as to the tariff classification of certain load securing devices from China. A sample was submitted. Our ruling follows.

FACTS:

Submitted literature depicts web winches, combination winches and cable winches, as well as trailer winches and truck winches. You indicate the article in question is a trailer winch. The device is mounted on the underside of a truck trailer and used to tie down or secure loads. The sample is of medium carbon steel plate construction and consists of a drum or cylinder rotating horizontally in a housing that bolts to the trailer. One end of a chain or nylon strap is fixed to the drum and the other end to the side of the trailer over the load. The drum is rotated manually by a winch bar or similar hand tool until the proper tension is reached. A ratchet and pawl maintain tension and prevent the load from slipping. The strap and tool are not a part of this importation.

Citing several dictionary definitions of the term winch, you maintain the articles in issue are hand-operated drum hauling devices that function as a type of active cargo control system. You state the provision in subheading 8425.39.00, Harmonized Tariff Schedule of the United States (HTSUS) represents the proper classification. The rate of duty is 2 percent ad valorem.

ISSUE:

Whether the articles in issue are winches of heading 8425; whether they are machines for tariff purposes.

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). GRI 1 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, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description And Coding System Explanatory Notes (ENs) constitute the Customs Cooperation Council's official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on

the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the notes should always be consulted. See T.D. 89–80.

The definitions you adduce as reflecting the common meaning of the term winch suggest a pulling or tightening function. While winches of heading 8425 consist of hand-operated or power driven horizontal ratchet drums around which a cable is wound, relevant Encls at p. 1191 indicate that the winches of that heading are simple lifting or handling equipment and that the group includes marine winches and capstans for operating cargo lifting gear, raising anchor, and hauling in tow lines, fishing nets, etc.

Heading 8425 designates a class of articles *eo nomine*, by name. In the absence of a contrary legislative intent, judicial decision, or administrative practice, an *eo nomine* designation will include all forms of the named article. However, in determining whether an article is within an *eo nomine* designation, its use may be considered in order to establish its identity. *United States v. Quon Quon Company*, 46 CCPA 70, C.A.D. 699 (1959). The articles in issue here are cargo securing devices or tiedowns that perform a mere tightening or restraining function. They do not lift, haul or tow, nor are they material handling devices of any type. They act on nothing outside themselves. We conclude, therefore, that the devices in issue are not winches encompassed by heading 8425. Tariff terms do not necessarily include everything within their literal meaning. *United States v. Andrew Fisher Cycle Co., Inc.*, 57 CCPA 102, 107, C.A.D. 986 (1970), and related cases.

Heading 8479 encompasses machinery having individual functions which is not more specifically provided for elsewhere in the HTSUS. The devices here have sufficient mechanical capability to qualify as machinery. Moreover, although they must be mounted on a flatbed trailer, their function is separate and distinct from that of the trailer. They therefore have an individual function as required for classification in heading 8479. In a ruling dated June 10, 1991 (089411), ratchet tie down instruments consisting of nylon straps and gear and pawl mechanisms, and used to secure various articles, were held to be classifiable in heading 8479.

HOLDING:

The Omni trailer winches are machines provided for in heading 8479. They are classifiable in subheading 8479.89.90, HTSUS, other machines and mechanical appliances having individual functions not specified or included elsewhere in [chapter 84]. The rate of duty is 3.7 percent *ad valorem*.

Sincerely,

JOHN DURANT,

Director

Commercial Rulings Division

[ATTACHMENT B]

HQ H031587
OT:RR:CTF:TCM H031587 TNA
CATEGORY: Classification
TARIFF NO.: 8425.39.01

ANDREW P. VANCE, ESQ.
BARNES, RICHARDSON & COLBURN
475 PARK AVENUE SOUTH, 25TH FLOOR
NEW YORK, NY 10016

RE: Revocation of HQ 950334; Classification of steel winches from China

DEAR MR. VANCE:

This letter is in reference to Headquarters Ruling Letter (“HQ”) 950334, issued to you on behalf of your client, Omni USA, Inc., Del Mar California (“Omni”) on January 24, 1992, concerning the tariff classification of flatbed trailer winches. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under subheading 8479.89.90, Harmonized Tariff Schedule of the United States (“HTSUS”), as parts of machines and mechanical appliances having individual functions, not specified or included elsewhere in Chapter 84. We have reviewed HQ 950334 and found it to be in error. For the reasons set forth below, we hereby revoke HQ 950334.

FACTS:

The merchandise at issue is described as a winch, constructed from medium carbon steel plate with precision cast steel pawls and gears. This winch in particular is specifically designed to be mounted under the rim of a flatbed truck trailer for safe securing of cargo. Several of these devices are used together to manually pull tight nylon webbing straps or cable that secure the trailer load. They are manufactured to accommodate webbing straps up to four inches in width and may be used with webbing straps, cable, or a combination of the two. The winches themselves consist of hand-operated horizontal ratchet drums around which webbing and/or cable is wound.

ISSUE:

Whether the winches are classified as winches under heading 8425, HTSUS, or under heading 8479, HTSUS, as other machines and appliances not specified elsewhere in Chapter 84?

LAW AND ANALYSIS:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and

are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

8479 Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof:

 Other machines and mechanical appliances:

8479.89 Other:

 Electromechanical appliances with self-contained electric motor:

8479.89.90 Other

* * * * * * * * * * *

8425 Pulley tackle and hoists other than skip hoists; winches and capstans; jacks:

 Pulley tackle and hoists other than skip hoists or hoists of a kind used for raising vehicles:

 Winches; capstans:

8425.39.01 Other

The EN to Heading 8425, HTSUS, reads, in pertinent part:

 This heading covers simple lifting or handling equipment.

* * * * * * * * *

 This heading covers:...

 Winches consist of hand-operated or power-driven horizontal ratchet drums around which the cable is wound. Capstans are similar, but the drum is vertical.

 This group includes:

- (1) Marine winches and capstans for operating cargo lifting gear, raising anchor, manoeuvring the steering gear, hauling in tow lines, fishing nets, dredging cables, etc. The power unit is often built into those machines as an integral whole.
- (2) Winches for tractors, etc....

In HQ 950334, CBP found that heading 8425, HTSUS, listed winches, *eo nomine*, in its heading, but determined that as evidenced by heading 8425, HTSUS, and the ENs, winches of that heading must lift, haul, or tow. In particular, CBP stated, “the articles in issue here are cargo securing devices that perform a mere tightening or restraining function. They do not lift, haul or tow, nor are they material handling devices of any type. They act on nothing outside themselves.” As a result, CBP classified the merchandise under heading 8479, HTSUS, a basket provision encompassing machines, and parts thereof, that are not specified elsewhere in Chapter 84.

An *eo nomine* provision is one that describes a commodity by a specific name, usually one well known to commerce. *The Pomeroy Collection v. United States*, 559 F. Supp. 2d 1374; 30 Int’l Trade Rep. (BNA) 1712; 2008 Ct. Intl. Trade LEXIS 60; SLIP OP. 2008–57; *Clarendon Marketing, Inc. v. United States*, 21 C.I.T. 59; 955 F. Supp. 1501; 19 Int’l Trade Rep. (BNA) 1142; 1997

Ct. Intl. Trade LEXIS 22. In addition, “an *eo nomine* designation, with no terms of limitation, will ordinarily include all forms of the named article.” *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375 (Fed. Cir. 1999); *Pomeroy*, 559 F. Supp. 2d 1374; *Clarendon Marketing*, 21 C.I.T. 59. Because the term “winches” is not defined in the tariff schedule, CBP turns to other sources to determine its meaning. See *Lonza, Inc. v. United States*, 46 F.3d 1098, 1106–07 (Fed. Cir. 1995).

The Oxford English Dictionary defines “winch” as “a hoisting or hauling apparatus consisting essentially of a horizontal drum round which a rope passes and a crank by which it is turned.” *Webster’s College Dictionary* defines a “winch” as “1. a crank with a handle for transmitting motion, as to a grindstone. 2. a machine for hoisting, lowering, or hauling, consisting of a drum or cylinder turned by a crank or motor; a rope or cable tied to the load is wound on the drum or cylinder.” The Web Sling & Tie Down Association, a trade group, defines a winch as “a tensioning device, which is mounted directly to a vehicle for tensioning synthetic web tie downs to secure cargo.” See http://www.wstda.com/products/wstda_winches_t-3.pdf.

The subject merchandise meets these definitions. Specifically, the winches consist of a horizontal drum around which a cable or webbing can be attached, and a crank by which it can be turned.

Furthermore, CBP does not agree that the ENs limit the scope of winches insofar as no limiting language is used. It is illustrative but not exhaustive. *Airflow Technology v. United States*, 524 F.3d 1287; 2008 U.S. App. LEXIS 9165; 30 Int’l Trade Rep. (BNA) 1065; *Archer Daniels Midland Co. v. United States*, 561 F.3d 1308; 2009 U.S. App. LEXIS 6390; 30 Int’l Trade Rep. (BNA) 2345; *ENI Techn. V. United States*, 641 F. Supp. 2d 1337; 2009 Ct. Intl. Trade LEXIS 101; SLIP OP. 2009–93. See also EN 84.25 (II).

Lastly, CBP notes that heading 8479, HTSUS, is a catchall provision, encompassing merchandise “not specified elsewhere” in Chapter 84, HTSUS. Because winches are classifiable *eo nomine* in heading 8425, HTSUS, classification in heading 8479, HTSUS, would be inappropriate. As a result, the winch is classified under heading 8425, HTSUS, as “winches.”

HOLDING:

Under the authority of GRI 1, Omni’s winches are provided for in heading 8425, HTSUS. More specifically, they are classified under subheading 8425.39.01, HTSUS, as “Pulley tackle and hoists other than skip hoists; winches and capstans; jacks: Pulley tackle and hoists other than skip hoists or hoists of a kind used for raising vehicles: Winches; capstans: other.” The applicable duty rate 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 internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

HQ 950334, dated January 24, 1992, is REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

CLA-2 OT:RR:CTF:TCM

HQ H075935 ASM



**PROPOSED MODIFICATION OF A RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF TOY PET CARRIERS**

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

ACTION: Proposed modification of a classification ruling letter and revocation of treatment relating to the classification of toy pet carriers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is proposing to modify a ruling letter relating to the classification of articles identified as toy “Pet Carriers”. CBP is also proposing to modify or revoke any treatment previously accorded by it to substantially identical merchandise.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Commercial Trade and Regulations Branch, 799 9th Street, N.W., 5th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118 during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Tariff Classification and Marking Branch; (202) 325–0031.

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 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. Section 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable 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 is proposing to modify a ruling letter pertaining to the classification of toy pet carriers. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) L85170, dated May 31, 2005, which replaced NY L84237, dated May 19, 2005 (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., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to modify any treatment previously accorded by CBP to substantially identical transactions. 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 decision on this notice.

In NY L85170, CBP classified the merchandise under subheading 4202.92.90, HTSUS, as a container. We have reviewed NY L85170

and found it to be in error. In order to classify articles that are both amusing and functional, such as the toy “Pet Carrier” now at issue, we look to the case of *Ideal Toy Corp. v United States*, 78 Cust. Ct. 28 (1977), in which the court stated that “when amusement and utility become locked in controversy, the question becomes one of determining whether amusement is incidental to the utilitarian purpose, or whether the utility purpose is incidental to the amusement”. In this instance, we find that the subject carriers are used primarily for amusement because they are intended for interactive play with a stuffed toy animal. Any utilitarian purpose would merely be incidental to any use as a functional container. Similarly, CBP has classified textile doll carriers designed for girls to carry their dolls and accessories as “toys” of heading 9503, HTSUS. See NY H81709, dated June 18, 2001; PD G83798, dated November 22, 2000; NY 851767, dated April 24, 1990. As such, CBP has determined that the merchandise is classified as “toys” in subheading 9503.00.00, HTSUS, which provides for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to modify NY L85170. Furthermore, CBP is proposing to revoke or modify any other ruling not specifically identified, to reflect the classification of the toy pet carriers according to the analysis contained in the proposed ruling letter identified under Headquarters Ruling Letter (HQ) H075935, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing 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: May 25, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY L85170
May 31, 2005
CLA-2-95:RR:NC:SP:225 L85170
CATEGORY: Classification
TARIFF NO.: 9503.41.0000; 4202.92.9026

Ms. CHARLOTTE CHEN
SKM ENTERPRISES, INC.
15210 E. NELSON AVENUE
CITY OF INDUSTRY, CA 91744

RE: The tariff classification of a stuffed dog and a "Pet Carrier" from China.

DEAR Ms. CHEN:

This letter replaces ruling number NY L84237 in order to correct a clerical error in item number 05GND110/A. A corrected ruling appears below.

In your letter dated April 14, 2005, you requested a tariff classification ruling.

You submitted a sample of a stuffed dog identified as item 05GND110/B and a "Pet Carrier" identified as item 05GND110/A. The red and pink stuffed dog is made of 100% polyester outer material with pellet stuffing inside, and measures approximately 8" in height x 5" in width x 10-1/2" in length. The red and white "Pet Carrier" is a double handle zippered carry bag wholly of man-made fiber textile materials. The bag is designed with an opening to permit the "pet's" head to protrude from one side, and measures approximately 4-1/2" in width x 10-1/2" in length x 7" in depth.

The applicable subheading for the stuffed dog identified as item 05GND110/B will be 9503.41.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Toys representing animals or non-human creatures (for example, robots and monsters) and parts and accessories thereof: Stuffed toys and parts and accessories thereof." The rate of duty will be Free.

The applicable subheading for the "Pet Carrier" identified as item 05GND110/A will be 4202.92.9026, HTS, which provides for in part, for other bags and containers, with outer surface of textile materials, other, other, of man-made fibers. The rate of duty will be 17.6 percent ad valorem. The "Pet Carrier" falls within textile category designation 670.

Quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information as to whether quota and visa requirements apply to this merchandise, we suggest that you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" available at our web site at www.cbp.gov. In addition, you will find current information on textile import quotas, textile safeguard actions and related issues at the web site of the Office of Textiles and Apparel, at otexa.ita.doc.gov.

We are returning your request for a classification ruling for item GND121, Easter Insect Basket, item GND149, Easter Flower Basket, and item GF2783, Easter Bunny Basket, also imported from China. We are also returning any related samples, exhibits, etc., because we are precluded from issuing a ruling letter by the provisions of Section 177.7(b) of the Customs Regulations (19 C.F.R. 177.7(b)). As stated in Section 177.7(b), "No ruling letter will be issued with respect to any issue which is pending before the

United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom.”

In *Park B. Smith Ltd. v. United States*, Court No. 96-02-00344, the United States Court of International Trade issued a decision on the scope of the term “festive articles.” The decision was appealed (Court of Appeals No. 01-1578). The case is on remand now to the CIT.

Since the classification of item GND121, Easter Insect Basket, item GND149, Easter Flower Basket, and item GF2783, Easter Bunny Basket, which are the subjects of this request for a ruling, may be affected by the case before the Court in *Park B. Smith*, supra, we are precluded from issuing a ruling on the item(s).

When all litigation has been concluded on the case referenced above, you may resubmit your request for a ruling. If you decide to resubmit your request, please include all materials that we have returned to you and mail your request to Director, National Commodity Specialist Division, Bureau of Customs and Border Protection, Attn: CIE/Ruling Request, One Penn Plaza, 10th Floor, New York, NY 10119.

If you have any questions regarding the above, contact National Import Specialist Alice Wong at 646-733-3026.

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

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H075935
CLA-2 OT:RR:CTF:TCM H075935 ASM
CATEGORY: Classification
TARIFF NO.: 9503.00.00

Ms. CHARLOTTE CHEN
SKM ENTERPRISES, INC.
15210 E. NELSON AVENUE
CITY OF INDUSTRY, CA 91744

RE: Modification of NY L85170; Classification of Toy Pet Carriers

DEAR Ms. CHEN:

This is in reference to New York Ruling Letter (NY) L85170, dated May 31, 2005, which replaced NY L84237, dated May 19, 2005, issued to you on behalf of SKM Enterprises, Inc., concerning the tariff classification of a toy “Pet Carrier” under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise as a container under subheading 4202.92.90, HTSUS. We have reviewed NY L85170 and found it to be in error. For the reasons set forth below, we hereby modify NY L85170.

FACTS:

In NY 85170¹, the subject merchandise, identified as item 05GND110/A, was described as follows:

The red and white “Pet Carrier” is a double handle zippered carry bag wholly of man-made fiber textile materials. The bag is designed with an opening to permit the “pet’s” head to protrude from one side, and measures approximately 4–1/2” in width x 10–1/2” in length x 7” in depth.

ISSUE:

Whether the “Pet Carrier” is classified as a container in heading 4202, HTSUS, or as a toy in heading 9503, HTSUS.

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI).

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 heading and legal notes do not otherwise require, the remaining GRI may then be applied.

The following headings of the HTSUS are under consideration in classifying the subject article:

¹ NY L85170 is a later ruling involving the same merchandise and importer that was issued to replace NY L84237 in order to correct a clerical error in item number 05GND110/A.

4202 Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:

4202.92.90 Other:

9503.00.00 Tricycles, scooters, pedal cars and similar wheeled

Toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:

The term "toy" is not defined in the HTSUS. To be a toy, the "character of amusement involved [is] that derived from an item which is essentially a plaything." *Wilson's Customs Clearance, Inc. v. United States*, 59 Cust. Ct. 36, C.D. 3061 (1967).

The General Explanatory Note (EN)²for Chapter 95 states that this "Chapter covers toys of all kinds whether designed for the amusement of children or adults."

Although nothing in heading 9503 or the relevant Chapter notes explicitly states that an item's classification as a "toy" is dependent upon its use, the Court of International Trade (CIT) has found inherent in various dictionary definitions of "toy" the notion that an object is a toy only if it is designed and used for amusement, diversion or play, rather than for practical purposes. *See Minnetonka Brands, Inc. v. United States*, 110 F. Supp. 2d 1020, 1026 (CIT 2000). The court found that an object must be designed and used for amusement, diversion or play, rather than practicality in order to be classified as a "toy" of heading 9503, HTSUS.

In order to classify articles that are both amusing and functional, such as the toy "Pet Carrier", we look to the case of *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28 (1977), in which the court stated that "when amusement and utility become locked in controversy, the question becomes one of determining whether amusement is incidental to the utilitarian purpose, or whether the utility purpose is incidental to the amusement. In this instance, the subject carriers are used primarily for amusement because they are intended for interactive play with a stuffed toy animal. As evidenced by their size and construction, any utilitarian purpose would merely be incidental to use as a functional container. Similarly, CBP has classified textile doll carriers designed for girls to carry their dolls and accessories as "toys" of heading 9503, HTSUS. *See* NY H81709, dated June 18, 2001; PD G83798, dated November 22, 2000; NY 851767, dated April 24, 1990.

² The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

It is the conclusion of CBP, based on the above discussion, that the subject toy pet carriers are primarily used for amusement. As such, the merchandise is classified as a “toy” in heading 9503, HTSUS.

HOLDING:

The subject merchandise, identified toy “Pet Carriers” are correctly classified in subheading 9503.00.00, HTSUS, which provides for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof. This provision is duty free at the general column one rate of duty.

EFFECT ON OTHER RULINGS:

NY L84237, dated May 19, 2005 (replacing NY L84237, dated May 19, 2005), is hereby modified consistent with the foregoing.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF A KNIT SWEATSHIRT
STYLE JACKET**

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

ACTION: Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the tariff classification of a knit sweatshirt style jacket.

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 proposing to revoke a ruling concerning the tariff classification of a knit sweatshirt style jacket under the Harmonized Tariff Schedule of the United States (“HTSUS”). Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 5th floor, 799 9th Street N.W., Washington,

D.C., 20229–1179, and may be inspected during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0188.

FOR FURTHER INFORMATION CONTACT: Robert Shervette, Office of International Trade Regulations and Rulings, at 202.325.0274

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”), become 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 to 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 is proposing to revoke one ruling letter pertaining to the tariff classification of knit sweatshirt style jackets. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (“NY”) N003933, dated December 5, 2006, set forth as “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., a 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 is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transaction 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 of this notice.

In NY N003933, CBP classified a knit sweatshirt style jacket under heading 6101, HTSUS, which provides for: “[m]en’s or boys’ overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6103.” Upon our review of NY N003933, we have determined that the merchandise described in that ruling is properly classified under heading 6102, HTSUS, which provides for: “[w]omen’s or girls’ overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6104.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N003933, and to revoke or modify any other ruling not specifically identified to reflect the proper classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter (“HQ”) H022174, 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, consideration will be given to any written comments timely received.

Dated: May 25, 2010

KELLY HERMAN

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N003933

December 5, 2006

CLA-2-61:RR:NC:TA:358

CATEGORY: Classification

TARIFF NO.: 6101.20.0020

MR. ROBERT RYAN
DIVERSIFIED FREIGHT LOGISTICS, INC.
P.O. BOX 610629
DALLAS FORT WORTH AIRPORT, TEXAS 75261

RE: The tariff classification of a boy's jacket from Pakistan

DEAR MR. RYAN:

In your letter dated November 1, 2006, on behalf of Williamson Dickie Manufacturing, you requested a classification ruling. A sample was submitted and is being returned as you requested.

The sample, style number KW901 is a boy's knit sweatshirt style jacket. It has a full front zipper opening, a hood, side entry pockets, rib knit cuffs and a rib knit waistband. The sample is a size XL/18-20.

You assert in your letter that the item is designed as unisex wear. There is no indication, aside from your statement, to support this conclusion. The fact that the article has a boys' wear silhouette and appears to be cut and sewn as a traditional boy's jacket, size XL/18-20 indicates that it is intended to be worn primarily by boys and not by girls.

The applicable subheading for the jacket will be 6101.20.0020, Harmonized Tariff Schedule of the United States (HTSUS), which provides for men's or boys' anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6103, of cotton, boys'. The duty rate will be 15.9 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

Boys' cotton jackets fall within textile category designation 334. Quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information as to whether quota and visa requirements apply to this merchandise, we suggest that you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" available at our web site at www.cbp.gov. In addition, you will find current information on textile import quotas, textile safeguard actions and related issues at the web site of the Office of Textiles and Apparel, at otexa.ita.doc.gov.

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 Bruce Kirschner at 646-733-3048.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H022174

CLA-2 OT: RR: CTF: TCM H022174 RES

CATEGORY: Classification

TARIFF NO.: 6102.20.0020

ROBERT RYAN

DIVERSIFIED FREIGHT LOGISTICS, INC.

P.O. Box 610629

DALLAS FORT WORTH AIRPORT, TX 75261-0629

RE: Classification of a knit sweatshirt style jacket from Pakistan. Revocation of NY N003933, dated December 5, 2006.

DEAR MR. RYAN:

This is in response to your letter dated December 18, 2007, on behalf of your client Williamson Dickie Manufacturing Company (“Williamson-Dickie”), for reconsideration of New York Ruling Letter (“NY”) N003933 issued on December 5, 2006. In NY N003933, U.S. Customs and Border Protection (“CBP”) classified a knit sweatshirt style jacket as a men’s or boy’s jacket under heading 6101, Harmonized Tariff Schedule of the United States (“HTSUS”). CBP has determined that NY N003933 is incorrect.

FACTS:

The subject jacket, style number KW901, is composed of 80% cotton and 20% polyester, has a full front zipper opening, a hood, two side entry pockets, rib knit cuffs, and a rib knit waistband. It comes in the colors dark navy blue, black, and hunter green and in sizes from XS/4 up to XL/18–20.

ISSUE:

Whether the fleece jacket at issue is classified under heading 6101, HTSUS, as boys’ wear or under heading 6102, HTSUS, as girls’ wear?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be “determined according to the terms of the headings and any relative section or chapter notes.” In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI 2 through 6 may be applied in order.

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the HTSUS at the international level, 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 under consideration in this case are as follows:

- 6101 Men’s or boys’ overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6103:

- 6102 Women's or girls' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6103:

General Note ("GN") 9 to Chapter 61 states in relevant part that "[g]arments which cannot be identified as either men's or boys' garments or as women's or girls' garments are to be classified in the headings covering women's or girls' garments."

In determining whether garments are identifiable as men's or boys' or as women's or girls', CBP considers the following factors: (1) sizing, (2) construction, (3) styling, and (4) other factors such as packaging, labeling, etc. See HQ 952241, dated October 25, 1992, (*citing Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories* ("Textile Guidelines"), 53 Fed. Reg. 52564 (Dec. 28, 1988)). Other factors may be considered and any factor may be determinative by itself or in combination with one or more factors. *Id.* Other factors to consider include examining how an article is marketed and advertised. See *St. Eve International, Inc. v. United States*, 11 C.I.T. 224 (1987) (determining the classification of a garment based on an analysis of how it was advertised, marketed, and on an examination of the garment itself); *Mast Industries, Inc. v. United States*, 9 C.I.T. 549, 552 (1985), *aff'd* 786 F. 2d 144 (Fed. Cir. 1986), (classifying a garment based on an analysis of an examination of the garment, witness testimony, and marketing and advertising materials). See also HQ 967185, dated October 8, 2004, (stating that CBP's policy is to carefully examine the physical characteristics of the garments in question and when that is not substantially helpful, to also consider other extrinsic evidence, such as marketing materials, packaging, labeling, and invoices associated with the article).

(1) *Sizing*: According to the *Dickies 2007 Buyer's Guide* ("Buyer's Guide"), the fleece jacket is sold in sizes XS/4 up to XL/18–20. The sample provided is a size XL/18–20. In the Buyer's Guide, Williamson-Dickie sells a variety of both boys' and girls' clothing in the XS/4 up to XL/18–20 scale of sizes. For example, boys' polo shirts and oxford shirts and girls' polo shirts and blouses come in this size scale. Additionally, because girls and boys from ages 5 until about 13 are similar in stature and weight, it is logical to assume that these sizes apply to both boys and girls and thus not indicative of being reserved for one sex over the other¹. Also noted is that in the Buyer's Guide two out of the other three kid's school uniform outerwear garments that are marketed as unisex are sold in the same size scale as the subject fleece jacket with the exception being the kid's Eisenhower Jacket, which does not come in XL/18–20 but comes in all the smaller sizes. Thus, because the size scale that the fleece jacket comes in covers both boys and girls, the factor of sizing weighs in favor of finding that the fleece jacket is a unisex garment and not simply boys' wear.

¹ Although, starting at around age 11, girls on average are slightly taller and weigh more than boys up to around age 13. See http://www.cdc.gov/growthcharts/clinical_charts.htm#Set1 (last visited Jan. 29, 2010). See Also http://www.walmart.com/cservice/contextual_help_popup.gsp?modId=1061624#girls_regular (last visited Jan. 29, 2010).

(2) *Construction*: The fleece jacket material is 80% cotton and 20% polyester, which upon visual and tactile inspection has a medium weight and thickness. The zipper that runs the length of the front of the jacket is a basic copper colored zipper that is neither heavy duty nor delicate. The jacket has elastic around the hood, the cuffs of the arms, and around the waistband, which is not particularly tight. Overall, the jacket is sturdy and is neither feminine nor masculine in construction. There is nothing about the construction of the fleece jacket that would place it in either the boys' or girls' category of clothing. Instead, the construction of the jacket is neutral in regards to gender categorization. Therefore, because the factor of construction does not favor labeling the garment in any one gender category over the other, this factor supports finding that the fleece jacket is of a unisex construction.

(3) *Styling*: The sample provided is dark navy blue. An examination of the fleece jacket reveals that when zipped up and laid flat on a table, the elastic on the bottom of the jacket causes it to taper slightly toward the waist. There are no markings, graphics, or tags on the outside of the jacket. It is simply plain with a full zipper, a hood, and side seam pockets. There are no prominent masculine or feminine features on the jacket. Therefore, in consideration of the shape and design of the fleece jacket, the style factor weighs in favor of its intended use as being a unisex garment.

(4) *Other factors*: Other factors include things like how an article is marketed, advertised, and labeled. The fleece jacket is being marketed and advertised as a unisex garment in the *Dickies 2007 Buyer's Guide* as outerwear for a line of school uniform clothing. Williamson-Dickie does sell separate lines of basic pieces, e.g., shirts, pants, skirts, for boys and girls uniforms. However, Williamson-Dickie markets and advertises their "kid's school uniform outerwear" as unisex and does not have separate lines based on gender for any type of kids' school outerwear. Additionally, the colors that Williamson-Dickie markets the jacket are not reserved for boys only. In the Buyer's Guide, both the boys and girls school uniform clothing articles are sold in dark navy blue and black. There are no girls' clothes in hunter green. The outerwear colors of navy blue, black, and hunter green match the navy blue, white, and khaki colors of the girls' shorts, shirts, skirts, and pants as well as the boys' trousers and shirts.

Additionally, the sizing, construction, styling, colors, and marketing of the Williams-Dickie fleece jacket is similar to the Lands' End Thermacheck Hoodie that CBP classified in NY N044979, dated November 25, 2008, as a unisex jacket². The Thermacheck Hoodie comes in the same range of sizes as the fleece jacket, has the same styling, and is marketed as unisex outerwear for kids' uniforms.

Therefore, these other factors, the way the fleece jacket is marketed and advertised, weigh in favor of finding that the garment is intended to be used by both boys and girls and hence is a unisex article of clothing.

Overall, an analysis of the factors provided for in the Textile Guidelines and used in HQ952241—the sizing, construction, styling, advertising and

² For comparison, see http://www.landsend.com/pp/UniformZipfrontHoodedJacket-171686_7.html?bcc=y&action=order_more&sku_0=:EVE&CM_MERCH=IDX_00013__000000690&origin=index (last visited March 12, 2010)

marketing of the garment—along with how CBP has classified other similar articles of clothing, weigh in favor of finding that the fleece jacket is intended to be used by both girls and boys as part of a line of school uniforms and, hence, is identifiable as a unisex garment. Pursuant to GN 9 to Chapter 61 of the HTSUS, the fleece jacket is classified in heading 6102, HTSUS as “Women’s or girls’ overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6104.”

HOLDING:

Pursuant to GRI 1 and GN 9 to Chapter 61, the knit sweatshirt style jacket, style number KW901, is classified under subheading 6102.20.0020, HTSUSA, which provides for “Women’s or girls’ overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6104: Of cotton: Girls.” The 2010 column one rate of duty is 15.9% and the visa category is 335.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since quota categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, we suggest your client check the *Textile Status Report for Absolute Quotas* at www.cbp.gov close to the time of shipment to obtain the most current information available.

EFFECT ON OTHER RULINGS:

NY N003933, dated December 5, 2006, is hereby REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF AN AQUADOODLE
WALL MAT FROM CHINA**

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

ACTION: Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the tariff classification of Aquadoodle Wall Mat 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 CPB is proposing to revoke a ruling letter

concerning the tariff classification of an Aquadoodle Wall Mat from China. Similarly, CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor, Washington, D.C. 20229-1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Albenia Peters, Penalties Branch: (202) 325-0321.

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 to 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 is proposing to revoke one ruling letter pertaining to the tariff classification of an Aquadoodle Wall Mat from China. Although in this notice, CBP is specifically referring to New

York Ruling Letter (NY) N014467, dated July 24, 2007 (Attachment A), this notice covers 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., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. 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 decision on this notice.

In NY N014467, CBP determined in relevant part that the Aquadoodle Wall Mat is classified under subheading 9503.00.0080, HTSUS. It is now CBP's position that the wall mat is classified under subheading 6307.90.9889, HTSUS.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N014467, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H050118, set forth as Attachment B to this notice.

Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing 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: May 25, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

July 24, 2007

CLA-2-95:RR:E:NC:2:224

CATEGORY: Classification

TARIFF NO.: 9503.00.0080

MARCUS LYNN BRUMLEY
N.A. IMPORT MANAGER, AMAZON.COM.KYDC
C/O AMAZON.COM INT'L TRADE
605 5TH AVENUE SOUTH
SEATTLE WA 98104

RE: The tariff classification of an Aquadoodle Wall Mat from China

DEAR MR. BRUMLEY:

In your electronic ruling request dated July 17, 2007, you requested a tariff classification ruling.

The product under consideration is named an "Aquadoodle Wall Mat." This mat is composed of a polyurethane foam pad covered by plastic sheeting. The mat can be placed on any hard surface by means of adhesive stickers. Between the pad and the plastic sheeting is a water-activated ink pad. The child, using the accompanying water pen, can apply water to the pad to make ink colors appear. The child can either draw free-lance or use plastic stencils provided in the set to apply specific shapes to the mat.

The applicable subheading for the Aquadoodle Wall Mat will be 9503.00.0080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof, Other." The rate of duty will be free.

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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

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 Tom McKenna at 646-733-3025.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H050118
CLA-2 OT:RR:CTF:TCM H050118 AP
CATEGORY: Classification
TARIFF NO.: 6307.90.9889

MARCUS LYNN BRUMLEY
N.A. IMPORT MANAGER
AMAZON.COM.KYDC
C/O AMAZON.COM INT'L TRADE
605 5TH AVENUE SOUTH
SEATTLE, WA 98104

RE: Classification of an Aquadoodle Wall Mat from China; Revocation of NY N014467

DEAR MR. BRUMLEY:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York Ruling Letter (NY) N014467, issued to you on July 24, 2007. In NY N014467, we determined that an Aquadoodle Wall Mat from China was classified under subheading 9503.00.0080, Harmonized Tariff Schedule of the United States (“HTSUS”). CBP has determined that NY N014467 is incorrect. Therefore, this ruling revokes NY N014467.

FACTS:

The item at issue is identified as an Aquadoodle Wall Mat, which is composed of a textile fabric mat and a marker pen intended to be filled with water before use. In NY N0144467, relying on information provided by the requester, CBP described the merchandise as follows:

The mat can be placed on any hard surface by means of adhesive stickers. Between the pad and the plastic sheeting is a water-activated ink pad. The child, using the accompanying water pen, can apply water to the pad to make ink colors appear. The child can either draw free-lance or use plastic stencils provided in the set to apply specific shapes to the mat.

When the water-filled pen touches the mat, the water causes the mat to change color and the child can write or draw on the mat without making a mess. When the water dries, the marks on the mat disappear and the child can draw on a clean mat again. The Aquadoodle Wall Mat is intended to be hung on a wall instead of being used on a floor.

In Headquarters Ruling Letter HQ W968020, dated May 31, 2006, we concluded that Aquadoodle Draw and Doodle floor mats are classified under subheading 6307.90.9889, HTSUS, as an “other textile made-up article” and not under subheading 9503.00.0080, HTSUS. The Aquadoodle Wall Mat is identical to the Aquadoodle Draw and Doodle floor mat. On the importer’s website, Spin Master states “The New Wall Mat is the same great doodling fun, but now on the wall.”

ISSUE:

Whether the subject Aquadoodle Wall Mat is classifiable as a textile article in heading 6307, HTSUS, or as a toy in heading 9503, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is governed by the General Rules of Interpretation (“GRIs”), which need to be applied in numerical order. 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, and, provided such headings or notes do not otherwise require, according to the remaining GRIs taken in order. In other words classification is governed first by the terms of the headings of the tariff schedule and any relative section or chapter notes.

In understanding the language of the HTSUS, the Explanatory Notes (“ENs”) may be used. The ENs, even though not dispositive or legally binding, may provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the harmonized system at the international level. CBP believes that ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128

(Aug. 23, 1989).

Since the Aquadoodle Wall Mat consists of a mat and a pen, which are *prima facie* classifiable in different headings in the HTSUS (i.e., the marking pen in heading 9608 and the wall mat conceivably in 6307), GRI 3 is implicated. Its relevant portions read as follows:

Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

The GRIs do not define the terms “retail sale” and “essential character” but the ENs suggest a list of factors to consider. EN X to GRI 3(b) defines “goods put up in sets for retail sale” as goods which consist of: (1) at least two different articles which are, *prima facie*, classifiable in different headings; (2) products or articles put up together to meet a particular need or carry out a specific activity; and (3) products put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

EN VIII to GRI 3(b) states:

The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

The Aquadoodle Wall Mat qualifies as a set for retail sale under GRI 3(b). The mat and the water pen are put up together to carry out the specific activity of drawing and in a manner suitable for sale directly to users without repacking. The wall mat gives the set its essential character because it cannot function without the mat. The mat performs the primary function, which is to provide a surface that allows for coloring or drawing. The water-activated ink pad is part of the wall mat. The marker pen merely facilitates that activity and is designed to be used in conjunction with the mat. Since the essential character is conveyed by the wall mat, the merchandise is therefore properly classified in accordance with that component.

The provisions at issue are the following:

6307	Other made up articles, including dress patterns:
6307.90	Other:
	Other:
6307.90.98	Other
	Other:
6307.90.9889	Other
*	* *
9503.00.00	Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys: reduced-scale ("scale") models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.00.0080	Other

In NY N014467, CBP classified the subject merchandise in Chapter 95, HTSUS, which covers toys of all kind designed for amusement of children or adults. The tariff schedule does not define the term "toy." A tariff term that is not defined in the HTSUS is construed in accordance with its common and commercial meaning. See *Intercontinental Marble Corp. v. United States*, 27 CIT 654, 657 (2003). Common and commercial meaning may be determined by consulting dictionaries. See *Minnetonka Brands v. United States*, 24 CIT 645, 649 (2000).

The Compact Oxford English Dictionary defines "toy" as an "object for a child to play with" or as a "gadget or machine regarded as providing amusement for an adult." Courts have concluded that an object is a "toy" of heading 9503, HTSUS, if it is designed and used for amusement, diversion or play, rather than practicality. See *Minnetonka Brands, Inc.*, 24 CIT at 651 (citing to *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1441 (Fed. Cir. 1998)). The determinative issue is whether the principal use of the article is to amuse. See *United States v. Topps Chewing Gum, Inc.*, 58 C.C.P.A. 157, 158, C.A.D. 1022 (1971). CBP has interpreted the amusement requirement to mean that toys should be designed and used principally for amusement. See HQ H037544, dated September 3, 2009.

"Principal use" is defined as the use "which exceeds any other single use of the article." *Minnetonka Brands, Inc.*, 24 CIT at 651. Factors, which have been considered to make this determination include the general physical characteristics of the merchandise, the expectations of the ultimate purchasers, the design and marketing of the merchandise as an item of amusement, the expectations of the ultimate purchasers that the object will be used for play, and the regular use of the merchandise by children for amusement purposes. See *id.* When articles are both amusing and functional, we need to determine whether amusement is incidental to the utilitarian purpose and vice versa. See *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 32, Cust. Dec. 4688 (1977).

The Aquadoodle is designed to be a drawing instrument. Drawing and coloring are activities capable of providing amusement. However, the ENs exclude from heading 9503, HTSUS, many articles that are used in drawing, coloring and other art activities. EN 95.03 states, in part, that heading 9503 excludes:

- (a) Paints put up for children's use (**heading 32.13**).
- (b) Modelling pastes put up for children's amusement (**heading 34.07**).
- (c) Children's picture, drawing or coloring books of **heading 49.03**.
- (d) Transfers (**heading 49.08**).
- (e) Bells, gongs or the like, of **heading 83.06**.
- (f) Card games (**heading 95.04**).
- (g) Paper hats, "blow-outs", masks, false noses and the like (**heading 95.05**).
- (h) Crayons and pastels for children's use of **heading 96.09**.
- (i) Slates and blackboards, of **heading 96.10**.

In HQ W968020, dated May 31, 2006, in applying the ENs, we found that the Aquadoodle Mat was designed to be colored with the included water markers and it was not a toy because it was designed for purposes of drawing. We concluded that the amusement from art-related activities is secondary to utility, because sets used for drawing and coloring are not "essentially playthings." *Id.* Children's play may include drawing or painting. However, materials for drawing or painting are not classified in heading 9503, HTSUS. *See* HQ 966724 dated May 24, 2004. Therefore, the Aquadoodle Mat is provided for, *eo nomine* (e.g., refers to a commodity by a specific name, usually one well-known in commerce), in headings other than heading 9503, HTSUS.

Heading 6307, HTSUS provides for classification of "other textile made-up articles." The wall mat is a textile fabric mat. We have previously determined that an Aquadoodle floor mat is classified in subheading 6307.90.9889, HTSUS. *See* HQW968020 dated May 31, 2006. The Aquadoodle Wall Mat is identical to the floor mat. The only difference is that the wall mat is intended to be hung on a wall instead of being used on a floor. Accordingly, the Aquadoodle Wall Mat is classified in heading 6307, HTSUS.

HOLDING:

Pursuant to GRIs 1 and 3(b), the subject merchandise, identified as Aquadoodle Wall Mat, is classified in heading 6307, HTSUS. Specifically, it is classified in subheading 6307.90.9889, HTSUS, which provides for "Other made up articles, including dress patterns: other: other: other: other. The general, column one applicable rate of duty is 7 percent *ad valorem*."

Duty rates are provided for convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <http://www.usitc.gov/tata/hts/>.

EFFECT ON OTHER RULINGS:

NY N014467, dated July 24, 2007, is revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION AND MODIFICATION OF TWO
RULING LETTERS AND REVOCATION OF TREATMENT
RELATING TO THE CLASSIFICATION OF CERTAIN
HOT/COLD COMPRESSES**

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

ACTION: Proposed revocation and modification of two classification ruling letters and revocation of treatment relating to the classification of certain hot/cold compresses.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that the Bureau of Customs and Border Protection (CBP) is proposing to revoke one ruling letter and modify one ruling letter relating to the classification of certain hot/cold compresses. CBP is also proposing to revoke any treatment previously accorded by it to substantially identical merchandise.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to the Bureau of Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street N.W., 5th Floor Washington, D.C. 20229—1179. Submitted comments may be inspected at the offices of 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) 325-0118.

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Tariff Classification and Marking Branch: (202) 325-0026.

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 to 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 is proposing to revoke one ruling letter and modify one ruling letter pertaining to the classification of certain hot/cold compresses. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) A87539, dated September 30, 1996 (Attachment A) and the revocation of NY 892007, dated November 24, 1993, (Attachment B) 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 ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. 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 decision on this notice.

In NY A87539 and NY 892007, hot/cold compresses were classified in heading 3005, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental, or veterinary

purposes.” Since the issuance of those rulings, CBP has reviewed the classification of these hot/cold compresses and has determined that the cited rulings are in error.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to modify NY A87539 and revoke NY 892007 and revoke or modify any other ruling not specifically identified, to reflect the classification of the hot/cold compresses according to the analysis contained in proposed Headquarters Ruling Letters (HQ) H055381 and HQ H055380 set forth as Attachments C and D to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing 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: May 25, 2010

GAIL A. HAMILL

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY A87539

September 30, 1996

CLA-2-63:RR:NC:TP:352 A87539

CATEGORY: Classification

TARIFF NO.: 6307.90.9989; 3005.90.5090

Ms. DEBORAH SCOTT
MODAWEST INTERNATIONAL, INC.
5246 W. 111TH ST.
LOS ANGELES, CA 90045

RE: The tariff classification of a ankle stabilizer, carpal tunnel syndrome support, wrist wrap, hot/cold compress and a shoulder brace from Taiwan.

DEAR MR. SCOTT:

In your letter dated October 9, 1996, on behalf of Lantic USA, Santa Monica, California, you requested a tariff classification ruling.

The following samples were submitted:

1. Item N-AN-14 is a boot shaped ankle stabilizer made of neoprene rubber laminated on both inner and outer surface with knit nylon fabric. Attached at the bottom of the foot portion is a 2 inch wide elastic strap with hook and loop fastener.

2. Item N-WR-03 is a carpal tunnel syndrome support composed of neoprene rubber laminated on both inner and outer surface with knit nylon fabric. It is designed to wrap around the wrist. It is held closed by hook and loop fastener.

3. Item N-WR-91 is a carpal tunnel wrist wrap designed to fit around the thumb and wrist. It is made of neoprene rubber laminated on both inner and outer surface with knit nylon fabric. It is held closed with hook and loop fastener.

4. Item N-IP-01 is a hot/cold compress constructed of neoprene rubber laminated on the outer side with knit nylon fabric and the inner side with nylon woven fabric. The interior side features a pocket that houses a gel pack. The pocket is held closed with a strip of hook and loop fastener.

5. Item N-SH-02 is a shoulder brace made of neoprene rubber laminated on both inner and outer surface with knit nylon fabric. It is designed to fit over one shoulder and the upper arm. The rest of the article is wrapped around the chest area.

The applicable subheading for item numbers N-AN-14, N-WR-03, N-WR-91, and N-SH-02 will be 6307.90.9989, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up articles...Other. The rate of duty will be 7 percent ad valorem.

The applicable subheading for item number N-IP-01 will be 3005.90.5090, HTS, which provides for wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes: Other: 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 Alan Tytelman at 212-466-5896.

Sincerely,

ROGER J. SILVESTRI

Director

National Commodity Specialist Division

[ATTACHMENT B]

NY 892007
November 24, 1993
CLA-2-30:S:N:N7:238 892007
CATEGORY: Classification
TARIFF NO.: 3005.90.5090

MS. HELEN I. SUGAR
THE BUFFALO CUSTOMHOUSE BROKERAGE CO., INC.
PEACE BRIDGE PLAZA WAREHOUSE
SUITE 211
BUFFALO, NY 14213

RE: The tariff classification of "Instant Cold" Frigid-Aid Cold Pack; "Instant Hot" Hot-Press Compress; and "Rapid Relief" Reusable Cold & Hot Compress, from Canada

DEAR MS. SUGAR:

In your letter dated October 29, 1993, on behalf of your client, Rapid Aid Ltd., you requested a tariff classification ruling.

The subject merchandise consists of reusable compresses for the application of heat or cold to an injured area of the body. The "Rapid Relief" Reusable Cold & Hot Compress, a sample of which was submitted with your inquiry, consists of a gel-filled plastic pouch that can be used as a cold or hot compress. For use as a cold compress, the pouch, after freezing, is placed on a dry towel and applied to the injured area. For use as a hot compress, the pouch, after placing it in water that has been boiled, is wrapped in a towel and applied to the injured area. According to the descriptive literature, the "Instant Hot" compress generates heat, based on the formation of a calcium chloride solution, and the "Instant Cold" compress generates cold, based on the formation of an ammonium nitrate solution.

The applicable subheading for these three (3) items will be 3005.90.5090, Harmonized Tariff Schedule of the United States (HTS), which provides for: Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes: other: other: other. The rate of duty, if considered "goods imported from the territory of Canada", will be 3.5 percent ad valorem. Otherwise, the rate of duty will be 7 percent ad valorem.

This merchandise may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, MD 20857, telephone number (202) 857-8400.

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.

Sincerely,
JEAN F. MAGUIRE
Area Director
New York Seaport

[ATTACHMENT C]

HQ H055381
CLA-2 OT:RR:CTF:TCM H012692 KSH
CATEGORY: Classification
TARIFF NO.: Unknown

Ms. DEBORAH SCOTT
MODAWEST INTERNATIONAL, INC.
5246 W. 111TH STREET
LOS ANGELES, CA 90045

RE: Modification of NY A87539, dated September 30, 1996; Classification of Hot/ Cold Compress

DEAR Ms. SCOTT:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) A87539, issued to you on September 30, 1996, on behalf of your client Lantic USA, concerning in relevant part, the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a hot/ cold compress. The compress was classified under heading 3005, HTSUS, which provides for "Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental, or veterinary purposes." We have reviewed that ruling and found it to be in error as it pertains to the classification of the hot/cold compress. Therefore, this ruling modifies NY A87539.

FACTS:

The product at issue was described as follows in NY A87539:

Item N-IP-01 is a hot/cold compress constructed of neoprene rubber laminated on the outer side with knit nylon fabric and the inner side with nylon woven fabric. The interior side features a pocket that houses a gel pack. The pocket is held closed with a strip of hook and loop fastener.

ISSUE:

Whether the compresses are classified in headings 3005, HTSUS, as wadding, gauze, bandages and similar articles or according to the inner heating/cooling material.

LAW AND ANALYSIS:

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

The good is potentially classifiable under more than one heading because they consist of separate components and no one heading in the tariff provides for the goods as entered. Because the compress is a composite good, consisting of a neoprene rubber laminated with knit and woven nylon fabric exterior and a gel pack, for tariff purposes, it constitutes a good consisting of two or

more materials and substances. Thus, it may not be classified solely on the basis of GRI 1. The compress is described in GRI 2(b) which covers mixtures or combinations of materials and substances and goods consisting of two or more materials and substances. According to GRI 2(b), "The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." Under GRI 3(b), classification of an article is to be determined on the basis of the component which gives the article its essential character.

The Explanatory Notes (ENs) to GRI 3(b)¹ provide that, if this rule applies, goods shall be classified as if they consisted of the material or component which gives them their essential character. EN Rule 3(b)(VIII) lists as factors to help determine the essential character of such goods: the nature of the materials or components, their bulk, quantity, weight or value, and the role of a constituent material in relation to the use of the goods.

As stated by the Court of International Trade in *Structural industries v. United States*, 360 F. Supp. 2d 1330, 1336 (citations omitted) (2005), "the essential character of an article is that which is indispensable to the structure, core or condition of the article, i.e., what it is." See also *Conair Corporation v. United States*, 29 Ct. Int'l Trade, 888, 895 (citations omitted) (2005), (discussing "the concept of 'essential character' found in GRI 3(b)").

Prior rulings that have classified heating and/or cooling composite goods have differentiated between goods on the basis of whether the article as a whole appears to function primarily as a means to provide heat or cold. In such instances, the heating/cooling element will impart the essential character. See Headquarters Ruling Letters (HQ) 964851, dated April 18, 2001; HQ 966262, dated May 29, 2003; HQ 957182, dated March 6, 1995; HQ 959825, dated May 19, 1999; HQ 964054, dated March 2, 2001; HQ 956845, dated December 22, 1994; and HQ 957478, dated September 7, 1995.

The composite good is being imported to provide heat or cold therapy. While the article does provide some compression to the affected area, the indispensable function of the article is the ability to provide heat or cold. The cover is merely a means to contain the inner gel pack. This criterion indicates that the essential character of the good is provided by gel pack. We therefore conclude that the essential character of the product is provided by the gel pack so that, under GRI 3(b), the compress is classifiable by the gel pack.

HOLDING:

By application of GRI 3(b), the compress is classified in the heading in which the gel pack is classified.

EFFECT ON OTHER RULINGS:

NY A87539, dated September 30, 1996, is MODIFIED.

¹ The Harmonized Commodity Description and Coding System ENs, constitute the official interpretation at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. It is Customs and Border Protection (CBP) 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).

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT D]

HQ H055380
CLA-2 OT:RR:CTF:TCM H055380 KSH
CATEGORY: Classification
TARIFF NO.: Unknown

Ms. HELEN I. SUGAR
THE BUFFALO CUSTOMHOUSE BROKERAGE Co., INC.
PEACE BRIDGE PLAZA WAREHOUSE
SUITE 211
BUFFALO, NY 14213

RE: Revocation of NY 892007, dated November 24, 1993; Classification of Hot & Cold Compresses

DEAR Ms. SUGAR:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) 892007, issued to you on November 24, 1993, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of three hot and cold compresses. The compresses were classified under heading 3005, HTSUS, which provides for “Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental, or veterinary purposes.” We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY 892007.

FACTS:

The products at issue were described as follows in NY 892007:

The subject merchandise consists of reusable compresses for the application of heat or cold to an injured area of the body. The “Rapid Relief” Reusable Cold & Hot Compress, a sample of which was submitted with your inquiry, consists of a gel-filled plastic pouch that can be used as a cold or hot compress. For use as a cold compress, the pouch, after freezing, is placed on a dry towel and applied to the injured area. For use as a hot compress, the pouch, after placing it in water that has been boiled, is wrapped in a towel and applied to the injured area. According to the descriptive literature, the “Instant Hot” compress generates heat, based on the formation of a calcium chloride solution, and the “Instant Cold” compress generates cold, based on the formation of an ammonium nitrate solution.

ISSUE:

Whether the compresses are classified in headings 3005, HTSUS, as wadding, gauze, bandages and similar articles or according to the inner heating/cooling material.

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be

classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The goods are potentially classifiable under more than one heading because they consist of separate components and no one heading in the tariff provides for the goods as entered. Because the compresses are composite goods, consisting of a unidentified exterior and a chemical filler, for tariff purposes, they constitute goods consisting of two or more materials and substances. Thus, they may not be classified solely on the basis of GRI 1. The compresses are described in GRI 2(b) which covers mixtures or combinations of materials and substances and goods consisting of two or more materials and substances. According to GRI 2(b), "The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." Under GRI 3(b), classification of an article is to be determined on the basis of the component which gives the article its essential character.

The Explanatory Notes (ENs) to GRI 3(b)¹ provide that, if this rule applies, goods shall be classified as if they consisted of the material or component which gives them their essential character. EN Rule 3(b)(VIII) lists as factors to help determine the essential character of such goods: the nature of the materials or components, their bulk, quantity, weight or value, and the role of a constituent material in relation to the use of the goods.

As stated by the Court of International Trade in *Structural industries v. United States*, 360 F. Supp. 2d 1330, 1336 (citations omitted) (2005), "the essential character of an article is that which is indispensable to the structure, core or condition of the article, i.e., what it is." See also *Conair Corporation v. United States*, 29 Ct. Int'l Trade, 888, 895 (citations omitted) (2005), (discussing "the concept of 'essential character' found in GRI 3(b)").

Prior rulings that have classified heating and/or cooling composite goods have differentiated between goods on the basis of whether the article as a whole appears to function primarily as a means to provide heat or cold. In such instances, the heating/cooling element will impart the essential character. See Headquarters Ruling Letters (HQ) 964851, dated April 18, 2001; HQ 966262, dated May 29, 2003; HQ 957182, dated March 6, 1995; HQ 959825, dated May 19, 1999; HQ 964054, dated March 2, 2001; HQ 956845, dated December 22, 1994; and HQ 957478, dated September 7, 1995.

The composite goods are being imported to provide heat or cold therapy. While the articles do provide some compression to the affected area, the indispensable function of the articles is the ability to provide heat or cold. The cover is merely a means to contain the inner chemicals. This criterion indicates that the essential character of the good is provided by the chemicals. We therefore conclude that the essential character of the products is provided by the chemicals so that, under GRI 3(b), the compresses are classifiable by the chemical solution.

¹ The Harmonized Commodity Description and Coding System ENs, constitute the official interpretation at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. It is Customs and Border Protection (CBP) 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).

HOLDING:

By application of GRI 3(b), the compresses are classified in the heading in which the chemical solution is classified.

EFFECT ON OTHER RULINGS:

NY 892007, dated November 24, 2003, is REVOKED.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division



**PROPOSED REVOCATION AND MODIFICATION OF TWO
RULING LETTERS AND REVOCATION OF TREATMENT
RELATING TO THE CLASSIFICATION OF CERTAIN
HOT/COLD COMPRESSES**

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

ACTION: Proposed revocation and modification of two classification ruling letters and revocation of treatment relating to the classification of certain hot/cold compresses.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that the Bureau of Customs and Border Protection (CBP) is proposing to revoke one ruling letter and modify one ruling letter relating to the classification of certain hot/cold compresses. CBP is also proposing to revoke any treatment previously accorded by it to substantially identical merchandise.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to the Bureau of Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street N.W., 5th Floor Washington, D.C. 20229-1179. Submitted comments may be inspected at the offices of 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) 325-0118.

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Tariff Classification and Marking Branch: (202) 325-0026.

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 to 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 is proposing to revoke one ruling letter and modify one ruling letter pertaining to the classification of certain hot/cold compresses. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) A87539, dated September 30, 1996 (Attachment A) and the revocation of NY 892007, dated November 24, 1993, (Attachment B) 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 ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. 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 decision on this notice.

In NY A87539 and NY 892007, hot/cold compresses were classified in heading 3005, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental, or veterinary purposes.” Since the issuance of those rulings, CBP has reviewed the classification of these hot/cold compresses and has determined that the cited rulings are in error.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to modify NY A87539 and revoke NY 892007 and revoke or modify any other ruling not specifically identified, to reflect the classification of the hot/cold compresses according to the analysis contained in proposed Headquarters Ruling Letters (HQ) H055381 and HQ H055380 set forth as Attachments C and D to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing 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: May 25, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY M81919

April 17, 2006

CLA-2-42:RR:NC:2:238 M81919

CATEGORY: Classification

TARIFF NO.: 4202.92.9026; 3102.30.0000; 3005.90.5090; 3004.90.9145

MR. TONY GUTERMUTH

GLOBAL COMPONENTS CORPORATION

3429 KNOBS VALLEY DRIVE

FLOYDS KNOBS, IN 47119

RE: The tariff classification of a textile-covered case containing the following items: an instant cold compress; a reusable hot & cold compress; an emergency/survival blanket; two 5" x 9" sterile trauma pads; two 4" x 4" sterile gauze pads, three 3" x 3" sterile gauze pads; three 2" x 2" sterile gauze pads; a foil packet of burn gel; and a foil packet of first aid cream

DEAR MR. GUTERMUTH:

In your (undated) letter, received on April 5, 2006, you requested a tariff classification ruling. The sample you submitted with your ruling request will be returned as requested.

The submitted sample, marked "01E-675," which you refer to as a first aid kit, consists of a case, with a zipper closure and a rubber handle, constructed from EVA foam. The foam is covered on its exterior surface with blue, polyester, woven fabric. A rubber label bearing the words, "First Aid Only," is permanently affixed, by sewing, to the fabric. The words, "First Aid Kit," are also embossed into the fabric, on the same side as the rubber label. The interior of the case contains a built-in, rigid, plastic frame, divided into sixteen (empty) compartments, which will be filled — subsequent to importation — with various first aid articles. In addition to the built-in plastic frame, the interior of the case contains three, removable, plastic sleeves (one held in place by a hook-and-loop closure) labeled "Hot/Cold Therapy," "Trauma Center," and "Bandage Buddy™," respectively. Each sleeve, in turn, contains a paperboard card printed with the names of the various first aid items that the sleeve will contain, and (in the case of the "Hot/Cold Therapy" and "Trauma Center" sleeves) instructions for their use on the reverse side. As submitted, the "Hot/Cold Therapy" sleeve contains the reusable hot/cold compress, the instant cold compress, and the foil packet of first aid cream; the "Trauma Center" sleeve contains the trauma pads, gauze dressing pads and the emergency/survival blanket; and the "Bandage Buddy™" sleeve contains only the foil packet of burn gel.

Under the Tariff Schedules of the United States Annotated (TSUSA), the predecessor to the Harmonized Tariff Schedule of the United States (HTSUS), subheading 495.20, TSUSA, provided for "First-aid kits **put up and packaged for retail sale**" (emphasis added). We construe this to mean that, under the TSUSA, the classification of any article as a first-aid kit was predicated upon that article — **in its condition as imported** — being exclusively intended directly for sale at retail, without the performance of any re-packing operation(s) prior to its actually being put up for retail sale. Furthermore, notwithstanding that the words, "put up and packaged for

retail sale” do not appear in subheading 3006.50.0000¹ of the HTSUS, we are unable to find any evidence of legislative intent to include first-aid boxes and kits within subheading 3006.50.0000, HTSUS, that — in their condition as imported — are *not* put up and packaged for retail sale. It is, therefore, our determination that the submitted sample is excluded from classification within subheading 3006.50.0000, HTSUS, as a first-aid box or kit.

The applicable subheading for the case will be 4202.92.9026, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Trunks, suitcases, vanity cases, attache cases, briefcases...and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other: With outer surface of textile materials: Other: Of man-made fibers.” The rate of duty will be 17.6 percent ad valorem.

The applicable subheading for the instant cold compress will be 3102.30.0000, HTSUS, which provides for “Ammonium nitrate, whether or not in aqueous solution.” The rate of duty will be free.

The applicable subheading for the sterile trauma pads and gauze pads will be 3005.90.5090, HTSUS, which provides for “Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices)...put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes: Other: Other: Other.” The rate of duty will be free.

The applicable subheading for the foil packet of burn gel and the foil packet of first aid cream will be 3004.90.9145, HTSUS, which provides for “Medicaments...consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses...or in forms or packings for retail sale: Other: Other: Other: Dermatological agents and local anesthetics.” The rate of duty will be 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

With respect to the reusable hot & cold compress, please be advised that we require the chemical name and percent by weight of each ingredient in order to issue a ruling on this product. When this information is available, you may wish to resubmit your request for a ruling on this product.

With respect to the emergency/survival blanket, please be advised that we require the chemical name of the polymer, onto which the aluminum is deposited, in order to issue a ruling on this product. When this information is available, you may wish to resubmit your request for a ruling on this product.

The case falls within textile category designation 670. Quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information as to whether quota and visa requirements apply to this merchandise, we suggest that you check, close to the time of shipment, the “Textile Status Report for Absolute Quotas” available at our website at www.cbp.gov. In addition, you will find current information on textile import quotas, textile safeguard actions and related issues by visiting the website of the Office of Textiles and Apparel at otexa.ita.doc.gov.

¹ Subheading 3006.50.0000, HTSUS, provides for “First-aid boxes and kits.”

The instant cold compress may be subject to the Toxic Substances Control Act (TSCA), which is administered by the U.S. Environmental Protection Agency (EPA). Information on the TSCA can be obtained by calling the EPA at (202) 554-1404, or, by visiting their website at www.epa.gov.

The burn gel and the first aid cream may be subject to the Federal Food, Drug, and Cosmetic Act and/or The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which are administered by the U.S. Food and Drug Administration (FDA). Information on the Federal Food, Drug, and Cosmetic Act, as well as The Bioterrorism Act, can be obtained by calling the FDA at 1-888-463-6332, or by visiting their website at: www.fda.gov.

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 Harvey Kuperstein at 646-733-3033.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ W968297

May 21, 2007

CLA-2 OT:RR:CTF:TCM W968297 TMF

CATEGORY: Classification

TARIFF NO.: 2833.21.0000 3102.30.0000

MR. STEPHEN C. LIU
PACIFIC CENTURY CUSTOMS SERVICE
11099 S. LA CIENEGA BLVD., SUITE 202
LOS ANGELES, CA 90045

RE: Revocation of NY L84821, dated June 8, 2005, concerning the tariff classification of Hot and Cold Compress Packs from China

DEAR MR. LIU:

Pursuant to your request dated May 9, 2005 for a binding tariff classification ruling, Customs and Border Protection issued New York Ruling Letter (NY) L84821, dated June 8, 2005, in which certain hot and cold compress packs were classified in 3824.90.9190, Harmonized Tariff Schedule of the United States (HTS).

Upon review, the Bureau of Customs and Border Protection (CBP) has determined that the merchandise was erroneously classified. This ruling letter sets forth the correct classification determination.

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 was published on April 11, 2007 in the CUSTOMS BULLETIN in Volume 41, Number 16. No comments were received in response to this notice.

FACTS:

The facts, which were taken directly from the ruling at issue, are as follows:

In your letter dated May 9, 2005, you requested a tariff classification ruling for “Instant Cold Compress” and “Instant Hot Compress” packs which you have stated are composed of ammonium nitrate and water; and magnesium sulfate and water; respectively. A sample of each product was submitted with your inquiry.

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings.

The subject cold compress pack is comprised of 40–70 percent ammonium nitrate and 30–60 percent water. The subject hot compress pack is comprised of 20–40 percent magnesium sulfate and 60–80 percent water. Both were classified in subheading 3824.90.9190, Harmonized Tariff Schedule of the United States (HTS), which provides for “prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; other...other.”

Heading 2833, HTSUS, provides for “sulfates; alums; peroxosulfates (persulfates).” Chapter Note 1(a) to Chapter 28 states: “Except where the context otherwise requires, the headings of this chapter apply only to “[s]eparate chemical elements and separate chemically defined compounds, whether or not containing impurities.” Chapter Note 1(b) to Chapter 28 states: “The products mentioned in (a) above dissolved in water.” EN 38.24(B), states, in pertinent part, that aqueous solutions of Chapter 28 remain classified therein.

The subject magnesium sulfate hot compress pack consists of magnesium sulfate dissolved in water. Based on this description, the subject hot compress pack should be classified in subheading 2833, HTSUS. Additionally, CBP has issued New York Ruling Letter (NY) E85600, dated December 6, 1999 that classified a 50 percent aqueous solution of magnesium sulfate from Canada in subheading 2833.21.0000, HTSUS.

The subject ammonium nitrate cold compress pack also contains water. Chapter 28, Note 3(c), which refers to Note 2, Chapter 31, states: “Subject to the provisions of note 1 to section VI, this chapter does not cover: Products mentioned in note 2, 3, 4 or 5 to chapter 31.” Note 2(a)(ii), Chapter 31, states that heading 3102 applies to ammonium nitrate, whether or not pure. As the ammonium nitrate cold pack is excluded from Chapter 28, it is classifiable in Chapter 31. *See also* NY M81919, in which CBP classified a cold compress containing ammonium nitrate in subheading 3102.30.0000, HTSUS.

Therefore, the subject hot and cold compresses are classified in subheadings 2833.21.0000 and 3102.30.0000, HTSUS, respectively.

HOLDING:

The “Instant Hot Compress” pack is classifiable in subheading 2833.21.0000, HTSUS, which provides for “Sulfates; alums; peroxosulfates (persulfates): Other sulfates: Of magnesium.” The general column one rate of duty is 3.7 percent *ad valorem*.

The “Instant Cold Compress” pack is classifiable in subheading 3102.30.0000, HTSUS, which provides for “Mineral or chemical fertilizers, nitrogenous: Ammonium nitrate, whether or not in aqueous solution.” The general column one rate of duty is FREE.

EFFECT ON OTHER RULINGS:

New York Ruling Letter (NY) L84821, dated June 8, 2005, is hereby RE-VOKED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT C]

NY L81028
December 22, 2004
CLA-2-31: RR: NC: SP: 236 L81028
CATEGORY: Classification
TARIFF NO.: 3102.30.0000

MS. ELEANORE KELLY-KOBAYASHI
RODE & QUALEY
55 WEST 39TH STREET
NEW YORK, NY 10018

RE: The tariff classification of Ace® Brand Instant Cold Compress from Canada

DEAR MS. KELLY-KOBAYASHI:

In your letter dated November 22, 2004, on behalf of your client, Becton Dickinson and Company, you requested a tariff classification ruling.

The sample submitted, Ace® Brand Instant Cold Compress is a plastic bag containing ammonium nitrate and water. To use the product, the pack must be squeezed to break the inner liquid bubbles in order to activate the solution. The solution makes the compress instantly cold and it can then be applied to the area requiring treatment. This product is used to help stop pain and swelling.

The applicable subheading for the Ace® Brand Instant Cold Compress will be 3102.30.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for Mineral or chemical fertilizers, nitrogenous: Ammonium nitrate, whether or not in aqueous solution. The rate of duty will be Free.

You assert that the subject product is classifiable in subheading 3005.90.5090, HTS, which provides for “Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packages for retail sale: Other: Other.” We disagree. Our Headquarters office (“Headquarters”), in HQ 961089, dated April 13, 1999, stated that “[U]nder the rule of ejusdem generis, the phrase ‘similar articles’ is limited to goods which ‘possess the essential characteristics or purposes that unite the articles eo nomine.’” As a consequence of the previous statement, Headquarters determined that “[T]he characteristic which unites the exemplars of this heading (i.e., 3005, HTS) is their direct application to an open wound or to irritated skin.” *Id.* Therefore, since the package insert indicates that subject product is intended to “help(s) stop pain and swelling fast,” rather than for direct application to an open wound or to irritated skin, it is our determination that it is precluded from classification in heading 3005, HTS.

This product may be subject to the requirements of the Food, Drug and Cosmetic Act, which are administered by the U.S. Food and Drug Administration. Questions regarding FDA requirements may be addressed to the U.S. Food and Drug Administration, Office of Cosmetics and Colors, 5100 Paint Branch Parkway, College Park, MD 20740-3835, telephone number (202) 418-3412

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 Debra Wholey at 646-733-3034.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT D]

HQ H056863
 CLA-2 OT:RR:CTF:TCM H056863 KSH
 CATEGORY: Classification
 TARIFF NO.: 3105.10

MR. TONY GUTERMUTH
 GLOBAL COMPONENTS CORPORATION
 3429 KNOBS VALLEY DRIVE
 FLOYDS KNOBS, IN 47199

RE: Modification of NY M81919; Ammonium Nitrate Cold Compress Pack

DEAR MR. GUTERMUTH:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) M81919, issued to you on April 17, 2006, concerning, in relevant part, the classification of an ammonium nitrate cold compress pack. In NY M81919, CBP determined that the cold compress was classified in heading 3102, HTSUS, which provides for: "Mineral or chemical fertilizers, nitrogenous." We have reviewed that ruling and found it to be in error as it pertains to the classification of the cold compress. Therefore, this ruling modifies HQ M81919.

FACTS:

The merchandise at issue is identified as the "Instant Cold Compress" measuring 4" by 5". It is composed in part of ammonium nitrate.

ISSUE:

Whether the cold compress is classified in heading 3102, HTSUS, as mineral or chemical fertilizers or heading 3105, HTSUS, as goods classifiable in chapter 30, HTSUS, in packages of a gross weight not exceeding 10 kg.

LAW AND ANALYSIS:

GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The provisions at issue are as follows:

3102	Mineral or chemical fertilizers, nitrogenous
3012.30	Ammonium nitrate, whether or not in aqueous solution
3105	Mineral or chemical fertilizers containing two or three of the fertilizing elements nitrogen, phosphorus and potassium; other fertilizers; goods of this chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg
3105.10	Products of this chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg

Note 2 to Chapter 31, HTSUS, provides in relevant part:

Heading 3102 applies only to the following goods, provided that they are not put up in the forms or packages described in heading 3105:

(a) Goods which answer to one or other of the descriptions given below:

* * *

(ii) Ammonium nitrate, whether or not pure;

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to heading 3105, HTSUS, provides in relevant part:

The heading also covers the goods of this Chapter if put up in tablets or similar forms or in packages of a gross weight not exceeding 10 kg.

By the express terms of Note 2 to Chapter 31, HTSUS, and heading 3105, HTSUS, the instant cold compress which is put up in a package not exceeding 10 kg cannot be classified in heading 3102. It is classified in heading 3105, HTSUS.

HOLDING:

Pursuant to GRI 1 and Note 2 to Chapter 31, the cold compress is classified in heading 3105, HTSUS. It is specifically provided for in subheading 3105.10.00, HTSUS, which provides for "Mineral or chemical fertilizers containing two or three of the fertilizing elements nitrogen, phosphorus and potassium; other fertilizers; goods of this chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg: Products of this chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg."

EFFECT ON OTHER RULINGS:

NY M81919, is modified.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT E]

HQ H056862
 CLA-2 OT:RR:CTF:TCM H056862 KSH
 CATEGORY: Classification
 TARIFF NO.: 3105.10

MR. STEPHAN C. LIU
 PACIFIC CENTURY CUSTOMS SERVICE
 11099 S. LA CIENEGA BLVD., SUITE 202
 LOS ANGELES, CA 90045

RE: Modification of HQ W968297; Ammonium Nitrate Cold Compress Pack

DEAR MR. LIU:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered Headquarters Ruling Letter (HQ) W968297, issued to you on May 21, 2007, concerning, in relevant part, the classification of an ammonium nitrate cold compress pack. In HQ W968297, CBP determined that the cold compress was classified in heading 3102, HTSUS, which provides for: “Mineral or chemical fertilizers, nitrogenous.” We have reviewed that ruling and found it to be in error as it pertains to the classification of the cold compress. Therefore, this ruling modifies HQ W968297.

FACTS:

The merchandise at issue is identified as the “Instant Cold Compress” measuring 5” by 6”. The weight of the compress is 6 oz. It is composed of 40–70% by weight ammonium nitrate and 3–60% by weight water. You stated it is used to aid minor sprains, strains, joint pain, tennis elbow, headaches, toothaches, nose bleeds, insect bites and minor stings.

ISSUE:

Whether the cold compress is classified in heading 3102, HTSUS, as mineral or chemical fertilizers or heading 3105, HTSUS, as goods classifiable in chapter 30, HTSUS, in packages of a gross weight not exceeding 10 kg.

LAW AND ANALYSIS:

GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

3102	Mineral or chemical fertilizers, nitrogenous
3012.31	Ammonium nitrate, whether or not in aqueous solution
3105	Mineral or chemical fertilizers containing two or three of the fertilizing elements nitrogen, phosphorus and potassium; other fertilizers; goods of this chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg
3105.10	Products of this chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg

Note 2 to Chapter 31, HTSUS, provides in relevant part:

Heading 3102 applies only to the following goods, provided that they are not put up in the forms or packages described in heading 3105:

(a) Goods which answer to one or other of the descriptions given below:

* * *

(ii) Ammonium nitrate, whether or not pure

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to heading 3105, HTSUS, provides in relevant part:

The heading also covers the goods of this Chapter if put up in tablets or similar forms or in packages of a gross weight not exceeding 10 kg.

By the express terms of Note 2 to Chapter 31, HTSUS, and heading 3105, HTSUS, the instant cold compress which is put up in a package not exceeding 10 kg cannot be classified in heading 3102. It is classified in heading 3105, HTSUS.

HOLDING:

Pursuant to GRI 1 and Note 2 to Chapter 31, the cold compress is classified in heading 3105, HTSUS. It is specifically provided for in subheading 3105.10.00, HTSUS, which provides for "Mineral or chemical fertilizers containing two or three of the fertilizing elements nitrogen, phosphorus and potassium; other fertilizers; goods of this chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg: Products of this chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg."

EFFECT ON OTHER RULINGS:

HQ W968297, dated May 21, 2007, is modified.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT F]

HQ H056864
 CLA-2 OT:RR:CTF:TCM H056864 KSH
 CATEGORY: Classification
 TARIFF NO.: 3105.10

Ms. ELEANORE KELLY-KOBAYASHI
 RODE & QUALEY
 55 WEST 39TH STREET
 NEW YORK, NY 10018

RE: Revocation of NY L81028; Ammonium Nitrate Cold Compress Pack

DEAR Ms. KELLY-KOBAYASHI:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) L81028, issued to you on December 22, 2004, on behalf of your client Becton Dickinson and Company, concerning the classification of an ammonium nitrate cold compress pack. In NY L81028, CBP determined that the cold compress was classified in heading 3102, HTSUS, which provides for: "Mineral or chemical fertilizers, nitrogenous." We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY L81028.

FACTS:

The merchandise at issue was described in NY L81028, as follows:

The sample submitted, Ace® Brand Instant Cold Compress is a plastic bag containing ammonium nitrate and water. To use the product, the pack must be squeezed to break the inner liquid bubbles in order to activate the solution. The solution makes the compress instantly cold and it can then be applied to the area requiring treatment. This product is used to help stop pain and swelling.

ISSUE:

Whether the cold compress is classified in heading 3102, HTSUS, as mineral or chemical fertilizers or heading 3105, HTSUS, as goods classifiable in chapter 30, HTSUS, in packages of a gross weight not exceeding 10 kg.

LAW AND ANALYSIS:

GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The provisions at issue are as follows:

3102	Mineral or chemical fertilizers, nitrogenous
3012.32	Ammonium nitrate, whether or not in aqueous solution
3105	Mineral or chemical fertilizers containing two or three of the fertilizing elements nitrogen, phosphorus and potassium; other fertilizers; goods of this chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg

3105.10 Products of this chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg

Note 2 to Chapter 31, HTSUS, provides in relevant part:

Heading 3102 applies only to the following goods, provided that they are not put up in the forms or packages described in heading 3105:

(a) Goods which answer to one or other of the descriptions given below:

* * *

(ii) Ammonium nitrate, whether or not pure

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to heading 3105, HTSUS, provides in relevant part:

The heading also covers the goods of this Chapter if put up in tablets or similar forms or in packages of a gross weight not exceeding 10 kg.

By the express terms of Note 2 to Chapter 31, HTSUS, and heading 3105, HTSUS, the instant cold compress which is put up in a package not exceeding 10 kg cannot be classified in heading 3102. It is classified in heading 3105, HTSUS.

HOLDING:

Pursuant to GRI 1 and Note 2 to Chapter 31, the cold compress is classified in heading 3105, HTSUS. It is specifically provided for in subheading 3105.10.00, HTSUS, which provides for "Mineral or chemical fertilizers containing two or three of the fertilizing elements nitrogen, phosphorus and potassium; other fertilizers; goods of this chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg: Products of this chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg."

EFFECT ON OTHER RULINGS:

NY L81028, dated December 22, 2004 is revoked.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF CERTAIN PET
TRAINING PADS**

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

ACTION: Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the tariff classification of pet training pads.

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 CPB is proposing to revoke a ruling letter concerning the tariff classification of pet training pads. Similarly, CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Albena Peters, Penalties Branch: (202) 325–0321.

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 to 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 is proposing to revoke one ruling letter pertaining to the tariff classification of pet training pads. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) N027137, dated May 20, 2008 (Attachment A), this notice covers 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., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. 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 decision on this notice.

In NY N027137, CBP determined in relevant part that pet training pads are classified under subheading 6307.90.9889, HTSUS. It is now CBP's position that the pet pads are classified under subheading 4818.90.0000, HTSUS.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N027137, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H044555, set forth as Attachment B to this notice.

Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing 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: May 25, 2010

GAIL A. HAMILL

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N027137

May 20, 2008

CLA-2-63:OT:RR:NC:N3:351

CATEGORY: Classification

TARIFF NO.: 6307.90.9889

TIMOTHY J. SHEEHAN
FOLEY & LARDNER
777 EAST WISCONSIN AVENUE
MILWAUKEE, WI 53202-5306

RE: The tariff classification of a pet pad from China

DEAR MR. SHEEHAN:

In your letter dated April 23, 2008, you requested a tariff classification ruling on behalf of your client, IRIS USA, Inc., of Pleasant Prairie, Wisconsin.

The submitted sample is identified as a pet pad. You state that it is intended to be used to absorb the excretions of animals, such as dogs, while they are being trained. It measures approximately 17½" x 23½" and is described as the "Wide" size. You indicate that your client also plans to import a "Square" size (17½" x 17½") and an "Ultra Wide" size (23½" x 35½").

The pet pads consist of a bottom layer of polyurethane sheet, a top layer of non-woven textile fabric, and an absorbent middle layer. The middle layer consists of one sheet non-woven sheet of textile fibers (you refer to them as polymers) and paper pulp quilted to a non-woven sheet of textile fibers. You state that the paper pulp and the textile fibers are the materials that provide the absorptive capacity for the pet pads, and that they are equally important in the absorption process. According to the values you have provided, the pulp outweighs the textile fibers in this sheet, but not in the finished product; the textile components are more costly than the pulp.

The pet pads are considered composite goods, made of plastic (the PE sheet), paper pulp, and textile fibers and fabric. When the essential character of a composite good cannot be determined (as in this instance), then classification is based on the harmonized tariff classification that comes last in numerical order of the competing classifications. In the instant case, the product may be classified in Chapter 39 (plastic), Chapter 48 (paper), or in Chapter 63 (other articles of textile fabric). Since the textile provision appears last in the tariff (of the two competing provisions), the entire item will be classified in Chapter 63. General Rule of Interpretation 3©, Harmonized Tariff Schedule of the United States (HTSUS), noted.

The applicable subheading for the pet pads will be 6307.90.9889, HTSUS, which provides for other made up textile articles, other. The rate of duty will be 7% ad valorem.

You have suggested that the pet pads should be classified in subheading 4818.90.0000 or subheading 4823.90.1000, HTSUS. However, as the pads are not made of paper, they would not be classified in those subheadings. This item cannot be classified in heading 4818 because it is not a household or sanitary item that will be used by humans as described in the heading, nor is it going to be used in a hospital or sanitary environment apparently for human use as described in this heading. We have established that we cannot determine the essential character as paper pulp. It is the paper pulp and

polymers that contribute to the absorbency of the middle layer, as you state in your letter; therefore we cannot classify it in heading 4823.

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 World Wide Web at *http://www.usitc.gov/tata/hts/*.

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 Mitchel Bayer at 646-733-3102.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H044555

CLA-2 OT:RR:CTF:TCM H044555 AP

CATEGORY: Classification

TARIFF NO.: 4818.90.0000

GEOFFREY M. GOODALE, ESQ.
FOLEY & LARDNER L.L.P.
WASHINGTON HARBOUR
3000 K STREET, N.W., SUITE 500
WASHINGTON, D.C. 20007-5143

RE: Classification of pet training pads from China; Revocation of NY N027137

DEAR MR. GOODALE:

This is in response to your request, dated July 18, 2008, made on behalf of IRIS U.S.A., Inc., for reconsideration of New York Ruling Letter (“NY”) N027137, issued by U.S. Customs and Border Protection (“CBP”) on May 20, 2008. In NY N027137, we classified pet training pads from China under subheading 6307.90.9889, Harmonized Tariff Schedule of the United States (“HTSUS”). CBP has determined that NY N027137 is incorrect as it applies to the classification of the pet training pads. Therefore, this ruling revokes NY N027137.

FACTS:

The items at issue are identified as pet training pads, which are composed of four layers. In NY N027137, relying on information provided by the requestor, CBP described the merchandise as follows:

[The pet pad is] intended to be used to absorb the excretions of animals, such as dogs, while they are being trained. It measures approximately 17½” x 23½” and is described as the “Wide” size. You indicate that your client also plans to import a “Square” size (17½” x 17½”) and an “Ultra Wide” size (23½” x 35½”) . . . You state that the paper pulp and the textile fibers are the materials that provide the absorptive capacity for the pet pads, and that they are equally important in the absorption process. According to the values you have provided, the pulp outweighs the textile fibers in this sheet, but not in the finished product; the textile components are more costly than the pulp.

In response to CBP’s classification of the pet pads in NY N027137 under heading 6307, HTSUS, the requestor provided additional information regarding the construction of the pads and resubmitted a sample.

The pads were analyzed by a CBP laboratory and the lab report issued on September 26, 2008, described the pads as follows:

The white first layer is composed of a nonwoven textile material. The blue second layer is composed of wood pulp fibers.

The white third layer is composed of fluff wood pulp fibers blended with an absorbent polymer (polyacrylamide) in powder form.

The white fourth layer is a polyethylene film.

The fluff pulp in the pad is composed of chemical wood pulp fibers. No binder was found.

According to the information provided by the requestor and CBP analysis, the purpose of the first layer is to keep the surface dry and the purpose of the second layer is to slow down the liquid waste. The third layer, which is composed of the paper pulp, soaks up the liquid waste until the polymers can catch and retain it. The polyethylene film keeps the liquid waste from soaking into the floor.

ISSUE:

Whether the subject pet training pads are classifiable under heading 6307, HTSUS, as “Other made up articles” of textile, under subheading 4818.90.0000, HTSUS, as household, sanitary or hospital articles “of paper pulp,” or under subheading 4823.90.1000, HTSUS, as “other articles of paper pulp.”

LAW AND ANALYSIS:

Classification under the HTSUS is governed by the General Rules of Interpretation (“GRIs”), which need to be applied in numerical order. 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, and, provided such headings or notes do not otherwise require, according to the remaining GRIs taken in order. In other words classification is governed first by the terms of the headings of the tariff schedule and any relative section or chapter notes. The provisions at issue are the following:

4818	Toilet paper and similar paper, cellulose wadding or webs of cellulose fibers, of a kind used for household or sanitary purposes, in rolls of a width not exceeding 36 cm, or cut to size or shape; handkerchiefs, cleansing tissues, towels, tablecloths, table napkins, diapers, tampons, bed sheets and similar household, sanitary or hospital articles, articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibers:
4818.90.00	Other
* *	* *
4823	Other paper, paperboard, cellulose wadding and webs of cellulose fibers, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers:
4823.90	Other:
4823.90.10	Of paper pulp
* *	* *
6307	Other made up articles, including dress patterns:
6307.90	Other:
	* * *
6307.90.98	Other
6307.90.9889	Other

Because the pads are composed of different materials that are *prima facie* classifiable in different headings (paper materials under headings 4818 and 4823, HTSUS and textile materials under heading 6307, HTSUS), GRI 3 is implicated. Its relevant portions read as follows:

Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which

cannot be classified by reference to 3(a), shall be classified as they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

The GRIs do not define “essential character” but the ENs suggest a list of factors to consider. In understanding the language of the HTSUS, the Explanatory Notes (“ENs”) may be used. The ENs, even though not dispositive or legally binding, may provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the harmonized system at the international level. CBP believes that ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Explanatory Note VIII to GRI 3(b), page 4, states:

The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

Chapter 63, HTSUS, includes textile articles and Chapter 48, HTSUS, includes paper articles. The subject merchandise is a composite good made of non woven textile material, wood pulp fibers, absorbent polymer, and polyethylene film. The paper pulp, by its nature and role, provides the essential material because it captures the liquid waste and keeps it from spreading until the polymer absorbs the fluid. Although the absorbent polymer has more absorbent capacity and is more expensive, it only supplements the absorbent capacity of a pad, it cannot function without the paper pulp. *See* HQ 965890 dated November 6, 2002, and HQ 965891 dated November 6, 2002. Fluids are initially captured by the paper pulp and are then absorbed by the polymer. The fluffed pulp is the component that gives the pads their essential character. *See* HQ 083160 dated April 3, 1989. Accordingly, the pet training pads are classified in Chapter 48, HTSUS, which provides, in pertinent part, for articles of paper pulp, and not in Chapter 63, HTSUS.

Within Chapter 48, the pet pads could be arguably classified under headings 4818, HTSUS or 4823, HTSUS. Heading 4823, HTSUS provides for classification of articles of paper pulp. Heading 4818, HTSUS, in the same chapter, provides, in pertinent part, for diapers and similar household, sanitary or hospital articles of paper pulp.¹ Heading 4818, HTSUS is the *eo nomine* (e.g., refers to a commodity by a specific name, usually one well-known in commerce) tariff provision for diapers and similar household, sanitary or hospital articles of paper pulp. It is a fundamental rule of tariff classification that an *eo nomine* tariff provision for an article, such as subheading 4818.90.00, HTSUS, takes precedence over a general or basket type provision such as subheading 4823.90.10, HTSUS. *See Clairol, Inc. v. United States*, 7 CIT 377, 383 (1984). Heading 4818, HTSUS, in providing for

¹ “Toilet paper and similar paper . . . in rolls of a width not exceeding 36 cm, or cut to size or shape” is separated by a semicolon from the phrase “handkerchiefs . . . diapers, tampons, bed sheets and similar household, sanitary or hospital articles.” Items separated by semicolon in the headings of the HTSUS need to be considered separately for the purposes of classification. *See* HQ 956924, dated August 25, 1994. The semicolon signals the end of an article description and the beginning of another article description. *See* HQ 087835, dated January 8, 1991. Accordingly, your argument that the pet pads at issue exceed the 36 cm limitation in heading 4818, HTSUS is inapplicable.

diapers and similar household, sanitary or hospital articles of paper pulp, is a more specific heading than heading 4823, HTSUS, which provides for a more general description as other articles of paper pulp not elsewhere specified or included. We have previously determined that pet pads are classified in subheading 4818.90.0000, HTSUS. See NY G87966 dated March 20, 2001 and NY L80975 dated December 1, 2004. Accordingly, we conclude that the pet training pads are correctly classified under heading 4818, HTSUS.

HOLDING:

Pursuant to GRIs 1 and 3(b), the pet training pads are classified in heading 4818, HTSUS. Specifically, they are classified in subheading 4818.90.0000, HTSUS, which provides for “Toilet paper and similar paper, cellulose wadding or webs of cellulose fibers, of a kind used for household or sanitary purposes, in rolls of a width not exceeding 36 cm, or cut to size or shape; handkerchiefs, cleansing tissues, towels, tablecloths, table napkins, diapers, tampons, bed sheets and similar household, sanitary or hospital articles, articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibers: Other.” The general, column one applicable rate of duty is 0 percent *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N027137, dated May 20, 2008, is revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

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

ACTION: Withdrawal of notice of proposed revocation of tariff classification ruling letter and withdrawal of proposed revocation of treatment relating to the tariff classification of video monitors.

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 withdrawing its proposed revocation of one ruling letter relating to the tariff classification of video monitors. CBP is also withdrawing its proposal to revoke any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 40, No. 17, on April 19, 2006. One comment was received in response to the notice. Due to ongoing litigation, CBP is withdrawing its proposal to revoke the ruling and the treatment.

EFFECTIVE DATE: Immediately.

FOR FURTHER INFORMATION CONTACT: Ieva O'Rourke, Tariff Classification and Marking Branch: (202) 325-0298.

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 to 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 in the *Customs Bulletin*, Vol. 40, No. 17, on April 19, 2006, proposing to revoke one ruling letter pertaining to the tariff classification of video monitors and proposing to revoke treatment accorded by CBP to such monitors. Although in this notice, CBP was specifically referring to the revocation of New York Ruling Letter (NY) L82966, dated March 10, 2005, the notice covered any rulings on this merchandise which may have existed but had not been specifically identified. One comment was received in response to the notice.

Section 177.7(b) U.S. Customs and Border Protection Regulations provides that no ruling will be issued with respect to any issue which is pending before the United States Court of International Trade (CIT) or the United States Court of Appeals for the Federal Circuit (CAFC). Issues pertaining to the classification of monitors were decided by the CIT in *Ben-Q America Corp. v. United States*, Court No. 05-00637, on March 1, 2010. The CIT decision was appealed in the CAFC under Case Number 2010-1259, on March 24, 2010. In

light of ongoing litigation pertaining to issues similar to those raised in NY L82966, the proposed notice and action (proposed Headquarters Ruling Letter (HQ) 967768) is being withdrawn.

Dated: May 25, 2010

GAIL A. HAMILL

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



**PROPOSED MODIFICATION OF RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF DONEPEZIL
HYDROCHLORIDE**

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

ACTION: Notice of proposed modification of one ruling letter and treatment relating to the tariff classification of donepezil hydrochloride.

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) proposes to modify one ruling letter relating to the tariff classification of Donepezil Hydrochloride under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W. 5th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch: (202) 325-0024.

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 to 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 is proposing to modify one ruling letter pertaining to the tariff classification of donepezil hydrochloride. Although in this notice, CBP is specifically referring to the proposed modification of New York Ruling Letter (NY) N044081, dated November 21, 2008 (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, as amended (19 U.S.C. 1625 (c)(2)), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. 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 N044081, CBP determined that donepezil hydrochloride was classified in subheading 2933.39.31, HTSUS, which provides for “Heterocyclic compounds with nitrogen hetero-atom(s) only: Compounds containing an unfused pyridine ring (whether or not hydrogenated) in the structure: Other: Other: Drugs: Antidepressants, tranquilizers and other psychotherapeutic agents.” It is now CBP’s position that Donepezil Hydrochloride is properly classified in subheading 2933.39.41, TSUS, which provides for “Heterocyclic compounds with nitrogen hetero-atom(s) only: Compounds containing an unfused pyridine ring (whether or not hydrogenated) in the structure: Other: Other: Drugs: Other.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY N044081 and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of donepezil hydrochloride according to the analysis contained in proposed Headquarters Ruling Letter H048947, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes 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: May 25, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N044081

November 21, 2008

CLA-2-29:OT:RR:NC:N2:238

CATEGORY: Classification

TARIFF NO.: 2933.29.2000; 2933.39.3100

MS. INGE FORSTENZER
REN-PHARM INTERNATIONAL, LTD.
350 JERICHO TURNPIKE, SUITE 204
JERICHO, NY 11753

RE: The tariff classification of Exenatide (CAS-141758-74-9) and Donepezil Hydrochloride (CAS-120011-70-3) in bulk form, from China and Spain, respectively

DEAR MS. FORSTENZER:

In your letter dated November 4, 2008 you requested a tariff classification ruling.

The first product, Exenatide, is in a class of medications called incretin mimetics and is a synthetic peptide identified in the lizard *Heloderma suspectum*. It is indicated as an adjunctive therapy to improve glycemic control in patients with type 2 diabetes mellitus.

The second product, Donepezil Hydrochloride, is a reversible inhibitor of the enzyme acetylcholinesterase. It is indicated for the treatment of mild to moderate dementia in patients with Alzheimer's Disease.

The applicable subheading for the Exenatide in bulk form will be 2933.29.2000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Heterocyclic compounds with nitrogen hetero-atom(s) only: Compounds containing an unfused imidazole ring (whether or not hydrogenated) in the structure: Other: Aromatic or modified aromatic: Other: Drugs." Pursuant to GN13, HTSUS, the rate of duty will be free.

The applicable subheading for the Donepezil Hydrochloride in bulk form will 2933.39.3100, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Heterocyclic compounds with nitrogen hetero-atom(s) only: Compounds containing an unfused pyridine ring (whether or not hydrogenated) in the structure: Other: Other: Drugs: Antidepressants, tranquilizers and other psychotherapeutic agents." Pursuant to GN13, HTSUS, the rate of duty will be 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

This merchandise may be subject to the Federal Food, Drug, and Cosmetic Act and/or The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which are administered by the U.S. Food and Drug Administration (FDA). Information on the Federal Food, Drug, and Cosmetic Act, as well as The Bioterrorism Act, can be obtained by calling the FDA at 1-888-463-6332, or by visiting their website at www.fda.gov.

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 Harvey Kuperstein at (646) 733-3033.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H048947
 CLA-2 OT:RR:CTF:TCM H048947 CkG
 CATEGORY: Classification
 TARIFF NO.: 2933.39.41

Ms. INGE FORSTENZER
 REN-PHARM INTERNATIONAL, LTD.
 350 JERICHO TURNPIKE, SUITE 204
 JERICHO, NY 11753

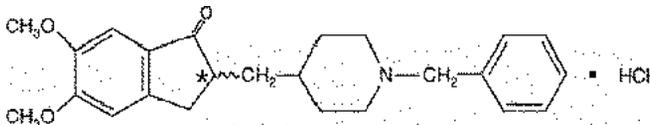
Re: Proposed modification of NY N044081; classification of donepezil hydrochloride

DEAR Ms. FORSTENZER,

This is in reference to New York Ruling Letter (NY) N044081, issued by the Customs and Border Protection (CBP) National Commodity Specialist Division on November 21, 2008, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of the drugs donepezil hydrochloride and Exenatide. We have reconsidered this decision, and for the reasons set forth below, have determined that classification of donepezil hydrochloride in subheading 2933.39.31, HTSUS, as an antidepressant, tranquilizer or other psychotherapeutic agent, is incorrect.

FACTS:

Donepezil Hydrochloride (CAS # 120011-70-3), is the salt of Donepezil (CAS 120014-06-4), with a chemical formula of $C_{24}H_{29}NO_3HCl$. It is a reversible inhibitor of the enzyme acetylcholinesterase. It is indicated for the treatment of mild to moderate dementia in patients with Alzheimer's Disease, and imported in bulk form. Its chemical structure is included in the diagram below:

**ISSUE:**

Whether donepezil hydrochloride is classifiable in subheading 2933.39.31, HTSUS, as an antidepressant, tranquilizers or other psychotherapeutic agent, or in subheading 2933.39.41, as an "other" drug of heading 2933.

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). 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 2 through 6. GRI 6, HTSUS, requires that the GRI's be applied at the subheading level on the understanding that only subheadings at the same level are comparable. The GRI's apply in the same manner when comparing subheadings within a heading.

The HTSUS provisions under consideration are as follows:

2933:	Heterocyclic compounds with nitrogen hetero-atom(s) only: Compounds containing an unfused pyridine ring (whether or not hydrogenated) in the structure:
2933.39:	Other: Other:
	Drugs:
2933.39.31:	Antidepressants, tranquilizers and other psychotherapeutic agents.....
2933.39.41:	Other.....
	* * * *

The introductory language to Table 1 of the HTSUS Pharmaceutical Appendix states:

This table enumerates products described by International Non-proprietary Names (INN) which shall be entered free of duty under general note 13 to the tariff schedule...

DONEPEZIL 120014-06-4

The introductory language to Table 2 of the HTSUS Pharmaceutical Appendix states:

Salts, esters and hydrates of the products enumerated in table 1 above that contain in their names any of the prefixes or suffixes listed below shall also be entered free of duty under general note 13 to the tariff schedule, provided that any such salt, ester or hydrate is classifiable in the same 6-digit tariff provision as the relevant product enumerated in table 1.

* * * *

Heading 2933, HTSUS, provides for heterocyclic compounds with nitrogen hetero-atom(s) only. Heterocyclic compounds are *organic compounds* containing at least one atom of *carbon*, and at least one element other than carbon, such as *sulfur*, *oxygen* or *nitrogen* within a ring structure. These structures may comprise either *simple aromatic rings* or non-aromatic rings. Donepezil hydrochloride is composed of multiple carbon rings, one of which includes a nitrogen atom. Donepezil is thus a heterocyclic compound classifiable in heading 2933, HTSUS. Donepezil hydrochloride further contains an unfused pyridine ring (a six-membered ring of five carbon atoms and one nitrogen atom), and is thus classifiable at the six-digit level in subheading 2933.39, HTSUS. The issue arises at the eight-digit tariff rate level.

In NY N044081, CBP classified the subject merchandise in subheading 2933.39.31, HTSUS. However, donepezil does not act as an antidepressant, tranquilizer, or psychotherapeutic agent. Rather, it is used to improve cognitive function and slow the progression of dementia due to Alzheimer's disease. As an inhibitor of the enzyme acetylcholinesterase, donepezil inhibits the *cholinesterase enzyme* from breaking down *acetylcholine*, increasing both the level and duration of action of the *neurotransmitter* acetylcholine, which is thought to excite neuronal activity in certain areas of the brain, and

to play a role in learning and short-term memory. Thus, the appropriate classification for donepezil hydrochloride at the eight-digit subheading level is 2933.39.41, HTSUS.

HOLDING:

By application of GRI 1 and 6, donepezil hydrochloride is classified in subheading 2933.39.41, HTSUS, which provides for “Heterocyclic compounds with nitrogen hetero-atom(s) only: Compounds containing an unfused pyridine ring (whether or not hydrogenated) in the structure: Other: Other: Drugs: Other.”

Pursuant to GN 13 of the HTSUS, donepezil hydrochloride is entered free of duty.

Duty rates are provided for your convenience and 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/tata/hts/.

EFFECT ON OTHER RULINGS:

NY N044081, dated November 21, 2008, is hereby modified with respect to the classification of donepezil hydrochloride.

Sincerely,

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division



**PROPOSED MODIFICATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF CERTAIN TOOL KITS**

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

ACTION: Notice of proposed modification of a ruling letter and proposed revocation of treatment relating to the tariff classification of tool kits.

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 proposing to modify a ruling letter concerning the tariff classification of certain tool kits. Similarly, CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Jacinto P. Juarez, Jr., Tariff Classification and Marking Branch: (202) 325–0027.

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 to 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 is proposing to revoke a ruling letter pertaining to the tariff classification of tool kits. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) H80677, dated May 15, 2001 (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., a ruling letter, internal advice

memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. 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 decision on this notice.

In NY H80677, CBP determined, in relevant part, that a tool kit comprised of 4 screwdriver bits, a screwdriver handle, an extension adapter, and a tool roll with pockets for the screwdriver handle and adapter and a hard plastic strip riveted at each end to the inside of the roll with four hard plastic sliders with posts attached to this strip for mounting the bits in a socket type holder for storage was classified under subheading 8205.40, HTSUS, which provides for: "handtools (including glass cutters) not elsewhere specified or included; . . . screwdrivers, and parts thereof." It is now CBP's position that the tool kit is classified under subheading 8207.90, HTSUS, which provides for: "interchangeable tools for handtools, . . . other interchangeable tools, and parts thereof: other: other: not suitable for cutting metal, and parts thereof: for handtools, and parts thereof."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY H80677, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter (HQ) HQ W968258, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing 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: May 25, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY H80677

May 15, 2001

CLA-2-82:RR:NC:1:104 H80677

CATEGORY: Classification

TARIFF NO.: 8207.90.6000; 8205.40.0000; 8466.10.8075

Ms. NANCY JIN

PEACE INTERNATIONAL CORPORATION

831 FOSTER AVENUE

BENSENVILLE, ILLINOIS 60106

RE: The tariff classification of tool kits from Taiwan

DEAR Ms. JIN:

In your letter dated April 25, 2001 on behalf of Hand Tools International of Lake Zurich, Illinois you requested a tariff classification ruling.

Two samples have been provided of tool kits in textile tool rolls. The samples will be returned as requested.

The first sample includes 4 screwdriver bits, a screwdriver handle and an extension adapter. The tool roll has pockets for the screwdriver handle and the adapter and a hard plastic strip riveted at each end to the inside of the roll. Four hard plastic sliders with posts are attached to this strip. The bits, which are mounted in a socket type holder, fit snugly over the posts for storage.

The second sample includes 10 screwdriver bits (no handle or adapter). It has two hard plastic strips riveted to the roll, each with five sliding posts for the bits.

You indicate that the kits will not be imported in retail packaging hence they cannot be considered as sets for tariff purposes. The textile tool rolls are not generic tool rolls.

The applicable subheading for the first sample will be 8205.40.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for screwdrivers and parts thereof. The rate of duty will be 6.2 percent.

The applicable subheading for the second sample will be 8207.90.6000, HTS, which provides for other interchangeable tools: other: other: not suitable for cutting metal: for handtools. The rate of duty will be 4.3 percent.

The textile tool rolls are classified with the tools they hold in accordance with General Rule of Interpretation 5(a) which states: Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and entered with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character.

You also inquired about the classification of the above items, except for the textile tool roll, shipped in bulk. Shipments may contain only bits, or a mixture of bits, screwdriver handles and adapters.

The screwdriver handles and adapters imported in bulk would be classified under 8466.10.8075, HTS, which provides for tool holders for any type of tool for working in the hand. The rate of duty will be 3.9 percent.

The screwdriver bits imported in bulk will be classified under HTS sub-heading 8207.90.6000 as other interchangeable tools; other: other: not suitable for cutting metal: for handtools. The rate of duty will be 4.3 percent.

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 212-637-7038.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ W968258
CLA-2 OT:RR:CTF:TCM 968258 JPJ
CATEGORY: Classification
TARIFF NO.: 8207.90.60

Ms. NANCY JIN
PEACE INTERNATIONAL CORPORATION
831 FOSTER AVENUE
BENSENVILLE, ILLINOIS 60106

RE: Modification of NY H80677, dated March 15, 2001; Classification of certain tool kits

DEAR Ms. JIN:

This letter concerns New York Ruling letter (“NY”) H80677, dated May 15, 2001, issued to you by the National Commodity Specialist Division (“NCSD”), U.S. Customs and Border Protection (“CBP”). At issue in that ruling, in relevant part, was the classification of a tool kit consisting of 4 screwdriver bits, a screwdriver handle and an extension adapter in a textile roll, under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY H80677 and have found that it is incorrect with respect to the tool kit. For the reasons set forth in this ruling, we are modifying NY H80677.

FACTS:

In NY H80677, the tool kit was described as follows:

The first sample includes 4 screwdriver bits, a screwdriver handle and an extension adapter. The tool roll has pockets for the screwdriver handle and the adapter and a hard plastic strip riveted at each end to the inside of the roll. Four hard plastic sliders with posts are attached to this strip. The bits, which are mounted in a socket type holder, fit snugly over the posts for storage.

ISSUE:

Whether the tool kit is classified in heading 8205, HTSUS, as handtools. . . not elsewhere specified or included, or in heading 8207, HTSUS, as interchangeable tools for handtools.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

- 8205 Handtools (including glass cutters) not elsewhere specified or included; blow torches and similar self-contained torches; vises, clamps and the like, other than accessories for and parts of machine tools; anvils; portable forges; hand-or pedal-operated grinding wheels with frameworks; base metal parts thereof (con.):
- 8207 Interchangeable tools for handtools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screwdriving), including dies for drawing or extruding metal, and rock drilling or earth boring tools; base metal parts thereof:
- 8466 Parts and accessories suitable for use solely or principally with the machines of headings 8456 to 8465, including work or tool holders, self-opening dieheads, dividing heads and other special attachments for machine tools; tool holders for any type of tool for working in the hand:

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN’s provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

The instant tool kit consists of at least two different articles that are, *prima facie* classifiable in more than one heading, i.e., the screwdriver handle and extension adapter are classifiable in heading 8466, HTSUS, and the screwdriver bits are classifiable in heading 8207, HTSUS. As such, classification cannot be resolved under GRI 1. GRI 2(b) directs that the “classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.”

GRI 3 provides that:

When by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings refer to only part of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to the goods, even if one of them gives a more complete or precise description of the good.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

The headings at issue only refer to part of the items in the set put up for retail sale. As such, they are regarded as equally specific and resort must be made to GRI 3(b).

EN X to GRI 3(b) provides guidance for determining whether the instant tool kit constitutes “goods put up in sets for retail sale”:

For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:

(a) consist of at least two different articles which are, *prima facie*, classifiable in different headings . . . ;

(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and

(c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

The screwdriver handle, extension adapter, and screwdriver bits are *prima facie* classifiable under different headings of the HTSUS. These are put together to meet a particular need or carry out a specific activity, that is, tightening or loosening fasteners and is imported in a manner suitable for sale to users without repacking.

Because the three criteria under EN X to GRI 3(b) are satisfied, pursuant to GRI 3(b), the item constitutes “goods put up in sets for retail sale” and will be “classified as if it consisted of the material or component which gives it its essential character, insofar as this criterion is applicable.”

Explanatory Note VIII to GRI 3(b) explains:

“[t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods.”

As noted above, EN (VIII) to GRI 3(b) provides that when performing an essential character analysis the factors that should be considered are the bulk, quantity, weight or value, or the role of a constituent material in relation to the use of the goods. There have been several court decisions on “essential character” for purposes of classification under GRI 3(b). *See, Conair Corp. v. United States*, 29 C.I.T. 888 (2005); *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1337–1338 (Ct. Int’l Trade 2005); and *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d 1278, 1295–1356 (Ct. Int’l Trade 2006), *aff’d* 491 F.3d 1334 (Fed. Cir. 2007). “[E]ssential character is that which is indispensable to the structure, core or condition of the article, i.e., what it is.” *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d at 1293 quoting *A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378, 383 (1971). In particular in *Home Depot USA, Inc. v. United States*, the court stated “[a]n essential character inquiry requires a fact intensive analysis.” 427 F. Supp. 2d 1278, 1284 (Ct. Int’l Trade 2006). Therefore, a case-by-case determination on essential character is warranted in this situation.

Applying the essential character analysis to the merchandise at issue, we look particularly to the role of the constituent material in relation to the use of the goods. As noted above, this set is intended to be used for tightening or loosening fasteners. The central component is the screwdriver bits because

they enable the tool to function as intended. Thus, the bits are what play the most important role in the use of the instant tool kit, and provide the essential character of the set. *Accord* NY J82517, April 17, 2003 (which determined, in relevant part, that the essential character of a 24 Piece Ratchet & Bit Set was imparted by the screwdriver bits); NY K83351, March 10, 2004 (which determined, in relevant part, that the essential character of three tool sets was imparted by the screwdriver bits). As such, the screwdriver bits are provided for in heading 8207, HTSUS.

HOLDING:

In accordance with GRI 3(b), the instant tool kit, which includes 4 screwdriver bits, a screwdriver handle and an extension adapter, is classified in heading 8207, HTSUS, and specifically in subheading 8207.90.60, HTSUS, as: “Interchangeable tools for handtools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screwdriving), including dies for drawing or extruding metal, and rock drilling or earth boring tools; base metal parts thereof: Other interchangeable tools, and parts thereof: Other: Not suitable for cutting metal, and parts thereof: For handtools, and parts thereof”. The 2010 column one rate of duty is 4.3%.

EFFECT ON OTHER RULINGS:

NY H80677, dated May 15, 2001, is hereby modified.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division



GENERAL NOTICE

19 CFR PART 177

Proposed Revocation of a Ruling Letter and Proposed Revocation of Treatment Relating to Classification of the Demy Digital Recipe Reader

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

ACTION: Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the classification of the Demy Digital Recipe Reader.

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 CPB proposes to revoke a ruling letter concerning

the classification of the Demy Digital Recipe Reader under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB proposes to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulation and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor Washington, D.C. 20229–1179. Comments submitted may be inspected at the above address during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

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 to 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 (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 proposes to revoke one ruling letter pertaining to the classification of the Demy Digital Recipe Reader. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) N055503, dated April 20, 2009 (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 data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise 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. 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 his agents for importations of merchandise subsequent to this notice.

In NY N055503, CBP found that the Demy Digital Recipe Reader was classified in subheading 8543.70.96, HTSUS, which provides for: "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter: Other machines and apparatus: Other: Other: Other." We are now of the opinion that the correct classification is subheading 8543.70.92, HTSUS, which provides for: "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter: Other machines and apparatus: Other: Other: Electrical machines with translation or dictionary functions."

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY N055503, 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 H068288 (see Attachment "B" to this document). Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP proposes 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: May 25, 2010

GAIL A. HAMILL
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT A]

N055503

April 20, 2009

CLA-2-85:OT:RR:NC:N1:112

CATEGORY: Classification

TARIFF NO.: 8543.70.9650

MR. DAVID H. GOODMAN
PRESIDENT & CEO
KEY INGREDIENT CORPORATION
P.O. BOX 1824
AUSTIN, TEXAS 78767

RE: The tariff classification of the Demy from China

DEAR MR. GOODMAN:

In your letter which was received by this office on March 24, 2009, you requested a tariff classification ruling. The sample which you submitted is being returned to you as requested.

The merchandise subject to this ruling is the "Demy". It is a portable electronic touch-screen recipe reader. The device measures 7.8 inches in length by 5.4 inches in width. It incorporates a 7 inch color touch-screen with a graphical navigation interface. It is capable of storing and sorting, recipe data, photographs of recipes, and descriptions of ingredients. The item includes a specialized application for the conversion of measurements. It also incorporates a piezo buzzer for the alarm in the device's "Kitchen Timer" application. The Demy comes packaged with an AC adapter, USB cable, and documentation.

The device runs Linux version 2.6.22. Applications developed for the Demy environment run exclusively on the Demy and are not compatible on standard Linux distributions. The Demy syncs up to the company's website account by plugging the device into a personal computer using a USB connection. The user can access recipes from the company's website and either download and install the receipts onto the Demy or save them into their computer. The item is pre-loaded with 250 recipes and can store up to 2500 recipes. The screen can be viewed at a horizontal or vertical angle by rotating the Demy to change the viewing angle.

The applicable subheading for the Demy will be 8543.70.9650, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Electrical machines and apparatus...: Other machines and apparatus: Other: Other: Other: Other." The rate of duty will be 2.6%.

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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

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 Steve Pollichino at 646-733-3008.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H068288

CLA-2: OT:RR:CTF:TCM H068288 TNA

CATEGORY: Classification

TARIFF NO.: 8543.70.92

JANE L. TAEGER, DIRECTOR OF COMPLIANCE
SAMUEL, SHAPIRO & COMPANY, INC.
ONE CHARLES CENTER
100 N. CHARLES STREET, SUITE 1200
BALTIMORE, MD 21201

RE: Revocation of NY N055503; Classification of Demy Digital Recipe Reader

DEAR Ms. TAEGER:

This letter is in response to your request on behalf of your client, Key Ingredient Corporation (“Key Ingredient”), for reconsideration of New York Ruling Letter (“NY”) N055503, dated April 20, 2009. In NY N055503, U.S. Customs and Border Protection (“CBP”) classified the Demy Electronic Recipe Reader under subheading 8543.70.96, Harmonized Tariff Schedule of the United States (HTSUS), as “[e]lectrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter: Other machines and apparatus: Other: Other: Other.” We have reviewed NY N055503 and found it to be incorrect. For the reasons set forth below, we hereby revoke NY N055503.

FACTS:

The merchandise at issue is the “Demy,” a portable digital recipe reader. The Demy measures 7.8 inches in length by 5.4 inches in width and contains a 7 inch color touch-screen with a graphical navigation interface. The screen can be read horizontally or vertically and will automatically adjust based on the device’s placement. The Demy stores and sorts recipes, photographs and definitions of completed food dishes. The device comes preloaded with 250 recipes, and a consumer can download up to 2500 of their own recipes from Key Ingredient’s website. To do so, consumers connect the Demy to their personal computer via a USB cable. On the Demy, recipes are indexed and can be retrieved alphabetically. The recipes can also be filed on the “Short List,” another of the device’s applications, for quick retrieval.

Another of the Demy’s functions is to list common food ingredients, describe each ingredient, supply a photo of it, and suggest a substitute. In addition, the device includes a specialized application for the conversion of measurements but does not otherwise contain a calculating device. It also incorporates a piezo buzzer for the alarm in the device’s “Kitchen Timer” application. The Demy comes packaged with an AC adapter, USB cable, and documentation.

ISSUE:

Whether the Demy electronic recipe reader is classified in subheading 8543.70.96, HTSUS, as an “other” electrical machine or apparatus having individual functions not specified or included elsewhere, or in subheading 8543.70.92, HTSUS, as an electrical machine with translation or dictionary functions?

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and 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. 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 GRIs 1 through 5.

The HTSUS subheadings at issue are as follows:

8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
8543.70	Other machines and apparatus: Other: Other:
8543.70.9200	Electrical machines with translation or dictionary functions; flat panel displays other than for articles of heading 8528, except for subheadings 8528.51 or 8528.61
8543.70.96	Other

It is not in dispute that electronic digital readers such as the Demy are not specifically provided for in any heading of chapter 85, HTSUS. They are therefore classified in heading 8543, HTSUS, because their only function is to enable recipes to be read electronically. It is also not in dispute that the Demy is classified under subheading 8543.70, HTSUS, because electronic readers are machines “other” than the ones named in subheadings 8543.10 through 8543.30 of the heading. Thus, the issue here is the correct 8-digit classification of the Demy.

In your letter of July 2, 2009, you argue that the Demy is properly classified under subheading 8543.70.92, HTSUS, which provides for electrical machines with translation or dictionary functions. You reason that the Demy performs a dictionary function. In support of your argument, you quote the *Merriam Webster’s Dictionary* definitions of “dictionary,” which include: “a reference source in print or electronic form containing words usually alphabetically arranged along with information about their forms, pronunciations, functions, etymologies, meanings, and syntactical and idiomatic uses,” as well as “a computerized list (as of items of data or words) used for reference (as for information retrieval or word processing).” See www.merriam-webster.com.

Because the HTSUS does not define the term “dictionary,” CBP is permitted to consult dictionaries and other lexicographic materials to determine its meaning. See, e.g., *Lonza v. United States*, 46 F.3d. 1098; 1995 U.S. App. LEXIS 1821; 16 Int’l Trade Rep (BNA) 2551. The *Oxford English Dictionary*, for example, defines “dictionary” as:

1.a. A book dealing with the individual words of a language (or certain specified classes of them), so as to set forth their orthography, pronunciation, signification, and use, their synonyms, derivation, and history, or

at least some of these facts: for convenience of reference, the words are arranged in some stated order, now, in most languages, alphabetical; and in larger dictionaries the information given is illustrated by quotations from literature; a word-book, vocabulary, or lexicon.

d. An ordered list stored in and used by a computer; *spec.* (a) a list of contents, e.g. of a database; (b) a list of words acceptable to a word-processing program, against which each word of text is checked.

2.a. By extension: A book of information or reference on any subject or branch of knowledge, the items of which are arranged in alphabetical order; an alphabetical encyclopædia: as a Dictionary of *Architecture*, *Bibliography*, *Geography*, *of the Bible*, *of Christian Antiquities*, *of Dates*, etc.

The Demy contains both a recipe list and an ingredient list that are in alphabetical order and which contain definitions and pictures of the items. As such, we find that the definition of “dictionary” encompasses the Demy, which is a recipe dictionary. Accordingly, the Demy is classified under subheading 8543.70.92, HTSUS, as an electrical machine with a dictionary function.

The Demy is imported packaged together with various accessories ready for retail sale. Merchandise classifiable under more than one heading is classified according to GRI 3. GRI 3(b) provides, in relevant part:

When, by application of Rule 2(b) or for any other reason, goods are *prima facie* classifiable under two or more headings, classification shall be effected as follows:

...

Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

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

EN VIII to GRI 3(b) provides:

The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

EN X to GRI 3(b) provides:

For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which: (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings; (b) consist of products or articles put up together to meet a particular need

or carry out a specific activity...; and (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

The Demy meets the description of “goods put up in sets for retail sale.” The components of the sets consist of various articles, which, if imported separately, would be classified in different headings. The AC adapter (heading 8504, HTSUS), USB cable (heading 8544, HTSUS) are put up together with the Demy (heading 8543, HTSUS) to carry out the specific activity of operating the Demy. As imported, they are packaged for retail sale to the ultimate purchaser without the need for repacking. See EN GRI 3(b). The essential character of this set is conveyed by the Demy because it is the reason why a consumer would purchase the set.

HOLDING:

Under the authority of GRI 1, the Demy is classified in heading 8543, HTSUS. It is specifically provided for in subheading 8543.70.92, HTSUS, which provides for “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter: Other machines and apparatus: Other: Other: Electrical machines with translation or dictionary functions...” The 2009 column one, general rate of duty is free. When the Demy and the accessories with which it is packaged are imported as a set, the set is also classified in subheading 8543.70.92, HTSUS, pursuant to GRI 3(b).

EFFECT ON OTHER RULINGS:

NY N055503, dated April 20, 2009, is revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED MODIFICATION AND REVOCATION OF TWO
RULING LETTERS AND PROPOSED REVOCATION OF
TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF MASONRY ANCHORS**

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

ACTION: Notice of proposed modification and revocation of two ruling letters and proposed revocation of treatment relating to the tariff classification of masonry anchors.

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 CPB is proposing to modify and revoke two ruling

letters concerning the tariff classification of masonry anchors. Similarly, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor, Washington, D.C. 20229-1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Janelle L. Gordon, Intellectual Property Rights and Restricted Merchandise Branch: (202) 325-0087.

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 to 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 is proposing to modify and revoke two ruling letters pertaining to the tariff classification of masonry an-

chers. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) I83699, dated June 25, 2002 (Attachment A) and the revocation of NY I80643, dated April 15, 2002 (Attachment B), 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., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. 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 decision on this notice.

In NY I83699, CBP determined in part that masonry anchors, consisting of a steel nail and lead anchor, were classified under heading 7317, HTSUS, as an article of iron or steel. It is now CBP's position that the masonry anchors are classified under heading 7806, HTSUS, as other articles of lead.

In NY I80641, CBP determined that masonry anchors, consisting of a zamac # 3 zinc anchor and a 1022 carbon steel nail, was classified under heading 7317, HTSUS, as an article of iron or steel. It is now CBP's position that the masonry anchors are classified under heading 7907, HTSUS, as other articles of zinc.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY I83699, revoke NY I80641 and revoke or modify any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letters (HQ) H030415 and H030416, set forth as Attachments C and D to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing 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: May 25, 2010

GAIL A. HAMILL
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY I83699

June 25, 2002

CLA-2-73:RR:NC:1:118 I83699

CATEGORY: Classification

TARIFF NO.: 7318.21.0030; 3926.90.9880; 7318.14.1060; 7317.00.7500;
7318.15.8065

MR. JEFF GREEN

M. GREEN CO.

P.O. BOX 3728

PHILADELPHIA, PA 19125

RE: The tariff classification of a fasteners from Taiwan

DEAR MR. GREEN:

In your letter dated June 17, 2002, you requested a tariff classification ruling.

You have described your samples as follows:

- ¼" Regular split lock washers, zinc plated. They are made of steel.
- 10-12 x 1 Plastic conical anchors
- Plastic anchor kit — containing 100 each 10-12 x 1 conical plastic anchors, 100 each of combination slotted/Philips sheet metal screws for light duty anchoring applications, and 1 ¼" x 4" carbide tipped masonry drill bit
- ¼" x 1" Mushroom head lead nail-ins. The nail is made of steel. The anchor body is made of a zinc alloy (zamac).
- ½" - 13 x 1 Grade 5 hex cap screw, zinc plated. They are made of steel.

The applicable subheading for the regular split lock washers will be 7318.21.0030, Harmonized Tariff Schedule of the United States (HTS), which provides for screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: non-threaded articles: spring washers and other lock washers: helical spring lock washers. The duty rate will be 5.8% ad valorem.

Helical spring lock washers from Taiwan are presently the subject of a dumping order. The case number is A-583-820. Should you require an Antidumping scope determination for this product, please file a request for a formal scope inquiry to: U.S. Department of Commerce, International Trade Administration, Office of Antidumping Compliance, IA Central Records Unit, Room B-009, Attention: Mr. Roland MacDonald, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

The applicable subheading for the plastic conical anchors imported alone will be 3926.90.9880, HTS, which provides for other articles of plastics and articles of other materials of headings 3901 to 3914: other: other: other. The rate of duty will be 5.3% ad valorem.

The applicable subheading for the plastic anchor kit which contains plastic conical anchors and an equal amount of sheet metal screws and a single drill bit is considered a GRI 3 set and will be classified 7318.14.1060, HTS, which provides for screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: threaded articles: self-tapping screws: having shanks or threads with a diameter of less than 6 mm: other. The duty rate will be 6.2% ad valorem.

The applicable subheading for the mushroom head lead nail-ins will be 7317.00.7500, HTS, which provides for nails, drawing pins, corrugated nails, staples (other than those of heading 8305) and similar articles, of iron or steel, whether or not with heads of other material, but excluding such articles with heads of copper: other: of two or more pieces. The duty rate will be 0.5% ad valorem.

The applicable subheading for the hex cap screws will be 7318.15.8065, HTS, which provides for screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel: threaded articles: other screws and bolts, whether or not with their nuts or washers: other: having shanks or threads with a diameter of 6 mm or more: other: other: with hexagonal heads: other. The duty rate will be 8.5% ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kathy Campanelli at 646-733-3021.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

NY I80641
April 15, 2002
CLA-2-73:RR:NC:1:118 I80641
CATEGORY: Classification
TARIFF NO.: 7317.00.7500

MR. PETER K. SCHLESINGER
ATLANTIC CUSTOMS BROKERS, INC.
1975 LINDEN BOULEVARD
ELMONT, NY 11003

RE: The tariff classification of masonry anchors from China.

DEAR MR. SCHLESINGER:

In your letter dated April 5, 2002, on behalf of your client Olympic Manufacturing, Agawam, MA, you requested a tariff classification ruling.



INSERT GRAPHIC ANCHOR.TIF

You have described your samples as masonry anchors. They are made of zamac #3 zinc anchors and 1022 carbon steel wire nails. They are to be used with a hammer. They are approximately 2" in length.

The applicable subheading for the masonry anchors will be 7317.00.7500, Harmonized Tariff Schedule of the United States (HTS), which provides for nails, drawing pins, corrugated nails, staples (other than those of heading 8305) and similar articles, of iron or steel, whether or not with heads of other material, but excluding such articles with heads of copper: other: of two or more pieces. The duty rate will be 0.5% ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kathy Campanelli at 646-733-3021.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT C]

HQ H030415
CLA-2 OT:RR:CTF:TCM H030415
CATEGORY: Classification
TARIFF NO.: 7907.00.6000

MR. PETER K. SCHLESINGER
ATLANTIC CUSTOMS BROKERS, INC.
1975 LINDEN BOULEVARD
ELMONT, NY 11003

RE: Classification of steel nail and zinc masonry anchors; Revocation of NY I80641

DEAR MR. SCHLESINGER:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) I80641, issued to you on April 15, 2002, on behalf of your client Olympic Manufacturing, Agawam (hereinafter "Olympic"). In NY I80641, CBP determined that masonry anchors consisting of zamac #3 zinc anchors and 1022 carbon steel nails were classified under heading 7317, HTSUS, as an article of iron or steel. CBP has reviewed the tariff classification of the subject masonry anchor and determined that NY I80641 is in error. Therefore, this ruling revokes NY I80641.

FACTS:

The product under consideration is a masonry anchor that is approximately 2 inches long and consists of two pieces: a cylindrical zinc alloy sleeve — the anchor, and a steel nail, which fit together to form one integral unit. Specifically, the masonry anchor at issue is comprised of a zamac # 3 zinc anchor that weighs approximately 5 $\frac{3}{4}$ grams, and a 1022 carbon steel nail that weighs approximately 2 $\frac{3}{4}$ grams. It is used for fastening articles in concrete, block, or brick by inserting the masonry anchor into a predrilled hole and driving the nail down with a hammer.¹ The anchor sleeve expands against the sides of the hole as the nail is installed; thereby securely bolting the masonry anchor in place.

ISSUE:

Whether masonry anchors consisting of a steel nail and zinc anchor are classified under heading 7317, HTSUS, as an "article of iron or steel," or under heading 7907, HTSUS, as "other articles of zinc."

LAW AND ANALYSIS:

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

¹See <http://www.acehardware.com/info/index.jsp?categoryId=1283458> (last visited March 22, 2010).

The HTSUS provisions under consideration are as follows:

7317	Nails, tacks, drawing pins, corrugated nails, staples (other than those of Heading 8305) and similar articles, of iron or steel, whether or not with heads of other material, but excluding such articles with heads of copper:
	Other:
7317.00.75	Of two or more pieces * * *
7907	Other articles of zinc: * * *
7907.00.60	Other.

Note 3 to Section XV (which includes Chapter 73 and 79), HTSUS, states, in relevant part:

Throughout the schedule, the expression “*base metals*” means: iron and steel, copper, nickel, aluminum, lead, zinc

Note 5 to Section XV, HTSUS, states, in relevant part:

Classification of alloys (other than ferroalloys and master alloys as defined in chapters 72 and 74):

(a) An alloy of base metals is to be classified as an alloy of the metal which predominates by weight over each of the other metals.

* * *

Note 7 to Section XV, HTSUS, states, in relevant part:

7. Classification of composite articles:

Except where the headings otherwise require, articles of base metal (including articles of mixed materials treated as articles of base metal under the General Rules of Interpretation) containing two or more base metals are to be treated as articles of the base metal predominating by weight over each of the other metals.

Explanatory Note IX to GRI 3(b), states in part that a “composite good” is a good that is “made up of different components . . . attached to each other to form a practically inseparable whole . . .” and “with separable components provided these components are adapted one to the other [,] and are mutually complementary and that together . . . form a whole which would not normally be offered for sale in separate parts.” See *Explanatory Notes*, at GRI 3(b)(IX).²

As stated previously, the masonry anchors under consideration consist of a zamac #3 anchor and a steel nail fitted together to form one integral unit. The anchor weighs approximately 5 ¾ grams and the nail 2 ¾ grams. Ac-

² In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. CBP believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

cordingly, the subject masonry anchor is classified as an article of zinc under heading 7909, HTSUS, as “other articles of zinc.”

HOLDING:

Pursuant to GRI 1 and Note 7 to Section XV, HTSUS, the steel nail and zinc masonry anchors are classified in heading 7907, HTSUS. Specifically, they are classified in subheading 7907.00.6000, HTSUS, which provides for “Other articles of zinc: Other.” The 2010 column one general rate of duty is 3% *ad valorem*.

Duty rates provided for convenience only 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 <http://www.usitc.gov/tata/hts/>.

EFFECT ON OTHER RULINGS:

NY I80641, dated April 15, 2002 is revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT D]

HQ H030416
CLA-2 OT:RR:CTF:TCM H030416
CATEGORY: Classification
TARIFF NO.: 7806.00.8000

MR. JEFF GREEN
M. GREEN Co.
P.O. Box 3728
PHILADELPHIA, PA 19125

RE: Modification of NY I83699 dated June 25, 2002; Classification of mushroom head lead nail-ins

DEAR MR. GREEN:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) I83699, issued to you on June 25, 2002. In NY I83699, CBP determined in part that mushroom head lead nail-ins consisting of lead anchors and steel nails were classified under heading 7317, HTSUS, as an article of iron or steel. CBP has reviewed the tariff classification of the subject article and determined that the cited ruling is in error with respect to the “1/4” x 1” mushroom head lead nail-ins.” NY I83699 remains correct with respect to the other items subject to ruling NY I83699. Accordingly, this ruling modifies NY I83699.

FACTS:

The product under consideration is a 1/4” x 1” mushroom head lead nail-in that is comprised of a cylindrical lead sleeve — the anchor, and a steel nail, which fit together to form one integral unit. The lead anchor weighs approximately 5 1/2 grams, and the nail weighs approximately 3 grams. It is used for fastening articles in concrete, block, or brick by inserting the lead anchor into a predrilled hole and driving the nail down with a hammer.¹ As the nail is installed, the anchor sleeve expands against the sides of the hole; thereby securely bolting the mushroom head lead nail-in into place.

ISSUE:

Whether mushroom head lead nail-ins consisting of a lead anchor and steel nail are classified under heading 7317, HTSUS, as an “article of iron or steel,” or under heading 7806, HTSUS, as “other articles of lead.”

LAW AND ANALYSIS:

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

¹See <http://www.acehardware.com/info/index.jsp?categoryId=1283458> (last visited March 22, 2010).

The HTSUS provisions under consideration are as follows:

7318	Nails, tacks, drawing pins, corrugated nails, staples (other than those of Heading 8305) and similar articles, of iron or steel, whether or not with heads of other material, but excluding such articles with heads of copper:
	Other:
7317.00.75	Of two or more pieces * * *
7806	Other articles of lead: * * *
7806.00.80	Other.

Note 3 to Section XV (which includes Chapter 73 and 78), HTSUS, states, in relevant part:

Throughout the schedule, the expression “*base metals*” means: iron and steel, copper, nickel, aluminum, lead

* * *

Note 5 to Section XV, HTSUS, states, in relevant part:

Classification of alloys (other than ferroalloys and master alloys as defined in chapters 72 and 74):

(b) An alloy of base metals is to be classified as an alloy of the metal which predominates by weight over each of the other metals.

Note 7 to Section XV, HTSUS, states, in relevant part:

7. Classification of composite articles:

Except where the headings otherwise require, articles of base metal (including articles of mixed materials treated as articles of base metal under the General Rules of Interpretation) containing two or more base metals are to be treated as articles of the base metal predominating by weight over each of the other metals.

Explanatory Note IX to GRI 3(b), states in part that a “composite good” is a good that is “made up of different components . . . attached to each other to form a practically inseparable whole . . .” and “with separable components provided these components are adapted one to the other[,] and are mutually complementary and that together . . . form a whole which would not normally be offered for sale in separate parts.” See *Explanatory Notes*, at GRI 3(b)(IX).²

² In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. CBP believes the ENs should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

In the instant case, the mushroom head lead nail-in consists of a lead anchor and a steel nail fitted together to form one integral unit. The lead anchor weighs 5 1/2 grams, and the steel nail weighs 3 grams. Therefore, we conclude that the mushroom head lead nail-in is classified as “other articles of lead” under heading 7806, HTSUS.

HOLDING:

Pursuant to GRI 1 and Note 7 to Section XV, HTSUS, the mushroom head lead nail-ins are classified in heading 7806, HTSUS. Specifically, they are classified in subheading 7806.00.8000, HTSUS, which provides for “Other articles of lead: Other.” The 2010 column one general rate of duty is 3% *ad valorem*.

Duty rates provided for convenience only 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 <http://www.usitc.gov/tata/hts/>.

EFFECT ON OTHER RULINGS:

NY I83699, dated June 25, 2002, is hereby modified.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



**CLA-2 OT:RR:CTF:TCM
 HQ H075936 ASM
 HQ H097735 ASM
 HQ H097736 ASM
 HQ H097737 ASM
 HQ H097738 ASM
 HQ H097739 ASM
 HQ H097740 ASM**

**PROPOSED REVOCATION OF SEVEN RULING LETTERS
 AND REVOCATION OF TREATMENT RELATING TO THE
 TARIFF CLASSIFICATION OF INFLATABLE PLAY
 STRUCTURES**

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

ACTION: Proposed revocation of classification ruling letters and revocation of treatment relating to the classification of certain inflatable play structures.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is proposing to revoke ruling letters relating to the classification of certain inflatable

play structures. CBP is also proposing to revoke any treatment previously accorded by it to substantially identical merchandise.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Tariff Classification and Marking Branch, 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) 325-0118.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Tariff Classification and Marking Branch: (202) 325-0031.

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 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. Section 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable 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 is proposing to revoke ruling letters pertaining to the classification of certain inflatable play structures. Although in this notice, CBP is specifically referring to Headquarters Ruling Letter (HQ) W967654, dated May 3, 2007; New York Ruling Letter (NY) N021595, dated January 16, 2008; NY N027455, dated

June 3, 2008; NY M87766, dated October 31, 2006; NY R01333, dated January 26, 2005; NY M87765, dated October 31, 2006; and NY K82586, dated January 29, 2004. (Attachments A–G), 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., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. 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 decision on this notice.

In HQ W967654, CBP determined that the "Jump n' Slide" was an article for general physical exercise. Thus, the merchandise was classified in subheading 9506.99.60, HTSUS. However, CBP has reviewed the classification of the "Jump 'n Slide" and determined that the cited ruling is in error.

In NY N021595, CBP determined that the "Banzai Splash Slide" was an article for general physical exercise. Thus, the merchandise was classified in subheading 9506.99.60, HTSUS. However, CBP has reviewed the classification of the "Banzai Splash Slide" and determined that the cited ruling is in error.

In NY N027455, CBP determined that the "Crashing Waves Water Park" was an article for general physical exercise. Thus, the merchandise was classified in subheading 9506.99.60, HTSUS. However, CBP has reviewed the classification of the "Crashing Waves Water Park" and determined that the cited ruling is in error.

In NY M87766, CBP determined that the "Jumbo Water Slide" was an article for general physical exercise. Thus, the merchandise was classified in subheading 9506.99.60, HTSUS. However, CBP has reviewed the classification of the "Jumbo Water Slide" and determined that the cited ruling is in error.

In NY M87765, CBP determined that the "Bounce House" was an article for general physical exercise. Thus, the merchandise was

classified in subheading 9506.99.60, HTSUS. However, CBP has reviewed the classification of the “Bounce House” and determined that the cited ruling is in error.

In NY R01333, CBP determined that the “Mega Bounce Trampoline” was an article for general physical exercise. Thus, the merchandise was classified in subheading 9506.99.60, HTSUS. However, CBP has reviewed the classification of the “Mega Bounce Trampoline” and determined that the cited ruling is in error.

In NY K82586, CBP determined that the “Banzai Falls Water Slide” and “Slam ‘N Hoops Bouncer” was an article for general physical exercise. Thus, the merchandise was classified in subheading 9506.99.60, HTSUS. However, CBP has reviewed the classification of the “Banzai Falls Water Slide” and “Slam ‘N Hoops Bouncer” and determined that the cited ruling is in error.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke the following rulings which erroneously classified certain inflatable play structures in subheading 9506.99.60, HTSUS: HQ W967654; NY N021595; NY N027455; NY M87766; NY R01333; NY M87765; and NY K82586. In addition, CBP is proposing to modify or revoke any other ruling not specifically identified, to reflect the classification of substantially identical merchandise according to the analysis contained in proposed HQ H075936, HQ H097735, HQ H097736, HQ H097737, HQ H097738, HQ H097739, and HQ H097740, which are set forth as (Attachments H–N) to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing 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: May 25, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ 967654

May 3, 2007

CLA-2 OT:RR:CTF:TCM 967654 ASM

CATEGORY: Classification

TARIFF NO.: 9506.99.6080

WILLIAM J. MALONEY, Esq.

RODE & QUALEY

ATTORNEYS AT LAW

55 WEST 39TH STREET

NEW YORK, NY 10018

RE: Request for reconsideration of NY K87043; Classification of “Jump ‘n Slide”

DEAR MR. MALONEY:

This is in response to a letter you submitted, dated March 31, 2005, on behalf of the “Little Tikes”® company, concerning their request for reconsideration of Customs and Border Protection (CBP) New York Ruling Letter (NY) K87043, dated June 28, 2004, involving the classification of the “Jump ‘n Slide” under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). No samples were submitted to this office for examination. However, we have received photographs, catalogs, and marketing information on the “Jump ‘n Slide” which provide sufficient information upon which to issue a decision in this ruling. In addition, a meeting was held with you and representatives from the “Little Tikes”® company on September 26, 2006, and we received an additional written submission dated November 9, 2006, which has been reviewed by this office.

FACTS:

The “Little Tikes”® “Jump ‘n Slide” is an inflatable gym surrounded on three sides by plastic mesh walls which are attached to red inflatable columns and yellow inflatable supports. There is an attached inflatable slide. The entire structure measures 9 x 12 x 6 feet. The “Little Tikes”® catalog describes the “Jump ‘n Slide” as having tall protective walls which “surround a large jumping area, including a big slide with side rails.” The catalog goes on to say that “a heavy-duty air blower provides continuous inflation of the inflatable structure . . . that is intended for outdoor domestic family use only and not for use in public areas or for use as a rental.”

In NY K87043, the subject article was classified in subheading 9506.99.6080, HTSUSA, which provides for “Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; . . . : Other: Other: Other, Other”. You disagree with this classification and claim that the article is classified as a toy in subheading 9503.90.0080, HTSUSA, which provides for “Other toys; reduced-size (‘scale’) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other, Other.”¹

¹ In the 2007 HTSUSA, this provision is contained at subheading 9503.00.00, which now provides for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (‘scale’) models and similar recreational models, working or not;

ISSUE:

What is the proper classification for the merchandise?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

In your submission dated November 9, 2006, you forwarded a notice issued by the U.S. Consumer Product Safety Commission (CPSC), which referred to certain home-use inflatable articles containing electric motors powered by a current of 120-volt branch circuits as “toys”. In characterizing certain inflatable articles (similar to the article at issue) as “toys”, we recognize that the CPSC is governing the safety of children in the use of merchandise that has been affixed with a powerful electrical current. While the CPSC may view this item as a toy, for tariff purposes, the article may still be classifiable as outdoor play equipment for children in heading 9506, HTSUSA. Although other agency decisions may be informative, these decisions are not binding on CBP and we do not need to consider other agency’s statutes, regulations, and administrative interpretations in defining tariff terms. *See Sabritas S.A. de C.V. v. United States*, 998 F. Supp. 1123 (CIT 1998), Headquarters Ruling Letter (HQ) 966521, dated September 10, 2003, HQ 964143, dated October 5, 2001, HQ 963835, dated October 17, 2000, HQ 957550, dated May 23, 1995, and HQ 952995, dated March 10, 1993.

Heading 9503, HTSUSA, currently provides for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (‘scale’) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof”. At the ten-digit level, subheading 9503.00.0010, HTSUSA, provides for “Inflatable toy balls, balloons and punchballs, of rubber” and the residual provision is contained at subheading 9503.00.0080, HTSUSA. The ENs to heading 9503 further indicate that the heading covers toy sports equipment, and that certain toys (e.g., electric irons, sewing machines, musical instruments, etc.) may be capable of a limited “use,” but they are generally distinguishable by their size and limited capacity from real sewing machines, etc. Although the term “toy” is not defined in the tariff, the ENs to Chapter 95 indicate that a toy is an article designed for the amusement of children or adults. Thus, in order to be classified as a “toy” of Chapter 95, HTSUSA, it has long been CBP’s position that a toy is essentially a plaything, something that is intended and designed
puzzles of all kinds; parts and accessories thereof”. At the ten-digit level, subheading 9503.00.0010, HTSUSA, provides for “Inflatable toy balls, balloons and punchballs, of rubber” and the residual provision is at subheading 9503.00.0080, HTSUSA.

for the amusement of children or adults. In order to be considered amusing, the toy must be designed and used principally for amusement and should not serve a utilitarian purpose. *See* HQ 964243, dated September 18, 2001, in which a stuffed pillow-like article designed and shaped to resemble a flower was found to be aesthetically pleasing but not amusing or entertaining.

Heading 9506, HTSUSA, provides, in pertinent part, for “Articles and equipment for general physical exercise . . . outdoor games, not specified or included elsewhere in this chapter.” In part, EN 95.06(B), states that the heading covers:

* * *

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

* * *

(12) Equipment of a kind used in children’s playgrounds (e.g., swings, slides, see-saws and giant strides).

* * *

The subject article has a slide and trampoline style component designed for active outdoor play and exercise. EN 95.06(B)(12), specifically identifies “slides” as classifiable in the heading. The “Jump ‘n Slide’s” trampoline component is similar in nature to the “swings” and “see-saws” which are specifically named in EN 95.06(B)(12), in that these components all provide active outdoor recreation for children. Furthermore, the size of the “Jump ‘n Slide” clearly limits its use as playground equipment for children. In addition, the “Jump ‘n Slide” is made of reinforced plastic, which is sturdy enough to withstand the active recreation of children and is only designed to be used out-of-doors. In New York Ruling (NY) R01333, dated January 26, 2005, CBP classified an inflatable trampoline of 100 percent rubberized PVC (electric air pump and repair kit included) and designed to be used by children in a backyard setting in subheading 9506.99.6080, HTSUSA. In this ruling CBP further noted that classification of such an article as a “toy” of heading 9503, HTSUSA, is misplaced because the heading only includes articles principally used as playthings of a frivolous amusement nature.

We do not agree with your assertion that the subject merchandise is similar to the “playhouses”, “play or slumber tents”, and “vehicle tents” that were classifiable as toys in *Ero Industries, Inc. v. United States*, 118 F. Supp. 2d 1356 (2000). The “Jump ‘n Slide” is a utilitarian article of outdoor playground equipment. In fact, it is promoted, advertised, and sold for outdoor use and cannot be safely used indoors. Any amusement derived from playing on the “Jump ‘n Slide” is secondary to the product’s utility of providing an outdoor playground environment for children. In addition, you reference NY 806703, dated February 10, 1995, in support of your contention that the

“Jump ‘n Slide” is classifiable as a “toy” in heading 9503, HTSUSA. Although NY 806703 classified small hand puppets as “toys” of heading 9503, HTSUSA, this merchandise is clearly distinguishable from the “Jump ‘n Slide”. In NY 806703, the hand puppets were designed for indoor use to be

used as bath mitts for the amusement of young children which is distinctly different from an active outdoor playground environment such as the “Jump n’ Slide”.

We also note that you have cited HQ 961142, dated January 30, 1998, wherein CBP classified a nylon braided jump rope with plastic handles as a “toy” in subheading 9503.90.0045, HTSUSA. In comparing the article classified in HQ 961142 to the merchandise now at issue, it is important to note that EN 95.03 specifically includes “skipping ropes”, other than those of heading 9504 or 9506, as classifiable in the heading. As such, in HQ 961142 it was necessary to make a distinction between the three different types of jump ropes, i.e., the “toy” jump ropes of heading 9503, HTSUSA, and articles of play equipment that would be more properly classified in heading 9504 or 9506, HTSUSA. In contrast, EN 95.06 specifically provides for active play equipment like the “Jump ‘n Slide, by identifying as exemplars “slides”, “see-saws”, and “swings”, while EN 95.03 does not provide a single exemplar, which would indicate that the “Jump ‘n Slide” should be classifiable in heading 9503, HTSUSA.

In HQ 950758, dated January 3, 1992, CBP classified a miniature basketball game consisting of a metal basketball hoop with mesh net, backboard, two-part metal tubular post standing approximately 6 feet tall and rising vertically from an x-shaped floor stand as an article of equipment under subheading 9506.99.6080, HTSUSA. In making this classification decision, it was noted in HQ 950758 that the miniature basketball game was not flimsily or delicately constructed and could function as a recreational article to provide outdoor physical activity for children and for use in children’s playgrounds. Similarly, the “Jump ‘n Slide” is a well-constructed article designed for use as a children’s outdoor playground. In fact, the promotional literature for the “Jump n’ Slide” identifies the article as a huge inflatable gym (measuring 9 feet x 12 feet x 6 feet), which is made of puncture-resistant material. These pictures advertise that the “Jump ‘n Slide” is for outdoor use and that it comes with stakes that are designed to anchor the equipment firmly to the ground. It is also noted that the “Jump ‘n Slide” comes with a heavy-duty blower and is for outdoor use only. Clearly, the “Jump ‘n Slide” can only be used as an outdoor playground for children and such equipment is specifically enumerated in the EN’s to heading 9506, HTSUSA, as “. . . equipment of a kind used in children’s playgrounds (e.g., swings, slides, and see-saws)”.

At this time, we are reviewing CBP rulings, including the ones that you have cited in your submission, i.e., PD E89793, dated December 10, 1999, NY R00606, dated July 28, 2004, and NY L80206, dated October 21, 2004, to determine if they are consistent with the holding in this ruling.

In view of the foregoing, it is our determination that the subject “Jump ‘n Slide” is not a “toy” within the meaning of heading 9503, HTSUSA, but is properly classifiable in subheading 9506.99, HTSUSA, as an article to be used as a children’s outdoor playground. Thus, it is our determination that NY K87043, dated June 28, 2004, correctly classified the “Jump n’ Slide”, in subheading 9506.99.6080, HTSUSA.

HOLDING:

The subject merchandise, identified as the “Jump ‘n Slide”, is correctly classified in subheading 9506.99.6080, HTSUSA, which provides for, “Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or in-

cluded elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Other: Other: Other, Other.” The general column one duty rate is 4 percent *ad valorem*.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT B]

N021595

January 16, 2008

CLA-2-95:OT:RR:NC:2:224

CATEGORY: Classification

TARIFF NO.: 9506.99.5500

MS. LORIANNE ALDINGER
RITE AID CORPORATION
P.O. BOX 3165
HARRISBURG, PA 17105

RE: The tariff classification of a Banzai Splash Slide from China

DEAR MS. ALDINGER:

In your letter dated December 31, 2007, you requested a tariff classification ruling.

You are requesting the tariff classification on a product that is identified as a "Banzai Splash Slide", item number 9001597. The item is a toddler-sized slide and splash pool that is specifically designed for outdoor recreational play. The wading pool is wholly constructed of inflatable plastic. The sample will be returned, as requested.

The applicable subheading for the Banzai Splash Slide will be 9506.99.5500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for articles and equipment for general physical exercise...or outdoor games, not specified or included elsewhere in this chapter...parts and accessories thereof: swimming pools and wading pools and parts and accessories thereof. The rate of duty will be 5.3% 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

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 Wayne Kessler at 646-733-3025.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT C]

N027455

June 3, 2008

CLA-2-95:OT:RR:NC:2:224

CATEGORY: Classification

TARIFF NO.: 9506.99.6080

MS. KAREN COOPER-MARTIN
MGA ENTERTAINMENT
16300 ROSCOE BLVD., #150
VAN NUYS, CA 91406

RE: The tariff classification of Crashing Waves Water Park from China.

DEAR MS. COOPER-MARTIN:

In your letter dated April 8, 2008 you requested a tariff classification ruling.

A sample of the Little Tikes Crashing Waves Water Park was received with your inquiry. The item is described as an inflatable play area that is designed for water play outdoors and measures 15' in width x 17' in length x 10' in height. On one side of the water park there is a stair climber which leads to what is described on your website as a lighthouse which contains a water cannon. On the other side is a curved water slide that empties into a shallow pool. There is also a crawl-through tunnel under the lighthouse that leads to the shallow pool. A regular lawn hose connects to the item's tubing to provide the water to the spray cannons and create a slippery surface for sliding into the shallow pool. An electric powered air blower is on continuously while the water park is in use in order for it to remain inflated. The product is for children between 5 and 10 years of age.

You state that the Crashing Waves Water Park is an inflatable toy and that its sole use is to amuse. You also state that due to its principal use, intended age and form of play that the Crashing Waves Water Park is a toy classifiable in subheading 9503.00.0080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other toys and is duty free. Furthermore, you described the Crashing Waves Water Park as being far more than a wading pool, with the majority of the play value, bulk and cost related to the non-pool play activity.

Classification under the Harmonized Tariff Schedule of the United States is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 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.

The headings under consideration are as follows:

- | | |
|------|--|
| 9506 | Articles and equipment for general physical exercise, gymnastics, athletics, other sports or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools |
| 9503 | Other toys |

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, though not dispositive or legally binding, provides commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs believes the ENs

should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Although the term “toy” is not defined in the tariff, the ENs to chapter 95 indicates that a toy is an article designed for the amusement of children or adults. Heading 9503, HTSUS, applies to “other toys,” i.e., all toys not specifically provided for in the other headings of chapter 95. It has been Customs’ position that the amusement requirement means that toys should be designed and used principally for amusement. See HQ W967654, dated May 3, 2007 and HQ 956261, dated May 26, 1994; Additional U.S. Rule of Interpretation 1(a), HTSUS. The Crashing Waves Water Park does not provide the manipulative play value or frivolous amusement characteristic of toy playthings.

The applicable subheading for the Little Tikes Crashing Waves Water Park will be 9506.99.6080, HTSUS, which provides for “Articles and equipment for general physical exercise, gymnastics, athletics, other sports...or outdoor games...; swimming pools and wading pools; parts and accessories thereof: Other: Other: Other...Other.” The rate of duty will be 4 % 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

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 James Forkan at 646–733–3025.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT D]

NY M87766
October 31, 2006
CLA-2-95:RR:NC:2:224 M87766
CATEGORY: Classification
TARIFF NO.: 9506.99.6080

Ms. LORIANNE ALDINGER
RITE AID CORPORATION
P.O. Box 3165
HARRISBURG, PA 17105

RE: The tariff classification of a "Jumbo Water Slide" from China

DEAR Ms. ALDINGER:

In your letter dated October 23, 2006, you requested a tariff classification ruling.

You are requesting the tariff classification on an item that is described as a "Jumbo Water Slide". The "Jumbo Water Slide" is inflatable, and is inflated by means of a blower that is connected to the slide. The product is an outdoor slide that is designed for children. Your sample will be returned, as requested by your office.

The proper classification will be in Chapter 95 of the HTS, as equipment for general physical exercise.

The applicable subheading for the "Jumbo Water Slide" will be 9506.99.6080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for articles and equipment for general physical exercise, gymnastics, athletics, other sports...or outdoor games, not specified or included elsewhere in this chapter...parts and accessories thereof: other...other. The rate of duty will be 4 % 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 Tom McKenna at 646-733-3025.

Sincerely,

ROBERT B. SWIERUPSKI
Director,

National Commodity Specialist Division

[ATTACHMENT E]

NY R01333
January 26, 2005
CLA-2-95:RR:NC:2:224 R01333
CATEGORY: Classification
TARIFF NO.: 9506.99.6080

TERRI URSERY
GARDEN RIDGE, LP
19411 ATRIUM PLACE – SUITE 170
HOUSTON TX 77084-6099

RE: The tariff classification of a trampoline from China.

DEAR Ms. URSERY:

In your electronic ruling request dated January 18, 2005, you requested a tariff classification ruling.

The merchandise is described as a Mega Bounce Trampoline. A copy of a quote sheet submitted with your request illustrates the trampoline in use by children in a backyard setting and describes the trampoline as item number 15219 with product dimensions of eight feet by 68 inches. The inflatable product is made of 100 percent rubberized PVC. An electric air pump and a repair kit are included with the product.

The composition, size, and the marketing thrust of the Mega Bounce Trampoline support the idea that the product will be used as a source of recreational fun activity and general physical exercise. As such, it qualifies for classification in heading 9506 of the Harmonized Tariff Schedule of the United States (HTSUS) that includes articles and equipment for general physical exercise, athletics, other sports or outdoor games. Your belief that the item is a toy and should be classified in subheading 9503.90 of the HTSUS as other toys is misplaced. Heading 9503 of the HTSUS includes only articles principally used as playthings of a frivolous amusement nature.

The applicable subheading for the Mega Bounce Trampoline will be 9506.99.6080, HTSUS, which provides for “Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter, swimming pools and wading pools; parts and accessories thereof: Other: Other, other.” The rate of duty will be 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 Tom McKenna at 646-733-3025.

Sincerely,

ROBERT B. SWIERUPSKI
Director,

National Commodity Specialist Division

[ATTACHMENT F]

NY M87765
October 31, 2006
CLA-2-95:RR:NC:2:224 M87765
CATEGORY: Classification
TARIFF NO.: 9506.99.6080

Ms. LORIANNE ALDINGER
RITE AID CORPORATION
P.O. Box 3165
HARRISBURG, PA 17105

RE: The tariff classification of a “Bounce House” from China

DEAR Ms. ALDINGER:

In your letter dated October 23, 2006, you requested a tariff classification ruling.

You are requesting the tariff classification on an item that is described as a 7ft. x 7ft. “Bounce House”. The “Bounce House” is inflatable, and is inflated by means of a blower that is connected to the house. The product, item #948429, is an inflatable house that is suitable for outdoor use by children. The child must go inside the inflatable house to bounce. Your sample will be returned, as requested by your office.

The proper classification will be in Chapter 95 of the HTS, as equipment for general physical exercise.

The applicable subheading for the 7ft. x 7ft. “Bounce House”, item 948429, will be 9506.99.6080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for articles and equipment for general physical exercise, gymnastics, athletics, other sports...or outdoor games, not specified or included elsewhere in this chapter...parts and accessories thereof: other...other. The rate of duty will be 4 % 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 Tom McKenna at 646-733-3025.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT G]

NY K82586
January 29, 2004
CLA-2-95:RR:NC:2:224 K82586
CATEGORY: Classification
TARIFF NO.: 9506.99.6080

MS. PATTI CORDO
AMERICAN CARGO EXPRESS, INC
435 DIVISION STREET
ELIZABETH, NJ 07201

RE: The tariff classification of Banzai Falls Water Slide and a Slam 'N Hoops Bouncer from China

DEAR MS. CORDO:

In your letter dated January 19, 2004, you requested a tariff classification ruling, on behalf of Manley Toy Direct, your client.

You are requesting the tariff classification on two items that are described as follows: Banzai Falls Water Slide and a Slam 'N Hoops Bouncer. The Banzai Falls Water Slide is inflatable, and is inflated by means of a blower that is connected to the slide to inflate it. In addition, there is a water tap that connects to a hose to run a stream of water down the slide while the slide is inflated. The Slam 'N Hoops Bouncer is also inflatable and it is inflated by means of a blower. There is an enclosed area for children to bounce and to shoot baskets into a net attached on the outer wall. There is a ledge and a hole for children to crawl through for play. You have submitted illustrations, in lieu of samples.

The proper classification will be in Chapter 95 of the HTS, as other outdoor games for the Slam 'N Hoops Bouncer and equipment for general physical exercise for the Banzai Falls Water Slide.

The applicable subheading for the Banzai Falls Water Slide and the Slam 'N Hoops Bouncer will be 9506.99.6080, Harmonized Tariff Schedule of the United States (HTS), which provides for articles and equipment for general physical exercise, gymnastics, athletics, other sports...or outdoor games, not specified or included elsewhere in this chapter...parts and accessories thereof: other...other. The rate of duty will be 4 % 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 Tom McKenna at 646-733-3025.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT H]

HQ H075936
CLA-2 OT:RR:CTF:TCM H075936 ASM
CATEGORY: Classification
TARIFF NO.: 9503.00.00

WILLIAM J. MALONEY, Esq.
RODE & QUALEY
ATTORNEYS AT LAW
55 WEST 39TH STREET
NEW YORK, NY 10018

RE: Revocation of HQ W967654; Tariff Classification of the “Jump ‘n Slide”

DEAR MR. MALONEY:

This is in reference to Headquarters Ruling Letter (HQ) W967654, dated May 3, 2007, which was issued to you on behalf of your client, Little Tikes® company (hereinafter “Little Tikes”), concerning the tariff classification of an inflatable slide, identified as the “Jump ‘n Slide”, under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise as an article for “general physical exercise” under subheading 9506.99.60, HTSUS. We have reviewed HQ W967654 and found it to be in error. For the reasons set forth below, we hereby revoke HQ W967654.

FACTS:

The subject article, which is identified as the “Jump ‘n Slide”, is an inflatable play structure surrounded on three sides by plastic mesh walls which are attached to red inflatable columns and yellow inflatable supports. There is an attached inflatable slide. The entire structure measures 9 x 12 x 6 feet. The inside dimensions measure 7 x 6 feet. The “Little Tikes”® catalog describes the “Jump ‘n Slide” as having tall protective walls which “surround a large jumping area, including a big slide with side rails.” The catalog goes on to say that “a heavy-duty air blower provides continuous inflation of the inflatable structure . . . that is intended for outdoor domestic family use only and not for use in public areas or for use as a rental.” The promotional material further indicates that there is a weight limit of 250 lbs. and that it is for use with no more than 3 children at a time. Additional information provides “Must use on a soft play surface” and that it is for outdoor use only. The age range is from 3 to 8 years.

ISSUE:

Whether the “Jump’n Slide” is classified in subheading 9503.00.00, HTSUS, as a “toy” or in heading 9506.99.60, HTSUS, as an article for “general physical exercise”.

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). 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.

The following headings of the HTSUS are under consideration in classifying the subject article:

- 9503** Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ('scale') models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof
* * *
- 9506** Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN's to heading 9503 provide, in relevant part, as follows:
This heading covers:

* * *

(D) **Other toys.**

This group covers toys intended essentially for the amusement of persons (children or adults). . . . This group includes:

* * *

(ix) Toy sports equipment, whether or not in sets (e.g., golf sets, tennis sets, archery sets, billiard sets; baseball bats, cricket bats, hockey sticks).

* * *

(xxiii) Play tents for use by children indoors or outdoors.

The EN to heading 9506, states, in pertinent part, the following:
This heading covers:

* * *

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

* * *

(13) Equipment of a kind used in children's playgrounds (e.g., swings, slides, see-saws and giant strides).

* * *

The EN to heading 9503 specifically indicates that "This group covers toys intended essentially for the amusement of persons (children or adults)". In order to be classified as a "toy" of Chapter 95, HTSUS, the toy must be designed and used principally for amusement and should not serve a utili-

tarian purpose. See HQ 086330, dated May 14, 1990; HQ 952186, dated April 29, 1993; HQ 954132, dated February 15, 1994; HQ 956779, dated September 29, 1994; and HQ 961530, dated October 21, 1998.

In *Minnetonka Brands, Inc. v. United States*, 110 F. Supp. 2d 1020 (CIT 2000), the court classified full-figured, three-dimensional, plastic objects in the form of well-recognized children's characters as ". . . [t]oys representing animals or non-human creatures . . . Other" under subheading 9503.49.00, HTSUS. *Id.* at 1029. The court found that because the evidence showed that "... the subject merchandise belongs to the class or kind of merchandise whose principal use is amusement, diversion or play", the merchandise is properly classified as "toys" of heading 9503, HTSUS. *Id.* at 1028. In *Minnetonka*, the CIT further noted that because heading 9503, HTSUS, is, in relevant part, a principal use provision, classification under this provision is controlled by the principal use "of goods of that class or kind to which the imported goods belong" in the United States at or immediately prior to the date of importation. See Additional U.S. Rule of Interpretation 1(a), HTSUS.¹

The principal use of the class or kind of goods to which an import belongs is controlling, not the principal use of the specific import. (citations omitted). "Principal use" is defined as the use "which exceeds any other single use." (citations omitted). As a result, "the fact that the merchandise may have numerous significant uses does not prevent the Court from classifying the merchandise according to the principal use of the class or kind to which the merchandise belongs. (citations omitted). See *E.M. Chems. v. United States*, 20 C.I.T. 382, 387–388 (Ct. Int'l Trade 1996).

As stated in *United States v. The Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), certain factors must be looked at to determine whether imported merchandise is of a certain "class or kind" as that expression is used in Additional U.S. Rule of Interpretation 1(a). These factors include: (1) the physical characteristics of the merchandise, (2) the expectation of the ultimate purchases, (3) the channels of trade of the merchandise, (4) the environment of the sale (accompanying accessories, manner of advertisement and display) (5) use in the same manner as merchandise which defines the class, (6) the economic practicality of so using the import, and (7) recognition in the trade of this use.

In the instant case, we apply the *Carborundum* factors as follows:

(1) The general physical characteristics of the merchandise: The subject merchandise consists of a 9 foot by 12 foot inflated plastic surface surrounded by mesh walls, with an attached slide, in bright primary colors. The weight limit is 250 lbs and the surface is large enough for only 3 children. The use of bright primary colors is especially attractive and amusing to young children. The plastic walled structure is akin to a play tent and the bouncy surface is akin to toy sports equipment listed as

¹Additional U.S. Rules of Interpretation 1(a), HTSUS, provides:

1. In the absence of special language or context which otherwise requires—

(a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use;

exemplars of the heading in EN 95.03. The slide is akin to playground equipment listed in EN 95.06. In HQ 966135, dated March 28, 2003, CBP classified a plastic sandbox as playground equipment of heading 9506 because it was sturdy enough "... to be stored in all kinds of weather". However, even though the slide component and entire article is designed for outdoor use, it is not intended to be stored outdoors in all kinds of weather. Accordingly, these features weigh in favor of classification as toys.

(2) The expectation of the ultimate purchasers: The ultimate purchasers expect that the product will be used in accordance with the instructions "for outdoor domestic family use only and not for use in public areas or for use as a rental." Such limited use is more representative of a toy rather than an article of outdoor play equipment.

(3 & 4) The channels of trade in which the merchandise moves and environment of sale: The instant merchandise is distributed by Little Tikes®, a toy company that specializes in indoor and outdoor play toys for children. The merchandise is sold in toy stores and the toy section of department stores, drug stores and supermarkets. This factor weighs in favor of classification as toys.

(5) The usage of the merchandise: The merchandise is used as an active play area for no more than three young children to jump, bounce and slide. Compared to the durable rental units that can be used/stored outdoors in all kinds of weather and for accommodation of many children at one time, including children older than 8 years old, the subject article is for personal backyard use and amusement of no more than three young children between the ages of 3 to 8 years old. The website for this product includes testimonials from parents of 2–4 year old children, with such comments as "great toy", and "hours of fun". See "<http://www.littletikes.com/toys/jump-slide-bouncer.aspx>". This factor weighs in favor of toys.

(6) The economic practicality of so using the import: The merchandise is moderately priced at \$229.99 per unit compared to the inflatable structures used for carnivals which may be retail priced from \$1000.00 to \$2300.00 per unit. See New York Ruling (NY) N021533, dated January 31, 2008.

(7) The recognition in the trade of use: The subject merchandise is recognized in the trade as an inflatable play area designed to amuse young children by bouncing and sliding in a backyard environment. This factor weighs in favor of toys.

On the balance, we find that the merchandise belongs to the class or kind of goods known as toys which are classified in heading 9503, HTSUS.

It is the conclusion of CBP, based on the above discussion, that the subject "Jump 'n Slide" is primarily used for amusement. As such, the merchandise is classified as a "toy" in heading 9503, HTSUS, and is excluded from classification in heading 9506, HTSUS. See EN 95.06(B).

HOLDING:

The subject merchandise, identified as the “Jump ‘n Slide”, is correctly classified in subheading, 9503.00.00, HTSUS, which provides for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof, Other”. This provision is duty free at the general column one rate of duty.

EFFECT ON OTHER RULINGS:

HQ 967654, dated May 3, 2007, is hereby revoked consistent with the foregoing.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT I]

HQ H097735

CLA-2 OT:RR:CTF:TCM H097735 ASM

CATEGORY: Classification

TARIFF NO.: 9503.00.00

Ms. LORIANNE ALDINGER
 RITE AID CORPORATION
 P.O. Box 3165
 HARRISBURG, PA 17105

RE: Revocation of NY N021595; Tariff Classification of the “Banzai Splash Slide”

DEAR Ms. ALDINGER:

This is in reference to New York Ruling Letter (NY) N021595, dated January 16, 2008, which was issued to you on behalf of the Rite Aid Corporation, concerning the tariff classification of an inflatable slide, identified as the “Banzai Splash Slide”, under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise as an article for “general physical exercise” under subheading 9506.99.60, HTSUS. We have reviewed NY N021595 and found it to be in error. For the reasons set forth below, we hereby revoke NY N021595.

FACTS:

The subject article, identified as the “Banzai Splash Slide” (item number 9001597), is an inflatable play structure. The article is a toddler-sized slide and splash pool that is specifically designed for outdoor recreational play. The wading pool is wholly constructed of inflatable plastic.

ISSUE:

Whether the “Banzai Splash Slide” is classified in subheading 9503.00.00, HTSUS, as a “toy” or in heading 9506.99.60, HTSUS, as an article for “general physical exercise”.

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). 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.

The following headings of the HTSUS are under consideration in classifying the subject article:

9503 Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof

* * *

- 9507** Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN’s to heading 9503 provide, in relevant part, as follows:

This heading covers:

* * *

(E) Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults). . . . This group includes:

* * *

- (x) Toy sports equipment, whether or not in sets (e.g., golf sets, tennis sets, archery sets, billiard sets; baseball bats, cricket bats, hockey sticks).

* * *

- (xxiii) Play tents for use by children indoors or outdoors.

The EN to heading 9506, states, in pertinent part, the following:

This heading covers:

* * *

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

* * *

- (14) Equipment of a kind used in children’s playgrounds (e.g., swings, slides, see-saws and giant strides).

* * *

(C) Swimming pools and paddling pools.

The EN to heading 9503 specifically indicates that “This group covers toys intended essentially for the amusement of persons (children or adults)”. In order to be classified as a “toy” of Chapter 95, HTSUS, the toy must be designed and used principally for amusement and should not serve a utilitarian purpose. *See* Headquarters Ruling Letter (HQ) 086330, dated May 14, 1990; HQ 952186, dated April 29, 1993; HQ 954132, dated February 15, 1994; HQ 956779, dated September 29, 1994; and HQ 961530, dated October 21, 1998.

In *Minnetonka Brands, Inc. v. United States*, 110 F. Supp. 2d 1020 (CIT 2000), the court classified full-figured, three-dimensional, plastic objects in

the form of well-recognized children's characters as ". . . [t]oys representing animals or non-human creatures . . . Other" under subheading 9503.49.00, HTSUS. *Id.* at 1029. The court found that because the evidence showed that "... the subject merchandise belongs to the class or kind of merchandise whose principal use is amusement, diversion or play", the merchandise is properly classified as "toys" of heading 9503, HTSUS. *Id.* at 1028. In *Minnetonka*, the CIT further noted that because heading 9503, HTSUS, is, in relevant part, a principal use provision, classification under this provision is controlled by the principal use "of goods of that class or kind to which the imported goods belong" in the United States at or immediately prior to the date of importation. See Additional U.S. Rule of Interpretation 1(a), HTSUS.¹

The principal use of the class or kind of goods to which an import belongs is controlling, not the principal use of the specific import. (citations omitted). "Principal use" is defined as the use "which exceeds any other single use." (citations omitted). As a result, "the fact that the merchandise may have numerous significant uses does not prevent the Court from classifying the merchandise according to the principal use of the class or kind to which the merchandise belongs. (citations omitted). See *E.M. Chems. v. United States*, 20 C.I.T. 382, 387-388 (Ct. Int'l Trade 1996).

As stated in *United States v. The Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), certain factors must be looked at to determine whether imported merchandise is of a certain "class or kind" as that expression is used in Additional U.S. Rule of Interpretation 1(a). These factors include: (1) the physical characteristics of the merchandise, (2) the expectation of the ultimate purchases, (3) the channels of trade of the merchandise, (4) the environment of the sale (accompanying accessories, manner of advertisement and display) (5) use in the same manner as merchandise which defines the class, (6) the economic practicality of so using the import, and (7) recognition in the trade of this use.

In the instant case, we apply the *Carborundum* factors as follows:

(1) The general physical characteristics of the merchandise: The subject merchandise consists of a toddler sized slide and splash pool. The slide and pool are akin to playground equipment listed in EN 95.06. However, in HQ 966135, dated March 28, 2003, CBP classified a plastic sandbox as playground equipment of heading 9506 because it was sturdy enough "... to be stored in all kinds of weather". Here, even though the slide and wading pool components are designed for outdoor use, the article is not intended to be stored outdoors in all kinds of weather. Furthermore, the pool area in particular is one for wading and provides a place for the child to have a cushioned water landing upon exiting the slide. This feature is not unlike that found in NY R01128, dated December 10, 2004, which classified an inflatable water slide as a "toy" in

¹ Additional U.S. Rules of Interpretation 1(a), HTSUS, provides:

1. In the absence of special language or context which otherwise requires—

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

heading 9503, HTSUS. There a slide was designed to rest at the edge of a swimming pool. At the tip of the water slide was a raft-like protuberance that hung into the water and cushioned the sliding child before hitting the water. In addition, a water hose was hooked to a sprayer that was attached to the slide. This provided a steady stream of water and slippery surface for sliding into the pool. Accordingly, these features weigh in favor of classification as toys.

(2) The expectation of the ultimate purchasers: The ultimate purchasers expect that the product will be used in accordance with the instructions for outdoor domestic family use. Such limited use is more representative of a toy rather than an article of outdoor play equipment.

(3 & 4) The channels of trade in which the merchandise moves and environment of sale: The instant merchandise is sold in toy stores and the toy section of department stores, drug stores and supermarkets. This factor weighs in favor of classification as toys.

(5) The usage of the merchandise: The merchandise is used as an active play area for young children to splash and slide. Compared to the durable rental units that can be used/stored outdoors in all kinds of weather and for accommodation of many children at one time, the subject article is just for personal backyard use. This factor weighs in favor of classification as toys.

(6) The economic practicality of so using the import: The merchandise is moderately priced compared to the inflatable structures used for carnivals which may be retail priced from \$1000.00 to \$2300.00 per unit. *See* New York Ruling (NY) N021533, dated January 31, 2008. This factor weighs in favor of classification as toys.

(7) The recognition in the trade of use: The subject merchandise is recognized in the trade as an inflatable play area designed to amuse young children by splashing and sliding in a backyard environment. This factor weighs in favor of toys.

On the balance, we find that the merchandise belongs to the class or kind of goods known as toys which are classified in heading 9503, HTSUS.

It is the conclusion of CBP, based on the above discussion, that the subject “Banzai Splash Slide” is primarily used for amusement. As such, the merchandise is classified as a “toy” in heading 9503, HTSUS, and is excluded from classification in heading 9506, HTSUS. *See* EN 95.06(B).

HOLDING:

The subject merchandise, identified as the “Banzai Splash Slide”, is correctly classified in subheading, 9503.00.00, HTSUS, which provides for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof, Other”. This provision is duty free at the general column one rate of duty.

EFFECT ON OTHER RULINGS:

NY N021595, dated January 16, 2008, is hereby revoked consistent with the foregoing.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT J]

HQ H097736
CLA-2 OT:RR:CTF:TCM H097736 ASM
CATEGORY: Classification
TARIFF NO.: 9503.00.00

MS. KAREN COOPER-MARTIN
MGA ENTERTAINMENT
16300 ROSCOE BLVD., #150
VAN NUYS, CA 91406

RE: Revocation of NY N027455; Tariff Classification of the “Crashing Waves Water Park”

DEAR MS. COOPER-MARTIN:

This is in reference to New York Ruling Letter (NY) N027455, dated June 3, 2008, which was issued to you on behalf of the MGA Entertainment company, concerning the tariff classification of the “Crashing Waves Water Park”, under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise as an article for “general physical exercise” under subheading 9506.99.60, HTSUS. We have reviewed NY N027455 and found it to be in error. For the reasons set forth below, we hereby revoke NY N027455.

FACTS:

The subject article, “Cashing Waves Water Park”, is an inflatable play area that is designed for outdoor water play. The dimensions are 15 feet in width x 17 feet in length x 10 feet in height. The article has a stair climber on one side leading to a center area that resembles a lighthouse. The light house contains a water cannon. On the other side is a curved water slide that empties into a shallow pool. There is also a crawl-through tunnel under the lighthouse that leads to the pool. A lawn hose connects to the item’s tubing to provide the water to the spray cannons and create a slippery surface for sliding. An electric power blower must be kept on continuously for inflation of the structure. The product is designed for children between the ages of 5 and 10 years.

ISSUE:

Whether the “Crashing Waves Water Park” is classified in subheading 9503.00.00, HTSUS, as a “toy” or in heading 9506.99.60, HTSUS, as an article for “general physical exercise”.

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). 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.

The following headings of the HTSUS are under consideration in classifying the subject article:

9503 Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ('scale') models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof

* * *

9508 Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN's to heading 9503 provide, in relevant part, as follows:

This heading covers:

* * *

(F) Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults). . . . This group includes:

* * *

(xi) Toy sports equipment, whether or not in sets (e.g., golf sets, tennis sets, archery sets, billiard sets; baseball bats, cricket bats, hockey sticks). * *

(xxiii) Play tents for use by children indoors or outdoors.

The EN to heading 9506, states, in pertinent part, the following:

This heading covers:

* * *

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

* * *

(15) Equipment of a kind used in children's playgrounds (e.g., swings, slides, see-saws and giant strides).

* * *

The EN to heading 9503 specifically indicates that "This group covers toys intended essentially for the amusement of persons (children or adults)". In order to be classified as a "toy" of Chapter 95, HTSUS, the toy must be designed and used principally for amusement and should not serve a utilitarian purpose. See HQ 086330, dated May 14, 1990; HQ 952186, dated April 29, 1993; HQ 954132,

dated February 15, 1994; HQ 956779, dated September 29, 1994; and HQ 961530, dated October 21, 1998.

In *Minnetonka Brands, Inc. v. United States*, 110 F. Supp. 2d 1020 (CIT 2000), the court classified full-figured, three-dimensional, plastic objects in the form of well-recognized children's characters as ". . . [t]oys representing animals or non-human creatures . . . Other" under subheading 9503.49.00, HTSUS. *Id.* at 1029. The court found that because the evidence showed that " . . . the subject merchandise belongs to the class or kind of merchandise whose principal use is amusement, diversion or play", the merchandise is properly classified as "toys" of heading 9503, HTSUS. *Id.* at 1028. In *Minnetonka*, the CIT further noted that because heading 9503, HTSUS, is, in relevant part, a principal use provision, classification under this provision is controlled by the principal use "of goods of that class or kind to which the imported goods belong" in the United States at or immediately prior to the date of importation. See Additional U.S. Rule of Interpretation 1(a), HTSUS.¹

The principal use of the class or kind of goods to which an import belongs is controlling, not the principal use of the specific import. (citations omitted). "Principal use" is defined as the use "which exceeds any other single use." (citations omitted). As a result, "the fact that the merchandise may have numerous significant uses does not prevent the Court from classifying the merchandise according to the principal use of the class or kind to which the merchandise belongs. (citations omitted). See *E.M. Chems. v. United States*, 20 C.I.T. 382, 387–388 (Ct. Int'l Trade 1996).

As stated in *United States v. The Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), certain factors must be looked at to determine whether imported merchandise is of a certain "class or kind" as that expression is used in Additional U.S. Rule of Interpretation 1(a). These factors include: (1) the physical characteristics of the merchandise, (2) the expectation of the ultimate purchases, (3) the channels of trade of the merchandise, (4) the environment of the sale (accompanying accessories, manner of advertisement and display) (5) use in the same manner as merchandise which defines the class, (6) the economic practicality of so using the import, and (7) recognition in the trade of this use.

In the instant case, we apply the *Carborundum* factors as follows:

¹ Additional U.S. Rules of Interpretation 1(a), HTSUS, provides:

1. In the absence of special language or context which otherwise requires—

(a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use;

(1) The general physical characteristics of the merchandise:

The use of bright primary colors is especially attractive and amusing to young children. We recognize that the slide and wading pool component is akin to playground equipment listed in EN 95.06. However, in HQ 966135, dated March 28, 2003, CBP classified a plastic sandbox as playground equipment of heading 9506 because it was sturdy enough "... to be stored in all kinds of weather". Even though the article is designed for outdoor use, it is not sturdy enough to be stored outdoors in all kinds of weather. Therefore, it is not "of a kind used in children's playgrounds". Accordingly, this feature weighs in favor of classification as toys.

(2) The expectation of the ultimate purchasers: The ultimate purchasers expect that the product will be used for outdoor domestic family use. Such limited use is more representative of a toy rather than an article of outdoor play equipment.

(3 & 4) The channels of trade in which the merchandise moves and environment of sale: The instant merchandise is sold in toy stores and the toy section of department stores, drug stores and supermarkets. This factor weighs in favor of classification as toys.

(5) The usage of the merchandise: Compared to the durable rental units that can be used/stored outdoors in all kinds of weather and for accommodation of many children at one time, the subject article is for personal backyard use. This factor weighs in favor of classification as toys.

(6) The economic practicality of so using the import: The merchandise is moderately priced compared to the inflatable structures used for carnivals which may be retail priced from \$1000.00 to \$2300.00 per unit. *See* New York Ruling (NY) N021533, dated January 31, 2008. This factor weighs in favor of toys.

(7) The recognition in the trade of use: The subject merchandise is recognized in the trade as an inflatable play area designed to amuse young children by splashing and sliding in a backyard environment. This factor weighs in favor of toys.

On the balance, we find that the merchandise belongs to the class or kind of goods known as toys which are classified in heading 9503, HTSUS.

It is the conclusion of CBP, based on the above discussion, that the subject "Crashing Waves Water Park" is primarily used for amuse-

ment. As such, the merchandise is classified as a “toy” in heading 9503, HTSUS, and is excluded from classification in heading 9506, HTSUS. *See* EN 95.06(B).

HOLDING:

The subject merchandise, identified as the “Crashing Waves Water Park”, is correctly classified in subheading, 9503.00.00, HTSUS, which provides for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof, Other”. This provision is duty free at the general column one rate of duty.

EFFECT ON OTHER RULINGS:

NY N027455, dated June 3, 2008, is hereby revoked consistent with the foregoing.

Sincerely,
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT K]

HQ H097737
 CLA-2 OT:RR:CTF:TCM H097737 ASM
 CATEGORY: Classification
 TARIFF NO.: 9503.00.00

Ms. LORIANNE ALDINGER
 RITE AID CORPORATION
 P.O. Box 3165
 HARRISBURG, PA 17105

RE: Revocation of NY M87766; Tariff Classification of the “Jumbo Water Slide”

DEAR Ms. ALDINGER:

This is in reference to New York Ruling Letter (NY) M87766, dated October 31, 2006, which was issued to you on behalf of your client, Rite Aid corporation, concerning the tariff classification of an inflatable slide, identified as the “Jumbo Water Slide”, under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise as an article for “general physical exercise” under subheading 9506.99.60, HTSUS. We have reviewed NY M87766 and found it to be in error. For the reasons set forth below, we hereby revoke NY M87766.

FACTS:

The subject article, identified as the “Jumbo Water Slide”, is an inflatable play structure that is inflated by means of a blower, which is connected to the slide. The product is intended for outdoor play and designed for use by children.

ISSUE:

Whether the “Jumbo Water Slide” is classified in subheading 9503.00.00, HTSUS, as a “toy” or in heading 9506.99.60, HTSUS, as an article for “general physical exercise”.

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). 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.

The following headings of the HTSUS are under consideration in classifying the subject article:

9503 Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (‘scale’) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof

* * *

9509 Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN’s to heading 9503 provide, in relevant part, as follows:

This heading covers:

* * *

(G) **Other toys.**

This group covers toys intended essentially for the amusement of persons (children or adults). . . . This group includes:

* * *

(xii) Toy sports equipment, whether or not in sets (e.g., golf sets, tennis sets, archery sets, billiard sets; baseball bats, cricket bats, hockey sticks).

* * *

(xxiii) Play tents for use by children indoors or outdoors.

The EN to heading 9506, states, in pertinent part, the following:

This heading covers:

* * *

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

* * *

(16) Equipment of a kind used in children’s playgrounds (e.g., swings, slides, see-saws and giant strides).

* * *

The EN to heading 9503 specifically indicates that “This group covers toys intended essentially for the amusement of persons (children or adults)”. In order to be classified as a “toy” of Chapter 95, HTSUS, the toy must be designed and used principally for amusement and should not serve a utilitarian purpose. *See* HQ 086330, dated May 14, 1990; HQ 952186, dated April 29, 1993; HQ 954132, dated February 15, 1994; HQ 956779, dated September 29, 1994; and HQ 961530, dated October 21, 1998.

In *Minnetonka Brands, Inc. v. United States*, 110 F. Supp. 2d 1020 (CIT 2000), the court classified full-figured, three-dimensional, plastic objects in the form of well-recognized children’s characters as “. . . [t]oys representing animals or non-human creatures . . . Other” under subheading 9503.49.00, HTSUS. *Id.* at 1029. The court found that because the evidence showed that “ . . . the subject merchandise belongs to the class or kind of merchandise whose principal use is amusement, diversion or play”, the merchandise is properly classified as “toys” of heading 9503, HTSUS. *Id.* at 1028. In

Minnetonka, the CIT further noted that because heading 9503, HTSUS, is, in relevant part, a principal use provision, classification under this provision is controlled by the principal use “of goods of that class or kind to which the imported goods belong” in the United States at or immediately prior to the date of importation. See Additional U.S. Rule of Interpretation 1(a), HTSUS.¹

The principal use of the class or kind of goods to which an import belongs is controlling, not the principal use of the specific import. (citations omitted). “Principal use” is defined as the use “which exceeds any other single use.” (citations omitted). As a result, “the fact that the merchandise may have numerous significant uses does not prevent the Court from classifying the merchandise according to the principal use of the class or kind to which the merchandise belongs. (citations omitted). See *E.M. Chems. v. United States*, 20 C.I.T. 382, 387–388 (Ct. Int’l Trade 1996).

As stated in *United States v. The Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2nd 373 (1976), certain factors must be looked at to determine whether imported merchandise is of a certain “class or kind” as that expression is used in Additional U.S. Rule of Interpretation 1(a). These factors include: (1) the physical characteristics of the merchandise, (2) the expectation of the ultimate purchasers, (3) the channels of trade of the merchandise, (4) the environment of the sale (accompanying accessories, manner of advertisement and display) (5) use in the same manner as merchandise which defines the class, (6) the economic practicality of so using the import, and (7) recognition in the trade of this use.

In the instant case, we apply the *Carborundum* factors as follows:

(1) The general physical characteristics of the merchandise: The slide is akin to playground equipment listed in EN 95.06. However, in HQ 966135, dated March 28, 2003, CBP classified a plastic sandbox as playground equipment of heading 9506 because it was sturdy enough “... to be stored in all kinds of weather”. However, even though the slide component and entire article is designed for outdoor use, it is not intended to be stored outdoors in all kinds of weather. Accordingly, these features weigh in favor of classification as toys.

(2) The expectation of the ultimate purchasers: The ultimate purchasers expect that the product will be used for outdoor domestic family use. Such limited use is more representative of a toy rather than an article of outdoor play equipment.

(3 & 4) The channels of trade in which the merchandise moves and environment of sale: The instant merchandise is sold in toy stores and the toy section of department stores, drug stores and supermarkets. This factor weighs in favor of classification as toys.

¹ Additional U.S. Rules of Interpretation 1(a), HTSUS, provides:

1. In the absence of special language or context which otherwise requires—

(a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use;

(5) The usage of the merchandise: The merchandise is used as an active play area for young children to splash and slide. Compared to the durable rental units that can be used/stored outdoors in all kinds of weather, the subject article is not intended to be used outdoors year round. This factor weighs in favor of classification as toys.

(6) The economic practicality of so using the import: The merchandise is moderately priced compared to the inflatable structures used for carnivals which may be retail priced from \$1000.00 to \$2300.00 per unit. See New York Ruling (NY) N021533, dated January 31, 2008. This factor weighs in favor of classification as toys.

(7) The recognition in the trade of use: The subject merchandise is recognized in the trade as an inflatable play area designed to amuse young children through water play and sliding in a backyard environment. This factor weighs in favor of toys.

On the balance, we find that the merchandise belongs to the class or kind of goods known as toys which are classified in heading 9503, HTSUS.

It is the conclusion of CBP, based on the above discussion, that the subject “Jumbo Water Slide” is primarily used for amusement. As such, the merchandise is classified as a “toy” in heading 9503, HTSUS, and is excluded from classification in heading 9506, HTSUS. See EN 95.06(B).

HOLDING:

The subject merchandise, identified as the “Jumbo Water Slide”, is correctly classified in subheading, 9503.00.00, HTSUS, which provides for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof, Other”. This provision is duty free at the general column one rate of duty.

EFFECT ON OTHER RULINGS:

NY M87766, dated October 31, 2006, is hereby revoked consistent with the foregoing.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT L]

HQ H097740
 CLA-2 OT:RR:CTF:TCM H097740 ASM
 CATEGORY: Classification
 TARIFF NO.: 9503.00.00

RE: Revocation of NY R01333; Tariff Classification of the “Mega Bounce Trampoline”

DEAR MR. MALONEY:

This is in reference to New York Ruling Letter (NY) R01333, dated January 26, 2005, which was issued to you on behalf of you concerning the tariff classification of an inflatable play structure, identified as the “Mega Bounce Trampoline”, under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise as an article for “general physical exercise” under subheading 9506.99.60, HTSUS. We have reviewed NY R01333 and found it to be in error. For the reasons set forth below, we hereby revoke NY R01333.

FACTS:

The subject article, “Mega Bounce Trampoline” (item number 15219), is an inflatable play structure that measures 96 inches long by 96 inches wide by 68 inches high. The inflatable product is made of 100 percent rubberized polyvinyl chloride (PVC). An electric air pump and repair kit are included with the product.

ISSUE:

Whether the “Mega Bounce Trampoline” is classified in subheading 9503.00.00, HTSUS, as a “toy” or in heading 9506.99.60, HTSUS, as an article for “general physical exercise”.

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). 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.

The following headings of the HTSUS are under consideration in classifying the subject article:

9503 Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (‘scale’) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof

* * *

9510 Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and

are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN's to heading 9503 provide, in relevant part, as follows:
This heading covers:

* * *

(H) **Other toys.**

This group covers toys intended essentially for the amusement of persons (children or adults). . . . This group includes:

* * *

(xiii) Toy sports equipment, whether or not in sets (e.g., golf sets, tennis sets, archery sets, billiard sets; baseball bats, cricket bats, hockey sticks).

* * *

(xxiii) Play tents for use by children indoors or outdoors.

The EN to heading 9506, states, in pertinent part, the following:
This heading covers:

* * *

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

* * *

(17) Equipment of a kind used in children's playgrounds (e.g., swings, slides, see-saws and giant strides).

* * *

The EN to heading 9503 specifically indicates that "This group covers toys intended essentially for the amusement of persons (children or adults)". In order to be classified as a "toy" of Chapter 95, HTSUS, the toy must be designed and used principally for amusement and should not serve a utilitarian purpose. *See* HQ 086330, dated May 14, 1990; HQ 952186, dated April 29, 1993; HQ 954132, dated February 15, 1994; HQ 956779, dated September 29, 1994; and HQ 961530, dated October 21, 1998.

In *Minnetonka Brands, Inc. v. United States*, 110 F. Supp. 2d 1020 (CIT 2000), the court classified full-figured, three-dimensional, plastic objects in the form of well-recognized children's characters as ". . . [t]oys representing animals or non-human creatures . . . Other" under subheading 9503.49.00, HTSUS. *Id.* at 1029. The court found that because the evidence showed that "... the subject merchandise belongs to the class or kind of merchandise whose principal use is amusement, diversion or play", the merchandise is properly classified as "toys" of heading 9503, HTSUS. *Id.* at 1028. In *Minnetonka*, the CIT further noted that because heading 9503, HTSUS, is, in relevant part, a principal use provision, classification under this provision is controlled by the principal use "of goods of that class or kind to which the imported goods belong" in the United States at or immediately prior to the

date of importation. See Additional U.S. Rule of Interpretation 1(a), HTSUS.¹

The principal use of the class or kind of goods to which an import belongs is controlling, not the principal use of the specific import. (citations omitted). “Principal use” is defined as the use “which exceeds any other single use.” (citations omitted). As a result, “the fact that the merchandise may have numerous significant uses does not prevent the Court from classifying the merchandise according to the principal use of the class or kind to which the merchandise belongs. (citations omitted). See *E.M. Chems. v. United States*, 20 C.I.T. 382, 387–388 (Ct. Int’l Trade 1996).

As stated in *United States v. The Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), certain factors must be looked at to determine whether imported merchandise is of a certain “class or kind” as that expression is used in Additional U.S. Rule of Interpretation 1(a). These factors include: (1) the physical characteristics of the merchandise, (2) the expectation of the ultimate purchasers, (3) the channels of trade of the merchandise, (4) the environment of the sale (accompanying accessories, manner of advertisement and display) (5) use in the same manner as merchandise which defines the class, (6) the economic practicality of so using the import, and (7) recognition in the trade of this use.

In the instant case, we apply the *Carborundum* factors as follows:

(1) The general physical characteristics of the merchandise: The subject merchandise consists of a surface that measures 96 inches long by 96 inches wide by 68 inches high. This inflatable structure is akin to a play tent and the bouncy surface is akin to toy sports equipment listed as exemplars of the heading in EN 95.03. In HQ 966135, dated March 28, 2003, CBP classified a plastic sandbox as playground equipment of heading 9506 because it was sturdy enough “... to be stored in all kinds of weather”. However, even though the article can be used outdoors, it is not intended to be stored outdoors in all kinds of weather. Accordingly, these features weigh in favor of classification as toys.

(2) The expectation of the ultimate purchasers: The ultimate purchasers expect that the product will be used for domestic family use. Such limited use is more representative of a toy rather than an article of outdoor play equipment.

(3 & 4) The channels of trade in which the merchandise moves and environment of sale: The instant merchandise is sold in toy stores and the toy section of department stores, drug stores and supermarkets. This factor weighs in favor of classification as toys.

(5) The usage of the merchandise: The merchandise is used as an active play area for no more than three young children to jump and bounce. Compared to the durable rental units that can be used/stored

¹ Additional U.S. Rules of Interpretation 1(a), HTSUS, provides:

1. In the absence of special language or context which otherwise requires—

(a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use;

outdoors in all kinds of weather and for accommodation of many children at one time, the subject article is for personal domestic family use. This factor weighs in favor of toys.

(6) The economic practicality of so using the import: The merchandise is moderately priced compared to the inflatable structures used for carnivals which may be retail priced from \$1000.00 to \$2300.00 per unit. See New York Ruling (NY) N021533, dated January 31, 2008.

(7) The recognition in the trade of use: The subject merchandise is recognized in the trade as an inflatable play area designed to amuse young children by jumping and bouncing in a domestic family environment. This factor weighs in favor of toys.

On the balance, we find that the merchandise belongs to the class or kind of goods known as toys which are classified in heading 9503, HTSUS.

It is the conclusion of CBP, based on the above discussion, that the subject “Mega Bounce Trampoline” is primarily used for amusement. As such, the merchandise is classified as a “toy” in heading 9503, HTSUS, and is excluded from classification in heading 9506, HTSUS. See EN 95.06(B).

HOLDING:

The subject merchandise, identified as the “Mega Bounce Trampoline”, is correctly classified in subheading, 9503.00.00, HTSUS, which provides for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof, Other”. This provision is duty free at the general column one rate of duty.

EFFECT ON OTHER RULINGS:

NY R01333, dated January 26, 2005, is hereby revoked consistent with the foregoing.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT M]

HQ H097738
 CLA-2 OT:RR:CTF:TCM H097738 ASM
 CATEGORY: Classification
 TARIFF NO.: 9503.00.00

MS. LORIANNE ALDINGER
 RITE AID CORPORATION
 P.O. BOX 3165
 HARRISBURG, PA 17105

RE: Revocation of NY M87765; Tariff Classification of a “Bounce House”

DEAR MS. ALDINGER:

This is in reference to New York Ruling Letter (NY) M87765, dated October 31, 2006, which was issued to you on behalf of the Rite Aid Corporation, concerning the tariff classification of an inflatable play structure, identified as a “Bounce House”, under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise as an article for “general physical exercise” under subheading 9506.99.60, HTSUS. We have reviewed NY M87765 and found it to be in error. For the reasons set forth below, we hereby revoke NY M87765.

FACTS:

The “Bounce House”, identified as item #948429, is a 7 ft. x 7 ft. inflatable play structure. The article is inflated by means of a blower that is connected to the “house”. The child must enter the “house” in order to bounce. The article is suitable for use outside.

ISSUE:

Whether the “Bounce House” is classified in subheading 9503.00.00, HTSUS, as a “toy” or in heading 9506.99.60, HTSUS, as an article for “general physical exercise”.

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). 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.

The following headings of the HTSUS are under consideration in classifying the subject article:

9503 Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof

* * *

9511 Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System

at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN's to heading 9503 provide, in relevant part, as follows:

This heading covers:

* * *

(I) **Other toys.**

This group covers toys intended essentially for the amusement of persons (children or adults). . . . This group includes:

* * *

(xiv) Toy sports equipment, whether or not in sets (e.g., golf sets, tennis sets, archery sets, billiard sets; baseball bats, cricket bats, hockey sticks).

* * *

(xxiii) Play tents for use by children indoors or outdoors.

The EN to heading 9506, states, in pertinent part, the following:

This heading covers:

* * *

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

* * *

(18) Equipment of a kind used in children's playgrounds (e.g., swings, slides, see-saws and giant strides).

* * *

The EN to heading 9503 specifically indicates that "This group covers toys intended essentially for the amusement of persons (children or adults)". In order to be classified as a "toy" of Chapter 95, HTSUS, the toy must be designed and used principally for amusement and should not serve a utilitarian purpose. *See* HQ 086330, dated May 14, 1990; HQ 952186, dated April 29, 1993; HQ 954132, dated February 15, 1994; HQ 956779, dated September 29, 1994; and HQ 961530, dated October 21, 1998.

In *Minnetonka Brands, Inc. v. United States*, 110 F. Supp. 2d 1020 (CIT 2000), the court classified full-figured, three-dimensional, plastic objects in the form of well-recognized children's characters as ". . . [t]oys representing animals or non-human creatures . . . Other" under subheading 9503.49.00, HTSUS. *Id.* at 1029. The court found that because the evidence showed that " . . . the subject merchandise belongs to the class or kind of merchandise whose principal use is amusement, diversion or play", the merchandise is properly classified as "toys" of heading 9503, HTSUS. *Id.* at 1028. In *Minnetonka*, the CIT further noted that because heading 9503, HTSUS, is, in relevant part, a principal use provision, classification under this provision is

controlled by the principal use “of goods of that class or kind to which the imported goods belong” in the United States at or immediately prior to the date of importation. See Additional U.S. Rule of Interpretation 1(a), HTSUS.¹

The principal use of the class or kind of goods to which an import belongs is controlling, not the principal use of the specific import. (citations omitted). “Principal use” is defined as the use “which exceeds any other single use.” (citations omitted). As a result, “the fact that the merchandise may have numerous significant uses does not prevent the Court from classifying the merchandise according to the principal use of the class or kind to which the merchandise belongs. (citations omitted). See *E.M. Chems. v. United States*, 20 C.I.T. 382, 387–388 (Ct. Int’l Trade 1996).

As stated in *United States v. The Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), certain factors must be looked at to determine whether imported merchandise is of a certain “class or kind” as that expression is used in Additional U.S. Rule of Interpretation 1(a). These factors include: (1) the physical characteristics of the merchandise, (2) the expectation of the ultimate purchasers, (3) the channels of trade of the merchandise, (4) the environment of the sale (accompanying accessories, manner of advertisement and display) (5) use in the same manner as merchandise which defines the class, (6) the economic practicality of so using the import, and (7) recognition in the trade of this use.

In the instant case, we apply the *Carborundum* factors as follows:

(1) The general physical characteristics of the merchandise: The subject merchandise consists of a 7 foot x 7 foot inflated plastic surface. Given the relatively small interior surface, we assume that there would only be sufficient space for 1–2 children to use the bouncer simultaneously. The plastic inflatable structure is akin to a play tent and the bouncy surface is akin to toy sports equipment listed as exemplars of the heading in EN 95.03. In HQ 966135, dated March 28, 2003, CBP classified a plastic sandbox as playground equipment of heading 9506 because it was sturdy enough “... to be stored in all kinds of weather”. However, the subject article is not intended to be stored outdoors in all kinds of weather. Accordingly, these features weigh in favor of classification as toys.

(2) The expectation of the ultimate purchasers: The ultimate purchasers expect that the product will be used in accordance with the instructions for indoor/outdoor personal domestic use. Such limited use is more representative of a toy rather than an article of outdoor play equipment.

(3 & 4) The channels of trade in which the merchandise moves and environment of sale: The instant merchandise is sold in toy stores

¹ Additional U.S. Rules of Interpretation 1(a), HTSUS, provides:

1. In the absence of special language or context which otherwise requires—

(a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use;

and the toy section of department stores, drug stores and supermarkets. This factor weighs in favor of classification as toys.

(5) The usage of the merchandise: The merchandise is used as an active play area for no more than three young children to jump and bounce. Compared to the durable rental units that can be used/stored outdoors in all kinds of weather and for accommodation of many children at one time, the subject article is for personal indoor or outdoor backyard use and the amusement of no more than three young children.

(6) The economic practicality of so using the import: The merchandise is moderately priced at \$259.99 per unit compared to the inflatable structures used for carnivals which may be retail priced from \$1000.00 to \$2300.00 per unit. *See* New York Ruling (NY) N021533, dated January 31, 2008.

(7) The recognition in the trade of use: The subject merchandise is recognized in the trade as an inflatable play area designed to amuse young children by bouncing in a personal domestic indoor or outdoor backyard environment. This factor weighs in favor of toys.

Finally, we note that the following CBP rulings classified substantially similar inflatable play structures as “toys” of heading 9503, HTSUS: NY N021006, dated January 10, 2008 (inflatable bounce house); NY N015704, dated September 12, 2007 (“Jump ‘N Jam Sports Center”); NY N016735, dated September 21, 2007 (“Victorian Inflatable Playhouse Toy”); NY N019323, dated November 20, 2007 (“Workout Ring Inflatable Toy”); and NY N013608, dated July 12, 2007 (“Inflatable Air-Cade Wall Court”).

On the balance, we find that the merchandise belongs to the class or kind of goods known as toys which are classified in heading 9503, HTSUS.

It is the conclusion of CBP, based on the above discussion, that the subject “Bounce House” is primarily used for amusement. As such, the merchandise is classified as a “toy” in heading 9503, HTSUS, and is excluded from classification in heading 9506, HTSUS. *See* EN 95.06(B).

HOLDING:

The subject merchandise, identified as the “Bounce House”, is correctly classified in subheading, 9503.00.00, HTSUS, which provides for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof, Other”. This provision is duty free at the general column one rate of duty.

EFFECT ON OTHER RULINGS:

NY M87765, dated October 31, 2006, is hereby revoked consistent with the foregoing.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT N]

HQ H097739

CLA-2 OT:RR:CTF:TCM H097739 ASM

CATEGORY: Classification

TARIFF NO.: 9503.00.00

Ms. PATTI CORDO
AMERICAN CARGO EXPRESS, INC.
435 DIVISION STREET
ELIZABETH, NJ 07201

RE: Revocation of NY K82586; Tariff Classification of the “Banzai Falls Water Slide” and “Slam ‘N Hoops Bouncer”

DEAR Ms. CORDO:

This is in reference to New York Ruling Letter (NY) K82586, dated January 29, 2004, which was issued to you on behalf of the American Cargo Express company, concerning the tariff classification of the “Banzai Falls Water Slide” and “Slam ‘N Hoops Bouncer”, under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (“CBP”) classified the subject merchandise as articles for “general physical exercise” under subheading 9506.99.60, HTSUS. We have reviewed NY K82586 and found it to be in error. For the reasons set forth below, we hereby revoke NY K82586.

FACTS:

The “Banzai Falls Water Slide” is an inflatable play structure measuring 10 feet high by 18 feet long by 5 feet wide. The original water slide is advertised with a weight limit of 200 pounds. There is a pool at the base of the structure and a water spray at the top. The top of the slide has an arch top with wall and rails that are constructed of poly vinyl chloride (PVC)-coated terylene material. A climbing wall is also made of PVC-coated terylene. Water bags are attached at various points around the slide to ensure stability of the structure. The article includes an electric blower motor that must run continuously to keep the structure inflated. Ground stake loops are included at two points to provide greater strength and durability.

The “Slam ‘N Hoops Bouncer” is an inflatable play structure measuring 13.8 feet in length by 8 feet in width. The “Slam ‘N Hoops Bouncer” is inflated by means of an electric blower motor which provides a constant air supply to keep the unit inflated. There is an enclosed area for children to bounce with 36 inch high mesh doors and heavy duty zippers, a 7 foot tall climbing wall, and 8 foot tall basketball wall with a net hoop. The front of the unit has an inflated ledge with a raised inflated wall containing holes for children to crawl through for play in the enclosed area. The product description indicates that it is for use by up to 3 children with a maximum weight capacity not to exceed 200 pounds.

ISSUE:

Whether the “Banzai Falls Water Slide” and “Slam ‘N Hoops Bouncer” are classified in subheading 9503.00.00, HTSUS, as a “toy” or in heading 9506.99.60, HTSUS, as articles for “general physical exercise”.

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). 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.

The following headings of the HTSUS are under consideration in classifying the subject article:

9503 Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ('scale') models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof

* * *

9512 Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN's to heading 9503 provide, in relevant part, as follows:

This heading covers:

* * *

(J) Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults). . . . This group includes:

* * *

(xv) Toy sports equipment, whether or not in sets (e.g., golf sets, tennis sets, archery sets, billiard sets; baseball bats, cricket bats, hockey sticks).

* * *

(xxiii) Play tents for use by children indoors or outdoors.

The EN to heading 9506, states, in pertinent part, the following:

This heading covers:

* * *

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

* * *

(19) Equipment of a kind used in children's playgrounds (e.g., swings, slides, see-saws and giant strides).

* * *

The EN to heading 9503 specifically indicates that “This group covers toys intended essentially for the amusement of persons (children or adults)”. In order to be classified as a “toy” of Chapter 95, HTSUS, the toy must be designed and used principally for amusement and should not serve a utilitarian purpose. See HQ 086330, dated May 14, 1990; HQ 952186, dated April 29, 1993; HQ 954132, dated February 15, 1994; HQ 956779, dated September 29, 1994; and HQ 961530, dated October 21, 1998.

In *Minnetonka Brands, Inc. v. United States*, 110 F. Supp. 2d 1020 (CIT 2000), the court classified full-figured, three-dimensional, plastic objects in the form of well-recognized children’s characters as “. . . [t]oys representing animals or non-human creatures . . . Other” under subheading 9503.49.00, HTSUS. *Id.* at 1029. The court found that because the evidence showed that “. . . the subject merchandise belongs to the class or kind of merchandise whose principal use is amusement, diversion or play”, the merchandise is properly classified as “toys” of heading 9503, HTSUS. *Id.* at 1028. In *Minnetonka*, the CIT further noted that because heading 9503, HTSUS, is, in relevant part, a principal use provision, classification under this provision is controlled by the principal use “of goods of that class or kind to which the imported goods belong” in the United States at or immediately prior to the date of importation. See Additional U.S. Rule of Interpretation 1(a), HTSUS.¹

The principal use of the class or kind of goods to which an import belongs is controlling, not the principal use of the specific import. (citations omitted). “Principal use” is defined as the use “which exceeds any other single use.” (citations omitted). As a result, “the fact that the merchandise may have numerous significant uses does not prevent the Court from classifying the merchandise according to the principal use of the class or kind to which the merchandise belongs. (citations omitted). See *E.M. Chems. v. United States*, 20 C.I.T. 382, 387–388 (Ct. Int’l Trade 1996).

As stated in *United States v. The Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), certain factors must be looked at to determine whether imported merchandise is of a certain “class or kind” as that expression is used in Additional U.S. Rule of Interpretation 1(a). These factors include: (1) the physical characteristics of the merchandise, (2) the expectation of the ultimate purchases, (3) the channels of trade of the merchandise, (4) the environment of the sale (accompanying accessories, manner of advertisement and display) (5) use in the same manner as merchandise which defines the class, (6) the economic practicality of so using the import, and (7) recognition in the trade of this use.

In the instant case, we apply the *Carborundum* factors as follows:

¹Additional U.S. Rules of Interpretation 1(a), HTSUS, provides:

1. In the absence of special language or context which otherwise requires—

(a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use;

(1) The general physical characteristics of the merchandise: The “Banzai Falls Water Slide” is constructed with a slide and attached splash area at the base of the slide which are akin to playground equipment listed in EN 95.06. However, in HQ 966135, dated March 28, 2003, CBP classified a plastic sandbox as playground equipment of heading 9506 because it was sturdy enough “... to be stored in all kinds of weather”. Here, even though the slide and attached splash area are designed for outdoor use, the article is not intended to be stored outdoors in all kinds of weather. Furthermore, the water area at the base of the pool is designed for a splash landing and provides a place for the child to have a cushioned water landing upon exiting the slide. This feature is not unlike that found in NY R01128, dated December 10, 2004, which classified an inflatable water slide as a “toy” in heading 9503, HTSUS. There a slide was designed to rest at the edge of a swimming pool. At the tip of the water slide was a raft-like protuberance that hung into the water and cushioned the sliding child before hitting the water. In addition, a water hose was hooked to a sprayer that was attached to the slide. This provided a steady stream of water and slippery surface for sliding into the pool. Accordingly, these features weigh in favor of classification as toys.

The “Slam ‘N Hoops Bouncer” consists of an inflated plastic surfaces surrounded by mesh walls and constructed of plastic in bright primary colors. The weight limit is 200 lbs and the surface is large enough for only 3 young children. The use of bright primary colors is especially attractive and amusing to young children. The plastic walled structure is akin to a play tent and the bouncy surface is akin to toy sports equipment listed as exemplars of the heading in EN 95.03. As we have already noted, HQ 966135, dated March 28, 2003, classified a plastic sandbox as playground equipment of heading 9506 because it was sturdy enough “... to be stored in all kinds of weather”. However, the “Slam ‘N Hoops Bouncer” is not intended to be stored outdoors in all kinds of weather. Accordingly, these features weigh in favor of classification as toys.

(2) The expectation of the ultimate purchasers: The ultimate purchasers expect that the “Banzai Falls Water Slide” and “Slam ‘N Hoops Bouncer” will be used for personal domestic family use. Such limited use is more representative of a toy rather than an article of outdoor play equipment.

(3 & 4) The channels of trade in which the merchandise moves and environment of sale: The “Banzai Falls Water Slide” and “Slam ‘N Hoops Bouncer” is sold in toy stores and the toy section of department stores, drug stores and supermarkets. This factor weighs in favor of classification as toys.

(5) The usage of the merchandise:

The “Banzai Falls Water Slide” is used as an active water slide play area for young children to splash and slide. Compared to the durable rental units that can be used/stored outdoors in all kinds of weather and for accommodation of many children at one time, the subject article is just for personal backyard use. This factor weighs in favor of classification as toys.

The “Slam ‘N Hoops Bouncer” is used as an active play area for no more than three young children to jump and bounce. Compared to the durable rental units that can be used/stored outdoors in all kinds of weather and for accommodation of many children at one time, the subject article is for personal domestic family use and the relatively small size (8 feet x 68 inches) would limit use of the article to no more than 2 young children at a time. This factor weighs in favor of toys.

(6) The economic practicality of so using the import: The “Banzai Falls Water Slide” is priced at \$379.00 per unit and the “Slam ‘N Hoops Bouncer” is priced at \$249.99 per unit. Both of these articles are moderately priced compared to the inflatable structures used for carnivals which may be retail priced from \$1000.00 to \$2300.00 per unit. *See* New York Ruling (NY) N021533, dated January 31, 2008.

(7) The recognition in the trade of use: The subject merchandise is recognized in the trade as an inflatable play area designed to amuse young children by sliding, splashing, and climbing and/or bouncing and playing in a domestic family environment. This factor weighs in favor of toys.

Finally, we note that the following CBP rulings classified substantially similar inflatable play structures as “toys” of heading 9503, HTSUS: NY N021006, dated January 10, 2008 (inflatable bounce house); NY N015704, dated September 12, 2007 (“Jump ‘N Jam Sports Center”); NY N016735, dated September 21, 2007 (“Victorian Inflatable Playhouse Toy”); NY N019323, dated November 20, 2007 (“Workout Ring Inflatable Toy”); and NY N013608, dated July 12, 2007 (“Inflatable Air-Cade Wall Court”).

On the balance, we find that the merchandise belongs to the class or kind of goods known as toys which are classified in heading 9503, HTSUS.

It is the conclusion of CBP, based on the above discussion, that the subject “Banzai Falls Water Slide” and “Slam ‘N Hoops Bouncer” is primarily used for amusement. As such, the merchandise is classified as a “toy” in heading 9503, HTSUS, and is excluded from classification in heading 9506, HTSUS. *See* EN 95.06(B).

HOLDING:

The subject merchandise, identified as the “Banzai Falls Water Slide” and “Slam ‘N Hoops Bouncer”, is correctly classified in subheading, 9503.00.00, HTSUS, which provides for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof, Other”. This provision is duty free at the general column one rate of duty.

EFFECT ON OTHER RULINGS:

NY K82586, Dated January 29, 2004, is hereby revoked consistent with the foregoing.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF A LOTION OR SOAP
DISPENSER HAND PUMP FROM CHINA**

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

ACTION: Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the tariff classification of a lotion or soap dispenser hand pump 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 CPB is proposing to revoke a ruling letter concerning the tariff classification of a lotion or soap dispenser hand pump from China. Similarly, CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Albena Peters, Penalties Branch: (202) 325–0321.

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 to 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 is proposing to revoke one ruling letter pertaining to the tariff classification of a lotion or soap dispenser hand pump from China. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) N047916, dated January 22, 2009 (Attachment A), this notice covers 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., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. 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 decision on this notice.

In NY N047916, CBP determined in relevant part that a lotion or soap dispenser hand pump is classified under subheading 8424.20.1000, HTSUS. It is now CBP's position that it is classified under subheading 8424.89.0000, HTSUS.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N047916, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H070635, set forth as Attachment B to this notice.

Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing 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: May 25, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

N047916

January 22, 2009

CLA-2-84:OT:RR:NC:N1:106

CATEGORY: Classification

TARIFF NO.: 8424.20.1000

JERRI HAWLEY
ATTN: IMPORTS RT. J4S
THE TJX COMPANIES, INC.
770 COCHITUATE RD.
FARMINGHAM, MA 01701

RE: The tariff classification of a lotion or soap dispenser from China.

DEAR Ms. HAWLEY:

In your letter dated December 23, 2008 you requested a tariff classification ruling. A sample and brief description were included with your request.

The item is a dispenser for lotion or soap, style 569-A. The lotion is dispensed by hand activation of a simple piston pump mechanism which is attached to the top of, and inserted into, the solid glass reservoir which holds the liquid soap or lotion.

The applicable subheading for the lotion or soap dispenser will be 8424.20.1000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for mechanical appliances for projecting, dispersing or spraying liquids or powders;...: spray guns and similar appliances: simple piston pump sprays and powder bellows. The rate of duty will be 2.9 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

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 Mark Palasek at (646) 733-3013.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H070635

CLA-2 OT:RR:CTF:TCM H070635 AP

CATEGORY: Classification

TARIFF NO.: 8424.89.00

DAVID M. MURPHY, ESQ.

GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & KLESTADT L.L.P.

399 PARK AVENUE, 25TH FLOOR

NEW YORK, NY 10022-4877

RE: Reconsideration of NY N047916, dated January 22, 2009; Classification of a lotion or soap dispenser hand pump from China

DEAR MR. MURPHY:

This is in response to your request, dated July 28, 2009, made on behalf of The TJX Companies, Inc., for reconsideration of New York Ruling Letter (“NY”) N047916, issued by U.S. Customs and Border Protection (“CBP”) on January 22, 2009.

In NY N047916, CBP classified a lotion or soap dispenser hand pump under subheading 8424.20.1000, of the Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids . . . : Spray guns and similar appliances: Simple piston pump sprays and powder bellows.”

FACTS:

In NY N047916, the merchandise is described as follows:

The item is a dispenser for lotion or soap, style 569-A. The lotion is dispensed by hand activation of a simple piston pump mechanism which is attached to the top of, and inserted into, the solid glass reservoir which holds the liquid soap or lotion.

The soap dispenser consists of a glass reservoir for soap or lotion and a simple piston pump, which is composed of plastic tubing with minor components of metal such as a small ball and spring. When the user depresses the top of the simple piston pump, a quantity of the soap or lotion enters the tube. Repeated pressing of the top of the dispenser results in the tube filling and liquid being issued from the opening for the user.

ISSUE:

Whether hand pump soap dispensers are classifiable as other mechanical appliances for projecting, dispersing or spraying liquids under subheading 8424.89, HTSUS, or as spray guns and similar appliances under subheading 8424.20, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is governed by 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. The HTSUS provisions under consideration in this case are as follows:

8424	Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; . . . * * *
8424.20	Spray guns and similar appliances:
8424.20.10	Simple piston pump sprays and powder bellows . . . * * *
	Other appliances: * * *
8424.89.00	Other

There is no dispute that the lotion or soap dispenser hand pump is classified in heading 8424, HTSUS. At issue is the proper 6-digit subheading. GRI 6 states:

For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to 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 Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized Tariff System. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The subheading ENs state that subheading 8424.20 covers the appliances described in Part (B) of the EN to heading 84.24. The EN 84.24(B) provides:

Spray guns and similar hand controlled appliances are usually designed for attaching to compressed air or steam lines, and are also connected, either directly or through a conduit, with a reservoir of the material to be projected. They are fitted with triggers or other valves for controlling the flow through the nozzle, which is usually adjustable to give a jet or more or less divergent spray. They are used for spraying paint or distemper, varnishes, oils, plastics, cement, metallic powders, textile dust . . . projecting a powerful jet of compressed air or steam for cleaning stonework in buildings, statuary, etc.. They may also be used for projecting a powerful jet of compressed air or steam for cleaning stonework in buildings, statuary, etc.

This group also includes separately presented hand controlled “anti-smudge” spraying devices for fitting to printing machines, and hand controlled metal spraying pistols operating either on the principle of a blow pipe, or by the combined effect of an electric heating device and a jet of compressed air.

Hand controlled spray guns with self-contained electric motor, incorporating a pump and a container for the material to be sprayed (paint, varnish, etc.), are also covered by the heading.

You state that the lotion or soap dispenser hand pump does not fall within the description of subheading 8424.20.20, HTSUS, because it is not a spray

gun or a similar appliance. The common meaning of a term is generally afforded deference when determining its proper interpretation for tariff purposes. See *Toyota Motor Sales (U.S.A.), Inc. v. United States*, 7 CIT 178, 182, 585 F. Supp. 649, 653 (1984), *aff'd*, 753 F.2d 1061 (Fed. Cir. 1985); *Nippon Kogaku (USA), Inc. v. United States*, 69 CCPA 89, 92, 673 F.2d 380, 382 (1982). Dictionaries and other lexicographic authorities may be utilized to determine a term's common meaning. See *Mast Indus., Inc. v. United States*, 9 CIT 549 (1985), *aff'd*, 786 F.2d 1144 (Fed. Cir. 1986). The compact Oxford English Dictionary defines spray gun as "a device resembling a gun which is used to spray a liquid such as paint under pressure." As described in the ENs, spray guns are usually designed for attaching to compressed air or steam lines, are connected with a reservoir with the material to be projected, and are fitted with a trigger or valve to control the flow through the nozzle. The instant lotion or soap dispenser is designed to dispense a small amount of liquid soap in the user's hand by means of a piston pump and not by pressure. There is no means to control the amount of liquid dispensed. Therefore, the lotion or soap dispenser hand pump at issue is not a spray gun or a similar appliance, and does not fall within the description of subheading 8424.20, HTSUS.

Subheading 8424.89, HTSUS provides for other mechanical appliances for projecting or dispersing liquids. We have previously determined that hand-operated soap dispensers are classified in subheading 8424.89, HTSUS. See HQ H012731 dated March 27, 2008; HQ 956522 dated August 29, 1994; HQ 956530 dated August 29, 1994. In HQ088500, dated April 4, 1991, CBP determined that cosmetic pumps, which did not spray fluid but projected or dispersed fluid from inside their container were classified in subheading 8424.89, HTSUS. Accordingly, we conclude that the lotion or soap dispenser hand pump is classified in subheading 8424.89, HTSUS.

HOLDING:

Pursuant to GRI 6, the lotion or soap dispenser hand pump is classifiable under subheading 8424.89.00, HTSUS, which covers "Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids . . . : Other appliances: Other." The column one, general rate of duty is 1.8% *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 Internet at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY N047916, dated January 22, 2009, is revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF SIX RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF CERTAIN BEVERAGE DISPENSERS

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

ACTION: Proposed revocation of six classification ruling letters and proposed revocation of treatment relating to the classification of certain beverage dispensers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is proposing to revoke six ruling letters letter relating to the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of certain beverage dispensers. CBP is also proposing to revoke any treatment previously accorded by it to substantially identical merchandise.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to the Bureau of Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street N.W., 5th Floor, Washington, D.C. 20229-1179. Submitted comments may be inspected at the above address during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Tariff Classification and Marking Branch: (202) 325-0026.

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 commu-

nity'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 to 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 is proposing to revoke six ruling letters pertaining to the classification of certain beverage dispensers. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letters (NY) N025129, dated April 10, 2008; NY R03851, dated May 30, 2006; NY N016275, dated September 13, 2007; NY I82366, dated July 5, 2002; NY R04997, dated October 26, 2006 and; NY L89010, dated November 15, 2005, (Attachments A–F) 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 ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. 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 decision on this notice.

In NY N025129, NY R03851, NY N016275, NY I82366, NY R04997 and NY L89010, beverage dispensers were classified in heading 8481, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts

thereof.” Since the issuance of those rulings, CBP has reviewed the classification of these beverage dispensers and has determined that the cited rulings are in error.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N025129, NY R03851, NY N016275, NY I82366, NY R04997 and NY L89010 and revoke or modify any other ruling not specifically identified, to reflect the classification of the beverage dispensers according to the analysis contained in proposed Headquarters Ruling Letters (HQ) H044960; H044958; H044956; H044957; H058924; and H044959, set forth as Attachments G–L to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing 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: May 25, 2010

GAIL A. HAMILL

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N025129

April 10, 2008

CLA-2-84:OT:RR:E:NC:N1:102

CATEGORY: Classification

TARIFF NO.: 8481.80.5090

MS. AMY MORGAN
COSTCO WHOLESALÉ
999 LAKE DRIVE
ISSAQUAH, WASHINGTON 98027

RE: The tariff classification of a ceramic beverage jar/dispenser from China

DEAR MS. MORGAN:

In your letter dated March 24, 2008 you requested a tariff classification ruling. Descriptive literature and an illustration were submitted.

The item you plan to import is described as a ceramic beverage jar/dispenser, item 109009. This portable beverage jar is a composite good that both stores and dispenses a liquid. The jar stands 16 inches tall and is made of earthenware ceramic with a matching removable earthenware lid. In addition, it includes a plastic hand operated tap/spigot at the base of the jar that dispenses the liquid. The jar is intended to sit on a table or countertop.

The applicable subheading for the ceramic beverage jar/dispenser will be 8481.80.5090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other hand operated taps, cocks, valves and similar appliances of other materials. The rate of duty will be 3 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

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 Kenneth T. Brock at 646-733-3009.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

NY R03851
May 30, 2006
CLA-2-84:RR:NC:1:102 R03851
CATEGORY: Classification
TARIFF NO.: 8481.80.5090

MR. TROY D. CRAGO
ATICO INTERNATIONAL USA, INC.
501 SOUTH ANDREWS AVENUE
FORT LAUDERDALE, FL 33301

RE: The tariff classification of a water bottle dispenser from China.

DEAR MR. CRAGO:

In your letter dated November 15, 2005 you requested a tariff classification ruling on behalf of Atico International USA.

The item in question is described as a water tank set, item number W038BA03046. The set is comprised of a refillable water bottle, a ceramic dispenser pot with plastic ring and valve, and a metal stand. The water bottle, dispenser and stand are imported together and are presumably packed together ready for retail sale. The dispenser pot incorporates a hand-operated valve with a spout to control the flow of water from the storage bottle. Descriptive literature was submitted.

The applicable subheading for the water bottle dispenser will be 8481.80.5090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other taps, cocks, valves and similar appliances, hand operated, of other materials. The duty rate will be 3 per cent 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

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 Kenneth T. Brock at 646-733-3009.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT C]

N016275

September 13, 2007

CLA-2-84:RR:NC:N1:102

CATEGORY: Classification

TARIFF NO.: 8481.80.5090

MS. MARTHA DE CASTRO
BED BATH & BEYOND
650 LIBERTY AVE.
UNION, NJ 07083

RE: The tariff classification of a liquor dispenser from China

DEAR MS. DE CASTRO:

In your letter dated August 22, 2007 you requested a tariff classification ruling. Descriptive literature and a sample were submitted.

The product you plan to import is described as a "World Globe Liquor Dispenser", item number 1942. It consists of a plastic globe shaped dispenser with a metal stand. The stand incorporates a hand-operated valve with a spout that controls the flow of liquid. The handle is turned counter-clockwise on the nozzle to dispense liquids and turned clockwise to stop liquid flow. The sample will be returned as you requested.

The applicable subheading for the liquor dispenser will be 8481.80.5090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other taps, cocks, valves and similar appliances, hand operated, of other materials. The rate of duty will be 3 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

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 Kenneth T. Brock at 646-733-3009.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT D]

NY I82366
July 5, 2002
CLA-2-84:RR:NC:1:102 I82366
CATEGORY: Classification
TARIFF NO.: 8481.80.5090

MS. LESA R. HUBBARD
J.C. PENNEY PURCHASING CORPORATION
P.O. BOX 10001
DALLAS, TEXAS 75301-0001

RE: The tariff classification of a water bottle dispenser from China.

DEAR MS. HUBBARD:

In your letter dated June 4, 2002 you requested a tariff classification ruling on behalf of your client JCPenney Purchasing Corporation.

The item in question is described as a “mini” water dispenser. The dispenser is comprised of a dispensing base and an inverted water bottle that essentially replicates in miniature a typical bottled water dispenser. You indicate that the dispenser is designed to hold and dispense the eight, eight ounce glasses of water that are generally recommended for daily drinking. Both the base and bottle are constructed of plastic and are imported shrink-wrapped and packaged together for retail sale. The base incorporates a hand-operated valve with a spout to control the flow of water from the storage bottle. A sample of the water dispenser was submitted.

The applicable subheading for the water bottle dispenser will be 8481.80.5090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other taps, cocks, valves and similar appliances, hand operated, of other materials. The duty rate will be 3 per cent 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 Kenneth T. Brock at 646-733-3009.

Sincerely,

ROBERT B. SWIERUPSKI
Director,

National Commodity Specialist Division

[ATTACHMENT E]

NY R04997
October 26, 2006
CLA-2-84:RR:E:NC:1:102 R04997
CATEGORY: Classification
TARIFF NO.: 8481.80.5090

MR. TODD W. STUMPF
STONEPATH LOGISTICS
1930 6TH AVENUE (SUITE 401)
SEATTLE, WA 98134

RE: The tariff classification of a water bottle dispenser from China.

DEAR MR. STUMPF:

In your letter dated September 29, 2006 you requested a tariff classification ruling on behalf of your client Pacific Direct.

The item in question is described as a water dispenser. The dispenser is comprised of a plastic water bottle and a plastic stand. The stand incorporates a hand-operated valve to control the flow of water from the bottle. Photographs were submitted.

The applicable subheading for the water bottle dispenser will be 8481.80.5090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other taps, cocks, valves and similar appliances, hand operated, of other materials. The duty rate will be 3 per cent 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

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 Kenneth T. Brock at 646-733-3009.

Sincerely,

ROBERT B. SWIERUPSKI
Director,

National Commodity Specialist Division

[ATTACHMENT F]

NY L89010
December 12, 2005
CLA-2-84:RR:NC:1:102 L89010
CATEGORY: Classification
TARIFF NO.: 8481.80.5090

Ms. LORIANNE ALDINGER
RITE AID CORPORATION
P.O. BOX 3165
HARRISBURG, PA 17105

RE: The tariff classification of a water bottle dispenser from China.

DEAR Ms. ALDINGER:

In your letter dated November 15, 2005 you requested a tariff classification ruling on behalf of Rite Aid Corporation.

The item in question is described as a "Penguin Water Dispenser", item number 943022. The dispenser is comprised of a dispensing base, which is in the shape of a penguin, and an inverted water bottle. Both the base and bottle are constructed of plastic and are imported packaged together for retail sale. The base incorporates a hand-operated valve with a spout to control the flow of water from the storage bottle. A sample of the water dispenser was submitted.

The applicable subheading for the water bottle dispenser will be 8481.80.5090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other taps, cocks, valves and similar appliances, hand operated, of other materials. The duty rate will be 3 per cent 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 Kenneth T. Brock at 646-733-3009.

Sincerely,

ROBERT B. SWIERUPSKI
Director,

National Commodity Specialist Division

[ATTACHMENT G]

HQ H044960
CLA-2 OT:RR:CTF:TCM H044960 KSH
CATEGORY: Classification
TARIFF NO.: 6912.00.48

Ms. AMY MORGAN
COSTCO WHOLESALÉ
999 LAKE DRIVE
ISSAQUAH, WASHINGTON 98027

RE: Revocation of NY N025129; Classification of a ceramic beverage jar

DEAR Ms. MORGAN:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) N025129, issued to you on April 10, 2008, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a ceramic beverage jar. The merchandise was classified under heading 8481, HTSUS, which provides for "Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof." We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY N025129.

FACTS:

The merchandise at issue was described as follows in NY N025129:

[A] ceramic beverage jar/dispenser, item 109009. This portable beverage jar is a composite good that both stores and dispenses a liquid. The jar stands 16 inches tall and is made of earthenware ceramic with a matching removable earthenware lid. In addition, it includes a plastic hand operated tap/spigot at the base of the jar that dispenses the liquid. The jar is intended to sit on a table or countertop.

ISSUE:

Whether the ceramic beverage jar is classified in heading 8481, HTSUS, as a valve or heading 6912, HTSUS, as ceramic kitchenware.

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and 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 relevant HTSUS provisions are as follows:

6912: Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china:

8481: Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof:

The merchandise at issue consists of a ceramic jar and lid of heading 6912, HTSUS and a tap of heading 8481, HTSUS. When goods are, *prima facie*,

classifiable in two or more headings, they must be classified in accordance with GRI 3, which provides, in relevant part, as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

* * * *

In this case, headings 6912 and 8481, HTSUS, each refer to only part of the merchandise. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b) as a composite good because it is “made up of different components,” which are “adapted one to the other and [be] mutually complementary and . . . together . . . form a whole which would not normally be offered for sale in separate parts.” See EN IX to GRI 3(b). *Infra*.

In classifying the articles pursuant to a GRI 3(b) analysis, the goods are classified as if they consisted of the component that gives them their essential character.

In relevant part, the ENs¹ to GRI 3(b) state:

- (VII) In all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
- (VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.
- (IX) For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole, but also those with separable components, provided these components are adapted one to the other and are mutually complementary, and that together they form a whole which would not normally be offered for sale in separate parts... As a general rule, the components of these composite goods are put up in a common packing.

* * *

There have been several court decisions on “essential character” for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine

¹ The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

essential character. *See Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (citations omitted) (2005), “the essential character of an article is that which is indispensable to the structure, core or condition of the article, i.e., what it is.” *See also Conair Corporation v. United States*, 29 Ct. Int'l Trade, 888, 895 (citations omitted) (2005), (discussing “the concept of ‘essential character’ found in GRI 3(b)”).

In this instance, the ceramic beverage jar performs the necessary role of storing the water, provides the aesthetic appeal and provides the greatest bulk. The tap distributes the water but is dependent upon the earthenware jar for its water supply. As such, we find that the essential character of the ceramic beverage jar with plastic tap is provided by the jar.

HOLDING:

By application of GRI 3(b), the ceramic beverage jar is classified in heading 6912, HTSUS. It is provided for in subheading 6912.00.48, HTSUS, which provides for: “Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Other: Other: Other.” The column one, general rate of duty is 9.8% *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 N025129, dated April 10, 2008, is revoked.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT H]

HQ H044958
CLA-2 OT:RR:CTF:TCM H044958 KSH
CATEGORY: Classification
TARIFF NO.: 3926.90.99

MR. TROY D. CRAGO
ATICO INTERNATIONAL USA, INC.
501 SOUTH ANDREWS AVENUE
FORT LAUDERDALE, FL 33301

RE: Revocation of NY R03851; Classification of a water tank set

DEAR MR. CRAGO:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) R03851, issued to you on May 30, 2006, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a water tank set. The merchandise was classified under heading 8481, HTSUS, which provides for "Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof." We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY R03851.

FACTS:

The merchandise at issue was described as follows in NY R03851:

[A] water tank set, item number W038BA03046. The set is comprised of a refillable water bottle, a ceramic dispenser pot with plastic ring and valve, and a metal stand. The water bottle, dispenser and stand are imported together and are presumably packed together ready for retail sale. The dispenser pot incorporates a hand-operated valve with a spout to control the flow of water from the storage bottle.

Since the issuance of NY R03851, we have ascertained that the stand is made of steel.

ISSUE:

Whether the water tank set is classified in heading 8481, as a valve or heading 3926, as an other article of plastic, heading 6914, as other ceramic articles or heading 7323, as table, kitchen or other household articles of steel.

LAW AND ANALYSIS:

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

3926: Other articles of plastics and articles of other materials of headings 3901 to 3914:

7323: Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel:

8481: Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof:

The merchandise at issue consists of a refillable water bottle of heading 3926, HTSUS and ceramic dispenser pot incorporating a plastic ring and a valve with a spout (a tap) of heading 8481, HTSUS and a steel stand. When goods are, *prima facie*, classifiable in two or more headings, they must be classified in accordance with GRI 3, which provides, in relevant part, as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

* * * *

In this case, headings 3926, 7323 and 8481, HTSUS, each refer to only part of the merchandise. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b) as a set because they are *prima facie* classifiable in more than one heading, are used for the specific activity of dispensing water and are put up for sale without repacking. *See* EN X to GRI 3(b). *Infra*.

In classifying the articles pursuant to a GRI 3(b) analysis, the goods are classified as if they consisted of the component that gives them their essential character.

In relevant part, the ENs¹ to GRI 3(b) state:

- (IX) In all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
- (X) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

¹ The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

- (X) For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:
- (a) consist of at least two different articles which are, prima facie, classifiable in different headings . . . ;
 - (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
 - (c) are put up in a manner suitable for sale directly to users without re-packing (e.g., in boxes or cases or on boards).

* * *

There have been several court decisions on “essential character” for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. See *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (citations omitted) (2005), “the essential character of an article is that which is indispensable to the structure, core or condition of the article, i.e., what it is.” See also *Conair Corporation v. United States*, 29 Ct. Int’l Trade, 888, 895 (citations omitted) (2005), (discussing “the concept of ‘essential character’ found in GRI 3(b)”).

In this instance, the refillable water bottle provides the indispensable role of storing the water and being the tank in the water tank set. The pot with its valve distributes the water but is dependent upon the refillable water bottle for its water supply and will only be used when the consumer dispenses the water. In contrast, the refillable water bottle continuously stores the water. The metal stand merely elevates the tank but does not affect its water storage capacity. As such, we find that the essential character of the water tank set is provided by the refillable water bottle.

HOLDING:

By application of GRI 3(b), the water tank set is classified in heading 3926, HTSUS. It is provided for in subheading 3926.90.99, HTSUS, which provides for: “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.” The column one, general rate of duty is 5.3% *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 R03851, dated May 30, 2006, is revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT I]

HQ H044956
CLA-2 OT:RR:CTF:TCM H044956 KSH
CATEGORY: Classification
TARIFF NO.: 3926.90.98

Ms. MARTHA DE CASTRO
BED BATH & BEYOND
650 LIBERTY AVE.
UNION, NJ 07083

RE: Revocation of NY N016275; Classification of a “World Globe Liquor Dispenser”

DEAR Ms. DE CASTRO:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) N016275, issued to you on September 13, 2007, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of the “World Globe Liquor Dispenser.” The merchandise was classified under heading 8481, HTSUS, which provides for “Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof.” We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY N016275.

FACTS:

The merchandise at issue was described as follows in NY N016275:

“World Globe Liquor Dispenser”, item number 1942... consists of a plastic globe shaped dispenser with a metal stand. The stand incorporates a hand-operated valve with a spout that controls the flow of liquid. The handle is turned counter-clockwise on the nozzle to dispense liquids and turned clockwise to stop liquid flow.

Since the issuance of NY N016275, we have determined that the stand is made of zinc alloy and iron, with the zinc alloy predominating by weight.

ISSUE:

Whether the World Globe Liquor Dispenser is classified in heading 7907 as an other article of zinc, heading 8481, as a valve or heading 3926, as an other article of plastic.

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and 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 relevant HTSUS provisions are as follows:

3926: Other articles of plastics and articles of other materials of headings 3901 to 3914:

8481: Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof:

The merchandise at issue consists of a plastic globe of heading 3926, HTSUS and a zinc stand which incorporates a valve and a spout (a tap) of heading 8481, HTSUS.¹ When goods are, *prima facie*, classifiable in two or more headings, they must be classified in accordance with GRI 3, which provides, in relevant part, as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

* * * *

In this case, headings 3926 and 8481, HTSUS, each refer to only part of the merchandise. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b) because they meet the definition of a set because they are *prima facie* classifiable in more than one heading, are put for the specific activity of dispensing water and are put up for sale without repackaging. See EN X to GRI 3(b). *Infra*.

In classifying the articles pursuant to a GRI 3(b) analysis, the goods are classified as if they consisted of the component that gives them their essential character.

In relevant part, the ENs² to GRI 3(b) state:

- (XI) In all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
- (XII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

¹ The zinc stand which incorporates a tap is a composite good because it is “made up of different components,” which are “adapted one to the other and are mutually complementary and . . . together . . . form a whole which would not normally be offered for sale in separate parts.” See EN IX to GRI 3(b).

² The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP’s practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

- (X) For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:
- (a) consist of at least two different articles which are, prima facie, classifiable in different headings . . . ;
 - (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
 - (c) are put up in a manner suitable for sale directly to users without re-packing (e.g., in boxes or cases or on boards).

* * *

There have been several court decisions on “essential character” for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. See *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (citations omitted) (2005), “the essential character of an article is that which is indispensable to the structure, core or condition of the article, i.e., what it is.” See also *Conair Corporation v. United States*, 29 Ct. Int’l Trade, 888, 895 (citations omitted) (2005), (discussing “the concept of ‘essential character’ found in GRI 3(b)”).

In this instance, the plastic globe performs the crucial role of storing the liquor, provides the aesthetic appeal and has the greatest bulk. The tap distributes the liquor but is dependent upon the globe to provide the liquor and will only be used when the consumer dispenses the liquor from within. The metal stand merely elevates the globe but does not affect its storage capacity. In contrast, the plastic globe dispenser continuously stores the liquor. As such, the essential character is provided by the plastic globe dispenser.

HOLDING:

By application of GRI 3(b), the “World Globe Liquor Dispenser” is classified in heading 3926, HTSUS. It is provided for in subheading 3926.90.99, HTSUS, which provides for: “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.” The 2009 column one, general rate of duty is 5.3% *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 N016725, dated September 13, 2007, is revoked.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT J]

HQ H044957
CLA-2 OT:RR:CTF:TCM H044957 KSH
CATEGORY: Classification
TARIFF NO.: 3926.90.99

Ms. LESA R. HUBBARD
J.C. PENNEY PURCHASING CORPORATION
P.O. Box 10001
DALLAS, TEXAS 75301-0001

RE: Revocation of NY I82366; Classification of a “mini” water dispenser

DEAR Ms. HUBBARD:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) I82366, issued to you on July 5, 2002, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a “mini” water dispenser. The merchandise was classified under heading 8481, HTSUS, which provides for “Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof.” We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY I82366.

FACTS:

The merchandise at issue was described as follows in NY I82366:

[A] mini dispenser...comprised of a dispensing base and an inverted water bottle that essentially replicates in miniature a typical bottled water dispenser. You indicate that the dispenser is designed to hold and dispense the eight, eight ounce glasses of water that are generally recommended for daily drinking. Both the base and bottle are constructed of plastic and are imported shrink-wrapped and packaged together for retail sale. The base incorporates a hand-operated valve with a spout to control the flow of water from the storage bottle.

ISSUE:

Whether the water bottle dispenser is classified in heading 8481, as a valve or heading 3926, as an other article of plastic.

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and 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 relevant HTSUS provisions are as follows:

3926: Other articles of plastics and articles of other materials of headings 3901 to 3914:

8481: Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof

The merchandise at issue consists of a plastic water bottle of heading 3926, HTSUS, and a dispensing base with a hand operated valve with a spout, i.e., a tap of heading 8481, HTSUS¹. When goods are, *prima facie*, classifiable in two or more headings, they must be classified in accordance with GRI 3, which provides, in relevant part, as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

* * * *

In this case, headings 3926 and 8481, HTSUS, each refer to only part of the merchandise. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b) because they are *prima facie* classifiable in more than one heading, are put for the specific activity of dispensing water and are put up for sale without repacking. *See* EN X to GRI 3(b). *Infra*.

In classifying the articles pursuant to a GRI 3(b) analysis, the goods are classified as if they consisted of the component that gives them their essential character.

In relevant part, the ENs² to GRI 3(b) state:

(XIII) In all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(XIV) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

¹ The dispensing base with a tap is a composite good because it is “made up of different components,” which are “adapted one to the other and [be] mutually complementary and . . . together . . . form a whole which would not normally be offered for sale in separate parts.” *See* EN IX to GRI 3(b).

² The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP’s practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

- (IX) For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole, but also those with separable components, provided these components are adapted one to the other and are mutually complementary, and that together they form a whole which would not normally be offered for sale in separate parts... As a general rule, the components of these composite goods are put up in a common packing.
- (X) For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:
- (a) consist of at least two different articles which are, prima facie, classifiable in different headings . . . ;
 - (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
 - (c) are put up in a manner suitable for sale directly to users without re-packing (e.g., in boxes or cases or on boards).

* * *

There have been several court decisions on “essential character” for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. See *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (citations omitted) (2005), “the essential character of an article is that which is indispensable to the structure, core or condition of the article, i.e., what it is.” See also *Conair Corporation v. United States*, 29 Ct. Int’l Trade, 888, 895 (citations omitted) (2005), (discussing “the concept of ‘essential character’ found in GRI 3(b)”).

In this instance, the water bottle performs the necessary role of holding the water. The tap distributes the water but is dependent upon the bottle to provide the water to dispense and will only be used when the consumer dispenses the water. In contrast, the water bottle continuously stores the water. As such, the essential character of the set is provided by the water bottle.

HOLDING:

By application of GRI 3(b), the “mini” water dispenser is classified in heading 3926, HTSUS. It is provided for in subheading 3926.90.99, HTSUS, which provides for: “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.” The column one, general rate of duty is 5.3% *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 I82366, dated July 5, 2002, is revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT K]

HQ H058924
CLA-2 OT:RR:CTF:TCM H058924 KSH
CATEGORY: Classification
TARIFF NO.: 3926.90.99

MR. TODD W. STUMPF
STONEPATH LOGISTICS
1930 6TH AVENUE
SUITE 401
SEATTLE, WA 98134

RE: Revocation of NY R04997; Classification of a water bottle dispenser

DEAR MR. STUMPF:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) R04997, issued to you on behalf of your client Pacific Direct, on October 26, 2006, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a water dispenser. The merchandise was classified under heading 8481, HTSUS, which provides for “Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof.” We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY R04997.

FACTS:

The merchandise at issue was described as follows in NY R04997:

[A] water dispenser ... comprised of a plastic water bottle and a plastic stand. The stand incorporates a hand-operated valve to control the flow of water from the bottle.

ISSUE:

Whether the water bottle dispenser is classified in heading 8481, as a valve or heading 3926, as an other article of plastic.

LAW AND ANALYSIS:

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

3926: Other articles of plastics and articles of other materials of headings 3901 to 3914:

8481: Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof

The merchandise at issue consists of a plastic water bottle and stand of heading 3926, HTSUS, and a stand incorporating a hand operated valve (a

tap) of heading 8481, HTSUS. When goods are, *prima facie*, classifiable in two or more headings, they must be classified in accordance with GRI 3, which provides, in relevant part, as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

* * * *

In this case, headings 3926 and 8481, HTSUS, each refer to only part of the merchandise. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b) as set because they are *prima facie* classifiable in more than one heading, are used for the specific activity of dispensing water and are put up for sale without repacking. See EN X to GRI 3(b). *Infra*.

In classifying the articles pursuant to a GRI 3(b) analysis, the goods are classified as if they consisted of the component that gives them their essential character.

In relevant part, the ENs¹ to GRI 3(b) state:

- (XV) In all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
- (XVI) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.
- (X) For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:
- (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings . . . ;
 - (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
 - (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

* * *

There have been several court decisions on “essential character” for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine

¹ The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

essential character. *See Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (citations omitted) (2005), “the essential character of an article is that which is indispensable to the structure, core or condition of the article, i.e., what it is.” *See also Conair Corporation v. United States*, 29 Ct. Int’l Trade, 888, 895 (citations omitted) (2005), (discussing “the concept of ‘essential character’ found in GRI 3(b)”).

In this instance, the water bottle performs the necessary role of holding the water and provides the greatest bulk. The valve distributes the water but is dependent upon the bottle to provide the water and will only be used when the consumer dispenses the water. In contrast, the water bottle continuously stores the water. As such, the essential character is provided by the water bottle.

HOLDING:

By application of GRI 3(b), the water bottle dispenser is classified in heading 3926, HTSUS. It is provided for in subheading 3926.90.99, HTSUS, which provides for: “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.” The column one, general rate of duty is 5.3% *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 R04997, dated October 26, 2006, is revoked

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT L]

HQ H044959
CLA-2 OT:RR:CTF:TCM H044959 KSH
CATEGORY: Classification
TARIFF NO.: 3926.90.99

Ms. LORIANNE ALDINGER
RITE AID CORPORATION
P.O. Box 3165
HARRISBURG, PA 17105

RE: Revocation of NY L89010; Classification of a Penguin Water Dispenser

DEAR Ms. ALDINGER:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) L89010, issued to you on November 15, 2005, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a Penguin Water Dispenser. The merchandise was classified under heading 8481, HTSUS, which provides for "Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof." We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY L89010.

FACTS:

The merchandise at issue was described as follows in NY L89010:

The dispenser is comprised of a dispensing base, which is in the shape of a penguin, and an inverted water bottle. Both the base and bottle are constructed of plastic and are imported packaged together for retail sale. The base incorporates a hand-operated valve with a spout to control the flow of water from the storage bottle.

ISSUE:

Whether the Penguin Water Dispenser is classified in heading 8481, as a valve or heading 3926, as an other article of plastic.

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and 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 relevant HTSUS provisions are as follows:

- 3926: Other articles of plastics and articles of other materials of headings 3901 to 3914:
- 8481: Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof

The merchandise at issue consists of a plastic water bottle and stand of heading 3926, HTSUS, and a tap, i.e., a valve with a spout of heading 8481,

HTSUS. When goods are, *prima facie*, classifiable in two or more headings, they must be classified in accordance with GRI 3, which provides, in relevant part, as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

* * * *

In this case, headings 3926 and 8481, HTSUS, each refer to only part of the merchandise. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b) as a set because they are *prima facie* classifiable in more than one heading, are used for the specific activity of dispensing water and are put up for sale without repacking. See EN X to GRI 3(b). *Infra*.

In classifying the articles pursuant to a GRI 3(b) analysis, the goods are classified as if they consisted of the component that gives them their essential character.

In relevant part, the ENs¹ to GRI 3(b) state:

- (XVII) In all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
- (XVIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.
- (X) For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:
- (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings . . . ;
 - (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
 - (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

* * *

¹ The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

There have been several court decisions on “essential character” for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. See *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (citations omitted) (2005), “the essential character of an article is that which is indispensable to the structure, core or condition of the article, i.e., what it is.” See also *Conair Corporation v. United States*, 29 Ct. Int’l Trade, 888, 895 (citations omitted) (2005), (discussing “the concept of ‘essential character’ found in GRI 3(b)”).

In this instance, the water bottle performs the necessary role of holding the water. The valve distributes the water but is dependent upon the bottle to provide the water and will only be used when the consumer dispenses the water. In contrast, the water bottle continuously stores the water. As such, the essential character is provided by the water bottle.

HOLDING:

By application of GRI 3(b), the Penguin Water Dispenser is classified in heading 3926, HTSUS. It is provided for in subheading 3926.90.99, HTSUS, which provides for: “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.” The column one, general rate of duty is 5.3% *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 L89010, dated December 12, 2005, is revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



GENERAL NOTICE

19 C.F.R. PART 177

Proposed Revocation of Two Ruling Letters and Proposed Revocation of Treatment Concerning the Classification of Instruments Used in the Course of Measuring-While-Drilling for Oil

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

ACTION: Notice of proposed revocation of two ruling letters and proposed revocation of treatment relating to the tariff classification of certain instruments used in course of measuring-while-drilling for oil.

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 revoke two ruling letters relating to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of certain instruments used in the course of measuring-while-drilling. CBP is also proposing to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at the above-stated address during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark, Trade and Commercial Regulations Branch, at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Richard Mojica, Tariff Classification and Marking Branch, at (202) 325–0032.

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 to 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 two ruling letters relating to the tariff classification of certain instruments used in the course of measuring-while-drilling for oil. Although in this notice CBP is specifically referring to the revocation of Headquarters Ruling Letter (HQ) 966618, dated January 16, 2004 (Attachment A), and HQ 950196, dated January 8, 1992 (Attachment B), 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 ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

In HQ 966618 and HQ 950196, CBP classified the merchandise in heading 8543, HTSUS, and 9031, HTSUS, respectively. CBP now finds that those rulings are incorrect. We now believe that the instruments are classified in heading 9015 (9015.80.80), HTSUS, as "Geophysical instruments: Other instruments and appliances: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke HQ 966618, HQ 950196, and any other ruling not specifically identified to reflect the correct classification of the instruments used in the course of measuring-while-drilling for oil, pursuant to the analysis set forth in proposed HQ H024750 (Attachment C) and H024751 (Attachment D). CBP is also proposing to revoke any treatment previously accorded by it to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: May 25, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

HQ 966618

JANUARY 16, 2004

CLA-2 RR:CR:GC 966618 JAS

CATEGORY: Classification

TARIFF NO.: 8543.89.96

SCOTT L. JOHNSTON, ESQ.
GIVENS & JOHNSTON, PLLC
950 ECHO LANE, SUITE 360
HOUSTON, TX 77024-2788

RE: OnTrak™ Formation Evaluation Subassembly; NY I81299 Affirmed

DEAR MR. JOHNSTON:

In a letter dated July 22, 2003, on behalf of Baker Hughes INTEQ, you request reconsideration of a ruling to INTEQ concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of OnTrak,™ a component used in measuring-while-drilling systems for subterranean oil exploration, as well as the five individual components that comprise it. At our request, you made a supplemental submission on December 11, 2003, which included a CD-ROM which we viewed. You presented additional factual and legal arguments during a teleconference with a member of my staff on January 14, 2003, which you confirmed in a facsimile transmittal on January 15, 2004.

In NY I81299, which the Director of Customs National Commodity Specialist Division, New York, issued to you on May 29, 2002, on behalf of INTEQ, OnTrak™ was held to be classifiable in subheading 8543.89.96, HTSUS, as other electrical machines and apparatus, not specified or included elsewhere in [chapter 85]. The five components that make up OnTrak™ were found to be separately classifiable. These are the Sensor Sub Assembly referred to as the navigation sub; the Bi-Directional Communications and Power Module (BCPM), a down-hole power source which creates electrical energy to operate the OnTrak™ and which functions primarily as a communications system with the surface; a surface cabin on skids with data processing and mud pulse telemetry communications systems and related electronic equipment, all built in; the Sensor Sub, a housing containing drill collar sections modified to house navigation and (oil) formation evaluation electronics, but without the electronics; and, the BCPM Electronics Sub, a drill collar housing modified to incorporate power generation equipment and communications electronics, but without the equipment and electronics. You contend that heading 8430, HTSUS, other boring or sinking machinery or, in the alternative, heading 8431, HTSUS, parts of such machinery, represents the correct classification.

FACTS:

OnTrak™ is identified in submitted literature as a “formation evaluation subassembly.” At p. 4 of the July 22, 2003, submission, you describe it as a “multi-function boring and sinking machinery *control system*.” (Emphasis added). OnTrak™ is used with the AutoTrak rotary closed loop drilling system. Together, they permit the drilling of multiple horizontal wells from

a single vertical well up to five miles from the drill rig and up to one mile beneath the ocean floor. This process is said to yield up to 20 times more oil than conventional vertical drilling.

Geophysical surveys identify beforehand the general location of oil deposits in the seabed. Typically, rock formations containing oil, and similar formations containing salt water are found in close proximity. But, they possess different densities and exhibit different electrical properties and thus have different “resistivities.” Utilizing sensors and both transmitting and receiving antennae, the Sensor Sub component of OnTrak™ transmits an electromagnetic signal into a formation and measures the resistance to the flow of that signal. Gamma ray detection is one feature ascribed to the Sensor Sub. *See* the July 22, 2003, submission, p. 3. These measurements are transmitted to data processing apparatus in the Surface Cabin where they are compared with known features of oil deposits. The boring and sinking machinery operator uses this information to select and follow the optimal drilling path. *See* July 22 submission, p. 6. Neither OnTrak™ nor any of its components automatically control the movement of the drill bit in relation to a particular formation. The above-ground operator sends instructions to OnTrak™ through the BCMP and OnTrak™ in turn sends a corresponding signal instructing AutoTrak to change the direction of the drill bit.

The HTSUS provisions under consideration are as follows:

8430	[E]xtracting or boring machinery * * * *
8431	Parts suitable for use solely or principally with the machinery of headings 8425 to 8430 * * * *
8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in [chapter 85] * * * *
9030	[I]nstruments and apparatus for measuring or detecting other ionizing radiations

ISSUE:

Whether OnTrak™ is a good of heading 8430, or a part of heading 8431.

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.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. Customs believes the ENs should always be consulted. *See* T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

You state that OnTrak™ consists of heavy steel drill collar sections inserted into the drill stem immediately above the drill bit, but modified with the addition of proprietary electronic, mechanical and hydraulic apparatus which, you maintain, controls the direction and placement of the boring/drilling. As such, you contend the OnTrak™ is a good included in heading 8430, HTSUS, as boring or sinking machinery, under Section XVI, Note 2(a), HTSUS. You assert that OnTrak™ qualifies as rotary well sinking machinery as described in the 8430 ENs because it functions within the drill collar section of a traditional surface driven rotary well or it may be used in a drill string where the bit is rotated by a drilling motor, or both. Alternatively, for those components not described by heading 8430, you contend the appropriate classification is as parts, in heading 8431, HTSUS, as required by Section XVI, Note 2(b), HTSUS. You maintain that heading 8543 is not an appropriate classification because OnTrak™ and its components are specified or included either in heading 8430 or in heading 8431. Lastly, you maintain that several Customs Court and Court of International Trade decisions support the claimed classification(s).

As to your claim under heading 8430, the relevant ENs state the heading covers machinery for “attacking” the Earth’s crust (e.g., for earth excavation, digging, drilling, etc.) (Emphasis original). OnTrak™ does not meet this description. Likewise, we do not agree with your contention that OnTrak™ is rotary well sinking machinery described in the ENs. Such machinery incorporates a derrick fitted with pulley tackle, a hoist drum with transmission and control gear, a swivel and a rotary table or gear-wheel, none of which OnTrak™ possesses. In *The Servco Company v. United States*, C.D. 4341, *aff’d*. C.A.D. 1098 (1973), a case you cite, the court found that certain stainless steel tubes constituted unfinished drill collars (heavy-walled steel tubes incorporated in the drill string of boring machines), solely or chiefly used with boring or sinking machinery, whose primary function is to add weight to the drill bit. A drill string is the column or string of drill pipe with attached tool joints that transmits hydraulic fluid and rotational power to the drill collars and bit. Notwithstanding OnTrak™ may function “within” the drill collar section of a rotary well or may be used “in” a drill string where the bit is rotated by a drilling motor, or both, it does not function in the manner ascribed by the *Servco* court to a drill collar. OnTrak™ is a formation evaluation sub(assembly) whose function is to measure or detect resistivity measurements, data which enables the drilling machine operator to reposition the drill bit on the AutoTrak relative to the desired formation. The second case you cite, *Nissho Iwai American Corp. v. United States*, 8 CIT 264 (1984), referred to by the court as a sequel to *Servco*, specially constructed pipe fittings called tool joints were found to be classifiable as parts of boring machinery and not pipe fittings. For the reasons stated above, this case does not control. The OnTrak™ is not classifiable in heading 8430.

As to the claim under heading 8431, for tariff purposes a “part” is an integral, constituent component of another article necessary to the completion of the article with which it is used, and which enables that article to function in the manner for which it was designed. You have stated that the AutoTrak cannot operate on its own, but must be attached to OnTrak™ or some other control system. That fact does not qualify the OnTrak™ as a part for tariff purposes. Without a control system, the AutoTrak would lack

direction-changing capability but, on the facts presented, its function as a drilling machine remains intact. OnTrak™ is not classifiable in heading 8431.

NY I81299 classified the Sensor Sub component of OnTrak™ as instruments and apparatus for measuring or detecting ionizing radiations. You cite HQ 950196, January 8, 1992, which classified a device used to indicate the direction and temperature of a drill, but not to change the direction of the drill, in subheading 9031.80.00, HTSUS, as other measuring or checking instruments, appliances or machines. You maintain that Customs erroneously classified the device in heading 9031 without considering headings 8430 and 8431. Heading 9031 covers measuring or checking instruments, appliances or machines not specified or included elsewhere in the HTSUS. The provision for instruments and apparatus for measuring or detecting ionizing radiations (of which gamma rays are one type) was found to more accurately describe the function of the Sensor Sub. But, because the Sensor Sub is only one of five components in OnTrak™ evidence that OnTrak™ itself is provided for in heading 9030, heading 9031, or any other provision of chapter 90 is inconclusive. As you have noted, Section XVI, Note 1(m), HTSUS, precludes classification of OnTrak™ or any of its components in heading 8543 if they are provided for in a heading of chapter 90.

HOLDING:

Under the authority of GRI 1, OnTrak™ is provided for in heading 8543. It is classifiable in subheading 8543.89.96, HTSUS. The Sensor Sub Assembly or navigation sub is provided for in heading 9030. It is classifiable in subheading 9030.10.00, HTSUS. As no alternative claims for the four remaining components of OnTrak™ are asserted, they remain classifiable in subheading 8543.90.88, HTSUS. NY I81299, dated May 29, 2002, is affirmed.

Sincerely,

MYLES B. HARMON,

Director

Commercial Rulings Division

[ATTACHMENT B]

HQ 950196

January 8, 1992

CLA-2 CO:R:C:M 950196 LTO

CATEGORY: Classification

TARIFF NO.: 9031.80.00

MR. CHUCK J. THOMPSON
XL BROKERS INTERNATIONAL, INC.
P.O. Box 60132, AMF
HOUSTON, TEXAS 77205

RE: Geolink Directional Measurement While Drilling [MWD] System; 8431.43.80; 9026; 9027; 9030; John S. James a/c The Consolidated Packaging Corp. v. United States; United States v. Corning Glass Works; Webster's Third New International Dictionary ("heck"/"measure"); NY 837951; Section XVI, note 1(m); Section XVI, note 4; Chapter 84, note 5; EN Chapter 84, General Note (E), pg. 1139; Chapter 90, note 3

DEAR MR. THOMPSON:

This ruling is in response to your letter of July 24, 1991, requesting the classification of the Geolink Directional MWD System under the Harmonized Tariff Schedule of the United States (HTSUS). Your letter was referred to this office for a response.

FACTS:

The Ensco Technology Corporation imports a system called the "Geolink Orienteer MWD Directional Surveying System" [GEOLINK]. The GEOLINK is a multipart system that is used to indicate the direction and temperature of a drill. The directional system is composed of a downhole system component that is attached to the drill and a surface system component that receives and interprets the data from the drill. The process begins with the downhole equipment. You stated that most, if not all, drilling procedures incorporate the GEOLINK or a similar device.

The downhole system, which is contained in the Transmitter Sub, consists of the following components: the Power Section Assembly; the Survey Electronics Assembly; the Actuator Power Controller Assembly; and the Transmitter Assembly. The Transmitter Sub is a specially machined, non-magnetic drill collar section for housing the mud pulse transmitter. The Power Section Assembly supplies the power to the Transmitter Assembly and the Survey Electronics Assembly. The Survey Electronics Assembly collects the mud pulse data. This assembly includes triaxial magnetometers, inclinometers and control electronics. These instruments indicate the inclination, temperature, tool face, and azimuth of the drill. The Actuator Power Controller Assembly carries the power from the Power Section Assembly to the Transmitter Assembly. The Transmitter Assembly collects the data from the Survey Electronics Assembly and converts it into a mud pulse signal that is sent to the Standpipe Pressure Transmitter on the surface.

The surface system consists of the following components: the Standpipe Pressure Transmitter; the Pump Synchronization Sensors; a Systems Interface Box; a Control Terminal; a Laptop PC; a Strip Chart Recorder; a Printer; and a Rig Floor Display. The Standpipe Pressure Transmitter receives the mud pulse signal from the Transmitter Assembly and sends the signal to the

Systems Interface Box. The Pump Synchronization Sensors synchronize the mud pumps with the Systems Interface Box to enhance pulse detection. The Systems Interface Box supplies power to the entire surface system, except the computer. It acts as the interface for the transmission of data between the various surface system components, except the printer. It converts raw signals into digital signals that are then sent to the computer. The Control Terminal is a hand-held interface that acts as a direct control device to the Systems Interface Box. The Laptop PC is a computer that analyzes the data from the drill. It is used for storage of data, printout, directional survey calculation, and other applications programs. The Strip Chart Recorder prints the data from the Systems Interface Box. The Printer produces hard copy output of data from the drill and other programs. The Rig Floor Display is a unit on the drill rig platform that displays the directional data of the drill. The data is sent from the computer through the Systems Interface Box.

You stated that the surface equipment does not and cannot control the downhole equipment—it can only be used to interpret the data sent to the surface from the downhole equipment. To change the drill's direction, the downhole equipment must be taken out of the ground.

ISSUE:

Whether the GEOLINK Directional MWD System is a measuring or checking instrument, appliance or machine under the Harmonized Tariff Schedule of the United States (HTSUS).

LAW AND ANALYSIS:

The General Rules of Interpretation (GRI's) to the HTSUS govern the classification of goods in the tariff schedule. GRI 1 states, in pertinent part:

...classification shall be determined according to the terms of the headings and any relative section or chapter notes...

You contend that the GEOLINK is classifiable under subheading 8431.43.80, HTSUS, which provides for “[p]arts suitable for use solely or principally with the machinery of headings 8425 to 8430 . . . [p]arts for boring or sinking machinery of subheading 8430.41 or 8430.49 . . . [o]ther.” However, according to Section XVI, note 1(m), if this merchandise is classifiable in Chapter 90, it cannot be classified under this subheading.

Heading 9031, HTSUS, provides for “[m]easuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter” Measuring or checking instruments are included in Chapter 90 under the following headings: Heading 9026, HTSUS, provides for “[i]nstruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquids or gases;” Heading 9027, HTSUS, provides for “instruments and apparatus for measuring and checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound or light;” and Heading 9030, HTSUS, provides for “other instruments and apparatus for measuring or checking electrical quantities”

Before determining the particular heading in which the GEOLINK belongs, it is necessary to first determine whether the article is “measuring or checking” apparatus for tariff purposes. Absent contrary indications, tariff schedule language is given its common meaning. *John S. James a/c The Consolidated Packaging Corp. v. United States*, 48 CCPA 75, 79, C.A.D. 768

(1961). In *United States v. Corning Glass Works*, 66 CCPA 25, 27, 586 F.2d 822, 825 (1978), the Court of Customs and Patent Appeals, quoting Webster's Third New International Dictionary, 381 (1971), stated:

"Check" is defined as "to inspect and ascertain the condition of especially in order to determine that the condition is satisfactory; *** investigate and insure accuracy, authenticity, reliability, safety, or satisfactory performance of ***; to investigate and make sure about conditions or circumstances ***."

The term "measure" is defined as follows:

To ascertain the quantity, mass, extent, or degree of in terms of a standard unit or fixed amount . . . ; measure the dimensions of; take the measurements of . . . ; to compute the size of . . . from dimensional measurements."

Webster's Third New International Dictionary, 1400 (1986); *See also* HQ 088025, dated January 17, 1991.

The GEOLINK's basic operating theory begins "downhole." The Survey Electronics Assembly measures inclination, azimuth, and tool face. The Transmitter Assembly generates a series of mud pulses to transmit the directional data to the surface. The Actuator Power Controller enables the downhole data to be transmitted to the surface as a coded sequence of mud pulses.

On the surface, a Standpipe Pressure transducer monitors circulating pressure to detect the mud pulse sequence transmitted by the downhole tool. An Interface Box automatically filters the raw mud pulse sequence and passes the data to a surface P.C. which decodes that pressure signal to extract the directional data. To enhance mud pulse detection, a pump synchronization sensor is used to synchronize the mud pumps with the Interface box.

The GEOLINK is used to indicate the direction (inclination, azimuth, rotation) and temperature of a drill. The directional system is composed of a downhole system component that is attached to the drill and a surface system component that receives and interprets the data from the drill. The GEOLINK determines whether the drill is advancing in the proper direction. However, the surface equipment does not and cannot control the downhole equipment. To change the drill's direction, the downhole equipment must be taken out of the ground.

Chapter 90, note 3 states that the provisions of note 4 to Section XVI apply to Chapter 90. Section XVI, note 4 provides as follows:

Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to chapter 85 [or chapter 90], then the whole falls to be classified in the heading appropriate to that function.

The article in question is a functional unit that performs a "checking" and "measuring" function, as those terms are defined above, and the GEOLINK is, therefore, classifiable under one of the following headings: Heading 9026, Heading 9027, Heading 9030, or Heading 9031, HTSUS. The GEOLINK is not covered by the terms of Heading 9026 (liquids and gases), HTSUS, Heading 9027 (viscosity, porosity, expansion, surface tension; heat, sound or light); or Heading 9030 (electrical quantities), HTSUS. Thus, the GEOLINK is classifiable under subheading 9031.80.00, HTSUS, which provides for

“[m]easuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter . . . [o]ther instruments, appliances and machines.” See NY 837951, dated March 15, 1989 (downhole probing device used to check the condition of the hole being drilled—the Posiprobe MWD Downhole Probe—classified under subheading 9031.80.00, HTSUS).

Finally, classification of the laptop PC and the printer separately under Heading 8471, HTSUS, was considered. This heading provides for “[a]utomatic data processing machines and units thereof.” The Explanatory Notes to Chapter 84 state “[i]n accordance with the provisions of the last paragraph of Note 5 to Chapter 84, the following classification principles should be applied in the case of a machine incorporating or working in conjunction with an automatic data processing machine, and performing a specific function:

Machines presented with an automatic data processing machine and intended to work in conjunction therewith to perform a specific function other than data processing, are to be classified as follows:

the automatic data processing machine must be classified separately in heading 84.71 and the other machines in the heading corresponding to the function which they perform unless, by application of Note 4 to Section XVI or Note 3 to Chapter 90, the whole is classified in another heading of Chapter 84, Chapter 85 or of Chapter 90 [emphasis added].”

Because the GEOLINK, as a whole, is classifiable as a “functional unit” according to Chapter 90, note 3, it is unnecessary to classify the laptop PC and the printer in separate headings.

HOLDING:

The GEOLINK is properly classifiable under subheading 9031.80.00, HTSUS, which provides for “[m]easuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter . . . [o]ther instruments, appliances and machines.” The corresponding rate of duty for articles of this subheading is 4.9% *ad valorem*.

Sincerely,

JOHN DURANT,

Director

Commercial Rulings Division

[ATTACHMENT C]

HQ H024750
CLA-2 OT:RR:CTF:TCM H024750 RM
CATEGORY: Classification
TARIFF NO.: 9015.80.80

SCOTT L. JOHNSON, Esq.
GIVENS & JOHNSON, PLLC
950 ECHO LANE, SUITE 360
HOUSTON, TX 77024-2788

RE: Revocation of HQ 966618; Classification of the “OnTrak System”

DEAR MR. JOHNSON:

This is in reference to Headquarters Ruling Letter (“HQ”) 966618, dated January 16, 2004, issued to you on behalf of Baker Hughes INTEQ. In that ruling, U.S. Customs and Border Protection (“CBP”) determined that the OnTrak System (“OnTrak”) was classified under heading 8543 the Harmonized Tariff Schedule of the United States (“HTSUS”), which provides in part for: “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in [Chapter 85].” We have reviewed the ruling and found this classification to be incorrect.

FACTS:

The OnTrak is a tool used in the course of measuring-while-drilling (also known as “directional drilling”)¹ for oil to monitor, in real time, the inclination, resistivity, annular pressure, stick-slip vibration, and azimuth (the compass direction) of the borehole (the rock face that bounds a drilled hole).² The data gathered by the OnTrak enables the drilling operator to change the trajectory of the well if desired.

The OnTrak, pictured below, is comprised of two main subassemblies: (1) the Sensor Sub, which gathers geological formation data — including an image of the borehole — during the drilling operation, and (2) the Bi-directional Communication and Power Module (“BCPM”), which communicates the data gathered by the Sensor Sub to the surface operator via mud-pulse telemetry (i.e., increasing or decreasing pressure pulses which are transmitted through the mud). The BCPM also provides the electrical energy

¹ Measuring-while-drilling (“MWD”) is a type of well logging that incorporates the measurement tools into the drill stem and provides real-time information to help with steering the drill. Generally, an MWD system (1) uses gyroscopes, magnetometers, and accelerometers to determine the inclination, azimuth (the compass direction), and temperature of the borehole, (2) transmits the data to the surface via mud pulse signals (i.e., pulses through the mud column) and electromagnetic telemetry, and (3) decodes those signals for use by the rig floor technicians. See *Schlumberger’s Oilfield Glossary*, available at <http://www.glossary.oilfield.slb.com>. See also “How Does Measuring-While-Drilling Work?” available at <http://www.rigzone.com/training>.

² The OnTrak is one of the several tools used in measuring-while-drilling to gather data about the geologic formation during the drilling operation.

required to power the OnTrak. The complete unit is installed into the drilling machine's collar and is attached to a steering unit (not at issue in this ruling) that is connected to the drill bit.³

INSERT GRAPHIC ONTRAK.TIF

ISSUE:

Is the OnTrak classified under heading 9015, HTSUS, as a geophysical instrument, or under heading 8543, HTSUS, as an electrical machine, having individual functions, not specified or included elsewhere in Chapter 85, HTSUS?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRIs"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The 2010 HTSUS headings under consideration are the following:

8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
8543.70	Other machines and apparatus:
	Other:
	Other:
8543.70.96	Other ...
	* * *
9015	Surveying (including photogrammetrical surveying), hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses; rangefinders; parts and accessories thereof:
9015.80	Other instruments and appliances:
9015.80.80	Other:
	Other ...
	* * *

Note 4 to Section XVI (which includes Chapter 85, HTSUS) provides:

Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables, or by other devices) intended to contribute together to perform a clearly defined function covered by one of the headings in chapter 84 or chapter 85, then the whole falls to be classified in the heading appropriate to that function.

³ It is most commonly paired with INTEQ's AutoTrak Rotary Closed Loop System, an automated directional drilling system that contains its own programmed controller and steering sub, and drills continuously in the rotary mode.

Note 3 to Section XVII (which includes Chapter 90, HTSUS) provides that “[t]he provisions of notes 3 and 4 to Section XVI apply also to this chapter.”

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 nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 85.43 provides, in relevant part:

This heading covers all electrical appliances and apparatus, **not falling** in any other heading of this Chapter, **nor covered more specifically** by heading of any other Chapter of the Nomenclature, nor excluded by operation of a Legal Note to Section XVI or to this Chapter. The principal electrical goods covered more specifically by other Chapters are electrical machinery of **Chapter 84** and certain instruments and apparatus of **Chapter 90**.

EN 90.15 provides, in relevant part:

(VI) **GEOPHYSICAL INSTRUMENTS**

The following remain in this heading:

...

(2) **Magnetic or gravimetric geophysical instruments used in prospecting for ores, oil, etc.** These highly sensitive instruments include magnetic balances, magnetometers, magnetic theodolites and gravimeters, torsion balances.

...

(5) **Apparatus for measuring the inclination of a borehole.**

Note 3 to Section XVII (which incorporates Note 4 to Section XVI into Chapter 90, HTSUS) directs that, when a combination of machines contribute together to perform a clearly defined function covered by one of the headings in Chapter 90, HTSUS, they are to be classified in the heading appropriate to that function.

Heading 9015, HTSUS, provides in part for “Geophysical instruments.” The term “geophysical” is not defined in the HTSUS. When a tariff term is not defined by the HTSUS or its legislative history, “the term’s correct meaning is its common meaning.” See *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (CCPA 1982) ; *Simod*, 872 F.2d at 1576.

Schlumberger’s Oilfield Glossary defines the term “geophysics” as “[t]he study of the physics of the earth, especially its electrical, gravitational and magnetic fields and propagation of elastic (seismic) waves within it.”⁴ The OnTrak is a machine comprised of two subassemblies which work together to

⁴See *Schlumberger’s Oilfield Glossary*, available at <http://glossary.oilfield.slb.com>.

gather down-hole data (e.g., the inclination, resistivity, pressure and azimuth of the drilled borehole) and transmit it to the surface for purposes of oil and gas exploration. Insofar as this function is “geophysical,” we conclude that the machine is classified as a functional unit of heading 9015, HTSUS.

Our conclusion is in keeping with EN 90.15(VI) which indicates that “apparatus for measuring the inclination of a borehole” and “magnetic geophysical instruments used in prospecting for oil” are classified under heading 9015, HTSUS, as geophysical instruments. *See* EN 90.15 (VI)(2),(5). *See also* HQ W968458, dated May 8, 2009 (sonic imaging tool used to examine the condition of subsurface geological formations for purposes of oil exploration classified under heading 9015, HTSUS, as a geophysical instrument). As the OnTrak is covered more specifically in heading 9015, HTSUS, than in heading 8543, HTSUS, it is precluded from classification under heading 8543, HTSUS. *See* EN 85.43.

HOLDING:

By application of GRI 1 (Note 3 to Section XVII, HTSUS), the OnTrak is classified under heading 9015, HTSUS, specifically in subheading 9015.80.80 which provides for: “Geophysical instruments: Other instruments and appliances: Other: Other.” The 2010 column one, general rate of duty is Free.

Duty rates are provided for convenience only 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:

This ruling revokes HQ 966618, dated January 16, 2004.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT D]

HQ H024751
CLA-2 OT:RR:CTF:TCM H024751 RM
CATEGORY: Classification
TARIFF NO.: 9015.80.80

MR. CHUCK J. THOMPSON
XL BROKERS INTERNATIONAL, INC.
P.O. Box 60132, AMF
HOUSTON, TX 77205

RE: Revocation of HQ 950196; Classification of the “Geolink Orienteer Directional Measurement-While-Drilling Surveying System”

DEAR MR. THOMPSON:

This is in reference to Headquarters Ruling Letter (“HQ”) 950196, dated January 8, 1992, issued to you on behalf of the Ensco Technology Corporation, concerning the tariff classification of the “Geolink Orienteer Directional Measurement-While-Drilling Surveying System” (hereinafter “Geolink Orienteer” or “Geolink”). In that ruling, U.S. Customs and Border Protection (“CBP”) determined that the Geolink Orienteer was classified under heading 9031 of the Harmonized Tariff Schedule of the United States (“HTSUS”), which provides in part for “Measuring or checking instruments ... not specified or included elsewhere in [Chapter 90].” We have reviewed the ruling and found this classification to be incorrect.

FACTS:

The Geolink Orienteer is a multi-part surveying system used in the course of measuring-while-drilling (also known as “directional drilling”) for oil to monitor, in real time, the inclination, temperature, and azimuth (the compass direction) of the borehole (the rock face that bounds a drilled hole).¹

In HQ 950196, we described the merchandise as follows:

[The GEOLINK] is composed of a “downhole system” component that is attached to the drill, and a “surface system” component that receives and interprets the data from the drill.

The downhole system (which is contained in the Transmitter Sub), consists of the following components: the Power Section Assembly; the Survey Electronics Assembly; the Actuator Power Controller Assembly; and the Transmitter Assembly. The Transmitter Sub is a specially machined, non-magnetic drill collar section for housing the mud pulse transmitter. The Power Section Assembly supplies the power to the Transmitter Assembly and the Survey Electronics Assembly. The Survey Electronics Assembly collects the mud pulse data. This assembly includes

¹ Measuring-while-drilling (“MWD”) is a type of well logging that incorporates the measurement tools into the drill stem and provides real-time information to help with steering the drill. Generally, an MWD system (1) uses gyroscopes, magnetometers, and accelerometers to determine the inclination, azimuth (the compass direction), and temperature of the borehole, (2) transmits the data to the surface via mud pulse signals (i.e., pulses through the mud column) and electromagnetic telemetry, and (3) decodes those signals for use by the rig floor technicians. See *Schlumberger’s Oilfield Glossary*, available at <http://www.glossary.oilfield.slb.com>. See also “How Does Measuring-While-Drilling Work?” available at <http://www.rigzone.com/training>.

triaxial magnetometers, inclinometers and control electronics. These instruments indicate the inclination, temperature, tool face, and azimuth of the drill. The Actuator Power Controller Assembly carries the power from the Power Section Assembly to the Transmitter Assembly. The Transmitter Assembly collects the data from the Survey Electronics Assembly and converts it into a mud pulse signal that is sent to the Standpipe Pressure Transmitter on the surface.

The surface system consists of the following components: the Standpipe Pressure Transmitter; the Pump Synchronization Sensors; a Systems Interface Box; a Control Terminal; a Laptop PC; a Strip Chart Recorder; a Printer; and a Rig Floor Display. The Standpipe Pressure Transmitter receives the mud pulse signal from the Transmitter Assembly and sends the signal to the Systems Interface Box. The Pump Synchronization Sensors synchronize the mud pumps with the Systems Interface Box to enhance pulse detection. The Systems Interface Box supplies power to the entire surface system, except the computer. It acts as the interface for the transmission of data between the various surface system components, except the printer. It converts raw signals into digital signals that are then sent to the computer. The Control Terminal is a hand-held interface that acts as a direct control device to the Systems Interface Box. The Laptop PC is a computer that analyzes the data from the drill. It is used for storage of data, printout, directional survey calculation, and other applications programs. The Strip Chart Recorder prints the data from the Systems Interface Box. The Printer produces hard copy output of data from the drill and other programs. The Rig Floor Display is a unit on the drill rig platform that displays the directional data of the drill. The data is sent from the computer through the Systems Interface Box.

You stated that the surface equipment does not and cannot control the downhole equipment — it can only be used to interpret the data sent to the surface from the downhole equipment. To change the drill's direction, the downhole equipment must be taken out of the ground.

ISSUE:

Is the Geolink Orienteer classified under heading 9015, HTSUS, as a geophysical instrument, or under heading 9031, HTSUS, as a measuring or checking instrument not specified or included elsewhere in Chapter 90?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (“GRIs”). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The 2010 HTSUS headings under consideration are the following:

9015	Surveying (including photogrammetrical surveying), hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses; rangefinders; parts and accessories thereof:
9015.80	Other instruments and appliances:
9015.80.80	Other ... * * *
9031	Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof:
9031.80	Other instruments, appliances and machines: Other:
9031.80.80	Other ... * * *

Note 4 to Section XVI (which includes Chapter 85, HTSUS) provides:

Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables, or by other devices) intended to contribute together to perform a clearly defined function covered by one of the headings in chapter 84 or chapter 85, then the whole falls to be classified in the heading appropriate to that function.

Note 3 to Section XVII (which includes Chapter 90, HTSUS) provides that “[t]he provisions of notes 3 and 4 to section XVI apply also to this chapter.”

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 nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 90.15 provides, in relevant part:

(VI) GEOPHYSICAL INSTRUMENTS

The following remain in this heading:

...

(2) **Magnetic or gravimetric geophysical instruments used in prospecting for ores, oil, etc.** These highly sensitive instruments include magnetic balances, magnetometers, magnetic theodolites and gravimeters, torsion balances.

...

(5) **Apparatus for measuring the inclination of a borehole.**

EN 90.31 provides, in relevant part:

This heading covers **measuring or checking instruments, appliances and machines, whether or not optical.** It should, however, be

noted that this group **does not include** any instruments ... falling in headings ... 90.15.

Note 3 to Section XVII (which incorporates Note 4 to Section XVI into Chapter 90, HTSUS) directs that, when a combination of machines contribute together to perform a clearly defined function covered by one of the headings in Chapter 90, HTSUS, they are to be classified in the heading appropriate to that function.

Heading 9015, HTSUS, provides in part for “Geophysical instruments.” The term “geophysical” is not defined in the HTSUS. When a tariff term is not defined by the HTSUS or its legislative history, “the term’s correct meaning is its common meaning.” *See Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult “dictionaries, scientific authorities, and other reliable information sources” and “lexicographic and other materials.” *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (CCPA 1982) ; *Simod*, 872 F.2d at 1576.

Schlumberger’s Oilfield Glossary defines the term “geophysics” as “[t]he study of the physics of the earth, especially its electrical, gravitational and magnetic fields and propagation of elastic (seismic) waves within it.”² The Geolink Orienteer is a system comprised of several interconnected machines which work together to transmit down-hole data to the surface (e.g., the inclination, temperature and azimuth of the drilled borehole), and to decode that information so that it can be used by rig technicians in course of oil and gas exploration. Insofar as this function is “geophysical,” we conclude that the entire system is classified together, as a functional unit of heading 9015, HTSUS.

Our conclusion is in keeping with EN 90.15(VI) which indicates that “apparatus for measuring the inclination of a borehole” and “magnetic geophysical instruments used in prospecting for oil” are classified under heading 9015, HTSUS, as geophysical instruments. *See* EN 90.15 (VI)(2),(5). *See also* HQ W968458, dated May 8, 2009 (sonic imaging tool used to examine the condition of subsurface geological formations for purposes of oil exploration classified under heading 9015, HTSUS, as a geophysical instrument). As the Geolink Orienteer is classified under heading 9015, HTSUS, it is precluded from classification under heading 9031, HTSUS, by the terms of that heading. *See also* EN 90.31.

HOLDING:

By application of GRI 1 (Note 3 to Section XVII, HTSUS), the Geolink Orienteer is classified under heading 9015, HTSUS, specifically in subheading 9015.80.80 which provides for: “Geophysical instruments: Other instruments and appliances: Other: Other.” The 2010 column one, general rate of duty is Free.

Duty rates are provided for convenience only and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided

²*See Schlumberger’s Oilfield Glossary*, available at <http://glossary.oilfield.slb.com>.

on the World Wide Web at *www.usitc.gov*.

EFFECT ON OTHER RULINGS:

This ruling revokes HQ 950196, dated January 8, 1992.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



GENERAL NOTICE

19 C.F.R. PART 177

Proposed Modification of One Ruling Letter and Proposed Revocation of Two Ruling Letters Concerning the Classification of High Definition Multimedia Interface (HDMI) Cables and Proposed Revocation of Treatment

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

ACTION: Notice of proposed modification of one ruling letter and proposed revocation of two ruling letters relating to the tariff classification of certain High Definition Multimedia Interface (HDMI) cables and proposed revocation of treatment.

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 one ruling letter and revoke two ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of HDMI cables fitted with connectors. CBP is also proposing to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at the above-stated address during regular business hours. Arrangements

to inspect submitted comments should be made in advance by calling Joseph Clark, Trade and Commercial Regulations Branch, at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Tariff Classification and Marking Branch, at (202) 325-0034, or Richard Mojica, Tariff Classification and Marking Branch, at (202) 325-0032.

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 to 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 one ruling letter and revoke two ruling letters relating to the tariff classification of certain HDMI cables. Although in this notice CBP is specifically referring to the modification of New York Ruling Letter (NY) N018675, dated November 13, 2007 (Attachment A) and the revocation of NY N088150, dated January 8, 2010 (Attachment B), and NY N037030, dated September 24, 2008 (Attachment C), 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 ones identified. No further rulings have been found. Any party who has received

an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

In NY N018675, NY N088150 and NY N037030, CBP classified HDMI cables in subheading 8544.42.90, HTSUS. CBP now finds that those rulings are incorrect as they concern the classification of HDMI cables. We now believe that the cables are “of a kind used for telecommunications” and that their correct classification is under subheading 8544.42.20, HTSUS.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N018675 and any other ruling not specifically identified to reflect the correct classification of HDMI cables, pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) H024054 (Attachment D). In addition, CBP is proposing to revoke NY N088150, NY N037030, and any other ruling not specifically identified to reflect the proper classification of the HDMI cables pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) H100096 (Attachment E) and HQ H100097 (Attachment F). CBP is also proposing to revoke any treatment previously accorded by it to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: DATED: May 25, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

N018675

November 13, 2007

CLA-2-85:OT:RR:E:NC:1:108

CATEGORY: Classification

TARIFF NO.: 8525.50.30; 8504.40.9510; 8543.70.9650; 8544.42.9000;
8544.42.2000

MS. CHARLOTTE G. FALLA

NETFLIX, INC.

100 WINCHESTER CIRCLE

LOS GATOS, CA 95032

RE: The tariff classification of a non-screened transmission device as well as related components imported with and without this device from China.

DEAR MS. FALLA:

In your letter dated October 18, 2007, you requested a tariff classification ruling.

The subject merchandise, based on the submitted information, consists of a non-screened transmission device, which is referred to as a “set-top box,” that contains neither a tuner nor a modem. It does incorporate the following parts: a main logic board, an NXP 8532 processor, a Wi-Fi antenna and several input/output connections, such as an RJ-45 Ethernet, a HDMI for digital video and an analog component video. This device will also be imported with an 802.11g radio card, an infrared remote control, a 5-volt power adapter, two AAA batteries, an instruction sheet, an eggshell tray, and a fitted case. It is noted that this merchandise does not incorporate a hard drive and does not have any recording or reproducing capability.

It is stated that this device is used to transmit data from Netflix servers to the end user’s television set, noting also its capability of being connected to an AV receiver. This process begins when the user logs on to the Netflix Web site and then chooses a movie to be viewed. This movie, which is stored on the Netflix server, is transmitted as data from the Internet to the customer’s existing router (either incorporating a modem or connected to a modem). This transmission device, which is connected to the customer’s television set by a cable, receives the data stream from the router through the use of an Ethernet connection or a wireless 802.11g radio card, and then converts the data to video and audio streams, which can be viewed on a television set. Since this transmission device does not have the capability to allow the customer to have direct access to the Internet, it is not considered to be a set top box with a communication function for tariff classification purposes.

When this transmission device is retail packed, at the time of importation, with the above components, it is considered to be a set for tariff classification purposes with the essential character being imparted by the transmission device.

The applicable subheading for this transmission device, retail-packed with the above components, will be 8525.50.30, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders: Transmission apparatus: Television: Other. The general duty rate will be 1.8 percent ad valorem.

It is stated that the following merchandise will also be imported separately as spare components for use with the above device:

1. a 5-volt power adapter with alternating current going in and direct current going out at a rate of 7.8 watts;
2. an infrared remote control;
3. a HDMI cable (project number SSR-72841), an Ethernet cable (project number SSR-72842), an audio cable and a composite cable (project number SSR-72844) with two-pin and three-pin connectors, respectively, and a component cable (project number SSR-72845).

The applicable subheading for the 5-volt power adapter will be 8504.40.9510, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof: Static converters: Other: Rectifiers and rectifying apparatus: Power supplies: With a power output not exceeding 50 W. The rate of duty will be 1.5 percent ad valorem.

The applicable subheading for the infrared remote control will be 8543.70.9650, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Electrical machines and apparatus....: Other machines and apparatus: Other: Other: Other: Other. The rate of duty will be 2.6 percent ad valorem.

The applicable subheading for the above cables (project numbers SSR-72841, SSR-72844, and SSR-72845), excluding the Ethernet cable (project number SSR-72842), will be 8544.42.9000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Insulated wire, cable and other insulated electric conductors, whether or not fitted with connectors...: Other electric conductors, for a voltage not exceeding 1,000 V: Fitted with connectors: Other: Other. The rate of duty will be 2.6 percent ad valorem.

The applicable subheading for the Ethernet cable, project number SSR-72842, will be 8544.42.2000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Insulated wire, cable...: Other electric conductors, for a voltage not exceeding 1,000 V: Fitted with connectors: Other: Of a kind used for telecommunications. The rate of duty will be 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

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 Lisa Cariello at 646-733-3014.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

N088150

January 8, 2010

CLA-2-85:OT:RR:NC:N1:112

CATEGORY: Classification

TARIFF NO.: 8544.42.9000

BARBARA Y. WIERBICKI
TOMPKINS & DAVIDSON, LLP
COUNSELORS AT LAW
5 HANOVER SQUARE, 15TH FLOOR
NEW YORK, NY 10004

RE: The tariff classification of an HDMI (High Definition Multimedia Interface) cable from China

DEAR Ms. WIERBICKI:

In your letter dated December 16, 2009, you requested a tariff classification ruling on behalf of your client, Jemtronix. The sample which you submitted is being retained by this office.

The item concerned is an HDMI (High Definition Multimedia Interface) cable. HDMI cables are a type of audio/video cable and are used to connect a high definition source to a television or home theater receiver. The cable transmits images, pictures and sound in high definition format. The cables are available in various lengths (e.g. 3 ft, 6 ft, 12 ft, 25 ft and 50 ft).

The sample submitted is a 3 foot cable made from individually sheathed copper wire. This cable is comprised of both individual insulated copper conductors and pairs of insulated copper conductors in a twisted pair configuration. This group of conductors is surrounded by an aluminum foil shield, and a tinned copper braid shield. It is then encased in a PVC jacket and finally a PET braided sleeve. There is an HDMI 24 K gold-plated connector on each end of the cable.

The applicable subheading for the HDMI (High Definition Multimedia Interface) cable will be 8544.42.9000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Insulated wire, cable...: Other electric conductors, for a voltage not exceeding 1,000V: Fitted with connectors: Other: Other". The rate of duty will be 2.6%.

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 Steven Pollichino at (646) 733-3008.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT C]

N037030

September 24, 2008

CLA-2-85:OT:RR:NC:N1:112

CATEGORY: Classification

TARIFF NO.: 8544.42.9000

MR. ROLANDO PORTAL
CUSTOMS COMPLIANCE MANAGER
CIRCUIT CITY
9950 MAYLAND DRIVE
RICHMOND, VA 23233

RE: The tariff classification of an HDMI (High Definition Multimedia Interface) cable from China

DEAR MR. PORTAL:

In your letter dated August 26, 2008, you requested a tariff classification ruling. The sample which you submitted is being retained by this office.

The item concerned is an HDMI (High Definition Multimedia Interface) cable. HDMI cables are a type of audio/video cable. HDMI cables are used to connect a high definition source to a television or home theater receiver. The cable transmits images, pictures, and sound in high definition format. The cables are available in various lengths (e.g., 4 ft, 6 ft, 8 ft, and 12 ft). The sample submitted was a 4 foot cable made from individually sheathed copper wire. This cable consisted of 7, individual, insulated copper conductors and 4 pairs of insulated copper conductors in a twisted pair configuration. This group of conductors is surrounded by an aluminum foil shield, then a tinned copper braided shield, then a PVC jacket and finally a PET braided sleeve. There is an HDMI 24K gold-plated connector on each end of the cable.

You have proposed classification of the HDMI (High Definition Multimedia Interface) cable under subheading 8544.42.2000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Insulated wire, cable... Other electric conductors, for a voltage not exceeding 1,000 V: Fitted with connectors: Other: Of a kind used for telecommunications." You base this proposed classification on a notice of proposed revocation of a ruling letter and treatment relating to the classification of "USB Cables and Ethernet Cables" which was published on August 6, 2008, under Customs Bulletin & Decisions, Vol. 42, No. 33. That proposed revocation applies only to those items specifically identified in that proposal. The merchandise concerned is HDMI cable, not USB or Ethernet cable; as such the proposed revocation notice and the findings within would not apply to this merchandise. In addition, it has consistently been Customs stance that audio and/or video cable is not a type of telecommunication cable as is provided for in the HTSUS. We have ruled in N018675, dated November 13, 2007, that an HDMI cable was classified under subheading 8544.42.9000, which provides for "...: Other electric conductors, for a voltage not exceeding 1,000 V: Fitted with connectors: Other: Other." The HDMI cable was not found to be classifiable as a telecommunications cable. In NY R04989, dated October 13, 2006, we classified an audio-visual cable and stereo cable under subheading 8544.41.8000, which provided for "...: Other electric conductors, for a voltage not exceeding 80 V: Fitted with connectors: Other." These audio and video cables were not found to be classifiable as telecommunication cable. In NY

K87746, dated July 20, 2004, we classified an RCA cable under subheading 8544.51.9000, which provides for "...: Other electric conductors, for a voltage exceeding 80 V but not exceeding 1,000 V: Fitted with connectors: Other: Other." This RCA cable was not found to be classifiable as telecommunications cable. Based on the information supplied and the previous rulings, it is the opinion of this office that the HDMI cable, which is a type of audio/video cable, is not classifiable as a type of telecommunications cable.

The applicable subheading for the HDMI (High Definition Multimedia Interface) cable will be 8544.42.9000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Insulated wire, cable...: Other electric conductors, for a voltage not exceeding 1,000 V: Fitted with connectors: Other: Other." The rate of duty will be 2.6%.

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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

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 Steve Pollichino at (646) 733-3008.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT D]

HQ H024054
OT:RR:CTF:TCM H024054 HkP
CATEGORY: Classification
TARIFF NO.: 8544.42.20

GEORGE R. TUTTLE, III, ESQ.
LAW OFFICES OF GEORGE R. TUTTLE
ONE EMBARCADERO CENTER, SUITE 730
SAN FRANCISCO, CA 94111-4044

RE: Modification of NY N018675; tariff classification of an HDMI cable

DEAR MR. TUTTLE:

This is in response to your letter dated July 8, 2008,¹ to U.S. Customs and Border Protection (“CBP”) on behalf of your client, Netflix, Inc., requesting reconsideration of New York Ruling Letter (“NY”) N018675, issued on November 13, 2007. At issue in that ruling was the correct classification of, among other things, a High Definition Multimedia Interface (“HDMI”) cable. CBP classified the HDMI cable in subheading 8544.42.90, HTSUS, as “other electric conductors for a voltage not exceeding 1,000 V: fitted with connectors: Other: Other.”

In reaching our decision we have taken into consideration arguments made in a supplemental submission dated May 11, 2009. For the reasons explained below, we hereby modify NY N018675.

FACTS:

The HDMI cable was not described in NY N018675. However, a sample of an HDMI cable was submitted for our review.

HDMI cables are used with high-definition consumer electronics such as HDTVs, Blu-ray Disc players, multimedia PCs, gaming systems, and digital camcorders.² The term “HDMI” is an acronym for the phrase “High Definition Multimedia Interface”. HDMI cables provide an uncompressed, all-digital interface between high definition electronics and personal computer products.³ HDMI signals can be sent over Cat5/6 networking cable, coaxial cable, and fiber-optic cable.⁴

HDMI cables use twisted pair construction — they consist of one EDID/DDC (Extended Display Identification Channel/Display Data Channel) pair and four separate TMDS (Transition Minimized Differential Signaling — the technology that allows DVI and HDMI to send high-speed digital data) twisted pairs with a drain (signal ground) wire, with each TMDS pair covered with AL-Mylar foil shielding. In addition, the cables contain three single wires of CEC (Consumer Electronics Control) and hot plug detect conductor and one single wire for +5VDC (direct current voltage). The entire

¹ The request contained in your letter dated January 3, 2008, to reconsider the classification of the set-top box was addressed in separate correspondence.

² See *What is HDMI?*, www.hdmi.org. See also *HDMI: Clearing up the Confusion White Paper*, http://www.monstercable.com/HDMI/the_facts_on_hdmi.asp.

³ See *What is HDMI?*, www.hdmi.org/consumer/hd_experience.aspx (last visited 4/28/2009).

⁴ See *Running Long Cable Lengths*, <http://www.hdmi.org/installers/longcablelengths.aspx> (last visited 5/7/2009).

contents of the cables are shielded and encased in a protective PVC jacket. They are fitted at each end with HDMI 19-pin connectors.⁵

ISSUE:

Whether HDMI cables are “of a kind used for telecommunications”, as required by subheading 8544.42.20, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

8544	Insulated (Including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fiber cables, made up of individually sheathed fibers, whether or not assembled with electrical conductors or fitted with connectors:
	Other electrical conductors, for a voltage not exceeding 1,000 V:
8544.42	Fitted with connectors:
	Other:
8544.42.2000	Of a kind used for telecommunications
8544.42.9000	Other

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The Explanatory Note (EN) to heading 8544, HTSUS, states in relevant part:

The heading covers, *inter alia* :

....

⁵ The pins in an HDMI connector are allocated as follows:

Pins 1 through 9 carry the three TMDS data channels, three pins per channel. TMDS data includes both video and audio information, and each channel has three separate lines for + values, - values, and a ground or data shield; Pins 10 through 12 carry data for the TMDS clock channel, which helps keep the signals in synchronization. As with the TMDS data channels, there are separate lines for + values, - values, and a data shield; Pin 13 is carries the CEC channel, used for sending command and control data between connected devices; Pin 14 is reserved for future use; Pins 15 and 16 are dedicated to the DDC, used for communicating EDID information between devices; Pin 17 is a data shield for the CEC and DDC channels; Pin 18 carries a low-voltage (+5V) power supply; and, Pin 19 is the Hot Plug Detect, dedicated to monitoring power up/down and plug/unplug events.

Inside an HDMI Cable, <http://www.hdmi.org/installers/insidehdmicable.aspx> (last visited 5/7/2009).

(3) **Telecommunications wires and cables** (including submarine cables and data transmission wires and cables) are generally made up of a pair, a quad or a cable core, the whole usually covered with a sheath. A pair or a quad consists of two or four insulated wires, respectively (each wire is made up of a single copper conductor insulated with a coloured material of plastics having a thickness not exceeding 0.5 mm), twisted together. A cable core consists of a single pair or a quad or multiple stranded pairs or quads.

Based on the statement of the Court of International Trade in *AGFA Corporation v. United States*, 491 F. Supp. 2d 1317 (2007), *aff'd*, 520 F. 3d 1326 (Fed. Cir. 2008), that, “given that the Explanatory Notes are persuasive authority for the Court when they specifically include or exclude an item from a tariff heading,” (internal quotation marks omitted), you argue that the ENs are persuasive authority for classification of the HDMI cables under sub-heading 8544.42.40, HTSUS.

The ENs are indicative of the scope of a heading at the international level, that is, up to the first six digits of the heading. *See* T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989). There is no dispute that the instant merchandise is described at GRI 1 by the terms of heading 8544 (8544.42), HTSUS, because it is an insulated cable fitted with connectors (and is for a voltage not exceeding 1,000 V). The issue in this case deals with text at the 8-digit level (cables “of a kind used for telecommunications” (8544.42.20) versus “other” cables (8544.42.90)), to which the ENs do not apply. Accordingly, *AGFA* is not helpful in this situation because there is no dispute that the cable is provided for in heading 8544, HTSUS.

You argue that, based on the common meaning of the term telecommunications, CBP’s classification of the HDMI cable under subheading 8544.42.90, HTSUS, as “other” than an electrical conductor of a kind used for telecommunications was incorrect because the cable is used for the transmission of digital signals, as are Ethernet and USB cables which CBP has previously found to be “for telecommunications” (*see* HQ H029719 (Nov. 2, 2008)).

When a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). “To ascertain the common meaning of a term, a court may consult ‘dictionaries, scientific authorities, and other reliable information sources’ and ‘lexicographic and other materials.’” *Id.* (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271, 69 C.C.P.A. 128 (C.C.P.A. 1982); *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989)).

You have provided several versions of the common meaning of the term “telecommunications.” You cite, among other examples, the common definition of telecommunications given by the *Computer Telephone & Electronics Glossary* (www.csghnetwork.com) — “The science of sending signals representing voice, video, or data through telephone lines” — and by the *Webster’s New World College Dictionary*, 4th ed. (1999) — “communications by electronic or electric means, as through radio, telephone, telegraph, television, or comput-

ers.”⁶ In addition, we note that *Newton’s Telecom Dictionary* (23rd ed. 2009) defines the term “telecommunications” as: “1. The art and science of ‘communicating’ over a distance by telephone, telegraph and/or radio. The transmission, reception and the switching of signals, such as electrical or optical, by wire, fiber, or electromagnetic (i.e. through-the-air) means.”

Based on the common and commercial meaning of the term “telecommunications”, we find that HDMI cables at issue are “of a kind used for telecommunications.” They allow communication between various high definition electronic devices by electronic or electric means and, therefore, are classified in subheading 8544.42.20, HTSUS. This decision is consistent with HQ H029719 (Nov. 7, 2008), in which we classified a USB and an Ethernet cable in subheading 8544.42.20, HTSUS, because they allowed the transfer of data between a personal computer and various other electronic devices.

⁶ In support of your position, you also state that in HQ 964534 (incorrectly referred to in your submission as HQ 974534) (Nov. 21, 2001) CBP defined the term “telecommunications equipment” in a way that includes the function of the HDMI cables, that is, to transmit sound, video information and data. You believe that this comports with the common meaning of the term “telecommunications” found in various dictionaries and technical references.

HQ 964534 concerned the classification of cable assemblies with connectors used in TECAS radar proximity systems for commercial airplanes. In that ruling the U.S. Customs Service (now CBP) did not define the term “telecommunications equipment” but merely restated Protestant’s claims, including the assertion that in HQ 554295 (Jan. 15, 1987) “Customs has previously stated that telecommunications equipment, both in a common and commercial sense, encompass the transfer of sound, written information, video information, and data, as well as combinations thereof.” In turn, HQ 554295 concerned whether telephonic switching apparatus was classified under Tariff Schedules of the United States (TSUS) item 684.62 as telephone apparatus, or under item 688.42 as electrical articles not specifically provided for. Because in HQ 964534 there were no samples or pictures of the cables at issue and no other relevant documentary evidence, “Customs [was] unwilling to speculate as to whether or not the cable assemblies at issue [met] the above descriptions,” that is, “of a kind used for telecommunications.” HQ 964534, Nov. 21, 2001. Consequently, contrary to your assertions, CBP did not discuss the meaning of the term “telecommunications equipment” in that ruling.

With regard to our statements in HQ 554295 concerning the meaning of the term “telecommunications”, we first note that CBP decisions concerning the HTSUS’ predecessor tariff code, the TSUS, are not deemed dispositive of classification, although on a case-by-case basis they may be considered instructive. See Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418, Aug. 23, 1988, 102 Stat. 1107, 1147; H.R. Rep. No. 576, 100th Cong., 2d Sess. 549–550 (1988); 1988 U.S.C.C.A.N. 1547, 1582–1583. We believe that these statements are equally applicable to CBP rulings that interpreted the nomenclature under the TSUS.

At the time that HQ 554295 was issued, TSUS item 684.59 provided for “telephonic apparatus and instruments and parts thereof” and the discussion contained in that ruling was within the context of this item description. The HTSUS provision currently at issue is for electrical conductors “of a kind used for telecommunications”. The terms of these two provisions are not similar.

Finally, while Customs did note in HQ 554295 that telecommunications, in both a common and commercial sense, encompasses the transfer of sound, written information, video information, and data, as well as combinations thereof, we also remarked, “However, there is no use of the term telecommunications within the tariff schedules.” As such, our comments were not interpretive of a nomenclature provision concerning telecommunications. For all these reasons, we do not find the discussion in HQ 554295 to be instructive.

HOLDING:

By application of GRI 1, the HDMI cables are classified in heading 8544, HTSUS. They are specifically provided for in subheading 8544.42.20, HTSUS, which provides for: “Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors...: Other electric conductors, for a voltage not exceeding 1,000 V: Fitted with connectors: Other: Of a kind used for telecommunications.” The 2010 column one, general rate of duty is Free.

EFFECT ON OTHER RULINGS:

NY N018675, dated November 14, 2007, is hereby modified with respect to the classification of the HDMI cable.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT E]

HQ H100096
CLA-2:OT:RR:CTF:TCM H100096 RM
CATEGORY: Classification
TARIFF NO.: 8544.42.20

RE: Revocation of N088150; tariff classification of an HDMI cable

BARBARA Y. WIERBICKI, Esq.
TOMPKINS & DAVIDSON, LLP
5 HANOVER SQUARE, 15TH FLOOR
NEW YORK, NY 10004

DEAR Ms. WIERBICKI:

This is in regards to New York Ruling Letter (“NY”) N088150 issued to you, on behalf of Jemtronix, on January 8, 2010. In that ruling, U.S. Customs and Border Protection (“CBP”) classified an HDMI cable in subheading 8544.42.90, HTSUS, as “other electric conductors for a voltage not exceeding 1,000 V: fitted with connectors: Other: Other.” For the reasons explained below, we hereby revoke NY N088150.

FACTS:

HDMI cables are used with high-definition consumer electronics such as HDTVs, Blu-ray Disc players, multimedia PCs, gaming systems, and digital camcorders.¹ The term “HDMI” is an acronym for the phrase “High Definition Multimedia Interface”. HDMI cables provide an uncompressed, all-digital interface between high definition electronics and personal computer products.² HDMI signals can be sent over Cat5/6 networking cable, coaxial cable, and fiber-optic cable.³

HDMI cables use twisted pair construction — they consist of one EDID/DDC (Extended Display Identification Channel/Display Data Channel) pair and four separate TMDS (Transition Minimized Differential Signaling — the technology that allows DVI and HDMI to send high-speed digital data) twisted pairs with a drain (signal ground) wire, with each TMDS pair covered with AL-Mylar foil shielding. In addition, the cables contain three single wires of CEC (Consumer Electronics Control) and hot plug detect conductor and one single wire for +5VDC (direct current voltage). The entire contents of the cables are shielded and encased in a protective PVC jacket. They are fitted at each end with HDMI 19-pin connectors.⁴

¹See *What is HDMI?*, www.hdmi.org. See also *HDMI: Clearing up the Confusion White Paper*, http://www.monstercable.com/HDMI/the_facts_on_hdmi.asp.

²See *What is HDMI?*, www.hdmi.org/consumer/hd_experience.aspx (last visited 4/28/2009).

³See *Running Long Cable Lengths*, <http://www.hdmi.org/installers/longcablelengths.aspx> (last visited 5/7/2009).

⁴ The pins in an HDMI connector are allocated as follows:

Pins 1 through 9 carry the three TMDS data channels, three pins per channel. TMDS data includes both video and audio information, and each channel has three separate lines for + values, - values, and a ground or data shield; Pins 10 through 12 carry data for the TMDS clock channel, which helps keep the signals in synchronization. As with the TMDS data channels, there are separate lines for + values, - values, and a data shield; Pin 13 is carries the CEC channel, used for sending command and control data between connected devices; Pin 14 is reserved for future use; Pins 15 and 16 are dedicated to the DDC, used for communicating EDID information between devices; Pin 17 is a data shield for the CEC and

ISSUE:

Whether HDMI cables are “of a kind used for telecommunications”, as required by subheading 8544.42.20, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

8544	Insulated (Including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fiber cables, made up of individually sheathed fibers, whether or not assembled with electrical conductors or fitted with connectors:
	Other electrical conductors, for a voltage not exceeding 1,000 V:
8544.42	Fitted with connectors:
	Other:
8544.42.2000	Of a kind used for telecommunications
8544.42.9000	Other

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The Explanatory Note (EN) to heading 8544, HTSUS, states in relevant part:

The heading covers, *inter alia* :

....

(3) **Telecommunications wires and cables** (including submarine cables and data transmission wires and cables) are generally made up of a pair, a quad or a cable core, the whole usually covered with a sheath. A pair or a quad consists of two or four insulated wires, respectively (each wire is made up of a single copper conductor insulated with a coloured material of plastics having a thickness not exceeding 0.5 mm), twisted together. A cable core consists of a single pair or a quad or multiple stranded pairs or quads.

There is no dispute that the instant merchandise is described at GRI 1 by the terms of heading 8544 (8544.42), HTSUS, because it is an insulated cable fitted with connectors (and is for a voltage not exceeding 1,000 V). At issue

DDC channels; Pin 18 carries a low-voltage (+5V) power supply; and, Pin 19 is the Hot Plug Detect, dedicated to monitoring power up/down and plug/unplug events. *Inside an HDMI Cable*, <http://www.hdmi.org/installers/insidehdmi-cable.aspx> (last visited 5/7/2009).

is whether HDMI cables are classified in subheading 8544.42.20, HTSUS (“of a kind used for telecommunications”) or in subheading 8544.42.90, HTSUS (“other”).

The term “telecommunications” is not defined in the HTSUS. When a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). “To ascertain the common meaning of a term, a court may consult ‘dictionaries, scientific authorities, and other reliable information sources’ and ‘lexicographic and other materials.’” *Id.* (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271, 69 C.C.P.A. 128 (C.C.P.A. 1982); *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989)).

The term “telecommunications” is defined by the *Computer Telephone & Electronics Glossary* (www.csgnetwork.com) as “The science of sending signals representing voice, video, or data through telephone lines,” and by the *Webster’s New World College Dictionary*, 4th ed. (1999) as “communications by electronic or electric means, as through radio, telephone, telegraph, television, or computers.”

Based on the common and commercial meaning of the term “telecommunications”, we find that HDMI cables at issue are “of a kind used for telecommunications.” They allow communication between various high definition electronic devices by electronic or electric means and, therefore, are classified in subheading 8544.42.20, HTSUS. This decision is consistent with HQ H029719 (Nov. 7, 2008), in which we classified a USB and an Ethernet cable in subheading 8544.42.20, HTSUS, because they allowed the transfer of data between a personal computer and various other electronic devices.

HOLDING:

By application of GRI 1, the HDMI cables are classified in heading 8544, HTSUS. They are specifically provided for in subheading 8544.42.20, HTSUS, which provides for: “Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors...: Other electric conductors, for a voltage not exceeding 1,000 V: Fitted with connectors: Other: Of a kind used for telecommunications.” The column one general rate of duty is Free.

EFFECT ON OTHER RULINGS:

NY N088150, dated January 8, 2010, is hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT F]

HQ H100097
CLA-2:OT:RR:CTF:TCM H100097 RM
CATEGORY: Classification
TARIFF NO.: 8544.42.20

RE: Revocation of N037030; tariff classification of an HDMI cable

MR. ROLANDO PORTAL
CUSTOMS COMPLIANCE MANAGER
CIRCUIT CITY
9950 MARYLAND DRIVE
RICHMOND, VA 23233

DEAR MR. PORTAL:

This is in regards to New York Ruling Letter (“NY”) N037030 issued to you on September 24, 2008. In that ruling, U.S. Customs and Border Protection (“CBP”) classified an HDMI cable in subheading 8544.42.90, HTSUS, as “other electric conductors for a voltage not exceeding 1,000 V: fitted with connectors: Other: Other.” For the reasons explained below, we hereby revoke NY N088150.

FACTS:

HDMI cables are used with high-definition consumer electronics such as HDTVs, Blu-ray Disc players, multimedia PCs, gaming systems, and digital camcorders.¹ The term “HDMI” is an acronym for the phrase “High Definition Multimedia Interface”. HDMI cables provide an uncompressed, all-digital interface between high definition electronics and personal computer products.² HDMI signals can be sent over Cat5/6 networking cable, coaxial cable, and fiber-optic cable.³

HDMI cables use twisted pair construction — they consist of one EDID/DDC (Extended Display Identification Channel/Display Data Channel) pair and four separate TMDS (Transition Minimized Differential Signaling — the technology that allows DVI and HDMI to send high-speed digital data) twisted pairs with a drain (signal ground) wire, with each TMDS pair covered with AL-Mylar foil shielding. In addition, the cables contain three single wires of CEC (Consumer Electronics Control) and hot plug detect conductor and one single wire for +5VDC (direct current voltage). The entire contents of the cables are shielded and encased in a protective PVC jacket. They are fitted at each end with HDMI 19-pin connectors.⁴

¹See *What is HDMI?*, www.hdmi.org. See also *HDMI: Clearing up the Confusion White Paper*, http://www.monstercable.com/HDMI/the_facts_on_hdmi.asp.

²See *What is HDMI?*, www.hdmi.org/consumer/hd_experience.aspx (last visited 4/28/2009).

³See *Running Long Cable Lengths*, <http://www.hdmi.org/installers/longcablelengths.aspx> (last visited 5/7/2009).

⁴The pins in an HDMI connector are allocated as follows:

Pins 1 through 9 carry the three TMDS data channels, three pins per channel. TMDS data includes both video and audio information, and each channel has three separate lines for + values, - values, and a ground or data shield; Pins 10 through 12 carry data for the TMDS clock channel, which helps keep the signals in synchronization. As with the TMDS data channels, there are separate lines for + values, - values, and a data shield; Pin 13 carries

ISSUE:

Whether HDMI cables are “of a kind used for telecommunications”, as required by subheading 8544.42.20, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

8544	Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fiber cables, made up of individually sheathed fibers, whether or not assembled with electrical conductors or fitted with connectors: Other electrical conductors, for a voltage not exceeding 1,000 V:
8544.42	Fitted with connectors: Other:
8544.42.2000	Of a kind used for telecommunications
8544.42.9000	Other

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The Explanatory Note (EN) to heading 8544, HTSUS, states in relevant part:

The heading covers, *inter alia* :

....

(3) **Telecommunications wires and cables** (including submarine cables and data transmission wires and cables) are generally made up of a pair, a quad or a cable core, the whole usually covered with a sheath. A pair or a quad consists of two or four insulated wires, respectively (each wire is made up of a single copper conductor insulated with a coloured material of plastics having a thickness not exceeding 0.5 mm), twisted together. A cable core consists of a single pair or a quad or multiple stranded pairs or quads.

the CEC channel, used for sending command and control data between connected devices; Pin 14 is reserved for future use; Pins 15 and 16 are dedicated to the DDC, used for communicating EDID information between devices; Pin 17 is a data shield for the CEC and DDC channels; Pin 18 carries a low-voltage (+5V) power supply; and, Pin 19 is the Hot Plug Detect, dedicated to monitoring power up/down and plug/unplug events.

Inside an HDMI Cable, <http://www.hdmi.org/installers/insidehdmicable.aspx> (last visited 5/7/2009).

There is no dispute that the instant merchandise is described at GRI 1 by the terms of heading 8544 (8544.42), HTSUS, because it is an insulated cable fitted with connectors (and is for a voltage not exceeding 1,000 V). At issue is whether HDMI cables are classified in subheading 8544.42.20, HTSUS (“of a kind used for telecommunications”) or in subheading 8544.42.90, HTSUS (“other”).

The term “telecommunications” is not defined in the HTSUS. When a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). “To ascertain the common meaning of a term, a court may consult ‘dictionaries, scientific authorities, and other reliable information sources’ and ‘lexicographic and other materials.’” *Id.* (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271, 69 C.C.P.A. 128 (C.C.P.A. 1982); *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989)).

The term “telecommunications” is defined by the *Computer Telephone & Electronics Glossary* (www.csgnetwork.com) as “The science of sending signals representing voice, video, or data through telephone lines,” and by the *Webster’s New World College Dictionary*, 4th ed. (1999) as “communications by electronic or electric means, as through radio, telephone, telegraph, television, or computers.” In addition, we note that *Newton’s Telecom Dictionary* (23rd ed. 2009) defines the term “telecommunications” as: “1. The art and science of ‘communicating’ over a distance by telephone, telegraph and/or radio. The transmission, reception and the switching of signals, such as electrical or optical, by wire, fiber, or electromagnetic (i.e. through-the-air) means.”

Based on the common and commercial meaning of the term “telecommunications”, we find that HDMI cables at issue are “of a kind used for telecommunications.” They allow communication between various high definition electronic devices by electronic or electric means and, therefore, are classified in subheading 8544.42.20, HTSUS. This decision is consistent with HQ H029719 (Nov. 7, 2008), in which we classified a USB and an Ethernet cable in subheading 8544.42.20, HTSUS, because they allowed the transfer of data between a personal computer and various other electronic devices.

HOLDING:

By application of GRI 1, the HDMI cables are classified in heading 8544, HTSUS. They are specifically provided for in subheading 8544.42.20, HTSUS, which provides for: “Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors...: Other electric conductors, for a voltage not exceeding 1,000 V: Fitted with connectors: Other: Of a kind used for telecommunications.” The column one general rate of duty is Free.

EFFECT ON OTHER RULINGS:

NY N037030, dated September 24, 2008, is hereby revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

GENERAL NOTICE

19 CFR PART 177

Proposed Revocation of Ruling Letter and Proposed Revocation of Treatment Relating to Classification of a Sky Ball Catch Set From China

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the classification of a sky ball catch set 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 CPB proposes to revoke a ruling concerning the classification of a Sky Catch Ball Set under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB intends to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulation and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor Washington, D.C. 20229–1179. Comments submitted may be inspected at 799 9th St. N.W. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

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 (Customs Modernization Act of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke a ruling pertaining to the classification of a Sky Catch Ball Set. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) N023143, dated March 7, 2008 (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 data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise 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. 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 his agents for importations of merchandise subsequent to this notice.

In NY N023143, CBP ruled that a Sky Catch Ball Set is classified in subheading 9506.99.60, HTSUS, which provides for “articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading

pools; parts and accessories thereof: Other: Other: Other.” The referenced ruling is incorrect because the subject Sky Catch Ball Set is better classified in subheading 9503.00.00, HTSUS, which provides for “tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY K84392, 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”) H092279. (*see* Attachment “B” to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes 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: May 25, 2010

GAIL A. HAMILL
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT A]

N023143

March 7, 2008

CLA-2-95:RR:OT:2:224

CATEGORY: Classification

TARIFF NO.: 9506.99.6080

MR. JOSEPH R. HOFFACKER
BARTHCO TRADE CONSULTANTS
THE NAVY YARD
5101 S. BROAD STREET
PHILADELPHIA, PA 19112-1404

RE: The tariff classification of a Sky Catch Ball Set from China

DEAR MR. HOFFACKER:

In your letter dated February 1, 2008, you requested a tariff classification ruling, on behalf of K.B. Toys of Massachusetts, Inc., your client.

The submitted sample, a Sky Catch Ball Set, item number 82270, is an outdoor game that is comprised of two plastic paddles and one plastic ball. The paddles are used to both throw and catch the ball. The game is designed for players, ages three and up. The sample will be returned, as requested.

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the harmonized system is such that virtually all 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 be applied.

The imported merchandise consists of outdoor game equipment. Heading 9506, HTSUS, provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter..." Since the subject Sky Catch Ball Set is designed principally for outdoor game play, there is no need to go any further than this heading in the tariff for classification of the merchandise. There is no subheading provision in heading 9506 that specifically addresses or describes the subject merchandise and accordingly the set will be classified in the heading's residual provision, subheading 9506.99.6080, HTSUS.

The applicable subheading for the Sky Catch Ball Set will be 9506.99.6080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports...or outdoor games...Other...Other." The rate of duty will be 4% 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

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 James Forkan at 646-733-3025.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H092279
CLA-2 OT:RR:CTF:TCM HQ H092279 TNA
CATEGORY: Classification
TARIFF NO.: 9503.00.00

MR. JOSEPH HOFFACKER
BARTHCO TRADE CONSULTANTS
THE NAVY YARD
5101 S. BROAD STREET
PHILADELPHIA, PA 19112-1404

RE: Revocation of NY N023143; Classification of a Sky Catch Ball Set from China

DEAR MR. HOFFACKER:

This letter is in reference to New York Ruling Letter (“NY”) N023143, issued to K.B. Toys on March 7, 2008, concerning the tariff classification of a Sky Catch Set from China. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the Sky Catch Ball Set under subheading 9506.99.60, Harmonized Tariff Schedule of the United States (“HTSUS”), as “articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Other: Other: Other.” We have reviewed NY N023143 and found it to be in error. For the reasons set forth below, we hereby revoke NY N023143.

FACTS:

The subject merchandise consists of an outdoor game that is comprised of two plastic paddles and one plastic ball. The paddles are used to both throw and catch the ball. The game is designed for players ages three and older.

In NY N023143, dated March 7, 2008, CBP classified the Sky Catch Ball Set under subheading 9506.99.60, HTSUS, as: “Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Other: Other: Other.”

ISSUE:

Whether a Sky Catch Set is classified under heading 9503, HTSUS, as a toy, or under heading 9506, HTSUS, as an article or equipment for general physical exercise, gymnastics or other sports?

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

9503.00.00	Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof
* * * * *	* * * * *
9506	Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:
	Other:
9506.99	Other:
9506.99.60	Other

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN for heading 9503, HTSUS, states, in pertinent part:
This heading covers:...

(D) **Other toys**

This group covers toys intended essentially for the amusement of persons (children or adults)... This group includes:

All toys **not included** in (A) to (C). Most of the toys are mechanically or electrically operated.

These include:...

(ix) Toy sports equipment, whether or not in sets (e.g., golf sets, tennis sets, archery sets, billiard sets; baseball bats, cricket bats, hockey sticks).

The EN for heading 9506, HTSUS, states, in pertinent part:

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

- (1) Snow-skis and other snow-ski equipment, (e.g., ski-fastenings (ski-bindings), ski brakes, ski poles).
- (2) Water-skis, surf-boards, sailboards and other water-sport equipment, such as diving stages (platforms), chutes, divers' flippers and respiratory masks of a kind used without oxygen or compressed air bottles, and simple underwater breathing tubes (generally known as "snorkels ") for swimmers or divers.
- (3) Golf clubs and other golf equipment, such as golf balls, golf tees.
- (4) Articles and equipment for table-tennis (ping-pong), such as tables (with or without legs), bats (paddles), balls and nets.
- (5) Tennis, badminton or similar rackets (e.g., squash rackets), whether or not strung.

- (6) Balls, other than golf balls and table-tennis balls, such as tennis balls, footballs, rugby balls and similar balls (including bladders and covers for such balls); water polo, basketball and similar valve type balls; cricket balls.
- (7) Ice skates and roller skates, including skating boots with skates attached.
- (8) Sticks and bats for hockey, cricket, lacrosse, etc.; chistera (jai alai scoops); pucks for ice hockey; curling stones.
- (9) Nets for various games (tennis, badminton, volleyball, football, basketball, etc.).
- (10) Fencing equipment: fencing foils, sabres and rapiers and their parts (e.g., blades, guards, hilts and buttons or stops), etc.
- (11) Archery equipment, such as bows, arrows and targets.
- (12) Equipment of a kind used in children's playgrounds (e.g., swings, slides, see-saws and giant strides).
- (13) Protective equipment for sports or games, e.g., fencing masks and breast plates, elbow and knee pads, cricket pads, shin-guards.
- (14) Other articles and equipment, such as requisites for deck tennis, quoits or bowls; skate boards; racket presses; mallets for polo or croquet; boomerangs; ice axes; clay pigeons and clay pigeon projectors; bobsleighs (bobsleds), luges and similar non-motorised vehicles for sliding on snow or ice.

In NY N023143, CBP classified the subject merchandise under heading 9506, HTSUS, as articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof. Multiple court cases and CBP rulings distinguish between objects which are used in competitive sports, and items that principally provide amusement, classifying the former in heading 9506, HTSUS, and the latter in heading 9503, HTSUS.

In particular, the Court of International Trade construes heading 9503 as a "principal use" provision insofar as it pertains to toys. See *Minnetonka Brands v. United States*, 110 F.Supp. 2d 1020, 1026 (Ct. Int'l Trade 2000). In order for the merchandise to be considered a toy under heading 9503, HTSUS, the item's principal use must be for amusement. In *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, C.D. 4688 (1977), the court noted that "when amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utilitarian purpose incidental to the amusement." *Ideal Toy Corp.*, 78 Cust. Ct. 28 at 33.

Courts have also provided several factors to apply when determining whether merchandise falls within a particular class or kind of good. They include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the

merchandise moves; (4) the environment of the sale (e.g. the manner in which the merchandise is advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. See *United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976).

Furthermore, *Newman Importing Co., Inc. v. United States* construed the term “sport” to include specific activities which possess, “to a meaningful degree, the same attributes of healthy, challenging and skillful recreation which characterize such acknowledged sports as scuba diving, skiing, horseback riding and mountain climbing.” *Newman Importing Co., Inc. v. United States*, 76 Cust. Ct. 143, 144.

Numerous CBP rulings distinguish between the items of heading 9503, HTSUS, and heading 9506, HTSUS, along these lines. HQ 950401, dated July 6, 1992, for example, classified a Frisbee under heading 9503, HTSUS, because it was a “source of fun and amusement” rather than being an activity that required “serious competition or intense testing of ones’ skills and athletic ability.” See HQ 950401. Other rulings have classified Velcro-surfaced paddles and a Velcro Ball as toys because their “relatively flimsy construction” indicated that they were “principally intended for use as a toy and not for rugged, serious athletic activity.” See HQ 950580, dated February 20, 1992. Other rulings have classified merchandise in heading 9503, HTSUS, based on a similar distinguishing between competitive sports and toys. See, e.g., HQ 953122, dated April 22, 1993 (“it is our determination that the item is a toy in that its principle use is to provide amusement to children or adults, not to equip them for competition and winning.”); HQ 959715, dated March 11, 1997; HQ 959885, dated December 30, 1997; HQ 961718, dated May 7, 1999.

In the present case, the subject merchandise consists of plastic paddles and a plastic ball, certainly a flimsier construction than the leather baseball gloves and hardballs used in competitive baseball, for example. Furthermore, the subject merchandise does little to foster participants’ athletic skills and competitive edge. As a result, we find that the sky catch ball set is designed as a source of amusement rather than as a serious athletic activity meant to equip its users for competition.

As a result, CBP finds that the Sky Catch Ball Set is classified under subheading 9503.00.00, HTSUS, as “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof.”

HOLDING:

Under the authority of GRI 1, K.B. Toys' Sky Catch Ball set from China is provided for in subheading 9503.00.00, HTSUS, which provides for "Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof." The general, column one, duty rate 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 internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY K84392, dated March 25, 2004, is REVOKED.

Sincerely,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division


**PROPOSED REVOCATION OF RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF A "MY MASS KIT"**

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 "My Mass Kit."

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) ("Title VI"), this notice advises interested parties that U.S. Customs and Border Protection ("CBP") proposes to revoke one ruling letter relating to the tariff classification of a combination hand cart and fold-out stepladder under the Harmonized Tariff Schedule of the United States ("HTSUS"). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor, Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border

Protection, 799 9th Street N.W., Washington, D.C. 20229 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Saskia Fronabarger, Penalties Branch: (202) 325-0324

SUPPLEMENTARY INFORMATION:

Background

Title VI came into effect on December 8, 1993. 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 to 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) of the 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 tariff classification of a “My Mass Kit.” Although this notice specifically refers to the revocation of New York Ruling Letter (NY) N048904 (Feb. 6, 2009), set forth as Attachment A to this document, this notice also 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) of the Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transac-

tions. 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 N048904, CBP classified the toy components of the "My Mass Kit" under subheading 9503.00.0080, HTSUS which provides for "Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof, Other."

In addition, NY N048904 classified the carrying case component of the "My Mass Kit" under subheading 4202.12.8030, HTSUS which provides for "Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers: With outer surface of plastics or of textile materials: With outer surface of textile materials: Other, Attache cases, briefcases, school satchels, occupational luggage cases and similar containers: Other: Of man-made fibers."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP proposes to revoke NY N048904 and revoke or modify any other ruling not specifically identified herein, in order to reflect the proper classification of the "My Mass Kit" according to the analysis contained in proposed Headquarters Ruling Letter H061204, 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, consideration will be given to any written comments timely received.

Dated: May 25, 2010

GAIL A. HAMILL
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N048904

February 6, 2009

CLA-2-95:OT:RR:NC:2:224

CATEGORY: Classification

TARIFF NO.: 9503.00.0080; 4202.12.8030

Ms. SANDY WIECKOWSKI
EXPEDITORS TRADEWIN, LLC
11101 METRO AIRPORT CENTER DRIVE
ROMULUS, MI 48174

RE: The tariff classification of the “My Mass Kit” from Thailand

DEAR Ms. WIECKOWSKI:

In your letter dated January 5, 2009 you requested a tariff classification ruling on behalf of Troparian Corporation dba Wee Believers.

A sample of the “My Mass Kit” was received with your inquiry. The product consists of 12 textile components, each made of cotton twill with polyester fill, that are for a child to “play Mass.” These components include a chalice, crucifix, censer, bowl, paten, purificator, corporal, two candles, two cruets, five EVA hosts, instruction booklet and a carrying case. The kit is intended to be used by children during church services to keep them quiet and busy, keeping their focus on the Mass, rather than playing with non-related books or toys. In addition, the kit provides a fun way for children to use their imagination as well as learn the various aspects of the Mass. The kit is packaged in a cardboard sleeve, with all of the components inside of the carry case. The item is targeted for children between the ages of 3 and 12.

You state that the carrying case will also serve as a toy “altar” for on the lap play. However, the carrying case is a child’s novelty bag, imprinted with a cross and the words “My Mass Kit,” similar to a briefcase and is constructed of 600D nylon textile material. It is designed to provide the useful functions of storage, protection, organization and portability to the various religious play articles. The interior of the case and the underside of the lid each have two open mesh pockets. It has an adjustable, removable webbed shoulder strap, as well as, a carrying handle. The case secures with a nylon zipper closure along three sides. It measures approximately 11” (W) x 9.5” (H) x 4” (D).

In your request, you compared the “My Mass Kit” to the item found in Headquarters Ruling Letter 960465 which included a “Snoopy” plush dog packaged together with a seven-inch high plastic carrying case shaped and decorated like “Snoopy’s” doghouse. The ruling went on to state that “Pretending that the carrying case is either a doghouse or a pet carrier by putting ‘Snoopy’ in the bag, carrying him around, and then unpacking him, imparts a recognizable and significant amount of play value to both the components. As such, the components appear to be intended to occupy the user in a pleasant or enjoyable (i.e., amusing) way, allowing the user to employ imagination and creativity to create different ‘play scenarios’ for ‘Snoopy’ and his ‘doghouse.’”

In contrast to the “Snoopy” set, the carrying case for the “My Mass Kit” has no special shape or incorporated features that would contribute to a child’s amusement nor is it considered the normal packaging for a toy. There is no clear nexus contemplating a use together to amuse. While all of the items in

the “My Mass Kit” will be considered toys, the carrying case will not. The carrying case will be classified separately from the toy components.

The applicable subheading for the toy components of the “My Mass Kit” will be 9503.00.0080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Tricycles, scooters, pedal cars and similar wheeled toys...dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other.” The rate of duty will be free.

The applicable subheading for the carrying case will be 4202.12.8030, HTSUS, which provides for provides for attaché cases, briefcases, school satchels, occupational luggage cases and similar containers, with outer surface of textile materials, other of man-made fibers. The duty rate will be 17.6% 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

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 James Forkan at (646) 733-3025.

Sincerely,

ROBERT B. SWIERUPSKI

Director

National Commodity Specialist Division

[ATTACHMENT B]

HQ H061204
OT: RR: CTF: TCM: H061204 SF
CATEGORY: Classification
TARIFF NO.: 9503.00.0080

SANDY WIECKOWSKI, MANAGER
EXPEDITORS TRADEWIN, LLC
1101 METRO AIRPORT CENTER DRIVE
BLDG. M2, SUITE 110
ROMULUS, MI 48174

RE: Classification of the Wee Believers "My Mass Kit" NY N048904 Revoked

DEAR Ms. WIECKOWSKI:

This is in response to the March 24, 2009 request for reconsideration of New York Ruling Letter ("NY") N048904, which you submitted on behalf of Troparian Corporation d/b/a Wee Believers. The U.S. Customs and Border Protection (CBP) National Commodity Specialist Division issued NY N048904 on February 6, 2009 which addressed the tariff classification of the Wee Believers "My Mass Kit" from Thailand.

FACTS:

Wee Believers provided a sample of the "My Mass Kit" which consists of a zippered carrying case marked "my Mass Kit." The case contains four mesh pockets which are designed to carry an instruction booklet and twelve toys. The toys are in the shapes of a corporal, a chalice, a crucifix, a censer, a bowl, a paten, a purificator, two candles, two cruets, and EVA hosts. Most of the kits twelve toys are made of cotton twill with polyester fill. The kit is packaged in a cardboard sleeve.

The "My Mass Kit" is designed to be used as a vocational tool for children between the ages of three and twelve to learn about the parts of the Catholic Mass, identify liturgical objects, and learn about the Catholic priesthood. Wee Believers suggests that the "My Mass Kit" can be used during church services to keep children quiet, busy, and focused on the Mass rather than playing with non-church related books or toys and at home or in school where parents and teachers can use the kit to teach children about the Catholic Faith.

In NY N048904, CBP classified the toy components of the "My Mass Kit" under subheading 9503.00.0080, of the Harmonized Tariff Schedule of the United States (HTSUS) which provides for "Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof, Other" and has a "free" rate of duty.

In the same ruling, CBP classified the carrying case component of the "My Mass Kit" under subheading 4202.12.8030, HTSUS which provides for "Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly

covered with such materials or with paper: Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers: With outer surface of plastics or of textile materials: With outer surface of textile materials: Other, Attache cases, briefcases, school satchels, occupational luggage cases and similar containers: Other: Of man-made fibers” and has a rate of duty of 17.6% *ad valorem*.

While NY N048904 made no mention of the classification of the instruction booklet, we note that it should be classified in heading 4901, HTSUS which covers printed books, brochures, leaflets, and similar printed matter.

ISSUE:

What is the classification the Wee Believers “My Mass Kit” under the HTSUS?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (“GRIs”). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings, any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level (for the four digit headings and the six digit subheadings) and facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs. While neither legally binding nor dispositive of classification issues, the ENs provide commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. *See* T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

Goods that are, *prima facie*, classifiable under two or more headings, are classifiable in accordance with GRI 3. GRI 3(a) states in part that when two or more headings each refer to a part of the item in a set put up for retail sale, those headings are to be regarded as equally specific, even if one heading gives a more precise description of the goods. The “My Mass Kit” must be classified pursuant to GRI 3 because it consists of at least three different articles that are, *prima facie*, classifiable in different headings; the carrying case is classifiable in heading 4202, HTSUS, the instruction booklet is classifiable in heading 4901, HTSUS, and the toys are classifiable in heading 9503, HTSUS. The headings at issue only refer to part of the items in the set put up for retail sale. As such, they are regarded as equally specific and we must resort to GRI 3(b).

EN X to GRI 3(b) provides guidance for determining whether the “My Mass Kit” constitutes “goods put up in sets for retail sale.” For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which: (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings . . . ; (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards). In addition, CBP has generally interpreted EN X to GRI 3(b) to mean that,

in most instances, a holder, case, or other container is included with other articles which clearly meet a particular need or carry out a specific activity when classified. See U.S. Customs and Border Protection, *What Every Member of the Trade Community Should Know About: Classification of Sets Under the HTSUS* (Mar. 2004).

The “My Mass Kit” consists of a case, an instruction booklet, and toys which are *prima facie* classifiable in three different headings. In addition, the “My Mass Kit” consists of products put up together to carry out a particular activity. All of the articles in the “My Mass Kit” interact with each other to provide a tool for teaching children about the Catholic Mass and to keep children quiet and occupied during Mass. Much like the pencil pouch in Headquarters Ruling Letter (“HQ”) 087026, the case of the “My Mass Kit” contributes to the specific activity for which the merchandise was created by storing and carrying “the other items so that they will be readily available when needed.” See HQ 087026 (Jul. 24, 1990). Although, the case could be classified as part of a kit even without considering its further uses, Wee Believers notes that the instruction booklet included in the kit instructs children to use the case as the altar when reenacting the Mass which further supports the conclusion that the case is intended to be used with the other items with the ultimate goal of carrying out a specific activity. Lastly, the kit, which comes packaged in a cardboard sleeve, is put up in a manner suitable for sale without repackaging. Consequently, the “My Mass Kit” constitutes a good put up in a set for retail sale.

GRI 3(b) requires that the classification of goods put up in sets for retail sale be based upon the material or component that provides the set with its essential character. EN VIII to GRI 3(b) explains that: “[t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods.” In addition to the guidance provided by EN VIII to GRI 3(b), courts frequently consider the role of the constituent materials or components in relation to the use of the goods to determine essential character. See *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1337–1338 (CIT 2005); *Conair Corp. v. United States*, 29 C.I.T. 888 (2005); *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d 1278, 1295–1356 (CIT 2006), *aff’d* 491 F.3d 1334 (Fed. Cir. 2007).

In determining the essential character of the “My Mass Kit,” we must consider the roles the case, the instruction booklet, and the toys play in relation to the ultimate purpose of teaching children about the Catholic Mass and keeping children quiet and occupied during Mass. In this case, not only are the toys more bulky and more numerous than the case and the instruction booklet but the role of the toys in the “My Mass Kit” is much more important in meeting the overall purpose of the “My Mass Kit.” Purchasers of the “My Mass Kit” could not meet the ultimate goal of teaching children about the Catholic Mass or keeping them occupied during Mass if the set did not contain the toys. Furthermore, the case in

the “My Mass Kit” is similar to the carrying case made for slippers classified in NY H83958 inasmuch as its purpose is to store the toys and instruction booklet inside when they are not in use. Consequently, the essential character of the “My Mass Kit” is that of a toy classifiable under heading 9503, HTSUS.

HOLDING:

By application of GRI 3(b), the “My Mass Kit” is classified in heading 9503, HTSUS. It is specifically provided for in subheading 9503.00.0080, HTSUS which provides for “Tricycles, scooters, pedal cars and similar wheeled toys; dolls’ carriages; dolls, other toys; reduced-scale (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof, Other.” The “My Mass Kit” has a “free” rate of duty under the HTSUS schedule.

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 N048904, dated February 6, 2009, is hereby REVOKED.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



AGENCY INFORMATION COLLECTION ACTIVITIES:

Voluntary Customer Survey

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

ACTION: 60-Day notice and request for comments; Proposal to establish a new collection of information.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on a proposed information collection requirement concerning a Voluntary Customer Survey. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before July 16, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229-1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document the CBP is soliciting comments concerning the following information collection:

Title: Voluntary Customer Survey

OMB Number: Will be assigned upon approval.

Abstract: Customs and Border Protection (CBP) plans to conduct a customer survey of international travelers seeking entry into the United States at the twenty highest volume airports in order to determine perceptions of the arrival process at our ports of entry. This voluntary customer survey will be conducted through short verbal surveys of travelers as they move through entry processing areas. Travelers who do not speak English will be given a written version of the survey in their language and may submit their responses in writing. The survey will include questions about wait times, ease of entry processing, and the level of communication, efficiency and professionalism of CBP officers. The results and analysis of the survey responses will be used to identify actionable items to improve services to

the traveling public with respect to the entry processes for travelers arriving at United States air ports of entry.

Current Actions: This submission is being made to establish a new collection of information.

Type of Review: Approval of a new collection of information.

Affected Public: Individuals, Travelers

Estimated Number of Respondents: 21,000

Estimated Time Per Respondent: 5 minutes

Estimated Total Annual Burden Hours: 1,743

Dated: May 12, 2010

TRACEY DENNING

Agency Clearance Officer

U.S. Customs and Border Protection

[Published in the Federal Register, May 17, 2010 (75 FR 27563)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

NAFTA Regulations and Certificate of Origin

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

ACTION: 30-Day notice and request for comments; Revision of an existing information collection: 1651-0098.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: NAFTA Regulations and Certificate of Origin This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (75 FR 5100) on February 1, 2010, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 21, 2010.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-5806.

SUPPLEMENTARY INFORMATION:

U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104-13). Your comments should address one of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
2. Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: NAFTA Regulations and Certificate of Origin

OMB Number: 1651-0098

Form Number: CBP Forms 434, 446, and 447

Abstract: The objectives of NAFTA are to eliminate barriers to trade in goods and services between the United States, Mexico, and Canada and to facilitate conditions of fair competition within the free trade area. CBP uses these forms to verify eligibility for preferential tariff treatment under NAFTA. CBP is adding the Form 447, North American Free Trade Agreement Motor Vehicle Averaging Election, to this collection of information. The CBP Form 447 is used to gather the information required by 19 CFR Part 181, Section 11 (2), Information Required When Producer Chooses to Average for Motor Vehicles. The Form 447 shall be completed for each category set out in the Regulation that is chosen by the producer of a motor vehicle referred to in 19 CFR

Part 181, Section 13 (Special Regional Value Content Requirements) in filing an election pursuant to subsection 13 (4).

Current Actions: This submission is being made to revise the burden hours as a result of adding Form 447.

Type of Review: Revision

Affected Public: Businesses

Form 434, NAFTA Certificate of Origin:

Estimated Number of Respondents: 40,000

Estimated Number of Responses per Respondent: 3

Estimated Time per Response: 15 minutes

Estimated Total Annual Burden Hours: 30,000

Form 446, NAFTA Questionnaire:

Estimated Number of Respondents: 400

Estimated Number of Responses per Respondent: 1

Estimated Time per Response: 45 minutes

Estimated Total Annual Burden Hours: 300

Form 447, NAFTA Motor Vehicle Averaging Election:

Estimated Number of Respondents: 11

Estimated Number of Responses per Respondent: 1.28

Estimated Time per Response: 1 hour

Estimated Total Annual Burden Hours: 14

Dated: May 17, 2010

TRACEY DENNING
Agency Clearance Officer
U.S. Customs and Border Protection

[Published in the Federal Register, May 20, 2010 (75 FR 28276)]