

U.S. Customs and Border Protection



MODIFICATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN BEARINGS AND HOUSINGS

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

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to the tariff classification of certain bearings and housings.

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 modifying a ruling concerning the tariff classification of certain bearings and housings under the Harmonized Tariff Schedule of the United States (“HTSUS”). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed modification was published on August 29, 2012, in the Customs Bulletin, Volume 46, Number 36. No comments were received in response to this notice.

DATES: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 7, 2013.

FOR FURTHER INFORMATION CONTACT: Robert Shervette, Office of International Trade, Tariff Classification and Marking Branch, 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, a notice was published on August 29, 2012, in the Customs Bulletin, Volume 46, No. 36, proposing to modify one ruling letter pertaining to the tariff classification of a pivot bearing part and a pivot bearings combined with a housing part. Although in the proposed notice, CBP is specifically referring to the modification of New York Ruling Letter (“NY”) N070076, dated August 25, 2009, 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 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 intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in a substantially identical transaction 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 of this notice.

In NY N070076, CBP classified two separate articles—a pivot bearing part and pivot bearings combined with a housing—under heading

7116, HTSUS, which provides for: “[a]rticles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed).” Upon our review of NY N070076, we have determined that the pivot bearing described in that ruling is properly classified under heading 8482, HTSUS, which provides for “[b]all or roller bearings, and parts thereof,” and that the pivot bearings combined with a housing described in that ruling are properly classified under heading 8483, HTSUS, which provides for “[t]ransmission shafts (including camshafts and crankshafts) and cranks; bearing housings, housed bearings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints); parts thereof.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N070076, and revoking or modifying any other ruling not specifically identified to reflect the proper classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letter (“HQ”) H088396, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: October 9, 2012

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

H088396

October 9, 2012

CLA-2 OT:RR:CTF:TCM H088396 RES

CATEGORY: Classification

TARIFF NO.: 8482.10.5068; 8483.20.8040;

8483.30.8020

MR. ADAM LEVY
NNR GLOBAL LOGISTICS
512 EAST DALLAS ROAD
#400
GRAPEVINE, TX 76051

RE: Modification of NY N070076, dated August 25, 2009.

DEAR MR. LEVY:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York (“NY”) Ruling letter N070076, dated August 25, 2009, issued to you on behalf of your client, United Technologies, regarding the classification, under the Harmonized Tariff Schedule of the United States (“HTSUS”), of pivot bearings, pivot bearing housings, and pivot bearings combined with a housing. In NY N070076, CBP classified the pivot bearings and pivot bearings combined with a housing as articles of semi-precious stones under heading 7116, HTSUS, and classified the pivot bearing housings as bearing housings under heading 8483, HTSUS. CBP has determined that NY N070076 was in error with respect to the classification of the pivot bearings and the pivot bearings combined with a housing. Accordingly, we are modifying NY N070076 to reflect the proper classification of the pivot bearings and the pivot bearings combined with a housing.

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 of the proposed action was published on August 29, 2012, in Volume 46, Number 36, of the *Customs Bulletin*. CBP did not receive any comments during the notice period.

FACTS:

In NY N070076, there are three different articles as issue: pivot bearings, part # 1110–113941; pivot bearing housings, part # 1110–114190; and pivot bearings combined with a housing, part # 1110–114510. All three articles are parts used in an altimeter, which is an aeronautical instrument that measures the altitude of an aircraft above a fixed level. The pivot bearings are comprised of custom-made steel balls with a sapphire plate that retains the balls. The pivot bearing housing assemblies are made of brass. The housing assemblies incorporate the pivot bearings to form the combined housing with bearings assembly that ultimately becomes integrated into the final altimeter product. According to United Instruments, all parts are made-to-order for the company’s own altimeter instruments and are not used in other aeronautical instrument manufacturers’ products.

ISSUE:

Whether the pivot bearings are classified under heading 9014, HTSUS, as parts of aeronautical instruments, or under heading 8482, HTSUS, as ball bearings?

Whether the pivot bearing housings and the pivot bearings combined with a housing part are classified under heading 7116, HTSUS, as articles of precious stones, under heading 9014, HTSUS, as parts of navigational instruments, or under heading 8483, HTSUS, as bearing housings/housed bearings?

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 Harmonized System 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 following HTSUS provisions are under consideration:

- 7116 Articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed):
- 8482 Ball or roller bearings, and parts thereof:
- 8483 Transmission shafts (including camshafts and crankshafts) and cranks; bearing housings, housed bearings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints); parts thereof:
- 9014 Direction finding compasses; other navigational instruments and appliances; parts and accessories thereof:

The applicable part of Legal Note 3(k) to Chapter 71, HTSUS, for the merchandise at issue is as follows:

3. This chapter does not cover:

* * *

(k) . . . machinery, mechanical appliances or electrical goods, or parts thereof, of section XVI. . . .

* * * * *

The applicable Legal Notes to Section XVI, HTSUS, for the merchandise at issue are as follows:

1. This section does not cover:

* * *

(f) Precious or semiprecious stones (natural, synthetic or reconstructed) of headings 7102 to 7104, or articles wholly of such stones of heading 7116, except unmounted worked sapphires an diamonds for styli (heading 8522);

* * *

2. Subject to 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546, or 8547) are to be classified according to the following rules:

- (a) Parts which are goods included in any of the headings of chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

* * * * *

The applicable Legal Notes to Chapter 90, HTSUS, for the merchandise at issue are as follows:

* * * * *

2. Subject to 1 above, parts and accessories for machines, apparatus, instruments or articles of this chapter are to be classified according to the following rules:

- (a) Parts and accessories which are goods included in any of the headings of this chapter or of Chapter 84, 85 or 91 (other than heading 8487, 8548 or 9033) are in all cases to be classified in their respective headings;

* * * * *

The articles at issue in NY L070076 are analyzed separately in light of the legal notes above and specifically of the Legal Note 3(k) to Chapter 71, HTSUS.

Pivot Bearings: part # 1110-113941

The pivot bearings were classified in NY N070076 under heading 7116, HTSUS, because of the sapphire plate that was part of the pivot bearings. Upon further examination, it is noted that these pivot bearings are themselves classifiable under a specific provision for bearings under Section XVI, specifically under heading 8482, HTSUS. Pursuant to Legal Note 3(k) to Chapter 71, the pivot bearings are precluded from classification under Chapter 71 because they are articles classifiable under Section XVI. Furthermore, Note 1(f) to Section XVI does not preclude classification in heading 8482 because the articles are not “wholly of such stones of heading 7116.”

United Instruments asserted, in its original ruling request, that the pivot bearings should be classified under heading 9014, HTSUS, because they are parts of aeronautical instruments. Although, the pivot bearings at issue here are parts of altimeters, which are aeronautical instruments classifiable in Chapter 90, the pivot bearings are precluded from classification under Chapter 90 on account of Legal Note 2(a) to Chapter 90 which directs that parts and accessories of goods of Chapter 84 are to be classified in their respective headings. Pursuant to Legal Note 2(a) to Chapter 90, a specific provision for an article classifiable in Chapter 84 prevails over a general parts provision for instruments classifiable in Chapter 90. In additional, Legal Note 2(a) to Section XVI directs that a part that is a good in a heading of Chapter 84 is classified in its respective heading. Therefore, the pivot bearings are properly classified under heading 8482, HTSUS, which specifically provides for ball or roller bearings.

Pivot Bearing Housings: part # 1110–114190

In NY N070076, the pivot bearing housings were classified under heading 8483, HTSUS, because they did not contain sapphire and because a bearing housing is specifically provided for in a provision under heading 8483. United Instruments asserted, in its original ruling request, that the bearing housings should be classified under heading 9014, HTSUS, because they are parts of aeronautical instruments. However, as explained *supra*, pursuant to Legal Note 2(a) to Chapter 90, a specific provision for an article classifiable under Chapter 84 prevails over a general parts provision for instruments classifiable in Chapter 90. In addition, Legal Note 2(a) to Section XVI directs that a part that is a good in a heading of Chapter 84 is classified in its respective heading. Therefore, the pivot bearing housings were properly classified in NY N070076 under heading 8483, HTSUS, which specifically provides for bearing housings.

Pivot Bearing Combined With Housing: part # 1110–114510

The part containing pivot bearings combined with a housing was classified under heading 7116, HTSUS, in NY N070076. Like the pivot bearings themselves, the presence of a sapphire plate does not preclude classification in Section XVI. Therefore, the pivot bearings combined with a housing is properly classified under heading 8483, HTSUS, which specifically provides for housed bearings. (See Note 2(a) to Chapter 90, HTSUS).

HOLDING:

Pursuant to GRI 1, Legal Note 3(k) to Chapter 71, Legal Note 2(a) to Section XVI, and Legal Note 2(a) to Chapter 90, the pivot bearings, part # 1110–113941, articles at issue are classified under heading 8482, specifically, subheading 8482.10.5068, HTSUSA, as “[b]all or roller bearings, and parts thereof; [b]all bearings: [o]ther: [o]ther.” The general, column one, rate of duty is 9 percent *ad valorem*.

Pursuant to GRI 1, Legal Note 2(a) to Section XVI, and Legal Note 2(a) to Chapter 90, the pivot bearing housings, part # 1110–114190, articles at issue are classified under heading 8483, specifically, subheading 8483.30.8020, HTSUSA, as “[t]ransmission shafts (including camshafts and crankshafts) and cranks; bearing housings, housed bearings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints); parts thereof: [b]earing housings; plain shaft bearings: [o]ther: [b]earing housings: [b]all or roller bearing type.” The general, column one, rate of duty is 4.5 percent *ad valorem*.

Pursuant to GRI 1, Legal Note 3(k) to Chapter 71, Legal Note 2(a) to Section XVI, and Legal Note 2(a) to Chapter 90, the pivot bearings combined with a housing, part # 1110–114510, article at issue is classified under heading 8483, specifically, subheading 8483.20.8040, HTSUSA, as “[t]ransmission shafts (including camshafts and crankshafts) and cranks; bearing housings, housed bearings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints); parts thereof: [h]oused bearings, incorporating ball or roller bearings: [o]ther: [i]ncorporating ball bearings.” The general, column one, rate of duty is 4.5 percent *ad valorem*.

EFFECTS ON OTHER RULINGS:

NY N070066, dated August 25, 2009, is hereby MODIFIED.

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



**PROPOSED REVOCATION OF TWO RULING LETTERS
AND PROPOSED MODIFICATION OF TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
SCREWDRIVERS WITH INTERCHANGEABLE BITS**

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

ACTION: Notice of proposed revocation of two ruling letters and proposed modification of treatment relating to the tariff classification of screwdrivers with interchangeable bits.

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 two rulings concerning the tariff classification of screwdrivers with interchangeable bits 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 December 7, 2012.

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) 325–0118.

FOR FURTHER INFORMATION CONTACT: Robert Shervette, Office of International Trade, Tariff Classification and Marking Branch, 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 two ruling letters pertaining to the tariff classification of screwdrivers with interchangeable bits. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (“NY”) D87806, dated February 11, 1999, set forth as “Attachment A”, and NY D88860, dated March 10, 1999, set forth as “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 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 D87806 and NY D88860, CBP classified screwdrivers with interchangeable bits under subheading 8207.90.6000, HTSUSA, which provides for: “[i]nterchangeable tools for handtools . . . : [o]ther interchangeable tools, and parts thereof: [o]ther: [n]ot suitable for cutting metal, and parts thereof: [f]or handtools, and parts thereof.” Upon our review of these two rulings, we have determined that the merchandise described in the rulings is properly classified under subheading 8205.40.0000, HTSUSA, which provides for: “[h]andtools (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: [s]crewdrivers, and parts thereof.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY D87806 and NY D88860 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”) H070915, set forth as “Attachment C,” and HQ H070916, set forth as “Attachment D” 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: October 16, 2012

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY D87806

February 11, 1999

CLA-2-82:RR:NC:115 D87806

CATEGORY: Classification

TARIFF NO.: 8207.90.6000

MS. LISA PETERMAN
AW FENTON COMPANY
1157 RARIG AVENUE
COLUMBUS, OHIO 43236-0614

RE: The tariff classification of 8" 6-in-1 Supergrip Screwdriver with six bits from China.

DEAR MS. PETERMAN:

In your letter dated February 1, 1999 you requested a tariff classification ruling on behalf of your client Consolidated Stores Corp.

The sample submitted (item SD65PND) is an 8" 6-in-one Supergrip Screwdriver with six attached bits. The screwdriver has a plastic handle with a 2.5" black grip. The shank is made of carbon steel. There are six bits made of chrome vanadium steel that measure 1" in length and are housed on the screwdriver. The screwdriver and bits are sold as a single unit. The bits include sizes 1 slotted 3/16", 1 slotted 1/4", 1 Phillips 1", 1 Phillips 2", 1 star 15 and 1 star 20. The sample will be returned as per your request.

The applicable subheading for the screwdriver with bits will be 8207.90.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for Interchangeable tools for hand tools, base metal parts thereof: Other: Not suitable for cutting metal, and parts thereof: For hand tools, and parts thereof. The rate of duty will be 4.3% ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Melvyn Birnbaum at 212-637-7017

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

NY D88860

March 10, 1999

CLA-2-82:RR:NC:115 D88860

CATEGORY: Classification

TARIFF NO.: 8207.90.6000

MR. ARLEN T. EPSTEIN
TOMPKINS & DAVIDSON
1515 BROADWAY
NEW YORK, N.Y. 10036-8901

RE: The tariff classification of Light-Up Magnetic Screwdriver from Taiwan or China.

DEAR MR. EPSTEIN:

In your letter dated March 4, 1999 you requested a tariff classification ruling on behalf of your client Avon Products, Inc.

The sample submitted (PP189453) is an interchangeable tool consisting of six bits (two flat head screwdriver bits, two Phillips head screwdriver bits and two star shaped bits) with a lighted "driver" handle. The handle incorporates a magnetized, telescoping shaft and a small battery power light to illuminate the tool. Each bit, measuring approximately one inch, is stored in a molded plastic housing located in the handle. The sample will be returned as per your request.

The applicable subheading for the interchangeable tool holder with screwdriver bits will be 8207.90.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for Other interchangeable tools, and parts thereof: Other: Other: Not suitable for cutting metal, and parts thereof: For handtools, and parts thereof. The rate of duty will be 4.3% ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Melvyn Birnbaum at 212-637-7017.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT C]

HQ H070915

CLA-2 OT:RR:CTF:TCM H070915 RES

CATEGORY: Classification

TARIFF NO.: 8205.40.0000

Ms. LISA PETERMAN
AW FENTON COMPANY

1157 RARIG AVENUE
COLUMBUS, OHIO 43236-0614

RE: Revocation of New York Ruling Letter D87806, dated February 11, 1999; classification of an 8" 6-in-1 Supergrip Screwdriver with six bits from China.

DEAR Ms. PETERMAN:

This letter is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered New York ("NY") Ruling letter D87806, dated February 11, 1999, regarding the classification of an 8" 6-in-1 Supergrip Screwdriver with six bits article, under the Harmonized Tariff Schedule of the United States ("HTSUS"). The merchandise in NY D87806 was classified as interchangeable tools, under heading 8207, HTSUS. We have determined that NY D87806 was in error. Accordingly, we are revoking NY D87806, to reflect the proper classification of the 8" 6-in-1 Supergrip Screwdriver with six bits articles.

FACTS:

The following facts were set forth in NY D87806:

The sample submitted (item SD65PND) is an 8" 6 in-one Supergrip Screwdriver with six attached bits. The screwdriver has a plastic handle with a 2.5" black grip. The shank is made of carbon steel. There are six bits made of chrome vanadium steel that measure 1" in length and are housed on the screwdriver. The screwdriver and bits are sold as a single unit. The bits include sizes 1 slotted 3/36", 1 slotted 1/4", 1 Phillips 1", 1 Phillips 2", 1 star 15 and 1 star 20.

ISSUE:

Whether the subject merchandise is classified under heading 8205, HTSUS as a single tool or under 8207 as an interchangeable tool for handtools?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI), and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation (ARI). 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.

The HTSUS headings under consideration in this case 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:
- 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:

The Legal Notes to Chapter 82, HTSUS, provide in pertinent part:

1. Apart from blow torches and similar self-contained torches, portable forges, grinding wheels with frameworks, manicure or pedicure sets, and goods of heading 8209, this chapter covers only articles with a blade, working edge, working surface or other working part of:

(a) Base metal;

* * *

2. Parts of base metal of the articles of this chapter are to be classified with the articles of which they are parts, except parts separately specified as such and toolholders (heading 8466). However, parts of general use as defined in note 2 to section XV are in all cases excluded from this chapter.

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 Harmonized System 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).

EN 82.05 provides in pertinent part:

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:

* * *

(D) Screwdrivers (including ratchet types).

* * * * *

EN 82.07 provides in pertinent part:

Whereas (apart from a few exceptions such as machine saw blades) the preceding headings of this Chapter apply in the main to hand tools ready for use as they stand or after affixing handles, this heading covers an important group of tools which are unsuitable for use independently, but are design to be fitted, as the case may be, into:

(A) hand tools, whether or not power-operated (e.g., breast drills, braces and die-stocks),

* * * * *

The tools classified in this heading include:

* * *

(9) Other interchangeable tools, such as:

* * *

(c) Screwdriver bits.

* * * * *

This article was originally classified under heading 8207, HTSUS. However, upon further review, because the screwdriver bits are imported with the screwdriver shaft and screwdriver handle, are stored within the actual screwdriver handle itself, and the screwdriver bits, shaft, and handle are all sold together in retail, CBP has now determined that the article is classified as a complete article pursuant to GRI 1.

Screwdriver bits, imported by themselves, would be classifiable under heading 8207, HTSUS. However, as EN 82.07 explains, hand tools that are ready for use, such as the article at issue here, are not classifiable under heading 8207, HTSUS. Instead, articles classifiable under heading 8207, HTSUS, such as the screwdriver bits when imported and sold as separate articles, are unsuitable for use independently and must be fitted into a screwdriver shaft in order to perform the screwing function.

The tariff term “screwdriver” is not defined in the HTSUS. “When a tariff term is not defined in either the HTSUS or its legislative history, the term’s correct meaning is presumed to be its common meaning in the absence of evidence to the contrary.” *Timber Prods. Co. v. United States*, 515 F.3d 1213, 1219 (Fed. Cir. 2008). In discerning this common meaning, federal courts utilize dictionary definitions of the statute’s words. See *Archer Daniels v. United States*, 561 F.3d 1308, 1312 (Fed. Cir. 2009). Various lexicographic resources define screwdriver as a tool for turning screws.¹ A screwdriver consists of a handle made of various materials (e.g. plastic and rubber) attached to a narrow shank usually made of a base metal and has a tip on the end of the shank that fits into the slot of a screw.²

There is nothing in the HTSUS or the ENs limiting a screwdriver to having only a fixed bit head, possessing only one type of bit, being able to function with one type of screw (e.g. Phillips, flathead, Robertson, hex, star), having a fixed handle, or a ratchet type handle. Rather, the only requirement for a tool to be classified as a screwdriver is that it is a hand tool for turning screws (the terms of heading 8205 limit this heading to the type of tools where a person uses his/her hands to utilize the tool to perform the work). Reading heading 8205.40.00, HTSUS, and EN 82.05 broadly, it encompasses screwdrivers that not only have a fixed head, but screwdrivers that could have interchangeable heads, including screwdrivers that come with multiple bits stored within the

¹ See <http://www.merriam-webster.com/dictionary/screwdriver?show=0&t=1335991059> (last visited May 2, 2012); <http://en.wikipedia.org/wiki/Screwdriver> (last visited on May 2, 2012);

² See <http://dictionary.reference.com/browse/screwdriver> (last visited May 2, 2012).

handle. The screwdriver bits, shaft, and handle, when imported and sold together form a complete self-contained screwdriver.

Thus, a screwdriver with multiple bits stored in the handle or on the tool itself can be regarded as a single tool for classification purposes and, hence, *eo nomine* classifiable as a screwdriver under heading 8205, HTSUS. See NY F80628, dated December 13, 1999; NY J82517, dated April 17, 2003; NY N034060, dated August 4, 2008. Because we have determined that the article at issue here is a complete article properly classifiable under GRI 1, resort to an analysis under GRI 3(b) is unnecessary.

Therefore, upon reconsideration CBP has determined that the classification in NY D87806 of the 8" 6-in-1 Supergrip Screwdriver with six bits in heading 8207, HTSUS, is incorrect. The 8" 6-in-1 Supergrip Screwdriver with six bits is properly classified in heading 8205, HTSUS, as "[h]andtools (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:"

HOLDING:

Pursuant to GRI 1, the 8" 6-in-1 Supergrip Screwdriver with six bits is classified under subheading 8205.40.0000, HTSUSA, as "[h]andtools (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: [s]crewdrivers, and parts thereof." The general, column one, rate of duty is 6.2% *ad valorem*.

EFFECTS ON OTHER RULINGS:

NY D87806, dated February 11, 1999, is revoked.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT D]

HQ H070916
CLA-2 OT:RR:CTF:TCM H070916 RES
CATEGORY: Classification
TARIFF NO.: 8205.40.0000

MR. ARLEN T. EPSTEIN
TOMPKINS & DAVIDSON
1515 BROADWAY
NEW YORK, NY 10036-8901

RE: Revocation of New York Ruling Letter D88860, dated March 10, 1999; classification of Light-up Magnetic Screwdriver.

DEAR MR. EPSTEIN:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York (“NY”) Ruling letter D88860, dated March 10, 1999, regarding the classification of a light-up magnetic screwdriver with six bits article, under the Harmonized Tariff Schedule of the United States (“HTSUS”). The merchandise in NY D88860 was classified as interchangeable tools, under heading 8207, HTSUS. We have determined that NY D88860 was in error. Accordingly, we are revoking NY D88860, to reflect the proper classification of the light-up magnetic screwdriver with six bits article.

FACTS:

The following facts were set forth in NY D88860:

The sample submitted (PP189453) is an interchangeable tool consisting of six bits (two flat head screwdriver bits, two Phillips head screwdriver bits and two star shaped bits) with a lighted “driver” handle. The handle incorporates a magnetized, telescoping shaft and a small battery power light to illuminate the tool. Each bit, measuring approximately one inch, is stored in a molded plastic housing located in the handle.

ISSUE:

Whether the subject merchandise is classified under heading 8205, HTSUS as a single tool or under 8207 as an interchangeable tool for handtools?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI), and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation (ARI). 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.

The HTSUS headings under consideration in this case 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:
- 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:

The Legal Notes to Chapter 82, HTSUS, provide in pertinent part:

1. Apart from blow torches and similar self-contained torches, portable forges, grinding wheels with frameworks, manicure or pedicure sets, and goods of heading 8209, this chapter covers only articles with a blade, working edge, working surface or other working part of:

(a) Base metal;

* * *

2. Parts of base metal of the articles of this chapter are to be classified with the articles of which they are parts, except parts separately specified as such and toolholders (heading 8466). However, parts of general use as defined in note 2 to section XV are in all cases excluded from this chapter.

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 Harmonized System 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).

EN 82.05 provides in pertinent part:

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:

* * *

(D) Screwdrivers (including ratchet types).

* * * * *

EN 82.07 provides in pertinent part:

Whereas (apart from a few exceptions such as machine saw blades) the preceding headings of this Chapter apply in the main to hand tools ready for use as they stand or after affixing handles, this heading covers an important group of tools which are unsuitable for use independently, but are design to be fitted, as the case may be, into:

(A) hand tools, whether or not power-operated (e.g., breast drills, braces and die-stocks),

* * * * *

The tools classified in this heading include:

* * *

(9) Other interchangeable tools, such as:

* * *

(c) Screwdriver bits.

* * * * *

The light-up magnetic screwdriver with six bits article was originally classified under heading 8207, HTSUS. However, upon further review, because the screwdriver bits are imported with the screwdriver shaft and screwdriver handle, are stored within the actual screwdriver handle itself, and the screwdriver bits, shaft, and handle are all sold together in retail, CBP has now determined that the article is classified as a complete article pursuant to GRI 1.

Screwdriver bits, imported by themselves, would be classifiable under heading 8207, HTSUS. However, as EN 82.07 explains, hand tools that are ready for use, such as the article at issue here, are not classifiable under heading 8207, HTSUS. Instead, articles classifiable under heading 8207, HTSUS, such as the screwdriver bits when imported and sold as separate articles, are unsuitable for use independently and must be fitted into a screwdriver shaft in order to perform the screwing function.

The tariff term “screwdriver” is not defined in the HTSUS. “When a tariff term is not defined in either the HTSUS or its legislative history, the term’s correct meaning is presumed to be its common meaning in the absence of evidence to the contrary.” *Timber Prods. Co. v. United States*, 515 F.3d 1213, 1219 (Fed. Cir. 2008). In discerning this common meaning, federal courts utilize dictionary definitions of the statute’s words. See *Archer Daniels v. United States*, 561 F.3d 1308, 1312 (Fed. Cir. 2009). Various lexicographic resources define screwdriver as a tool for turning screws.¹ A screwdriver consists of a handle made of various materials (e.g. plastic and rubber) attached to a narrow shank usually made of a base metal and has a tip on the end of the shank that fits into the slot of a screw.²

There is nothing in the HTSUS or the ENs limiting a screwdriver to having only a fixed bit head, possessing only one type of bit, being able to function with one type of screw (e.g. Phillips, flathead, Robertson, hex, star), having a fixed handle or a ratchet type handle, having a fixed shaft or telescopic shaft, or incorporating a small battery powered light. Rather, the only requirement for a tool to be classified as a screwdriver is that it is a hand tool for turning screws (the terms of heading 8205 limit this heading to the type of tools where a person uses his/her hands to utilize the tool to perform the work). Reading heading 8205.40.00, HTSUS, and EN 82.05 broadly, it encompasses

¹ See <http://www.merriam-webster.com/dictionary/screwdriver?show=0&t=1335991059> (last visited May 2, 2012); <http://en.wikipedia.org/wiki/Screwdriver> (last visited on May 2, 2012);

² See <http://dictionary.reference.com/browse/screwdriver> (last visited May 2, 2012).

screwdrivers that not only have a fixed head, but screwdrivers that could have interchangeable heads, including screwdrivers that come with multiple bits stored within the handle. The screwdriver bits, shaft, handle, and other subsidiary features (i.e. light), when imported and sold together form a complete self-contained screwdriver.

Thus, a screwdriver with multiple bits stored in the handle or on the tool itself can be regarded as a single tool for classification purposes and, hence, *eo nomine* classifiable as a screwdriver under heading 8205, HTSUS. See NY F80628, dated December 13, 1999; NY J82517, dated April 17, 2003; NY N034060, dated August 4, 2008. Because we have determined that the article at issue here is a complete article properly classifiable under GRI 1, resort to an analysis under GRI 3(b) is unnecessary.

Therefore, upon reconsideration CBP has determined that the classification in NY D88860 of the light-up magnetic screwdriver with six bits under heading 8207, HTSUS, is incorrect. The light-up magnetic screwdriver with six bits is properly classified under heading 8205, HTSUS, as “[h]andtools (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.”

HOLDING:

Pursuant to GRI 1, the light-up magnetic screwdriver with six bits that are stored in its handle is classified under subheading 8205.40.0000, HTSUSA, as “[h]andtools (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: [s]crewdrivers, and parts thereof.” The general, column one, rate of duty is 6.2% *ad valorem*.

EFFECTS ON OTHER RULINGS:

NY D88860, dated March 10, 1999, is 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 VALVE CABLE SUPPORT

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 valve cable support.

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 one ruling letter concerning the classification of a valve cable support 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 December 7, 2012.

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 one ruling letter pertaining to the classification of a valve cable support. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) N134819, dated December 22, 2010 (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 N134819, CBP held that the subject valve control support was classified in subheading 7326.90.85, HTSUS, as “Other articles

of iron or steel: other, other, other, other, other.” Based on the information provided in the initial ruling request, we were unable to determine that the subject merchandise was a part of a plastic injection molding machine. However, in requesting reconsideration, the importer has submitted new information concerning the development of this merchandise and its uses.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N134819, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed HQ H207578 (Attachment B). 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: October 16, 2012

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT A]

N134819

December 22, 2010

CLA-2-73:OT:RR:NC:N1:113

CATEGORY: Classification

TARIFF NO.: 7326.90.8588

MR. MARC A. ROMANO

HUSKY INJECTION MOLDING SYSTEMS, INC.

55 AMHERST VILLA ROAD

BUFFALO, NY 14225-1432

RE: The tariff classification of a valve cable support from Canada

DEAR MR. ROMANO:

In your letter dated November 19, 2010, you requested a tariff classification ruling on a valve cable support. Drawings and specification sheets for the merchandise under consideration were submitted for our review.

The imported article in question is a valve cable support, part number 4748679, made of non-alloy carbon steel. You stated in your letter dated September 24, 2010, that "Its main purpose is to support and protect electrical cables that run between a valve assembly and an injection molding machine on a plastic injection molding system."

In your letter dated November 19, 2010, you indicated that "the valve assembly is interconnected to the injection molding machine by way of electrical cables during operation. The valve assembly is removable from the injection molding machine." The valve cable support is mounted to the machine and acts as a support to keep the cables connecting the valve assembly to the machine from sagging.

You proposed classification for the valve cable support in heading 7326, heading 8302 or heading 8477, Harmonized Tariff Schedule of the United States (HTSUS). The National Import Specialist that handles heading 8302, HTSUS, stated that "The valve cable support is used on a machine. Machines are not ejusdem generis with the exemplars of heading 8302, therefore the valve cable support cannot be classified in this heading."

The National Import Specialist that handles heading 8744, HTSUS, has stated that "In his original submission dated October 4, 2010, Mr. Romano proposed classifying a non-alloy carbon steel valve cable support in one of three provisions, i.e., heading 7326, heading 8302 or heading 8477. Reviewing the specifications of this article, it is obvious that the valve cable support is not a machine in and of itself. It contains no moving parts or mechanical features. In considering whether the article is a part of an injection molding machine of heading 8477, it is noted that the term "a part of an article" has generally been interpreted by CBP to mean "an internal, constituent or component part, without which the article to which it is joined could not function." As the injection molding machine functions without the bracket, the bracket is not, in this office's opinion, a part. Turning to the possibility that the item might be an accessory, the term "accessory" has been interpreted by CBP as an item of secondary or subordinate importance. An accessory is generally not necessary to enable the good with which it is used to fulfill its intended function. An accessory is not essential to the operation of the good with which it is used. However, any discussion as to whether the valve cable support is (or is not) an accessory is moot with regard to heading

8477 as the language of said heading does not encompass accessories, only parts. In view of the above, the valve cable support would be precluded from classification in heading 8477.” Therefore, the subject valve cable support is classified under heading 7326, HTSUS, which provides for other articles of iron or steel.

The applicable subheading for the valve cable support will be 7326.90.8588, HTSUS, which provides for other articles of iron or steel, other, other, other, other. The rate of duty will be 2.9 percent ad valorem.

Duty rates 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 heading 8302, HTSUS, contact National Import Specialist Barbara Kaiser at 646-733-3024. If you have any questions regarding heading 8477, HTSUS, contact National Import Specialist Patricia O'Donnell at 646-733-3011. If you have any questions regarding heading 7326, HTSUS, contact National Import Specialist Ann Taub at 646-733-3018.

Sincerely,

ROBERT B. SWIERUPSKI

Director,

National Commodity Specialist Division

[ATTACHMENT B]

HQ H207578
CLA-2 OT:RR:CTF:TCM H207578 TNA
CATEGORY: Classification
TARIFF NO.: 8477.90.85

MR. MARC ROMANO, CUSTOMS TEAM LEADER, US
HUSKY INJECTION MOLDING SYSTEMS, INC.
55 AMHERST VILLA ROAD
BUFFALO, NY 14225

RE: Revocation of NY N134819; Classification of a valve cable support

DEAR MR. ROMANO:

This letter is in reference to New York Ruling Letter (“NY”) N134819, issued to Husky Injection Molding Systems, Inc. (“Husky”) on December 22, 2010, concerning the tariff classification of a valve cable support. In NY N134819, U.S. Customs and Border Protection (“CBP”) classified the merchandise in subheading 7326.90.85, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Other articles of iron or steel: Other: Other: Other: Other.” We have reviewed NY N134819 and found it to be in error. For the reasons set forth below, we hereby revoke NY N134819.

FACTS:

The subject merchandise consists of a valve cable support, part number 4748679. It is made of non-alloy carbon steel and is designed for use in Husky’s plastic injection molding machines. The support it offers keeps the electrical cables that connect the valve assembly to the plastic injection molding machine from sagging. The subject merchandise also serves to protect the machine’s electrical cables. No samples of the subject merchandise were submitted. However, drawings were submitted showing the valve cable support itself and the physical location of the valve support cable as it is used on an injection molding machine.

Based upon the information contained in the original ruling request, NY N134819 determined that the subject vertical cable support was not a part of Husky’s plastic injection molding machine. However, in your request for reconsideration, you submit that new information is available regarding how this item functions. You state that following the issuance of NY N134819, you sought guidance from your internal engineering design group to clarify whether the subject valve cable support is an optional or necessary component. In response, your engineering team noted that it designed the subject merchandise in response to a service issue. Prior to the development of the subject merchandise, the weight of the valve cables would pull the valve connector off the valve after a short period of time in operation. If the valve connector falls off or pulls out of contact, the machine stops. You state that since discovering this issue, all of your valve assemblies are now mandated to be manufactured with the subject valve cable support, which fixes the problem and allows the machines to continue functioning.

In NY N134819, U.S. Customs and Border Protection (“CBP”) classified the subject valve cable support in subheading 7326.90.85, Harmonized Tariff Schedule of the United States (“HTSUS”), as “Other articles of iron or steel: Other: Other: Other: Other.”

ISSUE:

Whether vertical cable supports are classified in heading 7326, HTSUS, as other articles of iron or steel, or in heading 8477, HTSUS, as parts of plastic molding machines?

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:

7326	Other articles of iron or steel:
8477	Machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this chapter; parts thereof:

Legal Note 2 to Section XVI, HTSUS, of which heading 8477, HTSUS, is a part, provides, in pertinent part, that:

Subject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

- (a) Parts which are goods included in any of the headings of chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;
- (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;
- (c) All other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized 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 (Aug. 23, 1989).

The EN to heading 7326, HTSUS, provides, in pertinent part:

This heading covers all iron or steel articles obtained by forging or punching, by cutting or stamping or by other processes such as folding, assembling, welding, turning, milling or perforating **other than** articles included in the preceding headings of this Chapter or covered by Note 1 to Section XV or included in **Chapter 82** or **83** or more specifically covered elsewhere in the Nomenclature.

The EN to heading 8477, HTSUS, provides, in pertinent part:

The heading covers machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this Chapter...

PARTS

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), the heading also covers parts of the machinery of this heading.

In your request for reconsideration, you argue that the new information you submitted regarding the way the subject merchandise functions warrants reconsideration of NY N134819. You argue that the injection molding machines with which the subject valve cable support is used could not function without it, because the valve connector would be separated from the machine, forcing the machine to cease its operations. As a result, you argue that the subject valve cable support is classified in subheading 8477.90.85, HTSUS, as a part of plastic injection molding machines.

We note that CBP has consistently classified plastic injection molding machines and parts thereof in heading 8477, HTSUS. *See, e.g.*, HQ H025103, dated February 6, 2009; NY M83570, dated June 13, 2006; NY B82646, dated March 26, 1997; NY D87287, dated February 22, 1999; NY L87365, dated September 13, 2006; NY L80203, dated November 12, 2004; NY D82211, dated October 7, 1998; NY J87789, dated August 25, 2003. The subject valve cable support is used with Husky's plastic injection molding machines. As a result, we examine whether they can be classified as parts of these machines.

The courts have considered the nature of "parts" under the HTSUS and two distinct though not inconsistent tests have resulted. *See Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States*, ("Bauerhin") 110 F.3d 774. The first, articulated in *United States v. Willoughby Camera Stores*, ("Willoughby Camera") 21 C.C.P.A. 322 (1933), requires a determination of whether the imported item is "an integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article." *Bauerhin*, 110 F.3d at 778 (quoting *Willoughby Camera*, 21 C.C.P.A. 322 at 324). The second, set forth in *United States v. Pompeo*, ("Pompeo") 43 C.C.P.A. 9 (1955), states that "an imported item dedicated solely for use with another article is a 'part' of that article within the meaning of the HTSUS." *Id.* at 779 (citing *Pompeo*, 43 C.C.P.A. 9 at 13). Under either line of cases, an imported item is not a part if it is "a separate and distinct commercial entity." *Id.*

In the present case, prior to the development of the subject valve cable support, Husky's injection molding machines would often cease to function because the weight of their valve cables would pull their valve connector off of the valve. Husky designed the subject merchandise to solve this problem in

particular; thus, it was designed for and is used solely for Husky's injection molding machines. Without the subject valve cable support, Husky's injection molding machines would continue to shut down when their connector valves became separated from the valves while the machines were in use. Therefore, we find that the subject merchandise is both dedicated solely for use with the injection molding machine and an integral component of the machine, without which the machine would not function properly.

As such, it is classified in subheading 8477.90.85, HTSUS, which provides for "Machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this chapter; parts thereof: Parts: Other." This conclusion is consistent with prior CBP rulings and Note 2(a) to Section XVI, HTSUS. *See, e.g.*, NY I85725, dated September 16, 2002 (classifying injection molding machine safety covers and doors in subheading 8477.90.85, HTSUS); HQ H025103 (affirming NY M83570's classification of parts of Husky's molding machines in subheadings 8477.90.85 and 8477.90.25, HTSUS).

Finally, we note that NY N134819 classified the subject merchandise in heading 7326, HTSUS, as "Other articles of iron or steel." While we acknowledge that the instant valve cable support is an article of iron or steel of heading 7326, HTSUS, merchandise is only classified there when it is not described elsewhere in the tariff schedule. *See* Note 2(a) to Section XVI, HTSUS, and EN 73.26. In the present case, because the subject merchandise is described by the terms of heading 8477, HTSUS, it is excluded from heading 7326, HTSUS.

HOLDING:

Under the authority of GRI 1, the subject valve cable support is classified in heading 8477, HTSUS. It is specifically provided for in subheading 8477.90.85, HTSUS, which provides for "Machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this chapter; parts thereof: Parts: Other." The column one general rate of duty is 3.1% *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 N134819, dated December 22, 2010, is **REVOKED**.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**MODIFICATION OF A RULING LETTER AND
MODIFICATION OF TREATMENT RELATING TO THE
ADMISSIBILITY OF JEWELRY SET WITH TUMBLED
DIAMONDS FROM THE REPUBLIC OF ZAMBIA**

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

ACTION: Notice of modification of a ruling letter and modification of treatment relating to the admissibility jewelry set with tumbled diamonds from the Republic of Zambia.

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 modifying a ruling concerning the admissibility of jewelry set with tumbled diamonds from the Republic of Zambia (Zambia). Similarly, CBP is modifying any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 46, No. 13, on March 21, 2012. No comments were received in response to the notice.

DATES: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 7, 2013.

FOR FURTHER INFORMATION CONTACT: Laurance W. Frierson, Tariff Classification and Marking Branch, at (202) 325–0371.

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) (“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 U.S. Customs and Border Protection (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 public 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 modifying a ruling letter pertaining to the admissibility of jewelry set with tumbled diamonds from Zambia. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) N018792, dated November 8, 2007, this notice covers any ruling 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 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 modifying 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.

In NY N018792, CBP stated that jewelry set with tumbled diamonds imported from Zambia is not admissible into the United States. CBP now clarifies that jewelry set with tumbled diamonds from Zambia is not subject to the requirements of the U.S. Clean Diamond Trade Act (19 U.S.C. §3901) and is therefore admissible into the United States.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY N018792 to reflect the proper admissibility of the subject merchandise according to the analysis contained in the Headquarters Ruling Letter (HQ) H173035, set forth as an attachment to this document. Additionally,

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

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

Dated: October 9, 2012

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H173035

October 9, 2012

CLA-2 OT:RR:CTF:TCM H173035 LWF

CATEGORY: Admissibility

MR. DAVID E. HORTON, III
TREASURES FROM THE PROPHET
3515 TULLAMORE ROAD
UNIVERSITY HEIGHTS, OHIO 44118

RE: Modification of New York Ruling Letter (NY) N018792; Admissibility of jewelry set with tumbled diamonds from the Republic of Zambia

DEAR MR. HORTON:

This modification is in reference to New York Ruling Letter (“NY”) N018792, dated November 8, 2007, issued to you concerning the tariff classification of loose tumbled diamonds, jewelry set with tumbled diamonds, loose cut and polished diamonds, and jewelry set with cut and polished diamonds. All articles were from the Republic of Zambia (Zambia). In NY N018792, U.S. Customs and Border Protection (CBP) stated that jewelry set with tumbled diamonds from Zambia will not be allowed into the United States because tumbled diamonds are considered rough and Zambia is not a member of the Kimberley Process Certification Scheme (“KPCS”). We have reviewed NY N018792 and find the ruling letter to be partially in error. For the reasons set forth below, we hereby modify NY N018792.

This modification applies only to the admissibility of the jewelry set with tumbled diamonds from Zambia. The classifications contained in NY N018792 of cut and polished loose diamonds under heading 7102, Harmonized Tariff Schedule of the United States (HTSUS), and the classifications of jewelry set with cut and polished diamonds under headings 7113 and 7116, HTSUS, remain unmodified. We also emphasize that, as stated in NY N018792, because tumbled diamonds are considered rough and Zambia is not a member of the KPCS, loose tumbled diamonds from Zambia are not admissible into the United States.

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 modify NY N018792 was published on March 21, 2012, in Volume 46, Number 13, of the *Customs Bulletin*. CBP received no comments in response to this notice.

FACTS:

In your letter, dated October 20, 2007, you stated that you intended to import certain articles, including loose tumbled diamonds from Zambia, as well as jewelry set with tumbled diamonds from Zambia. You indicated that the jewelry would consist of silver, gold, or copper and that it would be set with tumbled diamonds. While you stated that each piece of jewelry would be valued at over \$40, you did not provide a carat weight of the tumbled diamonds which would be set in the jewelry.

NY N018792 states as follows:

Tumbled diamonds are not considered “worked,” but still in their “rough” state. A diamond that has been tumbled is where the surface has been rendered glossy and shiny by chemical treatment, also known as chemical polishing. Chemical polishing is different from traditional abrasive polishing

in that the diamonds are not mounted individually and polished on a polishing wheel, but are loaded, in bulk, into a chemical reactor.

ISSUE:

Is silver, gold, or copper jewelry set with tumbled diamonds from Zambia admissible into the United States?

LAW AND ANALYSIS:

The U.S. Clean Diamond Trade Act of 2003 (“CDTA”), (Pub. L. 108–19, 117 Stat. 631), concerns efforts by the United States to curb the use of funds derived from the sale of rough diamonds by state actors and rebels to finance military activities and subvert international efforts to promote peace and stability. Section 4 of the CDTA (19 U.S.C. § 3903(a)) prohibits the importation into, or exportation from, the United States of any rough diamond, from whatever source, that has not been controlled through the Kimberley Process Certification Scheme. *See* Treasury Regulations section 592 (31 C.F.R § 592). “Rough diamond” is defined in 19 U.S.C. § 3902(9) and 31 C.F.R. § 592.310 as meaning “any diamond that is unworked or simply sawn, cleaved, or bruted and classifiable under subheading 7102.10, 7102.21, or 7102.31 of the Harmonized Tariff Schedule of the United States.”

The HTSUS provisions referenced in 19 U.S.C. § 3902 are the following:

- 7102: Diamonds, whether or not worked, but not mounted or set:
- 7102.10: Unsorted...
- 7102.21: Industrial:
 - Unworked or simply sawn, cleaved or bruted:
- 7102.31: Nonindustrial:
 - Unworked or simply sawn, cleaved or bruted:
 - * * * * *

Based on the CDTA definition of “rough diamond,” we find that the jewelry at issue is admissible into the United States and is not subject to Kimberley Process Certification Scheme requirements. The CDTA restricts the import of rough diamonds into the United States. The term “rough diamond” is defined in section 19 U.S.C. § 3902(9) as meaning any diamond that is unworked or simply sawn, cleaved, or bruted and classifiable under subheading 7102.10, 7102.21, or 7102.31, HTSUS. 31 C.F.R. § 592.310. Heading 7102, HTSUS, provides for “diamonds, whether or not worked, **but not mounted or set**” (emphasis added). By contrast, the instant merchandise consists of gold, silver, or copper jewelry set with tumbled diamonds from Zambia. Therefore, it is not classified in heading 7102, HTSUS. Because the merchandise is not classified in heading 7102, HTSUS, it is not considered a “rough diamond” under the CDTA. Consequently, the jewelry set with tumbled diamonds from Zambia is not subject to Kimberley Process Certification Scheme requirements and are not prohibited from import under the U.S. Clean Diamond Trade Act.

This modification applies only to the admissibility of jewelry set with tumbled diamonds from Zambia.

HOLDING:

As gold, silver, or copper jewelry set with tumbled diamonds is not classified in heading 7102, HTSUS, the tumbled diamonds do not fall within the U.S. Clean Diamond Trade Act's definition of a "rough diamond." The jewelry is admissible into the United States under the terms of the CDTA.

Note, however, that rough diamonds from Zambia classified in subheadings 7102.10, 7102.21, or 7102.31, HTSUS, would not be admissible to the United States.

EFFECT ON OTHER RULINGS:

In accordance with the above analysis, NY N018792, dated November 8, 2007, is hereby MODIFIED.

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

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



AIR CARGO ADVANCE SCREENING (ACAS) PILOT PROGRAM

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) is formalizing and expanding an Air Cargo Advance Screening (ACAS) pilot program which revises the time frame for transmission by pilot participants of a subset of mandatory advance electronic information for air cargo. CBP regulations implementing the Trade Act of 2002 require advance information for air cargo to be submitted no later than the time of departure of the aircraft for the United States (from specified locations) or four hours prior to arrival in the United States for all other locations. The ACAS pilot is a voluntary test in which participants agree to submit a subset of the required data elements (ACAS data) at the earliest point practicable prior to loading of the cargo onto the aircraft destined to or transiting through the United States. This notice provides a description of the ACAS pilot, sets forth eligibility requirements for participation, and invites public comment on any aspect of the test.

DATES: CBP is accepting applications from new ACAS pilot participants until November 23, 2012. Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period.

ADDRESSES: Written comments concerning program, policy, and technical issues should be submitted via email to CBPCCS@cbpdhs.gov.

FOR FURTHER INFORMATION CONTACT: Regina Park, Cargo and Conveyance Security, Office of Field Operations, U.S. Customs & Border Protection, via email at regina.park@dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 343(a) of the Trade Act of 2002, as amended (Trade Act) (19 U.S.C. 2071 note), requires CBP to promulgate regulations providing for the mandatory transmission of electronic cargo information by way of a CBP-approved electronic data interchange (EDI) system before the cargo is brought into or departs the United States by any mode of commercial transportation (sea, air, rail, or truck). The required cargo information is that which is reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling pursuant to the laws enforced and administered by CBP.

On December 5, 2003, CBP published a final rule in the **Federal Register** (68 FR 68140) to effectuate the provisions of the Trade Act. In particular, a new § 122.48a (19 CFR 122.48a) was added to the title 19 regulations to implement requirements for cargo brought into the United States by air. As provided in 19 CFR 122.48a, for any inbound aircraft required to enter under 19 CFR 122.41 that will have commercial cargo aboard, CBP must electronically receive certain information regarding that cargo through a CBP-approved EDI system no later than the time of the departure of the aircraft for the United States from any foreign port or place in North America, including locations in Mexico, Central America, South America (from north of the Equator only), the Caribbean, and Bermuda; or no later than 4 hours prior to the arrival of the aircraft in the United States for aircraft departing for the United States from any other foreign area.

In October 2010, the global counter-terrorism community disrupted a potential terrorist attack when concealed explosive devices were discovered in cargo on board aircraft destined for the United States. CBP can better prevent such attacks and strengthen air cargo supply chain security if the required time frame for the presentation of advance electronic cargo information is, in all cases, before the air cargo is loaded and early enough so that CBP has sufficient time to identify, target, and mitigate high-risk cargo. Therefore, CBP and the Transportation Security Administration (TSA) have collaborated with the private sector to identify strategies to strengthen air cargo

supply chain security, including developing a mechanism to collect cargo information at the earliest point practicable in the supply chain.

As a result of this collaboration, in December 2010, four express consignment air courier companies (“express couriers”) volunteered to provide CBP with a subset of the data elements required by 19 CFR 122.48a as early as possible before cargo is loaded onto an aircraft so that the requisite targeting could occur in the pre-loading air cargo environment, thus establishing the ACAS pilot. Since then, three passenger carriers, one-all cargo carrier, and one freight forwarder have joined the ACAS pilot and are operational. As of the summer of 2012, an additional twelve passenger carriers, two all-cargo carriers, and fifteen freight forwarders are in the process of testing or development to become operational ACAS pilot participants or have actively expressed an interest in doing so. CBP is in ongoing communication with stakeholders from all stages of the air cargo supply chain in an effort to enhance ACAS effectiveness and functionality from an industry perspective. In response to a request from stakeholders, on July 27, 2012, CBP published “Air Cargo Advance Screening Pilot Frequently Asked Questions” at http://www.cbp.gov/xp/cgov/trade/cargo_security/cargocontrol/acasp_faq.xml.

CBP is now formalizing and expanding the pilot to include other eligible participants in the air cargo environment, including other express couriers, passenger carriers, all-cargo carriers, and freight forwarders.

Authority

CBP has statutory authority to collect advance electronic cargo information pursuant to the Trade Act, and has implemented this authority in 19 CFR 122.48a. CBP has set forth the procedure for conducting test programs, such as the ACAS pilot, in 19 CFR 101.9.

Advance Electronic Air Cargo Information Required by 19 CFR 122.48a

Under 19 CFR 122.48a, the following advance electronic information is required to be transmitted to CBP for air cargo:

- (1) Air waybill number(s) (master and house, as applicable)
- (2) Trip/flight number
- (3) Carrier/ICAO code
- (4) Airport of arrival

- (5) Airport of origin
- (6) Scheduled date of arrival
- (7) Total quantity based on the smallest external packing unit
- (8) Total weight
- (9) Precise cargo description
- (10) Shipper name and address
- (11) Consignee name and address
- (12) Consolidation identifier (conditional)
- (13) Split shipment indicator (conditional)
- (14) Permit to proceed information (conditional)
- (15) Identifier of other party which is to submit additional air waybill information (conditional)
- (16) In-bond information (conditional)
- (17) Local transfer facility (conditional)

Paragraph (d) of 19 CFR 122.48a specifies, based on the type of shipment, what information the air carrier must transmit to CBP and what information other eligible filers may transmit to CBP. For non-consolidated shipments, the air carrier must transmit to CBP the above cargo information for the air waybill record. For consolidated shipments, the air carrier must transmit to CBP the above cargo information that is applicable to the master air waybill, and the air carrier must transmit a subset of the above information for all associated house air waybills, unless another eligible filer transmits this information to CBP. For split shipments, the air carrier must submit an additional subset of this information for each house air waybill.

As noted above, for any inbound aircraft required to enter under 19 CFR 122.41 that will have commercial cargo aboard, CBP must electronically receive the above information regarding that cargo through a CBP-approved EDI system no later than the time of the departure of the aircraft for the United States from any foreign port or place in North America, including locations in Mexico, Central America, South America (from north of the Equator only), the Caribbean, and

Bermuda; or no later than 4 hours prior to the arrival of the aircraft in the United States for aircraft departing for the United States from any other foreign area.

Description of ACAS Pilot

Submission of ACAS Data

Participants in the ACAS pilot agree to provide a subset of the required 19 CFR 122.48a data elements (ACAS data) at the earliest point practicable before the cargo is loaded onto the aircraft destined to or transiting through the United States. Currently, the ACAS data consists of:

- (1) Air waybill number
- (2) Total quantity based on the smallest external packing unit
- (3) Total weight
- (4) Cargo description
- (5) Shipper name and address
- (6) Consignee name and address

The ACAS data is used to target high-risk air cargo. These six data elements were chosen because they are available to air carriers and other participants early in the lifecycle of a cargo transaction and allow the ACAS risk assessment and workflow to be completed early enough in the supply chain to enhance security while minimizing disruption to the flow of goods. The collection of the ACAS data is covered under OMB Control Number 1651-0001, in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). If CBP decides to add other 19 CFR 122.48a data elements to the ACAS data, this will be announced in the **Federal Register**.

In the ACAS pilot, participants agree to submit the ACAS data to CBP through a CBP-approved EDI system. While the CBP-approved EDI under 19 CFR 122.48a is Air AMS, ACAS data may be transmitted to CBP as specified below in the section on eligibility requirements. CBP and TSA¹ are co-located at the National Targeting Center (NTC) and facilitate cooperative targeting and identification of high-risk air cargo based on this ACAS data. Any air cargo identified

¹ TSA's involvement in the ACAS pilot is authorized under 49 U.S.C. 114(f) and (m), and 44901(g), as amended by the Implementing Recommendations of the 9/11 Commission Act, Public Law 110-53, 121 Stat. 266 (Aug. 3, 2007), and under authority of the Secretary of Homeland Security, as delegated to the Assistant Secretary of Homeland Security for TSA, under the Homeland Security Act of 2002, as amended (6 U.S.C. 112(b)).

as high-risk will receive holds until the identified threat is mitigated through the provision of additional clarifying information related to the shipment, and/or adherence to the appropriate existing TSA screening protocols, as well as CBP/TSA Do Not Load protocols, depending on the direction provided by the NTC. Details related to these procedures are considered Sensitive Security Information (SSI), and will be made available to approved ACAS pilot participants as necessary.

Eligibility Requirements

CBP is seeking participation from stakeholders in the air cargo environment, including express couriers, passenger carriers, all-cargo carriers, and freight forwarders. There are no restrictions with regard to organization size, location, or commodity type. However, participation is limited to those parties with sufficient information technology infrastructure and support, as described below. Prospective ACAS pilot participants will need to assess whether they can fulfill the following eligibility requirements:

- ACAS pilot participants will need to have the technical capability to electronically submit data to CBP and receive hold messaging responses via one of the following:
 - An existing point to point connection with CBP;
 - A connection to CBP through a trade service provider (SITA, ARINC, Descartes, etc.);
 - A secure VPN connection with CBP that the ACAS pilot participant is willing to set up.
- ACAS pilot participants who do not have an existing connection with CBP, or who are modifying their connection type, will need to sign an Interconnection Security Agreement (ISA) or amend their existing ISA, if necessary, and adhere to security policies defined in the DHS 4300a security guide. Participants using an existing CBP connection covered by a valid and up to date ISA will have already met these requirements.
- ACAS pilot participants will need to establish operational security protocols that correspond to CBP hold messages that require the participant to take responsive action and respond to CBP confirming that the requested action was taken, that is, to mitigate, according to TSA screening protocols, any threat which is identified by the NTC; respond promptly with complete and

accurate information when contacted by the NTC with questions regarding the data submitted; and follow any Do Not Load instructions.

Application Process and Acceptance

Those interested in participating in the ACAS pilot should submit an email to CBPCCS@cbp.dhs.gov, stating their interest and their qualifications based on the above eligibility requirements. The email should also include a point of contact. The email will serve as an electronic signature of intent. Applications will be accepted until November 23, 2012 and will be processed in the order in which they are received.

Pilot participants will receive technical, operational, and policy guidance through all stages of pilot participation—from planning to implementation—on the necessary steps for the transmission of ACAS data. Therefore, the number of applicants CBP will accept will depend on CBP's technical, fiscal, and personnel capacity to provide the necessary guidance. Once applications are processed, those selected as ACAS pilot participants will be notified by CBP by email.

Conditions of Participation

ACAS pilot participants are to provide the ACAS data to CBP at the earliest point practicable prior to loading of cargo onto the aircraft ultimately destined for or transiting through the United States. In addition to the submission of the ACAS data to CBP, ACAS pilot participants are to: (1) Mitigate, according to TSA screening protocols, any threat which is identified by the NTC; (2) respond promptly with complete and accurate information when contacted by the NTC with questions regarding the data submitted; (3) follow any Do Not Load instructions; and (4) partake in regular teleconferences or meetings established by CBP, when necessary, to ensure any issues or challenges regarding the pilot are communicated and addressed.

Participation in the ACAS pilot does not impose any legally binding obligations on either CBP or TSA or the participant. In addition, CBP does not intend to enforce or levy punitive measures if ACAS pilot participants are non-compliant with these conditions of participation of the pilot.

Filing Options

ACAS pilot participants will send and receive advance security filing data and related action messages for all air cargo to CBP. The ACAS pilot uses messages based on existing industry standard message formats (Cargo-IMP and CAMIR-Air). This will simplify the

process for establishing a connection with and transmitting ACAS data to CBP and will increase the likelihood that participants are able to reuse existing system software. While the overall form of the ACAS pilot message formats is similar to the form of the Cargo-IMP and CAMIR-Air message formats on which it is based, the ACAS pilot message formats have slight differences in edits, timing, and new coded values, as needed to accommodate only the necessary data elements.

Currently, three possible filing options have been identified:

- *Air Carrier Dual Filing*—The air carrier transmits the ACAS data prior to loading and performs any required TSA screening. The air carrier must subsequently transmit the advance electronic cargo information as required by 19 CFR 122.48a.

- *Progressive Filing*—The party electing to file the ACAS data transmits the House Air Waybill (AWB) ACAS data, in addition to the associated master air waybill number, directly to CBP as early as possible in the supply chain. The air carrier may also opt to send house, master, or simple bill data messages for the same shipment. The response message from CBP would reflect the current status of the shipment. The air carrier can also send ACAS data for the same shipment. If any requisite TSA screening is not or cannot be conducted by the freight forwarder, it is expected that the air carrier will perform the required TSA screening. The air carrier must subsequently transmit the advance electronic cargo information as required by 19 CFR 122.48a.

- *Single Filing*—The air carrier or eligible participant transmits all of the advance electronic cargo information as required by 19 CFR 122.48a prior to loading the cargo, and performs any required TSA screening. This transmission prior to loading will be used by CBP as the submission of both the ACAS data and the advance electronic cargo information required by 19 CFR 122.48a.

Costs to ACAS Pilot Participants

ACAS pilot participants are responsible for all costs incurred as a result of their participation in the pilot and such costs will vary, depending on their pre-existing infrastructures. Costs may include carrier communication requirements, such as submission and receipt of data, and the cost of implementing the necessary screening protocols.

Benefits to ACAS Pilot Participants

While the benefits to ACAS pilot participants will vary, several advantages of joining may include:

- Increases in security by leveraging DHS threat and other data to employ a risk-based approach to improve air cargo security through targeted screening;
- Gains in efficiencies by automating the identification of high risk cargo for enhanced screening before it is consolidated and loaded on aircraft;
- Establishment of mitigation protocols for high-risk shipments;
- The ability to provide input into CBP and TSA efforts to establish, test, and refine the interface between government and industry communication systems for the implementation of ACAS;
- Ensuring a variety of business models are considered in the development and implementation of ACAS;
- Facilitation of corporate preparedness for future mandatory implementation of ACAS submission requirements; and
- Reduction in paper processes related to cargo screening requirements which may increase carrier efficiency.

Regulatory and Statutory Requirements

Participation in the ACAS pilot does not alter the participant's obligations to comply with applicable statutory and regulatory requirements, including 19 CFR 122.48a, and participants will still be subject to applicable penalties for non-compliance. In addition, submission of data under the ACAS pilot does not exempt the participant from TSA security program requirements or any statutory sanctions in the event a controlled substance or other prohibited article is introduced into the United States on a conveyance owned and/or operated by the participant.

Duration and Evaluation of the ACAS Pilot

The ACAS pilot will run for six months from October 24, 2012. While the pilot is ongoing, the results will be evaluated and a determination will be made as to whether the pilot will be extended. If the pilot is extended, CBP will publish another notice in the **Federal Register**. When sufficient pilot analysis and evaluation has been conducted, CBP intends to begin rulemaking to require the submission of ACAS data before the cargo is loaded onto the aircraft for all international shipments either destined for or transiting through the United States. The results of the ACAS pilot will help determine the relevant data elements, the time frame within which data should be submitted to permit CBP to effectively target, identify and mitigate any risk with the least impact practicable on trade operations, and any other related procedures and policies.

Dated: October 17, 2012.

DAVID V. AGUILAR,
Deputy Commissioner.

[Published in the Federal Register, October 24, 2012 (77 FR 65006)]

AGENCY INFORMATION COLLECTION ACTIVITIES:
Regulations Relating to Recordation and Enforcement of
Trademarks and Copyrights

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

ACTION: 60-Day Notice and request for comments; Extension of an existing 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 an information collection requirement concerning the: Regulations Relating to Recordation and Enforcement of Trademarks and Copyrights (Part 133 of the CBP Regulations). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before December 21, 2012, 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., 5th 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., 5th 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 (Pub. L. 104–13). 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) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Regulations Relating to Recordation and Enforcement of Trademark and Copyrights (Part 133 of the CBP Regulations).

OMB Number: 1651-0123.

Form Number: None.

Abstract: In accordance with 19 CFR part 133, trademark and trade name owners and those claiming copyright protection may submit information to CBP to enable CBP officers to identify violating articles at the borders. Parties seeking to have merchandise excluded from entry must provide proof to CBP of the validity of the rights they seek to protect. The information collected by CBP is used to identify infringing goods at the borders and determine if such goods infringe on intellectual property rights for which federal law provides import protection. Respondents may submit their information to CBP electronically at <https://apps.cbp.gov/e-recordations/>, or they may submit their information on paper in accordance with 19 CFR 133.2 and 133.3 for trademarks, or 19 CFR 133.32 and 133.33 for copyrights.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses and Individuals.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 4,000.

Dated: October 16, 2012.

TRACEY DENNING,
Agency Clearance Officer,
U.S. Customs and Border Protection.

