

# U.S. Customs and Border Protection



## **PROPOSED REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF PORTABLE LIGHT TOWERS**

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

**ACTION:** Notice of proposed revocation of one ruling letter, and revocation of treatment relating to the tariff classification of portable light towers.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of portable light towers under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

**DATES:** Comments must be received on or before August 5, 2016.

**ADDRESSES:** Written comments are to be addressed to the U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Parisa J. Ghazi, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0272.

## 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 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 proposing to revoke one ruling letter pertaining to the tariff classification of portable light towers. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N026470, dated May 2, 2008 (Attachment A), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of

reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N026470, CBP classified portable light towers in heading 9405, HTSUS, specifically in subheading 9405.40.60, HTSUS, which provides for “Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included: Other electric lamps and lighting fittings: Of base metal: Other.” CBP has reviewed NY N026470 and has determined the ruling letter to be in error. It is now CBP’s position that portable light towers are properly classified, by operation of GRIs 1, 3(b), and 6 in heading 8502, HTSUS, specifically in subheading 8502.11.00, HTSUS, which provides for “Electric generating sets and rotary converters: Generating sets with compression-ignition internal combustion piston engines (diesel or semi-diesel engines): Of an output not exceeding 75 kVA.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N026470 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H270400, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: June 7, 2016

JACINTO JUAREZ

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

May 2, 2008  
CLA-2-94:OT:RR:NC:1:110  
CATEGORY: Classification  
TARIFF NO.: 9405.40.6000

MS. KASEY TWHIG  
ALLMAND BROS. INC.  
P.O. BOX 888  
HOLDREGE, NE 68949

RE: The tariff classification of a portable light tower.

DEAR MS. TWHIG:

In your letter dated April 15, 2008, you requested a tariff classification ruling.

The merchandise under consideration is the Night-Lite Pro™ NL6/NL8 and Maxi-Lite® ML6/ML8. Literature and specification sheets were submitted with your ruling request. The country of origin was not stipulated.

The Night-Lite Pro™ NL6/NL8 and Maxi-Lite® ML6/ML8 are four portable light towers designed for providing light to open spaces and jobsites. They consist of diesel powered generators with fuel tanks mounted onto a metal chassis with a trailer hitch and two automotive type wheels, and a telescopic tower with a cluster of lighting fixtures with high output flood lights. The telescopic towers are constructed of galvanized steel with either a manual, electric or hydraulic system for raising the cluster of lights depending on the options ordered. The Allmand light towers are manufactured with all necessary lighting in a self powered portable system capable of being towed by a motor vehicle to various locations, and feature adjustable outriggers for securing the system at the desired location during use.

The applicable subheading for the Night-Lite Pro™ NL6/NL8 and Maxi-Lite® ML6/ML8 will be 9405.40.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Lamps and lighting fittings...: Other electric lamps and lighting fittings: Of base metal: Other." The general rate of duty will be 6 percent ad valorem.

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

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 Thomas Campanelli at 646-733-3016.

*Sincerely,*

ROBERT B. SWIERUPSKI  
*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H270400  
CLA-2 OT:RR:CTF:TCM H270400 PJG  
CATEGORY: Classification  
TARIFF NO.: 8502.11.00

KASEY TWHIG  
ALLMAND BROTHERS, INC.  
P.O. BOX 888  
HOLDREGE, NE 68949

RE: Revocation of NY N026470; tariff classification of portable light towers

DEAR Ms. TWHIG:

On May 2, 2008, U.S. Customs and Border Protection (“CBP”) issued Allmand Brothers, Inc. New York Ruling Letter (“NY”) N026470. The ruling pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of a portable light tower. We have reconsidered NY N026470 and found it to be in error.

**FACTS:**

In NY N026470, the subject portable light towers were described as follows:

The Night-Lite Pro™ NL6/NL8 and Maxi-Lite® ML6/ML8 (*sic*) are four portable light towers designed for providing light to open spaces and jobsites. They consist of diesel powered generators with fuel tanks mounted onto a metal chassis with a trailer hitch and two automotive type wheels, and a telescopic tower with a cluster of lighting fixtures with high output flood lights. The telescopic towers are constructed of galvanized steel with either a manual, electric or hydraulic system for raising the cluster of lights depending on the options ordered. The Allmand light towers are manufactured with all necessary lighting in a self powered portable system capable of being towed by a motor vehicle to various locations, and feature adjustable outriggers for securing the system at the desired location during use.

Additionally, according to the product specifications found in [www.allmand.com](http://www.allmand.com), the Maxi-Lite® ML 6/ML 8 models include metal halide lamps and two 120 VAC and one 240 VAC convenience outlets that can be used to power other machinery. Moreover, the Maxi-Lite® ML 6 generators have a 6 kilowatt (“kW”) output of power and the Maxi-Lite® ML 8 generators have an 8 kW output of power.

The Night-Lite Pro™ NL6/NL8 models include metal halide lamps and one 120 VAC duplex GFCI convenience outlet that can be used to power other machinery. Moreover, the Night-Lite Pro™ NL6 generators have a 6 kW output of power and the Night-Lite Pro™ NL8 generators have an 8 kW output of power.

**ISSUE:**

Whether the subject portable light towers are classifiable in heading 8502, HTSUS, as electric generating sets, or in heading 9405, HTSUS, as lamps.

**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 GRIs may then be applied.

The 2016 HTSUS provisions under consideration are as follows:

- 8502** Electric generating sets and rotary converters:
- 9405** Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:

GRI 3 states, in relevant part:

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

...

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

...

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

EN to GRI 3(b) states, in pertinent part:

**RULE 3 (b)**

- (VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.
- (IX) For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, **provided** these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

\* \* \*

EN to 85.02 states, in pertinent part:

- (I) The expression “generating sets” applies to the combination of an electric generator and any prime mover **other than an electric motor** (e.g., hydraulic turbines, steam turbines, wind engines, reciprocating steam engines, internal combustion engines). Generating sets consisting of the generator and its prime mover which are mounted (or designed to be mounted) together as one unit or on a common base (see the General Explanatory Note to Section XVI), are classified here **provided** they are presented together (even if packed separately for convenience of transport).

The portable light towers consist of diesel powered electric generators mounted onto a metal chassis and a telescopic tower with high output flood lights. Heading 8502, HTSUS, provides for “Electric generating sets and rotary converters.” We find that the diesel powered electric generators components of the portable light towers at issue are described as electric “generating sets” because they include a combination of an electric generator and a diesel engine mounted together on a metal chassis. *See* EN 85.02. Similarly, heading 9405, HTSUS provides for “Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included.” We find that the high output flood light components are described by heading 9405, HTSUS, as lamps. As such, the portable light towers are not specifically provided for in any one heading.

GRI 2(b) states in relevant part that “[t]he classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.” GRI 3(a) states that, “[w]hen, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows: (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.”

Pursuant to GRI 3(b) “[w]hen, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows: (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.”

EN (IX) to GRI 3(b) states that “composite goods” means goods made up of different components wherein the components are attached to each other to form a practically inseparable whole and goods with separable components, **provided** these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts. The portable light towers are made

up of different components – diesel powered electric generators and high output flood lights. The diesel powered electric generators and their mounted light towers form an inseparable whole given that they are attached to each other. Moreover, they are mutually complementary in that the generators provide power to the lights and the lights illuminate open spaces and jobsites. Finally, they are not normally offered for sale in separate parts. As such, the portable light towers are composite goods that must be classified using GRI 3(b).

The EN (VIII) to GRI 3(b) provides that when performing an essential character analysis the factors that should be considered are the bulk, quantity, weight or value, or the role of a constituent material in relation to the use of the goods. There have been several court decisions on “essential character” for purposes of classification under GRI 3(b). See *Conair Corp. v. United States*, 29 C.I.T. 888 (2005); *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1337–1338 (Ct. Int’l Trade 2005); and *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d 1278, 1295–1356 (Ct. Int’l Trade 2006), *aff’d* 491 F.3d 1334 (Fed. Cir. 2007). “[E]ssential character is that which is indispensable to the structure, core or condition of the article, i.e., what it is.” *Home Depot USA, Inc.*, 427 F. Supp. 2d at 1293 (quoting *A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378, 383 (1971)). In particular, in *Home Depot USA, Inc.*, the court stated “[a]n essential character inquiry requires a fact intensive analysis.” *Id.* at 1284. Therefore, a case-by-case determination on essential character is warranted in this situation.

Applying the essential character analysis to the merchandise at issue, we find that the electric generators constitute the bulk of the subject merchandise and provide the source of energy to the flood lights. Given that the purpose of the subject merchandise is to provide light to open spaces and jobsites using the energy provided by the generators, and to provide energy to other machinery using the convenience outlets that are located on the generators, we find that the generators are indispensable to the article as a whole. Without the generators, the portable lamps are inoperable. We find that the diesel powered electric generators are the components that provide the essential character.

Accordingly, the subject merchandise is classified in heading 8502, HTSUS. Considering the power output of the diesel powered generators, which ranges from 6 kW to 8 kW, the merchandise is specifically classified under subheading 8502.11.00, HTSUS, as “Electric generating sets and rotary converters: Generating sets with compression-ignition internal combustion piston engines (diesel or semi-diesel engines): Of an output not exceeding 75 kVA.”

#### **HOLDING:**

Under the authority of GRIs 1, 3(b), and 6 the portable light towers are classified in heading 8502, HTSUS, specifically in subheading 8502.11.00, HTSUS, which provides for “Electric generating sets and rotary converters: Generating sets with compression-ignition internal combustion piston engines (diesel or semi-diesel engines): Of an output not exceeding 75 kVA.” The 2016 column one, general rate of duty is 2.5 percent *ad valorem*.

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



**EFFECT ON OTHER RULINGS:**

NY N026470, dated May 2, 2008, is REVOKED.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

  
**PROPOSED REVOCATION OF FOUR RULING LETTERS AND  
REVOCATION OF TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF THERMAL TRANSFER RIBBONS**

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

**ACTION:** Notice of proposed revocation of three ruling letters and revocation of treatment relating to the tariff classification of thermal transfer ribbons.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke three ruling letters concerning tariff classification of thermal transfer ribbons under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

**DATES:** Comments must be received on or before August 5, 2016.

**ADDRESSES:** Written comments are to be addressed to the U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** George Aduhene, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0184.

## 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 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 proposing to revoke three ruling letters pertaining to the tariff classification of thermal transfer ribbons. Although in this notice, CBP is specifically referring to Headquarters Ruling Letter (“HQ”) HQ 958899, dated February 14, 1996 (Attachment A); HQ 958572, dated February 5, 1996 (Attachment B); New York Ruling Letter (“NY”) NY 814940, dated September 28, 1995 (Attachment C); and NY 814490, dated September 28, 1995 (Attachment D), 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 three identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In HQ 958899, HQ 958572, NY 814940, NY 814490, CBP classified thermal transfer ribbons in heading 9612, HTSUS, specifically in subheading 9216.10.10, HTSUS, which provides for "Typewriter or similar ribbons, inked or otherwise prepared for giving impressions, whether or not on spools or in cartridges; ink pads, whether or not inked, with or without boxes: Ribbons: Measuring less than 30 mm in width, permanently put up in plastic or metal cartridges (whether or not containing spools) of a kind used in typewriters, automatic data processing or other machines" and specifically in subheading 9612.10.90, HTSUS, which provides for "Typewriter or similar ribbons, inked or otherwise prepared for giving impressions, whether or not on spools or in cartridges; ink pads, whether or not inked, with or without boxes: Ribbons: Other," respectively. CBP has reviewed HQ 958899, HQ 958572, NY 814940, and NY 814490 and has determined the ruling letters to be incorrect. It is now CBP's position that the thermal transfer ribbons are properly classified, by operation of GRIs 1 (Note 2(b) to Section XVI and 6, in heading 8443, HTSUS, specifically in subheading 8443.99.25, HTSUS, which provides for "Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof: Parts and accessories: Other: Parts and accessories of printers: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke HQ 958899, HQ 958572, NY 814940, NY 814490 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H262583, set forth as Attachment E to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: June 7, 2016

GREG CONNOR  
*for*  
MYLES B. HARMON,  
*Director*  
*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

HQ 958899

February 14, 1996

CLA-2 RR:TC:MM 958899 RFA

CATEGORY: Classification

TARIFF NO.: 9612.10.10

MR. ROBERT SLOMOVITZ  
CHIEF, MACHINERY BRANCH  
NATIONAL COMMODITY SPECIALIST DIVISION  
U.S. CUSTOMS HOUSE  
NEW YORK, NY 10048

RE: Modification of HQ 958572; Tape Cassette Cartridges for Lettering Machines; Typewriter or Similar Ribbons, Inked or Otherwise Prepared for Giving Impressions

DEAR MR. SLOMOVITZ:

This is in reference to HQ 958572, issued to you on February 5, 1996, in which we determined that various tape cassette cartridges for use with lettering machines which will produce adhesive labels were classifiable as "typewriter or similar ribbons, inked or otherwise prepared for giving impressions, whether or not on spools or in cartridges; ink pads, whether or not inked, with or without boxes: [r]ibbons: [o]ther. . . .", under subheading 9612.10.90 of the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed that ruling and have determined that its holding needs to be modified for the reasons set forth below.

Examination of the subject merchandise indicates that one of the spools has "inked" ribbons with a narrow width of 3/8 to 1/2 inches contained within a plastic cartridge. Therefore, the tape cassette cartridges are classifiable under subheading 9612.10.10, HTSUS, which provides for: "[t]ypewriter or similar ribbons, inked or otherwise prepared for giving impressions, whether or not on spools or in cartridges; ink pads, whether or not inked, with or without boxes: [r]ibbons: [m]easuring less than 30 mm in width, permanently put up in plastic or metal cartridges (whether or not containing spools) of a kind used in typewriters, automatic data processing or other machines. . . ."

**HOLDING:**

The tape cassette cartridges are classifiable under subheading 9612.10.10, HTSUS, which provides for: typewriter or similar ribbons, inked or otherwise prepared for giving impressions, measuring less than 30 mm in width, permanently put up in plastic cartridges. The column one, general rate of duty is 2.9 percent ad valorem.

HQ 958572, dated February 5, 1996, is modified.

*Sincerely,*

JOHN DURANT,

*Director*

*Tariff Classification Appeals Division*

cc: Port Director, Los Angeles

## [ATTACHMENT B]

HQ 958572

February 5, 1996

CATEGORY: Classification

TARIFF NO.: 9612.10.90

MR. ROBERT SLOMOVITZ  
CHIEF, MACHINERY BRANCH  
NATIONAL COMMODITY SPECIALIST DIVISION  
U.S. CUSTOMS HOUSE  
6 WORLD TRADE CENTER  
NEW YORK, NY 10048

RE: Tape Cassette Cartridges for Lettering Machines; Typewriter or Similar Ribbons, Inked or Otherwise Prepared for Giving Impressions; "Parts"; Headings 3919, 8442, 9612; EN 96.12; Legal Note 2(w) to Chapter 39; QMS v. United States; HQs 958098, 951857, 088950, 087037, 085833

DEAR MR. SLOMOVITZ:

This is in reply to your memorandum of September 26, 1995 (CLA-2-84:R: N1:110), requesting our comments concerning the tariff classification of tape cassette cartridges for lettering machines under the Harmonized Tariff Schedule of the United States (HTSUS).

**FACTS:**

The merchandise consists of various tape cassette cartridges for use with the P-Touch lettering machines which will produce adhesive labels from 3/8 to 1/2 inches in width. The P-Touch lettering machines use either a keyboard, or a rotary knob with control button features to select letters or other characters to be printed on the labels. Each lettering machine contains an LCD display which allows for editing of text in the memory (holds up to 45 or 55 characters, depending upon the models) before printing. The lettering machines allow the user to print out a broad range of lettered labels that have a variety of applications in the office and home.

The tape cassette cartridges contain 3 spools of different printing media materials. One of the spools contains the adhesive plastic tape onto which the letters are printed. This tape actually acts as the finished label after it is printed and peeled from its paper backing. A second spool contains the colored plastic tape which is the "inked" material actually printed onto the plastic label; the "inked" ribbon is then rewound inside the cartridge. The third spool contains a clear plastic strip which covers the colored tape which is printed onto the adhesive label.

**ISSUE:**

Are the tape cassette cartridges for lettering machines classifiable as strips of plastic, or as a "part" of a lettering machine or as typewriter or similar ribbons, inked or otherwise prepared for giving impressions, under the HTSUS?

**LAW AND ANALYSIS:**

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

The subheadings under consideration are as follows:

3921.90.40 Other plates, sheets, film, foil and strip, of plastics: [o]ther: [o]ther: [f]lexible. . . .

Goods classifiable under this provision have a column one, general rate of duty of 4.2 percent ad valorem.

8442.40.00 Machinery, apparatus and equipment (other than the machine tools of headings 8456 to 8465), for type-founding or typesetting, for preparing or making printing blocks, plates, cylinders or other printing components; printing type, blocks, plates, cylinders and other printing components; blocks, plates, cylinders and lithographic stones, prepared for printing purposes (for example, planed, grained or polished); parts thereof: [p]arts of the foregoing machinery, apparatus or equipment. . . .

Goods classifiable under this provision have a column one, general rate of duty of free.

9612.10 Typewriter or similar ribbons, inked or otherwise prepared for giving impressions, whether or not on spools or in cartridges; ink pads, whether or not inked, with or without boxes: [r]ibbons:

9612.10.90 Other. . . .

Goods classifiable under this provision have a column one, general rate of duty of 8.8 percent ad valorem.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding or 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 FR 35127, 35128 (August 23, 1989). EN 96.12, pages 1609–1610, states that:

This heading covers:

(1) Ribbons, whether or not on spools or in cartridges, for typewriters, calculating machines, or for any other machines incorporating a device for printing by means of such ribbons (automatic balances, tabulating machines, teleprinters, etc.).

The heading also includes inked, etc., ribbons, usually having metal fixing fittings, used in barographs, thermographs, etc., to print and record the movement of the recording machine needle.

These ribbons are usually of woven textiles, but sometimes they are made of plastics or paper. To fall in the heading, they must have been inked or otherwise prepared to give impressions (e.g., impregnation of textile ribbons, or coating of plastics strip or paper with colouring matter, ink, etc.).

In HQ 087037, dated August 14, 1990, Customs determined that lift-off tapes on spools used in typewriters for automatic correction features were classifiable under heading 9612, HTSUS, because they are otherwise prepared for giving impressions. However, the Court of International Trade (CIT) held that color ink sheet rolls (“ISRs”) designed for use in color thermal

transfer printers which are used to print graphics with automatic data processing equipment, were not "similar ribbons" of heading 9612, HTSUS. *QMS v. United States*, CIT Slip Op. 95-65 (April 18, 1995). The CIT stated that the ISRs were not similar ribbons because they were very wide, measuring 228 and 325 mm in width, and were not uniformly inked along its length but coated with alternating color configurations throughout their lengths.

Because the tape cassette cartridges have a narrow width of 3/8 to 1/2 inches, and contains a uniformly "inked" ribbon which is impressed onto the plastic label, they meet the requirements of "similar ribbons" as stated in *QMS*. Like the lift-off tape in HQ 087037, we find that the tape cassette cartridges for the P-touch lettering machine are similar ribbons, inked or otherwise prepared for giving impressions onto an adhesive label and are of the type of merchandise described in EN 96.12. Therefore, the tape cassette cartridges are classifiable under heading 9612, HTSUS.

It has been suggested that the tape cassette cartridges are "parts" of lettering machines under heading 8442, HTSUS. Generally, a part of an article "must be an integral, constituent or component part, without which the article to which it is joined could not function." See HQ 958098, dated December 1, 1995; HQ 951857, dated August 14, 1992. The P-touch lettering machine's function is to allow the user to create labels. Although, the lettering machine cannot print labels without the tape cassettes, it is our opinion that the lettering machine is, by itself, a complete machine. (See HQ 085833, dated January 10, 1990, involving a typeset lettering and signage machine.) (See also HQ 958098, in which Customs determined that an intravenous administration set [IV set] was not a part of an infusion pump because the pump mechanically functions without the IV set.)

Classification of the tape cassette cartridges based upon their material components of plastic under heading 3919, HTSUS, was also suggested. Legal Note 2(w) to chapter 39, HTSUS, provides that: "[t]his chapter does not cover: . . . [a]rticles of chapter 96". Because the tape cassette cartridges are provided for under heading 9612, HTSUS, we find that classification under heading 3919, HTSUS, is precluded.

**HOLDING:**

The tape cassette cartridges are classifiable under subheading 9612.10.90, HTSUS, which provides for: "[t]ypewriter or similar ribbons, inked or otherwise prepared for giving impressions, whether or not on spools or in cartridges. . . : [r]ibbons: [o]ther . . . ." The general, column one rate of duty is 8.8 percent ad valorem.

*Sincerely,*

JOHN DURANT,

*Director*

*Tariff Classification Appeals Division*

cc: Port Director, Los Angeles



## [ATTACHMENT C]

NY 814940

September 28, 1995

CLA-2-96:R:N1:110 814940

CATEGORY: Classification

TARIFF NO.: 9612.10.1020; 9612.10.9030

MR. MICHAEL DAVIS  
ALPS ELECTRIC (USA) INC.  
3553 NORTH FIRST STREET  
SAN JOSE, CA 95134-1898

RE: The tariff classification of ink ribbon cartridges and ink ribbons from Japan

DEAR MR. DAVIS:

In your letter dated September 18, 1995, you requested a tariff classification ruling.

The merchandise under consideration involves a model MTM32 ink ribbon cartridge that is designed for use with a standard thermal printer for desktop computer users. It also includes the spooled ink ribbon itself which is constructed of polyethylene terephthalate.

The model MTM32 ribbon cartridge consists of a plastic cartridge (polystyrene) that is approximately eight inches in length and two inches in height. The cartridge houses a plastic ribbon on a spool, approximately 1/2 inch in width, that is inked and otherwise prepared for giving impressions.

The ink ribbon (M22190-02) is basically a plastic inked ribbon (polyethylene terephthalate) approximately 1/2 inch in width, that is on a plastic spool. This ribbon becomes a part of the ribbon cartridge.

The applicable subheading for the MTM32 ink ribbon cartridge will be 9612.10.1020, Harmonized Tariff Schedule of the United States (HTS), which provides for typewriter or similar ribbons, inked or otherwise prepared for giving impressions, measuring less than 30 mm in width, permanently put up in plastic or metal cartridges (whether or not containing spools) of a kind used in typewriters, automatic data processing or other machines. The rate of duty will be 3.8 percent ad valorem.

The applicable subheading for the M22190-02 ink ribbon will be 9612.10.9030, HTS, which provides for thermal transfer printing ribbons of coated polyethylene terephthalate film. The rate of duty will be 8.9 percent ad valorem.

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

A copy of 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 Arthur Brodbeck at 212-466-5490.

*Sincerely,*

ROGER J. SILVESTRI  
*Director*

*National Commodity Specialist Division*

## [ATTACHMENT D]

NY 814490

September 28, 1995

CLA-2-96:R:N1:110 814940

CATEGORY: Classification

TARIFF NO.: 9612.10.1020; 9612.10.9030

MR. MICHAEL DAVIS  
ALPS ELECTRIC (USA) INC.  
3553 NORTH FIRST STREET  
SAN JOSE, CA 95134-1898

RE: The tariff classification of ink ribbon cartridges and ink ribbons from Japan

DEAR MR. DAVIS:

In your letter dated September 18, 1995, you requested a tariff classification ruling.

The merchandise under consideration involves a model MTM32 ink ribbon cartridge that is designed for use with a standard thermal printer for desktop computer users. It also includes the spooled ink ribbon itself which is constructed of polyethylene terephthalate.

The model MTM32 ribbon cartridge consists of a plastic cartridge (polystyrene) that is approximately eight inches in length and two inches in height. The cartridge houses a plastic ribbon on a spool, approximately 1/2 inch in width, that is inked and otherwise prepared for giving impressions.

The ink ribbon (M22190-02) is basically a plastic inked ribbon (polyethylene terephthalate) approximately 1/2 inch in width, that is on a plastic spool. This ribbon becomes a part of the ribbon cartridge.

The applicable subheading for the MTM32 ink ribbon cartridge will be 9612.10.1020, Harmonized Tariff Schedule of the United States (HTS), which provides for typewriter or similar ribbons, inked or otherwise prepared for giving impressions, measuring less than 30 mm in width, permanently put up in plastic or metal cartridges (whether or not containing spools) of a kind used in typewriters, automatic data processing or other machines. The rate of duty will be 3.8 percent ad valorem.

The applicable subheading for the M22190-02 ink ribbon will be 9612.10.9030, HTS, which provides for thermal transfer printing ribbons of coated polyethylene terephthalate film. The rate of duty will be 8.9 percent ad valorem.

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

A copy of 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 Arthur Brodbeck at 212-466-5490.

*Sincerely,*

ROGER J. SILVESTRI

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT E]

HQ H262583  
CLA-2 OT:RR:CTF:TCM H262583 GA  
CATEGORY: Classification  
TARIFF NO.: 8443.99.25

MR. MICHAEL DAVIS  
ALPS ELECTRIC (USA) INC  
3553 NORTH FIRST STREET  
SAN JOSE, CA 95134-1898

RE: Revocation of HQ 958572, HQ 958899, NY 814940, NY 814490; Classification of thermal transfer ribbon

DEAR MR. DAVIS:

This is in reference to Headquarters Ruling Letter (“HQ”) 958572, dated February 5, 1996, 958899, dated February 14, 1996, New York Ruling Letter (“NY”) 814940, dated September 28, 1995, and NY 814490, dated September 28, 1995, concerning the tariff classification of thermal transfer ribbons, under the Harmonized Tariff Schedule of the United States (HTSUS). In HQ 958899 (which modified HQ 958572), U.S. Customs and Border Protection (CBP) determined that tape cassette cartridges are classifiable under subheading 9612.10.10, HTSUS, which provides for “Typewriter or similar ribbons, inked or otherwise prepared for giving impressions, whether or not on spools or in cartridges; ink pads, whether or not inked, with or without boxes: Ribbons: Measuring less than 30 mm in width, permanently put up in plastic or metal cartridges (whether or not containing pools) of a kind used in typewriters, automatic data processing or other machines.”

In addition, in NY 814940 and NY 814490, CBP also classified ink ribbon in subheading 9612.10.90, HTSUS, which provides for “Typewriter or similar ribbons, inked or otherwise prepared for giving impressions, whether or not on spools or in cartridges; ink pads, whether or not inked, with or without boxes: Ribbons: Other.” We have reviewed HQ 958572, HQ 958899, NY 814940, and NY 814490 and find them to be incorrect. For the reasons set forth below, we hereby revoke HQ 958572, HQ 958899, NY 814940, and NY 814490.

**FACTS:**

In HQ 958572 and HQ 958899, the subject merchandise was described follows:

Various tape cassette cartridges for use with the P-Touch lettering machines which produce adhesive labels from 3/8 to 1/2 inches in width.

In NY 814940 and NY 814490, the subject merchandise was described as follows:

The merchandise under consideration involves a model MTM32 ink ribbon cartridge that is designed for use with a standard thermal printer for desktop computer users. It also includes the spooled ink ribbon itself which is constructed of polyethylene terephthalate.

The model MTM32 ribbon cartridge consists of a plastic cartridge (polystyrene) that is approximately eight inches in length and two inches in height. The cartridge houses a plastic ribbon on a spool, approximately 1/2 inch in width, that is inked and otherwise prepared for giving impressions.

The ink ribbon (M22190-02) is basically a plastic inked ribbon (polyethylene terephthalate) approximately 1/2 inch in width that is on a plastic spool. This ribbon becomes a part of the ribbon cartridge.

### ISSUE:

Whether the thermal transfer ribbons are classified in heading 9612, HTSUS, as typewriter or similar ribbons, or in heading 8443, HTSUS, as printing machinery used for printing by means of plates.

### LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

- |      |  |
|------|--|
| 8443 | Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof: |
| 9612 | Typewriter or similar ribbons, inked or otherwise prepared for giving impressions whether or not on spools or in cartridges; ink pads, whether or not inked, with or without boxes:  |

Legal Note 1(q) to Section XVI, HTSUS, provides that:

Typewriter or similar ribbons, whether or not on spools or in cartridges (classified according to their constituent material, or in heading 9612 if inked or otherwise prepared for giving impressions).

Legal Note 2 to Section XVI, HTSUS, provides, in relevant part:

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.

\* \* \* \*

Note 1(q) to Section XVI, HTSUS, provides: "Typewriter or similar ribbons, whether or not on spools or in cartridges (classified according to their con-

stituent material, or in heading 9612 if inked or otherwise prepared for giving impressions).” Accordingly, if the subject merchandise is *prima facie* classifiable under heading 9612, HTSUS, it is excluded from classification under Section XVI. In *QMS, Inc., v. United States*, 19 C.I.T. 551; 17 Int’l Trade Rep. (BNA) 1510; 1995 Ct. Intl. Trade LEXIS 104; SLIP OP. 95–65 (Ct. Int’l Trade 1995), the court examined the classification of color ink sheet rolls (“ISRs”), also known as thermal transfer ribbons in the trade. *See QMS, Inc., v. United States*, 19 C.I.T. 551, 552 (“QMS”). These ISRs were specially designed solely for use in color thermal transfer printers that were used to print graphics with automatic data processing equipment. The printers could not function as intended without color ISRs. *Id.* at 551. In their condition as imported, the ISRs consisted of a thin polymer (i.e., plastic) film to which paraffin wax pigments (or “inks”) in varying color configurations (i.e., yellow, magenta, cyan, and black) had been applied. *Id.* at 551. The ISRs varied in size, depending on the color thermal transfer printers for which they are specially designed. They were between 228 and 325 millimeters in width, between 105 and 297 meters in length, and between 50 and 74 millimeters in diameter when tightly wound around a reinforced cardboard core. *Id.* at 551–552.

The court first considered classification in heading 9612, HTSUS, as typewriters or similar ribbons, and found that the subject ISRs could not be classified there because of the differences in physical characteristics and printing processes between ISRS and typewriter ribbons. *Id.* at 556. The court reasoned that typewriter ribbons are typically narrow while the ISRs were wide. *Id.* at 559. The court also noted that when typewriter ribbons are used, the ink is transferred to paper by impression which occurs when the ribbon is directly impacted by a mechanical striker. Thus, the court stated that the purpose of such ribbons is to serve as a medium for printing on paper by impression from impact, not the general purpose of printing. *Id.* at 559–560. By contrast, the court found that the purpose of the ISRs was to serve as a medium for the printing of graphic images on paper by use of heat. In the thermal printing process, pigmented wax is never transferred to the paper by means of impact. *Id.* at 560. As a result, the court found that the subject ISRs could not be classified in heading 9612, HTSUS.

Like in *QMS, Inc.*, in the present case, the subject thermal transfer ribbons also cannot be classified as typewriter ribbons of heading 9612, HTSUS, because they too are not similar enough to typewriter ribbons to be classified there. As in the case of *QMS, Inc.*, they also function as a medium for printing images onto various media by way of heat. This is in contrast to typewriter ribbon, which functions by transferring an image by way of impact. As a result, the subject thermal transfer ribbons cannot be classified in heading 9612, HTSUS, and classification under Section XVI can be considered. *See also* HQ H245899, dated July 23, 2014.

The term “part” is not defined in the HTSUS. In the absence of a statutory definition, the courts have fashioned two distinct but reconcilable tests for determining whether a particular item qualifies as a “part” for tariff classification purposes. *Bauerhin Techs. Ltd. Pshp. v. United States*, 110 F.3d 774, 779 (Fed. Cir. 1997). Under the test initially promulgated in *United States v. Willoughby Camera Stores, Inc. (“Willoughby”)*, 21 C.C.P.A. 322, 324 (1933), an imported item qualifies as a part only if can be described as 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 779. Pursu-

ant to the test set forth in *United States v. Pompeo*, 43 C.C.P.A. 9, 14 (1955), a good is a “part” if it is “dedicated solely for use” with a particular article and, “when applied to that use...meets the Willoughby test.” *Bauerhin*, 110 F.3d at 779 (citing *Pompeo*, 43 C.C.P.A. at 14); *Ludvig Svensson, Inc. v. United States*, 63 F. Supp. 2d 1171, 1178 (Ct. Int’l Trade 1999) (holding that a purported part must satisfy both the Willoughby and *Pompeo* tests).

Here, the subject thermal transfer ribbons meet the definition of “parts” as defined by the courts because they are integral part of a printing machine without which the machine could not function. Because they do not fall under the scope of a single heading of Section XVI as goods unto themselves per Note 2(a) to Section XVI, *supra*, the subject thermal transfer ribbons are properly classified under heading 8443, HTSUS, as parts of printers by operation of Note 2(b) to Section XVI.

**HOLDING:**

By application of GRIs 1 (Note 2(b) to Section XVI) and 6, the thermal transfer ribbons are classified in heading 8443, HTSUS, specifically in sub-heading 8443.99.25, HTSUS, which provides for “Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof: Parts and accessories: Other: Parts and accessories of printers: Other.” The general column one rate of duty is “Free.”

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

**EFFECT ON OTHER RULINGS:**

HQ 958572, dated February 5, 1996, HQ 958899, dated February 14, 1996, NY 814940, dated September 28, 1995, and NY 814490, dated September 28, 1995 are hereby REVOKED.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED REVOCATION OF TWO RULING LETTERS  
AND REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF GALAXOLIDE® MIXTURES**

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

**ACTION:** Notice of proposed revocation of two ruling letters and revocation of treatment relating to the tariff classification of Galaxolide® mixtures.

**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 Modern-

ization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke two ruling letters concerning tariff classification of Galaxolide® mixtures under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

**DATES:** Comments must be received on or before August 5, 2016.

**ADDRESSES:** Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Nicholai C. Diamond, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, at (202) 325–0292.

#### **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 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 neces-

sary 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 Galaxolide® mixtures. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N196797, dated February 3, 2012 (Attachment A), and NY C85217, dated March 18, 1998 (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 two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N196797 and NY C85217, CBP classified various Galaxolide® mixtures in heading 2932, HTSUS, specifically in subheading 2932.99.70, HTSUS, which provides for “Heterocyclic compounds with oxygen hetero-atom(s) only: Other: Aromatic: Other: Other.” CBP has reviewed NY N196797 and NY C85217 and has determined the ruling letters to be in error. It is now CBP’s position that the Galaxolide® mixtures are properly classified, by operation of GRI 1, in heading 3302, HTSUS, specifically in subheading 3302.90.10, HTSUS, which provides for “Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages: Containing no alcohol or not over 10 percent of alcohol by weight: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N196797 and NY C85217 and to revoke or modify any other ruling



not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter (“HQ”) H274972, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: May 27, 2016

ALLYSON MATTANAH

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

N196797

February 3, 2012

CLA-2-29 OT:RR:NC:N2:239

CATEGORY: Classification

TARIFF NO.: 2932.99.7000

MR. MARK K. NEVILLE, JR.  
SMITH, GAMBRELL & RUSSELL, LLP  
250 PARK AVENUE, SUITE 1900  
NEW YORK, NY 10177

RE: The tariff classification of Galaxolide 50 DEP and Galaxolide 66% IPM from France, Israel, and China

DEAR MR. NEVILLE:

In your letter dated December 9, 2011 you requested a tariff classification ruling.

Galaxolide 50 DEP consists of Galaxolide dissolved in Diethyl phthalate, a fluidizer (solvent.) Galaxolide 66% IPM consists of Galaxolide dissolved in isopropyl myristate, a fluidizer (solvent.) The products are identical with the exception of the solvents. Based on Chapter Note 1(e) to Chapter 29, Galaxolide 50 DEP and Galaxolide 66% IPM are separate chemically defined organic compounds. Galaxolide, CAS No. 1222-05-5, is chemically known as Cyclopenta[g]-2-benzopyran, 1,3,4,6,7,8-hexahydro-4,6,6,7,8,8-hexamethyl-. The products are aromatic heterocyclic compounds with oxygen hetero-atoms indicated for use in the fragrance industry.

The applicable subheading for Galaxolide 50 DEP and Galaxolide 66% IPM will be 2932.99.7000 Harmonized Tariff Schedule of the United States (HTSUS), which provides for Heterocyclic compounds with oxygen hetero-atom(s) only: Other: Other: Aromatic: Other: Other. The rate of duty will be 6.5 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Richard Dunkel (646) 733-3032.

*Sincerely,*

THOMAS J. RUSSO

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

NY C85217

March 18, 1998

CLA-2-29:RR:NC:2:239 C85217

CATEGORY: Classification

TARIFF NO.: 2932.99.7000

MR. DANIEL J. GLUCK  
SERKO & SIMON  
ONE WORLD TRADE CENTER  
NEW YORK, NY 10048

RE: The tariff classification of Galaxolide 60 MIP (CAS 1222-05-5) from Ireland.

DEAR MR. GLUCK:

In your letter dated March 10, 1998, you requested a tariff classification ruling for Galaxolide 60 MIP (Chemical Name - 1,3,4,6,7,8-Hexahydro-4,6,6,7,8,8-Hexamethyl-Cyclopenta[g]-2-Benzopyran which is used as a fragrance component.

The applicable subheading will be 2932.99.7000, Harmonized Tariff Schedule of the United States (HTS), which provides for heterocyclic compounds with oxygen hetero-atom(s) only: other. The rate of duty will be 2.2 cents per kilogram plus 12.3 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Thomas Brady at (212) 466-5747.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT C]

HQ H274972

CLA-2 OT:RR:CTF:TCM H274972 NCD

CATEGORY: Classification

TARIFF NO.: 3302.90.1050

MARK K. NEVILLE, JR.  
SMITH, GAMBRELL & RUSSELL, LLP  
250 PARK AVENUE, SUITE 1900  
NEW YORK, NY 10177

RE: Revocation of NY N196797 and NY C85217; classification of Galaxolide® mixtures

DEAR MR. NEVILLE, JR.:

This is in reference to New York Ruling Letter (NY) N196797, issued to you by U.S. Customs and Border Protection (CBP) on February 3, 2012. We have reviewed NY N196797, which involved classification of Galaxolide® mixtures under the Harmonized Tariff Schedule of the United States (HTSUS), and determined that it is incorrect. For the reasons set forth below, we are revoking that ruling.

We have additionally reviewed NY C85217, dated March 18, 1998, which similarly involved classification of a Galaxolide® mixture under the HTSUS. As with NY N196797, we have determined that NY C85217 is incorrect and, for the reasons set forth below, are revoking it.

**FACTS:**

Both NY N196797 and NY C85217 pertain to mixtures of Galaxolide®, whose chemical formula is depicted in Figure 1 below, dissolved in various solvents.

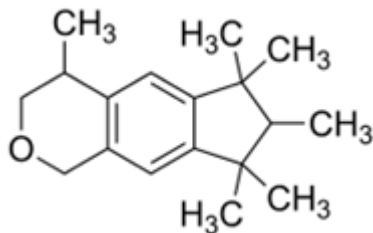


Figure 1

Specifically at issue in NY N196797 were Galaxolide® mixtures designated “Galaxolide® 50 DEP” and “Galaxolide® 66% IPM.” These products are described as follows in the ruling:

Galaxolide 50 DEP consists of Galaxolide dissolved in Diethyl phthalate, a fluidizer (solvent.) Galaxolide 66% IPM consists of Galaxolide dissolved in isopropyl myristate, a fluidizer (solvent.) The products are identical with the exception of the solvents. Based on Chapter Note 1(e) to Chapter 29, Galaxolide 50 DEP and Galaxolide 66% IPM are separate chemically defined organic compounds. Galaxolide, CAS No. 1222-05-5, is chemically known as Cyclopenta[*g*]-2-benzopyran, 1,3,4,6,7,8-hexahydro-

4,6,6,7,8,8-hexamethyl-. The products are aromatic heterocyclic compounds with oxygen hetero-atoms indicated for use in the fragrance industry.

NY C85217 pertains to a Galaxolide® mixture designated “Galaxolide® 60 MIP,” which, according to the description in the ruling, “is used as a fragrance component.” MIP is the French acronym for isopropyl myristate.

All three products in NY N196797 and NY C85217 were classified in heading 2932, HTSUS. They were specifically classified in subheading 2932.99.70, HTSUS, which provides for: “Heterocyclic compounds with oxygen hetero-atom(s) only: Other: Other: Aromatic: Other: Other.”

#### ISSUE:

Whether the subject Galaxolide® mixtures are properly classified in heading 2932, HTSUS, as heterocyclic compounds with oxygen hetero-atom(s) only, or in heading 3302, HTSUS, as mixtures with a basis of one or more odoriferous substances, of a kind used in industry.

#### LAW AND ANALYSIS:

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

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

The HTSUS provisions under consideration are as follows:

<b>2932</b>	Heterocyclic compounds with oxygen hetero-atom(s) only:
	Other:
2932.99	Other:
	Aromatic:
	Other
2932.99.70	Other

---

<b>3302</b>	Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages:
3302.90	Other:
3302.90.10	Containing no alcohol or not over 10 percent of alcohol by weight:

Heading 2932, HTSUS, provides for heterocyclic compounds with oxygen hetero-atom(s) only. Note 1 to Chapter 29 provides, in pertinent part, as follows:

1. Except where the context requires, the headings of this chapter apply only to:
    - (a) Separate chemically defined organic compounds, whether or not containing impurities;
- \*\*\*
- (e) Products mentioned in (a), (b) or (c) above dissolved in other solvents provided that the solution constitutes a normal and necessary method of putting up these products adopted solely for reasons of safety or for transport and that the solvent does not render the product particularly suitable for specific use rather than for general use...

With respect to Note 1(a) to Chapter 29, the General EN to Chapter 29 states as follows:

A separate chemically defined compound is a substance which consists of one molecular species (e.g., covalent or ionic) whose composition is defined by a constant ratio of elements and can be represented by a definitive structural diagram. In a crystal lattice, the molecular species corresponds to the repeating unit cell.

The provisions in the General Explanatory Note to Chapter 28 concerning the addition of stabilisers, antidusting agents and colouring substances apply, *mutatis mutandis*, to the chemical compounds of this Chapter.

The General EN to Chapter 28 in turn states as follows:

Such elements and compounds are **excluded** from Chapter 28 when they are dissolved in **solvents other than water**, unless the solution constitutes a normal and necessary method of putting up these products adopted solely for reasons of safety or for transport (in which case the solvent must not render the product particularly suitable for some types of use rather than for general use).

The General EN to Chapter 29 defines “separate chemically defined compound” for purposes of Note 1 as a “substance...whose composition...can be represented by a definitive structural diagram.” Pursuant to Note 1(e) to Chapter 29, as explained in the General EN to Chapter 28, such compounds may be dissolved in non-aqueous solvents needed solely for safety or for transport. However, when the solvent enables or enhances the resulting solution’s end-use, or is otherwise added for reasons other than safety or

transport, the solution falls outside the scope of Note 1(e) to Chapter 29. *See, e.g.*, Headquarters Ruling Letter (HQ) 968018, dated January 9, 2006 (determining that Bitrex dissolved in propylene glycol did not meet the terms of Note 1(e) to Chapter 29 because Bitrex “is designed for human exposure and is not harmful” and the solution “is not necessary to put up or sell the product”); and HQ 965089, dated January 31, 2002 (excluding solution from heading 2922, HTSUS, where the solvent did not “enhance the safety of transportation” but instead “aid[ed] in the manufacture of the final product”).

The products at issue consist of Galaxolide®, a heterocyclic compound represented by a distinct structural diagram, dissolved in diethyl phthalate or in isopropyl myristate. Like other Galaxolide® mixtures, the instant products are incorporated as active ingredients in perfumes and other fragrance products. Our research indicates that diethyl phthalate and isopropyl myristate, both known diluents, are added to Galaxolide® for the express purpose of reducing the latter’s viscosity and rendering it in usable form for incorporation in perfumes. *See* Horst Surburg and Johannes Panten, *Common Fragrance and Flavor Materials: Preparation, Properties and Uses* (6th ed. 2016). Our research further indicates that diethyl phthalate also functions as a fixative, which is “a substance that prevents too rapid volatilization of the components of a perfume and tends to equalize...rates of volatilization” and which “thus increases the odor life of a perfume and keeps the odor unchanged.” Richard J. Lewis, Sr., *Hawley’s Condensed Chemical Dictionary* 566–67 (15th ed. 2007); *see also* U.S. Food and Drug Admin., Phthalates, <http://www.fda.gov/Cosmetics/ProductsIngredients/Ingredients>. American Chemistry Council, Diethyl Phthalate (DEP) in Cosmetics Deemed Safe, <https://phthalates.americanchemistry.com/Phthalates-Basics/Personal-Care-Products/Diethyl-Phthalate-DEP-in-Cosmetics-Deemed-Safe.html> (last visited May 23, 2016). As such, neither additive enables or enhances the safe use or transportation of Galaxolide®, which can in fact be safely maintained or transported in its undiluted form. *See* NY C87142, dated May 11, 1998 (classifying Galaxolide® “neat”). Instead, these additives enable fabrication of the finished perfumes and, in the case of the Galaxolide® 50 DEP, extend these perfumes’ shelf lives. Consequently, neither product at issue is covered by Note 1(e) to Chapter 29. Because the subject products do not otherwise satisfy Note 1 to Chapter 29, they are excluded from heading 2932, HTSUS.<sup>1</sup>

We next consider heading 3302, HTSUS, which applies, *inter alia*, to mixtures with a basis in one or more odoriferous substances, of a kind used as raw materials in the industry. Chapter Note 2 to Chapter 33 states as follows:

The expression “odoriferous substances” in heading 3302 refers only to the substances of heading 3301, to odoriferous constituents isolated from those substances or to synthetic aromatics.

<sup>1</sup> We also considered whether the instant products are covered by Note 1(f) to Chapter 29, which provides for: “The products mentioned in (a), (b), (c), (d) or (e) above with an added stabilizer (including an anticaking agent) necessary for their preservation or transport.” However, while diethyl phthalate prevents volatilization of the final perfume, neither it nor isopropyl myristate stabilizes Galaxolide® when added to it.

With respect to “aromatics,” Additional U.S. Note 2(a) to Section Note VI states as follows:

2. For the purposes of the tariff schedule:
  - (a) The term “*aromatic*” as applied to any chemical compound refers to such compound containing one or more fused or unfused benzene rings...

EN 33.02 states, in pertinent part, as follows:

This heading covers the following mixtures **provided** they are of a kind used as raw materials in the perfumery, food or drink industries (e.g., in confectionery, food or drink flavourings) or in other industries (e.g., soap-making):

\*\*\*

- (6) Mixtures of one or more odoriferous substances (essential oils, resins, extracted oleoresins or synthetic aromatics) combined with added diluents or carriers such as vegetable oil, dextrose or starch...

Pursuant to Chapter Note 2 to Chapter 33, heading 3302, HTSUS, applies, *inter alia*, to synthetic aromatics, which are synthetic compounds containing at least one benzene ring, mixed with one or more substances. EN 33.02 states that the substances with which these synthetic aromatics may be mixed include diluents and carriers.

Galaxolide® is a synthetic substance that, according to its structural diagram, contains the requisite benzene ring of an aromatic compound within the meaning of Additional U.S. Note 2(a) to Section Note VI. *See* U.S. Patent No. 4,162,256 (issued July 24, 1979). It can therefore be described as a “synthetic aromatic” and, in effect, as an “odoriferous substance” within the meaning of Note 2 to Chapter 33. Because the instant products are mixtures consisting of an odoriferous substance and diluents, and because they are used as raw materials for perfumery products, they are described by EN 33.02 as examples of products classifiable in heading 3302. Consequently, we find that the instant products are properly classified in heading 3302, HTSUS, as mixtures with bases in an odoriferous substance, of a kind used as raw materials in the industry.

#### **HOLDING:**

By application of GRI 1, the subject Galaxolide® mixtures are properly classified in heading 3302, HTSUS. They are specifically classified in sub-heading 3302.90.1050, HTSUSA (Annotated), which provides for: “Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages: Other: Containing no alcohol or not over 10 percent of alcohol by weight: Other.” The 2016 column one general rate of duty is *free*.

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



**EFFECT ON OTHER RULINGS:**

New York Ruling Letters N196797, dated February 3, 2012, and NY C85217, dated March 18, 1998, are hereby REVOKED in accordance with the above analysis.


*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**CC:** Daniel J. Gluck  
Serko & Simon  
One World Trade Center  
New York, NY 10048



**PROPOSED REVOCATION OF TWO RULING LETTERS  
AND REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF A ROLLING PULLMAN  
CASE, BACKPACKS, A TOTE BAG, AND AN INSULATED  
LUNCH BAG**

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

**ACTION:** Notice of proposed revocation of two ruling letters, and revocation of treatment relating to the tariff classification of a rolling pullman case, backpacks, a tote bag, and an insulated lunch bag.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke two ruling letters concerning tariff classification of a rolling pullman case, backpacks, a tote bag, and an insulated lunch bag under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

**DATES:** Comments must be received on or before August 5, 2016.

**ADDRESSES:** Written comments are to be addressed to the U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during

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

**FOR FURTHER INFORMATION CONTACT:** Claudia Garver, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0024.

## **SUPPLEMENTARY INFORMATION:**

### **BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (“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 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 proposing to revoke two ruling letters pertaining to the tariff classification of a rolling pullman case, backpacks, a tote bag, and an insulated lunch bag. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) M82559, dated May 2, 2006 (Attachment A), and NY M84189, dated June 16, 2006 (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 two rulings identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY M82559 and NY M84189, CBP classified a rolling pullman case, backpacks, a tote bag, and an insulated lunch bag in heading 4202, HTSUS, specifically in subheadings 4202.12.80, HTSUS (rolling bag), 4202.92.08, HTSUS (insulated lunch bag), and 4202.92.30, HTSUS (backpacks and tote bag), as bags with an outer surface of textile materials. CBP has reviewed NY M82559 and NY M84189 and has determined the ruling letters to be in error. It is now CBP's position that the rolling pullman case, backpacks, a tote bag, and an insulated lunch bag are properly classified, by operation of GRIs 1 and 6, in heading 4202, HTSUS, specifically in subheadings 4202.12.20, HTSUS (rolling pullman case), 4202.92.10, HTSUS (insulated lunch bag), and 4202.92.45, HTSUS (backpacks and tote bag), as bags with an outer surface of other than textile materials.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY M82559 and NY M84189 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed Headquarters Ruling Letter ("HQ") H275674, set forth as Attachment C to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: May 27, 2016

JACINTO JUAREZ  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

NY M82559

May 2, 2006

CLA-2-61:RR:NC:TA:341 M82559

CATEGORY: Classification

TARIFF NO.: 4202.12.8070; 4202.92.3031;  
4202.92.3020

MS. DESPINA KEEGAN  
DESPINA KEEGAN, LLC  
ONE PENN PLAZA, SUITE 3600  
NEW YORK, NY 10119

RE: The tariff classification of a rolling pullman, a backpack, and tote bag

DEAR MS. KEEGAN:

In your letter dated April 11, 2006, you requested a classification ruling on behalf of Global Design Concepts, Inc. As requested, your sample is being returned to you.

You submitted a sample of a rolling (trolley) pullman case that has a telescopic handle and wheels and is designed to contain clothing and other personal effects during travel. It is manufactured with an exterior surface of nylon and a front panel of PVC sheeting with a printed design of Dora The Explorer. The case measures approximately 11" W x 14.5" H x 3.5" D. A zipper secures it.

You provided descriptive literature of a backpack. You state that it is a child's backpack manufactured with an exterior surface of polyester man-made fiber textile material with a front panel of polyvinyl chloride (PVC) plastic sheeting with a Tinkerbell themed depiction. The backpack measures approximately 11" W x 14.5" H x 5.5" D. The top of the bag is secured with a zipper.

You provided descriptive literature of a tote bag. You state that it is child's open top tote bag constructed of an exterior surface of nylon with a front panel of PVC sheeting depicting the SpongeBob Nickelodeon licensed character. The bag features a single, unlined interior compartment. It measures approximately 10" W x 10" H x 2.5" D.

The applicable subheading for the rolling pullman case will be 4202.12.8070, Harmonized Tariff Schedule of the United States (HTSUS), which provides for trunks, suitcases, vanity cases and similar containers, with outer surface of textile materials, other, other, of man-made fibers. The rate of duty will be 17.6% ad valorem.

The applicable subheading for the backpack will be 4202.92.3020, HTSUS, which provides for travel, sport and similar bags, with outer surface of textile materials, other man-made fibers, backpacks. The rate of duty will be 17.6% ad valorem.

The applicable subheading for the tote bag will be 4202.92.3031, HTSUS, which provides for travel bags, with outer surface of textile materials, other, of man-made fibers. The rate of duty will be 17.6% ad valorem.

4202.12.8070, 4202.92.3031, and 4202.92.3020 fall within textile category designation 670. Quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information as to whether quota and visa requirements apply to this merchandise, we suggest that you check, close to the time of shipment,

the “Textile Status Report for Absolute Quotas” available at our web site at [www.cbp.gov](http://www.cbp.gov). In addition, you will find current information on textile import quotas, textile safeguard actions and related issues at the web site of the Office of Textiles and Apparel, at [otexa.ita.doc.gov](http://otexa.ita.doc.gov).

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Camille R. Ferraro at 646-733-3049.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

NY M84189

June 16, 2006

CLA-2-42:RR:NC:TA:341 M84189

CATEGORY: Classification

TARIFF NO.: 4202.92.0807; 4202.92.3020

Ms. SUSAN E. ALBATAL  
CVS/PHARMACY  
ONE CVS DRIVE  
WOONSOCKET, RI 02895

RE: The tariff classification of an insulated lunch bag and a backpack from China.

DEAR Ms. ALBATAL:

In your letter dated June 2, 2006, you requested a classification ruling for two items that were not identified with style numbers. The first item, which is being returned to you, is an insulated lunch bag. The second item, which was destroyed during examination, is a backpack.

The insulated lunch bag is designed to carry food and/or beverage. It is manufactured with an exterior surface of 100% polyester man-made fiber textile material with a front panel of polyvinyl chloride (PVC) plastic sheeting with a "Cars"© themed depiction. The bag measures approximately 10" W x 7¾" H x 4" D. The bag has a carrying handle on top and is secured by means of a zippered closure on three sides of the bag.

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

The backpack is manufactured with an exterior surface of polyester man-made fiber textile material with a front panel of polyvinyl chloride (PVC) plastic sheeting with a "Cars"© themed depiction. The backpack measures approximately 12" W x 15" H x 3" D. The top and sides of the bag are secured with a zipper.

The applicable subheading for the backpack will be 4202.92.3020, HTSUS, which provides for travel, sports and similar bags, with outer surface of textile materials, other, of man-made fibers, other. The duty rate will be 17.6% ad valorem.

HTSUS 4202.92.0807 and 4202.92.3020 fall within textile category designation 670. Quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information as to whether quota and visa requirements apply to this merchandise, we suggest that you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" available at our web site at [www.cbp.gov](http://www.cbp.gov). In addition, you will find current information on textile import quotas, textile safeguard actions and related issues at the web site of the Office of Textiles and Apparel, at [www.otexa.ita.doc.gov](http://www.otexa.ita.doc.gov).

You asked about the country of origin marking requirements for these bags. Section 134.11 of the Customs Regulations (19 C.F.R. 134.11) provides in part:

Unless excepted by law...every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to an ultimate purchaser in the U.S. the English name of the country of origin of the article, at the time of importation into the Customs territory of the U.S.

Please note that separate Federal Trade Commission marking requirements exist regarding country of origin, fiber content, and other information that must appear on many textile items. You should contact the Federal Trade Commission, Division of Enforcement, 6th and Pennsylvania Avenue, N.W., Washington, D.C., 20580, for information on the applicability of these requirements to this item. Information can also be found at the FTC website [www.ftc.gov](http://www.ftc.gov) (click on "For Business" and then on "Textile, Wool, Fur").

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 341 at 646-733-3102.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT C]

HQ H275674

CLA-2 OT:RR:CTF:TCM H275674 CkG

CATEGORY: Classification

TARIFF NO.: 4202.12.20, 4202.92.10, 4202.92.45

DESPINA KEEGAN

DESPINDA KEEGAN, LLC

ONE PENN PLAZA, STE 3600

NEW YORK, NY 10119

Re: Revocation of NY M82559 and NY M84189; classification of a rolling pullman case, backpacks, a tote bag, and an insulated lunch bag.

DEAR Ms. KEEGAN:

This is in reference to New York Ruling Letter (NY) M82559, issued to you dated May 2, 2006, and NY M84189, issued to CVS pharmacy on June 16, 2006, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a rolling pullman case, two backpacks, a tote bag and an insulated lunch bag.

We have reconsidered these decisions. For the reasons set forth below, we have determined that the classification of the bags in question in subheadings 4202.12.80, HTSUS (rolling bag), 4202.92.08, HTSUS (insulated lunch bag), and 4202.92.30, HTSUS (backpacks and tote bag) was incorrect.

**FACTS:**

In NY M82559, the subject merchandise was described as follows:

You submitted a sample of a rolling (trolley) pullman case that has a telescopic handle and wheels and is designed to contain clothing and other personal effects during travel. It is manufactured with an exterior surface of nylon and a front panel of PVC sheeting with a printed design of Dora The Explorer. The case measures approximately 11" W x 14.5" H x 3.5" D. A zipper secures it.

You provided descriptive literature of a backpack. You state that it is a child's backpack manufactured with an exterior surface of polyester man-made fiber textile material with a front panel of polyvinyl chloride (PVC) plastic sheeting with a Tinkerbell themed depiction. The backpack measures approximately 11" W x 14.5" H x 5.5" D. The top of the bag is secured with a zipper.

You provided descriptive literature of a tote bag. You state that it is child's open top tote bag constructed of an exterior surface of nylon with a front panel of PVC sheeting depicting the SpongeBob Nickelodeon licensed character.

In NY M84189, the subject merchandise is described as follows:

The insulated lunch bag is designed to carry food and/or beverage. It is manufactured with an exterior surface of 100% polyester man-made fiber textile material with a front panel of polyvinyl chloride (PVC) plastic sheeting with a "Cars"© themed depiction. The bag measures approximately 10" W x 7¾" H x 4" D. The bag has a carrying handle on top and is secured by means of a zippered closure on three sides of the bag.



The backpack is manufactured with an exterior surface of polyester man-made fiber textile material with a front panel of polyvinyl chloride (PVC) plastic sheeting with a “Cars”© themed depiction. The backpack measures approximately 12” W x 15” H x 3” D. The top and sides of the bag are secured with a zipper.

### ISSUE:

Whether the essential character of the instant bags is imparted by the textile material or by the plastic sheeting on the outer surface.

### LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6. GRI 6, HTSUS, requires that the GRI’s be applied at the subheading level on the understanding that only subheadings at the same level are comparable. The GRI’s apply in the same manner when comparing subheadings within a heading.

- |             |   |
|-------------|---|
| 4202:       | Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: |
|             | Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers:   |
| 4202.12:    | With outer surface of plastics or of textile materials:   |
| 4202.12.20: | With outer surface of plastics...   |
|             | With outer surface of textile materials:  |
| 4202.12.80: | Other...  |
|             | Other:  |
| 4202.92:    | With outer surface of sheeting of plastic or of textile materials:  |
|             | Insulated food or beverage bags:  |
|             | With outer surface of textile materials:  |
| 4202.92.08: | Other . . .   |
| 4202.92.10: | Other . . .   |
|             | Travel, sports and similar bags:  |
|             | With outer surface of textile materials:  |
| 4202.92.30: | Other...  |
| 4202.92.45: | Other...  |

\* \* \* \* \*

In NY M82559 and NY M84189, CBP classified a rolling case, a tote bag, two backpacks and an insulated lunch bag in subheadings 4202.12.80, 4202.92.08, and 4202.92.30, HTSUS, as bags with an outer surface of textile materials. The instant bags all have an exterior surface comprised mostly of textile materials and a front panel of plastic sheeting featuring a cartoon character or theme.

There is no dispute that the instant bags are classified in heading 4202, HTSUS, as insulated food or beverage bags. The issue arises at the subheading level, which requires the application of GRI 6. GRI 6 requires that the GRI's be applied at the subheading level on the understanding that only subheadings at the same level are comparable.

At the eight-digit subheading level, the issue is whether the instant bags have an outer surface of textile or non-textile material. Because the instant bags have outer panels of both textile and plastic, classification is determined by application of GRI 3.

GRI 3 states:

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

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods . . . , those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

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

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

The subheadings covering the instant bags refer only to part of the materials or components contained therein. Therefore, under GRI 3(a), these subheadings must be regarded as equally specific in relation to the article, and the article must be classified as if it consisted of the material or component which gives it its essential character, pursuant to GRI 3(b).

The "essential character" of an article is "that which is indispensable to the structure, core or condition of the article, i.e., what it is." *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (Ct. Int'l Trade 2005). EN VIII to GRI 3(b) explains that "[t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods." The classification of the instant bags will thus turn on which component imparts the essential character to the whole.

CBP has generally determined that the material comprising the bulk of the exterior surface area of a bag imparts the essential character. *See e.g.*, HQ 962817, dated January 14, 2002 (“Customs believes that the four panels with an outer surface of plastic impart the essential character. These panels comprise the bulk of the outer surface of the bag. We also note that the material of these four panels is thicker and more rigid than the material used for the two side panels. Thus, we believe that these panels contribute significantly to the shape or form of the bag. Lastly, we note that when the bag is “collapsed” for storage, only the top and bottom panels (with an outer surface of plastic) are visible”); HQ H025873, dated September 3, 2010 (classifying a cooler bag in accordance with the majority of the exterior surface area). However, the plastic front panel of an insulated food or beverage bag might impart the essential character to the whole in cases where the style of the front panel significantly outweighs the remaining factors. *See e.g.*, HQ H088427, dated May 29, 2015.

In NY M82559 and NY M84189, CBP held that the essential character of the bags in question was determined by the textile material which comprised the majority of the external surface area of the bags, even though the plastic front panels featured visually appealing designs such as cartoon characters. However, as noted in HQ H088427, the relative external surface area is not the only factor in the classification of such bags. In this case, the plastic front panels of the instant bags feature the popular cartoon characters Dora the Explorer, Tinkerbell, and Spongebob, and characters from the Cars movie. These bags have an immediate visual appeal that is geared towards children, a particularly demanding and vociferous group of customers who are not likely to concern themselves with the composition, cost, sturdiness, or durability of a bag as opposed to the appeal of the design and the specific character represented. Unlike HQ H088427, HQ H025873, or HQ 962817, where the visual appearance of the front panel of the bags differed only in minor respects from the remainder of the exterior, the plastic front panel of the instant bags is clearly distinct and given the factors discussed above, is likely to play a significant role in the decision to purchase and use the bag.

This conclusion is consistent with past rulings wherein CBP has determined that the essential character of similar bags was determined by a plastic front panel with a similarly appealing design. *See e.g.*, HQ 964768, dated April 26, 2001 (backpack featuring the “Pooh” and “Tigger” characters on the front); NY N261757, dated March 19, 2015 (insulated cooler bag featuring Darth Vader on the front panel); NY N237048, dated February 06, 2013 (tote bag featuring several Disney Princesses on the front).

#### **HOLDING:**

By application of GRI 1, GRI 3(b) and GRI 6, the rolling Pullman case is classified in heading 4202, HTSUS, specifically subheading 4202.12.20, HTSUS, which provides for “Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composi-

tion leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers: With outer surface of plastics or of textile materials: With outer surface of plastics.” The 2016, column one, general rate of duty is 20% *ad valorem*.

By application of GRI 1, GRI 3(b) and GRI 6, the insulated lunch bag is classified in heading 4202, HTSUS, specifically subheading 4202.92.10, HTSUS, which provides for “Trunks,...and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Insulated food or beverage bags: Other.” The 2016, column one, general rate of duty is 3.4% *ad valorem*.

The backpacks and tote bag are classified in heading 4202, specifically subheading 4202.92.45, HTSUS, which provides for “Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers...: Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: Other.” The 2016 column one, general rate of duty is 20% *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 online at [www.usitc.gov/tata/hts/](http://www.usitc.gov/tata/hts/).

#### **EFFECT ON OTHER RULINGS:**


NY M82559, dated May 2, 2006, and NY M84189, dated June 16, 2006, are hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



### **PROPOSED MODIFICATION OF THREE RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CRANKS AND CHAIN RINGS THAT ARE PARTS OF BICYCLE COTTERLESS-TYPE CRANK SETS**

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

**ACTION:** Notice of proposed modification of three ruling letters and revocation of treatment relating to the tariff classification of cranks and chain rings that are parts of bicycle cotterless-type crank sets.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (“CBP”) intends to modify three rulings concerning the classification of cranks and chain rings that are parts of bicycle cotterless-type crank sets, under the Harmonized Tariff Schedule of the United States (“HTSUS”). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before August 5, 2016.

**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, 90 K Street NE, 10th Floor, Washington, D.C. 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Anthony L. Shurn, Tariff Classification and Marking Branch Regulations and Rulings, Office of International Trade, at (202) 325–0218.

## **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 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. §1 484), the importer of record is responsible for using reasonable care to enter, classify and value

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this Notice advises interested parties that CBP intends to modify three rulings pertaining to the tariff classification of cranks and chain rings that are parts of bicycle cotterless-type crank sets. Although in this Notice, CBP is specifically referring to the modification of CBP Ruling Letters NY K81790 (February 3, 2004) (Attachment A), NY K80388 (November 17, 2003) (Attachment B), and HQ 083052 (April 21, 1989) (Attachment C), this Notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the three identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this Notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this Notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY K81790 and NY K80388, CBP classified chain rings and cranks that are parts of bicycle cranksets that utilize pinch bolts but no cotters in subheading 8714.99.80, HTSUS, which provides for other "Parts and accessories of vehicles of heading 8711 to 8713: Other: Other: Other." CBP has reviewed NY K81790, NY K80388, and HQ 083052 and has determined the ruling letters to be in error. It is now CBP's position that chain rings and cranks that are parts of bicycle cranksets that utilize pinch bolts but no cotters are properly classified, by operation of HTSUS General Rule Interpretation 6, in subheading 8714.96.50, HTSUS, which provides for "Parts and accessories of vehicles of heading 8711 to 8713: Other: Pedals and crank-gear, and parts thereof: Cotterless-type crank sets and parts thereof."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY K81790, NY K80388, and HQ 083052 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H243595, set forth as Attachment D to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: April 27, 2016

GREG CONNOR

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

NY K81790

February 3, 2004

CLA-2-90:RR:NC:N1:105 K81790

CATEGORY: Classification

TARIFF NO.: 8714.96.9000; 8714.99.8000;  
9029.20.2000

MR. LESLIE KLEIN  
SRM SERVICE CENTER USA  
7555 JULYNN ROAD  
COLORADO SPRINGS, CO 80919

RE: The tariff classification of bicycle related items from Germany

DEAR MR. KLEIN:

This is the text of the actual letter that was issued to the inquirer. It corrects the draft of this letter numbered as K80388 and stored in Customs Rulings Online Search System (Cross) with the correction noted below in italics.

In your letter dated October 30, 2003, you requested a tariff classification ruling.

You import separately five items, PowerMeters, PowerControls, Chain Rings, Cranks, and Cables. The PowerMeter and the Chain Ring are joined together in the sample you submitted, but we understand from your letter that they will be imported separately.

You will resell these either together as elements of the SRM system “for use on a bicycle in scientific testing and research and to promote health and fitness” or individually as replacement parts.

The metal Chain Rings and Cranks replace the ones already on any standard bicycle and continue to perform the standard function for each. The replacement is made so the PowerMeter can be readily integrated into the bicycle.

You state that the PowerControl is “a small portable computer that receives and processes data transmitted from the PowerMeter.” It does not perform a control function, but keeps time, calculates the desired parameters from the raw data received, and displays that information. We assume it will be attached to the bicycle’s handle bars. Since it displays Heartrate as well as Power, Time, Speed, Distance, and Cadence, we assume it actually receives data also from another device, since we see no way the PowerMeter attached to the Chain Ring could transmit heartbeat data.

Noting New York Ruling Letter H83311-105, 7-18-01, the applicable subheading for the PowerControl will be 9029.20.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for bicycle speedometers. The rate of duty will be 6 percent ad valorem.

The applicable subheading for the Chain Ring gear will be 8714.96.9000, Harmonized Tariff Schedule of the United States (HTS), which provides for “other” crank gear and parts thereof. The rate of duty will be 10 percent ad valorem.

The applicable subheading for the crank will be 8714.99.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for “other” parts and accessories of vehicles of Headings 8711 to 8713. The rate of duty will be 10 percent ad valorem.



Regarding the Cables and the PowerMeter, we are returning your request for a classification ruling, and any related samples, exhibits, etc., because we need additional information in order to issue a ruling. Please submit the additional information indicated below:

1. Regarding the Cables, you state, "a download cable is used for attaching the SRM Power Control to the serial port of a computer to download the data collected." However, while one end of the cable does plug into the PowerControl, the cable bifurcates at the other end into two small plastic cylinders, which clearly cannot be plugged into a serial port. One of the cylinders has a magnet inside it, but the other does not. Explain in detail what the cable will connect and how it will interface with other devices.

2. Regarding the PowerMeter, you state that it is a "torque transducer," but we do not see how it could measure torque, in lbf-feet, etc, and the PowerControl does not display a torque measurement. Explain, including a definition of the Power displayed. Also, it appears that it might be a part of a rotary encoder, i.e., a device which emits pulses of electricity proportional to the number of rotations it experiences. If so, explain how it works. If not, explain how the PowerControl gets the information about the Cadence, etc.

When this information is available, you may wish to consider resubmission of your request. If you decide to resubmit your request, please include all of the material that we have returned to you and mail your request to U.S. Customs, Customs Information Exchange, 10th Floor, One Penn Plaza, New York, NY 10119, attn: Binding Rulings Section. If you have any questions regarding the above, contact National Import Specialist J. Sheridan at 646-733-3012.

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 J. Sheridan at 646-733-3012.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

NY K80388

November 17, 2003

CLA-2-90:RR:NC:N1:105 K80388

CATEGORY: Classification

TARIFF NO.: 8714.96.9000; 8714.99.8000;  
9029.20.2000

MR. LESLIE KLEIN  
SRM SERVICE CENTER USA  
7555 JULYNN ROAD  
COLORADO SPRINGS, CO 80919

RE: The tariff classification of bicycle related items from Germany; CORRECTED as noted in NY K81790

DEAR MR. KLEIN:

In your letter dated October 30, 2003, you requested a tariff classification ruling.

You import separately five items, PowerMeters, PowerControls, Chain Rings, Cranks, and Cables. The PowerMeter and the Chain Ring are joined together in the sample you submitted, but we understand from your letter that they will be imported separately.

You will resell these either together as elements of the SRM system “for use on a bicycle in scientific testing and research and to promote health and fitness” or individually as replacement parts.

The metal Chain Rings and Cranks replace the ones already on any standard bicycle and continue to perform the standard function for each. The replacement is made so the PowerMeter can be readily integrated into the bicycle.

You state that the PowerControl is “a small portable computer that receives and processes data transmitted from the PowerMeter.” It does not perform a control function, but keeps time, calculates the desired parameters from the raw data received, and displays that information. We assume it will be attached to the bicycle’s handle bars. Since it displays Hearttrate as well as Power, Time, Speed, Distance, and Cadence, we assume it actually receives data also from another device, since we see no way the PowerMeter attached to the Chain Ring could transmit heartbeat data.

Noting New York Ruling Letter H83311-105, 7-18-01, the applicable subheading for the PowerControl will be 9029. 20.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for bicycle speedometers. The rate of duty will be 6 percent ad valorem.

The applicable subheading for the Chain Ring gear will be 8714.96.9000, Harmonized Tariff Schedule of the United States (HTS), which provides for “other” crank gear and parts thereof. The rate of duty will be 10 percent ad valorem.

The applicable subheading for the crank will be 8714.99.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for “other” parts and accessories of vehicles of Headings 8711 to 8713. The rate of duty will be 10 percent ad valorem.

Regarding the Cables and the PowerMeter, we are returning your request for a classification ruling, and any related samples, exhibits, etc., because we

need additional information in order to issue a ruling. Please submit the additional information indicated below:

1. Regarding the Cables, you state, A. However, while one end of the cable does plug into the PowerControl, the cable bifurcates at the other end into two small plastic cylinders, which clearly cannot be plugged into a serial port. One of the cylinders has a magnet inside it, but the other does not. Explain in detail what the cable will connect and how it will interface with other devices.

2. Regarding the PowerMeter, you state that it is a “torque transducer,” but we do not see how it could measure torque, in lbf-feet, etc, and the PowerControl does not display a torque measurement. Explain, including a definition of the Power displayed. Also, it appears that it might be a part of a rotary encoder, i.e., a device which emits pulses of electricity proportional to the number of rotations it experiences. If so, explain how it works. If not, explain how the PowerControl gets the information about the Cadence, etc.

When this information is available, you may wish to consider resubmission of your request. If you decide to resubmit your request, please include all of the material that we have returned to you and mail your request to U.S. Customs, Customs Information Exchange, 10th Floor, One Penn Plaza, New York, NY 10119, attn: Binding Rulings Section. If you have any questions regarding the above, contact National Import Specialist J. Sheridan at 646-733-3012.

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 J. Sheridan at 646-733-3012.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT C]

HQ 083052

April 21, 1989

CLA-2 CO:R:C:G 083052 APS

Category: Classification

Tariff No.: 732.41 732.42 807.00 912.10  
8714.96.5000 8714.96.9 9802.80.00 9902.87.14

DISTRICT DIRECTOR OF CUSTOMS  
U.S. CUSTOMS SERVICE  
880 FRONT STREET, RM. 5-S-9  
SAN DIEGO, CALIFORNIA 92188

Re: Internal advice request No. 34/88 concerning the tariff classification, marking and allowance for American parts of crank sets for bicycles.

DEAR SIR:

This request for internal advice was filed on behalf of Assemble In Mexico, Inc., in your undated memorandum which was forwarded to Headquarters on October 26, 1988.

**FACTS:**

The imported article will be used as parts of a crank set for bicycles. A crank arm blank will be imported into Mexico from Japan. The crank arm blank is a tubular article approximately 8 inches long with a 1 inch x 1/2 inch cross section. Each end of the blank has an open circular cut out across the cross section. There is also a smaller cut out circle near one end of the blank.

Three tubular pieces which are to be fitted into the three cut out places will be imported into Mexico from the United States. These pieces are named the sprocket drive boss, the right pedal boss and the spindle boss.

The American made bosses will be welded into the three cut out circles in Mexico. We understand the operation in Mexico is a TIG or ARC welding process which requires only basic welding skills. This is the only operation which is performed in Mexico.

Upon importation into the United States, a pinch arm is welded to the end of the crank containing the spindle boss, six splines are machined on the inner surface of the spindle boss and the boss and pinch arm are split to leave a 1/16inch opening. The crank is then cleaned and chrome plated.

The crank is used in the construction of a bicycle. The pedal is torqued into the pedal boss, the sprocket drive boss is torqued onto the chain sprocket and the spline spindle boss is placed on the crank spindle. A so called pinch arm bolt is inserted into the pinch arm to "snug up" the crank on the spindle.

**ISSUE:**

Is the crank arm part of a cotterless crank set? If it is, classification will be under item 732.41, Tariff Schedules of the United States (TSUS) and subheading 8714.96.5000, Harmonized Tariff Schedules of the United States Annotated (HTSUSA). If not part of a cotterless crank set, classification will be as other parts of bicycles under item 732.42, TSUS, or as other crank gear parts under subheading 8714.96.9000, HTSUSA.

Other issues raised are whether there is an allowance for the American made parts under item 807.00, TSUS (subheading 9802.00.80, HTSUSA) and whether the part must be marked.

**LAW AND ANALYSIS:**

The article imported into the United States is an unfinished crank arm and classifiable as a part by reason of General Headnote 10(h), TSUS, and General Rule of Interpretation 2(a), HTSUSA.

A cotter is defined as follows in Webster's Third New International Dictionary, Unabridged (1986):

- 1a: a wedge-shaped or tapered piece used to fasten together parts of a machine or structure by being driven into a tapered opening through one or all the parts \*\*\*

The Random House Dictionary of the English Language, The Unabridged Edition (1973) defines a cotter as:

1. a pin, wedge, key or the like, fitted or driven into an opening to secure something or hold parts together.

**HOLDING:**

It is our position that the so called pinch-bolt fits very comfortably within these definitions. In fact, the diagram of a cotter in use in Webster's shows an application remarkably similar to the one under consideration. Thus, we find that the crank is not a cotterless crank.

Furthermore, even if it is found for some reason that the pinch bolt is not a cotter we still maintain that the crank is not a cotterless crank. In Headquarters letter 069847 dated June 11, 1982, IA 49/82 circulated as C.I.E. N-36/75 the interpretation of "cotterless type crank sets" was fully discussed. It was held that the term "cotterless" was not used in the common sense of "absence of a cotter" but in a commercial sense and "cotterless" referred to the attachment of the crank to the axle piece by mounting bolts and crank arm caps.

**OTHER ISSUES RAISED**

In order to receive an allowance for the American bosses, they must retain their identity and be subjected to a simple assembly. An examination of the sample showing the article as imported into the United States shows that the bosses have retained their identity. We understand that the welding process is a simple process requiring a minimum of skills which does not change the composition of the welded material. We find that an allowance should be made for the American components.

Regarding the marking issue, Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article.

Section 134.35, Customs Regulations (19 CFR 134.35), provides that an article used in the U.S. in manufacture which results in an article having a name, character, or use differing from that of the imported article will be considered substantially transformed, and therefore the manufacturer or processor in the U.S. who converts or combines the imported article into the different article will be considered the ultimate purchaser of the imported article within the contemplation of 19 U.S.C. 1304(a). Accordingly, the article

shall be excepted from marking. However, in accordance with 19 U.S.C. 1304(b) and {134.22, Customs Regulations (19 CFR 134.22), the outermost container of the imported article shall be marked to indicate the country of origin of the article.

A prior Customs ruling determined that imported ratchet wrench handles were substantially transformed by further machining in the U.S. In that instance the machining referred to broaching, *i.e.*, cutting teeth into the recessed core opening, plus some additional finishing. Also, a core mechanism was assembled into the core opening in the U.S. Although several things were done to the imported handles, the ruling singles out the broaching process as of particular significance and mentions the specialized machinery and skill required (721562 HL, October 17, 1988). *See also* 723271 HL, February 3, 1984, imported plier forgings are substantially transformed by the broaching of teeth and additional finishing operations performed in the U.S.

It is our opinion that the broaching of teeth into the spline boss, coupled with the additional welding to attach the pinch arm performed in the U.S. constitutes a substantial transformation of the imported crank assembly. Accordingly, the crank assemblies are excepted from individual marking under 19 U.S.C. 1304(a)(3)(D) provided that the assemblies will reach the ultimate purchaser in properly marked outer containers.

*Sincerely,*

JOHN DURANT,

*Director*

*Commercial Rulings Division*

## [ATTACHMENT D]

HQ H243595

CLA-2 OT:RR:CTF:TCM H243595 ALS

CATEGORY: Classification

TARIFF NO.: 8714.96.50

IVAN P. KOVES, ESQ.  
HOLLAND & HART, LLP  
555 17TH STREET, SUITE 3200  
DENVER, COLORADO 80202

RE: Modification of CBP Ruling NY K81790 (February 3, 2004), CBP Ruling NY K80388 (November 17, 2003), and CBP Ruling HQ 083052 (April 21, 1989); Tariff Classification of Bicycle Chainrings and Cranks; Harmonized Tariff Schedule of the United States subheading 8714.96.50

DEAR MR. KOVES:

This letter responds to your June 3, 2013 request for reconsideration of Customs and Border Protection (CBP) Ruling NY K81790 (February 3, 2004) on behalf of SRM Service Center. The request concerns the legal tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of SRM’s chainrings and cranks that are part of its cycling power meter system. The other components classified under NY K81790 are not affected in this ruling. In addition to the CBP Rulings noted above for reconsideration, we find that CBP Ruling HQ 083052 (April 21, 1989) addresses similar merchandise and therefore also warrants reconsideration with respect to the tariff classification the cranks at issue therein. Our decision is set forth below.

**FACTS:**

The facts as stated in NY K81790 are as follows:

You import separately five items, PowerMeters, PowerControls, Chainrings, Cranks, and Cables. The PowerMeter and the Chainring are joined together in the sample you submitted, but we understand from your letter that they will be imported separately. You will resell these either together as elements of the SRM system “for use on a bicycle in scientific testing and research and to promote health and fitness” or individually as replacement parts.

The metal Chainrings and Cranks replace the ones already on any standard bicycle and continue to perform the standard function for each. The replacement is made so the PowerMeter can be readily integrated into the bicycle. You state that the PowerControl is “a small portable computer that receives and processes data transmitted from the PowerMeter.” It does not perform a control function, but keeps time, calculates the desired parameters from the raw data received, and displays that information. We assume it will be attached to the bicycle’s handle bars. Since it displays Heartrate as well as Power, Time, Speed, Distance, and Cadence, we assume it actually receives data also from another device, since we *see* no way the PowerMeter attached to the Chainring could transmit heartbeat data.

The specific items at issue here are the chainrings and cranks of various SRM cranksets. The article at issue in HQ 083052 was a crank (described as a “crank arm blank” in that ruling) imported separately from the crankset with which it is used.<sup>1</sup>

You request reconsideration of NY K81790 because you argue that “the chainrings and cranks are part of an SRM crankset which is cotterless.” For that reason, you contend that [HTSUS subheading] “8714.96.5000 is the more specific and better classification” than both HTSUS subheading 8714.96.9000, the tariff classification under which the chainrings were classified in NY K81790, and HTSUS subheading 8714.99.8000, the tariff classification under which the cranks were classified in NY K81790. CBP issued NY K81790 to correct a clerical error in CBP Ruling NY K80388 (November 17, 2003). The substance of NY K80388 was not changed as a result. Consequently, both NY K81790 and NY K80388 are being reconsidered herein. All subsequent references herein to NY K81790 apply equally to NY K80388.

#### **ISSUE:**

Are certain SRM chainrings, as described herein, properly classified under HTSUS subheading 8714.96.90 as “Parts and accessories of vehicles of heading 8711 to 8713: Other: Pedals and crank-gear, and parts thereof: Other crank-gear and parts thereof,” or under HTSUS subheading 8714.96.50 as “Parts and accessories of vehicles of heading 8711 to 8713: Pedals and crank-gear, and parts thereof: Cotterless-type crank sets and parts thereof”?

Are certain SRM cranks and the crank at issue in HQ 093052, as described herein, properly classified under HTSUS subheading 8714.99.80 as “Parts and accessories of vehicles of heading 8711 to 8713: Other: Other,” or under HTSUS subheading 8714.96.50 as “Parts and accessories of vehicles of heading 8711 to 8713: Other: Pedals and crank-gear, and parts thereof: Cotterless-type crank sets and parts thereof”?

#### **LAW AND ANALYSIS:**

Classification under the HTSUS is determined in accordance with the General Rules of Interpretation 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, GRIs 2 through 6 may be applied in order. GRI 6 states that [f]or legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

The HTSUS provisions at issue are as follows:

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<sup>1</sup> The terms “crank” and “crank arm” are used interchangeably in HQ 083052 and are used as with the same meaning in this case.



8714	Parts and accessories of vehicles of headings 8711 to 8713: Other:
8714.96	Pedals and crank-gear, and parts thereof:
8714.96.50	Cotterless-type crank sets and parts thereof...
	* * *
8714.96.90	Other crank-gear and parts thereof...
	* * *
8714.99	Other:
8714.99.80	Other...

\*\*\*\*\*

There is no question that the articles at issue are parts of a vehicle of headings 8711 to 8713, specifically a bicycle of HTSUS heading 8712, which provides for “Bicycles and other cycles (including delivery tricycles), not motorized”. The distinction between the two HTSUS subheadings that CBP ruled to be applicable in this case is that 8714.96 specifically refers to pedals, crank-gear, and parts thereof, while 8714.99 more generally refers to other parts and accessories of vehicles of headings 8711 to 8713 and as such is a residual provision. *See, e.g., E.M. Industries, Inc. v. U.S.*, 999 F. Supp. 1473, 1480 (CIT 1998) (“Basket’ or residual provisions of HTSUS headings... are intended as a broad catch-all to encompass the classification of articles for which there is no more specifically applicable subheading.”). Thus, the primary issue is whether the SRM chainrings and cranks fall under the scope of subheading 8714.96 as parts of crank gear. If yes, then the follow-up question to be answered is whether the SRM chainrings and cranks are parts of a cotterless-type crankset of subheading 8714.96.50.

The SRM crankset, as mentioned in the FACTS section above, consists of chainrings, crank, a spider, pinch bolts (in some iterations), washers, screws, bolts, and end caps. This is typical of most bicycle cranksets. As noted above, the spider is a multi-pronged piece upon which the chainrings are affixed with bolts and screws on one side and to which one of the two cranks is affixed with the pinch bolts and nuts. An example of an unassembled complete crankset appears as follows in Image 1:

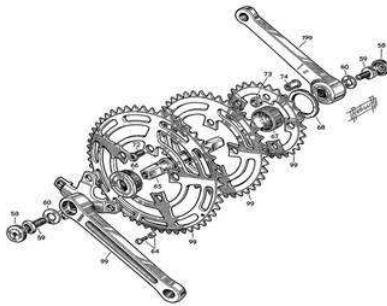


Image 1

Image 1b below shows a side view of a crankset with each part identified:

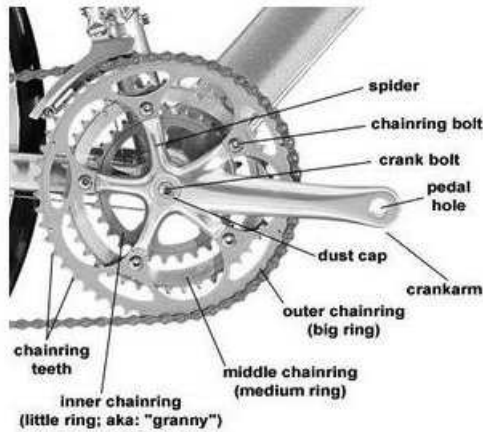


Image 1b

The following (Image 1c) is a more simplified blown up view of an unassembled crankset:

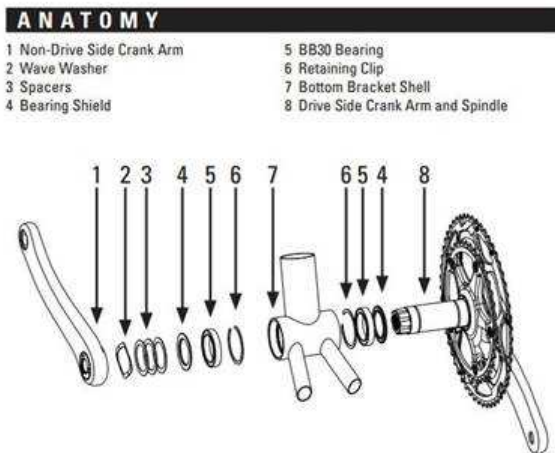


Image 1c

In Images 1 and 1b, the three large circular pieces with “teeth” lining their entire outer edges are chainrings. The subject chainrings are of the same design and have the same dimensions as the chainrings they are designed to replace on stock bicycles. In Image 1c, the long cylinder-like pieces that are fitted onto the spindle and then protrude out are the crankarms, or simply, cranks. The pedals of the bicycle are screwed into the holes at the outer end of the cranks. Note the spindle in relation to the chainrings and cranks in

Image 1c. The subject cranks are similar in design and have the same longitudinal dimensions as the cranks they are designed to replace on stock bicycles. Thus, it is without question that the subject chainrings and cranks are parts of crank gear, as specifically covered under subheading 8714.96. Therefore, subheading 8714.99 is not applicable, as a basket provision for articles not specifically covered elsewhere in HTSUS, to either article at issue in this case.

We must now determine if the SRM chainrings and cranks are, as parts of crank gear of subheading 8714.96, parts of cottered cranksets or cotterless cranksets. To do so, we will discuss the differences between cottered cranksets and cotterless cranksets.

#### *Cottered cranksets*

The following photograph (Image 2) is of a typical cotter for a bicycle cottered crankset assembly. Note the flat face of one side and the nut and washer affixed to one end but not the other end:



Image 2

An illustration of how the cotter fits into a crank and onto the spindle is as follows in Image 3:

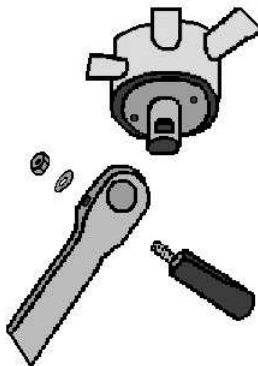


Image 3

In Image 3, the cotter is secured to the crank with the nut and washer after it is inserted into the crank and thereby fitted onto the spindle. The flat face of the cotter fits snugly onto the flat side of the spindle in this assembly. The following Image 4 is a photograph of a cotter inserted into a crank without the securing nut and washer:



Image 4

The following Image 5 is a photograph of flat-faced spindles onto which the crank and cotter is fitted:



Image 5

The following Image 5b is a photograph of a fully-assembled cotted crankset:



Image 5b

### *Cotterless cranksets*

In a cotterless crankset assembly, the cranks are fitted onto the spindle by inserting the end of the spindle in the corresponding hole of the crank. The following photograph (Image 6) shows four different types of cotterless spindles:



Image 6

As shown, cotterless spindles come in different shapes and the hole of the corresponding crank is, of course, shaped accordingly. Upon being fitted onto the spindle, the cotterless crank is secured to the spindle either exclusively with an end cap/bolt or a combination of the end cap/bolt and pinch bolts screwed into the end of the crank. The following (Image 7) is a photograph of a crank secured exclusively via an end bolt, with a cross-section cut out for illustration purposes:



Image 7

The following (Image 8) is an illustration of a crank with pinch bolts at the end and an end cap. This is similar to the SRM cranks at issue. Note the ridges on the inside of the hole in the crank:

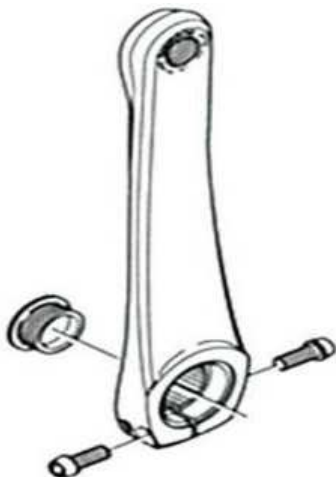


Image 8

The following (Image 9) is a photograph of the same type of crank fitted onto the spindle. Note the end cap secured in place:



Image 9

### *Analysis*

You assert that the method of attaching the subject crank to the axle by means of a splined spindle from the axle inserted into a matched hole in the crank and then secured by pinch bolts at the end of the crank is descriptive of a cotterless crank. You specifically disagree with HQ 083052, *supra*, in which CBP determined that the pinch bolt in this type of crankset assembly “fits very comfortably within [the definition]” of a cotter. HQ 083052 cited the Webster’s Third New International Dictionary, Unabridged (1986) for guidance on the definition of a cotter, which that dictionary defined as “a wedge shaped or tapered piece used to fasten together parts of a machine or structure by being driven into a tapered opening through one or all of the parts.” The ruling also cited another dictionary that defined a cotter as “a pin, wedge, key or the like, fitted or driven into an opening to secure something or hold parts together.” Random House Dictionary of the English Language, The Unabridged Edition (1973).

The latter definition is also stated verbatim in the online dictionary Dictionary.com (2016). A more recent definition of a cotter defines it as “a wedge-shaped or tapered piece used to fasten together parts of a structure.” <http://www.merriam-webster.com/dictionary/cotter> (2016).

Engineering-dictionary.org defines cotterless crankset as “bicycle crankset in which the crankarms are fastened to the axle by means of nuts or bolts instead of cotter pins.” [http://www.engineering-dictionary.org/Cotterless\\_crank](http://www.engineering-dictionary.org/Cotterless_crank). The same definition is offered verbatim on an automotive site. See [http://www.automotivedictionary.org/Dictionary-of-Automotive-Terms/H/6/N/2/P/A/9/I/3/Cotterless\\_crank](http://www.automotivedictionary.org/Dictionary-of-Automotive-Terms/H/6/N/2/P/A/9/I/3/Cotterless_crank).

In the HOLDING section of HQ 083052, CBP concluded that “the term ‘cotterless’ was not used in the common sense of ‘absence of a cotter’ but in a commercial sense and ‘cotterless’ referred to the attachment of the crank to the axle piece by mounting bolts and crank arm caps.” In reaching that conclusion, CBP cited CBP Letter HQ 069847 (June 11, 1982), which was circulated as C.I.E. N36/75. Upon review of the present case, we find the conclusion reached in HQ 083052 to be in error.

Our reading of the general definition of a cotter pin is that its pertinent defining characteristic is that it is tapered or wedge-shaped, as shown in Image 2. This is true no matter the source of the definition, even the definition cited in HQ 083052. In this context, that shape is critical to how the various pieces of the cottered crankset are fitted together. As noted above, a cottered crank spindle is flat on one side (see Image 5) so that the flat side of the cotter can fit snugly together, as shown in Images 3 and 4. This is basically how a cottered crankset is fitted together. The nut and washer that screw onto the end of the cotter that protrudes out of one end of the crank after insertion are what secures the cotter pin in place.

In contrast to how a cottered crankset is designed, a cotterless crankset has splines notched into the outer diameter of the end(s) of the spindle, as shown on the last three spindles in Image 6 from left to right, and the crank(s) (in some cases, the spindle is integrated onto the spider and/or the opposite crank, as shown in Image 1c) have corresponding splines notched into the inside of the spindle hole at the end of the crank, as shown in Image 8. (In earlier designs, the spindle has a rectangular knob at its end and the crank has a corresponding rectangular hole at its end, as shown in the first spindle in Image 6 from left to right.) The spindle and crank are fitted together by inserting the splined end of the spindle into the splined spindle hole of the crank. As noted above, the crank is secured to the spindle either exclusively with an end cap or bolt cap or with pinch bolts in conjunction with an end cap or bolt cap, as shown in Images 8 and 9.

While HQ 083052 finds that the pinch bolts fit within the definition of a cotter, we disagree with that finding. We find that the pinch bolts are more akin to the nut and washer of the cotter pin of cottered cranksets in that the pinch bolts secure the assembly in place after the principal parts, the spindle and crank(s), along with the spider, have been fitted together. There is no corresponding part for the cotter pin on cotterless cranksets as a cotter is not needed to fit the principal parts together. Furthermore, the pinch bolts are not tapered or wedge-shaped, rather they are shaped like conventional bolts with a head that is shaped for a corresponding wrench and a cylinder-shaped body with winding grooves running along its length. In short, the pinch bolts are not designed to and do not perform the equivalent function of a cotter pin in a cottered crankset.

Given the foregoing, we find that the pinch bolts are not cotters. We also find that cranksets that utilize such pinch bolts but do not utilize a cotter pin are not cottered cranksets, but are in fact cotterless cranksets. It also follows that the parts of cranksets that utilize pinch bolts but not a cotter pin, including chainrings, are parts of a cotterless crankset, not a cottered crankset. Consequently, the subject chainrings and cranks are identified as parts of cranksets that are cotterless. Therefore, in accordance with GRI 6, the subject chainrings and cranks and other SRM chainrings and cranks that are parts of SRM cranksets that do not utilize a cotter pin to be fitted together are properly classified under HTSUS subheading 8714.96.50 as "Parts and accessories of vehicles of heading 8711 to 8713: Other: Pedals and crank-gear, and parts thereof: Cotterless-type crank sets and parts thereof..."

We note again that CBP Ruling HQ 083052 (April 21, 1989) held that pinch bolts that are used as described above are parts of a cottered crankset, not a cotterless crankset. Based on the foregoing, the crank at issue in HQ 083052 is a part of a cotterless crankset and as such is properly classified under HTSUS subheading 8714.96.50 as "Parts and accessories of vehicles of head-



ing 8711 to 8713: Other: Pedals and crank-gear, and parts thereof: Cotterless-type crank sets and parts thereof.” Consistent with our findings and conclusion here, we now find the holding in HQ 083052 to be incorrect and therefore HQ 083052 is to be modified accordingly.

**HOLDING:**

By application of GRI 6, the subject chainrings and cranks that are parts SRM cranksets that do not utilize a cotter pin to be fitted together are properly classified under HTSUS subheading 8714.96.50 as “Parts and accessories of vehicles of heading 8711 to 8713: Other: Pedals and crank-gear, and parts thereof: Cotterless-type crank sets and parts thereof...” The general column one rate of duty, for merchandise classified under this subheading is free.

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

**EFFECT ON OTHER RULINGS:**

CBP Ruling NY K81790 (February 3, 2004) is hereby MODIFIED only with respect to the tariff classification of Chainrings and Cranks.

CBP Ruling NY K80388 (November 17, 2003) is hereby MODIFIED only with respect to the tariff classification of Chainrings and Cranks.

CBP Ruling HQ 083052 (April 21, 1989) is hereby MODIFIED only with respect to the tariff classification of Cranks (referred to as “Crank Arm Blanks” in that ruling).

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*



**PROPOSED REVOCATION OF ONE RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF A CABLE CUTTER**

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

**ACTION:** Notice of proposed revocation of one ruling letter and revocation of treatment relating to the tariff classification of a cable cutter.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of a cable

cutter under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

**DATES:** Comments must be received on or before August 5, 2016.

**ADDRESSES:** Written comments are to be addressed to the U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229-1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Emily Simon, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325-0142.

#### **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 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 proposing to revoke one ruling letter

pertaining to the tariff classification of a cable cutter. Although in this notice, CBP is specifically referring to New York Ruling Letter (“NY”) N201177, dated December 28, 2007 (Attachment A), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one ruling identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N021177, CBP classified a cable cutter in subheading 8203.20, HTSUS, specifically in subheading 8203.20.60, HTSUS, which provides for “Files, rasps, pliers (including cutting pliers), pincers, tweezers, metal cutting shears, pipe cutters, bolt cutters, perforating punches and similar handtools, and base metal parts thereof: Pliers (including cutting pliers), pincers, tweezers and similar tools, and parts thereof: Other: Other (except parts).” CBP has reviewed NY N021177 and has determined the ruling letter to be in error. It is now CBP’s position that the cable cutter is properly classified, by operation of GRIs 1 and 6, in heading 8203, HTSUS, specifically in subheading 8203.30.00, HTSUS, which provides for “Files, rasps, pliers (including cutting pliers), pincers, tweezers, metal cutting shears, pipe cutters, bolt cutters, perforating punches and similar handtools, and base metal parts thereof: Metal cutting shears and similar tools and similar tools, and parts thereof.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N021177 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H270402, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: June 9, 2016

JACINTO JUAREZ

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

N021177

December 28, 2007

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

CATEGORY: Classification

TARIFF NO.: 8203.20.6030

MS. CAROLYN LASKAVY  
COMPLIANCE SPECIALIST  
CENTRAL PURCHASING, LLC  
3491 MISSION OAKS BLVD.  
CAMARILLO, CA 9303

RE: The tariff classification of a cable cutter from China.

DEAR MS. LASKAVY:

In your letter dated December 21 2007, you requested a tariff classification ruling.

You describe Item number 40507 as a 10" cable cutter. The item is said to be made of rugged heat-treated drop forged steel. You state that it is capable of cutting through cable up to 7/8" in diameter but it is not suitable for cutting steel. The picture you supplied indicates that this item has dipped handles connected to two cutting jaws that pivot at the joint.

The applicable subheading for the cable cutter will be 8203.20.6030, Harmonized Tariff Schedule of the United States (HTSUS), which provides for files, rasps, pliers (including cutting pliers), pincers, tweezers, metal cutting shears, pipe cutters, bolt cutters, perforating punches and similar handtools, and base metal parts thereof: pliers (including cutting pliers), pincers, tweezers and similar tools, and parts thereof: other: other (except parts), pliers. The rate of duty will be 12¢/doz. + 5.5% ad valorem

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

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

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

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H270402  
CLA-2 OT:RR:CTF:TCM H270402 EMS  
CATEGORY: Classification  
TARIFF NO.: 8203.30.0000

SOLOMON SARANG, TRADE COMPLIANCE SPECIALIST  
CENTRAL PURCHASING LLC (dba HARBOR FREIGHT TOOLS)  
26541 AGOURA ROAD  
CALABASAS, CA 91302

RE: Revocation of NY N021177; Classification of a Cable Cutter (Item Number 40507)

DEAR MR. SARANG:

This is in reply to your letter dated September 3, 2015, on behalf of Central Purchasing LLC (dba Harbor Freight Tools), in which you requested reconsideration of NY N021177, dated December 28, 2007. U.S. Customs and Border Protection (“CBP”) classified a cable cutter (item number 40507) under subheading 8203.20.6030 of the Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “Files, rasps, pliers (including cutting pliers), pincers, tweezers, metal cutting shears, pipe cutters, bolt cutters, perforating punches and similar handtools, and base metal parts thereof: Pliers (including cutting pliers), pincers, tweezers and similar tools, and parts thereof: Other: Other (except parts): Pliers.”

We have reviewed NY N021177 and found it to be in error based on the revised facts set forth in the request for reconsideration, dated September 3, 2015, and the supplemental submission, dated June 3, 2016.

**FACTS:**

In NY N021177, CBP provided the following description of the cable cutter:

You describe Item number 40507 as a 10” cable cutter. The item is said to be made of rugged heat-treated drop forged steel. You state that it is capable of cutting through cable up to 7/8” in diameter but it is not suitable for cutting steel. The picture you supplied indicates that this item has dipped handles connected to two cutting jaws that pivot at the joint.

The request for reconsideration indicates that the factual description provided in the original ruling request did not take into account that the cable cutter was capable of cutting through copper and aluminum cable. According to the request for reconsideration, “item 40507 is capable of cutting through copper or aluminum cable.” The Harbor Freight Tools website describes the cable cutter, in part, as follows: “Cable cutter cuts copper and aluminum cable [to 7/8 in. diameter] with ease.”<sup>1</sup> It has been confirmed in a supplemental submission by Harbor Freight Tools that the cable cutter has always had this capability, including at the time of issuance of NY N021177. Moreover, the

<sup>1</sup> Harbor Freight Tools: Pittsburgh – Item Number 40507, <http://www.harborfreight.com/10-inch-cable-cutter-40507.html> (last visited June 6, 2016).

images of the product that we reviewed demonstrate that the two cutting jaws that pivot at the joint actually slide past each other when cutting cables made of the aforementioned metals.<sup>2</sup>

### ISSUE:

Whether the cable cutter (item number 40507) is classified as “pliers” of subheading 8203.20, HTSUS, or as “metal cutting shears” of subheading 8203.30, HTSUS.

### LAW AND ANALYSIS:

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

Heading 8203, HTSUS, provides for: “Files, rasps, pliers (including cutting pliers), pincers, tweezers, metal cutting shears, pipe cutters, bolt cutters, perforating punches and similar handtools, and base metal parts thereof: Pliers (including cutting pliers), pincers, tweezers and similar tools, and parts thereof.” The HTSUS subheadings under consideration in this case are as follows:

8203.20	Pliers (including cutting pliers), pincers, tweezers and similar tools, and parts thereof
8203.30	Metal cutting shears and similar tools and similar tools, and parts thereof

The applicable legal note is Note 3 to Section XV, HTSUS, which states as follows:

Throughout the schedule, the expression “base metals” means: iron and steel, copper, nickel, aluminum, lead, zinc, tin, tungsten (wolfram), molybdenum, tantalum, magnesium, cobalt, bismuth, cadmium, titanium, zirconium, antimony, manganese, beryllium, chromium, germanium, vanadium, gallium, hafnium, indium, niobium (columbium), rhenium and thallium.

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 ENs to heading 8203 address the types of hand tools covered in this heading and the ENs provide, in relevant part, as follows:

**(B) Pliers (including cutting pliers), pincers, tweezers and similar tools, including:**

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<sup>2</sup> We note that the original ruling request for NY N02117 neither included a sample nor did it otherwise expound upon the operation of the subject cable cutters (degree of movement of the shears) or identify any metals that it could cut.

- (1) Pliers (e.g., seal closers and pliers, sheep ear and other animal marking pliers, gas pipe pliers, pliers for inserting or extracting cotter pins, eyelet and eyelet closing pliers; plier type saw sets).
- (2) Pincers (e.g., farriers' tongs and smiths' tongs).
- (3) Tweezers (e.g., watchmakers', florists', philatelists', depilating).
- (4) Nail pullers (jaw type, working on the pincer principle).

(C) **Metal cutting shears and similar tools**, including tinmen's snips, and other sheet metal or wire cutting shears.

*(emphasis in original).*

As is evident from the ENs above, both pliers of subheading 8203.20, HTSUS, and shears of heading 8203.30, HTSUS, are capable of performing a cutting function. A critical difference is that while both tools work around a pivot, "the cutting blades of shears slide past each other to perform their cutting function." See NY N026888, dated May 2, 2008 (classifying "Oval Head Cutters" and "Flush Cutting Shears" as pliers of subheading 8203.20 because "[t]he cutting edges of these blades are not similar to shears since they do not slide past each other."). The cutting blades of the subject cable cutter do slide past each other when cutting cable. The kinds of cable that can be cut include both copper and aluminum, which are base metals, as defined in Note 3 to Section XV, HTSUS. Accordingly, the subject cable cutter is classifiable as "metal cutting shears" of subheading 8203.30, HTSUS, as described EN (C) to heading 8203. See NY N231636, dated September 6, 2012 (classifying a "Cable Cutter ... for cutting copper and aluminum cable" that "consist of two handles that operate to shear-type blades around a pivot" under subheading 8302.30, HTSUS).

#### **HOLDING:**

By application of GRIs 1 and 6, the cable cutter (item number 40507) is classified under subheading 8203.30, HTSUS, and specifically under subheading 8203.30.0000, HTSUS, which provides for "Files, rasps, pliers (including cutting pliers), pincers, tweezers, metal cutting shears, pipe cutters, bolt cutters, perforating punches and similar handtools, and base metal parts thereof: Metal cutting shears and similar tools and similar tools, and parts thereof." The column one, general rate of duty is free.

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

#### **EFFECT ON OTHER RULINGS:**

NY N021177, dated December 28, 2007, is hereby REVOKED.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*



**PROPOSED REVOCATION OF ONE RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF THE LG CHROMEbase**

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

**ACTION:** Notice of proposed revocation of one ruling letter and revocation of treatment relating to the tariff classification of the LG Chromebase.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter concerning tariff classification of the LG Chromebase under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

**DATES:** Comments must be received on or before August 5, 2016.

**ADDRESSES:** Written comments are to be addressed to the U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Emily Simon, Tariff Classification and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0142.

**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 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 proposing to revoke one ruling letter pertaining to the tariff classification of the LG Chromebase. Although in this notice, CBP is specifically referring to New York Ruling Letter ("NY") N257812, dated October 24, 2014 (Attachment A), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one ruling identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N257812, CBP classified the LG Chromebase in heading 8543, HTSUS, specifically in subheading 8543.70.96, HTSUS, which provides for "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other." CBP has reviewed NY N257812 and has determined the ruling letter to be in error. It is now CBP's position that the LG Chromebase is properly

classified, by operation of GRI 1, in heading 8471, HTSUS, specifically in subheading 8471.49.00, HTSUS, which provides for “Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included: Other automatic data processing machines: Other, entered in the form of systems.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N257812 and to revoke or modify any other ruling not specifically identified to reflect the analysis contained in the proposed HQ H264746, set forth as Attachment B to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: June 9, 2016

JACINTO JUAREZ

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## [ATTACHMENT A]

N257812

October 24, 2014

CLA-2-85:OT:RR:NC:N1:112

CATEGORY: Classification

TARIFF NO.: 8543.70.9650

Ms. SARAH CHO  
LG ELECTRONICS U.S.A., INC.  
1000 SYLVAN AVENUE  
ENGLEWOOD CLIFFS, NJ 07632

RE: The tariff classification of the Chromebase 22CV241-W from China

DEAR Ms. CHO:

In your letter dated October 2, 2014 you requested a tariff classification ruling.

The merchandise in question is referred to as a Chromebase (Model #22CV241-W) and is described as an All-in-one computer. The Chromebase is equipped with a 21.5" LED monitor, a 1.4 GHz processor, 2 GB of memory, a 15 GB solid state hard disk drive, and comes with the Chrome Operating System (OS) pre-installed. This All-in-one unit includes wired and wireless communication, built-in speakers, a microphone, and a webcam. The unit is packaged with a separate keyboard and mouse.

The Chromebase allows a user to conduct general computing tasks like web browsing, e-reading, document creation and editing, and minor photo and video editing capabilities. Users are provided with a cloud based file storage solution, antivirus and security software, and photo editing applications. The unit relies on the Internet for many of its main features, but the Chromebase can operate as a standalone unit and users are able to perform some tasks that are not dependent on web connectivity. However, while in a standalone mode, some core attributes like the cloud based storage do not function.

We note that software applications are limited to Chrome specific programs, and must be acquired exclusively from Chrome's Web Store. Further, users of the Chromebase are prevented or blocked from loading an alternative OS, web browser, or antivirus software of their choosing other than what is available from the Chrome Web Store.

You suggested the Chromebase is properly classified under 8471.49.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Automatic data processing machines and units thereof...: Other automatic data processing machines: Other, entered in the form of systems." This office disagrees with the proposed classification.

Based on the additional information you provided, the Chromebase is not freely programmable by the end user. It is limited in its capabilities since it is not able to do its own processing. Thus it does not meet all the requirements of Note 5A to Chapter 84, HTSUS.

The applicable subheading for the Chromebase (Model #22CV241-W) will be 8543.70.9650, HTSUS, which provides for Electrical machines and apparatus...: Other machines and apparatus: Other: Other: Other: Other. The rate of duty will be 2.6 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Karl Moosbrugger at [karl.moosbrugger@cbp.dhs.gov](mailto:karl.moosbrugger@cbp.dhs.gov).

*Sincerely,*

GWENN KLEIN KIRSCHNER,

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H264746  
CLA-2 RR:CTF:TCM H264746 EMS  
CATEGORY: Classification  
TARIFF NO.: 8471.49.0000

DAVID NEWMAN, ESQ.  
45 VILLAGE GATE WAY  
NYACK, NY 10960

RE: Revocation of NY N257812; Classification of LG Chromebase (Model Number 22CV241-W); Note 5(A) to Chapter 84, HTSUS

DEAR MR. NEWMAN:

This is in reply to your letter dated February 23, 2015, on behalf of LG Electronics U.S.A., Inc. (“LGEUS”), in which you requested reconsideration of NY N257812, dated October 24, 2014. U.S. Customs and Border Protection (“CBP”) classified the LG Chromebase (model number 22CV241-W) under subheading 8543.70.9650 of the Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “Electrical machines and apparatus ...: Other machines and apparatus: Other: Other: Other.”

We have reviewed NY N257812 and found it to be in error based on the revised facts set forth in the request for reconsideration and supplemental submissions dated December 24, 2015 and March 4, 2016.

**FACTS:**

In NY N257812, CBP described the LG Chromebase as follows:

The merchandise in question is referred to as a Chromebase (Model #22CV241-W) and is described as an All-in-one computer. The Chromebase is equipped with a 21.5” LED monitor, a 1.4 GHz processor, 2 GB of memory, a 15 GB solid state hard disk drive, and comes with the Chrome Operating System (OS) pre-installed. This All-in-one unit includes wired and wireless communication, built-in speakers, a microphone, and a webcam. The unit is packaged with a separate keyboard and mouse.

The Chromebase allows a user to conduct general computing tasks like web browsing, e-reading, document creation and editing, and minor photo and video editing capabilities. Users are provided with a cloud[-]based file storage solution, antivirus and security software, and photo editing applications. The unit relies on the Internet for many of its main features, but the Chromebase can operate as a standalone unit and users are able to perform some tasks that are not dependent on web connectivity. However, while in a standalone mode, some core attributes like the cloud[-]based storage do not function.

We note that software applications are limited to Chrome specific programs, and must be acquired exclusively from Chrome’s Web Store. Further, users of the Chromebase are prevented or blocked from loading an alternative OS, web browser [other than Google Chrome] , or antivirus software of their choosing other than what is available from the Chrome Web Store.

Prior to issuing NY N257812, CBP had considered and rejected classification under subheading 8471.49.0000, HTSUS, which provides for “Automatic

data processing machines and units thereof ...: Other automatic data processing machines: Other, entered in the form of systems.” In NY N257812, CBP explained as follows:

Based on the additional information you provided, the Chromebase is not freely programmable by the end user. It is limited in its capabilities since it is not able to do its own processing. Thus it does not meet all the requirements of Note 5A to Chapter 84, HTSUS.<sup>1</sup>

The request for reconsideration states at the outset that it is “based upon additional facts that were not before ... CBP.” The salient additional facts, which are supported by independent documentary evidence, including the product specifications, are as follows:

1. The native Chrome Operating System (“OS”) is stored and processed on the machine itself, but the LG Chromebase can be programmed by the end users to run a different OS.<sup>2</sup>
2. Access to cloud-based storage is not a core functionality for the LG Chromebase, as the OS and many applications can function when the machine is in standalone mode (i.e., without Internet connectivity).
3. The LG Chromebase is not limited to fixed programs and there are no hardware or software blocks preventing the end users from downloading off-the shelf, third party applications.<sup>3</sup>
4. The Chrome Web Store is not the exclusive source of applications that can be downloaded for use on the LG Chromebase; other sources are available online and programs can be manually created by the end users.<sup>4</sup>

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<sup>1</sup> It is noteworthy that CBP rejected two earlier ruling requests submitted by LGEUS earlier in 2014 for the LG Chromebase because the facts regarding the operational capabilities appeared to be inaccurately stated by LGEUS. There was also additional outreach from CBP and discussion with LGEUS in an attempt to clarify the facts prior to the issuance of NY N257812. It was only in the context of the reconsideration request submitted by legal counsel in 2015 that CBP has been provided the necessary clarification by LGEUS (including retractions of past inaccurate statements).

<sup>2</sup> According to the reconsideration request: “Previously, in response to Customs’ questions regarding its original submission, LGEUS indicated incorrectly that it could not do so. In point of fact, it can do so but LG will not warranty the Chromebase when used with other operating systems. So, from a marketing perspective LGEUS discourages the use of such alternatives. But, from a technical standpoint, there is absolutely nothing to prevent the Chromebase from running an OS other than Chrome.”

<sup>3</sup> We note that NY N257812 made reference to blocks regarding antivirus software and web browsers. According to the second supplemental submission for the reconsideration request, users can install web browsers (other than Google Chrome) as applications that can be run on the Chrome OS or users could install a different OS and use various web browsers. The second supplemental submission also advised that the Chrome OS has integrated antivirus software, but users can run additional antivirus software through downloadable applications or install a different OS and use various other antivirus software.

<sup>4</sup> According to the first supplemental submission for the reconsideration request: “The Chrome Web Store is still the official site for the download of Chrome applications .... LGEUS directs its customers to the official site to ensure a reliable user experience. ... [I]ndependent developers can program and release their own applications that a Chromebase user can download.” We note that there are publically available developer tools (known as Application Programming Interfaces or APIs) that enable end users to build applications for the Chrome OS platform (whether or not web-based).

It has been confirmed by LGEUS, through legal counsel, that all of the facts listed above described the specific LG Chromebase model in issue at the time of submission of the original ruling request that resulted in the issuance of NY N257812.

**ISSUE:**

Whether the LG Chromebase (model number 22CV241-W) is classified as “automatic data processing machines” of heading 8471, HTSUS, or as other “electrical machines” of heading 8543, HTSUS.

**LAW AND ANALYSIS:**

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

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

- |      |  |
|------|--|
| 8471 | Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included |
| 8543 | Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof   |

The applicable legal note is Note 5(A) to Chapter 84, HTSUS, which states as follows:

For the purposes of heading 8471, the expression “automatic data processing machines” means machines capable of:

- (i) Storing the processing program or programs and at least the data immediately necessary for the execution of the program;
- (ii) Being freely programmed in accordance with the requirements of the user;
- (iii) Performing arithmetical computations specified by the user; and
- (iv) Executing, without human intervention, a processing program which requires them to modify their execution, by logical decision during the processing run.

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(A) to heading 8471 addresses automatic data processing machine and states, in relevant part, as follows:



The automatic data processing machines of this heading must be capable of fulfilling **simultaneously** the conditions laid down in Note 5 (A) to this Chapter. ...

Thus, machines which operate only on fixed programs, i.e., programs which cannot be modified by the user, are **excluded** even though the user may be able to choose between a number of such fixed programs.

These machines have storage capability and also stored programs which can be changed from job to job. ...

*(emphasis in original).*

We note that NY N257812 properly took the position that a machine that is inoperable without Internet access is not classifiable under heading 8471; but, it has been confirmed that the LG Chromebase does, in fact, contain such functionality. The first requirement set forth in Note 5(A) to Chapter 84 is that an automatic data processing machine of heading 8471 must be capable of “[s]toring the processing program or programs and at least the data immediately necessary for the execution of the program.” Note 5(A)(i) to Chapter 84, HTSUS. The LG Chromebase contains a hard drive as well as memory and cache capable of storing programs and data immediately necessary for program execution. The native Chrome OS is stored and processed on the machine itself, although the end users may install a different OS. Moreover, the end users can write or download native Chrome OS applications and other web-based applications, a significant portion of which remain functional on the LG Chromebase regardless of whether there is Internet connectivity.

The applications described above must also comport with the second requirement set forth in Note 5(A) to Chapter 84, which is that an automatic data processing machine of heading 8471 must be capable of “[b]eing freely programmed in accordance with the requirements of the user.” Note 5(A)(ii) to Chapter 84, HTSUS. In HQ H075336, dated May 16, 2011, CBP analyzed the meaning of “freely programmable” in this context and explained as follows:

In *Optrex America Inc. v. United States*, 472 F. Supp. 2d 1177 (Ct. Int'l Trade 2006), *aff'd*, 745 F.3d 1367 (Fed. Cir. 2007) (“Optrex”), the U.S. Court of Appeals for the Federal Circuit (“CAFC”) upheld CBP’s long-standing interpretation that a “freely programmable” ADP machine is one that: (i) applications can be written for, (ii) does not impose artificial limitations upon such applications, and (iii) will accept new applications that allow the user to manipulate the data as deemed necessary by the user. 745 F.3d at 1368. *See also* Headquarters Ruling Letter (“HQ”) 964880, dated December 21, 2001. The *Optrex* court noted that “[CBP’s] interpretation is supported by the World Customs Organization’s Explanatory Notes [...] which provide that ‘machines which operate only on fixed programs, that is, programs which cannot be modified by the user, are excluded [from heading 8471] even though the user may be able to choose from a number of such fixed programs.’ Explanatory Note 84.71(I)(A).” *Id.* The court added that “[a]pplication programs are not ‘fixed’ because they can be installed or deleted from a machine.” 427 F. Supp. 2d at 1197.

If the software applications for use with the LG Chromebase were limited to those sold through the Chrome OS Web Store, then the CBP criteria for “freely programmable” machines, as endorsed by the CAFC in *Optrex*, would not be satisfied. However, LGEUS has confirmed that this is not the case. The LG Chromebase is not limited to fixed programs and there are no hardware or software blocks preventing the end user from downloading off-the shelf, third party applications. Moreover, the Chrome Web Store is not the exclusive source of applications that can be downloaded for use on the LG Chromebase; other sources are available online and programs can be manually created by the end users.

Except for what is discussed above, none of the other requirements for automatic data processing machine of heading 8471, HTSUS, are in controversy in this case; and, in light of the discussion, the LG Chromebase is properly classified under subheading 8471.49.0000, HTSUS. *See, e.g.*, HQ H075336, cited above (classifying the Apple iPod Touch under heading 8471, HTSUS). We note that CBP’s classification of the LG Chromebase under subheading 8543.70.9650, HTSUS, in NY N257812 was the direct result of inaccurate factual statements proffered by LGEUS.

**HOLDING:**

By application of GRIs 1 and 6, the LG Chromebase (model number 22CV241-W) is classified under heading 8471, HTSUS, and specifically under subheading 8471.49.0000, HTSUS, which provides for “Automatic data processing machines and units thereof ...: Other automatic data processing machines: Other, entered in the form of systems.” The column one, general rate of duty is free.

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

**EFFECT ON OTHER RULINGS:**

NY N257812, dated October 24, 2014, is hereby REVOKED.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**AGENCY INFORMATION COLLECTION ACTIVITIES:**

**Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers**

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

**ACTION:** 30-Day notice and request for comments; Extension of an existing collection of information.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers (CBP Form 6478). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours, there is no change to the information collected. This document is published to obtain comments from the public and affected agencies.

**DATES:** Written comments should be received on or before July 18, 2016 to be assured of consideration.

**ADDRESSES:** Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-5806.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, at 202-325-0265.

**SUPPLEMENTARY INFORMATION:** This proposed information collection was previously published in the **Federal Register** (81 FR 14120) on March 16, 2016, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. 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; 44 U.S.C. 3507). 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 to respondents or record keepers from the collection of information (total capital/

startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

**Title:** Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers.

**OMB Number:** 1651–0053.

**Form Number:** Form 6478.

**Abstract:** Commercial laboratories seeking accreditation or approval must provide the information specified in 19 CFR 151.12 to Customs and Border Protection (CBP), and Commercial Gaugers seeking CBP approval must provide the information specified under 19 CFR 151.13. This information may be submitted on CBP Form 6478. After the initial approval and/or accreditation, a private company may “extend” its approval and/or accreditation to add facilities by submitting a formal written request to CBP. This application process is authorized by Section 613 of Public Law 103–182 (NAFTA Implementation Act), codified at 19 U.S.C. 1499, which directs CBP to establish a procedure to accredit privately owned testing laboratories. The information collected is used by CBP in deciding whether to approve individuals or businesses desiring to measure bulk products or to analyze importations. Instructions for completing these applications are accessible at: <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>. CBP Form 6478 is accessible at: [http://www.cbp.gov/sites/default/files/documents/CBP%20Form%206478\\_0.pdf/](http://www.cbp.gov/sites/default/files/documents/CBP%20Form%206478_0.pdf/).

**Current Actions:** This submission is being made to extend the expiration date with a change to the burden hours based on updated estimates of the number of applicants and record keepers associated with this information collection. There are no changes to the information collected.

**Type of Review:** Extension (with change).

**Affected Public:** Businesses.

*Applications for Commercial Testing and Approval of Commercial Gaugers:*

**Estimated Number of Annual Respondents:** 8.

**Estimated Time per Response:** 1.25 hours.

**Estimated Total Annual Burden Hours:** 10.

*Record Keeping Associated with Applications for Commercial Testing and Approval of Commercial Gaugers:*

**Estimated Number of Respondents:** 180.

**Estimated Time per Response:** 1 hour.

**Estimated Total Annual Burden Hours:** 180.

Dated: June 14, 2016.

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

[Published in the Federal Register, June 17, 2016 (81 FR 39680)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:**

**Arrival and Departure Record (Forms I-94 and I-94W) and Electronic System for Travel Authorization**

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

**ACTION:** 60-Day Notice and request for comments; revision of an existing collection of information.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: CBP Form I-94 (Arrival/ Departure Record), CBP Form I-94W (Nonimmigrant Visa Waiver Arrival/ Departure), and the Electronic System for Travel Authorization (ESTA). This is a proposed extension and revision of an information collection that was previously approved. CBP is proposing that this information collection be extended with a revision to the information collected. This document is published to obtain comments from the public and affected agencies.

**DATES:** Written comments should be received on or before August 22, 2016 to be assured of consideration.

**ADDRESSES:** Written comments may be mailed to U.S. Customs and Border Protection, Attn: Paperwork Reduction Act Officer, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Regulations and Rulings, Office of Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, or by telephone at 202-325-0123.

**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 cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

**Title:** Arrival and Departure Record, Nonimmigrant Visa Waiver Arrival/Departure, and Electronic System for Travel Authorization (ESTA).

**OMB Number:** 1651-0111.

**Form Number:** I-94 and I-94W.

## **Abstract**

### *Background*

CBP Forms I-94 (Arrival/Departure Record) and I-94W (Nonimmigrant Visa Waiver Arrival/Departure Record) are used to document a traveler's admission into the United States. These forms are filled out by aliens and are used to collect information on citizenship, residency, passport, and contact information. The data elements collected on these forms enable the Department of Homeland Security (DHS) to perform its mission related to the screening of alien visitors for potential risks to national security and the determination of admissibility to the United States. The Electronic System for Travel Authorization (ESTA) applies to aliens seeking to travel to the United

States under the Visa Waiver Program (VWP) and requires that VWP travelers provide information electronically to CBP before embarking on travel to the United States without a visa. Travelers who are entering the United States under the VWP in the air or sea environment, and who have a travel authorization obtained through ESTA, are not required to complete the paper Form I-94W.

Pursuant to an interim final rule published on March 27, 2013 in the **Federal Register** (78 FR 18457) related to Form I-94, CBP has partially automated the Form I-94 process. CBP now gathers data previously collected on the paper Form I-94 from existing automated sources in lieu of requiring passengers arriving by air or sea to submit a paper I-94 upon arrival. Passengers can access and print their electronic I-94 via the Web site at [www.cbp.gov/I94](http://www.cbp.gov/I94).

ESTA can be accessed at: <https://esta.cbp.dhs.gov>. Samples of CBP Forms I-94 and I-94W can be viewed at: <http://www.cbp.gov/document/forms/form-i-94-arrivaldeparture-record> and <http://www.cbp.gov/document/forms/form-i-94w-visa-waiver-arrivaldeparture-record>.

### *Recent Changes*

On December 18, 2015, the President signed into law the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 as part of the Consolidated Appropriations Act of 2016. To meet the requirements of this new Act, DHS strengthened the security of the VWP by enhancing the ESTA application and Form I-94W. In two recent emergency submissions under the Paperwork Reduction Act, additional questions were added to ESTA and to Form I-94W that request information from applicants about countries to which they have traveled on or after March 1, 2011; countries of which they are citizens/nationals; countries for which they hold passports; and Global Entry Numbers.

### *Proposed Changes*

DHS proposes to add the following question to ESTA and to Form I-94W:

“Please enter information associated with your online presence — Provider/ Platform — Social media identifier.” It will be an optional data field to request social media identifiers to be used for vetting purposes, as well as applicant contact information. Collecting social media data will enhance the existing investigative process and provide DHS greater clarity and visibility to possible nefarious activity and connections by providing an additional tool set which analysts and investigators may use to better analyze and investigate the case.

**Current Actions:** This submission is being made to extend the expiration date with a change to the information collected as a result of adding a question about social media to ESTA and to Form I-94W, as described in the Abstract section of this document. There are no changes to the burden hours or to the information collected on Form I-94, or the I-94 Web site.

**Type of Review:** Revision.

**Affected Public:** Individuals, Carriers, and the Travel and Tourism Industry.

*Form I-94 (Arrival and Departure Record):*

**Estimated Number of Respondents:** 4,387,550.

**Estimated Time per Response:** 8 minutes.

**Estimated Burden Hours:** 583,544.

**Estimated Annual Cost to Public:** \$26,325,300.

*I-94 Web site:*

**Estimated Number of Respondents:** 3,858,782.

**Estimated Time per Response:** 4 minutes.

**Estimated Annual Burden Hours:** 254,679.

*Form I-94W (Nonimmigrant Visa Waiver Arrival / Departure):*

**Estimated Number of Respondents:** 941,291.

**Estimated Time per Response:** 16 minutes.

**Estimated Annual Burden Hours:** 251,325.

**Estimated Annual Cost to the Public:** \$5,647,746.

*Electronic System for Travel Authorization (ESTA):*

**Estimated Number of Respondents:** 23,010,000.

**Estimated Time per Response:** 23 minutes.

**Estimated Total Annual Burden Hours:** 8,812,830.

**Estimated Annual Cost to the Public:** \$265,020,000.

Dated: June 20, 2016,

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