U.S. Customs and Border Protection

REVOCATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF VIBRATING SEX TOYS

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

ACTION: Notice revocation of two tariff classification ruling letters and revocation of treatment relating to the classification of vibrating sex toys.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), this notice advises interested parties that U.S. Customs and Border Protection ("CBP") is revoking two ruling letters relating to the tariff classification of vibrating sex toys under the Harmonized Tariff Schedule of the United States ("HTSUS"). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on March 31, 2010, in the *Customs Bulletin*, Volume 44, No. 14. No comments were received in response to the notice.

DATES: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 26, 2010.

FOR FURTHER INFORMATION CONTACT: Richard Mojica, Tariff Classification and Marking Branch, at (202) 325–0032.

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on March 31, 2010, in the *Customs Bulletin*, Volume 44. No. 14, proposing to revoke two ruling letters concerning the tariff classification of vibrating sex toys. Although in the proposed notice, CBP was specifically referring to the revocation of New York Ruling Letter ("NY") N013185, dated July 12, 2007, and NY K89943, dated October 27, 2004, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

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

In NY N013185 and NY K89943, CBP classified certain vibrating sex toys under heading 8543, HTSUS, as "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in [chapter 85]." We have reviewed those rulings and determined that the classification set forth therein is incorrect. It is now our position that the subject goods are properly classified under heading 9019, HTSUS, as "Massage apparatus."

Pursuant to 19 U.S.C. \S 1625(c)(1), CBP is revoking NY N013185, NY K89943, and any other ruling not specifically identified, to reflect the proper classification of this merchandise according to the analysis contained in Headquarters Ruling Letter ("HQ") H053896 (Attachment A) and HQ H053897 (Attachment B). Additionally, pursuant to 19 U.S.C. \S 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: May 3, 2010

Gail A. Hamill
for
Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT A]

HQ H053896

May 3, 2010 CLA-2 OT:RR:CTF:TCM H053896 RM CATEGORY: Classification TARIFF NO.: 9019.10.20

Ms. Sylvia Perreira EGL's Compliance Source Eagle Global Logistics 8830 N.E. Alderwood Road Portland, Oregon 97220

RE: Revocation of New York Ruling Letter N013185, dated July 12, 2007; Classification of the "Finger Vibrator"

Dear Ms. Perreira

This is in reference to New York Ruling Letter ("NY") N013185, dated July 12, 2007, issued to you on behalf of Church & Dwight Co. Inc., concerning the tariff classification of a sex toy commercially known as the "Finger Vibrator." In that ruling, U.S. Customs and Border Protection ("CBP") classified the merchandise under heading 8543, Harmonized Tariff Schedule of the United States ("HTSUS"), as "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in [chapter 85]." We have reviewed the ruling and found this classification to be incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published on March 31, 2010, in the *Customs Bulletin*, Volume 44, No. 14. No comments were received in response to this notice.

FACTS:

In NY N013185, CBP described the merchandise as follows:

The article concerned is the Finger Vibrator. The product measures approximately 2 inches long x .75 inches wide. It consists of a soft, silicone plastic, finger-shaped housing. The back of the device incorporates a ring shaped band which is placed over the user's finger. Within the housing is a battery-operated, electric vibrator mechanism. The Finger Vibrator is activated by pressing a button located on the bottom of the device [T]he Finger Vibrator's function is to provide a massage for "intimate personal pleasure."

ISSUE:

Whether the "Finger Vibrator" is classified under heading 9019, HTSUS, as a massage apparatus.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRIs"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the

goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The 2010 HTSUS provisions under consideration are as follows:

8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
8543.70	Other machines and apparatus:
8543.70.96	Other
	* * *
9019	Mechano-therapy appliances; massage apparatus; psychological aptitude-testing apparatus; ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus; parts and accessories thereof:
9019.10	Mechano-therapy appliances; massage apparatus; psychological aptitude-testing apparatus; parts and accessories thereof:
9019.10.20	Mechano-therapy appliances and massage apparatus; parts and accessories thereof
	* * *

Heading 9019, HTSUS, provides in relevant part for "Massage apparatus." When, as in this case, a tariff term is not defined by the HTSUS or its legislative history, "the term's correct meaning is its common meaning." *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult "dictionaries, scientific authorities, and other reliable information sources" and "lexicographic and other materials." *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (CCPA 1982); *Simod*, 872 F.2d at 1576.

The Oxford English Dictionary defines the term "massage" as "the rubbing, kneading, or percussion of the muscles and joints of the body with the hands, usually performed by one person on another, esp. to relieve tension or pain; an instance of this." See www.oed.com. The term "apparatus" is defined in pertinent part as "the things collectively in which this preparation consists, and by which its processes are maintained; equipments, material, mechanism, machinery; material appendages or arrangements." Id. In keeping with the above definitions, the Explanatory Notes ("ENs")¹ to heading 9019 [EN 90.19 (II)] indicate that massage apparatus are:

[a]pparatus for massage of parts of the body (abdomen, feet, legs, back arms, hands, face, etc.) usually operate by friction, vibration, etc. They may be hand-or power-operated, and may be of an electro-mechanical type with a motor built into the working unit (vibratory-massaging appliances). The latter type in particular may include interchangeable at-

¹ The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

tachments (usually of rubber) to allow various methods of application (brushes, sponges, flat or toothed discs, etc.).

This group includes simple rubber rollers or similar massaging devices. It also covers hydromassage appliances for all-over or partial massage of the body, using the action of water or a blend of water and air under pressure.

Examples of these appliances include spa baths, presented complete with pumps, turbines or blowers, ducts, controls and all fittings; devices for massaging the breasts, using the action of water distributed by a series of small nozzles mounted inside a form fitted over the breast, and made to revolve by a stream of water introduced through a flexible tube.

* * *

In NY N03185, CBP indicated that to be classified as a massage apparatus, a device must not only manipulate muscles by way of kneading, stroking, vibration, etc., but also provide a therapeutic benefit. Upon review, based on the common meaning of the term massage, and the ENs, we find that our interpretation of the heading text in that ruling was too narrow. The text of heading 9019, HTSUS, does not require that a massage apparatus provide a therapeutic benefit.

The Finger Vibrator is a power-operated, electro-mechanical apparatus designed to massage muscles of the body by way of friction and vibration. As such, it is classified under heading 9019, HTSUS, as a "massage apparatus." See EN 90.19(II). Insofar as the device is classified therein, it is precluded from classification under heading 8543, HTSUS, by the terms of that heading, because it is specified elsewhere in the tariff.

Our determination is in accord with NY L81893, dated February 28, 2005, and NY B89414, dated October 8, 1997, wherein CBP classified similar battery-operated, vibrating sex toys under heading 9019, HTSUS, as massage apparatus.

HOLDING:

By application of GRI 1, the Finger Vibrator is classified under heading 9019, HTSUS, specifically in subheading 9019.10.20, as "Massage apparatus: ... massage apparatus: "The 2010, column one, general rate of duty is: Free.

Duty rates are provided for convenience only and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY N013185, dated July 12, 2007, is hereby revoked. In accordance with 19 U.S.C. § 1625(c), this action will become effective 60 days after publication in the *Customs Bulletin*.

Sincerely,
Gail A. Hamill
for
Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT B]

HQ H053897

May 3, 2010 CLA-2 OT:RR:CTF:TCM H053897RM CATEGORY: Classification TARIFF NO.: 9019.10.20

Ms. Maurine Cecil West Coast Regional Vice President American Shipping Company, Inc. 400 Oceangate Ave, Suite 1106 Long Beach, CA 90802

RE: Revocation of New York Ruling Letter K89943, dated October 27, 2004; Classification of a Vibrating Condom Ring

Dear Ms. Cecil:

This is in reference to New York Ruling Letter ("NY) "K89943, dated October 27, 2004, issued to you on behalf of Pacific Entertainment Holdings, LLC, concerning the tariff classification of a vibrating condom ring. In that ruling, U.S. Customs and Border Protection ("CBP") classified the merchandise under heading 8543, Harmonized Tariff Schedule of the United States ("HTSUS"), as "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in [chapter 85]." We have reviewed the ruling and found this classification to be incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published on March 31, 2010, in the *Customs Bulletin*, Volume 44, No. 14. No comments were received in response to this notice.

FACTS:

In NY K89943, CBP described the merchandise as follows:

The item concerned is the Vibrating Condom Ring. It is a beaded, circular piece of pink, soft plastic measuring approximately 1½ inches wide and 1¾ inches in height. Enclosed at the bottom of the circle is a small silicon-encased battery with an on-off twist switch on one end. Its purpose is to enhance the pleasure of one or both partners when they are engaged in sexual intercourse.

ISSUE:

Whether the vibrating condom ring is classified under heading 9019, HT-SUS, as a massage apparatus.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRIs"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the

goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The 2010 HTSUS provisions under consideration are as follows:

8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
8543.70	Other machines and apparatus:
8543.70.96	Other
	* * *
9019	Mechano-therapy appliances; massage apparatus; psychological aptitude-testing apparatus; ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus; parts and accessories thereof:
9019.10	Mechano-therapy appliances; massage apparatus; psychological aptitude-testing apparatus; parts and accessories thereof:
9019.10.20	Mechano-therapy appliances and massage apparatus; parts and accessories thereof
	* * *

Heading 9019, HTSUS, provides in relevant part for "Massage apparatus." When, as in this case, a tariff term is not defined by the HTSUS or its legislative history, "the term's correct meaning is its common meaning." *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult "dictionaries, scientific authorities, and other reliable information sources" and "lexicographic and other materials." *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (CCPA 1982); *Simod*, 872 F.2d at 1576.

The Oxford English Dictionary defines the term "massage" as "the rubbing, kneading, or percussion of the muscles and joints of the body with the hands, usually performed by one person on another, esp. to relieve tension or pain; an instance of this." *See* www.oed.com. The term "apparatus" is defined in pertinent part as "the things collectively in which this preparation consists, and by which its processes are maintained; equipments, material, mechanism, machinery; material appendages or arrangements." *Id.* In keeping with the above definitions, the Explanatory Notes ("ENs")¹ to heading 9019 [EN 90.19 (II)] indicate that massage apparatus are:

[a]pparatus for massage of parts of the body (abdomen, feet, legs, back arms, hands, face, etc.) usually operate by friction, vibration, etc. They may be hand-or power-operated, and may be of an electro-mechanical type with a motor built into the working unit (vibratory-massaging appliances). The latter type in particular may include interchangeable at-

¹ The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

tachments (usually of rubber) to allow various methods of application (brushes, sponges, flat or toothed discs, etc.).

This group includes simple rubber rollers or similar massaging devices. It also covers hydromassage appliances for all-over or partial massage of the body, using the action of water or a blend of water and air under pressure.

Examples of these appliances include spa baths, presented complete with pumps, turbines or blowers, ducts, controls and all fittings; devices for massaging the breasts, using the action of water distributed by a series of small nozzles mounted inside a form fitted over the breast, and made to revolve by a stream of water introduced through a flexible tube.

* * *

In NY K89943, CBP indicated that to be classified under heading 9019, HTSUS, as a massage apparatus, a device must not only manipulate muscles by way of kneading, stroking, vibration, etc., but also provide a therapeutic benefit. Upon review, based on the common meaning of the term "massage," and the ENs, we find that our interpretation of the heading text in that ruling was too narrow. The text of heading 9019, HTSUS, does not require that a massage apparatus provide a therapeutic benefit.

The subject vibrating condom ring is a power-operated, electro-mechanical apparatus designed to massage muscles of the body by way of friction and vibration. As such, it is classified under heading 9019, HTSUS, as a "massage apparatus." See EN 90.19(II). Insofar as the device is classified therein, it is precluded from classification under heading 8543, HTSUS, by the terms of that heading, because it is specified elsewhere in the tariff.

Our determination is in accord with NY L81893, dated February 28, 2005, and NY B89414, dated October 8, 1997, wherein CBP classified similar battery-operated, vibrating sex toys under heading 9019, HTSUS, as massage apparatus.

HOLDING:

By application of GRI 1, the vibrating condom ring is classified under heading 9019, HTSUS, specifically in subheading 9019.10.20, as: "Massage apparatus: ... massage apparatus." The 2010, column one, general rate of duty is: Free.

Duty rates are provided for convenience only and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY K89943, dated October 27, 2004, is hereby revoked. In accordance with 19 U.S.C. \S 1625(c), this action will become effective 60 days after publication in the *Customs Bulletin*.

Sincerely,
Gail A. Hamill
for
Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A CERTAIN SOLAR MODULE

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the classification of a certain solar module.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), this notice advises interested parties that U.S. Customs and Border Protection ("CBP") is revoking a ruling letter concerning the tariff classification of a solar module under the Harmonized Tariff Schedule of the United States ("HTSUS"). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on March 31, 2010, in the *Customs Bulletin*, Volume 44, No. 14. No comments were received in response to the notice.

DATES: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 26, 2010.

FOR FURTHER INFORMATION CONTACT: Richard Mojica, Tariff Classification and Marking Branch, at (202) 325–0032.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on March 31, 2010, in the *Customs Bulletin*, Volume 44. No. 14, proposing to revoke a ruling letter pertaining to the tariff classification of a certain solar module. Although in the proposed notice, CBP was specifically referring to the revocation of New York Ruling Letter ("NY") N047472, dated January 9, 2009, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

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

In NY N047472, CBP classified the solar module at issue under heading 8501, HTSUS, which provides for: "Electric motors and generators." We have reviewed that ruling and determined that the classification set forth therein is incorrect. It is now our position that the module is properly classified under heading 8541, HTSUS, which provides in relevant part for: "Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled into modules or made up into panels."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N047472 and any other ruling not specifically identified, to reflect the proper classification of this merchandise according to the analysis contained in Headquarters Ruling Letter ("HQ") H084604 (attachment). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: May 3, 2010

Gail A. Hamill
for
Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H084604

May 3, 2010 CLA-2 OT:RR:CTF:TCM H084604 RM CATEGORY: Classification TARIFF NO.: 8541.40.60

Jefferey M. Young, Esq. Moore & Van Allen, PLLC P.O. Box 13706 Research Triangle Park, NC 27709

RE: Revocation of New York Ruling Letter N047472; Tariff Classification of the Trinasolar TSM-175D Solar Module

DEAR MR. YOUNG:

This is in reference to New York Ruling Letter ("NY") N047472, dated January 9, 2009, issued to you on behalf of GES USA, Inc., concerning the tariff classification of the Trinasolar TSM-175D solar module. In that ruling, U.S. Customs and Border Protection ("CBP") classified the merchandise under heading 8501 of the Harmonized Tariff Schedule of the United States ("HTSUS"), as an electric generator. We have reviewed that ruling and found it to be incorrect. For the reasons set forth below, we intend to revoke NY N047472.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published on March 31, 2010, in the *Customs Bulletin*, Volume 44, No. 14. No comments were received in response to this notice.

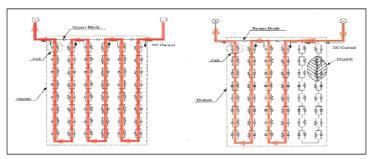
FACTS:

Trinasolar's TSM-175D solar module is comprised of 72 monocrystalline silicon photovoltaic ("PV") cells and a junction box. The cells are arranged in three, 24-cell strings, and are encapsulated between a sheet of tempered glass and a polymer backing. The junction box is attached to the rear of the module. It houses terminals to connect the strings of cells together, cables and connectors for external wiring, and 3 bypass diodes (one for each string) to protect the cells from overheating when shaded. The module can generate a maximum of 175 watts.

Under normal conditions with no shading, every cell on the module will generate power and the bypass diodes will be inactive. However, if part of the module becomes shaded (e.g., by a leaf or an antenna), the shaded cells will cease to generate power and will instead consume the energy produced by the active cells. Left unattended, the shaded cells would eventually overheat and deteriorate.

 $^{^1}$ PV cells are semiconductor devices which convert sunlight directly into direct current ("DC") electricity.

²See Stuart R. Wendham, Martin A. Green, Muriel E. Watt & Richard Corkish, Applied Photovoltaics, pp. 75–77 (2nd ed. 2007).



Bypass diodes protect the shaded cells from overheating by diverting the electrical current around strings with shaded cells and through an external circuit.³ As illustrated above, when part of the module becomes shaded, the bypass diode wired in parallel to the string with shaded cells will conduct current. As a result, the current will flow through the diode and around the shaded string. In turn, the module will continue to produce electricity, albeit at a reduced rate.

ISSUE:

Is the Trinasolar TSM-175D solar module classified under heading 8541, HTSUS, as a photosensitive semiconductor device, or under heading 8501, as an electric generator?

LAW AND ANALYSIS:

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

The 2010 HTSUS provisions under consideration are the following:

8501	Electric motors and generators (excluding generating sets): Other DC motors; DC generators:
8501.31	Of an output not exceeding 750 W:
8501.31.80	Generators
8541	Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof:
8541.40	Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up in panels; light-emitting diodes:
8541.40.60	Other diodes

³See Photovoltaic CDROM, p. 145, published by Prof. Christiana Honsenber and Stuart Bowden of the Arizona State University Solar Power Lab (http://pvcdrom.pveducation.org/).

* * *

Note 2 to Chapter 85, HTSUS, provides, in part:

Headings 8501 and 8504 do not apply to goods described in heading ...8541.

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 85.01 provides, in pertinent part:

(II) ELECTRICAL GENERATORS

Machines that produce electrical power from various energy sources (mechanical, solar, etc.) are classified here, provided they are not more specifically covered by any other heading of the Nomenclature.

... The heading also covers photovoltaic generators consisting of panels of photocells combined with other apparatus, e.g., storage batteries and electronic controls (voltage regulator, inverter, etc.) and panels or modules equipped with elements, however simple (for example, diodes to control the direction of the current), which supply the power directly to, for example, a motor, an electrolyser.

EN 85.41 provides, in pertinent part:

(B) PHOTOSENSITIVE SEMICONDUCTOR DEVICES

This group comprises photosensitive semiconductor devices in which the action of visible rays, infra-red rays or ultra-violet rays causes variations in resistivity or generates and electromotive force, by the internal photoelectric effect.

* * *

The main types of photosensitive semiconductor devices are:

(2) **Photovoltaic cells**, which convert light directly into electrical energy without the need for an external source of current. [...]

Special categories of photovoltaic cells are:

(i) **Solar cells**, silicon photovoltaic cells which convert sunlight directly into electric energy. They are usually used in groups such as source of electric power, e.g., in rockets or satellites employed in space research, for mountain rescue transmitters.

The heading also covers solar cells, whether or not assembled in modules or made into panels. However the heading **does not cover** panels or modules equipped with elements, however simple, (for example, diodes to control the direction of current), which supply the power directly to, for example, a motor, an electrolyser (**heading 85.01**).

* * *

Photosensitive semiconductor devices fall in this heading whether presented mounted (i.e., with their terminals or leads), packaged or unmounted.

* * *

In NY N047472, CBP classified the subject module under heading 8501, HTSUS, as an electric generator. Paraphrasing EN 85.41(B)(2)(i), as follows "... heading 8541 does not cover panels or modules equipped with elements, however simple, i.e., diodes to control the direction of the current", we reasoned that the module was beyond the scope of heading 8541, HTSUS, because it contains bypass diodes.

Heading 8541, HTSUS, provides for "Photosensitive semiconductor devices, including photovoltaic cells ... assembled in modules." EN 85.41(B) explains that photosensitive semiconductor devices are those "in which the action of visible rays, infra-red rays or ultra-violet rays causes variations in resistivity ... by the internal photoelectric effect." The EN adds that the heading includes PV cells assembled into modules, even if "presented mounted (i.e. with their terminals or leads)," provided they are not "equipped with elements, however simple (for example, diodes to control the direction of the current), which supply the power directly to, for example, a motor, an electrolyser." (Emphasis added).

At the outset, we note that a solar module is not precluded from classification under heading 8541, HTSUS, simply because it contains "elements" (e.g., diodes which control the direction of the current). Those elements must also "supply power directly" to an external load, such as a motor or an electrolyser. *See* EN 85.41(B)(2)(i).

The Trinasolar TSM-175D solar module is "presented mounted" (i.e., with its terminals and external cables and connectors), and includes three bypass diodes to protect it from overheating. See EN 85.41(B)(2)(i). The diodes achieve this function by controlling the direction of the current that flows through the module. They do not "supply power directly" to an external load. In fact, our research indicates that solar modules are very rarely used to supply power directly to a device. The vast majority of applications require that the DC produced by the module be converted into alternating current ("AC") by an inverter. Therefore, as the subject module is not equipped with elements which supply power to an external load, we find that it is classified under heading 8541, HTSUS, as a photosensitive semiconductor device.

Pursuant to Note 2 to Chapter 85, HTSUS, as the module is described by heading 8541, HTSUS, it is precluded from classification under heading 8501, HTSUS. Our conclusion is in accord with NY 866046, dated May 21, 1993, wherein CBP classified a solar module equipped with wired-in bypass diodes under heading 8541, HTSUS.⁶

 $^{^4} See$ Volker Quaschning, $Understanding\ Renewable\ Energy\ Systems,$ pg. 172 (1st ed., 2005). $^5 Id.$

⁶ Although the ruling does not reference the bypass diodes, the data sheet provided by the manufacturer, which is included in the case file, makes clear that the module included "built-in bypass diodes (12V configuration) which "help system performance during partial shading."

HOLDING:

By application of GRI 1, the Trinasolar TSM-175D solar module is classified under heading 8541, HTSUS, specifically in subheading 8541.40.60, which provides for: "Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels ...: Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up in panels ...: Other diodes." The 2010, column one, general rate of duty is: Free.

EFFECT ON OTHER RULINGS:

NY N047472, dated January 9, 2009, is hereby revoked. In accordance with 19 U.S.C. § 1625(c), this action will become effective 60 days after publication in the *Customs Bulletin*.

Sincerely,

Gail A. Hamill

for

Myles B. Harmon,

Director

Commercial and Trade Facilitation Division

REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF ATOVAQUONE

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

ACTION: Notice of revocation of one ruling letter and treatment relating to the tariff classification of Atovaquone.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking New York Ruling Letter (NY) K89730, relating to the tariff classification of Atovaquone under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin* Vol. 44, No. 14, on March 31, 2010. CBP received no comments in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 26, 2010.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. \$1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY K89730 was published on March 31, 10, 2010, in Volume 44, Number 14, of the *Customs Bulletin*. CBP received no comments in response to the notice.

As stated in the proposed notice, this action will cover any rulings on the subject 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 ruling identified above. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific

ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

In NY K89730, CBP determined that Atovaquone was classified in subheading 2914.69.20, HTSUS, HTSUS, which provides for "Ketones and quinones, whether or not with other oxygen function, and their halogenated, sulfonated, nitrated, or nitrosated derivatives: Quinones: Other: Drugs."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY K89730, in order to reflect the proper classification of Atovaquone according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H048948, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: May 11, 2010

Gail A. Hamill
for
Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

Attachments

HQ H048948

May 11, 2010 CLA-2 OT:RR:CTF:TCM H048948 CkG CATEGORY: Classification TARIFF NO.: 2914.70.40

Ms. Inge Forstenzer Ren-Pharm International, Ltd. 350 Jericho Turnpike, Suite 204 Jericho, NY 11753

Re: Revocation of NY K89730; classification of Atovaquone

Dear Ms. Forstenzer,

This is in reference to New York Ruling Letter (NY) K89730, issued by the Customs and Border Protection (CBP) National Commodity Specialist Division on September 27, 2004, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of the drug Atovaquone. We have reconsidered this decision, and for the reasons set forth below, have determined that classification of Atovaquone in subheading 2914.69.20, HTSUS, as an "other" quinone, was incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY K89730 was published on March 31, 10, 2010, in Volume 44, Number 14, of the *Customs Bulletin*. CBP received no comments in response to the notice.

FACTS.

Atovaquone, is indicated for the prevention of Pneumocystis carinii pneumonia in patients who are intolerant to trimethoprim-sulfamethoxazole. It is also indicated, in combination with prognanil hydrochloride, for the prevention of P. falciparum malaria. It is imported in bulk form.

ISSUE:

Whether Atovaquone is more specifically described as a quinone of subheading 2914.69, HTSUS, or a halogenated, aromatic compound of subheading 2914.70, HTSUS.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

2914: Ketones and quinones, whether or not with other oxygen function, and their halogenated, sulfonated, nitrated, or nitrosated derivatives:

Quinones:

2914.69: Other:

2914.69.20: Drugs....

2914.70: Halogenated, sulfonated, nitrated or nitrosated derivatives:

Aromatic:

2914.70.40: Other....

* * * * *

HTSUS Pharmaceutical Annex

This table enumerates products described by International Non-proprietary Names (INN) which shall be entered free of duty under general note 13 to the tariff schedule...

ATOVAQUONE 95233-18-4

* * * * *

There is not dispute that Atavaquone is classifiable at GRI 1 in heading 2914, HTSUS, as a halogenated quinone with an oxygen function. Atavaquone's chemical formula is C22H19O3Cl. A diagram of its chemical structure is included below. A quinone consists of a hydrocarbon ring with two double-bonded oxygen atoms substituted for two hydrogen atoms, as seen below. The compound is halogenated due to the further substitution of a hydrogen atom with a Chlorine atom. The compound is thus properly classifiable in heading 2914, HTSUS, as a halogenated quinone derivative. The issue arises at the six-digit subheading level. Atavaquone is also an aromatic compound, due to the presence of a six-membered carbon ring with three double bonds. It is thus classifiable either as an "other" quinone of subheading 2914.69, HTSUS, or as a halogenated, aromatic compound of subheading 2914.70, HTSUS. We find the latter to be a more specific description of the product at hand.



HOLDING:

By application of GRI 3(a) and GRI 6, Atavaquone is classified in subheading 2914.70.40, which provides for "Ketones and quinones, whether or not with other oxygen function, and their halogenated, sulfonated, nitrated, or nitrosated derivatives: Halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic: Other."

Pursuant to GN 13 of the HTSUS, Atavaquone is entered free of duty.

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

EFFECT ON OTHER RULINGS:

NY N044081, dated November 21, 2008, is hereby modified with respect to the classification of done pezil hydrochloride.

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

Sincerely,

Gail A. Hamill

for

Myles B. Harmon,

Director,

Commercial and Trade Facilitation Division

GENERAL NOTICE

19 C.F.R. PART 177

Revocation of Three Ruling Letters and Revocation of Treatment Relating to the Classification of Certain JVC Multifunctional Digital Cameras

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

ACTION: Notice of revocation of three ruling letters and revocation of treatment relating to the classification of certain JVC multifunctional digital cameras.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking three ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain multifunctional digital cameras. Similarly, CBP is revoking any treatment previously accorded by the agency to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 44, No. 7, on February 10, 2010. One comment was received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 26, 2010.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Tariff Classification and Marking Branch at: (202) 325–0034.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 44, No. 7 (Feb. 10, 2010), proposing to revoke New York Ruling Letters (NY) R04381, dated July 21, 2006, NY R04507, dated August 15, 2006, and NY R04505, dated August 15, 2006, concerning the tariff classification of three types of JVC multifunctional digital cameras. One comment was received in response to the notice.

As stated in the notice, these revocations will cover any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the rulings identified above. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. § 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially identical transactions should have advised CBP during the notice period.

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

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY R04381, NY R04507, and NY R04505, and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper tariff classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) H046643 (Attachment). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 10, 2010

Gail A. Hamill
for
Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H046643

May 10, 2010 CLA-2 OT:RR:CTF:TCM H046643 HkP CATEGORY: Classification TARIFF NO.: 8525.80.50

Mr. Dennis Forhart, Director Price Waterhouse Coopers 1420 Fifth Avenue, Suite 1900 Seattle, WA 98101

RE: Revocation of NY R04381, R04507, R04505; JVC Everio multifunction digital cameras

Dear Mr. Forhart:

This is in reference to New York Ruling Letters (NY) R04381 (July 21, 2006), R04507 (Aug. 15, 2006), and R04505 (Aug. 15, 2006) issued to you on behalf of your client, JVC Corporation. At issue in those rulings was the tariff classification of JVC Everio cameras, model GZ-MC500US, GZ-MG30US, and GZ-MG20US, respectively, under the Harmonized Tariff Schedule of the United States (HTSUS). The National Commodity Specialist Division, U.S. Customs and Border Protection ("CBP"), classified the cameras in subheading 8525.40.40, HTSUS (2006), as digital still image video cameras. For the reasons set forth in this ruling, we are of the view that the correct classification is under subheading 8525.80.50, HTSUS (2009), as "other" than digital still image cameras or television cameras and hereby revoke NY R04381, NY R04507, and NY R04505.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocations was published on February 10, 2010, in the Customs Bulletin, Vol. 44, No. 7. One comment was received from JVC in response to this notice opposing the proposed action.²

FACTS:

In NY R04381, the JVC Everio camera (model GZ-MC500US) was described as follows:

The item in question is a digital camera denoted as the Everio Camera model number GZMC500US. The camera capture and store [sic] up to 9,999 digital still images and up to sixty minutes of video. It employs 3 CCDs combined with advanced 5-mega-pixel shift technology. The camera can be connected to a PC and or [sic] television/monitor for viewing of images. The thousands of still images are stored as JPEG files and can also be directly connected to a printer for image reproduction.

In addition, this camera has the following features: 200x digital zoom, MPEG-2 digital video format; minimum shutter speed of $\frac{1}{2}$ sec.; maximum

¹ As a result of the 2007 changes to the Harmonized System, the goods of subheading 8525.40, HTSUS, were transferred to subheading 8525.80, HTSUS. See Presidential Proclamation 8097, 72 Fed. Reg. 453, Vol. 72, No. 2.

² Some of the attachments to the comment were not relevant to this ruling but to another JVC matter pending before this office. Consequently, some of the information in the attachments is not discussed.

shutter speed of 1/4000 sec.; custom, preset and automatic white balance, program, automatic, shutter-priority and aperture-priority exposure modes; pop-up flash; several flash modes; removable 4GB microdrive; storage for 2650 x 1920, 2048 x 1536, 1600 x 1200, 1280 x 960, and 640 x 480 JPEG images; a microphone; USB, composite video/audio output, S-video output connectors, and headphone and DC power input connectors. *See* http://cnet.com, JVC Everio GZ-MC500, Specifications.

In NY R04507, the JVC Everio camera (model GZ-MG30US) was described as follows:

The subject merchandise is a digital camera \dots It is stated that this camera can capture and store nearly 10,000 digital still images to an internal 30GB hard disk drive with the capability for recording seven hours of DVD-quality video. This camera, which has a 2 $\frac{1}{2}$ inch LCD screen for easy viewing of still images, allows for five different modes (from sport to portrait settings) to capture optimal quality still photos; there is also a choice of four recording modes that allows the user to choose between more shooting time or higher quality.

This camera can be connected to a television for viewing, a VCR/DVD recorder for recording onto a video tape or DVD, a printer to print still image photos, a computer for data transfer, or JVC's Everio Share Station which allows the user to burn images directly onto a DVD. It is also stated that all of the digital camera's capabilities are advertised equally on the good's packaging.

In addition this camera has the following features: 800x digital zoom; 8.0 megapixels; progressive scan; CCD optical sensor; NTSC and PAL analog video format and MPEG-2 digital video format; minimum/maximum shutter speeds of ½ sec/ 1/4000 sec; ½ sec camcorder slow shutter modes; storage for 640 x 480 JPEG images; 25 x optical zoom; 2.2 — 55 mm focal length equivalent to a 35 mm camera; built-in microphone; USB, composite video/audio output, S-video output connectors, and headphone and DC power input connectors. See http://cnet.com, JVC Everio GZ-MG30U, Specifications.

In NY R04505, Everio model GZ-MG20US was described as having the same features as the GZ-MG30US, except that the GZ-MG20US had an internal 20 GB hard disk drive with the capacity for recording nearly 4 ½ hours of DVD movie-quality video, and 6.8 megapixels. See also http://cnet.com, JVC Everio GZ-MG20U, Specifications.

ISSUE:

Do the JVC multifunction digital cameras, models GZ-MC500US, GZ-MG30US and GZ-MG20US, principally function as digital still image video cameras of subheading 8525.80.40, HTSUS?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation. 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 require otherwise, the remaining GRIs may then be applied.

The 2009 HTSUS provisions under consideration are as follows:

8525 Transmission apparatus for radio-broadcasting or television,

whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras

and video camera recorders:

8525.80 Television cameras, digital cameras and video camera recorders:

8525.80.4000 Digital still image video cameras

8525.80.50 Other

Note 3 to Section XVI, HTSUS, in which heading 8525 is located, provides as follows:

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

There is no dispute that the multifunction cameras are correctly classified in heading 8525 (8525.80), HTSUS, (2009) because that heading provides for both digital cameras and video camera recorders and the cameras at issue function as both. At issue is the proper eight digit national tariff rate. Accordingly, GRI 6 is implicated.

GRI 6 provides that the classification of goods in the subheading of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, mutatis mutandis, to GRI 1 through 5, on the understanding that only subheadings at the same level are comparable. Relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

You contend that "Digital cameras ... are commonly defined as, 'a camera that stores images digitally rather than recording them onto film." You also state that "cameras that have been historically referred to as camcorders" are not digital machines and that, consequently, digital machines that can record video and capture still images cannot be classified outside of subheading 8525.80.40, HTSUS.

In the comment submitted on behalf of JVC, counsel states that CBP's interpretation of the phrase "digital still image video camera" is not supported by the plain meaning of the text. Specifically, counsel argues that the Everio product line is provided for by name as "digital still image video cameras" in subheading 8525.80.40, HTSUS.³ Counsel states that each word in this provision directly addresses the product line. As such, counsel argues that a reasonable person would conclude that the wording itself could and should be taken at its face value and applied as such.

Subheading 8525.80.40, HTSUS (2009) provides for "Digital still image video cameras". This phrase is not defined in the HTSUS or in the Explana-

³ Only the GZ-MC500US, GX-MC30US and GZ-MG20US models of JVC Everio digital cameras are under consideration and, consequently, any other products in the Everio product line are outside the scope of this ruling. As a result, our comments are confined to the models of Everio digital cameras described herein.

tory Notes to heading 8525, HTSUS.⁴ When a tariff term is not defined in the HTSUS, we may look to its legislative history or, failing that, to its common and commercial meaning. *See, for e.g., Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). In this instance, because this provision is directly derived from text that was incorporated into the Harmonized System (HS) and, consequently, into the HTSUS in 1996,⁵ we seek guidance from its international legislative history.

Our research has revealed that the phrase "still image video camera" is a term of art, of which the term "digital" is a qualifier. When the phrase "still image video camera" was first introduced into the Harmonized System in 1996 in heading 8525 (8525.40), the Explanatory Note (EN) to heading 8525 explained that "[t]hese apparatus record images taken by the camera.... The images thus recorded can be reproduced by means of an external television receiver." EN 85.25(D) (1996). According to the WCO file on the creation of subheading 8525.40, still image video cameras worked by converting images into electric signals and recording them onto a magnetic medium (floppy disk). The camera then had to be connected to a video monitor in order to view the pictures. The products on which the description of a "still image video camera" was based were the Canon Still Video System, comprised of SV Camera R-470 and the SV Player RV-301, 6 as well as the Canon XAPSHOT

The phrase "still image video cameras" was replaced in HS 2007 with the phrase "digital cameras".

It's called SV, for Still Video — the fastest moving new technology in the imaging industry.... Shoot-and-show simplicity means no film to process, no slides to mount. Images are captured by a CCD Image Sensor and recorded on a floppy disk in the SV Camera. They can be displayed by a SV Player directly in the screen of any high-quality TV monitor....

THE MEDIUM: VIDEO FLOPPY

It's the key to the shoot-and-show simplicity of Still Video. The durable plastic case contains a "floppy" disk on which images are electromagnetically stored via a recording head inside the camera: 50 images in Field Mode, 25 in Frame Mode....

Use Any TV Monitor

A simple connection to the video input terminal of any TV monitor is all it takes. For TVs lacking a video input, the RV-301 provides an RF (frequency) output. Naturally, output can be recorded on any video deck.

Single-Image Display

Rapid and direct random access to any given picture on an inserted floppy is as simple as keying its track number on the remote controller....

Continuous Play

Image display times can be set from 1 to 99 seconds. Playback of the entire floppy will continue until you tell it to stop.

⁴ The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings at the international level. See T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

 $^{^5}$ The Harmonized Commodity Description and Coding System is an international convention of the World Customs Organization ("WCO"), to which the United States is a Contracting Party.

⁶ The product brochure for the Canon Still Video system states, in relevant part:

RC-250 High-Band Still Video Camera. EN 85.25(D) (1996) and the WCO discussions regarding still image video cameras indicate that (1) these cameras record still images by electronic means (CCD) and, (2) the electronic images are viewed on a video display. Therefore, because the phrase "digital still image video camera" is a term of art, its meaning is not the same as the plain meaning of its component words.

Since 1996 when the Harmonized System first provided for still image video cameras, the WCO has attempted to reflect the technological advancements made to these cameras by updating their description in the Explanatory Notes. In 2002 the text of EN 85.25 was updated to reflect that: (1) "data may be stored in analogue or digital form"; (2) "the cameras of the heading capture an image by focusing the image onto a light-sensitive device, such as a complementary metal oxide semiconductor (CMOS) or charge-coupled device (CCD)"; and, (3) "Generally, these cameras are equipped with an optical viewfinder or a liquid crystal display (LCD), or both. Many cameras equipped with an LCD can employ the display both as a viewfinder when taking pictures and as a screen when reproducing images already recorded; in some cases the camera is capable of displaying images received from other sources on the LCD screen." EN 85.25(D) (2002). Also, the phrase "digital cameras" was added to the text of heading 8525 and subheading 8525.40, HTSUS (2002).

When the 2007 changes were made to the HS, text was added to EN 85.25 which further clarified that the group including digital cameras and video camera recorders "covers cameras that capture images and convert them into an electronic signal that is ... recorded in the camera as a still image or as a motion picture (i.e., digital cameras and video camera recorders)." EN 85.25(B) (2007).

Based on this legislative history, we agree, with counsel's comment that the text of subheading 8525.80.40, HTSUS, (digital still image video camera) is derived from a description of a digital still camera fitted with a CCD and based on video recorder technology. However, as discussed supra, digital still image video cameras can also be based on CMOS technology.

Consistent with this legislative history, CBP has previously classified cameras that solely or principally record still images in a digital format and that reproduce the still images on a video display as digital still image cameras in subheading 8525.80.40, HTSUS. See, e.g., NY 817941, dated January 14, 1996 (concerning the Ricoh DC-1 digital camera "that can capture stills and

⁷ The product brochure for the Canon XAPSHOT camera states, in relevant part: XAP SHOT means no film, no waste, no waiting. And the whole family can enjoy it — directly on your TV monitor. Images are captured by a high-resolution CCD and recorded on a standard 2-inch video floppy — up to 50 per disk.

⁸ The inclusion of this text, regarding the incorporation of a video display into the body of the camera, reflected the unanimous decision of the Harmonized System Committee, taken at its 21st Session (March 1998), to classify a "LCD digital camera" with a 1.8" color LCD screen in subheading 8525.40. See Harmonized Commodity Description and Coding System, Compendium of Classification Opinions, CO 8525.40/1. **Digital still camera** fitted with a Charge Coupled Device (CCD) and based on video camera recorder technology.

⁹ Digital still image video cameras of subheading 8525.40.00, HTSUS, (the precursor to subheading 8525.80.40) are accorded duty-free treatment under the *Ministerial Declaration on Trade in Information Technology Products*, World Trade Organization, Ministerial Conference, Singapore, December 1996, WT/MIN(96)/16 (the "*Information Technology Agreement*" ("ITA")).

... motion scenes without the use of film"); HQ 960384, dated April 1, 1999 (concerning the Casio QV-10 "hand-held digital still ('point and shoot') camera ... based on camcorder technology..."); HQ 960664, dated April 20, 1999 (concerning the Olympus Digital Still Camera model # D-200L); NY F86533, dated May 17, 2000 (concerning a "digital camera that only takes still images utilizing an image sensor and storing images on computer chips"); and NY G86928, dated February 9, 2001 (concerning digital still image cameras with storage capability).

Subheading 8525.80.50, HTSUS, covers cameras "Other" than digital still image video cameras. It is CBP's position that cameras that solely or principally record moving images, such as camcorders/video cameras, and cameras that do not principally record still images are classified in this subheading, unless such cameras are more specifically provided for elsewhere in the HTSUS. Counsel for JVC agrees with the agency's position in her comment ("camcorders' which perform sequential image capture are classified in subheading 8525.80.40, HTSUS."). ¹⁰

Next, we address your view that digital machines that can record video and capture still images cannot be classified outside of subheading 8525.80.40, HTSUS. Counsel comments that it is not necessary to utilize a principal function analysis in classifying such cameras because they meet the plain meaning of subheading 8525.80.40, HTSUS. In this regard, counsel argues that GRI 1 is controlling and that an analysis of whether the products at issue are true composite machines is not necessary.

GRI 1 provides in relevant part that, "classification shall be determined according to the terms of the headings and any relative section or chapter notes." Our reliance on Chapter Note 3 to Section XVI, HTSUS, is therefore in accord with GRI 1. For reasons already addressed, we find that the context does not require anything other than a principal function analysis because no one subheading describes all the functions of the cameras. See Gen. EN (VI), Sec. XVI ("Note 3 to Section XVI need not be invoked when the composite machine is covered as such by a particular heading ..."). In particular, we refer to our finding that the phrase "still image video camera" is a term of art, qualified by the term "digital", that describes cameras that capture still images only and display them on a screen, and that the phrase should not be parsed for meaning.

Further, subheading 8525.80, HTSUS, the text superior to subheadings 8525.80.40 and 8525.80.50, and which governs the scope of those two subheadings, provides *eo nomine* for "video camera recorders", as does heading 8525. At the domestic level, subheading 8525.80.50, HTSUS, merely provides for cameras "other" than digital still image video cameras and television cameras. There is nothing in its text to exclude digital camcorders from classification in subheading 8525.80.50. Moreover, the Explanatory Notes to heading 8525, HTSUS, explain that:

[T]he cameras of this heading convert ... images into analogue or digital

¹⁰ Counsel also notes that the JVC Everio product line uses both CCD and CMOS technology for "superior digital image quality." While it may be true that the current Everio line uses both CCD and CMOS technology, the specific models at issue are based on CCD technology only and, consequently, counsel's point will not be addressed.

The cameras of this heading capture an image by focusing the image onto a light-sensitive device, such as a complementary metal oxide semiconductor (CMOS) or charge-coupled device (CCD). The light-sensitive device sends an electrical representation of the images to be further processed into an analogue or digital record of the images."

. . . .

In **digital cameras and video camera recorders**, images are recorded into an internal storage device or onto media (e.g., magnetic tape, optical media, semiconductor media or other storage media of heading 85.23)....

EN 85.25(B) (2009). *See also* EN 85.25(D) (2002). The Explanatory Notes clearly state that video camera recorders of heading 8525 may record images digitally (on semiconductor media).

Therefore, the cameras at issue have the functionality of digital still image video cameras of subheading 8525.80.40, HSTUS, and of other cameras of subheading 8525.80.50. As a result, they meet the description of composite machines provided in Note 3 to Section XVI and must be classified according to their principal function.

CBP has found the analysis developed and utilized by the courts in relation to "principal use" (the "Carborundum factors") to be a useful aid in determining principal function. Generally, the courts have provided several factors, which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: (1) general physical characteristics, (2) expectation of the ultimate purchaser, (3) channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), (4) use in the same manner as merchandise which defines the class, (5) economic practicality of so using the import, and (6) recognition in the trade of this use. See United States v. Carborundum Co., 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), cert denied, 429 U.S. 979 (1976); Lennox Collections v. United States, 20 Ct. Int'l Trade 194, 196 (1996); Kraft, Inc. v. United States, 16 Ct. Int'l Trade 483, 489 (1992); and G. Heileman Brewing Co. v. United States, 14 Ct. Int'l Trade 614, 620 (1990). See also Headquarters Ruling Letter ("HQ") W968223, dated January 12, 2007, and HQ 966270, dated June 3, 2003.

In your ruling requests submitted on July 13, and 28, 2006, you did not provide us with information on each of the factors noted above, but you did state the following:

The Everio media cameras are multifunctional cameras designed for the purpose of performing two or more complementary yet alternative functions, still image and video recording. The media cameras in question contain no feature that predominates over any other feature to suggest that one capability constitutes the principal function. In fact, all of the digital camera's capabilities are advertised equally on the good's packaging. As such, unlike previous generations of still image OR video cameras, we have concluded that JVC, in the digital Everio camera line has evolved digital technology to such a point that the cameras do not have a single principal function (still image or video).

By your own admission, the cameras at issue are precluded from being classified as digital still image cameras.

Counsel comments that CBP did not address information submitted by JVC in support of a Carborundum analysis. Accordingly, we will address the information under the relevant subheadings below.

General Physical Characteristics and Recognition in the Trade of Use

Based on the features of each of the cameras, which is detailed in the FACTS section above, the cameras are able to function as both digital "point and shoot" cameras and as camcorders. These functions have been extensively reviewed by the electronics industry. For example, a review on pcmag.com states, in relevant part:

The Everio GZ-MG30 — one of four new hard-drive models (the other three are the GZ-MG20, GZ-MG40 and GZ-MG50) is a one CCD chip camcorder with 25X optical zoom (a 35-mm equivalent of about 42 to 1,050 mm) that allows for more than seven hours of shooting time on the highest qualify setting. The hard drive also lets you avoid the continual need to buy additional disc media, which may soften the blow of the hefty \$900 price tag. (The GZ-MG20, GZ-MG40 and GZ-MG50 list for \$800, \$900, and \$1000, respectively. The latter two give you 1.3-megapixel still-image quality photos.)

. . . .

Lastly, we found the digital still-camera capabilities to be inadequate for anything other than Web use. For this camcorder, the stills were only 640-by-480, with an average of only 350 lines of resolution — below our acceptable 1MP range. There's no flash included on the camera either, so we were unable to test boot-up and recycle times.

Terry Sullivan, JVC Everio GZ-MG30U, Oct.17, 2005, www.pcmag.com, accessed on 12/12/08.

The CNET Editors Review on the GZ-MG20, states in pertinent part:

For such a capacious camcorder, the JVC Everio GZ-MG20U is extremely small. It is short in both height and length, though it's as wide as a typical DV camcorder. This gives it a boxy look, but it's amazingly comfortable for one-handed shooting and drops easily into a jacket pocket....

. . . .

Other than the standout 25X zoom lens and built-in video light, the Everio's feature set is more typical of a camcorder half its price, including the 1/6-inch 680,000 pixel CCD....

Still image support is limited to VGA-resolution stills. You can store more than 10,000 shots on the hard drive or shoot stills or full-resolution MPEG-2 video directly to SD cards....

• • • •

Still-image quality is terrible. The VGA-resolution images lack detail and are grainy no matter what the lighting conditions.

Denny Atkin, JVC Everio GZ-MG20, http://reviews.cnet.com/digital-camcorders/ jvc-everio-gz-mg20/4505-6500_7-31417995, accessed on

12/12/08 (according to the Editor's note, the review was based on CNET's evaluation of the JVC Everio GZ-MG30, which the editor describes as "an identical camcorder except for its larger 30GB hard disk").

An Infosync review of the MC500E states, 11 in relevant part:

Capable of shooting stills at up to 2560 x 1920 pixels in JPEG format only, the Everio GZ-MC500E delivers photo sizes as taken by a 5 Megapixel camera — but does so by means of pixel shifting technology which combines input from its three CCD sensors to one single image. The results are better than those produced by conventional interpolation techniques, but setting the camera for any higher than 3 Megapixels yields visible loss of detail and quite simply isn't realistic. Stick to this level, however, and the GZ-MC500E delivers a smooth-flowing interface combined with a well-rounded set of capabilities and excellent picture quality with rich saturation and detail.

And what of video recording, you ask? Well, since it doesn't rely on pixel shifting, results are just as excellent — and given the emphasis on video, users will find themselves solidly served by the feature set the GZ-MC500E has to offer. Relying on the MPEG2 format, four settings are available, the highest of which records at 720×576 pixels and a bit rate of 8.5 Mbps for up to 60 minutes on the included 4 GB Microdrive.

Jørgen Sundgot, *Review: JVC Everio GZ-MC500E*, Aug. 2, 2005, http://www.infosyncworld.com/reviews/n/6086.html, accessed on 2/4/09.

These reviews reveal that, based on the physical characteristics of the cameras, the electronics industry considers these cameras to be principally camcorders that are also capable of taking still images. Accordingly, we find that these factors indicate that the cameras at issue do not principally function as digital still image video cameras of subheading 8525.80.40, HT-SUS.

In JVC's original submission and in its comment, it is explained that digital dual-use cameras differ significantly from cameras referred to as camcorders in that:

- (1) Still image capture and video/audio platforms have equal capabilities;
- (2) Data is stored digitally on hard drives, built-in flash memory or removable digital memory cards;
- (3) Data are not stored on tapes such as VHS Betamax, 8mm, DVD (mini) or DVC:
- (4) They are designed specifically for the images to be downloaded to a computer or other digital electronic storage devices;

 $^{^{11}}$ The JVC Everio GZ-MC500E is the counterpart of the North American model, the Everio GZ-MC500. At the time of writing of the review (August 2005), they were available throughout Europe and North America, selling in the $\mathsecolumn{1}{c}$ 1,050 EUR (\$1300 USD) range. http://www.infosyncworld.com/reviews/ n/6086.html.1

- (5) Images can be manipulated with a graphics program and printed;
- (6) Many digital cameras use CCDs to captures images while others used CMOS technology, both of which are electronic sensors used to images as binary data;
- (7) Digital cameras can usually take pictures and perform sound and video functions. Some can be used like webcams, some can use the PictBridge standard to connect to a printer without using a computer, and some can display pictures directly on a television set;
- (8) The processing system inside the camera that turns the raw data into a color-balanced and pleasing photograph is the most critical metric used to evaluate digital cameras.

This ruling concerns the three models of cameras at issue and, as such, our analysis is confined to the physical characteristics of those cameras, as opposed to a general discussion of the physical differences between digital "point and shoot" cameras and camcorders. As a result we will not address points 2, 3, 4, 6 and 7. ¹² We are unable to comment on points 1 and 8 because the cameras being compared with the ones under consideration have not been specified. With regard to point 5, we note that graphics programs are external to the cameras and thus cannot be taken into consideration when assessing their physical characteristics. ¹³

Use and Economic Practicality of Use

In our proposed ruling we stated:

Based on the above-quoted electronics industry assessments that the cameras at issue produce fair to poor quality still images but "excellent" video recordings, ¹⁴ we find that it would be economically impractical to purchase these cameras primarily for their still image functionality. Accordingly, we find that that this factor favors classification as other than as a digital still image video camera.

In the comment submitted, counsel states that the fact that the cameras can capture up to 9,999 still images strongly supports the cameras' use for still images, given that the general still image quality of the cameras is "very good." Counsel also notes that the still images can be viewed directly on a large screen display without the quality loss suffered by other cameras when presented on a large display.

 $^{^{12}}$ We note that EN 85.25 (2002 & 2009) does not distinguish between digital still image video cameras and camcorders of 8525, HTSUS, but merely states that "the cameras of this heading" capture an image by CCD or CMOS technology, which can be recorded onto magnetic tape or other media of heading 8523. Further, "the cameras of this heading" may include an output terminal which provides the means to send images to ADP machines, printers, televisions or other viewing machines.

¹³ We are unable to comment on the reviews referred to in your comment because the Everio GZ-MG505 model of camera is not at issue and the review on the videomaker.com website was "not found." *See* www.videomaker.com/article/13328 (accessed 4/23/2010).

¹⁴See, for e.g., Sundgot, supra.

Using the 5 megapixel GZ-MC500US model as an example, we note that in 2005 its approximate cost was \$1300.00 USD. See supra n.11. While we are unable to compare feature for feature, in 2005 a 5 megapixel point and shoot digital camera cost between \$200 and \$300 USD. See Ben Stafford, 2005 Digital Camera Buyers Guide from DigitalCameraReview.com (2005), www. digitalcamerareview.com (accessed 4/23/2010). While the price gap today between cameras may not be as large, it cannot be disregarded. As such, our view is unchanged that this factor favors classification as other than as a digital still image video camera.

Finally, you state in your comment that JVC routinely hears from its customers that its cameras allow them to use one camera for all their photographic and video needs. However, you have not provided any evidence in support of this statement. Consequently, we are unable to take your statement into account.¹⁶

 ${\it Channels of Trade/Environment of Sale/Expectations of the \ Ultimate \ Purchaser}$

The particular models of the cameras at issue are available at several electronics retailers found on the Internet. See, for example, http://mycyber shops.com and http://novatechgadgets.com. Each of these retailers sells camcorders as well as digital cameras. Accordingly, we find that where the cameras are sold is not a dispositive factor in determining their principal function. Counsel for JVC agreed with CBP on this point.

On the JVC website, the Everio line of cameras is found on the "Everio/camcorder" section of the website, though the particular models at issue are not listed. See http://www.jvc.com. In our proposed ruling we stated:

We are of the view that this description would cause a prospective purchaser to believe that "JVC Everio" is a line of camcorders. On the other hand, in your submission you acknowledged that all of the digital cameras' capabilities (video and still image capture) are advertised equally on their packaging. Based on this information, we find it reasonable to conclude that purchasers of these cameras would expect to be able to capture still images as well as to record video. Taking into account the disparity between how the cameras are advertised on the JVC website and the capabilities listed on their packaging, we find that we are unable to use these factors to determine the cameras' principal function.

Concerning the "Everio/camcorder" section of the JVC website, counsel states that this is "mostly due to IT [information technology] space availability considerations." Counsel also contends that the slash between the words "Everio" and "camcorder" advises the consumer that the Everio is not a camcorder

When we type the phrase "jvc camcorder" into a search engine, we are taken to the page http://camcorder.jvc.com/index.jsp, which displays the full

 $^{^{15}}$ We have relied on 2005 prices because it is not clear that these models are currently sold new by retailers.

 $^{^{16}}$ We note that you compare the JVC cameras to those at issue in HQ H012688 (Aug. 31, 2007) issued to Sony Electronics. That ruling is currently the subject of litigation and the agency will not comment on it at this time.

Everio line as well as a line of pocket-sized camcorders.¹⁷ Accordingly, whether or not due to IT considerations, we conclude that the way in which the Everio cameras are advertised and displayed on the JVC website would cause a prospective purchaser to believe that Everios are camcorders. Our conclusion is bolstered by the name of the webpage on which Everios are found: http://camcorder.jvc.com/index.jsp. The fact that there may be another JVC website offering other camcorders does not alter our belief that consumers viewing the Everio/camcorder section of the JVC webpage would expect camcorders to be offered on that page due to its address and content. Consequently we are not persuaded by counsel's reasoning.

The Carborundum analysis indicates that these cameras do not principally function as still image cameras. In particular, we refer to the fact that industry reviews of the cameras, which are based on their physical characteristics, all highlight the shortcomings of their still image function. In light of these reviews and given the cost of the cameras, we find that it would be economically impractical to purchase such expensive cameras primarily for their still image function. We find these factors to be persuasive evidence under a Carborundum analysis that the cameras at issue principally function as other than digital still image video cameras of subheading 8525.80.40, HTSUS.

Finally, you cite HQ 966072 (Sept. 4, 2003), which you claim to be a prior CBP ruling on similar merchandise, in support of classification of the instant cameras in subheading 8525.80.40, HTSUS. HQ 966072 concerned the classification of a multifunction digital camera, described on the manufacturer's website as a "4-in-1 camera" with digital still image, video, TV and PC camera functions. HQ 966072. As described in that ruling:

The basic components in the camera, all of which are incorporated into a rectangular housing (approximately 3.48 inches x 2.26 inches x 0.81 inches), are as follows: a CCD (charged-coupled device) image sensor, 16 MB internal flash memory, a fixed-focus lens, a data-conversion device for converting analog data from the CCD into digital data format for transmission by the Universal Serial Bus (USB) cable, USB and TV connector, optical viewfinder, LCD (liquid crystal display) function menu, synchronized flash, tripod mount, and battery compartment.

This digital camera captures live images in real time (i.e., for videoconferencing) with audio capacity and records digital still images and images in sequential order at 15 frames per second (fps) from 35–90 seconds (i.e., video clips) without audio. It operates independently of a computer, recording approximately 120 photos on 1280 x 1024 (high) resolution, or 228 photos on 640 x 480 VGA mode (low) resolution which can be stored in the camera's internal flash memory. When connected to a television, it can capture television-generated still images and sequential images.

As in the instant case, classification of the camera was governed by Note 3 to Section XVI, HTSUS, because it was a composite machine of heading 8525, HTSUS. The subheadings under consideration were 8525.40.40 (digital still image video cameras) and 8525.30.90 (other television cameras).

¹⁷ When we type the phrase "jvc everio" into a search engine we are taken to the page http://everio.jvc.com/, which does not characterize the Everio line as either camcorders or point and shoot cameras. See http://everio.jvc.com/ (accessed 5/5/2010). However, the

After considering all of the camera's functions and the scope of subheading 8525.40.40, HTSUS, CBP concluded:

The instant camera contains no feature that predominates over any other feature to suggest that one capability constitutes the principal function. In fact, all of the digital camera's capabilities are advertised equally on the good's packaging and in the owner's manual. As such, we are unable to determine the digital camera's principal function.

General EN (VI) to Section XVI provides that, "[w]here it is not possible to determine the principal function, and where as provided in Note 3 to the Section, the context does not otherwise require, it is necessary to apply General Interpretative Rule 3(c)...." GRI 3(c) provides that "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." Subheadings 8525.30, HTSUS, and 8525.40, HTSUS, merit equal consideration for the reasons stated above. Thus, the digital camera is classified in subheading 8525.40 [8525.40.40, current subheading 8525.80.40], HTSUS.

We find the reasoning in HQ 966072 to be distinguishable from the present classification analysis. The camera described in HQ 966072, although multifunctional, is not similar to the cameras at issue. One of functions of the camera in HQ 966072 (television camera) is not present in the instant cameras and is described by a subheading that is not currently at issue (8525.80.10). Moreover, in HQ 966072 we were unable to determine the principal function of the camera because none of its features predominated over any other feature, which is not the case here.

Based on all of the foregoing analysis, we find that the JVC cameras at issue were erroneously classified as digital still image video cameras because they do not principally function as such. We note that this conclusion is consistent with the statement in the conclusion of JVC's comment that "[t]he media cameras in question contain no feature that significantly predominates over any other feature." Accordingly, they must be classified in subheading 8525.80.50, HTSUS, ¹⁸ as "other" than digital still image cameras of subheading 8525.80.40, HTSUS.

HOLDING:

By application of GRI 1 and Note 3 to Section XVI, HTSUS, the JVC multifunction digital cameras, models GZ-MC500, GZ-MG30 and GZ-MG20, are classified in heading 8525, HTSUS. They are specifically provided for in subheading 8525.80.50, HTSUS, which provides for: "[T]elevision cameras, digital cameras and video camera recorders: Television cameras, digital

"What's New" section of the webpage has a link to a January 7, 2010, news release, JVC Launches HD Everio Camera with Built-in Bluetooth Wireless Technology, which is posted in the "Camcorder" section of the JVC Newsroom webpage. See http://newsroom.jvc.com/2010/01/jvc-launches-hd-everio-camera-with-built-in-

bluetooth%c2%ae-wireless-technology/#more-843 (accessed 5/5/2010). See also, Chantry Kaitlyn, JVC Releases a New Flagship Camcorder, Jan. 7, 2010, www.camcorderinfo.com (accessed 5/5/2010). However, the models of Everio cameras described on these pages are not the same as the ones at issue.

¹⁸ Subheading 8525.80.50, HTSUS, is not covered by the provisions of the ITA and the goods of the subheading are not entitled to duty-free treatment under the agreement.

cameras and video camera recorders: Other." The 2009 column one, general rate of duty is 2.1% ad valorem.

EFFECT ON OTHER RULINGS:

NY R04381 (July 21, 2006), NY R04507 (Aug. 15, 2006), and NY R04505 (Aug. 15, 2006) are hereby revoked.

Sincerely,

Gail A. Hamill

for

Myles B. Harmon,

Director

Commercial and Trade Facilitation Division

REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A STUFFED BEAR BANK

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to tariff classification of a stuffed bear bank.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking Headquarters Ruling Letter (HQ) 087133, relating to the tariff classification of a stuffed bear bank under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 44, No. 14, on March 31, 2010. CBP received no comments in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 26, 2010.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. $\S1625(c)(1)$), as amended by section 623 of Title VI, notice proposing to revoke HQ 087133 was published on March 31, 2010, in Volume 44, Number 14 of the *Customs Bulletin*. CBP received no comments in response to the notice.

As stated in the proposed notice, this action will cover any rulings on the subject 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 ruling identified above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In HQ 087133, dated October 18, 1990, CBP determined that the subject stuffed bear bank was classified in subheading 6307.90.95, HTSUS, which provides for "Other made up articles, including dress patterns: Other: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ 087133 and, in order to reflect the proper classification of the subject bear bank according to the analysis contained in Headquarters Ruling Letter H065119, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: May 11, 2010

Gail A. Hamill
for
Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

Attachments

HQ H065119

May 11, 2010 CLA-2 OT:RR:CTF:TCM H065119 CkG Category: Classification

TARIFF NO.: 9503.00.00

PORT DIRECTOR
U.S. CUSTOMS AND BORDER PROTECTION
301 E. OCEAN BLVD.
SUITE 1400
LONG BEACH, CA 90802

Re: Revocation of HQ 087133; classification of stuffed bear coin bank

DEAR PORT DIRECTOR:

This letter is to inform you that Customs and Border Protection has reconsidered Headquarters Ruling Letter (HQ) 087133, issued to you on October 18, 1990, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a stuffed bear coin bank. In HQ 087133, CBP classified the bear bank in heading 6307, HTSUS, as an "other" made up article. We have reconsidered this ruling and have determined that it is incorrect.

HQ 087133 is a decision on a specific protest. A protest is designed to handle entries of merchandise which have entered the U.S. and been liquidated by CBP. A final determination of a protest, pursuant to Part 174, Customs Regulations (19 CFR 174), cannot be modified or revoked as it is applicable only to the merchandise which was the subject of the entry protested. Furthermore, CBP lost jurisdiction over the protested entries in HQ 087133 when notice of disposition of the protest was received by the protestant. See, San Francisco Newspaper Printing Co. v. U.S., 9 CIT 517, 620 F.Supp. 738 (1935).

However, CBP can modify or revoke a protest review decision to change the legal principles set forth in the decision. Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), 60 days after the date of issuance, CBP may propose a modification or revocation of a prior interpretive ruling or decision by publication and solicitation of comments in the CUSTOMS BULLETIN. This revocation will not affect the entries which were the subject of Protest 2704–89–002117, but will be applicable to any entries of similar merchandise made 60 days after publication of the final notice of revocation in the CUSTOMS BULLETIN.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke HQ 087133 was published on March 31, 2010, in Volume 44, Number 14 of the *Customs Bulletin*. CBP received no comments in response to the notice.

FACTS:

The subject article is described in HQ 087133 as follows:

The submitted sample, item #0225, is a partially stuffed bear figure measuring approximately 8–1/2 inches in height and 7 inches in width.

The head and appendages of the bear are stuffed, while the torso incorporates a hollow plastic container for the holding of coins. The sample contains a coin slot and bottom plug for the removal of coins. Its exterior is made of soft plush pile fabric.

ISSUE:

Whether the subject article is a toy of heading 9503, HTSUS, or a made up article of heading 6307, HTSUS.

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.

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

The HTSUS provisions under consideration are as follows:

6307:	Other made up articles, including dress patterns:
6307.90:	Other:
	Other:
6307.90.98:	Other
	* * * * *
9503:	Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof
9503.00.00:	Other
	* * * * *
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EN 95.03 states, in pertinent part:

D) Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults)....This group includes:

(xvi) Educational toys (e.g., toy chemistry, printing, sewing and knitting sets).

(xxii) Toy money boxes; babies; rattles, jack-in-the-boxes; toy theatres with or without figures, etc.

Certain toys (e.g., electric irons, sewing machines, musical instruments, etc.) may be capable of a limited use; but they are generally distinguishable by their size and limited capacity from real sewing machines, etc.

* * * * *

Although the term "toy" is not defined in the HTSUS, EN 95.03 provides that heading 9503, HTSUS, covers toys intended essentially for the amusement of persons. *U. S. v. Topps Chewing Gum*, 58 CCPA 157, C.A.D. 1022 (1971) (hereafter Topps), is illustrative in determining whether an article is intended for the amusement of the user. In Topps, various decorative buttons with humorous quotes were classified as toys of heading 9503. Topps held that if the purpose of an object is to give the same kind of enjoyment as playthings give, its purpose is amusement. It is the quality of mind or emotion induced by the object which is controlling. Therefore, an article classified as a toy does not have to be a plaything, provided that the quality of emotion induced by the article takes on the character of frivolous amusement. Therefore, an article may be considered a toy if it is inherently or evidently amusing. *See* HQ 959749, dated October 23, 1997; HQ 960136 (July 24, 1997); HQ 963907 (July 12, 2001); and HQ 964834 (May 23, 2002).

Where merchandise might have another purpose in addition to providing amusement, the primary purpose of the item must be its amusement value for it to be classified as a toy. In *Minnetonka Brands v. United States*, 110 F. Supp. 2d 1020, 1026 (CIT 2000), the court held that an object is a toy only if it is designed and used for amusement, diversion or play, rather than practicality. In *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 33 (1977), the Customs Court similarly held that "when amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose is incidental to the amusement."

In HQ 088983, dated August 12, 1991, a plush bear approximately eight inches in height constructed of plush man-made textile fabric with a hollow body cavity that formed an interior compartment designed to hold an 8-ounce infant feeding bottle, was classified in heading 9503, HTSUS. We found that the bear bottle warmer had "the appearance and play value of any toy, plush bear and can therefore be used for amusement without being used as a bottle holder. If the item is used as a bottle holder, however, it will continue to provide amusement and a sense of companionship to the child." See also NY M87270, dated October 27, 2006; NY L88374, dated October 27, 2005; and NY D88231, dated February 24, 1999. Similarly, we find that a stuffed bear bank is likely to be used much in the same way that any stuffed animal would be used—for comfort, companionship, and amusement.

We therefore do not agree that the commercial viability of the item depends on the item functioning as a bank. The article is commercially viable as a stuffed bear alone. Therefore, it is classified in heading 9503, HTSUS.

HOLDING:

By application of GRI 1, the subject article is classified in subheading 9503.00.00, HTSUS, which provides for "Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other." The 2009 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 on the World Wide Web at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

HQ 087133, dated October 18, 1990, is hereby revoked. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Sincerely,
Gail A. Hamill
for
Myles B. Harmon,
Director,
Commercial and Trade Facilitation Division

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF MEN'S SLEEPWEAR PANTS

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

ACTION: Notice of modification of a ruling letter and treatment relating to the tariff classification of men's sleepwear pants.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is modifying New York Ruling Letter (NY) N025623, relating to the tariff classification of two styles men's sleepwear pants under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 44, No. 14, on March 31, 2010. CBP received no comments in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 26, 2010.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. \$1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify NY N025623 was published on March 31, 2010, in Volume 44, Number 14 of the *Customs Bulletin*. CBP received no comments in response to the notice.

As stated in the proposed notice, this action will cover any rulings on the subject 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 ruling identified above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

In NY N025263, dated April 1, 2008, CBP determined that the subject men's knit and woven pants, styles 230316 and 230317, were classified in headings 6103 and 6203, HTSUS, respectively; specifically subheading 6103.42.1020, which provides for: "Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted: of cotton: trousers, breeches and shorts: trousers and breeches: men's," and subheading 6203.42.4016, which provides for "Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear): trousers, bib and brace overalls, breeches and shorts: of cotton: other: other: men's trousers and breeches: other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N025263, in order to reflect the proper classification of the subject men's woven and knit pants according to the analysis contained in Headquarters Ruling Letter (HQ) H030421, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: May 10, 2010

Gail A. Hamill
for
Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

Attachments

HQ H030421

May 10, 2010 CLA-2 OT:RR:CTF:TCM H030421 CKG CATEGORY: Classification TARIFF NO.: 6107.91.0030; 6207.91.3010

MR. JOHN PETERSON, ESQ. NEVILLE PETERSON LLP 17 STATE STREET, 19TH FLOOR NEW YORK, NY 10004

Re: Modification of NY N025623; Classification of men's knit and woven pants

DEAR MR. PETERSON,

This is in response to your letter of June 6, 2008, on behalf of your client, Target Corporation, requesting the reconsideration, in part, of New York Ruling Letter (NY) N025623, dated May 2, 2008, as it pertains to the classification of two styles of men's sleepwear pants under the Harmonized Tariff Schedule of the United States (HTSUS).

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify NY N025623 was published on March 31, 10, 2010, in Volume 44, Number 14, of the *Customs Bulletin*. CBP received no comments in response to the notice.

FACTS:

The submitted samples are two styles of men's cotton pants, identified as styles PID # 230316 and 230317. The classification of the additional styles subject to NY Ruling Letter N025623 is not at issue.

Style # 230316 is made of 60% cotton and 40% polyester jersey knit fabric. Style # 230317 is made of 55% cotton and 45% polyester yarn died woven fabric. Both garments feature an elasticized waistband with an outside drawstring, side seam pockets, hemmed legs, and an unsecured, 5.5 inch fly front opening with no means of closure. The subject articles are described by the importer as "sleep pants" and "sleep bottoms" and are offered for sale as "sleepwear" in the intimate apparel section of target stores.

Style # 230316 was classified in NY N025623 under heading 6103, HTSUS, which provides for: "Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted." Style # 230317 was classified under heading 6203, HTSUS, which provides for "Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear)."

Additional marketing information submitted with the request for reconsideration indicates that the subject styles are characterized as sleepwear and sold in the intimate apparel department of Target stores.

ISSUE:

Whether the instant merchandise is classifiable as sleepwear of headings 6107 and 6207, HTSUS, or as trousers of headings 6103 and 6203, HTSUS.

LAW AND ANALYSIS:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by 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. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's, applied in sequential order.

The HTSUSA provisions at issue are as follows:

6103: Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers,

bib and brace overalls, breeches and shorts (other than swimwear),

knitted or crocheted

6103.42: Of cotton:

6103.42.10: Trousers, breeches and shorts

Trousers and breeches:

6103.42.1020: Men's (347)

* * * * * *

6107: Men's or boys' underpants, briefs, nightshirts, pajamas, bathrobes,

dressing gowns and similar articles, knitted or crocheted

Other:

6107.91.00: Of cotton

6107.91.0030: Sleepwear (351)

* * * * * *

* * * * * *

6203: Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers,

bib and brace overalls, breeches and shorts (other than swimwear)

Trousers, bib and brace overalls, breeches and shorts

6203.42: Of cotton 6203.42.40: Other

6203.42.4016: Other (347)

6207: Men's or boys' singlets and other undershirts, underpants, briefs,

nightshirts, pajamas, bathrobes, dressing gowns and similar articles

Other:

6207.91: Of cotton: 6207.91.30: Other

6207.91.3010: Sleepwear (351)

* * * * * *

You propose classification in heading 6107, HTSUS, which provides for "Men's or boys' underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles, knitted or crocheted" and heading 6207, HTSUS, which provides for "Men's or boys' singlets and other undershirts, underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles."

The determination of whether garments are classified as sleepwear or multi-purpose apparel is controlled by the principal use of the garments. A tariff classification controlled by use, other than actual use, is to be determined by the principal use in the United States at, or immediately prior to, the date of importation, of goods of the same class or kind of merchandise. Additional U.S. Rule of Interpretation 1(a).

Several court cases have also addressed the classification of sleepwear. In *Mast Industries, Inc. v. United States*, 9 CIT 549, 552 (1985), *aff'd* 786 F.2d 144 (CAFC, 1986), the Court of International Trade considered the classification of a garment claimed to be sleepwear. The court cited several lexicographic sources, among them *Webster's Third New International Dictionary* which defined "nightclothes" as "garments to be worn to bed." In *Mast*, the court determined that the woman's nightshirt at issue therein was designed, manufactured, and used as nightwear and therefore was classifiable as nightwear. Similarly, in *St. Eve International, Inc. v. United States*, 11 CIT 224 (1987), the court ruled that the subject nightgowns were manufactured, marketed and advertised as nightwear and were chiefly used as nightwear.

Finally, in *Inner Secrets/Secretly Yours, Inc. v. United States*, 885 F. Supp. 248 (1995), the court was faced with the issue of whether women's boxer style shorts were classifiable as "outerwear" under heading 6204, HTSUS, or as "underwear" under heading 6208, HTSUS. The court stated the following, in pertinent part:

[P]laintiff's preferred classification is supported by evidence that the boxers in issue were designed to be worn as underwear and that such use is practical. In addition, plaintiff showed that the intimate apparel industry perceives and merchandises the boxers as underwear. While not dispositive, the manner in which plaintiff's garments are merchandised sheds light on what the industry perceives the merchandise to be.

Further, evidence was provided that plaintiff's merchandise is marketed as underwear. While advertisements also are not dispositive as to correct classification under the HTSUS, they are probative of the way that the importer viewed the merchandise and of the market the importer was trying to reach.

On the other hand, in *International Home Textile, Inc. v. United States*, 21 CIT 280, 282 (1997), aff'd 153 F.3d 1378 (CAFC, 1998), the court classified the men's top, pants and shorts at issue as loungewear in heading 6103, HTSUS. The court therein stated:

Based upon a careful examination of the loungewear as well as the testimony of the various witnesses, the court finds that the loungewear items at issue do not share that essential character of privateness or private activity. As the parties have already stipulated, the loungewear is used primarily for lounging and not for sleeping. The court finds no basis in the exhibits, the witness testimony, or the loungewear's construction and design to find that it is inappropriate, at a minimum, for the loungewear to be worn at informal social occasions in and around the home, and for other individual, non private activities in and around the house e.g., watching movies at home with guests, barbecuing at a backyard gathering, doing outside home and yard maintenance work...

When ruling on similar merchandise in the past, CBP's policy has been to carefully examine the physical characteristics of the garments in question. When this has not proven substantially helpful, we consider other extrinsic evidence such as environment of sale, advertising and marketing, recognition in the trade of virtually identical merchandise, and documentation incidental

to the purchase and sale of the merchandise, *i.e.*, purchase orders, invoices, and other internal documentation. It should be noted that CBP considers these factors in totality and no single factor is determinative of classification as each factor viewed alone may be flawed. *See* HQ 964513, dated February 11, 2002.

In the instant case, the physical characteristics of the subject styles are suggestive of sleepwear, such as the lightweight and loose construction characteristic of sleepwear, an elasticized waistband with an outside drawstring, and an unsecured fly front opening with no means of closure. While the New York Ruling at issue found that the short fly opening did not compromise modesty or privacy, we disagree. The unsecured, 5.5 inch open fly clearly indicates the intended use of the garment to be that of nightwear, and would not normally be considered appropriate for informal social gatherings. We have reached this same conclusion in prior rulings on similar merchandise. For instance, in HQ 962703, dated November 2, 2000, we stated: "An open fly is a feature whose essential character is privateness or private activity, which is indicative of sleepwear and pajamas. An unsecured fly does not satisfy the conventional standards of modesty necessary on a garment that would be worn for the type of non-private activities named in International Home Textiles, Inc." Furthermore, in HQ 963906, dated April 4, 2001, we noted that a pair of men's pants possessing a fly opening secured by a one-button closure did not provide the appropriate privacy for individual, non private activities in and around the house. Both the button and the button hole in this case were very close to the outside edge of the fly, allowing for "very little overlapping of the fabric around the opening, resulting in the fly front gaping open when the garment is worn." See HQ 963906. Other rulings classifying similar garments as sleepwear include HQ 966345, dated February 6, 2004; NY L81656, dated February 3, 2005; and NY N023207, dated February 27,

The subject pants also feature two side-seam pockets. NY N025623 noted the "deep and/or excessive pockets" as characteristic of multi-use garments. However, we have held previously that such a feature "will not preclude a garment from being classified as sleepwear inasmuch as these pockets do not interfere with the garment's practical use for sleeping." See HQ 963906, dated April 4, 2001. The physical characteristics of the subject garments are thus consistent with sleepwear. We also find that the environment of sale supports classification as sleepwear. The marketing material which was submitted describes the items as "sleep pants," "sleep bottoms," and "pajama pants". The subject articles are offered for sale as "sleepwear" in the intimate apparel section of Target stores, with other nightwear such as pajamas. The environment of sale thus indicates that both of these garments are being presented as sleepwear for the primary purpose of wearing to bed for sleeping. Nothing else in the environment of sale suggests the garments are designed or intended for wear other than while sleeping.

It is thus the opinion of this office, based on the physical characteristics of the garments in question and the general environment of sale that the subject articles are designed, marketed and used as sleepwear.

HOLDING:

Pursuant to GRI 1, the instant merchandise is properly classifiable as men's sleepwear. Style PID # 230316 is classified under the provision for "Men's or boys' underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles, knitted or crocheted: Other: Of cotton", in subheading 6107.91.0030, HTSUSA, and is dutiable under the general column one rate of 8.7 percent ad valorem. Style PID # 230317 is classified under subheading 6207.91.3010, HTSUSA, which provides for "Men's or boys' singlets and other undershirts, underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles: Other: Sleepwear," dutiable under the general column one rate of 6.1 percent ad valorem. The textile quota category for both garments is 351.

EFFECT ON OTHER RULINGS:

New York Ruling Letter N025623, dated May 2, 2008, is hereby modified. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Sincerely,
Gail A. Hamill
for
Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A GLASS JAR FROM CHINA

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to tariff classification of a glass jar.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking a ruling letter relating to the tariff classification of a glass jar under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 44, No. 14, on March 31, 2010. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 26, 2010.

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

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI, this notice advises interested parties that CBP is modifying a ruling letter relating to the tariff classification of a glass jar. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) N048031, dated January 23, 2009, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the rulings identified above. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice period.

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

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N048031 in order to reflect the proper classification of glass jars according to the analysis contained in Headquarters Ruling Letter (HQ) H078900, which is attached to this document. Additionally, pursuant to 19 U.S.C. \$1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 11, 2010

Gail A. Hamill
for
Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H078900

May 11, 2010 CLA-2–85:CTF:TCM H078900 TNA CATEGORY: Classification TARIFF NO.: 7013.99.50

MARK METHENITIS
THE VERNON LAW GROUP, PLLC
1201 ELM STREET, SUITE 4242
DALLAS, TX 75270

RE: Revocation of NY N048031; Classification of a glass jar from China

DEAR MR. METHENITIS:

This letter is in reference to New York Ruling Letter ("NY") N048031, issued to you on January 23, 2009, concerning the tariff classification of a glass bottle from China. In that ruling, U.S. Customs and Border Protection ("CBP") classified the merchandise under subheading 7010.90.50, Harmonized Tariff Schedule of the United States ("HTSUS"), as bottles of a kind used for the conveyance or packing of goods. We have reviewed NY N048031 and found it to be in error. For the reasons set forth below, we hereby revoke NY N048031.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. \$1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N048031 was published on March 31, 2010, in Volume 44, Number 14, of the *Customs Bulletin*. CBP received no comments in response to this notice.

FACTS:

The merchandise at issue is Item Number DB080607001, a small, round, clear glass jar with a short neck and a rubber stopper. It measures approximately three inches in height and has a volume of four ounces. The jar is imported empty, and then filled with scented oil for sale to consumers. It is also sold with reeds to diffuse the oil and its scent throughout a room. As such, it is known as a "reed diffuser bottle."

ISSUE:

Whether a glass jar used as a reed diffuser bottle should be classified under heading 7010, HTSUS, as a bottle of a kind used for the conveyance or packing of goods, or under heading 7013, as glassware of the kind used for table, kitchen, toilet, office, indoor decoration or similar purposes?

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

7010 Carboys, bottles, flasks, jars, pots, vials, ampoules and other containers, of glass, of a kind used for the conveyance or packing of goods; preserving jars of glass; stoppers, lids and other closures, of glass

7010.90 Other

7010.90.50 Other containers (with or without their closures)

* * * * * * * * * * *

Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018)

Other glassware

7013.99 Other

Other

7013.99.50

Valued over \$0.30 but not over \$3 each

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

The EN to heading 7010, HTSUS, states, in pertinent part:

This heading covers all glass containers of the kinds commonly used commercially for the conveyance or packing of liquids or of solid products (powders, granules, etc.). They include:

(A) Carboys, demijohns, bottles (including syphon vases), phials and similar containers, of all shapes and sizes, used as containers for chemical products (acids, etc.), beverages, oils, meat extracts, perfumery preparations, pharmaceutical products, inks, glues, etc.

These articles, formerly produced by blowing, are now almost invariably manufactured by machines which automatically feed molten glass into moulds where the finished articles are formed by the action of compressed air. They are usually made of ordinary glass (colourless or coloured) although some bottles (e.g., for perfumes) may be made of lead crystal, and certain large carboys are made of fused quartz or other fused silica.

The above-mentioned containers are generally designed for some type of closure; these may take the form of ordinary stoppers (of cork, glass, etc.), glass balls, metal caps, screw caps (of metal or plastics), or special devices (e.g., for beer bottles, bottles for aerated waters, soda water syphons, etc.).

These containers remain in this heading even if they are ground, cut, sand-blasted, etched or engraved, or decorated (this applies, in particular, to certain perfume or liqueur bottles), banded, wickered or otherwise trimmed with various materials (wicker, straw, raffia, metal, etc.); they may also have tumbler-caps fitted to the neck. They may be fitted with drop measuring devices or may be graduated, provided that they are not of a kind used as laboratory glassware.

The EN to heading 7013, HTSUS, states, in pertinent part:

This heading covers the following types of articles, most of which are obtained by pressing or blowing in moulds:

- (1) Table or kitchen glassware, e.g. drinking glasses, goblets, tankards, decanters, infants' feeding bottles, pitchers, jugs, plates, salad bowls, sugar-bowls, sauce-boats, fruit-stands, cake-stands, hors-d'oeuvres dishes, bowls, basins, egg-cups, butter dishes, oil or vinegar cruets, dishes (for serving, cooking, etc.), stew-pans, casseroles, trays, salt cellars, sugar sifters, knife-rests, mixers, table hand bells, coffee-pots and coffee-filters, sweetmeat boxes, graduated kitchenware, plate warmers, table mats, certain parts of domestic churns, cups for coffee-mills, cheese dishes, lemon squeezers, ice-buckets.
- (2) Toilet articles, such as soap-dishes, sponge-baskets, liquid soap distributors, hooks and rails (for towels, etc.), powder bowls, perfume bottles, parts of toilet sprays (other than heads) and tooth-brush holders.
- (3) Office glassware, such as paperweights, inkstands and inkwells, book ends, containers for pins, pen-trays and ashtrays.
- (4) Glassware for indoor decoration and other glassware (including that for churches and the like), such as vases, ornamental fruit bowls, statuettes, fancy articles (animals, flowers, foliage, fruit, etc.), table-centres (other than those of heading 70.09), aquaria, incense burners, etc., and souvenirs bearing views.

NY N048031 classified the subject merchandise under heading 7010, HT-SUS, as jars that are used for conveyance or packing. The classification was based on the importer's assertion that the bottles would not be reused once the reeds and scented oil with which they were sold were finished.

Bottles, flasks, jars, pots, vials and other containers of a kind used for the conveyance or packing of goods of heading 7010, HTSUS, are jars that are designed to remain closed as they transport liquids or solids from one location to another. Glassware of the kind used for table, kitchen, toilet, office, indoor decoration or similar purposes of heading 7013, HTSUS, are designed to be displayed in the home or office as they hold material inside of them. They may remain open as they display their contents and are meant to lend decoration to the items they display.

The subject merchandise is filled with scented oil and reeds and, although they can be closed, they generally remain open to allow the scent to permeate the area. In addition, the bottles are generally placed in an open setting, rather than being hidden, to add decoration to their surroundings. Furthermore, counsel admits that its reed diffuser bottles are used in the same manner as larger, fancier reed diffuser bottles- i.e., as reed diffuser bottles.

Moreover, with the exception of the subject merchandise's small size, there is essentially no difference between it and the larger reed diffuser bottles that CBP routinely classifies in heading 7013, HTSUS. See, e.g., HQ 960162; HQ 956470; HQ 961353; HQ 961409, among others, for a detailed explanation on the characteristics that differentiate bottles of heading 7010, HTSUS, and bottles of heading 7013, HTSUS. Given the similarities between the small bottles classified in NY N04031 and the larger bottles of the rulings noted above, the subject reed diffuser bottles should also be classified under heading 7013, HTSUS.

HOLDING:

Under the authority of GRI 1, small glass reed diffuser bottles are provided for in heading 7013, HTSUS. Specifically, they are classified under subheading 7013.99.50, as glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): Other glassware: other: Valued over \$0.30 but not over \$3 each. As such, the rate of duty is 30% ad valorem.

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

EFFECT ON OTHER RULINGS:

NY N048031, dated January 23, 2009, is REVOKED.

Sincerely,

Gail A. Hamill

for

Myles B. Harmon,

Director

Commercial and Trade Facilitation Division

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE APPLICABILITY OF SUBHEADING 9817.00.96, HTSUS, TO CERTAIN IMPORTED VITREOUS CHINA TOILET BOWLS/TOILETS

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

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to the applicability of subheading 9817.00.96, Harmonized Tariff Schedule of the United States ("HTSUS"), to certain vitreous china toilet bowls/toilets.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection ("CBP") is modifying a ruling letter related to the applicability of subheading 9817.00.96, HTSUS, to certain imported vitreous china toilet bowls/toilets. CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin* on March 31, 2010. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 26, 2010.

FOR FURTHER INFORMATION CONTACT: Elif Eroglu, Valuation and Special Programs Branch: (202) 325–0277.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(1)), a notice was published in the *Customs Bulletin* on March 31, 2010, proposing to modify New York Ruling Letter ("NY") N033006, dated July 24, 2008, which involved the applicability of subheading 9817.00.96, HTSUS, to certain imported vitreous china toilet bowls/toilets. No comments were received in response to the notice.

Accordingly, pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N033006, based upon the analysis set forth in Headquarters Ruling Letter ("HQ") H055815, attached. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: May 10, 2010

Monika Brenner
for
Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H055815

May 10, 2010 CLA-2 OT:RR:CTF:VS H055815 EE CATEGORY: Classification

IVAN LAVRIKOV
SCHENKER OF CANADA LIMITED
6555 NORTHWEST DRIVE
MISSISSAUGA, ON L4V 1K2
CANADA

RE: Modification of NY N033006, dated July 24, 2008; subheading 9817.00.96, HTSUS; vitreous china toilet bowls/toilets

Dear Mr. Lavrikov:

This is in reference to New York Ruling Letter ("NY") N033006, dated July 24, 2008, issued on behalf of your client Wolseley Inc. ("Wolseley"), concerning the applicability of 9817.00.96, Harmonized Tariff Schedule of the United States ("HTSUS"), to certain vitreous china toilet bowls/toilets. We have reviewed NY N033006 and determined that while the conclusion that model PF1303WH toilet bowl does not qualify for preferential treatment under subheading 9817.00.96, HTSUS, is correct, the conclusion that models PFCT103WH, PF9303WH, and PF9403WH toilet bowls/toilets do not qualify for preferential treatment under subheading 9817.00.96, HTSUS, is incorrect. Therefore, NY N033006 is modified for the reasons set forth in this ruling.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY N033006, as described below, was published in the *Customs Bulletin* on March 31, 2010. No comments were received in response to the notice.

FACTS:

NY N033006, dated July 24, 2008, provided, in pertinent part, the following facts:

Ferguson's Proflo Americans with Disabilities Act ("ADA") compliant toilet bowls provide comfortable, chair height seating for handicapped persons, and comply with the highest requirements of the ADA. Comfort height toilets are comparable to the height of an average household chair—just over 17 inches—making sitting down and standing up easier.

These toilet bowls are used primarily in commercial applications where establishments are required to have handicap accessible lavatories by code. They are also used (but not required) in some residential applications for the reason stated above (ease of use or comfort). U.S. Customs and Border Protection ("CBP") classified the four products in NY N029335, dated June 12, 2008.

In NY N033006, CBP determined that the toilet bowls/toilets, models PFCT103WH, PF1303WH, PF9303WH and PF9403WH, are not eligible for duty-free treatment under subheading 9817.00.96, HTSUS. In support of this conclusion, CBP stated that although the toilet bowls' height make them minimally acceptable under the ADA, their use by the non-handicapped is not

fugitive. Additionally, CBP noted that the channel of trade for the bowls/toilets are as an option in a standard plumbing catalog, not that of a channel dedicated to items for the handicapped.

ISSUE:

Whether the vitreous china toilet bowls/toilets models PFCT103WH, PF9303WH, PF1303WH, and PF9403WH are eligible for duty-free treatment under subheading 9817.00.96, HTSUS.

LAW AND ANALYSIS:

The Agreement on the Importation of Educational, Scientific and Cultural Materials, known as the Florence Agreement, is an international agreement drafted by the United Nations Educational, Scientific, and Cultural Organization (UNESCO), adopted by it in Florence, Italy, in July 1950 (17 UST 1835; TIAS 6129). It provides for duty free treatment and the reduction of trade obstacles for imports of educational, scientific, and cultural materials in the interest of facilitating the international free flow of ideas and information. Materials falling within the coverage of the Florence Agreement include: books, publications and documents; works of art and collectors' pieces of an educational, scientific or cultural character; visual and auditory materials of an educational, scientific or cultural character; scientific instruments and apparatus; and articles for the blind.

The Nairobi Protocol to the Florence Agreement, adopted by UNESCO in November 1976, broadened the scope of the Florence Agreement by removing some of its restrictions on articles otherwise entitled to duty-free status, and by expanding the Agreement to embrace technologically new articles and previously uncovered works of art, films, etc. One major new category of articles is: "all materials specially designed for the education, employment and social advancement of other physically or mentally handicapped persons..." Protocol to the Agreement on the Importation of Educational, Scientific, and Cultural Materials annex E (ii), opened for signature March 1, 1977, 1976 U.S.T. LEXIS 388. Thus, the Protocol is intended to afford duty-free treatment not only for articles for the blind, but all other handicapped persons without regard to the source of their affliction. The 97th Congress passed Pub. L. 97-446 to ratify the Nairobi Protocol in the United States. The Senate stated in its Report that one of the goals of this law was to benefit the handicapped and show U.S. support for the rights of the handicapped. The Senate, however, did state that it did not intend "that an insignificant adaptation would result in duty free treatment for an entire relatively expensive article... the modification or adaptation must be significant so as to clearly render the article for use by handicapped persons." S. Rep. No. 97-564, 97th Cong. 2nd Sess. (1982). The Senate was concerned that persons would misuse this tariff provision to avoid paying duties on expensive products.

Section 1121 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. no. 100–418, 102 Stat. 1107) and Presidential Proclamation 5978 provided for the implementation of the Nairobi Protocol by inserting permanent provisions, subheadings 9817.00.92, 9817.00.94, and 9817.00.96 into the HT-SUS. These tariff provisions specifically provide that "[a]rticles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons" are eligible for duty-free treatment.

U.S. Note 4(a), subchapter XVII, Chapter 98, HTSUS, states that, "the term 'blind or other physically or mentally handicapped persons' includes any person suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working."

U.S. Note 4(b), subchapter XVII, Chapter 98, HTSUS, which establishes limits on classification of products in these subheadings, states that "Subheadings 9817.00.92, 9817.00.94 and 9817.00.96 do not cover (i) articles for acute or transient disability; (ii) spectacles, dentures, and cosmetic articles for individuals not substantially disabled; (iii) therapeutic and diagnostic articles; or (iv) medicine or drugs."

The primary issue regarding the toilet bowls/toilets in question is whether they are "specifically designed or adapted" for the use or benefit of the handicapped within the meaning of the Nairobi Protocol. The meaning of the phrase "specially designed or adapted" has been decided on a case-by-case basis. In Headquarters Ruling Letter ("HQ") 556449, dated May 5, 1992, CBP set forth factors it would consider in making this case-by-case determination. These factors include: 1) the physical properties of the article itself, i.e., whether the article is easily distinguishable, by properties of the design and the corresponding use specific to this unique design, from articles useful to non-handicapped individuals; 2) whether any characteristics are present in an article that create a substantial probability of use by the chronically handicapped, whether the article is easily distinguishable from articles useful to the general public, and whether use of the article by the general public is so improbable that such use would be fugitive; 3) whether articles are imported by manufacturers or distributors recognized or proven to be involved in this class or kind of articles for the handicapped; 4) whether the articles are sold in specialty stores which serve handicapped individuals; and 5) whether the condition of the articles at the time of importation indicates that these articles are for the handicapped. Each of these factors is to be weighed against each other to determine whether an article is specially designed or adapted for the handicapped. See also T.D. 92-77 (26 Cust. Bull. 1, August 26, 1992).

The goods in question consist of four different models of vitreous toilet bowls/toilets, three of which, upon installation are designed to measure 17 inches from the floor to the top of the bowl rim. An additional model, PF1303WH, measures 16.5 inches from the floor to the top of the bowl rim. The harmonized ASME A112.19.2/CSA B45.1–2008 National Consensus Standards for Vitreous China Plumbing Fixtures provides that adult water closets must have a minimum rim height of 13.5 inches (343 mm). The height of the goods at issue clearly distinguishes them from standard toilets which measure 14 inches to 15 inches from the floor to the top of the bowl rim.

You state that the toilets at issue comply with standards issued under the ADA and are designed for use by physically handicapped persons, who suffer from arthritis, joint diseases, handicaps and other maladies which make it difficult for them to lift themselves off of low chairs or benches. The higher elevation of the toilet makes it easier for the handicapped persons to lower themselves to and from the toilet seat. You advise that if the toilet angle is raised by two inches, there is a two-thirds (67%) reduction in the negative

angle of the knee joint. The degree to which the toilet user's weight is pitched rearward is also reduced by a like amount. This makes it much easier for a person to rise from the seat.

The ADA Accessibility Guidelines for Buildings and Facilities ("ADAAG") provide that "the height of water closets shall be 17 in to 19 in (430 mm to 485 mm), measured to the top of the toilet seat." 28 C.F.R. § 36, Appendix A, 4.16.3. The ADAAG provides that the typical seat height of a wheelchair for a large adult male is 19 inches (485 mm). 28 C.F.R. § 36, Appendix A, A4.2.4. We note that a standard toilet with a thick toilet seat as well as comfort height toilets that measure 16.5 inches from the floor to the top of the bowl rim could presumably comply with the ADAAG and be utilized by handicapped as well as non-handicapped individuals. We note that several compamarket comfort height toilets for general http://www.homedepot.com. However, we find it unlikely that toilets that measure 17 inches from the floor to the top of the bowl rim would be acquired other than for the benefit or use of a handicapped individual who is likely to benefit when transferring from the wheelchair to the toilet.

Lastly, we note that although the toilet bowls/toilets are sold by a company that markets products to the general public, the goods at issue are specifically advertised as ADA compliant.

You have provided information stating that the Canada Border Services Agency ("CBSA") classified Wolseley's toilets under Canada's tariff item No. 9979.00.00 as goods specifically designed to assist persons with disabilities in alleviating the effects of those disabilities. While CBP is not bound to abide by another country's rulings, foreign rulings may be instructive. See T.D. 89–80.

Based on the above factors, we find that the toilet bowls with a bowl rim height of 17 inches or more are "specially designed and adapted" for the use or benefit of the handicapped people and are entitled to duty-free treatment under 9817.00.96, HTSUS.

HOLDING:

Based upon the information before us, we find that the vitreous china toilet models PFCT103WH, PF9303WH and PF9403WH are eligible for duty-free treatment under subheading 9817.00.96, HTSUS. However, per NY N033006, model PF1303WH toilet bowl does not qualify for preferential treatment under subheading 9817.00.96, HTSUS.

EFFECT ON OTHER RULINGS:

NY N033006, dated July 24, 2008, is hereby modified consistent with the foregoing. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Sincerely,

Monika Brenner
for

Myles B. Harmon,
Director

Commercial and Trade Facilitation Division

GENERAL NOTICE

REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE ELIGIBILITY OF CERTAIN JEWELRY FOR PREFERENTIAL TARIFF TREATMENT UNDER THE GENERALIZED SYSTEM OF PREFERENCES

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

ACTION: Notice of revocation of two ruling letters and revocation of any treatment relating to the alloying and casting of metal for purposes of jewelry production.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking two ruling letters, Headquarters Ruling Letter (HQ) 562035, dated June 22, 2001, and HQ 562526, dated November 15, 2002, relating to the eligibility for preferential treatment under the GSP of certain jewelry. CBP is also revoking any treatment previously accorded to substantially identical transactions

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 26, 2010.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Valuation and Special Classification Branch, (202) 325–0046.

SUPPLEMENTARY INFORMATION:

Background

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

nity's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and 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 revoking two rulings, HQ 562035, dated June 22, 2001, and HQ 562526, dated November 15, 2002, relating to the eligibility for preferential treatment under the GSP of certain jewelry produced by the "lost wax" technique or substantially similar technique. Although in this notice CBP is specifically referring to the revocations of HQ 562035 and HQ 562526, 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., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ 562035 and HQ 562526, by issuance of HQ H072082 and HQ H072776, set forth as Attachments A and B to this document. HQ H072082 and HQ H072776 reflect the proper analysis of eligibility of the jewelry processed as described therein for preferential tariff treatment under the GSP. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. In accordance with 19 U.S.C. 1625(c), this rulings will become effective 60 days after publication in the *Customs Bulletin*.

Dated: May 5, 2010

Myles B. Harmon,

Director

Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ H072082

May 5, 2010 VAL-2 OT:RR:CTF:VS H072082 CMR

CATEGORY: Classification

PORT DIRECTOR
U.S. CUSTOMS AND BORDER PROTECTION
605 W. FOURTH AVENUE
ANCHORAGE, ALASKA 99501

RE: Revocation of Internal Advice Decision, Headquarters Ruling Letter 562035, dated June 22, 2001; alloying; casting; double substantial transformation

Dear Port Director:

This ruling revokes our earlier decision in Headquarters Ruling Letter (HQ) 562035, dated June 22, 2001, issued in response to an internal advice request from your port regarding the eligibility of gold jewelry imported from Sri Lanka for duty-free treatment under the Generalized System of Preferences (GSP). We have reviewed our decision in HQ 562035 and found it to be in conflict with earlier and later decisions on substantially identical transactions.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published on March 31, 2010, in the *Customs Bulletin*, Vol. 44, No. 14. No comments were received.

FACTS:

The facts of the transaction at issue in HQ 562035 were set forth in the ruling as follows:

Hansa Jewellery Ltd. purchases pure gold from a foreign country other than Sri Lanka. The company purchases alloying metals in Italy. In their production facilities in Sri Lanka, the pure gold is mixed with the appropriate percentages of alloying metals. This mixture is then melted to form an alloy. The alloy is then poured into flasks and cast into various styles, typically used to make rings and pendants. The castings are then set with diamonds and/or colored stones ("stones"). The gold castings, set with stones, are then polished. The country of origin of the diamonds and stones is not indicated. We will assume for the purposes of this ruling that the diamonds and stones are not of U.S. or Sri Lankan origin.

In HQ 562035, it was held that the gold alloying materials and stones only underwent a single substantial transformation in Sri Lanka.

ISSUE:

Whether the imported gold jewelry is eligible for special tariff treatment under the GSP.

LAW AND ANALYSIS:

Congress originally enacted the GSP program to extend preferential tariff treatment to the exports of less-developed countries to encourage economic diversification and export development within the developing world. *SDI Technologies Inc. v. United States*, 977 F. Supp. 1235 (CIT 1997), quoting S. Rep. No. 93–1298, (1974). Under the GSP, eligible articles the growth, product or manufacture of a designated beneficiary developing country (BDC) which are imported directly into the customs territory of the U.S. from a BDC may receive duty-free treatment if the sum of (1) the cost or value of materials produced in the BDC, plus (2) the direct costs of the processing operations performed in the BDC, is equivalent to at least 35 % of the appraised value of the article at the time of entry into the U.S. *See* 19 U.S.C. 2463(a).

General Note 3(c)(i), HTSUS, provides, in part, that special tariff treatment under the GSP is indicated in the "Special" subcolumn in the tariff by the symbols "A", "A*," or "A+". Under General Note 4(a), HTSUS, Sri Lanka is designated as a beneficiary developing country for GSP purposes. It is assumed for the purposes of this ruling that the imported gold jewelry is classified in Chapter 71, HTSUS. At the time that HQ 562035 was issued, all the tariff provisions of Chapter 71 were GSP-eligible. Currently, gold jewelry classified in subheading 7113.19, HTSUS (which we believe to be the applicable tariff provision for classification of the merchandise described herein), and a product of Sri Lanka is eligible for preferential tariff treatment under the GSP provided the requirements of that program are met.

The first issue involved in this case is whether the imported jewelry is a "product of" Sri Lanka. The "product of" requirement means that to receive duty-free treatment, an article either must be made entirely of materials originating in the BDC, or if made of materials imported into the BDC, those materials must be substantially transformed in the BDC into a new and different article of commerce. A substantial transformation occurs "when an article emerges from a manufacturing process with a name, character, or use which differs from those of the original material subjected to the process." Texas Instruments Inc. v. United States, 681 F.2d 778 (1982).

CBP considered a similar issue in Headquarters Ruling Letter ("HQ") 560331, dated December 2, 1997, involving imported jewelry from the Dominican Republic. CBP held that casting non-beneficiary precious metal alloys into jewelry and setting foreign gem stones resulted in a substantial transformation and therefore, the jewelry was considered a product of the Dominican Republic. In HQ 556457, dated March 5, 1992, CBP ruled that gold, silver and alloys of U.S. origin shipped to Costa Rica to be alloyed to create shot and then cast into jewelry and the setting of stones was considered a substantial transformation. Therefore, the finished pieces of jewelry were considered products of Costa Rica for the purposes of the CBERA. See also HQ 555801, dated January 2, 1991.

In this case, the gold, the alloying materials and the stones are imported into Sri Lanka from a foreign country. The facts that you have provided are similar to the above cited rulings. Like HQ 560331 and HQ 556457, the casting and setting of stones that transform the metals and stones into jewelry are performed in the GSP beneficiary country. There is a change in name from gold, alloy materials and the stones into a finished ring or pendant. There is also a change in character; the gold is mixed with the other

materials and therefore, the resulting material has different characteristics than pure gold or the alloy materials. Gold, alloying materials and stones have many potential uses while the finished jewelry has a single use. Therefore, we conclude that the gold, alloy materials and stones are substantially transformed into a finished piece of jewelry in Sri Lanka with a different name, character and use. Thus, there is a substantial transformation and the finished jewelry is a "product of" Sri Lanka for the purposes of the GSP.

If an article consists of materials that are imported into a BDC, as in the instant case, the cost or value of these materials may be counted toward the 35% value-content requirement only if they undergo a double substantial transformation in the BDC. See 19 CFR 10.177(a)(2). Materials imported into the BDC must first be substantially transformed into a new and different article of commerce which becomes "material produced," and these materials produced in the BDC must then be substantially transformed into a new and different article of commerce (the final article).

With regard to the gold and metal alloys, we must determine whether they undergo a double substantial transformation in Sri Lanka when they are used to make jewelry to determine whether their value may be counted toward the 35% requirement. The description of the processing of the gold and metal alloys set forth in the facts portion of this decision indicates that the gold and metal alloys are mixed and melted, and the molten mixture is poured into flasks and cast.

In one scenario, in HQ 560331, dated December 2, 1997, the alloying and casting was done in the Dominican Republic. It was held that the cost or value of the gold bars, silver, copper zinc, nickel or brass which were alloyed to the desired specifications and subsequently cast into the jewelry pieces in the Dominican Republic could be included in the 35% value calculation. Similarly, in HQ H022844, dated June 20, 2008, which cited to HQ 560331, it was held that gold alloyed, poured into a mold and cast in Thailand, constituted a double substantial transformation. It was noted that in situations where all processing is accomplished in one GSP beneficiary country, the likelihood that the processing constitutes little more than a pass through operation is greatly diminished.

In this case, if the processing ceased after the gold and metal alloys were mixed and melted to form the alloy to be used in casting the jewelry, and the alloy was allowed to cool and harden, the alloy shot would clearly be an intermediate article of commerce. However, although the processing is not stopped before casting, it could be and following HQ H022844 and HQ 560331, we find that the gold and metal alloys in this case undergo a double substantial transformation and the value of the gold and metal alloys may be counted toward meeting the required 35% value content requirement of the GSP.

With regard to the diamonds and/or colored stones which are set in the gold castings, setting the diamonds and/or colored stones into the castings is not considered a double substantial transformation. See HQ 556467, dated March 5, 1992 which held that finished precious and semiprecious stones set into castings are not subjected to a double substantial transformation.

HOLDING:

The jewelry produced as described herein is a product of Sri Lanka as the materials used to produce the jewelry, *i.e.*, the gold, metal alloys, and diamonds and/or colored stones, are substantially transformed in Sri Lanka. Furthermore, the value of the gold and metal alloys may be counted toward meeting the required 35% value content requirement of the GSP as these materials undergo a double substantial transformation. The value of the diamonds and/or colored stones may not be counted toward meeting the required 35% value content of the GSP.

HQ 562035, dated June 22, 2001, is hereby revoked. In accordance with 19 U.S.C. \S 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

[ATTACHMENT B]

HQ H072776

May 5, 2010 VAL-2 OT:RR:CTF:VS H072776 CMR CATEGORY: Classification

PORT DIRECTOR
U.S. CUSTOMS AND BORDER PROTECTION
605 W. FOURTH AVENUE
ANCHORAGE, ALASKA 99501

RE: Revocation of Internal Advice Decision, Headquarters Ruling Letter 562526, dated November 15, 2002; alloying; casting; double substantial transformation

DEAR PORT DIRECTOR:

This ruling revokes our earlier decision in Headquarters Ruling Letter (HQ) 562526, dated November 15, 2001, issued in response to an internal advice request from your port regarding the eligibility of silver jewelry imported from Thailand for duty-free treatment under the Generalized System of Preferences (GSP). We have reviewed our decision in HQ 562526 and found it to be in conflict with earlier and later decisions on substantially identical transactions.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published on March 31, 2010, in the *Customs Bulletin*, Vol. 44, No. 14. No comments were received.

FACTS:

The facts of the transaction at issue in HQ 562526 were set forth in the ruling as follows:

Toucan, Inc. (dba "Tomas Jewelry"), imports sterling silver jewelry from Thailand. The jewelry is made from pure silver and copper imported into Thailand from many foreign countries. In Thailand, the pure silver is mixed with the copper in a ratio of 92.5% silver to 7.5% copper, known as sterling silver. This mixture is then melted to form an alloy known as 925 silver. The alloy is then poured into molds and cast into various styles.

The castings are created using the traditional "lost wax" technique. The design is either carved into hard wax using a stylus or an original piece of jewelry can be used in lieu of a wax model. A rubber mold is then made, and multiple patterns of the original design are produced by injecting wax into this mold. The wax images are then attached to a base, forming a tree-like shape, a process called sprueing. This wax "tree" is placed into a metal flask and is covered with investment, a substance that resembles plaster of Paris.

When the investment sets or hardens, the flask is placed in a kiln set at 1,275 degrees Fahrenheit until the wax vaporizes, leaving a hollow impression in the plaster. The molten sterling silver is then poured into the hot flask under a vacuum-like pressure created in a centrifuge. After cooling slightly, the container is "quenched" in water, thus dissolving the plaster and leaving the metal "tree" intact. When it is completely cool, the cast tree is chemically cleaned.

Each cast piece is then cut off the tree at the base, and lightly filed to smoothness. Oxidizing agents may also be applied, if desired, to enhance the detail of the piece. The castings are eventually buffed and polished, either before or after further manufacture, to remove any chemical residue left by processing and to remove any scratches.

The castings are then assembled with either metal posts or wires (hooks) to make earrings.

In addition to being used to make earrings, counsel for Tomas states that the castings are used in making anklets and bracelets, or as decoration on other items such as pillboxes, bookmarks, key rings, pocket pieces, cake pulls, wine glass identifiers, shoestring decorations and zipper pulls. However, we understand that this particular case only involves the production and importation of earrings.

In HQ 562526, it was held that while the silver and gold made into earrings were a product of Thailand, the silver and gold did not undergo a double substantial transformation and could not be counted towards the 35% value added requirement.

ISSUE:

Whether the imported sterling silver earrings are eligible for special tariff treatment under the GSP.

LAW AND ANALYSIS:

Congress originally enacted the GSP program to extend preferential tariff treatment to the exports of less-developed countries to encourage economic diversification and export development within the developing world. *SDI Technologies Inc. v. United States*, 977 F. Supp. 1235 (CIT 1997), quoting S. Rep. No. 93–1298, (1974). Under the GSP, eligible articles the growth, product or manufacture of a designated beneficiary developing country (BDC) which are imported directly into the customs territory of the U.S. from a BDC may receive duty-free treatment if the sum of (1) the cost or value of materials produced in the BDC, plus (2) the direct costs of the processing operations performed in the BDC, is equivalent to at least 35% of the appraised value of the article at the time of entry into the U.S. *See* 19 U.S.C. 2463(a).

General Note 3(c)(i), HTSUS, provides, in part, that special tariff treatment under the GSP is indicated in the "Special" subcolumn in the tariff by the symbols "A", "A*," or "A+". Under General Note 4(a), HTSUS, Thailand is designated as a beneficiary developing country for GSP purposes. It is assumed for the purposes of this ruling that the imported sterling silver jewelry is classified in Chapter 71, HTSUS. At the time that HQ 562526 was issued, all the tariff provisions of Chapter 71 were GSP-eligible. Currently, sterling silver jewelry classified in subheading 7113.11, HTSUS (which we believe to be the applicable tariff provision for classification of the merchandise described herein), and a product of Thailand is eligible for preferential tariff treatment under the GSP provided the requirements of that program are met.

The first issue involved in this case is whether the imported jewelry is a "product of" Thailand. The "product of" requirement means that to receive duty-free treatment, an article either must be made entirely of materials originating in the BDC, or if made of materials imported into the BDC, those materials must be substantially transformed in the BDC into a new and different article of commerce. A substantial transformation occurs "when an article emerges from a manufacturing process with a name, character, or use which differs from those of the original material subjected to the process." Texas Instruments Inc. v. United States, 681 F.2d 778 (1982).

CBP considered a similar issue in Headquarters Ruling Letter ("HQ") 560331, dated December 2, 1997, involving imported jewelry from the Dominican Republic. CBP held that casting non-beneficiary precious metal alloys into jewelry and setting foreign gem stones resulted in a substantial transformation and therefore, the jewelry was considered a product of the Dominican Republic. In HQ 556457, dated March 5, 1992, CBP ruled that gold, silver and alloys of U.S. origin shipped to Costa Rica to be alloyed to create shot and then cast into jewelry and the setting of stones was considered a substantial transformation. Therefore, the finished pieces of jewelry were considered products of Costa Rica for the purposes of the CBERA. See also HQ 555801, dated January 2, 1991.

In this case, the silver and copper are imported into Thailand from a foreign country. The facts that you have provided are similar to the above cited rulings. Like HQ 560331 and HQ 556457, the casting that transforms the metals and stones into jewelry are performed in the GSP beneficiary country. There is a change in name from silver and copper into finished earrings. There is also a change in character; the silver is mixed with copper and therefore, the resulting material has different characteristics than pure silver or copper. Silver and copper have many potential uses while the finished jewelry has a single use. The processing involved to manufacture the earrings from silver and copper is complex and intricate rather than of a minor nature. Therefore, based on the above, we conclude that the silver and copper are substantially transformed into finished earrings in Thailand with a different name, character and use. Thus, the finished jewelry is a "product of" Thailand for the purposes of the GSP.

If an article consists of materials that are imported into a BDC, as in the instant case, the cost or value of these materials may be counted toward the 35% value-content requirement only if they undergo a double substantial transformation in the BDC. See 19 CFR 10.177(a)(2). Materials imported into the BDC must first be substantially transformed into a new and different article of commerce which becomes "material produced," and these materials produced in the BDC must then be substantially transformed into a new and different article of commerce (the final article).

With regard to the silver and copper, we must determine whether they undergo a double substantial transformation in Thailand when they are used to make jewelry to determine whether their value may be counted toward the 35% requirement. The description of the processing of the silver and copper set forth in the facts portion of this decision indicates that the silver and copper are mixed and melted, and the molten mixture is poured into molds and cast.

In one scenario, in HQ 560331, dated December 2, 1997, the alloying and casting was done in the Dominican Republic. It was held that the cost or

value of the gold bars, silver, copper zinc, nickel or brass which were alloyed to the desired specifications and subsequently cast into the jewelry pieces in the Dominican Republic could be included in the 35% value calculation. Similarly, in HQ H022844, dated June 20, 2008, which cited to HQ 560331, it was held that gold alloyed, poured into a mold and cast in Thailand, constituted a double substantial transformation. It was noted that in situations where all processing is accomplished in one GSP beneficiary country, the likelihood that the processing constitutes little more than a pass through operation is greatly diminished.

In this case, if the processing ceased after the silver and copper were mixed and melted to form the alloy to be used in casting the jewelry, and the alloy was allowed to cool and harden, the alloy shot would clearly be an intermediate article of commerce. However, although the processing is not stopped before casting, it could be and following HQ H022844 and HQ 560331, we find that the silver and copper in this case undergo a double substantial transformation and the value of the silver and copper may be counted toward meeting the required 35% value content requirement of the GSP.

HOLDING:

The earrings produced as described herein are a product of Thailand as the materials used to produce the jewelry, *i.e.*, the silver and copper, are substantially transformed in Thailand. Furthermore, the value of the silver and copper may be counted toward meeting the required 35% value content requirement of the GSP as these materials undergo a double substantial transformation.

HQ 562526, dated November 15, 2001, is hereby revoked. In accordance with 19 U.S.C. \S 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

MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A CERTAIN TEXTILE DRAWSTRING BAG

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

ACTION: Notice of modification of one ruling letter and revocation of treatment relating to tariff classification of a certain textile drawstring 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 inter-

ested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter relating to the tariff classification of a certain textile drawstring bag under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 44, No. 14, on March 31, 2010. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 26, 2010.

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

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin*, Vol. 44, No. 14, on March 31, 2010, proposing to modify New York Ruling Letter (NY) N020461, dated December 17, 2007, in which CBP classified a drawstring bag under heading 9504, HTSUS, and specifically under subheading 9504.90.60, HTSUS, which provides for: "[a]rticles for arcade, table or parlor

games, including pinball machines, bagatelle, billiards and special tables for casino games; automatic bowling alley equipment; parts and accessories thereof: Other: Other: Chess, checkers, parchisi, backgammon, darts and other games played on boards of a special design, all the foregoing games and parts thereof (including their boards); mah-jong and dominoes; any of the foregoing games in combination with each other, or with other games, packaged together as a unit in immediate containers of a type used in retail sales; poker chips and dice...." No comments were received in response to the notice.

As stated in the proposed notice, this action will cover any rulings on the subject 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 ruling identified above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially identical transactions should have advised CBP during the comment 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 this final decision.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY N020461 to reflect the proper factual basis and tariff classification analysis of this merchandise under subheading 9504.90.60, HTSUS, pursuant to the analysis set forth in Headquarters Ruling Letter H061738, which is attached to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by it to substantially identical transactions.

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

Dated: May 5, 2010

Gail A. Hamill
for
Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H061738

May 5, 2010 CLA-2 OT:RR:CTF:TCM H061738 GC CATEGORY: Classification TARIFF NO.: 9504.90.60

Connie Rose Hasbro, Inc. Post Office Box 200 Pawtucket, Rhode Island 02862–0200

RE: Tariff classification of textile drawstring bags; Modification of NY N020461

Dear Ms. Rose:

This letter is to inform you that Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) N020461, dated December 17, 2007, which concerns the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a polyester bag with a cotton drawstring that is used with a board game manufactured by Hasbro, Inc. (Hasbro). We have since reviewed NY N020461 and find that the factual basis for the ruling, along with the analysis contained therein, to be incomplete.

Notice of the proposed action was published in the *Customs Bulletin*, Vol. 44, No. 14, on March 31, 2010. No comments were received in response to the notice.

FACTS:

The subject bag is a polyester bag with a cotton drawstring that measures approximately 5 ½ by 7 inches used to carry a USA board game. The hem around the opening of the bag, the seams running the length of one side and the bottom are secured by a single row of stitching. The opening of the bag is closed when the drawstring is pulled from one end of the opening. Prior to pulling the drawstring, the opening of the bag has a diameter of approximately 3.5 inches, with a circumference of approximately 11 inches. When the drawstring is pulled, there is a small opening remaining at the top of the bag.

The subject bag also features the screen printing on one side of the bag identifying the game with which the bag will be attached after importation into the United States. The text on the screen printing, which is in white lettering on top of an orange background, reads phrase "Learning made fun! TM" above the word "GAMES" below. We searched the Hasbro website and found that several games manufactured by Hasbro bear the "Learning made fun" trademark.

In your initial ruling request, you stated that "[t]he bag is part of game play". You also submitted the instructions for the "Mickey Mouse Clubhouse Letters & Numbers TM Game", which direct the players to take one game token per turn from the subject bag and match it with the spaces on the game board.

ISSUE:

Whether the subject drawstring bag is a made up textile article of heading 6307, HTSUS, or an accessory of games covered by heading 9504, HTSUS?

LAW AND ANALYSIS:

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

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

Other made up articles, including dress patterns:

6307.90 Other:

Other:

6307.90.98 Other...

* * *

Articles for arcade, table or parlor games, including pinball machines,

bagatelle, billiards and special tables for casino games; automatic

bowling alley equipment; parts and accessories thereof:

9504.90 Other:

Other:

9504.90.60

Chess, checkers, parchisi, backgammon, darts and other games played on boards of a special design, all the foregoing games and parts thereof (including their boards); mah-jong and dominoes; any of the foregoing games in combination with each other, or with other games, packaged together as a unit in immediate containers of a type used in retail sales; poker chips and dice...

Note 7 to Section XI, HTSUS (which covers heading 6307, HTSUS), states, in pertinent part:

For the purposes of this section, the expression "made up" means:

* * *

(e) Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded...

Note 1(t) to Section XI, HTSUS, excludes, in pertinent part, "articles of chapter 95..." Note 3 to chapter 95, HTSUS, states, in pertinent part, that "...parts and accessories which are suitable for use solely or principally with articles of this chapter are to be classified with those articles."

The term "accessory" is not defined in the HTSUS or in the Harmonized Commodity Description and Coding Explanatory Notes (ENs). However, this office has stated that the term "accessory" is generally understood to mean an

¹ Additional U.S. Rule of Interpretation 1(c) states that, "[i]n the absence of special language or context which otherwise requires — [a] provision for parts of an article covers products solely or principally used as part of such articles but a provision for 'parts' or 'parts and accessories' shall not prevail over a specific provision for such part or accessory." Because the terms of Note 3 to chapter 95 constitute "special language... which otherwise requires", Additional U.S. Rule of Interpretation 1(c) is not applicable here.

article which is not necessary to enable the goods with which they are intended to function. They are of secondary importance, but must, however, contribute to the effectiveness of the principal article (e.g., facilitate the use or handling of the particular article, widen the range of its uses, or improve its operation). See Headquarters Ruling Letter (HQ) 958710, dated April 8, 1996; HQ 950166, dated November 8, 1991. We also employ the common and commercial meanings of the term "accessory", as the courts did in Rollerblade v. United States, wherein the Court of International Trade derived from various dictionaries that an accessory must relate directly to the thing accessorized. See Rollerblade, Inc. v. United States, 116 F.Supp. 2d 1247 (CIT 2000), aff'd, 282 F.3d 1349 (Fed. Cir. 2002) (holding that inline roller skating protective gear is not an accessory because the protective gear does not directly act on or contact the roller skates in any way) (referred to herein as Rollerblade); see also HQ 966216, dated May 27, 2003.

The instant drawstring bag is a textile article produced in the finished state, ready for use without sewing or other working. See Note 7(b) to Section XI, HTSUS. As such, the subject liner meets the terms of Note 7, and the terms of Note 1 to Chapter 63, HTSUS. Therefore, they are provided for under 6307, HTSUS. See HQ 960757, dated August 26, 1997; HQ W964711, dated April 2, 2002. However, if the drawstring bag is also prima facie classifiable under heading 9504, HTSUS, as an accessory to a game, it cannot be classified in heading 6307, HTSUS. See Note 1(t) to Section XI, HTSUS, and Note 3 to Chapter 95, HTSUS.

As evidenced by the fact that the players of the "Mickey Mouse Clubhouse Letters & Numbers TM Game" are directed to pick one game piece out of the instant bag when they take their respective turns, the subject bag is used directly with a game of heading 9504, HTSUS, contributes to the effectiveness of the game, and is suitable for sole or principal use with games of heading 9504, HTSUS. These features are supported by the fact that the screen printing on the bag is specific to a certain type of game sold by Hasbro. Accordingly, we find that the instant textile drawstring bag fits the terms of heading 9504, HTSUS, by operation of Note 3 to Chapter 95, HTSUS. Consequently, Note 1(t) to Section XI, HTSUS, precludes classification in heading 6307, HTSUS.

HOLDING:

By application of GRI 1, Note 1(t) to Section XI, HTSUS, and Note 3 to Chapter 95, HTSUS, the subject textile drawstring bags are classified in heading 9504, HTSUS, and more specifically provided for in subheading 9504.90.60, HTSUS, which provides for: "[a]rticles for arcade, table or parlor games, including pinball machines, bagatelle, billiards and special tables for casino games; automatic bowling alley equipment; parts and accessories thereof: Other: Other: Chess, checkers, parchisi, backgammon, darts and other games played on boards of a special design, all the foregoing games and parts thereof (including their boards); mah-jong and dominoes; any of the foregoing games in combination with each other, or with other games, packaged together as a unit in immediate containers of a type used in retail sales; poker chips and dice..." 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 on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY N020461, dated December 17. 2007, is hereby MODIFIED. In accordance with 19 U.S.C. \$1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

Sincerely,
Gail A. Hamill
for
Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

AGENCY INFORMATION COLLECTION ACTIVITIES: Permit to Transfer Containers to a Container Station

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

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0049

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the: Permit to Transfer Containers to a Container Station. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before July 12, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information: (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Permit to Transfer Containers to a Container Station

OMB Number: 1651–0049 Form Number: None

Abstract: This information collection is in accordance with 19 CFR 19.46 which provides that when a person is granted a permit to operate a container station, the port director may request a list of names, addresses, social security numbers, dates and places of birth of the persons employed by the operator. Respondents must provide this list to CBP within 30 calendar days after the date of receipt of a written request by the port director.

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

Type of Review: Extension (without change)

Affected Public: Businesses

Estimated Number of Respondents: 350 Estimated Number of Total Responses: 1,400 Estimated Time per Response: 20 minutes Estimated Total Annual Burden Hours: 466 Dated: Dated: May 6, 2010

Tracey Denning
Agency Clearance Officer
U.S. Customs and Border Protection

[Published in the Federal Register, May 11, 2010 (75 FR 26268)]