U.S. Customs and Border Protection

PROPOSED REVOCATION OF A RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A MEN'S VEST

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

ACTION: Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the tariff classification of a men's vest.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection ("CBP") is proposing to revoke a ruling concerning the tariff classification of a men's vest under the Harmonized Tariff Schedule of the United States ("HTSUS"). Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before January 27, 2012.

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

FOR FURTHER INFORMATION CONTACT: Robert Shervette, Office of International Trade Regulations and Rulings, at 202.325.0274.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of a men's vest. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter ("NY") N084077, dated April 12, 2010, set forth as "Attachment A", this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

agents for importations of merchandise subsequent to the effective date of the final decision of this notice.

In NY N084077, CBP classified a men's vest under heading 6110, HTSUS, which provides for: "[s]weaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted." Upon our review of NY N084077, we have determined that the merchandise described in that ruling is properly classified under heading 6211, HTSUS, which provides for: "[t]rack suits, ski-suits and swimwear; other garments."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N084077, and to revoke or modify any other ruling not specifically identified to reflect the proper classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter ("HQ") H136897, set forth as "Attachment B" to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: November 28, 2011

IEVA K. O'ROURKE
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N084077

April 12, 2010
CLA-2–61:OT:RR:NC:WA: 356
CATEGORY: Classification
TARIFF NO.: 6110.30.3030

MR. ROBERT RYAN
BNSF LOGISTICS INTERNATIONAL, INC.
P.O. BOX 610629
DALLAS FORT WORTH AIRPORT, TEXAS 75261–0629

RE: The tariff classification of a men's bonded vest from China.

DEAR MR. RYAN:

In your letter, which was received by this office on November 13, 2009, you requested a tariff classification ruling on behalf of Williamson Dickie Manufacturing Company. Your sample was destroyed during laboratory analysis and cannot be returned.

Lot TE 424 is a men's vest constructed from a bonded fabric consisting of an outer layer of 92% polyester, 8% spandex, woven fabric, a middle layer of a polyurethane membrane, and an inner layer of 100% polyester finely knit pile fabric. The garment is sleeveless with oversized armholes and features a self-fabric stand-up collar; a full front opening with a zipper closure; a zippered pocket on the left chest; patch pockets below the waist; and a straight bottom with a drawcord and cord locks.

Laboratory analysis has determined that the inner layer of this fabric is of knit pile construction. Following Chapter 60, Note 1(c), laminated knit pile fabric, whether laminated to a knit or to a woven fabric, is considered a knit fabric.

Consequently, the applicable subheading for Lot TE 424 will be 6110.30.3030, Harmonized Tariff Schedule of the United States, (HTSUS), which provides for: men's or boys' sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: of man-made fibers: other: other: other: other: vests, other than sweater vests: men's or boys'. The rate of duty is 32% ad valorem.

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

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177). A copy of this ruling letter or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding this ruling, contact National Import Specialist Mary Ryan at 646–733–3271.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT B]

HQ H136897
CLA-2 OT: RR: CTF: TCM H136897 RES
CATEGORY: Classification
TARIFF NO.: 6211.33.0054

TED MURPHY
BAKER & MCKENZIE LLP
815 CONNECTICUT AVENUE, NW
WASHINGTON, DC 20006–4078

RE: Reconsideration of New York Ruling N084077, dated April 12, 2010; classification of a men's vest from China

DEAR MR. MURPHY:

This is in response to your letter dated November 23, 2010, on behalf of Williamson-Dickie Manufacturing Company ("Williamson-Dickie") for reconsideration of New York Ruling Letter ("NY") N084077 issued on April 12, 2010, regarding the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of a men's vest. The merchandise in NY N084077 was classified under heading 6110, HTSUS. We have determined that NY N084077 was in error.

FACTS:

The subject vest, identified as "lot TE 424", is composed of three layers of bonded fabric. The outer layer is a woven fabric that is 92% polyester and 8% spandex. The middle layer is composed of thermoplastic polyurethane and the inner layer is a knit fabric that is 100% polyester. The vest is sleeveless, has one zippered pocket over the left side of the chest, two waist-level pockets without zippers. A zipper closure runs from the bottom to the top of the front of the vest. There are also two elastic draw cords at the base of the vest with cord locks that allow a user to tighten or loosen the vest at waist level.

ISSUE:

Whether the men's vest at issue is classified under heading 6110, HTSUS, as a vest that is knitted or crocheted or under heading 6211, HTSUS, as an "other garment of man-made fibers"?

LAW AND ANALYSIS:

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

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the HTSUS at the international level, may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

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

6110	Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted:
* * *	
6211	Track suits, ski-suits and swimwear; other garments:

A composite article governed by GRI 3(b) is classified according to the material that gives the article its essential character. An article of apparel that consists of multiple layers of fabric is classified based on the material of the outer layer, subject to any exceptions in the legal notes that direct otherwise or in instances where an article of apparel has parts or accessories which materially contribute to the article's character or usefulness and impart the essential character. *See* Headquarters Ruling "HQ" 084262, dated June 21, 1989, and HQ 086504, dated December 27, 1990.

In the case of the subject merchandise, classification is based on the outer layer of fabric because there are no other parts or accessories that materially contribute to the vests' character or usefulness to an extent to impart the essential character over the outer layer of fabric. The outer layer of fabric is an artificial woven fabric with a composition that is 92% polyester and 8% spandex. A textile garment that is a men's vest with an outer layer of woven fabric is classifiable in Chapter 62, HTSUS, as an article of apparel not knitted or crocheted, and specifically under heading 6211, HTSUS. As both polyester and spandex are both man-made fibers, the instant vest is specifically provided for under subheading 6211.33.00, HTSUS, as "[t]rack suits, ski-suits and swimwear; other garments: [o]ther garments, men's or boys': [o]f man-made fibers."

HOLDING:

By application of GRI 3(b), the men's vest, lot # TE 424, is classified under subheading 6211.33.0054, HTSUSA, as "[t]rack suits, ski-suits and swimwear; other garments: [o]ther garments, men's or boys': [o]f man-made fibers: [v]ests: [o]ther." Articles classified under this subheading are subject to a column one rate of duty of 16 percent, *ad valorem*, and the visa category is 659.

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

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, we suggest your client check the *Textile Status Report for Absolute Quotas* at *www.cbp.gov* close to the time of shipment to obtain the most current information available.

EFFECTS ON OTHER RULINGS:

The classification of the men's vest merchandise in NY N084077, dated April 12, 2010, is revoked.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

CLA-2 OT:RR:CTF:TCM

HQ W968017ASM

PROPOSED REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF THE "TRENDY TEE" CRAFT KIT

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

ACTION: Proposed revocation of a classification ruling letter and revocation of treatment relating to the classification of the "Trendy Tee" craft kit.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is proposing to revoke a ruling letter relating to the classification of the "Trendy Tee" craft kit. CBP is also proposing to revoke any treatment previously accorded by it to substantially identical merchandise.

DATES: Comments must be received on or before January 27, 2012.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Tariff Classification and Marking Branch, 799 9th Street, NW, Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke a ruling letter pertaining to the classification of the "Trendy Tee" craft kit. Although in this notice, CBP is specifically referring to one ruling, New York Ruling Letter (NY) K87306, dated June 28, 2004, (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In NY K87306, CBP determined that the "Trendy Tee" craft kit (item number 89009) was an "Other" toy. Thus, the merchandise was

classified in heading 9503, HTSUS. However, CBP has reviewed the classification of the "Trendy Tee" craft kit and determined that the cited ruling is in error.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke NY K87306. In addition, CBP is proposing to modify or revoke any other ruling not specifically identified, to reflect the classification of substantially identical merchandise according to the analysis contained in proposed Headquarters Ruling Letter (HQ) 968017, which is set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: November 23, 2011

IEVA K. O'ROURKE
for
MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY K87306

June 28, 2004
CLA-2–95:RR:NC:SP:225 K87306
CATEGORY: Classification
TARIFF NO.: 9503.70.0000

MR. JOSEPH R. HOFFACKER
BARTHCO TRADE CONSULTANTS, INC.
7575 HOLSTEIN AVENUE
PHILADELPHIA, PA 19153

RE: The tariff classification of a toy craft kit from China.

DEAR MR. HOFFACKER:

In your letter dated June 21, 2004, on behalf of K.B. Toys, Inc., you requested a tariff classification ruling.

You submitted a sample of item number 89009, Trendy Tee, which is a toy craft kit consisting of a stud tool, a plastic workstation, metal studs, rhinestones, a pencil, stencil pattern cards, and a sheet of instructions packaged inside an illustrated cardboard box. The articles are used to decorate t-shirts by placing a paper stencil pattern card on the front of a t-shirt (not included) and then rubbing the chalk over the holes. This fills the holes with chalk and leaves a pattern on the t-shirt. The rhinestones and studs are placed over these chalk marks and attached with the stud setting tool. By following the enclosed instructions, a child 8 years of age and older can derive amusement by making their own "trendy" t-shirts.

Your sample is being returned upon your request.

The applicable subheading for item number 89009, Trendy Tee, will be 9503.70.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Other toys, put up in sets or outfits, and parts and accessories thereof." The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alice Wong at 646–733–3026.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT B]

HQ W968017
CLA-2 OT:RR:CTF:TCM W968017 ASM
CATEGORY: Classification
TARIFF NO.: 8479.89.98

MR. JOSEPH R. HOFFACKER
BARTHCO TRADE CONSULTANTS, INC.
7575 HOLSTEIN AVENUE
PHILADELPHIA, PA 19153

RE: Revocation of NY K87306; Tariff Classification of the "Trendy Tee" Craft Kit

DEAR MR. HOFFACKER:

This is in reference to New York Ruling Letter (NY) K87306, dated June 28, 2004, issued to you on behalf of Trendy Tee, concerning the tariff classification of a craft kit under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection ("CBP") classified the merchandise in the provision for "Other" toys in subheading 9503.70.00, HTSUS. We have reviewed NY K87306 and found it to be in error. For the reasons set forth below, we hereby revoke NY K87306.

FACTS:

In NY K87306, the subject merchandise, identified as "Trendy Tee" (item number 89009), was described as a toy craft kit consisting of a stud tool, a plastic workstation, metal studs, plastic rhinestones, chalk, cardboard stencil pattern cards, and a sheet of instructions packaged inside an illustrated cardboard box. According to the description contained in NY K87306, the articles are used to decorate t-shirts by placing a paper stencil pattern card on the front of a t-shirt and then rubbing chalk over the holes (a t-shirt is not included in the kit). The user follows the decorative chalk pattern by attaching rhinestones and studs with the stud setting tool included in the kit. The box is marked as appropriate for children of 8 years of age and older.

ISSUE:

Whether the subject craft kit is classified as an "Other" toy in heading 9503, HTSUS, or as an "Other" machine and mechanical appliance in heading 8479, HTSUS.

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. When by application of GRI 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, they must be classified in accordance with GRI 3. GRI 3(b) states that "Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to

3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable."

The following HTSUS provisions are under consideration in classifying the craft kit:

8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof:
	Other machines and mechanical appliances:
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 …[1]

Note 4 to Chapter 95, HTSUS, states the following:

> Subject to the provisions of Note 1 above, heading 9503 applies, *inter alia*, to articles of this heading combined with one or more items, which cannot be considered as sets under the terms of General Interpretative Rule 3(b), and which, if presented separately, would be classified in other headings, provided the articles are put up together for retail sale and the combinations have the essential character of toys.

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 GRI 3(b) states:

> (VII) In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character**, insofar as this criterion is applicable.
>
> (VIII) The factor which determines the essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

The General EN for Chapter 95 states that the "chapter covers toys of all kinds whether designed for the amusement of children or adults."

The "Trendy Tee" craft kit consists of a manually operated plastic stud tool, a plastic desk, chalk, stencil pattern cards, and plastic rhinestone gems which are all packaged together with instructions in a cardboard box for retail sale at the time of importation. If the components of the craft kit were

[1] In 2004, heading 9503, HTSUS provided as follows: "Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: …".

classified separately, the plastic stud tool would be classified in heading 8479, HTSUS, which provides for "Machines and mechanical appliances having individual functions, . . ." (*See* HQ 967824, dated December 6, 2005). The plastic desk would be classified in heading 3926, HTSUS, which provides for "Other articles of plastics". The chalk is classifiable in heading 9609, HTSUS, which provides for "… drawing charcoals, writing or drawing chalks and tailors' chalks". The cardboard stencils are classifiable in heading 4823, HTSUS, which provides for " . . . other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibers" (*See* HQ 966198, dated July 21, 2003 and HQ 959189, dated September 25, 1996). The plastic rhinestone gems are classifiable in heading 3926, HTSUS, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914". None of the items on their own are classifiable in heading 9503 as toys. Hence, note 4 to Chapter 95 does not apply to this merchandise and it cannot be classified at GRI 1.

Instead, the merchandise consists of articles of different headings, packaged for retail sale, for use in the specific activity of decorating an article of clothing. Hence, the merchandise must be classified as a set under GRI 3(b) as to its essential character.

There have been several court decisions on "essential character" for purposes of classification under GRI 3(b). *See*, *Conair Corp. v. United States*, 29 C.I.T. 888 (2005); *Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1337–1338 (Ct. Int'l Trade 2005); and *Home Depot USA, Inc. v. United States*, 427 F. Supp. 2d 1278, 1295–1356 (Ct. Int'l Trade 2006), aff'd 491 F.3d 1334 (Fed. Cir. 2007). "[E]ssential character is that which is indispensable to the structure, core or condition of the article, i.e., what it is." *Home Depot USA, Inc. v. United States*, at 1293 quoting *A.N. Deringer, Inc. v. United States*, 66 Cust. Ct. 378, 383 (1971). In particular in *Home Depot*, the court stated "[a]n essential character inquiry requires a fact intensive analysis." 427 F. Supp. 2d 1278, 1284 (Ct. Int'l Trade 2006).

The plastic desk and fastening machine, i.e., "stud tool", are the bulkiest components in the set. The rhinestones number the greatest quantity, but the stud tool is the heaviest. While we have no information on the value of each article, the stud tool is the most complex and likely has the greatest value in the set. As for the role of the constituent material and the nature of the components in relation to the use of the goods, the craft kit is designed to affix decorative studs and/or rhinestones to a t-shirt. Thus, the plastic fastening machine, i.e., "stud tool", is the most important component in the set because the plastic tool allows the user to permanently attach decorative elements to an article of clothing. Therefore, the stud tool provides the essential character to the set.

The issue thus becomes, whether the stud tool is, in fact, a toy of heading 9503, HTSUS. The U.S. Court of International Trade (CIT) construes heading 9503, HTSUS, as a "principal use" provision, insofar as it pertains to "toys." *See Minnetonka Brands v. United States,* 110 F. Supp. 2d 1020, 1026 (CIT 2000). Thus, to be a toy, the "character of amusement involved [is] that derived from an item which is essentially a plaything." *Wilson's Customs Clearance, Inc. v. United States*, 59 Cust. Ct. 36, C.D. 3061 (1967). It has been

CBP's position that the amusement requirement means that toys should be designed and used principally for amusement. For articles that are both amusing and functional, we look to *Ideal Toy Corp. v United States*, 78 Cust. Ct. 28 (1977), in which the court stated that "when amusement and utility become locked in controversy, the question becomes one of determining whether amusement is incidental to the utilitarian purpose, or whether the utility purpose is incidental to the amusement."

For articles governed by principal use, Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that, in the absence of special language or context which otherwise requires, such use "is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use."

In *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), the court provides the following factors, which are indicative but not conclusive, to determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use.

Here, the physical characteristics and actual use of the stud-setting tool are as a tool with a primary purpose to decorate articles of clothing with rhinestones. The ultimate purchaser expects to use the tool to that end with a degree of skill, care, and patience that is more typically exemplified in older children (ages 8 years old and up) and involves activity that is not necessarily amusing. The item is marketed as part of a craft set for older children to decorate their clothing. The foregoing application of the *Carborundum* criteria indicates that the stud tool is not a good of a kind designed for amusement. Accordingly, any amusement derived from the tool is incidental to its utilitarian purpose of decorating clothing. *See* HQ 967824, dated December 6, 2005 ("Girlfitti"® "Style Setter" craft kit which consisted of a manually operated plastic fastening machine, plastic rhinestone gems with metal backings, a fabric belt, simple cardboard stencils, and a pencil, packaged together for retail sale classified pursuant to GRI 3(b) in heading 8479 HTSUS, as an other machines or mechanical appliance).

In view of the foregoing, we find that the subject "Trendy Tee" craft kit is properly classified as a set pursuant to a GRI 3(b) analysis. We further find that the "stud tool" provides the essential character to the set and is utilitarian rather than amusing. Therefore, the subject merchandise is classified as an "Other" machine and mechanical appliance in heading 8479, HTSUS.

HOLDING:

The subject merchandise, identified as the "Trendy Tee" craft kit (item number 89009) is correctly classified in subheading 8479.89.98, HTSUS, which provides for "Machines and mechanical appliances having individual functions, not specified or included elsewhere in the chapter; parts thereof: Other machines and mechanical appliances: Other: Other, Other". This

provision is dutiable at 2.5 percent *ad valorem* under the general column one rate of duty. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY K87306, dated June 28, 2004, is hereby revoked consistent with the foregoing analysis.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF A RULING LETTER HQ 547654 RELATING TO POST-IMPORTATION ADJUSTMENTS; TRANSFER PRICING; RELATED PARTY TRANSACTIONS; RECONCILIATION; REQUEST FOR COMMENTS

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

ACTION: Notice of proposed revocation of a valuation ruling letter and treatment relating to post-importation adjustments made pursuant to a methodology specified in formal transfer pricing policies, reconciliation, and request for comments.

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") proposed to revoke Headquarters Ruling Letter ("HRL") 547654, dated November 8, 2001 (set forth as Attachment A), relating to transfer pricing and the acceptability of post-importation adjustments, claimed pursuant to a formal transfer pricing policy. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical transactions.

On September 23, 2011, pursuant to the Commissioner Bersin's initiative, CBP published the advance notice on this issue on cbp.gov and requested that the public provide comments on the broadening of CBP's interpretation of what constitutes a "formula" for purposes of using transaction value, thereby allowing post-importation adjustments. Several comments were received in response to CBP's request for advance comments. All of the comments received were in support

of CBP's proposed action. CBP has reviewed and taken these comments into account in issuing this proposed revocation of HRL 547654. Comments are invited once again on the correctness of the intended actions. However, persons who already provided comments in response to the advance notice need not resubmit them, unless there are additional points they would like CBP to consider.

EFFECTIVE DATE: Written comments should be received on or before January 27, 2012.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W., Fifth Floor, Washington DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark, Trade and Commercial Regulations Branch, at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Yuliya A. Gulis, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202) 325–0042.

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 en-

able CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Many importations into the U.S. involve trade between related parties. According to the U.S. Census Bureau, U.S. Department of Commerce, related-party trade in 2010 accounted for 40.8 percent ($1, 295 billion) of total goods trade ($3,176 billion). Related-party total goods trade is based on consumption imports and total exports. Related-party trade accounted for about 48.6 percent ($922 billion) of consumption imports ($1,899 billion) and about 29.2 percent ($373 billion) of total exports ($1,278 billion). In 2010, U.S. related-party trade increased by 23.6 percent ($247 billion) while total trade increased by 21.9 percent ($570 billion) from 2009.[1] Therefore, the related-party trade represents a fairly large percentage of U.S. trade. Related party transactions present various Customs appraisement issues. As explained below, these transactions are subject to rules to ensure that the relationship between the parties does not affect the price. For example, related parties often have formal intercompany policies in place for setting the price (i.e., the transfer price) and may provide for various adjustments to be made to the transfer price after importation.[2] This arrangement raises the issue of whether transaction value may be used, and, if so, how to treat the adjustments. As a result of pending requests claiming post-importation adjustments and the lack of consistent guidance on these issues, CBP has reviewed its current decisions regarding the use of transaction value to related party transactions and has determined that some changes are appropriate to properly address these transfer pricing concerns.

In HRL 547654, CBP determined that transaction value did not apply because the price was not considered to be fixed or determinable pursuant to an objective formula prior to importation. CBP found that at least one of the elements for determining the price was within the control of the buyer and/or the seller. After briefly considering the hierarchy of valuation methods set forth in 19 U.S.C. §1401a, CBP ultimately found that the goods could be appraised using the "fallback" method of valuation based on the related party price and that the adjustments could be reported (and claimed) to CBP through reconciliation, assuming that the related party price

[1] U.S. Census Bureau News, U.S. Department of Commerce, Washington, D.C. 20239, dated May 11, 2011. According to the report, "related party" trade includes trade by U.S. companies with their subsidiaries abroad as well as trade by U.S. subsidiaries of foreign companies with their parent companies. The definition of related parties for CBP appraisement purposes is even broader. *See* 19 U.S.C. §1401a(g) and Note 2.

[2] When transfer prices are established based on certain "transaction-based methods" (resale price, cost plus) or "profit based" methods (Comparable Profits Method, or Profit Splits), it is often the case that the related parties will make year-end adjustments to the transfer price to achieve transfer pricing objectives for tax purposes.

was an acceptable arm's length transaction. Thus, while transaction value was not allowed, HRL 547654 nevertheless allowed the importer to use actual costs and take into account any downward adjustments. Upon review of this matter, CBP is proposing to rule that even though the parties are related and certain costs may be within the control of the parties, if the transfer pricing policy is set before importation and is used by the parties, subject to certain factors, it may be considered an objective formula, so that the merchandise is appraised under transaction value. Under such circumstances, post-importation adjustments may be recognized.

Thus, 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 proposes to revoke Headquarters Ruling Letter ("HRL") 547654, dated November 8, 2001 (set forth as Attachment A), relating to transfer pricing and the acceptability of post-importation adjustments claimed pursuant to a formal transfer pricing policy. CBP is proposing that subject to certain factors, the transaction value method of appraisement will not be precluded when a related party sales price is subject to post-importation adjustments that are made pursuant to formal transfer pricing policies and specifically related (directly or indirectly) to the declared value of the merchandise. CBP is proposing that these adjustments, whether upward or downward, may be taken into account in determining transaction value. Additionally, under this proposal, importers that have such post-importation adjustments affecting the value of the imported merchandise must report the adjustments to CBP using Reconciliation.

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

Accordingly, pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke HRL 547654 and any other ruling not specifically identified, to reflect the proposed changes according to the analysis contained in proposed HRL 548314, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially

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

Dated: November 29, 2011

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ 547654
November 8, 2001
RR:IT:VA:547654 KDW

CHRISTOPHER E. PEY
COUDERT BROTHERS
1114 AVENUE OF THE AMERICAS
NEW YORK, NY 10036–7703

RE: transfer pricing, transaction value, related parties, reconciliation, post importation price adjustments

DEAR MR. PEY:

This is in response to your letter dated February 10, 2000, filed on behalf of [****] ("E") requesting a prospective ruling regarding transfer prices on imports from related vendors, [*****] and [****] (collectively referred to herein as "S"). Per your letter dated April 19, 2001, we have reviewed your request for confidentiality pursuant to section 177.2(b)(7) of the Customs Regulations chapter 19, with respect to the information submitted. As that information constitutes privileged or confidential matters, it has been bracketed and will be deleted from any published versions.

FACTS:

E imports and distributes [*****] products from its related vendors. Since the parties are related, E uses a transfer price to report its transaction value to Customs. E states that the prices for the imported goods are negotiated between it and S on an annual basis as set forth in its [**********] Policy. An English translation of the Policy was submitted for our review. The policy applies to all but two of the product lines imported by E, [**********]. E claims that the policy ensures it will earn enough to cover its costs and incur a reasonable profit, similar to a third-party distributor. Further, E states that the policy aims to result in a price similar to that of unrelated parties.

Currently, E's transfer price and reported transaction value is calculated by subtracting the following from the anticipated resale price in the United States: transportation costs to the United States, U.S. customs duties, fixed costs of E's U.S. operations, and E's profit. E states that its current prices under the Policy provide a valid basis for appraisement using transaction value even though the parties are related. Further, E asks that we assume for purposes of this ruling, that the policy ensures that E earns a reasonable net profit comparable to other unrelated third-party distributors.

S wishes to change its billing system [**********
****
****
*]. Under the current system, variations in sales prices and volumes require frequent management intervention in order to cover fixed costs and achieve the requisite profit. S proposes to change its calculations by deferring certain deductions from the resale price until after the actual resale in the United States. Under those circumstances, E will make entry at the resale price less freight costs, customs duties and E's profit. The deduction for E's U.S. fixed costs will occur after resale in the United States. Entries from all shipments to the United States between S and E would be flagged for reconciliation with

Customs. For those costs not known at the time of entry, i.e. E's fixed costs in the United States, E proposes to file reconciliation entries with Customs to adjust its prices for the actual costs quarterly. As part of the quarterly reconciliation filing, the sum of the fixed cost would be allocated by product group to individual shipments made during the quarter based on the ratio of fixed costs to sales for each product grouping.

E states that the new method would not amend or alter the current policy. Also, E states that the new method arrives at the same budgeted prices and profits, but in a more predictable way. E anticipates that the new method will require less managerial intervention, and will eliminate the need for price adjustments each time selling prices or sales volumes fluctuate. E believes that there will ultimately be no change in the overall amount of duties paid to Customs with the new method. Lastly, E claims that customs should consider the transfer price for the imported merchandise under the contemplated method an acceptable transaction value.

ISSUE:

1) Is the proposed transfer price acceptable for purposes of transaction value?

2) If not, what is the appropriate method of appraisement?

LAW AND ANALYSIS:

As you are aware, merchandise imported into the United States is appraised in accordance with section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a; TAA). The preferred method of appraisement of imported merchandise for customs purposes is transaction value.

Transaction value is the price actually paid or payable for the merchandise when sold for export to the United States, plus certain enumerated additions. 19 U.S.C. 1401a(b)(1). The term 'price actually paid or payable' means the total payment (whether direct or indirect, and exclusive of any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller. 19 U.S.C. §1401a(b)(4)(A).

In determining transaction value, the price actually paid or payable is considered without regard to its method of derivation. It may be the result of discounts, increases, or negotiations, or may be arrived at by the application of a formula, such as the price in effect on the date of export in the London Commodity Market. The word "payable" refers to a situation in which the price has been agreed upon, but the actual payment has not been made at the time of importation. 19 CFR § 152.103(a).

Pursuant to section 402(b)(2)(A)(iv), the transaction value of imported merchandise shall be acceptable *only if* the buyer and the seller are not related, or if the buyer and the seller are related, the transaction value is acceptable under section 402(b)(2)(B). In this case, we are asked to assume that the current transfer pricing method yields an acceptable transaction value. We note that the provisions of the Policy alone would not satisfy the tests in 402(b)(2)(B). Thus assuming you can otherwise substantiate the original transfer price consistent with one of the related party tests set forth

in 402(b)(2)(B), we turn our analysis to the proposed change in billing for adjustments to the price and whether those adjustments would alter the applicability of transaction value.

In this case, the proposed transfer price is ultimately contingent on the final costs incurred by E for sales in the United States, [**********]. E proposes that it make quarterly adjustments to Customs through the reconciliation program after it has finalized its fixed costs in the United States. No formula for the proposed adjustments is provided for in the Policy or in your description of the pricing structure. We have consistently held that where the price is not fixed at the time of importation or determinable by an objective formula agreed upon prior to importation, transaction value is not applicable.

In a case similar to this, Headquarters Ruling Letter ("HRL") No. 545242, dated April 16, 1996, we found that a price, derived by factors controlled by the parties and determined after importation, was not "fixed" at the time of importation of the merchandise. In HRL 545242, as here, the price for the goods was arrived at pursuant to a methodology that included an initial sum subject to adjustments. Customs concluded that the parties to the agreement knew the pricing structure took into consideration possible, if not probable, price adjustments due to changing conditions and market pressures existing in the U.S. automobile industry. However, the control by the parties as to whether and to what degree the price was to be adjusted in response to changing competitive pricing conditions, could not be considered a "formula" within the meaning of 19 C.F.R. §152.103(a)(1). Accordingly, transaction value did not exist. *See also* HRL 545618, dated August 23, 1996.

Here, although the elements of the proposed transfer price appear to be the same as those in the current transfer price, the proposed price is not fixed or determinable by some formula at the time of importation. Accordingly, the use of transaction value is precluded for the proposed billing structure, and we move to the succeeding alternate methods of appraisement for the imported merchandise in the hierarchy provided under 19 U.S.C. § 1401a(b) through (e). However, we have insufficient information to determine whether the alternate methods set forth in those provisions would be acceptable. Therefore, we find that the merchandise may need to be appraised under 402(f) of the TAA (19 U.S.C. § 1401(a)(f)) using a modified transaction value approach. This will allow the use of the importer's figures through reconciliation. Again, our finding is based on the assumption that the former transfer pricing structure as well as the proposed structure yields a price that meets one of the related party tests. We are not ruling on the acceptability of the price itself.

HOLDING:

As set forth above, the proposed method for the transfer price does not yield a transaction value. A modified transaction value based on the provisions of 402(f) of the TAA (19 U.S.C. § 1401a(f)) could be an acceptable method of appraisement. For information or clarification regarding the use of Customs Reconciliation Program you may contact the Reconciliation Team at 202–927-ext. 0915, 0032, or 2293.

Sincerely,

VIRGINIA L. BROWN
Chief,
Value Branch

[ATTACHMENT B]

HQ W548314
OT:RR:CTF:VS W548314 YAG
CATEGORY: Valuation

PORT DIRECTOR
PORT OF CHAMPLAIN
U.S. CUSTOMS AND BORDER PROTECTION
198 WEST SERVICE ROAD
CHAMPLAIN, NEW YORK 12919

RE: Transaction Value; Formulas; Post-Importation Adjustments; Revocation of HRL 547654

DEAR PORT DIRECTOR:

This is in reference to Headquarters Ruling Letter ("HRL") 547654, dated November 9, 2001, regarding the valuation of certain bulk chemicals. The Importer requested reconsideration of HRL 547654 in an internal advice request forwarded by your office. We have reconsidered HRL 547654 and determined that the methodology for determining the transfer price at issue constitutes an objective formula for purposes of determining transaction value and claiming post-importation adjustments. For the reasons set forth below, we hereby revoke HRL 547654.

FACTS:

HRL 547654 determined that there were bona fide sales between the Importer and the Sellers. As discussed in HRL 547654, the related party Importer and Sellers used a transfer price to report the transaction value to U.S. Customs and Border Protection ("CBP") which was calculated by subtracting: transportation costs to the U.S., U.S. Customs duties, fixed costs of the importer's U.S. operations, and the importer's profits from the anticipated resale price in the U.S. Because of variations in sales prices and volumes, frequent managerial intervention was needed to cover fixed costs and achieve the requisite profit amongst the related parties. Therefore, the related party Sellers proposed to change the calculation of the transfer price by deferring certain deductions from the resale price until after the actual resale in the U.S. Under those circumstances, the Importer made entry at the resale price less freight costs, customs duties, and the Importer's profit. The deduction for the Importer's U.S. fixed costs would occur after resale in the U.S. Entries from all shipments to the U.S. between the Seller and Importer were flagged for reconciliation with Customs. For those costs not known at the time of entry (*i.e.* the Importer's fixed costs in the U.S.), the Importer proposed to file quarterly reconciliation entries with Customs to adjust its prices for the actual costs. As part of the quarterly reconciliation filing, the sum of the fixed costs would be allocated by product group to individual shipments made during the quarter based on the ratio of fixed costs to sales for each product grouping. In HRL 547654, CBP held that transaction value did not apply because the price was not fixed or determinable pursuant to an objective formula prior to importation. CBP found that the price was within the control of the buyer and/or the seller.

Subsequent to the receipt of the ruling, the Importer sought advice concerning the application of the ruling to its pending entries, and further

information was provided. The company's "Intercompany Transfer Pricing Determination Policy," dated February 11, 2000, translated into English, was submitted to show how its inter-company prices are determined. On April 18, 2006, the Importer provided CBP with its complete Transfer Pricing Determination Policy, prepared for tax purposes.[1] In this case, the company's Transfer Pricing Determination Policy was prepared by its tax department.

The company's Transfer Pricing Determination Policy established a system for the calculation of the transfer price and the distinction between the variable and fixed costs. In pertinent part, the transfer pricing calculation for directly delivered sales between the Importer and Seller is established as follows:

> Transfer price for a sale between the Importer and Seller = Sales price to the U.S. customer (net of cash customer discount and forecasted rebates)[2] minus variable costs and a percentage of margin.

The transfer pricing policy states that the absorption of variable costs takes into account the following (which are deducted from line 01 of the Analytical Income Statement ("AIS"))[3]:

- Post invoice adjustments (including credit notes for quality, sale price adjustments, claims. . .), which will rarely occur,
- Customer discounts, and
- Variances between the rebates used to calculate the transfer prices and actual costs.

According to the policy, none of the variable costs and profits (including the unknown forecasted discounts and rebates, which may be subject to value manipulation of the parties), are subject to any post-importation price adjustments. Therefore, the transfer price declared to CBP upon importation is fixed with respect to the application of the variable costs. Any fluctuations to the variable costs are not re-invoiced or remitted back to the seller/exporter.[4] The company's Transfer Pricing Determination Policy established that fixed expenses in the U.S., for example, structural costs, depreciation and interest

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[1] The Internal Revenue Service ("IRS") regulates transfer pricing for tax purposes through Section 482 of the Internal Revenue Code, 26 U.S.C. §482 and the Section 482 regulations. The tax rules for transfer pricing are based on the premise that a taxpayer is dealing with another party at arm's length. A U.S. taxpayer may obtain approval in advance of its transfer pricing methodology through an Advance Pricing Agreement ("APA"). An APA is a prospective binding agreement between the taxpayer and the IRS regarding the correct transfer pricing methodology under section 482. However, more often, multinational companies prepare their own transfer pricing studies based on section 482 principles to support their transfer pricing practices. Although not approved by the IRS, these transfer-pricing studies are used to support the company's transfer pricing methodology in the event of an audit. These transfer pricing studies can be prepared by accounting firms, or they can be prepared internally by the companies.

[2] The Importer's Transfer Pricing Policy provides that discounts and rebates, if any, are forecasted and taken into account prior to the importation of the merchandise.

[3] The Analytical Income Statement ("AIS") is the income statement used to reflect the profit/loss of the business units. It is generated by the general ledger system. The information is accumulated for each business unit for the year and makes up the audited financial statements.

[4] If there are any post-importation adjustments for a variable expense (such as in the rare instance when there is a change in business practice), these adjustments are borne by the Importer, and, therefore, do not affect the transaction value or the price actually paid or payable to the Seller.

on working capital, would no longer be deducted from the invoice accompanying a shipment to the Importer, but rather, would be separately invoiced and paid to the Importer on a monthly basis after importation. In other words, via reconciliation, the Importer seeks to report the actual, final amount paid to the Seller for the imported goods by reducing the value originally declared at the time of entry by the amount of fixed expenses paid by the Seller to the Importer. With the exception of the fixed costs, all elements of the transfer price are declared to CBP upon the importation; these elements are known, included in the value of the merchandise, and not subject to change.

For products to be warehoused by the Importer before resale, the transfer price is calculated as follows:

> Transfer price for a sale between the Importer and Seller = Forecasted sales price ("FSP") minus logistic variable costs ("LVC") of the Importer minus actual or forecasted variable costs and a percentage of margin.

The Importer calculated the FSP to customers for each article taking into account the amount of sales net of cash customer discount and forecasted rebates. The Importer calculated LVC for each article from all forecasts relating to all sales ex-storage taking into account: variable transport costs from the warehouse to the customer (transportation cost plus insurance, duty, customs duty brokerage, variable storage), and variable transport costs from the producer to the warehouse (particularly the duties) incurred by the Importer. According to the policy, the absorption of the variable costs took into account:

- Post invoice adjustments (including credit notes for quality, sale price adjustment claims . . .), which will rarely occur, deducted from line 01 of the AIS
- Customer discounts, deducted from line 01 of the AIS,
- Logistic costs: storage costs, rental and maintenance of trucks and containers (line 07 of the AIS), and
- Variances between the forecast (rebates and variable logistic costs) used to calculate the transfer price, and the actual costs.

Once again, pursuant to the company's Transfer Pricing Determination Policy, none of these variable costs are stated to be re-invoiced or remitted back to the seller/exporter.

The company's Transfer Pricing Determination Policy directs that only monthly budgeted fixed costs, incurred in the U.S., are to be analyzed quarterly and adjusted prospectively, if needed. In other words, the transfer pricing policy included a procedure to quarterly verify the actual versus budgeted fixed cost amounts as well as an explanation for any possible variances. The policy defines fixed costs as the following items of the income statement:

- Selling expenses,
- Commissions received/paid (only the commissions paid to the sub-agents),
- General and administrative expenses,
- Miscellaneous income and expenses (except the income allocated to this item corresponding to fixed costs invoicing),
- Interest on working capital, and
- Depreciation of assets not directly attributable to manufacturing.

These fixed costs are allocated to the resale activity. On the other hand, as is stated above, variable costs and profits are not subject to any post-importation price adjustments, as fluctuations in variable costs are not remitted to the seller. Additionally, the Importer books its adjustments for the fixed cost reimbursement as "Other Income." The Importer applied for and was approved to participate in the Reconciliation Prototype Program.

The company also provided CBP with a copy of an inter-company memorandum, dated December 20, 1999, which sets out the following method to calculate the fixed costs: budgeted fixed costs (structural costs + depreciation + interest on working capital). The budgeted fixed costs are directly invoiced by 1/12 (based on the approved budget amount) and the income is allocated to line 31 of the AIS (miscellaneous income and expenses).[5] This method is set in advance, and according to the new information submitted by the Importer, the amount of the fixed costs is known at the beginning of each year. The element that is not known at the time of importation is the level of total imports across which the fixed costs are allocated in a particular month. Therefore, the fixed costs paid are set; it is merely the allocation of those fixed costs to the individual import entries that cannot be fixed until after the month has passed.

The specified percentage of margin, referenced in the Company's Transfer Pricing Determination Policy, is calculated based on a study of comparable and available data, concerning sales in the uncontrolled market to allow a reasonable profit to be earned. The margin is confirmed as often as required by the U.S. transfer pricing regulations, by a joint external study of the importer's and exporter's finance departments. The Importer also submitted a transfer pricing study, dated September 20, 2001, prepared by PricewaterhouseCoopers, LLP, for CBP review, which was not provided to CBP at the time HRL 547654 was decided. This transfer pricing study further confirms the margin the Importer utilizes in establishing its transfer price. The Importer's transfer pricing study also determines the range of profit margins the Importer's profit must fall within in order for the transfer price to be at arm's length. If, depending on the level of imports across which the fixed costs are allocated, the allocation of fixed costs causes the Importer's profit to fall outside of the range, the Importer must make the necessary adjustments to bring its transfer price within the range to be at arm's length.

Although certain post-importation price adjustments may occur pursuant to the Policy, the Importer is of the view that transaction value may be applied because the price is determined pursuant to an objective formula in place prior to importation. The Importer is also of the view that annual price adjustments made pursuant to the Policy should be taken into account and that reconciliation should be used as the vehicle to make the adjustment. Finally, the Importer provided information and documentation in an attempt to establish that the related party price was acceptable under the circumstances of sale test, and to clarify the company's transfer pricing policy.

As indicated, the original ruling issued to the Importer determined that transaction value could not be applied because there was no fixed price or objective formula in place for determining the price prior to importation. In view of this finding, the ruling did not analyze the circumstances of the sale

[5] This method is implemented by dividing the value of the particular import by the total "fixed costs" as reported on the Importer's income statement. The resulting ratio is multiplied by 1/12 of the total annual fixed costs to derive the amount of fixed costs allocated to a particular entry.

to determine whether the related party transaction value was acceptable or whether post-importation price decreases were precluded under 19 U.S.C. §1401a(b)(2)(2). Instead, after finding that the alternate methods of appraisement under 19 U.S.C. §1401a(b) through (e) were not applicable due to the unavailability of information, CBP appraised the merchandise under section 402(f) of the TAA (19 U.S.C. §1401a(f)), using a modified transaction value approach and permitted the Importer to use its figures through reconciliation.

ISSUES:

1. Does the related party price, determinable pursuant to the transfer pricing policy, constitute a formula at the time of importation for purposes of determining transaction value, and if so, is it acceptable to take post-importation price adjustments (upward and downward) into account in determining transaction value?
2. Do the circumstances of sale establish that the price actually paid or payable by the Importer/Buyer to the Exporter/Seller was not influenced by the relationship of the parties and is acceptable for the purposes of using transaction value?

LAW AND ANALYSIS:

Merchandise imported into the United States is appraised for customs purposes in accordance with Section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA; 19 U.S.C. §1401a). The primary method of appraisement is transaction value, which is defined as "the price actually paid or payable for the merchandise when sold for exportation to the United States," plus amounts for certain statutorily enumerated additions to the extent not otherwise included in the price actually paid or payable. *See* 19 U.S.C. §1401a(b)(1).

As provided in 19 U.S.C. §1401a(b)(4):

(A) The term "price actually paid or payable" means the total payment (whether direct or indirect, and exclusive of any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

Section 152.103(a)(1), CBP Regulations (19 CFR §152.103(a)(1)) provides, in pertinent part, as follows:

> In determining transaction value, the price actually paid or payable will be considered without regard to its method of derivation. It may be the result of discounts, increases, or negotiations, or may be arrived at by the application of a formula, such as the price in effect on the date of export in the London Commodity Market.

However, rebates, or any other decrease in the price actually paid or payable made or effected after the date of importation are to be disregarded for the purposes of determining transaction value. 19 U.S.C. §1401a(b)(4)(B).

1. Does the related party price, determinable pursuant to the transfer pricing policy, constitute a formula at the time of importation for purposes of determining transaction value, and if so, is it acceptable to take post-importation price adjustments (upward and downward) into account in determining transaction value?

Related party transactions involve initial transfer prices that may be subject to adjustment after importation. It is common for the transfer price to be determined in accordance with the company's transfer pricing policy/formula. The term transfer pricing policy refers to Advance Pricing Agreements ("APA"s), transfer pricing studies prepared in accordance with 26 U.S.C. §482 (the IRS transfer pricing statute) or its foreign equivalent, and/or legally binding inter-company agreements/memoranda. Oftentimes such policies provide the method for determining the transfer price, which may include the setting of an initial price and then making various adjustments to the price after the importation based on specified criteria. For example, the transfer pricing policy may provide for the transfer price to be initially set based on certain estimated costs and for adjustments to be made at the end of the year based on the actual costs incurred. Further, adjustments may be made to account for certain additional expenses that may be incurred by the parties. In some cases, the transfer pricing policy may provide for year-end "compensating adjustments" to the transfer price to comply with the requirements of an APA entered into by the U.S. party and the IRS. In other words, the adjustments are taken to bring the profit margins of the companies within the range of profit margins established on the basis of a study of comparable data from the uncontrolled market, in order for the transfer price to be at arm's length for tax purposes. Depending on the circumstances presented, such adjustments could similarly affect whether the price is considered fixed or determinable by an objective formula at the time of importation.

CBP determined that where the price is not fixed at the time of importation, transaction value is not applicable. *See e.g.,* HRL 545618, dated August 23, 1996; HRL 545242, dated April 16, 1995; HRL 545798, dated October 28, 1994; HRL 546231, dated February 10, 1997; and HRL 546421, dated March 27, 1998. CBP has determined that the fixed price rule is satisfied when the price is determinable by an objective formula agreed upon prior to importation. In applying this provision, CBP ruled in HRL 542701, dated April 28, 1982, TAA No. 47, and subsequent rulings, that in situations in which the price paid or payable is determined pursuant to a formula, a firm price need not be known or ascertainable at the time of importation, although it is necessary for the formula to be fixed at that time so that a final sales price can be determined at a later time on the basis of some event or occurrence over which neither the seller nor the buyer has any control. *See also* HRL 545622, dated April 28, 1994.

CBP has previously determined that if a transfer price is subject to post-importation adjustments and those adjustments are within the control of either the buyer or the seller, the formula exception to the fixed price rule would not apply. *See* HRL 544680, dated June 26, 1992 (CBP did not consider the parties' arrangement to be a "formula" because the final determination to make additional payments depended on a subjective factor within the control

of the importer, i.e., importer's inspection of the imported merchandise). *See* HRL 545388, dated October 21, 1994 (the parties entered into a supplemental agreement after the importation decreasing certain royalty payments; CBP found that this was a decrease in the price that was "made or otherwise effected...after the date of importation..." and should be disregarded).

In many cases, the events in the transfer pricing formula that trigger the post-importation price adjustments (for example, the costs incurred or the profit earned) are to some extent within the control of the buyer and/or the seller. Accordingly, based on these prior decisions, many transfer pricing policies would not qualify as formulas within the meaning of 19 CFR §152.103(a)(1). In those cases, transaction value determined under 19 U.S.C. §1401a(b) may not be applied, even if the relationship between the parties did not affect the price. This is not consistent with transaction value's being the preferred method of appraisement.

Further, when transaction value cannot be applied, the merchandise must be appraised using one of the other valuation methods in 19 U.S.C. §1401a. In a few cases, CBP has determined that when transaction value could not be applied because the transfer price was not "fixed," the merchandise should be appraised using a modified transaction value under the fallback method, e.g., HRL 545618, dated August 23, 1996; HRL 547654, dated November 8, 2001; and, HRL 544845, dated November 9, 1993. However, under the customs value law, the fallback method may only be used when all previous valuation methods cannot be applied. In HRL 545618, HRL 547654, and HRL 544845, CBP applied the fallback method of appraisement and permitted the importers to claim upward and downward post-importation adjustments because the information about the applicability of other methods was not available.

In HRL 547654, the price for the goods was arrived at pursuant to a methodology that included an initial sum subject to adjustments. The Importer provided CBP with limited details of the transaction and little documentation explaining the relevant transfer pricing policies. Thus, although there was a formula in HRL 547654 that determined the price prior to importation and allowed for certain post-importation adjustments, CBP found that the transfer pricing policy was not fixed and could not be considered an objective "formula" within the meaning of 19 CFR §152.103(a)(1) because the parties could control whether and to what degree the price would be adjusted. Accordingly, the use of transaction value was precluded for the proposed billing structure. However, CBP appraised the merchandise under section 402(f) of the TAA (19 U.S.C. §1401a(f)), using a modified transaction value approach and permitted the Importer to claim downward post-importation adjustments through reconciliation. While this analysis was consistent with CBP's interpretation at the time, we now conclude that notwithstanding that there may be some element of control, additional considerations should be taken into account in evaluating whether an intercompany transfer pricing formula is an objective formula when it provides for post-importation adjustments to the price.

After examining the additional submissions which have clarified the Importer's transfer pricing policy, CBP finds that the Importer's transfer pricing policy constitutes an objective formula. It is CBP's view that when analyzing whether transaction value may be used in a related party transaction, certain factors should be examined to determine whether there is a fixed price, pursuant to a formula. CBP is considering that since the following criteria were met, the company may use the transaction value method of appraise-

ment: (1) a written "Intercompany Transfer Pricing Determination Policy," which sets out how the transfer price is to be determined prior to the importation; (2) the importer/buyer is the U.S. taxpayer, and it uses its transfer pricing methodology in filing its corporate income tax returns; (3) the company's transfer pricing policy specifically covers the products for which the value is to be adjusted; (4) the policy specifies what adjustments must be made to the transfer price, and the company provides detailed explanations and calculations of the adjustments incurred and claimed in the United States; and, (5) there is an absence of other conditions which may indicate that the compensating adjustments do not result in an arm's length price between the parties.

We note that since the Importer claimed adjustments for the fiscal years 2001 and 2002, and the written transfer pricing policy was executed by relevant parties on February 11, 2000, the agreement, and thus, the formula was in effect prior to the importations subject to this internal advice request. We also note that the formula had an impact on the reported Customs values. Since the downward adjustments are reported in the Importer's accounting books as adjustments to "Other Income" and are made quarterly,[6] these adjustments specifically result in lower declared values for the merchandise. Such transfer pricing adjustments indirectly relate to the originally-reported price actually paid by the Importer to the related Seller (adjustments must, directly or indirectly, relate to the value of the merchandise). Changes must be declared to the value of the imported merchandise and be reported on a product-by-product, entry-by-entry basis. In this case, based on the information provided by the Importer, the related party price (and the adjustments thereto) is determined pursuant to their transfer pricing policy. The Importer provided CBP with documentation that showed what adjustments are made on an entry-by-entry basis; therefore, adjustments are related to specific entries upon importation. The transactions in question are not subject to antidumping/countervailing duty proceedings or type 03 entries. Also, the Importer does not allocate the compensating adjustments and claim such adjustments for merchandise partially damaged at the time of importation. Finally, the documents submitted by the Importer show how the adjustments are calculated and claimed. Specifically, only the budgeted fixed costs (and not the variable costs, absorbed by the Importer), incurred in the United States are adjusted after importation. None of the variable costs are stated to be re-invoiced or remitted back to the Seller/Exporter. On the other hand, the amount of the fixed costs is known at the beginning of each year and is set in advance, pursuant to the inter-company memorandum, dated December 20, 1999. The element that is not known at the time of importation is the level of total imports across which the fixed costs are allocated in a particular month. Therefore, the costs paid are set; it is merely the allocation of those costs to the individual import entries that cannot be fixed until after the month has passed. Taking into account the adjustments based on the fixed costs, the analysis undertaken by PricewaterhouseCoopers, LLP concluded that the Importer's average profit ratio was within the range for comparable

[6] The frequency of adjustments is one of the important factors that need to be examined in order to determine whether there is a fixed price, pursuant to a formula. Adjustments made on the yearly or quarterly basis are more acceptable than adjustments booked in lump sum at the end of the multi-year APA term (if applicable), for example. If the adjustments are made at the end of the term, the importers must show that such adjustments would not result in the importers being out of the transaction value for Customs purposes).

transactions by similarly situated companies and that the Importer's implementation of its transfer pricing policy conformed to the applicable U.S. laws and regulations.

While some of the provisions of the transfer pricing policy in this particular case might be considered to be within the "control" of the parties under the prior understanding of "control" in CBP's previous decisions, such as the initial determination of the budgeted fixed costs by the company, the factors set out above (and especially the fact that the amount of fixed costs is set in advance and later simply allocated to the individual imports) reduces the possibility of price manipulation and subjectivity in claiming post-importation adjustments. Further, the transfer pricing policy includes a procedure to quarterly verify the actual versus budgeted fixed cost amounts as well as an explanation as to any possible variances. Therefore, it is our opinion that in this particular case and based on the above referenced factors, the Importer's transfer pricing policy may be considered an objective formula in place prior to importation for purposes of determining the price within the meaning of 19 CFR §152.103(a)(1). Of course, no single factor is determinative, and CBP's finding with respect to whether an objective formula exists will be made on a case-by-case basis.

Therefore, CBP is of the view that post-importation adjustments (both downward and upward), to the extent they occur, may be taken into account in determining the transaction value under 19 U.S.C. §1401a(b). We find the downward adjustments in the transfer price made pursuant to the valid transfer pricing study are not rebates of, or other decreases in, the price actually paid or payable that are made or otherwise effected between the buyer and seller after the date of importation of the merchandise into the United States (*see* 19 U.S.C. §1401a(b)(4)(B)). Instead, the post-importation adjustments represent an element of the determination of the price actually paid or payable in accordance with 19 CFR §152.103(a)(1). Therefore, the post-importation adjustments made pursuant to the transfer pricing policy in this case simply reflect what should have been reported as the invoice price upon entry, had the exact price information of the imported merchandise been available at the time. Any such changes in the transfer price should be immediately reported to CBP.

In this particular case, the Importer uses reconciliation to report downward and upward post-importation adjustments to the value initially declared upon the importation of the merchandise. We find that the reconciliation program must be used to properly apply transaction value and account for the total value for the imported merchandise where a formal transfer pricing study, policy, or an APA allows for upward or downward post-importation adjustments that directly (or indirectly) relate to the value of the merchandise. Reconciliation allows companies to provide CBP with information not available at the time of entry summary filing and which is necessary to ascertain the final appraisement of imported merchandise. Furthermore, the reconciliation can be filed as late as 21 months from the date of the first entry summary filed under that reconciliation with extensions of time as available to importers. This flexibility makes reconciliation an ideal vehicle to declare all adjustments (upward and downward) within the timeframe allowed by in the APA or a transfer pricing study or policy. Thus, the

Importer should continue to report all of its adjustments to CBP via reconciliation. However, if circumstances change, the decision issued by CBP may no longer be valid.

Finally, we note that, in general, in order to claim adjustments, the Importer must be prepared to furnish its complete transfer pricing documentation to CBP upon request, including but not limited to documentation concerning the proposed adjustments.

2. Do the circumstances of sale establish that the price actually paid or payable by the Importer/buyer to the exporter/seller was not influenced by the relationship of the parties and is acceptable for the purposes of using transaction value?

Having established under the new approach that the Importer's transfer pricing policy constitutes a formula, despite the post-importation adjustments being within some control of the buyer and/or the seller, we must determine whether the imported merchandise can be appraised under transaction value. In order to use transaction value, there must be a bona fide sale for exportation to the United States. Several factors are relied on to determine whether a bona fide sale exists. *See* HRL 546067, dated October 31, 1996. In HRL 547654, the question whether there was a bona fide sale was not at issue. So, it is assumed that bona fide sales occurred. Furthermore, there are special rules that apply when the buyer and seller are related parties, as defined in 19 U.S.C. §1401a(g). Specifically, transaction value between a related buyer and seller is acceptable only if the transaction satisfies one of the two tests: (1) circumstances of the sale or (2) test values. *See* 19 U.S.C. §1401a(b)(2)(B); 19 CFR §152.103(l). While the fact that the buyer and seller are related is not in itself grounds for regarding transaction value as unacceptable, where Customs has doubts about the acceptability of the price and is unable to accept transaction value without further inquiry, the parties will be given the opportunity to supply such further detailed information as may be necessary to support the use of transaction value pursuant to the methods outlined above.

In this case, the Importer provided information regarding the circumstances of the sale. Under this approach, the transaction value between a related buyer and seller is acceptable if an examination of the circumstances of the sale indicates that although related, their relationship did not influence the price actually paid or payable. The Customs Regulations specified in 19 CFR Part 152 set forth illustrative examples of how to determine if the relationship between the buyer and the seller influences the price. In this respect, Customs will examine the manner in which the buyer and seller organize their commercial relations and the way in which the price in question was derived in order to determine whether the relationship influenced the price. If it can be shown that the price was settled in a manner consistent with the normal pricing practices of the industry in question, or with the way in which the seller settles prices with unrelated buyers, this will demonstrate that the price has not been influenced by the relationship. *See* 19 CFR §152.103(l)(1)(i)-(ii). In addition, Customs will consider the price not to have been influenced if the price was adequate to ensure recovery of all costs plus a profit equivalent to the firm's overall profit realized over a representative

period of time. 19 CFR §152.103(l)(1)(iii). These are examples to illustrate that the relationship has not influenced the price, but other factors may be relevant as well.[7]

Detailed information has been confidentially provided by the Importer's counsel regarding the Seller's sale price data for the imported products. In lieu of this information submitted by the Importer concerning the prices of the merchandise sold to the related and unrelated buyers around the world, which are established pursuant to the company's Transfer Pricing Determination Policy and further supported by the transfer pricing study, prepared by PricewaterhouseCoopers, LLP, CBP finds the examination of whether the transfer pricing study itself, prepared for tax purposes, satisfied the circumstances of the sale test, to be unnecessary. Counsel has submitted detailed charts including data from 2000 and 2001 pertaining to the Seller's global sales of the imported products. The charts show the name of the customer, the country, the material number and name, the quantity, and unit prices. In addition, the charts include the total volumes and value as well as the average per unit sales price. They also include a weighted average per unit sale price. The charts allow a comparable product-by-product comparison of export sales to the U.S. (both related and unrelated customers) with export sales to third countries. There are numerous examples of sales of identical products (identified by either material name or material number) at comparable unit prices to unrelated customers both in the U.S. and abroad. An examination of the data reveals that the price for a particular product can vary throughout the year even to the same customer. Counsel states that the reason for this is that sales prices are driven by market conditions of supply and demand. In particular, most of the imported products are price sensitive depending upon numerous factors such as the quantity of product purchased, the timing of the demand, and availability as to alternative sources. Other factors supporting the variance in pricing include whether the customer has a long term purchase agreement or whether a sale is merely a "spot purchase." The customers for such products are often in industries that are cyclical in nature and very sensitive to changes in general economic conditions. These fluctuating market conditions are reflected in the varying sales prices for these products. Notably, these price differences occur equally for sales to unrelated parties as well as to related parties. That is at times, the prices can be lower for sales to parties that are not related than the prices for sales to related parties.

Based on the Importer's explanation of the differences in prices between related and unrelated parties and detailed documentation submitted to CBP, we find that the related party prices are settled in a manner consistent with the way the seller settles prices in sales to unrelated buyers. Although CBP generally requires that the comparison sales to unrelated buyers be sales to buyers in the U.S., CBP will consider evidence regarding sales to unrelated buyers in other countries, provided the Importer presents an adequate explanation as to why it is relevant to the transactions at issue. In this instance, the Importer presented an adequate explanation as to why it is relevant to the transactions at issue and accounted for the differences in unit

[7] The fact that the "fixed price" requirement has been satisfied based on the acceptance of the Importer's transfer pricing policy, prepared for tax purposes, as formula, does not mean that the circumstances of the sale test is satisfied. The Importer must show that the relationship has not influenced the price.

prices. The Importer also submitted price lists for the merchandise sold by the Seller to the unrelated parties in the United States. Thus, the Importer satisfied the circumstances of the sale test. Accordingly, transaction value is acceptable method of appraisement in the instant case.

HOLDING:

Based on the above referenced factors, in this case the Importer's transfer pricing policy may be considered a formula in place prior to importation for purposes of determining the price within the meaning of 19 CFR §152.103(a)(1). Therefore, all adjustments (both upward and downward) made to the price pursuant to the Importer's transfer pricing policy and subject to certain considerations are to be reported to CBP to be taken into account in determining transaction value. Lastly, we find that the related party prices are settled in a manner consistent with the way the seller settles prices in sales to unrelated buyers.

Please note that this ruling is issued on the assumption that all of the information furnished in connection with the consideration of this matter, including the internal advice and reconsideration requests, is accurate and complete in every material respect. Further, the application of this decision is subject to the verification by the Office of Regulatory Audit should an audit be conducted.

This decision should be mailed by your office to the party requesting Internal Advice no later than 60 days from the date of this letter. On that date, the Office of Regulations and Rulings will make the decision available to CPB personnel, and to the public on the CPB Home Page on the World Wide Web at www.cbp.gov, by means of the Freedom of Information Act, and other methods of public distribution.

EFFECT ON OTHER RULINGS:

Headquarters Ruling Letter ("HRL") 547654, dated November 9, 2001, is hereby revoked.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

PROPOSED MODIFICATIONS AND REVOCATION OF RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF AIR FRESHENERS

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

ACTION: Notice of proposed modification of four ruling letters and revocation of one ruling letter and proposed revocation of treatment relating to the tariff classification of air fresheners.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection ("CBP") is proposing to modify four rulings and revoke one ruling concerning the tariff classification of air fresheners under the Harmonized Tariff Schedule of the United States ("HTSUS"). Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before January 27, 2012.

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

FOR FURTHER INFORMATION CONTACT: Robert Shervette, Office of International Trade, Tariff Classification and Marking Branch, at (202) 325–0274.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke one ruling letter and to modify four ruling letters pertaining to the tariff classification of air fresheners. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter ("NY") K89535, dated October 5, 2004, set forth as "Attachment A" and to the modification of NY J88743, dated September 25, 2003, set forth as "Attachment B", NY L82296, dated February 22, 2005, set forth as "Attachment C", NY L83477, dated April 13, 2005, set forth as "Attachment D", and NY L85641, dated July 13, 2005, set forth as "Attachment E", this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY K89535 (scented card in animal figure), NY J88743 (Dog Car Air Freshener), NY L82296 (Hula Garfield air freshener article), and NY L83477 (Sea Turtle air freshener article), CBP classified air freshener articles under heading 9503, HTSUS, which provides for: "[o]ther toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof." In NY L85641 (human figure PVC clip hanger air freshener article), CBP classified an air freshener article under heading 9502, HTSUS, which provides for: "[d]olls representing only human beings and parts and accessories thereof." Upon our review of these five rulings, we have determined that the merchandise described in the rulings are properly classified under heading 3307, HTSUS, which

provides for: "[p]re-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY K89535 and to modify NY J88743, NY L82296, NY L83477, and NY L85641, and to revoke or modify any other ruling not specifically identified to reflect the proper classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter ("HQ") H045873, set forth as "Attachment F", HQ H045874, set forth as "Attachment G", HQ H108678, set forth as "Attachment H", HQ H108681, set forth as "Attachment I", and HQ H108682, set forth as "Attachment J" to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: November 9, 2011

IEVA K. O'ROURKE
for
MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division

[ATTACHMENT A]

NY K89535

October 5, 2004
CLA-2–95:RR:NC:2:224 K89535
CATEGORY: Classification
TARIFF NO.: 9503.49.0000

MS. TIA TENBRINK
SCARBROUGH INT'L., LTD.
10841 AMBASSADOR DRIVE
KANSAS CITY, MO 64153

RE: The tariff classification of an air freshener from China

DEAR MS. TENBRINK:

In your letter dated September 14, 2004, you requested a tariff classification ruling, on behalf of Tri D Innovations, Inc., your client.

You submitted descriptive literature and a product sample with your request. The subject merchandise is described as an air freshener that will hang from the rear view mirror in a car. This item (no style number is shown) consists of a scented card inserted into a sewn fabric toy animal. The toy animal and scented card will be imported together with the entire piece placed on a backing card. The sample will be returned, as requested.

The item is made up of two components: a miniature toy animal and a scented air freshener card. No one heading in the tariff schedule covers these components in combination; GRI 1 cannot be used as a basis for classification. GRI 3 provides for goods that are, prima facie, classifiable in two or more headings. GRI 3 (b) provides that mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, shall be classified as if they consisted of the material or component which gives them their essential character.

The submitted merchandise is considered a composite good. We believe that the toy animal and the scented air freshener card each play an equal role in relation to the use of the merchandise. The toy has a pocket specially designed for the insertion of the air freshener card.

Since neither of the components imparts the essential character to this merchandise, GRI 3 (c) is applicable. GRI 3 (c) provides that when the essential character of a product cannot be determined, the product shall then be classified under the heading that occurs last in numerical order in the tariff among those which merit equal consideration. The competing headings for the product are 9503 HTS and 3307 HTS.

Since it has been established that the item is a composite good, it will be classified in Chapter 95 of the HTS, in accordance with GRI 3 (c).

The applicable subheading for the air freshener (the toy animal and the scented card) will be 9503.49.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for toys representing animals or non-human creatures...and parts and accessories thereof: other. The rate of duty will be free.

Section 304 of the Tariff Act of 1930, as amended (19 USC 1304), provides, in general, that all articles of foreign origin imported into the United States must be legibly, conspicuously, and permanently marked to indicate the English name of the country of origin to an ultimate purchaser in the United States. The implementing regulations to 19 USC 1304 are set forth in Part

134, Customs Regulations (CFR Part 134). You may wish to discuss the matter of country of origin marking with the Customs import specialist at the proposed port of entry.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Tom McKenna at (646) 733–3025.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT B]

NY J88743
September 25, 2003
CLA-2–33:RR:NC:2:240 J88743
CATEGORY: Classification
TARIFF NO.: 3307.49.0000; 9503.41.0000

MR. PETER D. ALBERDI
A.J. ARANGO, INC.
1516 E. 8TH AVENUE
TAMPA, FLORIDA 33605

RE: The tariff classification of Car Air Fresheners from Taiwan

DEAR MR. ALBERDI:

In your letter dated September 2, 2003 you requested a tariff classification ruling on behalf of your client KSJ Investments. Four samples of car air fresheners were submitted with your inquiry and will be disposed.

The first item, referred to as Areolite-pink Auto Perfume, is an oval shaped plastic disk containing a liquid floral fragrance. Inside the disk is a small fan. The item is designed to clip on an automobile air vent. The second item, referred to as Passion Auto Perfume, is a circular shaped plastic disk containing a liquid lemon fragrance. Based on the packaging, the item can be clipped on a car air vent, placed on top of the dashboard or hung from the mirror. The third item, referred to as Fragrance Board, is composed of paperboard. It is sprayed with a vanilla scent and has a loop for hanging. The packaging states that the air freshener can be hung in a room, office, closet or car. The fourth item, referred to as Dog Car Air Freshener, is a full-bodied stuffed dog-shaped toy containing scented pellets. The dog, measuring approximately 4 inches in height by 2 ½ inches across, has a suction cup attached for mounting on an automobile window.

The Areolite-pink Auto Perfume, the Passion Auto Perfume and the Fragrance Board are scented air fresheners. Although the Dog Car Air Freshener is scented, it can be used as a toy or decoration once the scent dissipates. Therefore, the item will be classified as a stuffed toy.

The applicable subheading for the Areolite-pink Auto Perfume, Passion Auto Perfume and the Fragrance Board will be 3307.49.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for Preparations for perfuming or deodorizing rooms, including odoriferous preparations used during religious rites: Other….. The rate of duty will be 6 percent ad valorem.

The applicable subheading for the Dog Car Air Freshener will be 9503.41.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for toys representing animals or non-human creatures…and parts and accessories thereof: stuffed toys and parts and accessories thereof…. The rate of duty will be free.

Perfumery, cosmetic and toiletry products are subject to the requirements of the Food and Drug Cosmetic Act administered by the U.S. Food and Drug Administration. Questions regarding FDA requirements may be addressed to the U.S. Food and Drug Administration, Office of Cosmetics and Colors, 5100 Paint Branch Parkway, College Park, MD 20740–3835, telephone number (202) 418–3412.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stephanie Joseph at 646–733–3268.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT C]

NY L82296
February 22, 2005
CLA-2–95:RR:NC:2:224 L82296
CATEGORY: Classification
TARIFF NO.: 9503.49.0000; 7326.20.0070

MR. RALPH SAUNDERS
DERINGER LOGISTICS CONSULTING GROUP
1 LINCOLN BOULEVARD, SUITE 225
ROUSES POINT, NY 12979

RE: The tariff classification of 5 assorted items from China

DEAR MR. SAUNDERS:

In your letter dated January 21, 2005, you requested a tariff classification ruling, on behalf of Car Freshner Corp., your client.

You are requesting the tariff classification on five articles as follows: an unscented piggy bank made of polyvinyl chloride resin, an unscented polyvinyl chloride resin pine tree attached to a metal key ring, a bio-hazard auto air freshener (diffuser), a Hula Garfield air freshener, and a Western gear steer skull air freshener. The samples will be returned, as requested.

You stated in your letter that the piggy bank should be classified in 3924.90.5500 HTS. However, we are of the opinion that the item is too small to function as a bank. Rather, we believe that the piggy bank would be most suitable for use as a toy.

The Garfield air freshener functions as a source of amusement while it freshens the air. Therefore, it would also be classified as a toy representing an animal in Chapter 95 of the HTS.

The applicable subheading for the toy piggy bank and the Hula Garfield toy will be 9503.49.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for toys representing animals or non-human creatures…and parts and accessories thereof: other. The rate of duty will be free.

The applicable subheading for the pine tree key ring will be 7326.20.0070, Harmonized Tariff Schedule of the United States (HTS), which provides for articles of iron or steel wire. The rate of duty will be 3.9% ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Tom McKenna at 646–733–3025.

We are returning your request for a classification ruling regarding the bio-hazard auto air freshener (diffuser) and the Western gear steer skull air freshener because we need additional information in order to issue a ruling.

Samples of these products were submitted with your ruling request. The samples are being returned to you.

Please submit marketing material for these products: the bio-hazard auto air freshener and the Western gear steer skull air freshener.

Please submit a value breakdown for the bio–hazard auto air freshener and the steer skull air freshener.

Are these two products refillable, and what is the source of the fragrance?

Please provide a fragrance breakdown.

As regards the bio-hazard auto air freshener, is there any other function of the plug-in?

When this information is available, you may wish to consider resubmission of your request. If you decide to resubmit your request, please submit the samples and a copy of your original letter, along with any additional information requested in this notice.

Please mail your request to the U.S. Customs and Border Protection, Customs Information Exchange, 10th Floor, One Penn Plaza, New York, NY 10119, attn: Binding Rulings Section. If you have any questions regarding the above, contact National Import Specialist Stephanie Joseph at 646–733–3268.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT D]

NY L83477

April 13, 2005
CLA-2–33:RR:NC:2:240 L83477
CATEGORY: Classification
TARIFF NO.: 3307.49.0000; 3926.40.0000;
9503.49.0000

MR. BRIAN KAVANAUGH
DERINGER LOGISTICS CONSULTING GROUP
1 LINCOLN BLVD SUITE 225
ROUSSES POINT, NY 12979

RE: The tariff classification of Bio Hazard air refresher, Western Gear Steer Skull air freshener, Sea Turtle air freshener and Baseball Glove air freshener from China

DEAR MR. KAVANAUGH:

In your letter dated March 11, 2005 you requested a tariff classification ruling on behalf of your client Car Freshener Corp.

Bio Hazard air refresher, Western Gear Steer Skull air freshener, Sea Turtle air freshener and Baseball Glove air freshener samples were submitted for review with your inquiry. The Bio Hazard air freshener consists of an automobile cigarette lighter plug attachment and a plastic oval front with a removable faceplate. A fragrance chip inside the oval front is activated upon plugging the Bio Hazard air freshener into an auto cigarette lighter outlet. The Baseball Glove air freshener, measuring approximately 2 inches by 2 inches in the shape of a baseball glove with a flat baseball attached by a spring in the center of the glove, is composed of fragrance-impregnated plastic. An elastic holder is attached to a ring at the top of the baseball glove. The Sea Turtle air freshener is composed of fragrance-impregnated plastic in the shape of a turtle. An elastic holder is strung through a loop in the center of the turtle shell. The Western Gear Steer Skull consists of a fragrance-impregnated plastic steer head attached to an adjustable cord with silver colored tips. Hung on the rearview mirror of an automobile, the Western Gear Steer Skull, Sea Turtle and Baseball Glove are utilized as an air freshener and an auto decoration.

The Western Gear Steer Skull, Sea Turtle and Baseball Glove air freshener and automobile decorations are composite articles whose components fall in different categories of the tariff. Classification of merchandise under the Harmonized Tariff Schedule of the United States (HTS) is in accordance with the General Rules of Interpretation (GRIs), taken in order. GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Since no one heading in the tariff schedules covers the components of the automobile air freshener decorations, GRI 1 cannot be used as a basis for classification. GRI 3(b) provides that mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale shall be classified as if they consisted of the material or component which gives them their essential character. GRI 3 (c) states that when goods cannot be classified by reference to GRI 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration. In this instance, neither the air freshener or auto decoration

imparts the essential character; therefore, the Western Gear Steer Skull, Sea Turtle and Baseball Glove will be classified in the heading that appears last in the tariff.

The applicable subheading for the Bio Hazard air freshener will be 3307.49.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for preparations for perfuming or deodorizing rooms, including odoriferous preparations used during religious rites: Other. The rate of duty will be 6 percent ad valorem.

The applicable subheading for the Western Gear Steer Skull air freshener and Baseball Glove air freshener will be 3926.40.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of plastics, statuettes and other ornamental articles. The rate of duty will be 5.3 percent ad valorem.

The applicable subheading for the Sea Turtle air freshener will be 9503.49.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for toys representing animals or non-human creatures…and parts and accessories thereof: stuffed toys and parts and accessories thereof. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stephanie Joseph at 646–733–3268.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT E]

NY L85641

July 13, 2005
CLA-2–39:RR:NC:221:SP L85641
CATEGORY: Classification
TARIFF NO.: 3926.40.0000; 9502.10.0060

MR. BRIAN KAVANAUGH
DERINGER LOGISTICS CONSULTING GROUP
1 LINCOLN BLVD., SUITE 225
ROUSES POINT, NY 12979

RE: The tariff classification of scented decorative articles from China.

DEAR MR. KAVANAUGH:

In your letter dated June 9, 2005, on behalf of Car Freshner Corp., you requested a tariff classification ruling.

The four samples provided with your letter include the hand figure PVC suction cup, the human figure PVC clip hanger, the PVC flashing ball and the PVC and ABS iced medallion with a scented wafer. All the samples are composed of plastic and have been scented. The scent of the first three samples accounts for approximately 10 to 15 percent of the cost of the item, while the plastic accounts for the rest of the value. The scented wafer accounts for approximately 25 percent of the cost of the iced medallion, with the rest of the value attributable to the plastic. The items are not meant to be re-infused with scent, nor are separate scented wafers sold for the medallion. When the scent dissipates, the products will serve as decorative items. As you requested, the samples will be returned.

The applicable subheading for the hand figure suction cup, flashing ball and iced medallion will be 3926.40.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of plastics…statuettes and other ornamental articles. The rate of duty will be 5.3 percent ad valorem.

The applicable subheading for the human figure clip hanger will be 9502.10.0060, HTS, which provides for dolls representing only human beings and parts and accessories thereof: dolls, whether or not dressed: other. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Joan Mazzola at 646–733–3023.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT F]

H045873
CLA-2 OT:RR:CTF:TCM H045873 RES
CATEGORY: Classification
TARIFF NO.: 3307.49.0000

MS. VALERIE BEUMER
SCARBROUGH INT'L., LTD.
10841 AMBASSADOR DRIVE
KANSAS CITY, MO 64153

RE: Revocation of NY K89535, dated October 5, 2004.

DEAR MS. BEUMER:

This letter is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered New York ("NY") Ruling letter K89535, dated October 5, 2004, regarding the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of an air freshener. The article in NY K89535 was classified as a toy under heading 9503, HTSUS. We have determined that NY K89535 was in error. Therefore, this ruling revokes K89535.

FACTS:

In NY K89535, the product was described as follows:

> The subject merchandise is described as an air freshener that will hang from the rear view mirror in a car. This item . . . consists of a scented card inserted into a sewn fabric toy animal. The toy animal and scented card will be imported together with the entire piece placed on a backing card.

The toy animal air freshener was classified under heading 9503, HTSUS, as "[o]ther toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof."

ISSUE:

Whether the air freshener article at issue classifiable under heading 3307, HTSUS, or under heading 9503, HTSUS?

LAW AND ANALYSIS:

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

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the Harmonized System at the international level, may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The following 2011 HTSUS provisions are under consideration:

3307	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
9503	Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scaled ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:

Note 3 to Chapter 33, HTSUS, provides in pertinent part:

Headings 3303 to 3307 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put in packings of a kind sold by retail for such use.

(Emphasis in original).

The article at issue is composed of two parts: a scented card and a miniature toy animal. Analyzing the article first under GRI 1, there is no specific provision in the HTSUS that completely describes this product. Likewise, the article is not classifiable under GRI 2(a) or 2(b) because it is not in an unassembled or incomplete state, but is imported as a complete article and is a composite of parts which are classifiable under two or more headings. GRI 2(b) instructs that "[t]he classification of goods consisting of more than one material or substance shall be [determined] according to the principles of rule 3."

GRI 3(a) does not apply because there is no heading that provides a specific description that clearly identifies an article that is a composite of a scented card and a miniature toy animal. Thus, the article at issue is analyzed under GRI 3(b), because it is a composite good consisting of different components each of which, if imported separately, would be classifiable under different headings. According to GRI 3(b), "mixtures, composite goods consisting of different materials or made up of different components . . . shall be classified as if they consisted of the material or component which gives them their essential character . . . ." Thus, to determine under which heading to properly classify the entire toy animal air freshener, we must determine which component gives the article its essential character: the scented card or the miniature toy animal.

Although the GRI's do not provide a definition of "essential character," the EN (VIII) of GRI 3(b) provides guidance. According to this EN, the essential character may ". . . be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods." This is known as the "essential character test" and the application of this test requires a fact-intensive analysis. *Home Depot U.S.A., Inc. v. United States*, 491 F.3d 1334, 1337 (Fed. Cir. 2007). Many factors should be considered when determining the essential character of an article, including but not limited to those factors enumerated in EN

(VIII) to GRI 3(b). *Id*. Headquarters ("HQ") ruling H061205, dated August 10, 2009, involved an essential character analysis of a tea infuser set. This ruling was a straight-line analysis of the factors listed in the EN (VIII) to GRI 3(b): (1) what component makes up the bulk of the set; (2) quantity of goods in the set; (3) weight of the components; (4) value of the components; and (5) role of the constituent material in relation to the use of the goods. This ruling also teaches that it is neither necessary for all the factors to favor one component over another in making a determination nor are all factors determinative in the analysis

From both EN (VIII) of GRI 3(b), rulings, and caselaw, the pertinent factors used in analyzing which component gives a composite article the essential character include: (1) the bulk or amount each component contributes physically to the composite article; (2) weight of the components relative to the whole composite article; (3) the quantity of components; (4) value of the components; (5) role of the constituent material in relation to the use of the goods; and (6) nature of the components. Applying these factors, we can determine which component provides the essential character of the air freshener article at issue. As described previously, the air freshener is composed of a scented air freshener card and a miniature toy animal. The function of the complete article is to hang from a rear view mirror and scent the inside of an automobile. The analysis focuses on whether the scented card or the miniature toy animal imparts the essential character of the air freshener.

(1) & (2) *Bulk and Weight of the Components*. Based upon the description in NY K89535 of the physical sample provided, the miniature toy appears to comprise a larger part of the bulk and the weight of the composite article because the scented card is inserted into the miniature toy. Additionally, the miniature toy is the predominant physical part of the retail package. Thus, these factors weigh in favor of the miniature toy.

(3) *Quantity of Components*. This factor is not relevant in this case because each composite article for retail sale has one scented card paired with one miniature toy animal.

(4) *Value of the Components*. There is no break down of the individual costs of each component. Thus this factor is not helpful in determining essential character.

(5) *Roles of the Components*. The composite air freshener article has both a utilitarian function of providing scent and an apparent amusement function as a toy. However, we find that the primary function of the composite article is the scenting of an automobile because the main point of having an air freshener is to provide a scent that fills an enclosed space, such as a room or car. Although each component contributes separately to the two functions, the scented card provides the sole contribution to the primary function of the composite article. On its own without the inserted scented card the miniature toy animal does not have any scent and thus, cannot provide a scent that would fill an enclosed space. Moreover, when the article is out of the packaging in the open, the predominant feature is not the miniature toy animal but the smell of the scent it provides—one would notice the scent the article provides upon entering the interior of an automobile first before noticing the physical miniature toy.

In addition, the fact that the retail package of the article has the words "air freshener" in it gives a reasonable impression that the primary function of the article is an air freshener and not a toy that is meant to be played with. The name of a composite article can be persuasive indicia of essential character. *Home Depot U.S.A., Inc. v. United States*, 427 F. Supp. 2d 1278, 1294 (Ct. Int'l Trade 2007). The "air freshener" part of the package does not give any indication that this is referring to a toy. It is a reasonable assumption that a customer would perceive that the article is a scented air freshener that looks like a toy and not a toy that just happens to be able to scent the interior of a car. Thus, this factor weighs in favor of the scented card.

(6) *Nature of the Components*. Another factor in favor of the scented card is that the composite article is designed around the function of providing a scent. The complete article is designed to have a slit in the miniature toy animal where the scented card will be inserted and it comes with a looped string that has the function of hanging the complete article on the rear view mirror, where it is supposed to be placed so that it can passively scent the inside of an automobile interior. There is nothing to indicate that the miniature toy animal is to be handled and hence, played with. These custom design aspects demonstrate an emphasis on the scent providing functions of the air freshener. As to the miniature toy animal's design in regard to its actual shape and colors, these features are what gives it an aesthetic functionality and are not additional design features that emphasize anything beyond its own appeal as providing something that reflects the aesthetics of personal taste. Thus, because the composite article is designed around the function of providing a scent for an enclosed area, this is a factor that weighs in favor of the scented card.

In summary, although the miniature toy animal component comprises the bulk and weight of the article, this is outweighed by the following factors: the fact that the article has features, such as the hanging string and slit for the scented card, that are specifically incorporated to facilitate the air freshener function; the fact that the article's scent is the predominant noticeable feature of the article outside the packaging; and the fact that the article is marketed and sold as an air freshener and not simply as a toy. Upon consideration of the totality of these factors in favor of the scented card, CBP finds that the essential character of the miniature toy animal air freshener is imparted by its scented card.

Articles, such as the air freshener at issue here, which are infused with scented oils and principally used to perfume or deodorize a room and are packaged for retail sale, are pursuant to Note 3 to Chapter 33, HTSUS, *prima facie* classifiable under heading 3307, HTSUS. *See* NY 801980, dated September 20, 1994; NY N009558, dated May 1, 2007. *See also* HQ H105015, dated December 7, 2010 (noting that a room deodorizer under heading 3307, HTSUS, is a preparation that disperses chemical preparations into the air to mask or chemically remove odor molecules).

Therefore, the article in NY K89535 is to be classified under heading 3307, HTSUS.

HOLDING:

Pursuant to GRI 3(b), the air freshener article at issue is classified under heading 3307, specifically, subheading 3307.49.0000, HTSUSA, as "[p]re-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties: [p]reparations for perfuming or deodorizing rooms, including odoriferous preparations used during religious rites: [o]ther." The general, column one, rate of duty is 6 percent *ad valorem*.

EFFECTS ON OTHER RULINGS:

NY K89535, dated October 5, 2004, is revoked.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT G]

H045874
CLA-2 OT:RR:CTF:TCM H045874 RES
CATEGORY: Classification
TARIFF NO.: 3307.49.0000

MR. PETER D. ALBERDI
A.J. ARANGO, INC.
1516 E. 8TH AVENUE
TAMPA, FLORIDA 33605

RE: Modification of NY J88743, dated September 25, 2003.

DEAR MR. ALBERDI:

This letter is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered New York ("NY") Ruling Letter J88743, dated September 25, 2003, regarding the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of the Dog Car Air Freshener. We have determined that NY J88743 was in error as it pertains to the classification of the Dog Car Air Freshener. Accordingly, we are modifying NY J88743, to reflect the proper classification of the Dog Car Air Freshener.

FACTS:

In NY J88743, the merchandise at issue was described as follows:

> The . . . Dog Car Air Freshener, is a full-bodied stuffed dog-shaped toy containing scented pellets. The dog, measuring approximately 4 inches in height by [2.5] inches across, has a suction cup attached for mounting on an automobile window.

Is the Dog Car Air Freshener article at issue classifiable under heading 3307, HTSUS, or under heading 9503, HTSUS?

LAW AND ANALYSIS:

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

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the Harmonized System at the international level, may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The following 2011 HTSUS provisions are under consideration:

3307	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
9503	Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scaled ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:

Note 3 to Chapter 33, HTSUS, provides in pertinent part:

Headings 3303 to 3307 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put in packings of a kind sold by retail for such use.

(Emphasis in original).

Although the term "toy" is not defined in the HTSUS, EN to heading 9503, HTSUS, provides that "this heading covers toys intended essentially for the amusement of persons." The case *U.S. v. Topps Chewing Gum*, *58 CCPA 157*, C.A.D. 1022 (1971), 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. The court in *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 may be considered a toy if it is inherently or evidently amusing. *See e.g.*, HQ 960136, dated July 24, 1997; HQ 959749, dated October 23, 1997; HQ 964834, dated 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 (Ct. Int'l Trade 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, 3 (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."

The *Minnetonka* court further concluded that heading 9503, HTSUS, is a "principal use" provision within the meaning of Additional U.S. Rule of Interpretation 1(a), HTSUS. Therefore, classification under the heading is controlled by the principal use of goods of that class or kind to which the imported goods belong in the United States at or immediately prior to the date of the importation.

In determining whether the principal use of a product is for amusement, and it is thereby classified as a toy, CBP considers a variety of factors, including: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels, class or kind of trade in which the merchandise moves; (4) the environment of sale (i.e. accompanying accessories and the manner in which the merchandise is advertised and displayed); (5) usage, if any, in the same manner as merchandise which defines the class. *United States v. Carborundum Co.*, 536 F.2d 373, 377 (C.C.P.A. 1977).

The Dog Car Air Freshener's characteristics of being a plush stuffed dog are indicative that the aesthetic purpose of this product is for amusement. However, the fact that the article is filled with scented pellets demonstrates that the article also has the utilitarian function of providing scent to the interior of an automobile. In addition, the article has a suction cup fastened to it. This design feature facilitates the article's function as an air freshener by attaching it to a car window such that it can passively scent the air of an automobile interior. Moreover, the predominant characteristic of this article is its scent because the first thing an individual would notice after entering the interior of a car that has this article would be the scent that the article provides. Furthermore, the fact that the name of the article contains the words "car air freshener" and not "toy" highlights the article's primary function, which is that of providing a scent. Finally, the article is imported, packaged, and marketed as an air freshener and the article's manufacturer's primary business is that of making and exporting automobile air freshener products.

Thus, based on an analysis under the *Carborundum* factors, the principal use of the Dog Car Air Freshener is not for amusement but for the primary purpose of providing a scent that permeates throughout the interior of an automobile. Articles, such as the air freshener at issue here, which are infused with scented oils and principally used to perfume or deodorize a room and are packaged for retail sale, are pursuant to Note 3 to Chapter 33, HTSUS, *prima facie* classifiable under heading 3307, HTSUS. *See* NY 801980, dated September 20, 1994; NY N009558, dated May 1, 2007. *See also* HQ H105015, dated December 7, 2010 (noting that a room deodorizer under heading 3307, HTSUS, is a preparation that disperses chemical preparations into the air to mask or chemically remove odor molecules).

Therefore, the Dog Car Air Freshener is classified under subheading 3307, HTSUS.

HOLDING:

Pursuant to GRI 1, the Dog Car Air Freshener article at issue is classified under heading 3307, specifically, subheading 3307.49.0000, HTSUSA, as "[p]re-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties: [p]reparations for perfuming or deodorizing rooms, including odoriferous preparations used during religious rites: [o]ther." The general, column one, rate of duty is 6 percent *ad valorem*.

EFFECTS ON OTHER RULINGS:

NY J88743, dated September 25, 2003, is modified.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT H]

H108678
CLA-2 OT:RR:CTF:TCM H108678 RES
CATEGORY: Classification
TARIFF NO.: 3307.49.0000

MR. BRIAN KAVANAUGH
DERINGER LOGISTICS CONSULTING GROUP
1 LINCOLN BLVD., SUITE 225
ROUSES POINT, NY 12979

RE: Modification of NY L82296, dated February 22, 2005.

DEAR MR. KAVANAUGH:

This letter is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered New York ("NY") Ruling letter L82296, dated February 22, 2005, regarding the classification of a "Hula Garfield" air freshener, under the Harmonized Tariff Schedule of the United States ("HTSUS"). The merchandise at issue herein was classified in NY L82286 as a toy under heading 9503, HTSUS. We have determined that NY L82296 was in error with respect to the classification of the "Hula Garfield" air freshener. Accordingly, we are modifying NY L82296, to reflect the proper classification of the "Hula Garfield" air freshener.

FACTS:

In NY L82296, the product at issue was described as a "Hula Garfield air freshener that functions as a source of amusement while it freshens the air." This article was classified under heading 9503, HTSUS, as "[t]oys representing animals or non-human creatures . . . and parts and accessories thereof." The air freshener has a string attached to it so that it may be hung on the rearview mirror of an automobile and it comes in packaging that is marked "not a toy" on the back of the packaging.

ISSUE:

Is the Hula Garfield air freshener at issue classifiable under heading 3307, HTSUS, or under heading 9503, HTSUS?

LAW AND ANALYSIS:

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

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the Harmonized System at the international level, may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The following 2011 HTSUS provisions are under consideration:

3307	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
9503	Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scaled ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:

Note 3 to Chapter 33, HTSUS, provides in pertinent part:

> Headings 3303 to 3307 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put in packings of a kind sold by retail for such use.

(Emphasis in original).

Although the term "toy" is not defined in the HTSUS, EN to heading 9503, HTSUS, provides that "this heading covers toys intended essentially for the amusement of persons." The case *U.S. v. Topps Chewing Gum*, 58 CCPA 157, C.A.D. 1022 (1971), 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. The court in *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 may be considered a toy if it is inherently or evidently amusing. *See e.g.*, HQ 960136, dated July 24, 1997; HQ 959749, dated October 23, 1997; HQ 964834, dated 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 (Ct. Int'l Trade 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, 3 (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."

The *Minnetonka* court further concluded that heading 9503, HTSUS, is a "principal use" provision within the meaning of Additional U.S. Rule of Interpretation 1(a), HTSUS. Therefore, classification under the heading is controlled by the principal use of goods of that class or kind to which the imported goods belong in the United States at or immediately prior to the date of the importation.

In determining whether the principal use of a product is for amusement, and it is thereby classified as a toy, CBP considers a variety of factors, including: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels, class or kind of trade in which the merchandise moves; (4) the environment of sale (i.e. accompanying accessories and the manner in which the merchandise is advertised and displayed); (5) usage, if any, in the same manner as merchandise which defines the class. *United States v. Carborundum Co.*, 536 F.2d 373, 377 (C.C.P.A. 1977).

The Hula Garfield air freshener's characteristic of being based on a comic strip character is indicative that this product has an amusement function. However, the fact that the article is scented demonstrates that the article also has the utilitarian function of providing scent to the interior of an automobile. In addition, the article has a string attached to it for the purpose of hanging the article on a car's rearview mirror. This design feature facilitates the article's function as an air freshener such that it can passively scent the air of an automobile interior. Moreover, the predominant characteristic of this article is its scent because the first thing an individual would notice after entering the interior of a car that has this article would be the scent that the article provides. Furthermore, the fact that the name of the article contains the words "air freshener" and not "toy" along with the notice on the back of the packaging that states "Important: Not a toy. Keep away from children" emphasizes that the article's primary function is that of providing a scent. Finally, the article is imported, packaged, and marketed as an air freshener and the article's manufacturer, Car-Freshener Corporation, is in the business of designing, manufacturing, importing, and exporting automobile air freshener products. The Car-Freshener Corporation does not make toys.

Thus, based on an analysis under the *Carborundum* factors, the principal use of the Hula Garfield air freshener is not for amusement but for the primary purpose of providing a scent that permeates throughout the interior of an automobile. Articles, such as the air freshener at issue here, which are infused with scented oils and principally used to perfume or deodorize a room and are packaged for retail sale, are pursuant to Note 3 to Chapter 33, HTSUS, *prima facie* classifiable under heading 3307, HTSUS. *See* NY 801980, dated September 20, 1994; NY N009558, dated May 1, 2007. *See also* HQ H105015, dated December 7, 2010 (noting that a room deodorizer under heading 3307, HTSUS, is a preparation that disperses chemical preparations into the air to mask or chemically remove odor molecules).

Therefore, the Hula Garfield air freshener is classified under heading 3307, HTSUS.

HOLDING:

Pursuant to GRI 1, the Hula Garfield air freshener article at issue is classified under heading 3307, specifically, subheading 3307.49.0000, HTSUSA, as "[p]re-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties: [p]reparations for perfuming or deodorizing rooms, including odoriferous preparations used during religious rites: [o]ther." The general, column one, rate of duty is 6 percent *ad valorem*.

EFFECTS ON OTHER RULINGS:

NY L82296, dated February 22, 2005, is modified.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT I]

H108681
CLA-2 OT:RR:CTF:TCM H108681 RES
CATEGORY: Classification
TARIFF NO.: 3307.49.0000

MR. BRIAN KAVANAUGH
DERINGER LOGISTICS CONSULTING GROUP
1 LINCOLN BLVD., SUITE 225
ROUSES POINT, NY 12979

RE: Modification of NY L83477, dated April 13, 2005.

DEAR MR. KAVANAUGH:

This letter is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered New York ("NY") Ruling letter L83477, dated April 13, 2005, regarding the classification of a "Sea Turtle" air freshener, under the Harmonized Tariff Schedule of the United States ("HTSUS"). The merchandise was classified in NY L83477 as a toy under heading 9503, HTSUS. We have determined that NY L83477 was in error with respect to the classification of the "Sea Turtle" air freshener. Accordingly, we are modifying NY L83477, to reflect the proper classification of the "Sea Turtle" air freshener.

FACTS:

In NY L83477, the article at issue was described as follows:

> The Sea Turtle air freshener is composed of fragrance-impregnated plastic in the shape of a turtle. An elastic holder is strung through a loop in the center of the turtle shell . . . [h]ung on the rearview mirror of an automobile the . . . Sea Turtle [is] utilized as an air freshener and an auto decoration.

Additionally, the back of the packaging for the article is marked with the warning "not a toy." This article was classified under heading 9503 HTSUS, as "[o]ther toys . . . parts and accessories thereof: [t]oys representing animals or non-human creatures . . . and parts and accessories thereof."

ISSUE:

Is the Sea Turtle air freshener at issue classifiable under heading 3307, HTSUS, or under heading 9503, HTSUS?

LAW AND ANALYSIS:

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

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the Harmonized System at the international level, may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are gener-

ally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The following 2011 HTSUS provisions are under consideration:

3307	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
9503	Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scaled ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:

Note 3 to Chapter 33, HTSUS, provides in pertinent part:

Headings 3303 to 3307 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put in packings of a kind sold by retail for such use.

(Emphasis in original).

Although the term "toy" is not defined in the HTSUS, EN to heading 9503, HTSUS, provides that "this heading covers toys intended essentially for the amusement of persons." The case *U.S. v. Topps Chewing Gum*, 58 CCPA 157, C.A.D. 1022 (1971), 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. The court in *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 may be considered a toy if it is inherently or evidently amusing. *See e.g.*, HQ 960136, dated July 24, 1997; HQ 959749, dated October 23, 1997; HQ 964834, dated 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 (Ct. Int'l Trade 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, 3 (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."

The *Minnetonka* court further concluded that heading 9503, HTSUS, is a "principal use" provision within the meaning of Additional U.S. Rule of Interpretation 1(a), HTSUS. Therefore, classification under the heading is

controlled by the principal use of goods of that class or kind to which the imported goods belong in the United States at or immediately prior to the date of the importation.

In determining whether the principal use of a product is for amusement, and it is thereby classified as a toy, CBP considers a variety of factors, including: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels, class or kind of trade in which the merchandise moves; (4) the environment of sale (i.e. accompanying accessories and the manner in which the merchandise is advertised and displayed); (5) usage, if any, in the same manner as merchandise which defines the class. *United States v. Carborundum Co.*, 536 F.2d 373, 377 (C.C.P.A. 1977).

The Sea Turtle air freshener's characteristic of having a comical appearance is indicative that this product has an amusement function. However, the fact that the article is scented demonstrates that the article also has the utilitarian function of providing scent to the interior of an automobile. In addition, the article has a string attached to it for the purpose of hanging the article on a car's rearview mirror. This design feature facilitates the article's function as an air freshener such that it can passively scent the air of an automobile interior. Moreover, the predominant characteristic of this article is its scent because the first thing an individual would notice after entering the interior of a car that has this article would be the scent that the article provides. Furthermore, the fact that the name of the article contains the words "air freshener" and not "toy" along with the notice on the back of the packaging that states "Important: Not a toy. Keep away from children" emphasizes that the article's primary function is that of providing a scent. Finally, the article is imported, packaged, and marketed as an air freshener and the article's manufacturer, Car-Freshener Corporation, is in the business of designing, manufacturing, importing, and exporting automobile air freshener products. The Car-Freshener Corporation does not make toys.

Thus, based on an analysis under the *Carborundum* factors, the principal use of the Sea Turtle air freshener is not for amusement but for the primary purpose of providing a scent that permeates throughout the interior of an automobile. Articles, such as the air freshener at issue here, which are infused with scented oils and principally used to perfume or deodorize a room and are packaged for retail sale, are pursuant to Note 3 to Chapter 33, HTSUS, *prima facie* classifiable under heading 3307, HTSUS. *See* NY 801980, dated September 20, 1994; NY N009558, dated May 1, 2007. *See also* HQ H105015, dated December 7, 2010 (noting that a room deodorizer under heading 3307, HTSUS, is a preparation that disperses chemical preparations into the air to mask or chemically remove odor molecules).

Therefore, the Sea Turtle air freshener is classified under subheading 3307, HTSUS.

HOLDING:

Pursuant to GRI 1, the Sea Turtle air freshener article at issue is classified under heading 3307, specifically, subheading 3307.49.0000, HTSUSA, as "[p]re-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers,

whether or not perfumed or having disinfectant properties: [p]reparations for perfuming or deodorizing rooms, including odoriferous preparations used during religious rites: [o]ther." The general, column one, rate of duty is 6 percent *ad valorem*.

EFFECTS ON OTHER RULINGS:

NY L83477, dated April 13, 2005, is modified.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT J]

H108682
CLA-2 OT:RR:CTF:TCM H108682 RES
CATEGORY: Classification
TARIFF NO.: 3307.49.0000

MR. BRIAN KAVANAUGH
DERINGER LOGISTICS CONSULTING GROUP
1 LINCOLN BLVD., SUITE 225
ROUSES POINT, NY 12979

RE: Modification of NY L85641, dated July 13, 2005.

DEAR MR. KAVANAUGH:

This letter is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered New York ("NY") Ruling letter L85641, dated July 13, 2005, regarding the classification of a "human figure PVC clip hanger" air freshener, under the Harmonized Tariff Schedule of the United States ("HTSUS"). The merchandise was classified in NY L85641 as a doll, under heading 9502, HTSUS. We have determined that NY L85641 was in error with respect to the classification of the "human figure PVC clip hanger" air freshener. Accordingly, we are modifying NY L85641, to reflect the proper classification of the "human figure PVC clip hanger" air freshener.

FACTS:

In NY L85641, the article at issue, the human figure PVC clip hanger, was classified under subheading 9502.10.00, HTSUS, as "[d]olls representing only human beings and parts and accessories thereof: dolls, whether or not dressed: [o]ther." The human figure PVC clip hanger is composed of plastic, has scent infused into it, and has a clip fastened to it so that it can be attached to some part of the inside of an automobile. Additionally, the back of the packaging for the article is marked with the warning "not a toy."

ISSUE:

Is the human figure PVC clip hanger at issue classifiable under heading 3307, HTSUS, or under heading 9503, HTSUS?[1]

LAW AND ANALYSIS:

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

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the Harmonized System at the inter-

[1] The goods of heading 9502, HTSUS, were incorporated into heading 9503, HTSUS, in the 2006 HTSUS revision. Therefore, for purposes of determining the appropriate classification of the article at issue, the analysis compares heading 3307, HTSUS, with heading 9503, HTSUS.

national level, may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The following 2011 HTSUS provisions are under consideration:

3307	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
9503	Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scaled ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:

Note 3 to Chapter 33, HTSUS, provides in pertinent part:

> Headings 3303 to 3307 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put in packings of a kind sold by retail for such use.

(Emphasis in original).

Although the terms "toy" and "doll" are not defined in the HTSUS, EN to heading 9503, HTSUS, provides that "this heading covers toys [and dolls] intended essentially for the amusement of persons." The case *U.S. v. Topps Chewing Gum*, 58 CCPA 157, C.A.D. 1022 (1971), 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. The court in *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 may be considered a toy if it is inherently or evidently amusing. *See e.g.*, HQ 960136, dated July 24, 1997; HQ 959749, dated October 23, 1997; HQ 964834, dated 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 (Ct. Int'l Trade 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, 3 (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."

The *Minnetonka* court further concluded that heading 9503, HTSUS, is a "principal use" provision within the meaning of Additional U.S. Rule of Interpretation 1(a), HTSUS. Therefore, classification under the heading is

controlled by the principal use of goods of that class or kind to which the imported goods belong in the United States at or immediately prior to the date of the importation.

In determining whether the principal use of a product is for amusement, and it is thereby classified as a toy or doll, CBP considers a variety of factors, including: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels, class or kind of trade in which the merchandise moves; (4) the environment of sale (i.e. accompanying accessories and the manner in which the merchandise is advertised and displayed); (5) usage, if any, in the same manner as merchandise which defines the class. *United States v. Carborundum Co.*, 536 F.2d 373, 377 (C.C.P.A. 1977).

The human figure PVC clip hanger air freshener's characteristic of resembling an action figure is indicative that this product has an amusement function. However, the fact that the article is scented demonstrates that the article also has the utilitarian function of providing scent to the interior of an automobile. In addition, the article has a clip attached to it for the purpose of fastening the article onto some part of a car's interior, such as a vent, seat, or sun visor. This design feature facilitates the article's function as an air freshener such that it can passively scent the air of an automobile interior. Moreover, the predominant characteristic of this article is its scent because the first thing an individual would notice after entering the interior of a car that has this article would be the scent that the article provides. Furthermore, the fact that the name of the article contains the words "air freshener" and not the words "doll" or "toy" along with the notice on the back of the packaging that states "Important: Not a toy. Keep away from children" emphasizes that the article's primary function is that of providing a scent. Finally, the article is imported, packaged, and marketed as an air freshener and the article's manufacturer, Car-Freshener Corporation, is in the business of designing, manufacturing, importing, and exporting automobile air freshener products. The Car-Freshener Corporation does not make dolls or toys.

Thus, based on an analysis under the *Carborundum* factors, the principal use of the human figure PVC clip hanger air freshener is not for amusement but for the primary purpose of providing a scent that permeates throughout the interior of an automobile. Articles, such as the air freshener at issue here, which are infused with scented oils and principally used to perfume or deodorize a room and are packaged for retail sale, are pursuant to Note 3 to Chapter 33, HTSUS, *prima facie* classifiable under heading 3307, HTSUS. *See* NY 801980, dated September 20, 1994; NY N009558, dated May 1, 2007. *See also* HQ H105015, dated December 7, 2010 (noting that a room deodorizer under heading 3307, HTSUS, is a preparation that disperses chemical preparations into the air to mask or chemically remove odor molecules).

Therefore, the human figure PVC clip hanger air freshener is classified as a deodorizer under heading 3307, HTSUS.

HOLDING:

Pursuant to GRI 1, the human figure PVC clip hanger air freshener article at issue is classified under heading 3307, specifically, subheading 3307.49.0000, HTSUSA, as "[p]re-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfum-

ery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties: [p]reparations for perfuming or deodorizing rooms, including odoriferous preparations used during religious rites: [o]ther." The general, column one, rate of duty is 6 percent *ad valorem.*

EFFECTS ON OTHER RULINGS:

NY L85641, dated July 13, 2005, is modified.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 10 2011)

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

SUMMARY: Presented herein are the copyrights, trademarks, and trade names recorded with U.S. Customs and Border Protection during the month of September 2011. The last notice was published in the CUSTOMS BULLETIN on October 26, 2011.

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

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

CBP IPR RECORDATION — OCTOBER 2011

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 96–00135	10/31/2011	7/15/2015	SALVATORE FERRAGAMO	SALVATORE FERRAGAMO S.P.A	No
TMK 06–00386	10/25/2011	9/17/2021	TETRIS	TETRIS HOLDING LLC	No
TMK 05–00724	10/25/2011	6/15/2021	INTEL	INTEL CORPORATION	No
TMK 04–00196	10/25/2011	12/18/2021	AKUZA ROAD CONCEPTS	PRESTIGE AUTOTECH CORPORATION	No
COP 92–00010	10/25/2011	10/25/2031	BASEBALL	NINTENDO OF AMERICA INC.	No
TMK 02–00265	10/25/2011	10/16/2021	CSA DESIGN CERTIFIED	CANADIAN STANDARDS ASSOCIATION	No
TMK 02–00924	10/12/2011	8/6/2021	DOLBY	DOLBY LABORATORIES LICENSING CORPORATION	No
TMK 02–00973	10/25/2011	9/11/2021	MAXXIMA	PANOR CORPORATION	No
TMK 04–00248	10/25/2011	9/15/2021	GUCCI	GUCCI AMERICA, INC.	No
COP 11–00167	10/25/2011	10/25/2031	SUNGLASSES PRINT	SUNBEAM INTERNATIONAL, INC.	No
TMK 09–00357	10/25/2011	9/11/2021	CONFIGURATION OF CHESTPIECE OF A STETHOSCOPE	3M COMPANY	No
TMK 02–00264	10/25/2011	7/17/2021	CSA CERTIFIED	CANADIAN STANDARDS ASSOCIATION	No
TMK 09–01206	10/25/2011	7/17/2021	DKNY	GABRIELLE STUDIO, INC.	No
TMK 10–00608	10/25/2011	6/30/2021	VIMTO	NICHOLS PLC	No
TMK 10–00959	10/31/2011	3/27/2020	ANCHOR BLUE	PEI LICENSING INC.	No
TMK 10–00921	10/31/2011	3/10/2018	ANCHOR BLUE	PEI LICENSING, INC.	No
TMK 10–00922	10/31/2011	9/16/2018	ANCHORBLUE	PEI LICENSING, INC.	No
TMK 06–01337	10/31/2011	9/4/2014	ANCHOR BLUE	PEI LICENSING INC	No

CBP IPR RECORDATION — OCTOBER 2011

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 11–01344	10/25/2011	9/27/2021	BODY MOP	FLUFF MONKEY ENTERPRISES, LLC	No
COP 11–00165	10/25/2011	10/25/2031	DONKEY KONG COUNTRY RETURNS	NINTENDO OF AMERICA INC.	No
COP 11–00162	10/25/2011	10/25/2031	NEW PLAY CONTROL! METROID PRIME	NINTENDO OF AMERICA INC.	No
COP 11–00164	10/25/2011	10/25/2031	MARIO KART WII (US COMMERCIAL PACKAGING BOX).	NINTENDO OF AMERICA INC.	No
TMK 11–01332	10/25/2011	10/30/2017	EA WITHIN A CIRCLE	GIORGIO ARMANI S.P.A., MILAN, SWISS BRANCH MENDRISIO	No
TMK 11–01336	10/25/2011	6/24/2017	VAN SON AND WINMILL DESIGN	VAN SON HOLLAND INK CORPORATION OF AMERICA	No
TMK 11–01334	10/25/2011	9/25/2017	ARMANI COLLEZIONI	GIORGIO ARMANI S.P.A., MILAN, SWISS BRANCH MENDRISIO	No
TMK 11–01338	10/25/2011	7/11/2016	EA7	GIORGIO ARMAN I S.P.A., MILAN, SWISS BRANCH MENDRISIO	No
TMK 11–01250	10/12/2011	9/13/2021	S.O.A.R. SYSTEMS	ALEXANDER M PUCKETT	No
TMK 11–01335	10/25/2011	8/23/2021	JAVA POWERED	ORACLE AMERICA, INC.	No
TMK 11–01333	10/25/2011	8/10/2019	SAN SIMEON	SAN ANTONIO WINERY, INC.	No
TMK 11–01343	10/25/2011	3/15/2021	VILLA ALENA	SAN ANTONIO WINERY, INC.	No
TMK 11–01337	10/25/2011	5/13/2017	CONTADINA	DEL MONTE CORPORATION	No
TMK 11–01342	10/25/2011	11/23/2020	LACROSSE	LACROSSE FOOTWEAR, INC.	No

CBP IPR RECORDATION — OCTOBER 2011

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 11–01341	10/25/2011	8/23/2031	PARFUMS DE LAROMA	CR TRADING COMPANY, INC. DBA TOP FRAGRANCES CORPORATION	No
TMK 11–01339	10/25/2011	1/20/2018	GEAR WRENCH AND DESIGN	APEX BRANDS, INC.	No
TMK 02–00435	10/25/2011	10/9/2021	BIOLAGE	L'OREAL USA CREATIVE, INC.	No
TMK 11–01348	10/26/2011	7/5/2021	HANDYCAM	SONY CORPORATION	No
TMK 11–01351	10/26/2011	2/23/2020	W.	SONY CORPORATION	No
TMK 11–01354	10/31/2011	10/2/2017	DESIGN (CRABS)	VIET HUONG FISHSAUCE COMPANY INC.	No
TMK 02–00996	10/25/2011	11/6/2021	B (STYLIZED)	BOSTON RED SOX BASEBALL CLUB LTD	No
TMK 11–01340	10/25/2011	11/25/2019	DEL MONTE	DEL MONTE CORPORATION	No
COP 11–00163	10/25/2011	10/25/2031	REVENT OVEN DISPLAY.	REVENT INTERNATIONAL AB.	No
TMK 11–01317	10/25/2011	11/25/2019	DESIGN (SHIELD SHAPE)	DEL MONTE CORPORATION	No
TMK 11–01320	10/25/2011	10/31/2015	ORCHARD SELECT	DEL MONTE CORPORATION	No
TMK 11–01321	10/25/2011	9/20/2015	ESCORT	ESCORT INC.	No
TMK 11–01322	10/25/2011	7/26/2021	ZOUBABY	ZOUBABY LLC	No
TMK 11–01318	10/25/2011	8/6/2015	PASSPORT	ESCORT INC.	No
TMK 11–01323	10/25/2011	3/2/2020	EDDA	TEITEL BROS., INC.	No
TMK 11–01331	10/25/2011	6/6/2016	MARK NAIMER	LAKHANI ENTERPRISE INC.	No
TMK 11–01325	10/25/2011	10/22/2016	SUNFRESH	DEL MONTE CORPORATION	No

CBP IPR RECORDATION — OCTOBER 2011

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 11–01327	10/25/2011	4/16/2016	S & W	DEL MONTE CORPORATION	No
TMK 11–01319	10/25/2011	2/13/2016	S & W AND DESIGN	DEL MONTE CORPORATION	No
COP 11–00166	10/25/2011	10/25/2031	SPORTS CHECKERS :A NEW CONCEPT IN CHECKERED BOARD GAMES.	JAMES H. PICKETT, JR.	No
COP 11–00155	10/25/2011	10/25/2031	POKEMON BLACK VERSION	NINTENDO OF AMERICA INC.	No
TMK 11–01329	10/25/2011	5/26/2019	NIGHT BULLET 3-DAY SEXUAL STIMULANT	GREEN PLANET, INC.	No
TMK 11–01326	10/25/2011	9/20/2013	SAS (STYLIZED)	SAN ANTONIO SHOE, INC	No
COP 11–00159	10/25/2011	10/25/2031	ETCHED GLASS KNOB SIDE VIEW ET AL.	NIFTY NOB	No
TMK 11–01324	10/25/2011	8/31/2014	ICE AGE	TWENTIETH CENTURY FOX FILM CORPORATION	No
TMK 04–00246	10/25/2011	9/8/2021	GUCCI	GUCCI AMERICA, INC.	No
TMK 04–00247	10/25/2011	9/15/2021	GUCCI	GUCCI AMERICA, INC.	No
COP 11–00158	10/25/2011	10/25/2031	POKEMON WHITE VERSION	NINTENDO OF AMERICA INC.	No
TMK 11–01328	10/25/2011	9/27/2021	ALUMA WALLET	TELEBRANDS CORP.	No
TMK 11–01330	10/25/2011	9/7/2014	ICE AGE	TWENTIETH CENTURY FOX FILM CORPORATION	No
COP 11–00157	10/25/2011	10/25/2031	NEW SUPER MARIO BROS. : WII.	NINTENDO OF AMERICA INC.	No
TMK 11–01303	10/25/2011	9/6/2021	DESIGN (BIRD DESIGN SILHOUETTE)	ABERCROMBIE & FITCH TRADING CO.	No

CBP IPR RECORDATION — OCTOBER 2011

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 11–00153	10/25/2011	10/25/2031	SHED PAL PACKAGING.	TELEBRANDS CORP.	No
COP 11–00161	10/25/2011	10/25/2031	POKEMON BLACK VERSION	NINTENDO OF AMERICA INC.	No
TMK 11–01304	10/25/2011	3/1/2015	GEARWRENCH	APEX BRANDS, INC.	No
TMK 11–01302	10/25/2011	11/30/2019	EXPRESS MAIL AND DESIGN	UNITED STATES POSTAL SERVICE	No
COP 11–00154	10/25/2011	10/25/2031	SANDALS FOR YOUR NECK	SUNIL MOHANANI	No
TMK 11–01307	10/25/2011	2/1/2021	EASYMAX	EPS BIO TECHNOLOGY CORP.	No
COP 11–00160	10/25/2011	10/25/2031	POKEMON WHITE VERSION (US COMMERCIAL PACKAGING)	NINTENDO OF AMERICA INC.	No
TMK 11–01308	10/25/2011	5/24/2021	PIIQ (STYLIZED)	SONY CORPORATION	No
TMK 02–00006	10/25/2011	8/28/2021	PIKACHU	NINTENDO OF AMERICA INC.	No
TMK 11–01305	10/25/2011	5/3/2021	JET STREAM	GOLDSHIELD FIBERGLASS INC.	No
TMK 11–01311	10/25/2011	4/9/2015	3M	3M COMPANY	No
TMK 11–01310	10/25/2011	7/3/2017	SAN ANTONIO	SAN ANTONIO WINERY, INC.	No
TMK 11–01309	10/25/2011	1/15/2018	TRES PINOS	SAN ANTONIO WINERY, INC.	No
TMK 11–01249	10/12/2011	2/19/2018	MADDALENA	SAN ANTONIO WINERY, INC.	No
TMK 11–01248	10/12/2011	8/25/2019	IL DUCA IMPERIALE	SAN ANTONIO WINERY, INC.	No
TMK 07–00165	10/25/2011	11/26/2021	CHROME HEARTS	CHROME HEARTS LLC	No
TMK 11–01349	10/26/2011	2/17/2018	MECHANIX	MECHANIX WEAR INC.	No
TMK 11–01350	10/26/2011	3/7/2020	MECHANIX	MECHANIX WEAR INC.	No

CBP IPR RECORDATION — OCTOBER 2011

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 11–01306	10/25/2011	6/18/2012	DEL MONTE QUALITY AND SHIELD DESIGN	DEL MONTE CORPORATION	No
TMK 11–01315	10/25/2011	8/10/2019	UTC AND DESIGN	DEL MONTE FRESH PRODUCE (CHILE) S.A.	No
TMK 11–01358	10/31/2011	10/11/2021	ELITEKÄSE	ARION INTERNATIONAL INCORPORATED	No
TMK 10–00935	10/31/2011	2/18/2017	ANCHOR BLUE	PEI LICENSING, INC.	No
COP 11–00156	10/25/2011	10/25/2031	CHEFDINI PACKAGING.	TELEBRANDS CORP.	No
TMK 11–01312	10/25/2011	8/5/2017	SKOAL	U.S. SMOKELESS TOBACCO MANUFACTURING COMPANY LLC	No
TMK 11–01313	10/25/2011	4/16/2015	RED SEAL	U.S. SMOKELESS TOBACCO MANUFACTURING COMPANY LLC	No
TMK 11–01314	10/25/2011	6/4/2015	ESCORT	ESCORT INC.	No
TMK 11–01316	10/25/2011	8/5/2017	COPENHAGEN	U.S. SMOKELESS TOBACCO MANUFACTURING COMPANY LLC	No
TMK 11–01282	10/25/2011	6/19/2021	INSURRECTION	Y.Z.Y., INC.	No
TMK 11–01283	10/25/2011	12/12/2019	SPECTRUM	GEORGIA-PACIFIC CONSUMER PRODUCTS LP	No
TMK 11–01285	10/25/2011	8/22/2019	SOLO	ESCORT INC.	No
TMK 11–01286	10/25/2011	10/4/2021	KRILOGY FINANCIAL AND DESIGN	KENT S SKORNIA	No

CBP IPR RECORDATION — OCTOBER 2011

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 11–01289	10/25/2011	5/17/2021	THE TUNEABLES	MUSIC INTELLIGENCE PROJECT, LLC	No
TMK 11–01287	10/25/2011	8/24/2019	COOLMAX	INVISTA NORTH AMERICA S.A R.L.	No
TMK 11–01290	10/25/2011	3/28/2016	BELTRONICS	BELTRONICS USA INC.	No
TMK 11–01288	10/25/2011	12/12/2016	DESIGN	VIET HUONG FISHSAUCE COMPANY INC.	No
TMK 11–01292	10/25/2011	5/30/2016	HUONG VIET	VIET HUONG FISHSAUCE COMPANY INC.	No
TMK 11–01294	10/25/2011	9/10/2012	VIET HUONG (STYLIZED)	VIET HUONG FISHSAUCE COMPANY INC.	No
TMK 11–01293	10/25/2011	6/30/2017	THREE CRABS	VIET HUONG FISHSAUCE COMPANY INC.	No
TMK 11–01295	10/25/2011	4/14/2017	PUP-PERONI	DEL MONTE CORPORATION	No
TMK 11–01291	10/25/2011	5/10/2021	MUSIC INTELLIGENCE PROJECT	MUSIC INTELLIGENCE PROJECT, LLC	No
TMK 11–01296	10/25/2011	9/7/2021	9LIVES	DEL MONTE CORPORATION	No
TMK 11–01297	10/25/2011	8/1/2016	COOLMAX AND DESIGN	INVISTA NORTH AMERICA S.A R.L.	No
TMK 02–00387	10/25/2011	9/4/2021	EXPRESS	EXPRESS, LLC	No
TMK 11–01298	10/25/2011	7/9/2021	DESIGN	VIET HUONG FISHSAUCE COMPANY INC.	No
TMK 11–01301	10/25/2011	5/12/2019	X400	SUREFIRE LLC	No

CBP IPR RECORDATION — OCTOBER 2011

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 11–01299	10/25/2011	8/11/2018	MARILYN MONROE	THE ESTATE OF MARILYN MONROE LLC	No
TMK 11–01262	10/25/2011	2/16/2019	MARILYN MONROE	THE ESTATE OF MARILYN MONROE LLC	No
TMK 11–01263	10/25/2011	12/18/2019	ESCORT	ESCORT INC.	No
TMK 11–01264	10/25/2011	9/27/2015	ESCORT	ESCORT INC.	No
TMK 11–01265	10/25/2011	12/12/2018	JERKY TREATS	DEL MONTE CORPORATION	No
TMK 11–01266	10/25/2011	2/16/2020	MILK-BONE	DEL MONTE CORPORATION	No
TMK 11–01353	10/31/2011	9/19/2015	MECHANIX	MECHANIX WEAR INC.	No
TMK 11–01268	10/25/2011	11/15/2015	PASSPORT	ESCORT INC.	No
TMK 11–01269	10/25/2011	9/27/2015	SOLO	ESCORT INC.	No
TMK 11–01270	10/25/2011	6/28/2018	VECTOR	BELTRONICS USA INC.	No
TMK 11–01271	10/25/2011	1/14/2012	CANINE CARRY OUTS	DEL MONTE CORPORATION	No
TMK 11–01274	10/25/2011	8/16/2015	MARILYN MONROE	THE ESTATE OF MARILYN MONROE LLC	No
TMK 11–01267	10/25/2011	3/7/2016	ROSY	DEL MONTE FRESH PRODUCE (WEST COAST) INC.	No
TMK 11–01273	10/25/2011	9/1/2012	5 CRABS	VIET HUONG FISHSAUCE COMPANY INC.	No

CBP IPR RECORDATION — OCTOBER 2011

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 11–01272	10/25/2011	6/11/2015	FLYING LION	VIET HUONG FISHSAUCE COMPANY INC.	No
TMK 11–01275	10/25/2011	11/24/2012	TWO CRABS	VIET HUONG FISHSAUCE COMPANY INC.	No
TMK 11–01276	10/25/2011	11/21/2016	PHÚ QUÔC AND DESIGN	VIET HUONG FISHSAUCE COMPANY INC.	No
TMK 11–01347	10/26/2011	3/29/2021	NIVEA CREME	BEIERSDORF AG	No
TMK 11–01278	10/25/2011	8/10/2020	GK GLOBAL KERATIN AND DESIGN	GK WORLD HOLDING LLC	No
TMK 11–01300	10/25/2011	5/27/2018	X300	SUREFIRE LLC	No
TMK 11–01280	10/25/2011	1/4/2021	JUVEXIN	GK WORLD HOLDING LLC	No
TMK 11–01346	10/26/2011	3/8/2021	TAPOUT	ABG TAPOUT LLC	No
TMK 11–01281	10/25/2011	4/5/2020	GRAVY TRAIN	DEL MONTE CORPORATION	No
TMK 11–01252	10/25/2011	2/16/2020	KIBBLES 'N BITS	DEL MONTE CORPORATION	No
TMK 11–01253	10/25/2011	9/14/2012	MEATY BONE	DEL MONTE CORPORATION	No
TMK 11–01254	10/25/2011	8/20/2016	MEOW MIX	DEL MONTE CORPORATION	No
TMK 11–01256	10/25/2011	12/7/2014	NATURE'S RECIPE	DEL MONTE CORPORATION	No
TMK 11–01257	10/25/2011	3/17/2019	IIT	ILLINOIS INDUSTRIAL TOOL, INC.	No
TMK 11–01258	10/25/2011	1/15/2015	SNAUSAGES	DEL MONTE CORPORATION	No
TMK 11–01279	10/25/2011	5/12/2018	HERCEPTIN	GENENTECH, INC.	No
TMK 11–01259	10/25/2011	9/3/2013	POUNCE	DEL MONTE CORPORATION	No

CBP IPR RECORDATION — OCTOBER 2011

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 11–01260	10/25/2011	8/10/2020	GK GLOBAL KERATIN AND DESIGN	GK WORLD HOLDING LLC LIMITED LIABILITY COMPANY FLORIDA	No
TMK 11–01261	10/25/2011	4/19/2021	TIBOLLI	GK WORLD HOLDING LLC	No
TMK 11–01255	10/25/2011	9/6/2021	MILO'S KITCHEN AND DESIGN	DEL MONTE CORPORATION	No
TMK 11–01251	10/25/2011	7/9/2015	DESIGN	VIET HUONG FISHSAUCE COMPANY INC.	No
TMK 08–00056	10/25/2011	3/26/2022	BUILD-A-BEAR WORKSHOP	BUILD-A-BEAR RETAIL MANAGEMENT, INC.	No
TMK 11–01345	10/26/2011	7/19/2021	KMD	INNEX, INC.	No
TMK 11–01277	10/25/2011	12/11/2020	ONE CRAB	VIET HUONG FISHSAUCE COMPANY INC.	No
TMK 11–01284	10/25/2011	12/1/2019	JUAHN (STYLIZED)	JUDIETH ANN BRACK	No
TMK 11–01357	10/31/2011	8/2/2015	AVASTIN	GENENTECH, INC.	No
TMK 11–01356	10/31/2011	6/16/2019	SAM'S TAILOR	SAM'S TAILOR (HONG KONG PARTNERSHIP)	No
TMK 11–01355	10/31/2011	5/4/2013	PULMOZYME	GENENTECH, INC.	No
TMK 11–01352	10/31/2011	6/9/2022	SCOPEMETER	FLUKE CORPORATION	No

Total Records: 152
Date as of: 12/7/2011

Dated: November 3, 2011

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

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 11 2011)

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

SUMMARY: Presented herein are the copyrights, trademarks, and trade names recorded with U.S. Customs and Border Protection during the month of November 2011. The last notice was published in the CUSTOMS BULLETIN on October 26, 2011.

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

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

CBP IPR RECORDATION — NOVEMBER 2011

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 04–00151	11/25/2011	10/24/2021	DTS DIGITAL SURROUND	DIGITAL THEATER SYSTEMS, INC.	No
TMK 06–00821	11/25/2011	2/19/2022	DESIGN ONLY (RAM HEAD)	ST. LOUIS RAMS PARTNERSHIP	No
TMK 07–00646	11/25/2011	6/11/2021	BRIGHAM YOUNG UNIVERSITY	BRIGHAM YOUNG UNIVERSITY	No
TMK 11–01432	11/25/2011	4/14/2018	SANUK AND DESIGN	DECKERS OUTDOOR CORPORATION	No
TMK 11–01433	11/25/2011	10/1/2021	SMARTRAY	PONICA INDUSTRIES CORPORATION	No
TMK 04–01104	11/25/2011	10/9/2021	B AND DESIGN	BALTIMORE RAVENS LIMITED	No
COP 11–00191	11/25/2011	11/25/2031	SNOW HOUSE: ITEM NO. 7166SN.	UNIPAK DESIGNS	No
COP 11–00197	11/25/2011	11/25/2031	OCEAN HOUSE: ITEM NO. 71660C.	UNIPAK DESIGNS	No
COP 11–00194	11/25/2011	11/25/2031	HORSE HOUSE: ITEM NO. 7166HO.	UNIPAK DESIGNS	No
COP 11–00193	11/25/2011	11/25/2031	MONKEY HOUSE ITEM#7166MK.	UNIPAK DESIGNS	No
COP 11–00196	11/25/2011	11/25/2031	SIMONE: A FICTION NOVEL	GENEVA PERRY, (MATTIE ROSE, PSEUD.)	No
TMK 11–01446	11/25/2011	8/22/2015	DESIGN	KYSER MUSICAL PRODUCTS, INC.	No
COP 11–00195	11/25/2011	11/25/2031	BNB NATURAL CAMO	BNB ENTERPRISES, INC.	No
TMK 11–01444	11/25/2011	9/14/2020	TAPOUT	ABG TAPOUT LLC	No
TMK 11–01434	11/25/2011	7/14/2019	TAPOUT	ABG TAPOUT LLC	No
TMK 11–01443	11/25/2011	10/22/2018	DUNHILL	ALFRED DUNHILL LIMITED	No
TMK 11–01371	11/7/2011	6/28/2021	CULINARY MASTERS	RUSSELL MCCALL'S, INC.	No
TMK 11–01359	11/7/2011	10/27/2018	XELODA	HOFFMANN-LA ROCHE INC.	No
TMK 11–01370	11/7/2011	6/7/2021	AQUAMAX	OASE GMBH	No

CBP IPR RECORDATION — NOVEMBER 2011

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 11–01374	11/7/2011	7/26/2021	PONDOVAC	OASE GMBH	No
TMK 11–01449	11/25/2011	10/4/2021	GK GLOBAL KERATIN AND DESIGN	GK WORLD HOLDING LLC LIMITED LIABILITY COMPANY FLORIDA	No
TMK 11–01451	11/25/2011	10/4/2021	NINTENDO ZONE	NINTENDO OF AMERICA INC.	No
TMK 11–01448	11/25/2011	3/26/2021	GMC TRUCK	GENERAL MOTORS LLC	No
TMK 11–01452	11/25/2011	4/12/2021	TIMELESS DESIGNS	CDC DISTRIBUTORS, INC.	No
TMK 11–01454	11/25/2011	9/7/2020	OZERI	COMMONPATH, LLC	No
TMK 11–01453	11/25/2011	7/19/2021	KANDLE BY OZERI	COMMONPATH, LLC	No
TMK 11–01373	11/7/2011	6/28/2021	LUNAQUA	OASE GMBH	No
TMK 11–01430	11/25/2011	1/4/2021	PRONTO!	WILLIAM HUCKESTEIN	No
TMK 11–01431	11/25/2011	10/25/2021	KENSINGTON BY CLAYTON MARCUS	CLAYTON-MARCUS COMPANY, INC.	No
TMK 11–01447	11/25/2011	9/7/2019	SILVER STAR	ABG SSIP LLC	No
TMK 11–01445	11/25/2011	8/18/2012	PONTIAC	GENERAL MOTORS LLC	No
TMK 11–01436	11/25/2011	2/4/2017	GM GOODWRENCH AND DESIGN	GENERAL MOTORS LLC	No
COP 11–00192	11/25/2011	11/25/2031	SANRIO 2010 CHARACTER GUIDE.	SANRIO COMPANY LTD.	No
TMK 11–01372	11/7/2011	7/4/2016	STARBUZZ	STARBUZZ TOBACCO, INC.	No
TMK 11–01442	11/25/2011	1/25/2021	BLOOD TRAIL CAMO AND DESIGN	ARDISAM, INC.	No
TMK 11–01438	11/25/2011	5/31/2021	CONVOY	HEINRICH J. KESSEBÖHMER KG	No
TMK 11–01440	11/25/2011	9/27/2018	SALVATORE FERRAGAMO	SALVATORE FERRAGAMO S.P.A.	No
TMK 11–01360	11/7/2011	12/28/2021	EIN GEDI AND DESIGN	EIN GEDI COSMETICS, LTD	No

CBP IPR RECORDATION — NOVEMBER 2011

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 11–01439	11/25/2011	8/7/2020	SALVATORE FERRAGAMO	SALVATORE FERRAGAMO S.P.A.	No
TMK 11–01361	11/7/2011	10/25/2021	JUDD WADDELL	JUDD WADDELL LLC	No
TMK 11–01437	11/25/2011	11/9/2020	DESIGN	SALVATORE FERRAGAMO S.P.A.	No
TMK 11–01441	11/25/2011	7/12/2015	DESIGN	SALVATORE FERRAGAMO S.P.A.	No
TMK 07–00594	11/7/2011	5/12/2017	DESIGN ONLY	OWENS CORNING INTELLECTUAL CAPITAL, LLC	No
TMK 11–01362	11/7/2011	8/16/2021	AIR SWIMMERS	WILLIAM MARK CORPORATION	No
TMK 11–01369	11/7/2011	6/14/2021	E/T LIGHT	SOUTHWEST SYNERGISTIC SOLUTIONS, LLC	No
TMK 11–01364	11/7/2011	10/11/2022	THYVENT	THYBAR CORPORATION	No
COP 11–00168	11/7/2011	11/7/2031	ANGRY BIRDS -BLACK BIRD, BLUE BIRD, WHITE BIRD YELLOW BIRD.	ROVIO MOBILE OY	No
TMK 11–01419	11/25/2011	9/26/2016		GERARD E. ROBBINS	Yes
COP 11–00190	11/25/2011	11/25/2031	ANGRY BIRDS -BIG RED BIRD.	ROVIO MOBILE OY.	No
TMK 11–01368	11/7/2011	10/9/2017	THE ORIGINAL SEATBELTBAG	HARVEYS INDUSTRIES, INC	No
TMK 11–01363	11/7/2011	10/10/2021	THE LACELOCKER	STASH SPORTING GOODS, INC.	No
TMK 11–01367	11/7/2011	11/1/2021	BRITTO	BRITTO CENTRAL, INC.	No
COP 11–00182	11/25/2011	11/25/2031	SUN WEAR PACKAGING DESIGN V.O1.	SUNWEAR FASHION, LLC,	No
TMK 02–00702	11/25/2011	7/17/2021	CUTLER-HAMMER	EATON CORPORATION	No
TMK 11–01366	11/7/2011	7/27/2020	ROMERO BRITTO	BRITTO CENTRAL, INC.	No

CBP IPR RECORDATION — NOVEMBER 2011

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 11–00183	11/25/2011	11/25/2031	STYLIZED CLAW WITH JAGGED EDGES (ORIGINAL VERSION)	HANSEN BEVERAGE COMPANY	No
TMK 11–01365	11/7/2011	6/6/2020	PEGASYS	HOFFMANN-LA ROCHE INC.	No
TMK 11–01414	11/25/2011	4/25/2021	RIVERS EDGE ARDISAM AND DESIGN	ARDISAM, INC.	No
TMK 11–01426	11/25/2011	10/25/2021	TT AND DESIGN	RIVER LIGHT V	No
TMK 11–01415	11/25/2011	11/3/2019	TAPOUT	ABG TAPOUT LLC	No
TMK 11–01418	11/25/2011	1/30/2018	DUNHILL	ALFRED DUNHILL LIMITED	No
TMK 11–01417	11/25/2011	4/23/2012	PONTIAC	GENERAL MOTORS LLC	No
TMK 11–01416	11/25/2011	5/12/2012	PONTIAC EMBLEM	GENERAL MOTORS LLC	No
TMK 11–01422	11/25/2011	1/30/2019	THERM-A-REST	CASCADE DESIGNS, INC.	No
COP 11–00187	11/25/2011	11/25/2031	TREE HOUSE: ITEM NO. 7166TR.	UNIPAK DESIGNS	No
TMK 11–01429	11/25/2011	1/17/2016	MSR	CASCADE DESIGNS, INC.	No
TMK 11–01427	11/25/2011	2/4/2013	MSR AND DESIGN	CASCADE DESIGNS, INC.	No
TMK 11–01428	11/25/2011	11/13/2014	GOODWRENCH	GENERAL MOTORS LLC	No
TMK 11–01425	11/25/2011	9/24/2012	PONTIAC EMBLEM	GENERAL MOTORS LLC	No
TMK 11–01423	11/25/2011	7/10/2021	STERILUX	MEISSNER FILTRATION PRODUCTS, INC.	No
TMK 11–01424	11/25/2011	11/17/2016	SKULLCANDY	SKULLCANDY, INC.	No
COP 11–00186	11/25/2011	11/25/2031	ALLIGATOR OPEN TOP ET AL.	CJ PRODUCTS, LLC	No
COP 11–00188	11/25/2011	11/25/2031	GIRAFFE OPEN TOP ET AL.	CJ PRODUCTS, LLC.	No

CBP IPR RECORDATION — NOVEMBER 2011

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 11–00189	11/25/2011	11/25/2031	I-INSECT COCOON TOY	INNOVATION FIRST, INC.	No
TMK 11–01450	11/25/2011	6/7/2021	NATIVE SHOES	NATIVE SHOES LIMITED	No
TMK 11–01397	11/25/2011	5/10/2021	ROK	SHOEZ, INC	No
TMK 11–01398	11/25/2011	10/15/2012	PONTIAC EMBLEM	GENERAL MOTORS LLC	No
TMK 11–01399	11/25/2011	12/22/2018	PONTIAC EMBLEM	GENERAL MOTORS LLC	No
TMK 11–01400	11/25/2011	2/4/2013	PONTIAC	GENERAL MOTORS LLC	No
TMK 11–01455	11/25/2011	10/22/2021	CHEVROLET EMBLEM	GENERAL MOTORS LLC	No
COP 11–00179	11/25/2011	11/25/2031	LUX T LINING.	TORY BURCH LLC.	No
COP 11–00180	11/25/2011	11/25/2031	3T.	TORY BURCH LLC	No
TMK 11–01401	11/25/2011	2/4/2013	PONTIAC EMBLEM	GENERAL MOTORS LLC	No
TMK 11–01403	11/25/2011	5/30/2020	PLATYPUS	CASCADE DESIGNS, INC.	No
TMK 11–01404	11/25/2011	9/28/2013	SEALLINE	CASCADE DESIGNS, INC.	No
TMK 11–01405	11/25/2011	7/12/2015	FAST & LIGHT	CASCADE DESIGNS, INC.	No
TMK 11–01435	11/25/2011	5/24/2015	HUMMER	GENERAL MOTORS LLC	No
TMK 11–01406	11/25/2011	6/5/2020	THERM A REST AND DESIGN	CASCADE DESIGNS, INC.	No
TMK 11–01407	11/25/2011	1/30/2019	THERM-A-REST	CASCADE DESIGNS, INC.	No
TMK 11–01408	11/25/2011	10/12/2013	DESIGN	GENERAL MOTORS LLC	No
TMK 11–01409	11/25/2011	7/28/2014	DESIGN	GENERAL MOTORS LLC	No
COP 11–00181	11/25/2011	11/25/2031	I-INSECT TOY.	INNOVATION FIRST, INC.,	No
TMK 11–01411	11/25/2011	5/11/2013	SATURN	GENERAL MOTORS LLC	No

CBP IPR RECORDATION — NOVEMBER 2011

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 11–01402	11/25/2011	3/19/2012	PONTIAC EMBLEM	GENERAL MOTORS LLC	No
TMK 11–01412	11/25/2011	4/25/2016	SUNRNR	SUNRNR OF VIRGINIA, INC	No
TMK 11–01396	11/25/2011	6/23/2021	GG (STYLIZED)	GUCCI AMERICA, INC.	No
TMK 11–01410	11/25/2011	3/20/2021	DESIGN	GENERAL MOTORS LLC	No
TMK 11–01413	11/25/2011	11/4/2013	CADILLAC EMBLEM	GENERAL MOTORS LLC	No
TMK 11–01386	11/25/2011	3/12/2012	CADILLAC EMBLEM	GENERAL MOTORS LLC	No
COP 11–00171	11/25/2011	11/25/2031	LAMB PLUSH FOLDING STUFFED ANIMAL	CJ PRODUCTS, LLC.	No
COP 11–00172	11/25/2011	11/25/2031	DUCK PLUSH FOLDING STUFFED ANIMAL	CJ PRODUCTS, LLC	No
COP 11–00173	11/25/2011	11/25/2031	ELEPHANT PLUSH FOLDING STUFFED ANIMAL.	CJ PRODUCTS, LLC.	No
COP 11–00185	11/25/2011	11/25/2031	PIG PLUSH FOLDING STUFFED ANIMAL.	CJ PRODUCTS, LLC. ADDRESS: 4040 CALLE PLATINO, STE. 123, OCEANSIDE, CA, 92056, UNITED STATES.	No
TMK 11–01387	11/25/2011	11/1/2021	DESIGN	HONG LI	No
TMK 11–01388	11/25/2011	2/12/2018	SKULLCANDY	SKULLCANDY, INC.	No
TMK 11–01389	11/25/2011	9/11/2021	VENUS	THE GILLETIE COMPANY	No
TMK 11–01390	11/25/2011	6/8/2020	DESIGN	THE TORO COMPANY	No
TMK 11–01391	11/25/2011	11/14/2021	KITCHEN BEST	MONTEREY MUSHROOMS, INC	No

CBP IPR RECORDATION — NOVEMBER 2011

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 11–01392	11/25/2011	11/14/2016	CAPTIVEWORKS AND DESIGN	CAPTIVEWORKS INC.	No
TMK 11–01385	11/25/2011	8/12/2013	CADILLAC EMBLEM	GENERAL MOTORS LLC	No
TMK 11–01393	11/25/2011	10/25/2021	HEATHTECNA	HEATH TECNA INC.(DELAWARE CORPORATION)	No
TMK 11–01394	11/25/2011	11/26/2012	DESIGN	GENERAL MOTORS LLC	No
COP 11–00174	11/25/2011	11/25/2031	FLYING FISH.	WILLIAM MARK CORPORATION.	No
COP 11–00175	11/25/2011	11/25/2031	FLYING SHARK.	WILLIAM MARK CORPORATION	No
COP 11–00176	11/25/2011	11/25/2031	LEOPARD FRONT ET AL.	CJ PRODUCTS, LLC.	No
COP 11–00177	11/25/2011	11/25/2031	BEAR OPEN BOTTOM ET AL.	CJ PRODUCTS, LLC.	No
COP 11–00178	11/25/2011	11/25/2031	CAT PLUSH FOLDING STUFFED ANIMAL.	CJ PRODUCTS, LLC..	No
TMK 11–01395	11/25/2011	8/20/2012	CADILLAC EMBLEM	GENERAL MOTORS LLC	No
TMK 11–01379	11/25/2011	2/12/2018	DESIGN	SKULLCANDY, INC.	No
TMK 11–01376	11/25/2011	6/15/2013	CAT'S EYE	CLEARSNAP HOLDING, INC.	No
TMK 11–01377	11/25/2011	12/31/2016	PETAL POINT	CLEARSNAP HOLDING INC.	No
TMK 11–01378	11/25/2011	6/11/2015	DESIGN	THE TORO COMPANY	No
TMK 11–01380	11/25/2011	11/16/2021	ATRA	THE GILLETTE COMPANY	No
TMK 11–01382	11/25/2011	5/5/2021	DESIGN (RECTANGULAR BATTERY DEVICE COPPER & BLACK)	THE GILLETTE COMPANY	No
TMK 11–01381	11/25/2011	10/20/2021	SENSOR	THE GILLETTE COMPANY	No

CBP IPR RECORDATION — NOVEMBER 2011

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 11–01383	11/25/2011	5/8/2021	CREST	THE PROCTER & GAMBLE COMPANY	No
COP 11–00169	11/25/2011	11/25/2031	COW PLUSH FOLDING STUFFED ANIMAL.	CJ PRODUCTS, LLC.	No
TMK 11–01384	11/25/2011	10/25/2021	SOIGNE K	SOIGNE K, LLC	No
COP 11–00170	11/25/2011	11/25/2031	HORSE PLUSH FOLDING STUFFED ANIMAL	CJ PRODUCTS, LLC.	No
COP 11–00184	11/25/2011	11/25/2031	LION PLUSH FOLDING STUFFED ANIMAL.	CJ PRODUCTS, LLC. ADDRESS: 4040 CALLE PLATINO, STE. 123, OCEANSIDE, CA, 92056, UNITED STATES.	No
TMK 11–01375	11/25/2011	12/19/2020	DUREX & DESIGN	LRC PRODUCTS LIMITED	No

Total Records: 131
Date as of: 12/1/2011

Dated: December 8, 2011

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

AGENCY INFORMATION COLLECTION ACTIVITIES:

Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate and Release

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

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0013.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate and Release (CBP Form 7523). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 62086) on October 6, 2011, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before January 9, 2012.

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

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected

Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate of Release.

OMB Number: 1651–0013.

Form Number: CBP Form 7523.

Abstract: CBP Form 7523, *Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate of Release,* is used by carriers and importers as a manifest for the entry of merchandise free of duty under certain conditions. CBP Form 7523 is also used by carriers to show that articles being imported are to be released to the importer or consignee, and as an inward foreign manifest for vehicles of less than 5 tons arriving from Canada or Mexico with merchandise conditionally free of duty. CBP uses this form to authorize the entry of such merchandise. CBP Form 7523 is authorized by 19 USC 1484 and provided for by 19 CFR 123.4 and 19 CFR 143.23. This form is accessible at *http://forms.cbp.gov/pdf/CBP_Form_7523.pdf.*

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 4,950.

Estimated Number of Responses per Respondent: 20.

Estimated Total Annual Responses: 99,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 8,247.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177, at (202) 325–0265.

Dated: December 5, 2011

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

[Published in the Federal Register, December 9, 2011 (76 FR 76983)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

NAFTA Regulations and Certificate of Origin

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

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

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the NAFTA Regulations and Certificate of Origin. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before February 7, 2012, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington DC 20229–1177, at (202) 325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should

address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for 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: NAFTA Regulations and Certificate of Origin.

OMB Number: 1651–0098.

Form Number: CBP Forms 434, 446, and 447.

Abstract: On December 17, 1992, the U.S., Mexico and Canada entered into an agreement, "The North American Free Trade Agreement" (NAFTA). The provisions of NAFTA were adopted by the U.S. with the enactment of the North American Free Trade Agreement Implementation Act of 1993 (Pub. L. 103–182).

CBP Form 434, *North American Free Trade Certificate of Origin*, is used to certify that a good being exported either from the United States into Canada or Mexico or from Canada or Mexico into the United States qualifies as an originating good for purposes of preferential tariff treatment under the NAFTA. This form is completed by exporters and/or producers and furnished to CBP upon request. CBP Form 434 is provided for by 19 CFR 181.11 and is accessible at: *http://forms.cbp.gov/pdf/CBP_Form_434.pdf.*

The CBP Form 446, *NAFTA Verification of Origin Questionnaire*, is a questionnaire that CBP personnel use to gather sufficient information from exporters and/or producers to determine whether goods imported into the United States qualify as originating goods for the purposes of preferential tariff treatment under NAFTA. CBP Form 446 is provided for by 19 CFR 181.72 and is accessible at: *http://forms.cbp.gov/pdf/CBP_Form_446.pdf.*

CBP is also seeking approval of Form 447, *North American Free Trade Agreement Motor Vehicle Averaging Election*, in order to gather information required by 19 CFR part 181 Appendix, Section 11, (2) "Information Required When Producer Chooses to Average for Motor

Vehicles". This form is provided to CBP when a manufacturer chooses to average motor vehicles for the purpose of obtaining NAFTA preference.

Current Actions: This submission is being made to extend the expiration date for CBP Forms 434 and 446, and to add Form 447.

Type of Review: Revision.

Affected Public: Businesses.

Form 434, NAFTA Certificate of Origin:

Estimated Number of Respondents: 40,000.

Estimated Number of Responses per Respondent: 3.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 30,000.

Form 446, NAFTA Questionnaire:

Estimated Number of Respondents: 400.

Estimated Number of Responses per Respondent: 1.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 300.

Form 447, NAFTA Motor Vehicle Averaging Election:

Estimated Number of Respondents: 11.

Estimated Number of Responses per Respondent: 1.28.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 14.

Dated: December 6, 2011.

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

[Published in the Federal Register, December 9, 2011 (76 FR 76983)]