U.S. Customs and Border Protection

GENERAL NOTICE

19 CFR PART 177

NOTICE OF REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF AN ARTICLE OF INSULATING MINERAL MATERIALS

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

ACTION: Notice of revocation of a ruling letter and treatment concerning the tariff classification of an article of insulating mineral materials.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking a ruling letter relating to the tariff classification of an article of insulating mineral materials under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on August 1, 2012, in the Customs Bulletin, Vol. 46, No. 32. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 29, 2013.

FOR FURTHER INFORMATION CONTACT: Dwayne S. Rawlings, Tariff Classification and Marking Branch, (202) 325–0092.

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, a notice was published in the Customs Bulletin, Vol. 46, No. 32, on August 1, 2012, proposing to revoke New York Ruling Letter (NY) N125656, dated December 13, 2010, pertaining to the tariff classification of an article of insulating materials. No comments were received in response to the notice. As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the rulings identified above. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

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

issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this action.

In NY N125656, CBP classified an article of insulating mineral materials in heading 6806, HTSUS, specifically subheading 6806.10.10, HTSUS, which provides for slag wool, rock wool and similar mineral wools (including mixtures thereof) in bulk, sheets or wool. It is now CBP's position that the article, while remaining in heading 6806, HTSUS, is properly classified in subheading 6806.90.00, HTSUS, which provides for other articles of insulating mineral materials.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N125656 and any other ruling not specifically identified, in order to reflect the proper analysis contained in Headquarters Ruling (HQ) H146056 (Attachment). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: January 16, 2013

IEVA K. O'ROURKE
For

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H146056
January 2, 2013
CLA-2 OT:RR:CTF:TCM H146056 DSR
CATEGORY: Classification
TARIFF NO.: 6806.90.00

MS. CARMEN MORROW
ROLLS-ROYCE NORTH AMERICA
2001 S. TIBBS AVENUE: SPEED CODE S36
INDIANAPOLIS, IN 46241

RE: Revocation of NY N125656, dated December 13, 2010; subheading 6806.90.00, HTSUS; tariff classification of an article of insulating mineral materials

DEAR MS. MORROW:

This letter is in reference to New York Ruling Letter (NY) N125656, issued to you on December 13, 2010, regarding the classification under the 2010 Harmonized Tariff Schedule of the United States (HTSUS) of an article of insulating mineral materials used in a gas turbine engine to protect the rear turbine support hub from excessive heat produced by the turbine. The ruling classified the article under subheading 6806.10.00, HTSUS, which provides for "Slag wool, rock wool and similar mineral wools (including intermixtures thereof), in bulk, sheets or rolls."

We have reviewed the tariff classification of the article and have determined that the cited ruling is in error. Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, a notice was published in the Customs Bulletin, Vol. 46, No. 32, on August 1, 2012, proposing to revoke New York Ruling Letter (NY) N125656, dated December 13, 2010, pertaining to the tariff classification of an article of insulating materials. No comments were received in response to the notice. Therefore, NY N125656 is revoked for the reasons set forth in this ruling.

FACTS:

In NY N125656, we stated that the product identified as part number 23059513 and described as a "thermal insulation blanket" consists of "ceramic fiber (mineral wool) pads encapsulated in one-inch woven textile squares covered with an outer cladding of stainless steel." We based the above upon statements by the importer, and upon the following findings in CBP Laboratory Report #15225, dated December 3, 2010:

> The sample consists of three layers of white padding enclosed in stainless steel foil 0.003 mm thick. The unit measures at 24.6 cm in outside diameter x 23.1 cm in inside diameter x 5.0 cm long.
>
> … The white padding is composed predominantly of an aluminum silicate (mineral fibers), non-woven glass fibers, and a smaller amount of titanium oxide and other oxides.

The importer states that the material composition of the white padding (by weight percentage) is 35–55% aluminum oxide, 35–55% silica, 0–18% titanium oxide, and less than 1% of other material.

ISSUE:

Whether the article in question is classified under (1) subheading 6806.10.00, HTSUS, as a mineral wool in bulk, sheets, or rolls; (2) subheading 6806.90.00, HTSUS, as an other form of mineral wool; (3) heading 7019, HTSUS, as a woven article of glass fibers; or (4) heading 7326, HTSUS, as an other article of iron or steel.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's 2 through 6 may then be applied in order. In addition, in interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System 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 provisions under consideration in this case are as follows:

6806	Slag wool, rock wool and similar mineral wools; exfoliated vermiculite, expanded clays, foamed slag and similar expanded mineral materials; mixtures and articles of heat-insulating, sound-insulating or sound-absorbing mineral materials, other than those of heading 6811 or 6812, or of chapter 69:
6806.10.00	Slag wool, rock wool and similar mineral wools (including intermixtures thereof), in bulk, sheets or rolls.
	* * *
6806.90.00	Other.
* * *	
7019	Glass fibers (including glass wool) and articles thereof (for example, yarn, woven fabrics).
* * *	
7326	Other articles of iron or steel.
* * * *	

EN 73.26 states that heading 7326, HTSUS, covers other articles of iron or steel that are:

> … obtained by forging or punching, by cutting or stamping or by other processes such as folding, assembling, welding, turning, milling or perforating other than articles included in the preceding headings of Chapter 73, HTS, or covered by Note 1 to Section XV or included in Chapter 82 or 83 or more specifically covered elsewhere in the Nomenclature.

Although the article is partially composed of a thin layer of stainless steel foil cladding, the complete article is fully described by a heading other than heading 7326, HTSUS, as explained below.

Heading 6806 covers, in relevant part, articles of heat-insulating mineral materials, other than those of heading 6811, HTSUS, or heading 6812, HTSUS, or of Chapter 69, HTS. The EN to heading 6806 states that the heading

covers, in relevant part, articles (usually of low density) made from heat insulating products or mixtures (e.g., blocks, sheets, bricks, tiles, tubes, cylinder shells, cords, pads). Such heat-insulating products or mixtures may be composed of a class of "alumino-silicates" known as "ceramic fibers," which are formed by "fusing a blend of alumina and silica, in varying proportions, sometimes with the addition of small amounts of other oxides such as zirconia, chromia or boric oxide, and by blowing or extruding the melt into a mass of fibers." *Ibid*.

Heading 7019, HTSUS, includes glass fibers themselves, as well as glass fibers (including glass wool as defined in Note 4 to Chapter 70, HTS) made up in various forms, including those glass fiber articles from other headings by reason of their nature. Furthermore, such articles of glass fibers of heading 7019, HTSUS, may be in the forms of thin sheets (voiles), mats, boards, and similar nonwoven products, among others. *See* EN 70.19. General Note 4 to Chapter 70, HTS, states the following:

> For the purposes of heading 7019, the expression "glass wool" means:
>
> (a) Mineral wools with a silica (SiO2) content not less than 60 percent by weight;
>
> (b) Mineral wools with a silica (SiO2) content less than 60 percent but with an alkaline oxide (K2O or Na2O) content exceeding 5 percent by weight or a boric oxide (B2O3) content exceeding 2 percent by weight.
>
> *Mineral wools which do not comply with the above specifications fall in heading 6806.*

(Emphasis added). Laboratory analysis of the article reveals that the mineral insulating fibers (mineral wool) predominate in the article, and the mineral insulating fibers are indispensable to the primary use and purpose of the article, which is to protect a rear turbine support hub from excessive heat produced by the turbine. According to the importer, the mineral insulating fibers contain 35–55% silica, with an alkaline oxide content not exceeding 5% by weight. Furthermore, the boric oxide content of the fibers does not exceed 2% by weight. Therefore, the article is not composed of glass wool, per General Note 4 to Chapter 70, HTS, and is instead classifiable in heading 6806, HTSUS.

Our inquiry continues with an analysis of which subheading within 6806, HTSUS, applies to the article. Of the relevant subheadings, subheading 6086.10.00, HTSUS, requires that the mineral wool be imported in bulk, sheets, or rolls. The instant article measures at 24.6 cm in outside diameter x 23.1 cm in inside diameter x 5.0 cm long. Upon examination, the article is in the shape of a ring with a large hole in its middle. A sheet is a broad, flat, continuous surface or expanse. *The American Heritage Dictionary of the English Language*, 4th Ed. (2009). Whereas a ring is a circular object, form, line, or arrangement with a vacant circular center. *Ibid.* As such, the article cannot be described as a sheet.

Thus, it is now the position of CBP that the proper subheading for the article is 6806.90.00, HTSUS, which provides for other forms of mineral wools.

HOLDING:

By application of GRI 1 and 6, the subject article is classifiable under heading 6806, HTSUS. Specifically, it is classifiable under subheading 6806.90.00, HTSUS, which provides for "Slag wool, rock wool and similar mineral wools …: Other." The column one, general rate of duty is "Free." Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at *www.usitc.gov*.

EFFECT ON OTHER RULINGS:

NY N125656, dated December 13, 2010, is hereby revoked.

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

Sincerely,

IEVA K. O'ROURKE
For

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF ULTRALUBE D-806

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

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of Ultralube D-806.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking one ruling letter relating to the tariff classification of Ultralube D-806 under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 46, No. 32, on August 1, 2012. One comment was received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 29, 2013.

FOR FURTHER INFORMATION CONTACT: Aaron Marx, Tariff Classification and Marking Branch: (202) 325–0195.

SUPPLEMENTARY INFORMATION:

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

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP is revoking one ruling letter pertaining to the tariff classification of Ultralube D-806. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) N063739, dated June 17, 2009, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY N063739, CBP determined that Ultralube D-806 was classified in the heading 3901, HTSUS, specifically 3901.10.50, HTSUS, which provides for: "Polymers of ethylene, in primary forms: Polyethylene having a specific gravity of less than 0.94: Other".

It is now CBP's position that this product is properly classified in heading 3901, HTSUS, specifically 3901.20.10, HTSUS, which provides for "Polymers of ethylene, in primary forms: Polyethylene having a specific gravity of 0.94 or more: Having a relative viscosity of 1.44 or more".

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N063739 and revoking or modifying any other ruling not specifically identified, in order to reflect the proper classification of the subject Ultralube D-806 according to the analysis contained in proposed Headquarters Ruling Letters (HQ) H080820 (Attachment). Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: January 16, 2013

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

Attachment

HQ H080820
January 11, 2013
CLA–2 OT:RR:CTF:TCM H080820 AMM
CATEGORY: Classification
TARIFF NO.: 3901.20.10

MR. ALAN KALMIKOFF, PRESIDENT
KEIM-ADDITEC SURFACE, USA, LLC
1200 CENTRAL AVE., SUITE 306
WILMETTE, IL 60091

RE: Revocation of New York Ruling Letter N063739; Tariff Classification of Ultralube D-806

DEAR MR. KALMIKOFF,

This is in reference to New York Ruling Letter (NY) N063739, dated June 17, 2009, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of the product identified as "Ultralube D-806." In that ruling, U.S. Customs and Border Protection (CBP) classified the Ultralube D-806 under heading 3901, HTSUS, which provides for "Polymers of ethylene, in primary forms". We have reviewed NY N063739 and found it to be incorrect. For the reasons set forth below, we are revoking that ruling.

Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of treatment relating to the tariff classification of Ultralube D-806 was published on August 1, 2012, in the Customs Bulletin, Volume 46, Number 32. Comments from one interested party were received on this proposal. The commenter disagreed with the proposed classification of the instant Ultralube D-806. A discussion of the comments and CBP's reasoning are found in the "Law and Analysis" section below.

FACTS:

In NY N063739, CBP described the instant merchandise as linear low density polyethylene, consisting of a mixture of "50% linear low density Polyethylene, 40% Water, 6% Oxidized Polyethylene, 4% Ethoxylated alcohols." CBP further described it as "an aqueous wax additive in which linear low density polyethylene particles of an average particle size of about 8µm are dispersed in water. The product will be incorporated into aqueous coatings such as water based printing inks to improve the surface qualities of the coating, ink and lacquers." CBP classified this product under heading 3901, HTSUS, which provides for "Polymers of ethylene, in primary forms".

In your submission, dated July 10, 2009, you requested that CBP reconsider NY N063739. In this submission, you stated that "Ultralube D-806 is currently used as a polish, straight out of the container, by Chinese leather manufacturers who use the material for the Bianchini effect of toning (a whitening effect) the look of the leather and for soft feel properties." You also included a Material Safety Data Sheet (MSDS) stating that the density of Ultralube D-806 is 0.96 g/cm ^{3} at 22°C. According to your submission dated April 3, 2012, the viscosity of Ultralube D-806 is between 200 and 400 mPa*s at 20°C. You argue that the instant merchandise is properly classified under heading 2712, HTSUS, which provides in pertinent part for "[O]ther mineral

waxes …", or under heading 3405, HTSUS, which provides in pertinent part for "Polishes and creams …". You provided two samples of the instant merchandise for review.

CBP Laboratory Report No. NY20091075, dated October 2, 2009, states that "Ultralube D-806 [is] a milky white liquid, [and] is an aqueous preparation of high density polyethylene wax."

ISSUE:

What is the proper classification of Ultralube D-806 under the 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 GRI may then be applied.

The 2012 HTSUS provisions at issue are as follows:

2712	Petroleum jelly; paraffin wax, microcrystalline petroleum wax, slack wax, ozokerite, lignite wax, peat wax, other mineral waxes and similar products obtained by synthesis or by other processes, whether or not colored:
2712.90	Other:
2712.90.20	Other
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3404	Artificial waxes and prepared waxes:
3404.90	Other:
3404.90.51	Other
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3405	Polishes and creams, for footwear, furniture, floors, coachwork, glass or metal, scouring pastes and powders and similar preparations (whether or not in the form of paper, wadding, felt, nonwovens, cellular plastics or cellular rubber, impregnated, coated or covered with such preparations), excluding waxes of heading 3404:
3405.90.00	Other
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3901	Polymers of ethylene, in primary forms:
3901.10	Polyethylene having a specific gravity of less than 0.94:
3901.10.50	Other
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3901.20	Polyethylene having a specific gravity of 0.94 or more:
3901.20.10	Having a relative viscosity of 1.44 or more
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3901.20.50	Other

Note 5 to Chapter 34, HTSUS, states, in pertinent part:

In heading 3404, subject to the exclusions provided below, the expression "artificial waxes and prepared waxes" applies only to:

(a) Chemically produced organic products of a waxy character, whether or not water-soluble;

* * *

The heading does not apply to:

* * *

(c) Mineral waxes or similar products of heading 2712, whether or not intermixed or merely colored; or

(d) Waxes mixed with, dispersed in or dissolved in a liquid medium (headings 3405, 3809, etc.).

Note 1 to Chapter 39, HTSUS, states, in pertinent part:

Throughout the tariff schedule the expression "plastics" means those materials of headings 3901 to 3914 which are or have been capable, either at the moment of polymerization or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticizer) by molding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence.

* * *

Note 2(b) to Chapter 39, HTSUS, states, in pertinent part: "This chapter does not cover: … (b) Waxes of heading 2712 or 3404; …".

Note 6(a) to Chapter 39, HTSUS, states, in pertinent part: "In headings 3901 to 3914, the expression 'primary forms' applies only to the following forms:

(a) Liquids and pastes, including dispersions (emulsions and suspensions) and solutions[.]"

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 27.12 states, in pertinent part:

The heading also includes products similar to those referred to in the heading and obtained by synthesis or by any other process (e.g., synthetic paraffin wax and synthetic microcrystalline wax). However, the heading does not include high polymer waxes such as polyethylene wax. These fall in heading 34.04.

EN 34.04 states, in pertinent part:

This heading covers artificial waxes (sometimes known in industry as "synthetic waxes") and prepared waxes, as defined in Note 5 to this Chapter, which consist of or contain relatively high molecular weight organic substances and which are not separate chemically defined compounds. These waxes are:

(A) Chemically produced organic products of a waxy character, whether or not water-soluble. Waxes of heading 27.12, produced synthetically or otherwise (e.g., Fischer-Tropsch waxes consisting essentially of

hydrocarbons) are, however, excluded. Water-soluble waxy products having surface-active properties are also excluded (heading 34.02).

* * *

The products described in (A), (B) and (C) above, when mixed with, dispersed (suspended or emulsified) in or dissolved in a liquid medium, are however excluded from this heading (headings 34.05, 38.09, etc.).

The waxes of paragraphs (A) and (C) above must have:

(1) a dropping point above 40°C; and

(2) a viscosity, when measured by rotational viscometry, not exceeding 10 Pa*s (or 10,000 cP) at a temperature of 10°C above their dropping point.

* * *

EN 34.05 states, in pertinent part:

These preparations may have a basis of wax, abrasives or other substances. Examples of such preparations are:

(1) Waxes and polishes consisting of waxes impregnated with spirits of turpentine or emulsified in an aqueous medium and frequently containing added colouring matter.

* * *

The General EN to Chapter 39 states, in pertinent part:

Polymers consist of molecules which are characterised by the repetition of one or more types of monomer units.

* * *

Primary forms

Headings 39.01 to 39.14 cover goods in primary forms only. The expression "primary forms" is defined in Note 6 to this Chapter. It applies only to the following forms:

(1) Liquids and pastes. These may be the basic polymer which requires "curing" by heat or otherwise to form the finished material, or may be dispersions (emulsions and suspensions) or solutions of the uncured or partly cured materials. In addition to substances necessary for "curing" (such as hardeners (cross-linking agents) or other co-reactants and accelerators), these liquids or pastes may contain other materials such as plasticisers, stabilisers, fillers and colouring matter, chiefly intended to give the finished products special physical properties or other desirable characteristics. The liquids and pastes are used for casting, extrusion, etc., and also as impregnating materials, surface coatings, bases for varnishes and paints, or as glues, thickeners, flocculants, etc.

* * *

In NY N063739, CBP classified the instant merchandise under heading 3901, HTSUS, which provides for "polymers of ethylene, in primary forms". At the time of the original ruling request on June 4, 2009, you submitted product information, an MSDS and a list of ingredients. You described the

instant merchandise as an aqueous wax additive in which linear low density polyethylene particles of an average particle size of about 8µm are dispersed in water, having a density of 1.0 g/ml. According to your original submission, the product was intended for incorporation into aqueous coatings such as water based printing inks to improve the surface qualities of the coating, ink and lacquers. Based on this information, CBP classified the instant product under heading 3901, HTSUS, specifically under subheading 3901.10.50, HTSUS, which provides for "Polymers of ethylene, in primary forms: Polyethylene having a specific gravity of less than 0.94: Other".

After NY N063739 was issued, you requested a reconsideration of that ruling, alleging that the instant product is properly classified under heading 3405, HTSUS, as a polish. In the alternative, you suggest classification under heading 2712, HTSUS. A sample was submitted to the CBP Laboratory for review

If the instant merchandise is classifiable under headings 2712 or 3404, HTSUS, it is excluded from classification in heading 3901, HTSUS. *See* Note 2(b) to Chapter 39, HTSUS. Therefore, it is appropriate to first consider whether the instant merchandise is properly classified in these headings.

Heading 2712, HTSUS, provides in pertinent part for "other mineral waxes and similar products obtained by synthesis or by other processes, whether or not colored". According to the EN, "the heading does not include high polymer waxes such as polyethylene wax." *See* EN 27.12. The instant product is comprised of a mixture of two polyethylene waxes. Therefore, it is not properly classified under heading 2712, HTSUS.

Heading 3404, HTSUS, provides for "artificial waxes and prepared waxes". According to Note 5(a) to Chapter 34, HTSUS, the phrase "artificial waxes and prepared waxes" includes "[c]hemically produced organic products of a waxy character, whether or not water-soluble". EN 34.04 lists two properties that a wax of this type must have, which are (1) a dropping point above 40°C, and (2) a viscosity, when measured by rotational viscometry, not exceeding 10 Pa*s (or 10,000 cP) at a temperature of 10 °C above its dropping point. *See* EN(1) and (2) to 34.04. In your submission, you allege that the dropping point of the sample provided was above 40°C, and its viscosity, when measured at 10°C above its dropping point, does not exceed 10,000 cP, but provide no data to support this assertion.

However, it is irrelevant whether the product satisfies Note 5(a) to Chapter 34, HTSUS. The instant product is composed of two types of polyethylene wax dispersed in water. Because the polyethylene wax used in Ultralube D-806 is "mixed with, dispersed in or dissolved in a liquid medium", it is excluded from heading 3404, HTSUS, by Exclusionary Note 5(d) to Chapter 34, HTSUS. Furthermore, because the instant product is not classifiable in heading 2712 or 3404, HTSUS, Note 2(b) to Chapter 39, HTSUS, does not operate to exclude the Ultralube D-806 from heading 3901, HTSUS.

In your submission, you argued that the instant merchandise is properly classified under heading 3405, HTSUS, which provides in pertinent part for "Polishes". The term "polish" is not defined in the HTSUS or the ENs.[1] The

[1] When a tariff term is not defined by the HTSUS or its legislative history, "the term's correct meaning is its common meaning." *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be

Merriam-Webster Online Dictionary defines the term "polish" as "3: a preparation that is used to produce a gloss and often a color for the protection and decoration of a surface." *See* <http://www.m-w.com> (last viewed on November 16, 2011). According to the ENs, one example of this type of preparation is a "polish[] consisting of waxes … emulsified in an aqueous medium …". *See* EN(1) to heading 34.05.

Heading 3405, HTSUS, is an *eo nomine* provision, in that it provides for a specific commodity by name. Ordinarily, use is not a criteria considered when determining whether merchandise is embraced within an *eo nomine* provision. *J.E. Mamiye & Sons, Inc. v. United States*, 509 F. Supp. 1268, 1274 (Cust. Ct. 1980); *Pistorino & Co. v. United States*, 599 F.2d 444 (C.C.P.A. 1979); *F.W. Myers & Co. v. United States*, 24 Cust. Ct. 178, 184–185, C.D. 1228 (1950). However, in *United States v. Quon Quon Co.*, 46 C.C.P.A. 70, 73 (1959), the Court of Customs and Patent Appeals stated:

> Of all things most likely to help in the determination of the identity of a manufactured article, beyond the appearance factors of size, shape, construction and the like, use is of paramount importance. To hold otherwise would logically require the trial court to rule out evidence of what things actually are every time the collector thinks an article, as he sees it, is specifically named in the tariff act.

The *Quon Quon* case has come to stand for the proposition that use may be considered in determining the identity of an *eo nomine* provision. *Sears Roebuck & Co. v. United States*, 790 F. Supp. 299, 302 (Ct. Int'l. Trade 1992); *J.E. Mamiye & Sons, Inc.*, 509 F. Supp. at 1274; *Sanji Kobata et al. v. United States*, 326 F. Supp. 1397, 1402–1403 (Cust. Ct. 1971); *See also* Headquarters Ruling Letter (HQ) H128496, dated March 30, 2011; HQ W968275, dated January 26, 2010; HQ 964444, dated December 18, 2001; HQ 963032, dated July 24, 2000; HQ 957997, dated August 7, 1995.

Use is simply one of the factors to be considered in determining whether merchandise falls within the scope of an *eo nomine* tariff provision. *Myers v. United States*, 969 F. Supp. 66, 72 (Ct. Int'l. Trade 1997); *See also* HQ 964444; HQ 957997. "The Court does not read the [*Quon Quon]* opinion to support the proposition that certain *eo nomine* provisions are in fact governed by use." *Myers*, 969 F. Supp. at 72. In order to determine whether the instant merchandise is, in fact, a "polish," CBP will examine the four factors laid out in *Quon Quon* ; namely the size, shape, construction, and use of the articles.

The instant product, Ultralube D-806, is a liquid, composed of a mixture of linear low density polyethylene, water, oxidized polyethylene, and ethoxylated alcohols. The product data sheets indicate that the instant merchandise is sold to the end user in "120 kg drums" or "1000 kg IBC" containers. These data sheets also indicate that the instant merchandise is a "water based dispersion improving [sic] the surface qualities of aqueous lacquers and printing inks" and "can also be used for the production of water based

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the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult "dictionaries, scientific authorities, and other reliable information sources" and "lexicographic and other materials." *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (C.C.P.A. 1982); *Simod*, 872 F.2d at 1576.

deforming lubricants." The data sheets further state that the instant merchandise "is stirred directly into the formulation" of these products. You allege that the instant merchandise may be used straight out of the container, as a polish. In particular, in your letter dated July 10, 2009, you state that it is sold as an aqueous leather polish, used to create a "Bianchini-Effect"[2] in China. However, you provided no further evidence to support these assertions of such use in the United States.

The *Quon Quon* factors indicate that the instant product is not a "polish," as that term is defined above. Even though the product consists of a wax dispersed in a liquid medium (which can be typical of a polish), it is not used as a polish in the United States. It is used as an additive for printing inks and for deforming lubricants. Even though you assert that the product is occasionally used as a polish, you have provided no evidence to support this claim. Furthermore, the product is sold in large volumes (120 kg drums and 1000 kg intermediate bulk containers), which, along with statements in the product data sheets, show that the product is added directly to the formulation of other products during a manufacturing process, rather than used straight out of the container as a leather polish, as you suggest. Therefore, the instant product is not properly classified as a "polish" under heading 3405, HTSUS.

The commenter argues that CBP did not give appropriate weight to Keim-Additec's assertion that the instant product is used as a leather polish in China. However, this is not the case. As discussed above, use is simply one of the factors to be considered in determining whether merchandise falls within the scope of an *eo nomine* tariff provision. *Myers v. United States*, 969 F. Supp., at 72. Furthermore, CBP did take this use into account, but found that it was not controlling. Keim-Additec only sells the instant merchandise in 120kg or 1,000kg containers. The merchandise is sold in bulk form to manufacturers, who incorporate Ultralube D-806 into printing inks and deforming lubricants. Furthermore, Keim-Additec provided no evidence that the product is actually sold to leather goods manufacturers. Therefore, according to the information provided by Keim-Additec, the product's use as an additive for printing inks and deforming lubricants, outweighs its alleged use as a polish.

The instant product is a mixture of polyethylene, oxidized polyethylene, and an ethoxylated alcohol, dispersed in water. As such, it is properly classified under heading 3901, HTSUS, which provides for "Polymers of ethylene, in primary forms". *See* Note 6(a) to Chapter 39, HTSUS.

The commenter argues that the instant product is not properly classified in heading 3901, HTSUS, because it "is not PE, identified as a plastic, in primary form and thermo setting/forming in character." However, polyethylene is a plastic material, because it is "capable, either at the moment of polymerization or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticizer) by molding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence." *See* Note 1 to Chapter 39, HTSUS. Furthermore, polyethylene is a "polymer," because it is

[2] No specific definition for this term is provided by Keim-Additec. It is described only as a "whitening" effect for leather products.

made up of repeating units of ethylene monomers. *See* General EN to Chapter 39. Finally, the instant product is in a "primary form" because it consists of low density polyethylene mixed with additives and water. *See* Note 6(a) to Chapter 39, HTSUS; *See also* HQ965290, dated June 5, 2002; General EN to Chapter 39. Therefore, CBP does not find the commenter's argument to be persuasive.

In NY N063739, CBP classified the instant product under heading 3901, HTSUS, specifically under subheading 3901.10.50, HTSUS, which provides for "Polymers of ethylene, in primary forms: Polyethylene having a specific gravity of less than 0.94: Other". "The specific gravity of a material is defined as the ratio of its density to the density of some standard material, such as water at a specified temperature, for example, 60°F (15°C) …". *McGraw-Hill Concise Encyclopedia of Science and Technology*, 5th Ed. (McGraw-Hill, 2004), p. 2073. Water at room temperature has a density of 1.0 g/ml (or 1.0 g/cm^3). CBP has previously observed that the specific gravity of a liquid is numerically equal to its density. *See* NY 803092, dated October 17, 1994.

The MSDS contained in your original submission, dated June 4, 2009, states that the density of the instant product is 1.0 g/ml, which translates to a specific gravity of 1.0. The MSDS contained in your request for reconsideration, dated July 10, 2009, states that the density of the instant product is 0.96 g/cm^3, which translates to a specific gravity of 0.96. Even though CBP cannot be certain which of these statements is correct, we note that the specific gravity provided in both documents is greater than 0.94.

Classification at the 8-digit level requires consideration of the relative viscosity[3] of the instant product. The term "viscosity" means, "For a laminar flow of a fluid the ratio of the shear stress to the velocity gradient perpendicular to the plane of shear." *IUPAC Compendium of Chemical Terminology*, 2nd Ed. (available at <http://goldbook.iupac.org>). The term "relative viscosity" is defined as "The ratio of the viscosity of the solution, η, to the viscosity of the solvent, η_s, i.e., $\eta_r=\eta/\eta_s$." *IUPAC Compendium of Chemical Terminology*. According to your submission dated April 3, 2012, the viscosity (η) of Ultralube D-806 at 20°C is between 200 and 400 mPa*s. Water is generally assumed to have a viscosity (η_s) of 1.0 mPa*s at 20°C. *See*, *e,g.*, Kestin, et. al., "J. Phys. Chem. Ref. Data," Vol. 7, No. 3 (1978).[4] Thus, the relative viscosity of Ultralube D-806 is between 200 and 400, depending on the actual viscosity of the solution. Therefore, as the instant product has a specific gravity above 0.94, and a relative viscosity above 1.44, it is properly classified under subheading 3901.20.10, HTSUS, which provides for "Polymers of ethylene, in primary forms: Polyethylene having a specific gravity of 0.94 or greater: Having a relative viscosity of 1.44 or more".

HOLDING:

By application of GRI 1, the instant Ultralube D-806 product is classified under heading 3901, HTSUS, specifically under subheading 3901.20.10, HT-

[3] Viscosity is abbreviated with the symbol "η" (the greek letter "eta"). 1 mPa*s = 1 centipoise (cP).

[4] Available at <http://www.nist.gov/data/PDFfiles/jpcrd121.pdf>.

SUS, which provides for "Polymers of ethylene, in primary forms: Polyethylene having a specific gravity of 0.94 or greater: Having a relative viscosity of 1.44 or more". The column one, general rate of duty is 6.5% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

New York Ruling Letter N063739, dated June 17, 2009, is hereby REVOKED in accordance with the above analysis. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Sincerely,

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

PROPOSED REVOCATION OF A RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE COUNTRY OF ORIGIN MARKING OF CHILDREN'S TOY BLOCKS

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

ACTION: Notice of proposed revocation of one ruling letter and proposed revocation of treatment relating to the country of origin marking of children's toy blocks.

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 one ruling concerning the country of origin marking of children's toy blocks. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before March 29, 2013.

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, 10th floor, 90 K. St. NE., Washington, D.C., 20229–1177, 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 pertaining to the country of origin marking of children's toy blocks. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter ("NY") N132564, dated December 15, 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 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 N132564, CBP ruled that, pursuant to 19 CFR 134.46, the packaging in which imported children's toy blocks are sold to the ultimate purchasers in is required to be marked with the country of origin on the back of the box in the proximity of the address listed for the importer's European headquarters. Upon our review of this ruling, we have determined that the merchandise does not need to be marked with the country of origin on the back of the box.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N132564 and to revoke or modify any other ruling not specifically

identified to reflect the proper country of origin marking of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter ("HQ") H147197, 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: January 16, 2013

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N132564

December 14, 2010
MAR-2 OT:RR:NC:N4:424
CATEGORY: MARKING

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

RE: Country of Origin Marking of Certain Imported Toy Building Blocks

DEAR MR. PETERSON:

This is in response to your letter dated October 24, 2010, on behalf of MEGA Brands, requesting the proper country of origin marking on certain imported toy building blocks with other toys sold under the MEGA BLOKS brand. In particular, you are requesting whether the items are subject to the marking requirements of 19 C.F.R. 134.46 when a certain panel of the packaging contains the European Union "CE" conformity mark along with "MEGA Brands Europe" and the company's Belgium address. Photographs of the item's retail packaging displaying the marking in question were submitted with your letter. The item consists of two individual sets, an 11 and 40 piece set, which are shrink-wrapped together for retail sale. This sample's marking is representative of your clients other products as well.

A different panel on each product shows them being marked "Components Made in Canada and China," which would be an acceptable country of origin marking as long as each set will contain pieces originating from both countries listed on the retail packaging.

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

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. Section 134.41(b), Customs Regulations (19 CFR 134.41(b)), mandates that the ultimate purchaser in the U.S. must be able to find the marking easily and read it without strain.

Section 134.46, Customs Regulations (19 CFR 134.46), deals with cases in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any city or locality in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced, appears on an imported article or its container, and those words, letters or names may mislead or deceive the ultimate purchaser as to the actual country of origin. In such a case, there shall appear, legibly and permanently, in close proximity to such words, letters, or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning.

In order to satisfy the close proximity requirement, the country of origin marking must generally appear on the same side(s) or surface(s) in which the

name or locality other than the actual country of origin appears. There is no country of origin marking on the panel in question.

You state that the European Union CE conformity mark and MEGA Brand's Belgium address, prefaced by "MEGA Brands Europe," should not trigger or violate 19 C.F.R. 134.46 as the CE mark is an indicator of consumer safety certification, with the Belgium address displayed only to invite contact from consumers concerning the product's conformity to applicable European safety certifications and product quality.

You also cite several apparel rulings (HQ 560610, HQ 732816 and HQ 561610) in which CBP has found the mere presence of a geographical location does not necessarily trigger 19 C.F.R. 134.46, particularly in instances in which various U.S. addresses were displayed for the purposes of facilitating consumer contact regarding a guarantee or warranty. Furthermore, you state that the CE marking would not mislead or deceive consumers as the CE marking does not indicate the country of origin but is a certification that is recognized in 31 countries.

This office finds the circumstances of this ruling to be distinguishable from those that you cited. In the various Headquarters rulings cited, the displaying of the U.S. addresses was not found to be misleading. In each case CBP determined that it would appear clear to the consumer that the locality information and telephone numbers to contact the company would not connote origin and therefore, would not deceive or mislead the purchaser. That is not the case in the instant ruling.

While you describe in detail the purpose of the CE mark in Europe, its purpose and function would not be apparent to a consumer in the U.S. The references to Europe and Belgium are preceded by the phrase "Keep this information." A U.S. consumer would not conclude the stated purpose and function of the foreign references based on this wording. The CE mark with MEGA Brand's Belgium address and the reference to Europe may mislead or deceive the ultimate purchaser in the United States as to the actual country of origin of the item. Therefore, we find that the special marking requirements of 19 CFR 134.46 are triggered.

The phrase "Components Made in Canada and China" should appear, legibly and permanently, in close proximity and in at least a comparable size to the Belgium address and the reference to Europe in order to satisfy the marking requirements of 19 U.S.C. 1304 and 19 CFR Part 134.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR Part 177). A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist James Forkan at (646) 733–3025.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity Specialist Division

[ATTACHMENT B]

HQ H147197
CLA-2 OT:RR:CTF:TCM H147197 RES
CATEGORY: Marking

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

RE: Reconsideration of New York Ruling Letter N132564, dated December 24, 2010; Country of Origin Marking of Certain Imported Toy Building Blocks.

DEAR MR. PETERSON:

This is in response to your letter dated January 26, 2011, on behalf of your client Mega Brands Inc., ("Mega"), requesting that U.S. Customs and Border Protection ("CBP") reconsider New York Ruling Letter ("NY") N132564, dated December 24, 2010. In NY N132564, CBP ruled that the imported Toy Building Blocks required special country of origin marking pursuant to 19 CFR § 134.46. CBP has determined that NY N132564 is incorrect.

FACTS:

Mega Brands imports "Mega Bloks" Children Block Toys ("toy blocks") from Canada into the United States. The toy blocks are manufactured in Canada and China. These articles are plastic building blocks and other small toys that are assembled by a child.

Mega Brands requested a ruling on the proper country of origin marking for the toy blocks. The toy blocks are packaged in two different cardboard box containers, which are sold at retail in their imported form. Both boxes have pictures of the blocks and small toys in different scenes on the front. Printed on both boxes at the top left corner in a big red and blue cartoon font are the words "MEGA BLOKS." One box has a small description printed in English and several other languages of the toys contained inside, *e.g.* "2-in-1 Station to Truck * Estracion 2 en 1 para camion . . . ," and printed in a cartoon-like font are the words "play n go." On the front of the other box, at about left-of-center, the phrase "Collect them all!" is printed in English and several other languages. Both boxes have printed across the bottom of the front, in about a 1.5 inch wide strip section, set off with a white background and with black lettering, the following: the "MEGA" trademark; the words "Mega Brands Inc." with the company's Canadian address listed under the company name; and written in English and several other languages the phrase "components made in Canada and China."

On the back of one box, are the phrases: "©2010, MEGA Brands Inc. ® & ™ MEGA Brands Inc. EN This toy conforms to: ASTM F963–08 U.S., Canadian Hazardous Products Act CEN Standards E.N. 71. Products and colors may vary"; "Keep this information."; "Most models can be built one at a time."; "Do not give packaging materials to a child."; "51 Pieces."; and "Proof of purchase." All of these phrases are written in English and several other languages. In addition, the phrase "Keep this information" (in English and several other languages) is enclosed in a rectangular box with thin black

borders and has the letters "CE"[1] in a large stylized font next to the words "MEGA Brands Europe NV" with the Belgium address of Mega Brands underneath it. Lastly, there is the barcode and the symbols for recycling printed on the back of the box. These phrases and symbols cover the entire back of one box.

On the back of the second box, are the phrases: "©2009, MEGA Brands Inc. ® & ™ MEGA Brands Inc. EN This toy conforms to: ASTM F963–08 U.S., Canadian Hazardous Products Act CEN Standards E.N. 71. Products and colors may vary"; "Keep this information."; and "Most models can be built one at a time." In addition, the phrase "Keep this information" (in English and several other languages) is enclosed in a rectangular box with thin black borders and has the letters "CE" in a large stylized font next to the words "MEGA Brands Europe NV" with the Belgium address of Mega Brands underneath it. There are no barcodes or recycling symbols on the back of the box. The phrases and symbols cover one quarter of the back of the box in the top left corner.

In NY N132564, the findings in regard to the adequacy of the country of origin markings were described as follows:

> While you describe in detail the purpose of the CE mark in Europe, its purpose and function would not be apparent to a consumer in the U.S. The references to Europe and Belgium are preceded by the phrase "Keep this information." A U.S. consumer would not conclude the stated purpose and function of the foreign references based on this wording. The CE mark with MEGA Brand's Belgium address and the reference to Europe may mislead or deceive the ultimate purchaser in the United States as to the actual country of origin of the item. Therefore, we find that the special marking requirements of 19 CFR 134.46 are triggered.

ISSUE:

(1) What are the country of origin marking requirements for the imported children's toy blocks?

LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. § 1304 (2011)), provides that unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States, the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. § 1304 was "that the *ultimate purchaser* should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the *ultimate purchaser* may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such

[1] "CE" means "Conformité Européenne", and certifies that a product has met EU health, safety, and environmental requirements, which ensure consumer safety. Manufacturers in the European Union (EU) and abroad must meet CE marking requirements where applicable in order to market their products in Europe. *See http://export.gov/cemark/index.asp* (last visited February 2, 2012).

marking should influence his will." *United States v. Friedlander & Co.*, 27 C.C.P.A. 297 at 302; C.A.D. 104 (1940) (emphases added).

Part 134, U.S. Customs and Border Protection (CBP) Regulations (19 C.F.R. § 134 (2011)) implements the country of origin marking requirements and exceptions of 19 U.S.C. § 1304. Section 134.1(b) defines "country of origin" as:

> [T]he country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within the meaning of [the marking regulations]…

Section 134.46 states in pertinent part:

> In any case in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any city or location in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced appear on an imported article or its container, and those words, letters or names may mislead or deceive the ultimate purchaser as to the actual country of origin of the article, there shall appear legibly and permanently in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "product of," or other words of similar meaning.

Mega Brands asserts that the toy building blocks packaging has adequate and proper country of origin marking to inform the ultimate purchaser of the origin of the articles. Mega Brands states that the presence of the Belgium address of its European headquarters does not trigger § 134.46, because it is not displayed in a manner confusing to a reasonable consumer trying to discern the country of origin of the toy blocks.

Pursuant to § 134.46, country of origin markings are required to be in close proximity of the name of any foreign country or locality other than the country or locality in which an article was manufactured if the words or phrases relating to the foreign country or locality are misleading or deceiving the ultimate purchaser as to the actual country of origin of the article.

In the case of the toy blocks at issue here, because there is a Belgium address relating to Mega Brands' European headquarters and the "CE" symbol, on the back of the boxes, the issue is whether this printed information may mislead or deceive an ultimate purchaser of the toy blocks articles as to where the toy blocks were actually manufactured, which is in Canada and China.

Upon examination of the country of origin markings on the front of the boxes and the way the Belgian address and CE symbol are printed on the back of the boxes, CBP concludes that a reasonable ultimate purchaser would not be misled or deceived as to the toy blocks' provenance of manufacture and production.

The first thing an ultimate purchaser would observe when shopping at a toy store for the Mega Brands toy blocks is the front of the box, because the front is what stores display facing out to customers. The country of origin marking on the front of the boxes is clearly displayed in black capital letters that is a block font on a white background and is set off from the rest of the front of the box which is decorated in a light blue and with images of the toys

inside. An ultimate purchaser would easily discern from examining the front of the box that the toy blocks are manufactured in Canada and China.

As to the Belgian address on the back of the box, there is nothing about this address that would reasonably mislead or deceive an ultimate purchaser as to where the toy blocks are manufactured. The Belgian address clearly reflects that it is the address of the Mega Brands corporation in Europe. The Mega Brands company name is part of the address, which reads "MEGA Brands Europe N.V." Nothing about this address reasonably infers that the toy blocks are made at this address. The Belgian address looks like what it is—a mailing address—and nothing more, nothing less.

In regard to the "CE" symbol, there is nothing about this symbol that would indicate to an ultimate purchaser that it has anything to do with the country of origin of the toy blocks. Even if an ultimate purchaser did not know what the "CE" symbol meant, they reasonably would not assume that it had anything to do with the country of origin of the toy blocks. If anything, the size and the unconventional font of the "CE" symbol gives the impression that it is just that, a symbol relating to something about the toy blocks but not something related to the provenance of the manufacturing of the contents of the boxes. Even the phrase "Keep this Information" does not in any way infer or hint at any type of country of origin for the toy blocks inside the box. Rather, the common sense meaning of this phrase is to retain the address of the Mega Brands headquarters for informational purposes and, if one is familiar with the meaning of "CE", to note that it conforms with the European health, safety, and environmental requirements.

Therefore, pursuant to § 134.46, because we do not find that the presence of the corporate address and the "CE" symbol on the back of the box may be misleading or deceiving, no additional country of origin marking is required on the back of the box.

HOLDING:

Pursuant to 19 U.S.C. § 1304, the containers the MEGA BLOKS Children's Block Toys are packaged in are properly marked with the country of origin.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the CBP officer handling the transactions.

EFFECTS ON OTHER RULINGS:

NY N132564, dated December 14, 2010, is Revoked.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF A CERTAIN WETTED SPHERICAL ALUMINUM POWDER PRODUCT

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

ACTION: Notice of proposed revocation of ruling letter and proposed revocation of treatment relating to the classification of a certain wetted spherical aluminum powder product.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to revoke one ruling letter relating to the classification of a certain wetted spherical aluminum powder product. CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before March 29, 2013.

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

FOR FURTHER INFORMATION CONTACT: Aaron Marx, Tariff Classification and Marking Branch: (202) 325–0195

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 com-

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the classification of a certain wetted spherical aluminum powder product. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) N117455, dated October 5, 2010 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY N117455, CBP determined that the wetted spherical aluminum powder product at issue was classified in heading 3824, HTSUS, specifically under subheading 3824.90.92, HTSUS, which provides for "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or

included: Other: Other: Other: Other: Other". It is now CBP's position that the subject merchandise is properly classified under heading 7603, HTSUS, specifically under subheading 7603.10.00, HTSUS, which provides for: "Aluminum powders and flakes: Powders of a non-lamellar structure".

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY N117455, and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the nacelle according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H161855, 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: January 17, 2013

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N117455

October 5, 2010
CLA-2–38:OT:RR:NC:2:239
CATEGORY: Classification
TARIFF NO.: 3824.90.9290

MR. ROLAND SIMON
FERRO CORPORATION
1000 LAKESIDE AVENUE
CLEVELAND, OHIO 44144

RE: The tariff classification of aluminum powder mixture from France

DEAR MR. SIMON:

In your letter dated August 2, 2010, you requested a tariff classification ruling.

The product, described as a wetted spherical aluminum powder, consists of aluminum powder and a solvent. As indicated in your ruling request, the product can be used in paints as a metallic pigment, utilized in rocket fuel and in electronics.

In your letter you suggest classification in 3212.90.0010, HTSUS, which provides for metallic aluminum pigments. The product must contain 50 to 75 percent of a solvent to be considered a metallic aluminum pigment.

You also suggest classification in 3824.90.7000, HTSUS, which provides for other materials for printed circuit boards and 8541.90.0000, HTSUS, which provides for parts of photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes. We have discussed this issue with the Customs Laboratory. The subject merchandise is a formulated ingredient to be further processed to create a conductive paste in the manufacture of photovoltaic solar panels. The aluminum powder mixture, in the condition as imported, is a chemical mixture of a metallic powder and a nonaromatic organic compound. The product is properly classified in subheading 3824.90.9290, HTSUS.

The applicable subheading will be 3824.90.9290, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other: Other. The rate of duty will be 5 percent ad valorem.

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

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

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

Sincerely,
ROBERT B. SWIERUPSKI
Director
National Commodity Specialist Division

[ATTACHMENT B]

HQ H161855
CLA–2 OT:RR:CTF:TCM H161855 AMM
CATEGORY: Classification
TARIFF NO.: 7603.10.00

MR. RITCHIE THOMAS
SQUIRE, SANDERS & DEMPSEY, LLP
1201 PENNSYLVANIA AVE., NW, SUITE 500
WASHINGTON, DC 20004

RE: Revocation of New York Ruling Letter N117455; classification of wetted aluminum powder

DEAR MR. THOMAS,

This is in response to your request for reconsideration, dated April 15, 2011, made on behalf of your client, Ferro Corporation, of New York Ruling Letter (NY) N117455, dated October 5, 2010, which pertains to the classification of wetted aluminum powder, under the Harmonized Tariff Schedule of the United States (HTSUS). In reaching our decision, we have also taken into consideration your original submission, dated August 2, 2010, and a sample provided for testing. We have reviewed NY N117455 and found it to be incorrect. Accordingly, for the reasons set forth below, we intend to revoke that ruling.

FACTS:

In NY 117455, CBP described the merchandise as follows:

> The product, described as a wetted spherical aluminum powder, consists of aluminum powder and a solvent. As indicated in your ruling request, the product can be used in paints as a metallic pigment, utilized in rocket fuel and in electronics.
>
> * * *
>
> The subject merchandise is a formulated ingredient to be further processed to create a conductive paste in the manufacture of photovoltaic solar panels. The aluminum powder mixture, in the condition as imported, is a chemical mixture of a metallic powder and a nonaromatic organic compound.
>
> * * *

The sample is a lumpy gray powder composed of over 80% aluminum, other base metals, and a non-aromatic organic solvent used as a wetting agent. CBP Laboratory Report No. NY20111397, dated September 19, 2011, states that at least ninety (90) percent or more by weight of the instant product passed through a sieve having a mesh aperture of 1mm. A photo of the sample is provided below:

ISSUE:

What is the proper classification of the wetted aluminum powder under the 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 GRI may then be applied.

The 2012 HTSUS provisions under consideration are:

3212	Pigments (including metallic powders and flakes) dispersed in non-aqueous media, in liquid or paste form, of a kind used in the manufacture of paints (including enamels); stamping foils; dyes and other coloring matter put up in forms or packings for retail sale:
3212.90.00	Other
---	---
3824	Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:
3824.90	Other:
	Other:
	Other:
	Other:
3824.90.70	Mixtures of dibromo neopentyl glycol; Polydibromophenylene oxide; Tetrabromobisphenol-A-carbonate oligomers; and Electroplating chemical and electroless plating solutions and other materials for printed circuit boards, plastics and metal finishings
---	---
3824.90.92	Other
---	---
7603	Aluminum powders and flakes:
7603.10.00	Powders of non-lamellar structure
---	---
7616	Other articles of aluminum:
	Other:
7616.99	Other:
7616.99.50	Other
---	---
8541	Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof:
8541.90.00	Parts

Note 1 to Section XV (which covers Chapter 76), HTSUS, states, in pertinent part: "This section does not cover: (a) Prepared paints, inks or other products with a basis of metallic flakes or powder (headings 3207 to 3210, 3212, 3213 or 3215); …"

Note 3 to Section XV, HTSUS, states, in pertinent part: "Throughout the schedule, the expression 'base metals' means: … aluminum …".

Note 5 to Section XV, HTSUS, states, in pertinent part:

> Classification of alloys (other than ferroalloys and master alloys as defined in chapters 72 and 74):
>
> * * *
>
> (b) An alloy composed of base metals of this section and of elements not falling within this section is to be treated as an alloy of base metals of this section if the total weight of such metals equals or exceeds the total weight of the other elements present.
>
> * * *

Note 6 to Section XV, HTSUS, states: "Unless the context otherwise requires, any reference in the tariff schedule to a base metal includes a reference to alloys which, by virtue of note 5 above, are to be classified as alloys of that metal."

Note 7 to Section XV, HTSUS, states, in pertinent part:

> Classification of composite articles:
>
> Except where the headings otherwise require, articles of base metal (including articles of mixed materials treated as articles of base metal under the General Rules of Interpretation) containing two or more base metals are to be treated as articles of the base metal predominating by weight over each of the other metals. For this purpose:
>
> * * *

Note 8 to Section XV, HTSUS, states, in pertinent part:

In this section, the following expressions have the meanings hereby assigned to them:

* * *

(b) *Powders*

> Products of which 90 percent or more by weight passes through a sieve having a mesh aperture of 1 mm.
>
> * * *

Note 8 to Chapter 85, HTSUS, states, in pertinent part: "For the purposes of headings 8541 and 8542: … For the classification of the articles defined in this note, headings 8541 and 8542 shall take precedence over any other heading in the Nomenclature …".

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 32.12 states, in pertinent part:

(A) PIGMENTS (INCLUDING METALLIC POWDERS AND FLAKES) DISPERSED IN NON-AQUEOUS MEDIA, IN LIQUID OR PASTE FORM OF A KIND USED IN THE MANUFACTURE OF PAINTS (INCLUDING ENAMELS)

These are concentrated dispersions of pigments (including aluminium or other metal powders and flakes) in a non-aqueous medium (e.g., drying oils, white spirit, gum, wood or sulphate turpentine or varnish), in liquid or paste form, of a kind used in the manufacture of paints or enamels.

* * *

EN 38.24 states, in pertinent part:

This heading includes:

* * *

(B) CHEMICAL PRODUCTS AND CHEMICAL OR OTHER PREPARATIONS

* * *

The chemical or other preparations are either mixtures (of which emulsions and dispersions are special forms) or occasionally solutions. Aqueous solutions of the chemical products of Chapter 28 or 29 remain classified within those Chapters, but solutions of these products in solvents other than water are, apart from a few exceptions, excluded therefrom and accordingly fall to be treated as preparations of this heading.

* * *

The General EN to Section XV states, in pertinent part:

(B) ARTICLES OF BASE METALS

In accordance with Section Note 7, base metal articles containing two or more base metals are classified as articles of that metal which predominates by weight over each of the other metals, except where the headings otherwise require (e.g., copper-headed iron or steel nails are classified in heading 74.15 even if the copper is not the major constituent). The same rule applies to articles made partly of non-metals, provided that, under the General Interpretative Rules, the base metal gives them their essential character.

* * *

EN 76.03 states, in pertinent part:

This heading covers aluminium powders as defined in Note 8 (b) to Section XV and aluminium flakes. In general these products correspond to those of copper and the Explanatory Note to heading 74.06 therefore applies, *mutatis mutandis*, to this heading. Aluminium powders and flakes are, however, also used in pyrotechnics, as heat generators (e.g., in the thermit process), to protect other metals from corrosion (e.g., calorising, metallic cementation), in rocket propellants and in the preparation of special cements.

The heading does not cover:

(a) Powders or flakes, prepared as colours, paints or the like (e.g., made up with other colouring matter or put up as suspensions, dispersions or pastes with a binder or solvent) (Chapter 32).

* * *

EN 76.16 states, in pertinent part: "This heading covers all articles of aluminum other than those covered by the preceding headings of this Chapter, or by Note 1 to Section XV, or articles specified or included in Chapter 82 or 83, or more specifically covered elsewhere in the Nomenclature."

In your original ruling request, dated August 2, 2010, you argued that the instant product may be properly classified under heading 3212, HTSUS, which provides for "Pigments ...". You also argued for classification under heading 8541, HTSUS, which provides for "[P]hotovoltaic cells …; parts thereof", and under heading 3824, HTSUS, specifically under subheading 3824.90.70, HTSUS, which provides for "[C]hemical products and preparations of the chemical or allied industries … not elsewhere specified or included: Other: Other: Other: Other: [O]ther materials for printed circuit boards …". In NY N117455, CBP classified the instant product under heading 3824, HTSUS, specifically under heading 3824.90.92, HTSUS, which provides for "[C]hemical products and preparations of the chemical or allied industries … not elsewhere specified or included: Other: Other: Other: Other: Other". In your request for reconsideration, dated April 15, 2011, you argued that the instant product is properly classified under heading 7616, HTSUS, which provides for "Other articles of aluminum". CBP has also considered whether the articles are properly classified under heading 7603, HTSUS, as "Aluminum powders and flakes".

Heading 8541, HTSUS, takes precedence over all other headings under consideration. *See* Note 8 to Chapter 85, HTSUS. Inasmuch as articles of heading 3212, HTSUS, are excluded from Section XV, HTSUS, we consider it before headings of Section XV, HTSUS, namely those in Chapter 76, HTSUS. *See* Note 1(a) to Section XV, HTSUS; EN(a) to heading 76.03. Heading 7603, HTSUS will be considered next, followed by heading 7616, HTSUS. *See* EN 76.16. Finally, we will consider heading 3824, HTSUS, if the instant merchandise is not elsewhere specified or included.

You assert that the instant product is used as an ingredient for a conductive paste used in the manufacture of photovoltaic solar panels, and therefore a "part thereof" under heading 8541, HTSUS. Even assuming (without admitting) that conductive paste is a part of a solar panel, the instant product is not a paste in its condition as imported and cannot be used for this application. It must first be mixed with other substances to create the conductive paste. Thus, classification in heading 8541, HTSUS, as "[P]hotosensitive semiconductor devices …; parts thereof", is not possible.

As for heading 3212, HTSUS, the product is not "dispersed in nonaqueous media, in liquid or paste form" as required by the text of the heading. The instant product is described in CBP lab report NY20111397 as a "moist gray baby powder" or a "lumpy gray powder." The photo of the sample clearly shows that the product is not a liquid or a paste. Therefore, it is not properly classified under heading 3212, HTSUS, and Note 1(a) to Section XV, HTSUS does not operate to exclude the product from Chapter 76, HTSUS.

In HQ 968287, dated September 26, 2006,[1] CBP considered the classification of an alloy steel powder. The powder consisted 85–90% base metals (neodymium, boron, iron, cobalt, and carbon), and 10–15% of a phenolic resin identified as polyphenylene sulfide. In this ruling, CBP modified a previous ruling, HQ 961028, dated November 13, 1998, which had revoked NY A88776, dated November 18, 1996. CBP had previously classified the alloy steel powder under heading 7205, HTSUS, by operation of Note 5(b) to Section XV, HTSUS. *See* HQ 961028. However, in HQ 968287, CBP noted that this Note was inapplicable to the alloy steel powder, because it only applies to "An alloy composed of base metals of this section and of *elements* not falling within this section …" (emphasis added). *See* Note 5(b) to Section XV, HTSUS. The alloy steel powder contained 10–15% polyphenylene sulfide, which is not an element.

Instead, CBP found that Note 7 to Section XV, HTSUS, applied to the product. *See* HQ 968287. According to this note, "articles of base metal … containing two or more base metals are to be treated as articles of the base metal predominating by weight over each of the other metals[.]" *See* Note 7 to Section XV, HTSUS. According to the EN, "The same rule applies to articles made partly of non-metals, provided that, under the [GRIs], the base metal gives them their essential character." *See* General EN(B) to Section XV. Because steel was found to predominate by weight over all the other ingredients, CBP found that the product was a "steel alloy," containing sufficient boron and cobalt to be considered an "other alloy steel" as defined in Note 1(f) to Chapter 72, HTSUS. Furthermore, CBP affirmed the earlier finding that the product was classified as a powder, as it met the test described in Note 8(b) to Section XV, HTSUS. *See* HQ 968287; HQ 961028.

The instant product is similar to the product under consideration in HQ 968287. The instant product consists almost entirely of aluminum powder, but contains small quantities of other metals and an organic solvent used as a wetting agent. Because it contains an organic solvent, which is not an "element," Note 5(b) to Section XV, HTSUS, does not apply. *See* HQ 968287. Instead, it is a composite article, composed of aluminum, other base metals, and the organic solvent.

According to Note 7 to Section XV, HTSUS, and EN(B) to Section XV, products containing base metals and non-metals are to be treated as articles of the base metal which predominates by weight. *See* HQ 968287. Because the instant product consists of more than 80% aluminum, it is to be classified as an alloy of aluminum, as the aluminum gives the product its essential character. *See* Note 7 to Section XV, HTSUS.

Heading 7603, HTSUS, provides for aluminum powders. Reference to "aluminum" in heading 7603, HTSUS, specifically includes alloys of aluminum. *See* Note 6 to Section XV, HTSUS. According to CBP lab report NY20111397, the product meets the definition of "powder" contained in Note 8(b) to Chapter 76, HTSUS. Therefore, the instant product is properly classified under heading 7603, HTSUS, by operation of GRI 1 and Notes 3, 7, and 8(a) to Section XV, HTSUS.

[1] This ruling was published in the Customs Bulletin, Vol. 40, No. 42, on October 11, 2006.

Furthermore, the above-identified lab report indicates that the aluminum powder has spherical structure. Therefore, the instant product is specifically classified in subheading 7603.10.00, HTSUS, which provides for "Aluminum powders and flakes: Powders of a non-lamellar structure". The fact that it contains a non-metal ingredient does not exclude it from classification as a powder. *See* HQ 968287.

Because the instant product is classified under heading 7603, HTSUS, by operation of GRI 1, it cannot also be properly classified under heading 7616, HTSUS. *See* EN to 76.16. Likewise, the product cannot be classified under heading 3824, HTSUS, which only provides for "chemical products and preparations of the chemical or allied industries … not elsewhere specified or included".

HOLDING:

By application of GRI 1 and Notes 3, 7, and 8(a) to Section XV, HTSUS, the wetted aluminum powder is classified under heading 7603, HTSUS, specifically under subheading 7603.10.00, HTSUS, which provides for: "Aluminum powders and flakes: Powders of a non-lamellar structure". The general, column one rate of duty is 5% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

New York Ruling Letter N117455, dated October 5, 2010, is hereby REVOKED.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

PROPOSED MODIFICATION OF RULING LETTER AND PROPOSED MODIFICATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A CERTAIN DRY SUIT

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

ACTION: Notice of proposed modification of ruling letter and treatment relating to tariff classification of a certain dry suit.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to modify one ruling letter relating to the tariff classification of a dry suit identified as the "Style MSD577vSR Tactical Operations Dry Suit" under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to modify any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before March 29, 2013.

ADDRESSES: Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W. (Mint Annex), Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 90 K. St. NE. (10th Floor), Washington, D.C. 20229 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Aaron Marx, Tariff Classification and Marking Branch: (202) 325–0195

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993 Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP intends to modify one ruling letter pertaining to the tariff classification of the "Style MSD577vSR Tactical Operations Dry Suit." Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) N068477, dated August 6, 2009, (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY N068477, CBP determined that, with regard to the "Style MSD577vSR Tactical Operations Dry Suit," the plastic is not visible to the naked eye in cross section. CBP further determined that this product was classified in heading 6211, HTSUS, specifically 6211.43.0010, HTSUS, which provides for: "Track suits, ski-suits and

swimwear; other garments: Other garments, women's or girls': Of man-made fibers". Finally, CBP determined that this product did not satisfy the requirements of General Note (GN) 12, HTSUS, and was therefore ineligible for treatment under the North American Free Trade Agreement (NAFTA).

It is now CBP's position that this product is properly classified in heading 6210, HTSUS, specifically 6210.50.50, HTSUS, which provides for "Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Other women's or girls' garments: Of man-made fibers: Other". Furthermore, it is now CBP's position that the product does satisfy the requirements of GN 12, HTSUS, and is therefore eligible for treatment under NAFTA.

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to modify NY N068477 and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the subject dry suit according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H073928 (Attachment B). 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: January 17, 2013

MYLES B. HARMON
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N068477

August 6, 2009
CLA-2–61:OT:RR:NC:TA:348
CATEGORY: Classification
TARIFF NO.: 6211.33.0010; 6210.40.5020

MR. CRAIG FISHER
MUSTANG SURVIVAL CORP.
3810 JACOMBS ROAD
BRITISH COLUMBIA
CANADA V6V 1Y6

RE: The tariff classification and status under the North American Free Trade Agreement (NAFTA), of dry suits from Canada; Article 509

DEAR MR. FISHER:

In your letter dated, June 30, 2009, you requested a ruling on the status of dry suits from Canada under the NAFTA. The samples are being returned to you as requested.

The submitted samples, Styles MSD575 Water Rescue Dry Suit and MSD577vSR Tactical Operations Dry Suit, are unisex coverall garments designed for over-water and waterborne tactical operation teams. The one-piece garments have long sleeves and legs with attached waterproof boots.

Style MSD575 features a double collar consisting of an inner stand up neoprene collar with a draw cord and cord locks and an outer neoprene collar, long sleeves with hook and loop closures at the wrist and a neoprene inner cuff, shoulder patches, padded elbow patches, an interior suspender system with buckles, an interior chest patch, a diagonal zipper across the chest with a covering patch for the zipper pull, a horizontal zipper below the waist with a covering patch for the zipper pull, abrasion fabric on the seat, forearms, the sleeve and ankle cuffs and the major portion of each leg, padded shins, ankle zippers, elasticized cuffs with hook and loop closures and attached boots.

Style MSD577vSR features a stand up neoprene collar with a draw cord and cord locks, neoprene shoulder gussets, long sleeves with a hook and loop closure at the wrist and a neoprene inner cuff, reflective bands on each sleeve near the cuff, padded elbow patches, an interior draw cord and cord lock at the waist, an interior suspender system with buckles, a diagonal zipper across the chest, a horizontal zipper below the waist, an interior coccyx pad, a lining on the lower body and legs, a neoprene mid-section, a web belt with a plastic buckle closure at the waist, wide belt loops, abrasion fabric on the hip and seat, adjustable thigh straps, padded overlays at the knees, ankle zippers, elasticized cuffs with hook and loop closures and attached boots.

For Style MSD575, you state that the body and boots are constructed of a laminated fabric consisting of a top layer of 100% nylon woven fabric, a middle layer of expanded polytetrafluoroethylene (ePTFE) and a bottom layer of 100% polyester knit fabric. The collars and inner cuffs are constructed of laminated fabric consisting of a top layer of neoprene, a middle layer of adhesive and bottom layer of nylon knit fabric. Both fabrics contain an inner layer of cellular plastic that is visible in cross section and considered a laminated fabric. The fabric for the body and boots would be classified in heading 5903, Harmonized Tariff Schedule of the United States (HTSUS) and the fabric for the collars and cuffs would be classified in heading 5906,

HTSUS. The patches for the shoulders, the elbows and over the zipper pulls are constructed of nylon fabric that has been coated with polyurethane. Although the nylon woven fabric is coated with polyurethane, the coating can not be seen with the naked eye. The abrasion fabric for the seat, forearms, sleeve and leg cuffs and the major lower portion of the legs is composed of polyamid/Kevlar/elasthane woven fabric.

The laminated fabrics of headings 5903 and 5906, HTSUS, comprise over 60% of the visible surface area of the garment and impart the essential character to the garment.

For Style MSD577vSR, you state the upper body portion, boots and lining are composed of a laminated fabric consisting of a top layer of 100% nylon woven fabric, a middle layer of expanded ePTFE and a bottom layer of 100% polyester knit fabric and should be classified in heading 5903. We have examined the fabric and have determined that it is a laminated fabric; however, the plastic is not visible to the naked eye in cross section.

Note 2 to Chapter 59, HTSUS, defines the scope of heading 5903, under which textile fabrics which are coated, covered, impregnated, or laminated with plastics are classifiable. In addition, it provides guidance on the classification of combinations of textile and plastics. Note 2 states in part that heading 5903, HTSUS, applies to:

> (a) Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular), other than:
>
> (1) Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually chapters 50 to 55, 58 or 60): for the purposes of this provision, no account should be taken of any resulting change in color;

The Explanatory Notes (EN) to the HTSUS constitutes the official interpretation of the tariff at the international level. The EN to this heading includes therein:

> The laminated fabrics of this heading should not be confused with fabrics which are simply assembled in layers by means of a plastic adhesive. These fabrics, which have no plastics showing in cross-section, generally fall in Chapters 50 to 55.

Since the plastic is not visible to the naked eye, the fabric is not considered a laminated fabric for the purposes of classification in heading 5903, HTSUS.

With regard to the collars, gussets, inner cuffs and mid-section for Style MSD577vSR, we find that they are constructed of laminated fabric consisting of a top layer of neoprene, a middle layer of adhesive and bottom layer of nylon knit fabric. This fabric contains an inner layer of cellular plastic that is visible in cross section; it is considered a laminated fabric of heading 5903, HTSUS. The abrasion fabric for the belt loops, hips, seat, knees and lower portion of the legs and arms is composed of nylon/Kevlar/PET/PU woven fabric. The forearm and back of the sleeves and the lower body are constructed of nylon/spandex knit fabric.

The manmade woven fabric comprises over 60% of the visible surface area of the garment and imparts the essential character to the garment.

You have described these garments as “unisex”. Unisex garments are classified based on the requirements of Chapter 62, note 8, which states:

> Garments which cannot be identified as either men's or boys' garments or as women's or girls' garments are to be classified in the headings covering women's or girls' garments.

Since the dry suits cannot be identified as either men's or women's garments, they are classified as women's garments under heading 6210 and 6211, HTSUS.

The applicable subheading for Style MSD575 will be 6210.50.5040, HTSUS, which provides for garments, made up of fabric of heading 5602, 5603, 5903, 5906 or 5907, other women's or girls' garments: of man-made fibers, other, overalls and coveralls. The rate of duty will be 14.9 percent ad valorem.

The applicable subheading for Style MSD577vSR will be 6211.43.0010, HTSUS, which provides for track suits, ski-suits and swimwear, other garments: other garments, women's or girls': of man-made fibers, coveralls, jumpsuits and similar apparel: other: women's. The duty rate will be 16 percent ad valorem.

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

The manufacturing operations are as follows:

Style MSD575

- The nylon/ePTFE/polyester laminated fabric is manufactured in the U.S. from originating materials.
- The neoprene/nylon laminated fabric is manufactured in Taiwan.
- The nylon woven fabric is manufactured in Taiwan.
- The polyamid/Kevlar/elasthane woven fabric is manufactured in Switzerland.
- The internal foam shin and elbow padding is manufactured in Taiwan.
- The fabric is cut, sewn and assembled into the finished garment in Canada.
- The garment is exported directly from Canada to the U.S.

Style MSD577vSR

- The nylon/ePTFE/polyester woven fabric is manufactured in the U.S. from originating materials.
- The neoprene/nylon laminated fabric is manufactured in the U.S. from originating materials.
- The nylon/Kevlar/PET/PU woven fabric is manufactured in Taiwan.
- The nylon/spandex knit fabric is manufactured in the U.S. from originating materials.
- The internal foam elbow padding is manufactured in Taiwan.
- The fabric is cut, sewn and assembled into the finished garment in Canada.
- The garment is exported directly from Canada to the U.S.

General Note 12(b), HTSUS, sets forth the criteria for determining whether a good is originating under the NAFTA. General Note 12(b), HTSUS, (19 U.S.C. § 1202) states, in pertinent part, that

> For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as "goods originating in the territory of a NAFTA party" only if--
>
> (i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or
>
> (ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that--
>
> (A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or
>
> (B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or
>
> (iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials; or
>
> (iv) they are produced entirely in the territory of Canada, Mexico and/or the United States but one or more of the nonoriginating materials falling under provisions for "parts" and used in the production of such goods does not undergo a change in tariff classification because--
>
> (A) the goods were imported into the territory of Canada, Mexico and/or the United States in unassembled or disassembled form but were classified as assembled goods pursuant to general rule of interpretation 2(a), or
>
> (B) the tariff headings for such goods provide for and specifically describe both the goods themselves and their parts and is not further divided into subheadings, or the subheadings for such goods provide for and specifically describe both the goods themselves and their parts,
>
> provided that such goods do not fall under chapters 61 through 63, inclusive, of the tariff schedule, and provided further that the regional value content of such goods, determined in accordance with subdivision (c) of this note, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used, and such goods satisfy all other applicable provisions of this note.

Chapter 62, Chapter rule 3 states in pertinent part:

For purposes of determining whether a good of this chapter is originating, the rule applicable to that good shall only apply to the component that determines the tariff classification of the good and such component must satisfy the tariff change requirements set out in the rule for that good.

The component that determines the classification for Style MSD575 is the laminated fabric. The non-originating material is the neoprene/nylon laminated fabric that is classified in heading 5906, HTSUS.

For Style MSD575, classified in subheading 6210, GN 12/62.32C requires:

> A change to subheadings 6208 through 6210 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, *provided* that the good is both sewn or otherwise assembled in the territory of one or more of the NAFTA parties.

The neoprene/nylon laminated fabric does meet the terms of the tariff shift rule. The good will be both sewn and assembled in Canada.

For Style MSD577vSR, the component that determines the classification is the manmade woven fabric. The non-originating material is the nylon/Kevlar/PET/PU woven fabric. The applicable tariff heading for this fabric is 5407, HTSUS.

For Style MSD577vSR, classified in subheading 6211.43, GN 12/62.35 requires:

> A change to subheadings 6211.31 through 6211.49 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, *provided* that the good is both sewn or otherwise assembled in the territory of one or more of the NAFTA parties.

The nylon/Kevlar/PET/PU woven fabric does not meet the terms of the tariff shift rule.

Based on the facts provided, Style MSD575 qualifies for NAFTA preferential treatment because it meets the requirements of HTSUS General Note 12(b)(ii)(A). The merchandise will therefore be entitled to a free rate of duty under the NAFTA upon compliance with all applicable laws, regulations, and agreements.

Based on the facts provided, Style MSD577vSR does not qualify for NAFTA preferential treatment because it does not meet the requirements of HTSUS General Note 12(b)(ii)(A). The merchandise will therefore not be entitled to a free rate of duty under the NAFTA.

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 181 of the Customs Regulations (19 C.F.R. 181).

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 Rosemarie Hayward at (646) 733–3064.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity Specialist Division

[ATTACHMENT B]

HQ H073928
CLA–2 OT:RR:CTF:TCM H073928 AMM
CATEGORY: Classification
TARIFF NO.: 6210.50.50

MR. CRAIG FISHER
MUSTANG SURVIVAL CORP.
7525 LOWLAND DRIVE
BURNABY, BC V5J 5L1

RE: Modification of New York Ruling Letter N068477; Tariff Classification of a Dry Suit; NAFTA status of Dry Suits from Canada

DEAR MR. FISHER,

This is in reference to New York Ruling Letter (NY) N068477, dated August 6, 2009, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) and NAFTA eligibility of a certain Dry Suit, identified as the "Style MSD577vSR Tactical Operations Dry Suit" (Style MSD577vSR). In that ruling, Customs and Border Protection (CBP) classified the Style MSD577vSR product under heading 6211, HTSUS, which provides in pertinent part for "[O]ther garments", and found that the product was not eligible for NAFTA preferential treatment. We have reviewed NY N068477 and found it to be incorrect with respect to the above identified product. For the reasons set forth below, we intend to modify that ruling.

FACTS:

The Style MSD577vSR product is a unisex coverall garment designed for over-water and waterborne tactical operation teams. It is described as follows:

> Style MSD577vSR features a stand up neoprene collar with a draw cord and cord locks, neoprene shoulder gussets, long sleeves with a hook and loop closure at the wrist and a neoprene inner cuff, reflective bands on each sleeve near the cuff, padded elbow patches, an interior draw cord and cord lock at the waist, an interior suspender system with buckles, a diagonal zipper across the chest, a horizontal zipper below the waist, an interior coccyx pad, a lining on the lower body and legs, a neoprene mid-section, a web belt with a plastic buckle closure at the waist, wide belt loops, abrasion fabric on the hip and seat, adjustable thigh straps, padded overlays at the knees, ankle zippers, elasticized cuffs with hook and loop closures and attached boots.

See NY N068477. The Style MSD577vSR product is constructed from the following components: a three-layer woven nylon/ePTFE/woven polyester fabric manufactured in the United States, a neoprene/nylon laminated fabric manufactured in the United States, a nylon/spandex knit fabric manufactured in the United States, a nylon/Kevlar/PET/PU fabric manufactured in Taiwan, and internal foam pads manufactured in Taiwan. The nylon/ePTFE/polyester fabric is both breathable and waterproof, and comprises the outer shell of the product. The nylon/spandex knit fabric is a small component used as a "waist drainage patch." The neoprene/nylon fabric is used as trim around the neck and wrists to provide a watertight seal, and is also used in the elbow patches. The nylon/Kevlar/PET/PU fabric is used for

abrasion resistance at the knees and seat. These fabrics are cut, sewn, and assembled into a finished garment in Canada.

CBP classified the Style MSD577vSR product under heading 6211, HTSUS, which provides in pertinent part for "[O]ther garments". Furthermore, CBP determined that this product was not eligible for NAFTA preferential treatment, because it did not satisfy the required tariff shift.

ISSUE:

What is the proper classification of the instant MSD577vSR Tactical Operations Dry Suit under the HTSUS?

LAW AND ANALYSIS:

In NY N068477, CBP considered the classification and NAFTA eligibility of two dry suits manufactured by Mustang. The first, identified as the Style MSD575 Water Rescue Dry Suit (Style MSD575), was classified under heading 6210, HTSUS, specifically under subheading 6210.50.50, HTSUS, which provides for "Garments, made up of fabrics of heading … 5903 [or] 5906 …: Other women's or girls' garments: Of man-made fibers: Other". This product was found to be eligible for NAFTA preferential treatment. Mustang does not dispute the classification or eligibility determination of the Style MSD575 product. The second product, identified as the Style MSD577vSR Tactical Operations Dry Suit (Style MSD577vSR), was classified under heading 6211, HTSUS, specifically under subheading 6211.43.00, HTSUS, which provides for "[O]ther garments: Other garments, women's or girls': Of man-made fibers". This product was found not to qualify for NAFTA preferential treatment. Mustang disputes both the classification and the eligibility determination of the Style MSD577vSR product.

I. Classification

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 GRI may then be applied.

The 2013 HTSUS provisions at issue are as follows:

5407	Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404:

5903	Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902:

6210	Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907:
6210.50	Other women's or girls' garments:
	Of man-made fibers:
6210.50.50	Other

6211	Track suits, ski-suits and swimwear; other garments:
	Other garments, women's or girls':
6211.43.00	Of man-made fibers

GRI 3, HTSUS, states, in pertinent part:

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

Note 2 to Chapter 59, HTSUS, states, in pertinent part:

Heading 5903 applies to:

> (a) Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular), other than:
>
> (1) Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually chapters 50 to 55, 58 or 60); for the purpose of this provision, no account should be taken of any resulting change of color;
>
> * * *

Note 8 to Chapter 62, HTSUS, states, in pertinent part: "[G]arments which cannot be identified as either men's or boys' garments or as women's or girls' garments are to be classified in the headings covering women's or girls' garments."

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 59.03 states, in pertinent part:

> This heading covers textile fabrics which have been impregnated, coated, covered or laminated with plastics (e.g., poly(vinyl chloride)).
>
> Such products are classified here whatever their weight per m^2 and whatever the nature of the plastic component (compact or cellular), provided:
>
> (1) That, in the case of impregnated, coated or covered fabrics, the impregnation, coating or covering can be seen with the naked eye otherwise than by a resulting change in colour.

> Textile fabrics in which the impregnation, coating or covering cannot be seen with the naked eye or can be seen only by reason of a resulting change in colour usually fall in Chapters 50 to 55, 58 or 60. Examples of such fabrics are those impregnated with substances designed solely to render them crease-proof, moth-proof, unshrinkable or waterproof (e.g., waterproof gabardines and poplins). Textile fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments are also classified in Chapters 50 to 55, 58 or 60.
>
> * * *
>
> The laminated fabrics of this heading should not be confused with fabrics which are simply assembled in layers by means of a plastic adhesive. These fabrics, which have no plastics showing in cross-section, generally fall in Chapters 50 to 55.
>
> * * *

In NY N068477, CBP classified the Style MSD577vSR under heading 6211, HTSUS, which provides, in pertinent part for "other garments." Mustang asserts in their request for reconsideration that the product is properly classified under heading 6210, HTSUS, which provides, in pertinent part for "Garments, made up of fabrics of heading … 5903 …".

The Style MSD577vSR product is constructed from the following components: a three-layer woven nylon/ePTFE/woven polyester fabric, a neoprene/nylon laminated fabric, a nylon/spandex knit fabric, a nylon/Kevlar/ PET/PU fabric and internal foam pads. The nylon/ePTFE/polyester fabric is both breathable and waterproof, and comprises the outer shell of the product. The nylon/spandex knit fabric is a small component used as a "waist drainage patch." The neoprene/nylon fabric is used as trim around the neck and wrists to provide a watertight seal. The nylon/Kevlar/PET/PU fabric is used for abrasion resistance at the knees and seat.

It is a well accepted maxim of Customs law that a garment will ordinarily be classified according to the material of its outer shell. *See* Headquarters Ruling Letter (HQ) H042543, dated November 30, 2009; HQ 087527, dated October 21, 1992; HQ H087157, dated October 21, 1992; HQ H087156, dated October 21, 1992; HQ H086504, dated December 27, 1990; HQ 080817, dated August 31, 1987. *See also* HQ 959732, dated April 28, 1997 (classifying firefighter's protective garments according to the outer shell fabric).

Furthermore, CBP has previously stated, in "Classification of Garments Composed in Part of Linings or Interlinings of Specialized Fabrics or Nonwoven Insulating Layers," T.D. 91–97, 56 Fed. Reg. 46372 (Sep. 12, 1991), that:

> [I]t is usually the outer shell which imparts the essential character to the garment because the outer shell normally creates the garment.
>
> * * *
>
> Garments which have outer shells of fabrics specified in Headings 6113 and 6110, HTSUS, are classifiable, pursuant to GRI 3(b), under those headings.
>
> * * *

The outer shell of the Style MSD577vSR product is composed of a laminated fabric consisting of a top layer of nylon woven fabric, a middle layer of ePTFE, and a bottom layer of polyester knit fabric. You assert that, because this outer shell fabric is properly classified under heading 5903, HTSUS, as a coated fabric that the instant product is properly classified under heading 6210, HTSUS, which provides, in pertinent part for "Garments, made up of fabrics of heading … 5903 …".

However, in NY N068477, CBP stated that this outer shell fabric was excluded from heading 5903, HTSUS, by Note 2(a)(1) to Chapter 59, HTSUS, because the plastic could not be seen with the naked eye. CBP also found that the outer shell fabric was properly classified under heading 5407, HTSUS, which provides for "Woven fabrics of synthetic filament yarn …".

When reviewing fabrics assembled in layers under Note 2(a)(1) to Chapter 59, HTSUS, CBP examines the fabrics to ascertain whether the plastics layer is visible in the cross-section to the naked eye. *See* HQ H005538, dated November 30, 2007; HQ W968304, dated December 1, 2006; NY M82475, dated August 29, 2006; NY L80809, dated December 28, 2004. Additionally, CBP examines whether the plastics layer is visible through one of the assembled layers of fabric. In situations where one of the fabrics is of a loosely knitted or woven construction that allows the coating to be seen through that layer of fabric, CBP has considered such coating to be "visible to the naked eye." *See* HQ H005538; NY L89462, dated January 13, 2006; NY K87940, dated July 23, 2004 (both in which CBP found plastic film to be visible through a knit layer).

Upon further review of the samples you submitted on February 8, 2011, CBP has determined that the ePTFE plastic layer is visible to the naked eye through the knit polyester layer. Therefore, because the outer shell fabric is a plastic laminated textile fabric, in which the plastic layer is visible to the naked eye, it is properly classified under heading 5903, HTSUS. *See also* EN to heading 59.03; HQ H005538. Furthermore, in accordance with T.D. 91–97 and GRI 3(b), the Style MSD577vSR product is properly classified under heading 6210, HTSUS, which provides for "Garments, made up of fabrics of heading … 5903 …", because its outer shell is classifiable under heading 5903, HTSUS. *See also* HQ H042543; HQ 080817.

Since the garments are described as "unisex," they are classified in subheadings covering women's or girls' garments. *See* Note 8 to Chapter 62, HTSUS. Therefore, the Style MSD577vSR product is properly classified under subheading 6210.50.50, HTSUS, which provides for "Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Other women's or girls' garments: Of man-made fibers: Other".

II. NAFTA Eligibility

General Note (GN) 12, HTSUS, incorporates Article 401 of the North American Free Trade Agreement (NAFTA) into the HTSUS. GN 12(a)(i), HTSUS, provides, in pertinent part, that:

> Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Canada under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury (without regard to whether the goods are marked), and goods enumerated in subdivision (u) of this note,

when such goods are imported into the customs territory of the United States and are entered under a subheading for which a rate of duty appears in the "Special" subcolumn followed by the symbol "CA" in parentheses, are eligible for such duty rate, in accordance with section 201 of the North American Free Trade Agreement Implementation Act.

Accordingly, the Style MSD577vSR product will be eligible for the "Special" "CA" rate of duty provided: (1) it is deemed to be NAFTA originating under the provisions of GN 12(b), HTSUS; and, (2) it qualifies to be marked as a product of Canada under the NAFTA Marking Rules that are set forth in Part 102 of the Code of Federal Regulations (19 C.F.R. §102).

A. NAFTA Originating under GN 12(b)

In order to determine whether the Style MSD577vSR product is NAFTA-originating, we must consult GN 12(b), HTSUS, which provides, in pertinent part, as follows:

For the purposes of this note, goods imported into the Customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as "goods originating in the territory of a NAFTA party" only if—

* * *

(ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that--

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or

* * *

GN 12(t), HTSUS, states, in pertinent part:

(t) *Change in Tariff Classification Rules.*

* * *

Chapter 62.

* * *

Chapter rule 3: For purposes of determining the origin of a good of this chapter, the rule applicable to that good shall only apply to the component that determines the tariff classification of the good and such component must satisfy the tariff change requirements set out in the rule for that good. If the rule requires that the good must also satisfy the tariff change requirements for visible lining fabrics listed in chapter rule 1 for this chapter, such requirement shall only apply to the visible lining fabric in the main body of the garment, excluding sleeves, which covers the largest surface area, and shall not apply to removable linings.

* * *

32C. A change to headings 6208 through 6210 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307

through 5308 or 5310 through 5311, chapter 54, or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties.

* * *

35. A change to subheadings 6211.32 through 6211.49 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54 or headings 5508 through 5518, 5801 through 5802 or 6001 through 6006, provided that the good is both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties.

* * *

In NY N068477, CBP determined that the Style MSD577vSR product was classified in subheading 6211.43, HTSUS, and that the outer shell fabric was classified in heading 5407, HTSUS. CBP also determined that the Style MSD577vSR product did not satisfy GN 12(t)/62.35, HTSUS, because the change to subheading 6211.43, HTSUS, from Chapter 54, HTSUS, does not meet the required tariff shift.

However, the Style MSD577vSR product was not correctly classified in NY N068477. As discussed above, this product is properly classified in heading 6210, HTSUS, and its outer shell fabric is properly classified under heading 5903. Therefore, the requirements of GN 12(t)/62.32C, HTSUS, are satisfied, because the component which determines the tariff classification of the good (the outer shell fabric) shifts from heading 5903, HTSUS, to heading 6210, HTSUS. *See also* GN 12(t)/62, Chapter Rule 3, HTSUS.

The Style MSD577vSR product satisfies the requirements of GN 12(t), HTSUS. As such, it also satisfies the requirements of GN 12(b)(ii)(A), HTSUS, and is deemed to be NAFTA originating.

B. Country of Origin Marking

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. §1304), requires that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit in such manner as to indicate to the ultimate purchaser the English name of the country of origin of the article. The regulations implementing the requirements and exceptions to 19 U.S.C. §1304 are set forth in Part 134, CBP Regulations (19 C.F.R. §134).

Section 134.1(b), CBP Regulations (19 C.F.R. §134.1(b)), defines "country of origin" as:

> [T]he country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within the meaning of [the marking requirements] …

Title 19, Section 3592, of the United States Code (19 U.S.C. §3592) was promulgated to implement the Uruguay Round Agreements Act provisions concerning the classification of textiles. CBP published 19 C.F.R. §102.21 in

response. *See* 60 FR 46188. In *Pac Fung Feather Co. Ltd. v. United States*, 911 F.Supp. 529 (Ct. Int'l. Trade 1995), *aff'd* 111 F.3d 114 (Fed. Cir. 1997), the Court of International Trade held that CBP's promulgation of its final regulations concerning the rules of origin for textile and apparel products to be in accordance with the law.

19 C.F.R. §102.21 states, in pertinent part:

> (a) [T]he provisions of this section will control the determination of the country of origin of imported textile and apparel products for purposes of the Customs laws and the administration of quantitative restrictions.
>
> * * *
>
> (c) General rules … the country of origin of a textile or apparel product will be determined by sequential application of paragraphs (c)(1) through (5) of this section …
>
> (1) The country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced.
>
> (2) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section.
>
> * * *
>
> (e) Specific rules by tariff classification.
>
> (1) The following rules will apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section:

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

To determine the country of origin of the instant merchandise, CBP must consider 19 C.F.R. §102.21(c)(1) through (5) in order. The instant product is made from: a laminated nylon/ePTFE/polyester fabric manufactured in the United States, a neoprene/nylon fabric manufactured in the United States, a nylon/spandex knit fabric manufactured in the United States, a nylon/Kevlar/PET/PU fabric manufactured in Taiwan, and foam padding manufactured in Taiwan. Because these components were made in two different countries, 19 C.F.R. §102.21(c)(1) does not apply. Next, we apply 19

C.F.R. §102.21(c)(2), which directs us to consider 19 C.F.R. §102.21(e). The Style MSD577vSR product consists of five (5) component parts, which are assembled into a good of heading 6210, HTSUS. All of the fabric is cut, sewn, and assembled into a finished garment in Canada. Therefore, Special Rule (1) for headings 6210–6212 of 19 C.F.R. §102.21(e)(1) apply, and the country of origin of the instant product is Canada, by application of 19 C.F.R. §102.21(c)(2).

C. Conclusion

Because the Style MSD577vSR product has been deemed to be NAFTA originating under the provisions of GN 12(b), HTSUS, and because it may be marked as a product of Canada in accordance with 19 C.F.R. §102, it is eligible for the "Special" "CA" rate of duty.

HOLDING:

The Style MSD577vSR product is properly classified under heading 6210, HTSUS, specifically under subheading 6210.50.50, HTSUS, which provides for "Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Other women's or girls' garments: Of man-made fibers: Other". The general, column one rate of duty is 7.1% *ad valorem*.

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

The Style MSD577vSR product is an originating good under NAFTA pursuant to the tariff shift rules set forth in GN 12(b) and (t)/62.32C, HTSUS. Pursuant to 19 CFR §102.21(c)(2) and (e)(1), the country of origin for marking purposes is Canada, provided a certificate of origin is completed and signed for the good.

A copy of this ruling letter should be attached to the entry documents filed at the time the goods are entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the CBP officer handling the transaction.

EFFECT ON OTHER RULINGS:

New York Ruling Letter N068477, dated August 6, 2009, is hereby MODIFIED in accordance with the above analysis.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

GENERAL NOTICE

19 CFR PART 177

PROPOSED REVOCATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF BITREX, 25% IN PROPYLENE GLYCOL

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

ACTION: Notice of proposed revocation of two ruling letters and proposed revocation of treatment relating to the classification of "Bitrex, 25% in Propylene Glycol."

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 ("CPB") is proposing to revoke two rulings concerning the classification of Bitrex, 25% in Propylene Glycol, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB is proposing to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before March 29, 2013.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade--Regulation and Rulings, Attn: Mr. Joseph Clark, 90 K. St. NE. (10th) Floor, 5th Floor, Washington D.C. 20229–1177. Comments submitted may be inspected at the above address during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

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

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke a ruling pertaining to the classification of Bitrex 25% in Propylene Glycol. Although in this notice CBP is specifically referring to Headquarters Ruling Letter (HQ) 968018, dated January 9, 2006, which affirmed the holding in New York (NY) ruling letter L85332, dated June 24, 2005, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

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

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

In HQ 968018 (Attachment A) and in NY L85332 (Attachment B), CBP ruled that the merchandise consists of an "other" chemical mixture classified in subheading 3824.90.91, HTSUS. The referenced rulings are incorrect because the mixture consists of a solution containing more than 5% of an aromatic substance, and is classified accordingly in subheading 3824.90.28, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke HQ 968018 and NY L85332, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H072379 (Attachment C). 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: January 17, 2013

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT A]

HQ 968018

January 9, 2006
CLA-2 RR:CTF:TCM 968018 BtB
CATEGORY: Classification
TARIFF NO.: 3824.90.9190

MR. MITCHELL J. TRACY
MARKET ACTIVES, LLC
8300 SW 71ST AVENUE
PORTLAND, OR 97223

Re: Reconsideration of NY L85332; classification of "Bitrex, 25% in Propylene Glycol"

DEAR MR. TRACY:

This is in reply to your letter dated July 25, 2005 to the National Commodity Specialist Division ("NCSD") requesting reconsideration of New York Ruling Letter (NY) L85332, dated June 24, 2005, on the classification of a product identified as "Bitrex, 25% in Propylene Glycol." You supplemented your request with another letter dated December 12, 2005. Pursuant to your reconsideration request, we have reviewed NY L85332. This ruling, HQ 968018, affirms the holding in NY L85332.

FACTS:

In NY L85332, U.S. Customs and Border Protection ("CBP") classified a solution composed of 25% bitrex (C.A.S. number 3734–33–6) and 75% propylene glycol (C.A.S. number 57–55–6) in subheading 3824.90.9190, Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"), which provides for: "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other, Other."

In your July 25, 2005 letter, you assert that the solution at issue is classified in subheading 2924.29.7100, HTSUSA, which provides for: "Carboxyamide-function compounds; amide-function compounds of carbonic acid: Cyclic amides (including cyclic carbamates) and their derivatives; salts thereof: Other: Aromatic: Other: Other: Other: Products described in additional U.S. note 3 to section VI." Your assertion is addressed below.

ISSUE:

What is the classification of "Bitrex, 25% in Propylene Glycol?"

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes." If the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied, in order.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings)

and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. *See* T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

You assert that the product at issue is classifiable in subheading 2924.29.7100, HTSUSA. However, before any consideration of subheadings, it is necessary to determine a single correct heading for the merchandise at issue. *See Orlando Food Corp. v. United States*, 140 F.3d 1437 (Fed. Cir. 1998). The HTSUSA headings under consideration for classification of the instant solution are: Heading 2924, which provides for: "Carboxyamide-function compounds; amide-function compounds of carbonic acid" and Heading 3824, which provides for: "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included."

As its U.S. distributor, you are aware that "Bitrex" is the brand name for denatonium benzoate, the bitterest compound known. *See* www.bitrex.com. Bitrex is an aromatic, cyclic amide indicated for use as a denaturant and bittering agent. *See generally* NY J82291, dated March 27, 2003, addressed to you. The EN to heading 2924 specifically states that the heading includes cyclic amides. CBP has classified Bitrex in heading 2924, HTSUSA. *Id.* However, the solution at issue contains only 25% Bitrex. The remaining 75% is propylene glycol, also a chemical compound.

As a general rule, subject to the provisions of Note 1 to the Chapter, the headings of Chapter 29 are restricted to separate chemically defined organic compounds. *See* Note 1 to Chapter 29, HTSUSA, and General EN to Chapter 29. "Bitrex, 25% in Propylene Glycol," however, is not a separate chemically defined organic compound, but a solution; that is, a homogenous mixture with Bitrex serving as the solute and the propylene glycol serving as the solvent.

Note 1 to Chapter 29, HTSUSA, however, does offer certain allowances in regard to the general rule above. Note 1(e) to Chapter 29, HTSUSA, allows for chemical compounds "dissolved in other solvents provided that the solution constitutes a normal and necessary method of putting up these products adopted solely for reasons of safety or for transport and that the solvent does not render the product particularly suitable for specific use rather than for general use." Note 1(g) to Chapter 29, HTSUSA, allows for chemical compounds that contain an anti-dusting agent for safety reasons, provided that the additions do not render the product particularly suitable for specific use rather than for general use.

In your July 25, 2005 letter, you claim that propylene glycol has only been added to the instant product "… as an anti-dusting agent for safety reasons as allowed in Chapter 29 (e) and (g) notes." You assert that, as a consequence, the headings of Chapter 29 apply to the product at issue.

We do not agree that the allowances set forth in Note 1(e) or Note 1(g) bring the product at issue within the scope of products covered by the headings of Chapter 29. In regard to Note 1(e), the dissolving of Bitrex in a solvent is not

necessary to put up or sell the product. This is evidenced by the fact that you distribute Bitrex in anhydrous form in granules and powder. In regard to Note 1(g), we do not regard the propylene glycol in the product to be a mere anti-dusting agent used for safety reasons. Market Actives, LLC's website (www.marketactives.com) states the following regarding the Bitrex solutions that it distributes:

> Bitrex is stable, inert and easily added to most products. For ease of handling, many manufacturers use our standard Bitrex solutions of Propylene Glycol, Ethylene Glycol or Ethanol. This reduces mixing time and bitter taste exposures.

Propylene glycol serves as more than an anti-dusting agent in the product at issue. The compound composes 75% of the solution. Propylene glycol was specifically chosen to be part of the solution, not because it is an effective anti-dusting agent, but because of its compatibility with and authorized use in pharmaceutical preparations, cosmetics, toiletries, perfumes, etc. As mentioned on the above website, this compatibility reduces mixing time. If the propylene glycol merely served as a dusting-agent that was suitable for general use, there would be no need for the two other varieties of solution (Bitrex with ethylene glycol or ethanol) that Market Actives, LLC distributes. The two other varieties of Bitrex solutions are distributed because these solutions are compatible with other specific products that the solution at issue is not. Additionally, while Bitrex mixed with propylene glycol may reduce bitter taste exposures, it is our understanding that Bitrex is a product that is designed for human exposure and is not harmful. While bitter taste exposures may be unpleasant, they are not a safety concern. As a result, we do not consider the Bitrex to be mixed with the propylene glycol for "safety reasons."

As, pursuant to Note 1 to Chapter 29, HTSUSA, the product at issue does not fall within the scope of merchandise covered by the headings of Chapter 29, HTSUSA, the product at issue cannot be classified in heading 2924, HTSUSA. The product is, however, classifiable in heading 3824, HTSUSA, as a chemical product not elsewhere specified or included. In regard to the part of heading 3824 providing for chemical products not elsewhere specified or included, the EN to heading 3824 states, in relevant part, that:

> The **chemical or other preparations** are either mixtures … or occasionally solutions. Aqueous solutions of the chemical products of Chapter 28 or 29 remain classified within those Chapters, but solutions of these products in solvents other than water are, apart from a few exceptions, excluded therefrom and accordingly fall to be treated as preparations of this heading."

The product at issue is a solution, with propylene glycol serving as the solvent. Pursuant to the terms of the heading and guidance from the EN, the product falls squarely within the scope of heading 3824, and accordingly is classified in that heading.

HOLDING:

By application of GRI 1, "Bitrex, 25% in Propylene Glycol" is classified in heading 3824, HTSUSA. It is provided for in subheading 3824.90.9190, HTSUSA, which provides for: "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (in-

cluding those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other, Other." The applicable column one, general duty rate under the 2006 HTSUSA is 5% *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the world wide web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY L85332, dated June 24, 2005, is affirmed.

Sincerely,

MYLES B. HARMON,
Director
Commercial Trade and Facilitation Division

[ATTACHMENT B]

NY L85332

June 24, 2005
CLA-2–38:RR:NC:2:239 L85332
CATEGORY: Classification
TARIFF NO.: 3824.90.9190

MR. MITCHELL TRACY
MARKET ACTIVES, LLC
8300 SW 71st AVE.
PORTLAND, OR 97223

RE: The tariff classification of "Bitrex, 25% in Propylene Glycol" from the United Kingdom.

DEAR MR. TRACY:

In your letter dated May 31, 2005, you requested a tariff classification ruling for "Bitrex, 25% in Propylene Glycol" which you have stated is composed of 25% bitrex and 75% propylene glycol. The product is used as a denaturant and bittering agent.

The applicable subheading will be 3824.90.9190, Harmonized Tariff Schedule of the United States (HTS), which provides for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: other. The rate of duty will be 5 percent ad valorem.

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

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

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT C]

HQ H072379
CLA-2 OT:RR:CTF:TCM H072379 ARM
CATEGORY: Classification
TARIFF NO.: 3824.90.28

MR. MITCHELL J. TRACY
MARKET ACTIVES, LLC
8300 SW 71ST AVENUE
PORTLAND, OR 97223

Re: Revocation of HQ 968018 and NY L85332; classification of "Bitrex, 25% in Propylene Glycol"

DEAR MR. TRACY:

This is in reference to Headquarters ruling letter (HQ) 968018, dated January 9, 2006, which affirmed the holding in New York (NY) ruling letter L85332, dated June 24, 2005, issued to you, concerning the classification, of a product identified as "Bitrex, 25% in Propylene Glycol." NY L85332 and HQ 968018 held that Bitrex, 25% in Propylene Glycol is classified, under the Harmonized Tariff Schedule of the United States (HTSUS), in subheading 3824.90.91, HTSUS, the provision for: "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other, Other." We have reviewed these rulings and find them to be in error. This ruling revokes HQ 968018 and NY L85332.

FACTS:

In NY L85332, U.S. Customs and Border Protection ("CBP") classified a solution composed of 25% Bitrex (C.A.S. number 3734–33–6) and 75% propylene glycol (C.A.S. number 57–55–6) in subheading 3824.90.91, HTSUS", which provides for: "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Other." In HQ 968018, CBP affirmed its previous decision that the product is a mixture of heading 3824, HTSUS, and not a separate chemically defined amide function compound of heading 2924, HTSUS.

"Bitrex" is the brand name for denatonium benzoate, the bitterest compound known. *See* www.bitrex.com. Bitrex is an aromatic, cyclic amide indicated for use as a denaturant and bittering agent.

ISSUE:

What is the classification of Bitrex, 25% in Propylene Glycol?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes." If the goods cannot be classified solely

on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied, in order.

The HTSUS provisions under consideration are as follows:

3824	Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:				
3824.90		Other:			
			Other:		
				Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances:	
					Other.
*	*	*	*	*	
				Other:	
					Other:
3824.90.92					Other.

Additional U.S. note 2(a) to section VI, which covers heading 3824, HTSUS, states the following:

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

In HQ 968018, we discussed the correct classification of the instant solution, under GRI 1, in heading 3824, HTSUS, as a chemical preparation, rather than in your preferred heading, 2924, HTSUS, as an amide-function compound of carbonic acid. As such, we will not address the classification at the heading level herein. Rather, the issue here is the correct eight-digit level national tariff rate applicable to the Bitrix solution. The Bitrix solution contains 25% denatonium benzoate in 75% propylene glycol. Therefore, the solution contains more than 5% of an aromatic substance and is classified as such in subheading 3824.90.28, HTSUS, under GRI 6.

HOLDING:

By application of GRI 1 and 6, "Bitrex, 25% in Propylene Glycol" is classified in heading 3824, HTSUS. It is provided for in subheading 3824.90.28, HTSUS, which provides for: "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other: Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances: Other." The applicable column one, general duty rate under the 2009 HTSUS is 6.5% *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the world wide web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

HQ 968018, dated January 9, 2006, and NY L85332, dated June 24, 2005, are revoked.

Sincerely,

MYLES B. HARMON,
Director
Commercial Trade and Facilitation Division

GENERAL NOTICE

19 CFR PART 177

PROPOSED MODIFICATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF REAGENT KIT IM1579 RIA FREE T3

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

ACTION: Notice of proposed modification of a ruling letter and treatment relating to the classification of Reagent kit IM1579 RIA Free T3.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection ("CBP") intends to modify one ruling concerning the classification of Reagent kit IM1579 RIA Free T3, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before March 29, 2013.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade--Regulations and Rulings, Attn: Mr. Joseph Clark, 90 K. St. NE., 10th Floor, Washington D.C. 20229–1177. Comments submitted may be inspected at 90 K. St, NE. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

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

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (CBP Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP intends to modify a ruling pertaining to the classification of Reagent kit IM1579 RIA Free T3. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) N019762, dated December 10, 2007, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

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

In NY N019762 (Attachment "A"), CBP ruled that the Reagent kit is classified in subheading 3002.10.01, HTSUS, which provides for "Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes:

Other." The rate of duty is free. The referenced ruling is incorrect because the good which gives the kit its essential character is classified by its isotope component in Chapter 28, HTSUS, rather than its monoclonal antibody component, in Chapter 30, HTSUS.

CBP, pursuant to 19 U.S.C. 1625(c)(1), proposes to modify NY N019762 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H035574 (Attachment "B"). 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: January 17, 2013

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT A]

N019762
December 10, 2007
CLA-2–30:OT:RR:E:NC:N2:238
CATEGORY: Classification
TARIFF NO.: 3002.10.0190; 3822.00.5090

MS. HELEN MESTAS
BECKMAN COULTER INC.
4300 HARBOR BLVD.
FULLERTON, CA 92835

RE: The tariff classification of Rubella IgG 34430, TBIL reagent 442745, IgG reagent 446400, Reagent kit IM 1579 RIA Free T3 and GenomeLab™ GeXP Human MetastasisPlex Kit A32712, from France

DEAR MS. MESTAS:

In your letter dated November 14, 2007, you requested a tariff classification ruling.

The first product, Rubella IgG 34430, is used for the quantitative and qualitative determination of IgG antibodies to the rubella virus in human serum and aids in the diagnosis of rubella infection. This product contains mouse monoclonal IgG and uses chemiluminescent reaction to determine anti-rubella levels in human serum.

The second product, TBIL reagent 442745, is used for the quantitative determination of bilirubin concentration in human serum or plasma. It is used to measure the total bilirubin concentration by a timed endpoint Diazo method. Per your letter, this reagent does not contain any biological and animal source material, but, rather, contains various chemicals including sodium benzoate, caffeine, sulfanilic acid, HCL, Sodium Nitrite and Sodium Acetate.

The third product, IgG reagent 446400, is used for the quantitative determination of Immunoglobulin G (IGG) in human serum or cerebrospinal fluid (CSF) and is primarily used for in vitro diagnosis. This product contains processed goat sera IGG antibody and processed diluted human serum IGG antigen Excess Solution. The methodology used to determine IGG is by measuring the rate of increase in light scattered from particles suspended in solution as a result of complexes formed during an antigen-antibody reaction.

The fourth product, Reagent Kit IM 1579 RIA Free T3, is intended for in vitro diagnostic use. This kit contains Ligand coated tubes and is radioactive labeled monoclonal antibody in bovine serum albumin and dye. It is used for the quantitative determination of triiodothyronine (T3) in human serum by the principle of the competitive protein binding analysis.

The last product, GenomeLab™ GeXP Human MetastasisPlex Kit A32712, is used with the GenomeLab™ system, a gene expression analysis system used to study gene pathways in human tumor progression. This instant reagent kit contains RT Rev Primer Plex Human, PCR FWD Primer Plex Human, and Control Human RNA Templates, all used for DNA replication.

The applicable subheading for Rubella IgG 34430, IgG reagent 446400 and Reagent kit IM 1579 RIA Free T3, will be 3002.10.0190, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Antisera and

other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes: Other." The rate of duty will be free.

The applicable subheading for the TBIL reagent 442745 and GenomeLab™ GeXP Human MetastasisPlex Kit A32712, will be 3822.00.5090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents, whether or not on a backing, other than those of heading 3002 or 3006: Other: Other." The rate of duty will be free.

The Rubella IgG 34430, IgG reagent 446400, Reagent kit IM 1579 RIA Free T3 and GenomeLab™ GeXP Human MetastasisPlex Kit A32712 may be subject to the rules and regulations of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, located at 1600 Clifton Rd., Atlanta, GA 30333. You may contact them, by telephone, at: (404) 639–3534 / (800) 311–3435.

The TBIL reagent 442745 may be subject to the requirements of the Toxic Substances Control Act (TSCA), which are administered by the U.S. Environmental Protection Agency (EPA). Information on the TSCA can be obtained by calling the EPA at (202) 554–1404, or by visiting their website at www.epa.gov.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Harvey Kuperstein at 646–733–3033.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT B]

HQ H035574
CLA-2 OT:RR:CTF:TCM H035574 ARM
CATEGORY: Classification
TARIFF NO: 2844.40.00

MS. HELEN MESTAS
BECKMAN COULTER INC.
4300 HARBOR BLVD.
FULLERTON, CA 92835

RE: Modification of New York Ruling Letter N019762; Classification of Reagent kit IM1579 RIA Free T3

DEAR MS. MESTAS:

This is in reply to your electronic request, of July 2, 2008, for reconsideration of New York Ruling Letter (NY) N019762, dated December 10, 2007, regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of Reagent kit IM1579 RIA Free T3. In NY N019762, Customs and Border Protection ("CBP") classified the Reagent kit in subheading 3002.10.01, HTSUS, which provides for "Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes." The rate of duty is free. You state that you have received a copy of a ruling issued by the Australian Customs Service that classifies the product in heading 2844, of its Tariff, and ask that we reconsider our ruling. Your request has been forwarded to this office for reply. We have reviewed NY N019762 and find it to be it error with respect to Reagent kit IM1579 RIA Free T3.

FACTS:

NY N019762 describes the instant merchandise as follows:

> Reagent Kit IM 1579 RIA Free T3, is intended for in vitro diagnostic use. This kit contains Ligand coated tubes and is radioactive labeled monoclonal antibody in bovine serum albumin and dye. It is used for the quantitative determination of triiodothyronine (T3) in human serum by the principle of the competitive protein binding analysis.

A page entitled "Direction for Use" is submitted with your request. It states, in pertinent part, the following:

> 1. Principle of the Assay
>
> The radioimmunoassay of free triiodythyronin (T3) is a competition assay based on the principle of labeled antibody. Samples and calibrators are incubated with ^{125}I-labeled monoclonal antibody specific for T3, as tracer, in tubes coated with an analog of T3 (ligand). There is competition between the free triiodothyronine of the sample and the ligand for the binding to the labeled antibody. After incubation, the content of tubes is aspirated and bound radioactivity is measured. A calibration curve is established and unknown values are determined by interpolation from the curve.
>
> 2. Reagents Provided
>
> 2.1 Kit for determination of free T3, 100 tubes (Cat #1579)

2.1.1 Ligand-coated tubes: 2x50 tubes (ready-to-use)

2.1.2 ^{125}I-labeled monoclonal antibody: one 45 ml vial (ready-to-use)

The vial contains 225 kBq, at the date time of manufacture, of ^{125}I-labeled immunoglobulins in liquid form with bovine serum albumin and sodium azide (parenthetical omitted) and a dye.

2.1.3 Calibrators: five 1 ml vials (ready-to-use)

The calibrator vials contain from 0 to 44pM of free T3 in human serum. . . 2.1.4 Control serum: one 1 ml vial (ready-to-use) . . . .

ISSUE:

Whether the vial of ^{125}I-labeled monoclonal antibody, bovine serum albumin, sodium azide and a dye in the Reagent Kit IM1579 RIA Free T3 is classified as a monoclonal antibody reagent of heading 3002, HTSUS, or as a chemically undefined organic compound of Iodine contained in a solution of heading 2844, 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 of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs and Border Protection (CBP) believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

GRI 2(b) requires that goods consisting of different materials be classified according to the principles of GRI 3. GRI 3(a) requires that amongst competing headings, the most specific heading be used, but headings which refer to part only of the goods are equally specific. GRI 3(b), provides that sets put up for retail sale and 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, insofar as this criterion is applicable. Explanatory Note 3(b)(VIII) to GRI 3(b) states that 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." Explanatory Note (X) (page 5) to GRI 3(b) states that the term "goods put up in sets for retail sale" means goods which:

(a) consist of at least two different articles which are, prima facie, classifiable in different headings;

(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and

(c) are put up in a manner suitable for sale directly to users without repacking.

The Section VI Notes state, in pertinent part, the following:

1. (a) Goods . . .answering to a description in heading 2844 or 2845 are to be classified in those headings and in no other heading of the tariff schedule.

* * * *

3. Goods put up in sets consisting of two or more separate constituents, some or all of which fall in this section and are intended to be mixed together to obtain a product of section VI or VII, are to be classified in the heading appropriate to that product, provided that the constituents are:

(a) Having regard to the manner in which they are put up, clearly identifiable as being intended to be used together without first being repacked;

(b) Entered together; and

(c) Identifiable, whether by their nature or by the relative proportions in which they are present, as being complementary one to another.

Chapter 28 note 6 states:

6. Heading 2844 applies only to:

(a) Technetium (atomic No. 43), promethium (atomic No. 61), polonium (atomic No. 84) and all elements with an atomic number greater than 84;

(b) Natural or artificial radioactive isotopes (including those of the precious metals or of the base metals of sections XIV and XV), whether or not mixed together;

(c) Compounds, inorganic or organic, of these elements or isotopes, whether or not chemically defined, whether or not mixed together;

(d) Alloys, dispersions (including cermets), ceramic products and mixtures containing these elements or isotopes or inorganic or organic compounds thereof and having a specific radioactivity exceeding 74 becquerels per gram (0.002 microcurie per gram);

(e) Spent (irradiated) fuel elements (cartridges) of nuclear reactors;

(f) Radioactive residues whether or not usable.

The term "isotopes", for the purposes of this note and of the wording of headings 2844 and 2845, refers to:

(i) Individual nuclides, excluding, however, those existing in nature in the monoiosotopic state;

(ii) Mixtures of isotopes of one and the same element, enriched in one or several of the said isotopes, that is, elements of which the natural isotopic composition has been artificially modified.

Chapter 30 note 2 provides that "For the purposes of heading 3002, the expression "modified immunological products" applies only to monoclonal antibodies (MABs), antibody fragments, antibody conjugates and antibody fragment conjugates."

The following HTSUS provisions are relevant to the classification of this product:

2844:	Radioactive chemical elements and radioactive isotopes (including the fissile or fertile chemical elements and isotopes) and their compounds; mixtures and residues containing these products:
2844.40.00	Radioactive elements and isotopes and compounds other than those of subheadings 2844.10, 2844.20, and 2844.30; alloys, dispersions (including cermets), ceramic products and mixtures containing these elements, isotopes or compounds; radioactive residues
* * * * *	
3002	Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products:
3002.10.01	Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes.
* * * * *	

The contents of the Reagent Kit IM1579 RIA Free T3 meets the definition of a set under GRI 3(b) as it consists of articles classified in different headings, put up in packings for the end user (laboratory personnel), intended to be used together for the particular activity of determining the level of free T3 in a blood sample. The article of the kit which imparts the kit with its essential character is the vial of ^{125}I-labeled monoclonal antibody, bovine serum albumin, sodium azide and a dye. This vial and its contents constitute a composite good under GRI 3(b). The item that imparts the contents of the vial with its essential character is the ^{125}I-labeled monoclonal antibody. These statements are not in dispute.

The classification of the ^{125}I-labeled monoclonal antibody is at issue. A monoclonal antibody is a modified immunological product classified in heading 3002, HTSUS, by note 2 to Chapter 30. A "labeled" monoclonal antibody is a new chemical compound that is not chemically defined, however, the monoclonal antibody remains intact. The "label", in this case ^{125}Iodine, is a radioactive isotope of iodine. Hence, the ^{125}I-labeled monoclonal antibody at issue is included in Chapter 28 under note (c) to the chapter. It is contained in a dispersion of bovine serum albumin, sodium azide and a dye having a specific radioactivity exceeding 74 becquerels per gram, which meets the terms of Chapter 28 note 6(d). Therefore, under Section VI, note (a), the merchandise must remain classified in Chapter 28, specifically in heading 2844, HTSUS, as a mixture containing a compound of a radioactive isotope.

HOLDING:

By application of GRIs 1 and 3, the classification of the Reagent kit IM1579 RIA Free T3 is in heading 2844, HTSUS, specifically in subheading 2844.40.00, HTSUS, which provides for: "Radioactive chemical elements and radioactive isotopes (including the fissile or fertile chemical elements and

isotopes) and their compounds; mixtures and residues containing these products: Radioactive elements and isotopes and compounds other than those of subheadings 2844.10, 2844.20, and 2844.30; alloys, dispersions (including cermets), ceramic products and mixtures containing these elements, isotopes or compounds; radioactive residues." The column one general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

This ruling modifies NY N019762, dated December 10, 2007, with respect to the classification of the Reagent kit IM1579 RIA Free T3. The classification of Rubella IgG 34430, TBIL reagent 442745, IgG reagent 446400, and GenomeLab™ GeXP Human MetastasisPlex Kit A32712 remains unchanged.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF PERFORATING GUN ASSEMBLIES

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

ACTION: Notice of revocation of three ruling letters and treatment relating to the tariff classification of certain perforating gun assemblies.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CPB is revoking three ruling letters relating to the tariff classification of certain perforating gun assemblies under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB is revoking any treatment previously accorded by CPB to substantially identical transactions. Notice of the proposed action was published on May 16, 2012, Vol. 46, No. 21, of the *Customs Bulletin*. One comment was received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 29, 2013.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke three ruling letters pertaining to the tariff classification of certain perforating gun assemblies was published in the May 16, 2012, *Customs Bulletin*, Vol. 46, No. 21. One comment was received in response to the notice.

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

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

In NY N012463, CBP determined that a perforating gun assembly was classified under heading 9303, HTSUS, as a firearm or other similar device which operated by an explosive charge. In NY C83105 and in NY C82398 CBP determined that a charge holder and a pre-drilled barrel (respectively), used to perforate oil wells, were classified in heading 9305, HTSUS, as parts of an article of heading 9303, HTSUS. CBP now believes that these devices are properly classified in heading 7326, HTSUS, as other articles of iron or steel.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N012463, NY C83105, NY C82398 and any other ruling not specifically identified, to reflect the proper classification of the perforating gun assemblies, charge holders and pre-drilled barrels according to the analysis contained in Headquarters Ruling Letters ("HQ") H053672, HQ H102845 and HQ H102847, set forth as attachments A, B, and C, respectively, to this document. Additionally, pursuant to 19 U.S.C.

§1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: January 16, 2013

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

Attachments

[ATTACHMENT A]

HQ H053672
January 11, 2013
CLA-2 OT:RR:CTF:TCM H053672 JER/JPJ
CATEGORY: Classification
TARIFF NO.: 7326.90.85

ROBERT T. GIVENS, ESQ.
GIVENS & JOHNSTON, PLLC
950 ECHO LANE, SUITE 360
HOUSTON, TX 77024–2788

RE: Revocation of New York Ruling Letter N012463; Classification of a Perforating Gun Assembly

DEAR MR. GIVENS:

This letter is in response to your request of February 20, 2009, for reconsideration of New York Ruling Letter (NY) N012463, issued to your client, Halliburton Energy Services, Inc. (Halliburton), by U.S. Customs and Border Protection (CBP) on June 18, 2007. In NY N012463, CBP determined that the subject "Perforating Gun Assembly" was classified under heading 9303 of the Harmonized Tariff Schedule of the United States (HTSUS) as "Other firearms and similar devices which operate by the firing of an explosive charge." We have reviewed NY N012463 and found it to be incorrect for the reasons set forth below. In reaching our decision we have taken into consideration your submission dated February 20, 2009, information obtained during a meeting held on October 29, 2009, between CBP, your office and Halliburton, and your supplemental submission dated November 23, 2009.

On May 16, 2012, pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published in the *Customs Bulletin*, Vol. 46, No. 21. One comment was received in support of the notice. However, the commenter suggests that while heading 7326 may indeed be the most appropriate heading, headings 7304, 7305 and 7306 should also be given consideration. The suggested headings are discussed in the Law and Analysis Section herein.

FACTS:

The subject merchandise, referred to as a perforating gun assembly (hereinafter "perforating gun"),[1] was described in NY N012463 as follows:

> It is an apparatus consisting of a tube-like device called a charge holder which is a specialized component of a perforating gun. The charge holder is basically a long tube, up to several feet in length, with holes cut out of it. The design of the tube and the placement of the holes are made to exact specifications. The charge holder tube will be fitted with direc-

[1] According to your November 23, 2009 submission, Perforating tools generally consist of 1) a tube called the "carrier" which encases the charge holder, 2) a tube charge holder, consisting of a tube with holes cut into it at prescribed intervals (can circle around the tube, or be confined to one or more sides, depending on the direction of the desired perforation. The tube charge holder holds the sealed, shaped charges), 3) an electrically-operated or mechanical detonator, plus detonating cord, and various other small assembly components.

tional, sealed, powdered charges, combined with the perforating gun, and placed in oil or gas wells where its detonation will blow or perforate holes in casings and rock strata.

According to your submission perforating guns are used in connection with onshore oil well drilling and oil production. The subject perforating guns are said to be imported without any explosive charges, sensors, or the like, and are described as "single use" articles which are discarded after use. You have also stated that:

> Without the explosives, the perforating tool provides a sealed atmospheric chamber that can withstand collapse pressure when an external pressure is applied, provides alignment for mating parts, has provisions for attaching additional members, and has strength to withstand tension, compression and torsion.
>
> * * *

The explosive charges in question are shaped charges that focus the energy of the explosion in a specific direction. In many applications the charge holder orients these shaped charges so that they focus their energy laterally precisely into a spot on the wall of the well bore...

ISSUE:

Whether the subject perforating gun assembly as imported is classified (1) under headings 7304, 7305, or 7306, HTSUS, as tubes, pipes and hollow profiles, other tubes and pipes, or other tubes, pipes and hollow profiles, (2) under heading 7326, HTSUS, as an other article of iron or steel, or (3) under heading 8430, HTSUS, as an excavating, boring or extracting machine, or (4) under heading 8431, HTSUS, as a part of an excavating, boring or extracting machine, or (5) under heading 8479, HTSUS, as a machine having an individual function not elsewhere specified or included, or (6) under heading 9303, HTSUS, as a firearm or similar device which operates by the firing of an explosive charge.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

7304	Tubes, pipes and hollow profiles, seamless, of iron (other than cast iron) or steel.
7305	Other tubes and pipes (for example, welded, riveted or similarly closed), having circular cross-sections, the external diameter of which exceeds 406.4 mm, of iron or steel.
7306	Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel.
7326	Other articles of iron or steel:

8430	Other moving, grading, leveling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snowplows and snow-blowers:
8431	Parts suitable for use solely or principally with machines of headings 8425 to 8430:
8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof:
9303	Other firearms and similar devices which operate by the firing of an explosive charge (for example, sporting shot-guns and rifles, muzzle-loading firearms, Very pistols and other devices designed to project only signal flares, pistols and revolvers for firing blank ammunition, captive-bolt humane killers, line-throwing guns):

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

EN 73.04 provides, in pertinent part, that:

The heading **excludes**:

* * *

(f) Tubes, pipes and hollow profiles made up into specific identifiable articles. . .

EN 73.05 provides, in pertinent part, that:

The heading **does not cover**:

* * *

(c) Tubes or pipes made up into specific identifiable articles.

EN 73.06 provides, in pertinent part, that:

The heading **excludes**:

* * *

(f) Tubes, pipes and hollow profiles made up into specific identifiable articles. . .

EN 84.30 provides, in pertinent part, that:

(III) **EXTRACTING, CUTTING OR DRILLING MACHINERY**

This heading covers machinery, **other than** the self-propelled machines of **heading 84.29** and agricultural, horticultural or forestry machinery (**heading 84.32**), for "attacking" the earth's crust (e.g., for cutting and breaking down rock, earth, coal, etc.; earth excavation, digging, drilling, etc.), or for preparing or compacting the terrain (e.g., scraping, levelling, grading, tamping or rolling). It also includes pile-drivers, pile-extractors, snow-ploughs, and snow-blowers.

EN 84.79 states, in relevant part, as follows:

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

(a) Is not excluded from this Chapter by the operation of any Section or Chapter Note.

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

* * *

(B) Mechanical devices which cannot perform their function unless they are mounted on another machine or appliance, or are incorporated in a more complex entity, **provided** that this function:

(i) is distinct from that which is performed by the machine or appliance whereon they are to be mounted, or by the entity wherein they are to be incorporated, and

(ii) does not play an integral and inseparable part in the operation of such machine or entity.

EN 93.03 provides, in pertinent part, that:

This heading includes all firearms **not covered by headings 93.01** and **93.02**; it includes some devices which are not weapons but which operate by the firing of an explosive charge.

* * *

In your request for reconsideration, you argue that the instant merchandise does not qualify as a firearm within the meaning of heading 9303, HTSUS, in part, because, it does not meet the definition of a "firearm." You state that an "arm" is commonly defined as a weapon, specifically a firearm. In turn, a weapon is defined as "an instrument of attack or defense in combat, as a gun, missile or sword. *The American Heritage Dictionary of the English Language*, 3rd ed., (1992). You further contend that the instant perforating gun is not a "similar device" within the meaning of heading 9303, HTSUS, because the subject perforating gun does not look or function like a firearm. You explain that the name "perforating gun" is a misnomer used within the oil and gas industry that does not describe the functionality of the merchandise. In your February submission, you noted that the subject perforating gun is used for "facilitating the production of oil…[and is] not designed to either fire a projectile or to resemble a firearm firing a projectile."

In order to classify the subject merchandise under heading 9303, HTSUS, it must be a firearm or *ejusdem generis* (of the same class or kind) with those devices enumerated in the heading. The Court has held that "As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms." *Nissho-Iwai American Corp. v. United States* (Nissho), 10 Court of Int'l Trade 154, 157 (1986). The exemplars named in heading 9303, HTSUS, share several characteristics which include: multiple usage, operating by the firing of an explosive charge activated by an internal triggering mechanism which sends a projectile through a barrel, and being hand-held.

By contrast, the subject perforating device consists of one long tube with multiple perforations along its length from which multiple explosive charges exit in multiple directions. Further, the tube itself is not the explosive device, it does not use an internal firing or triggering mechanism to fire a projectile from a barrel, and it is not capable of re-use as are the articles of heading 9303, HTSUS. Moreover, the subject merchandise is used in connection with oil drilling and production rather than as a weapon. Therefore, under the canon of construction known as *ejusdem generis*, the subject perforation device can not be said to be similar in function, essential character or purpose to the enumerated examples of heading 9303, HTSUS. Accordingly, it is not described by the term "firearm." Based on the foregoing, the subject perforating gun cannot be classified in heading 9303, HTSUS, because it is not described by the heading.

You assert that the subject merchandise is classifiable in heading 8430, HTSUS, as other moving, grading, leveling, scraping, excavating, tamping, or boring machinery. In the alternative, you assert classification under heading 8431, HTSUS, as parts suitable for use solely or principally with the machinery of heading 8430, HTSUS, or in heading 8479, HTSUS, as a machine or mechanical appliance having an individual function, not specified or included elsewhere in Chapter 84.

Machinery of heading 8430, HTSUS, by their own mechanical function, directly affects the scraping, leveling, boring, excavation or extraction of the earth, ores or minerals in question. The examples provided in EN 84.30 include: (A) coal or rock cutters, (B) Tunneling machinery, (C) Machines for boring drill holes in rock, coal, etc., (D) Well sinking or boring machines (F) Hydraulic wedges. The machinery of heading 8430, HTSUS, have in common the fact that they break the earth's crust by physical impact, abrasion or percussion between the machine in question and the rock or earth to be broken. The instant merchandise does not function in the aforementioned manner. While the ultimate objective of the instant perforation device is to stimulate the flow of oil into the well hole, the subject perforating gun does not itself have direct contact with the subsurface strata. Instead, it acts as a single use container or carrier into which explosive charges are inserted. We find that the subject perforating gun assembly does not perform a function which is described by the terms of heading 8430, HTSUS.

Further, the subject perforating gun is not designed to be a part of any of the machines of heading 8430, HTSUS and is therefore not classifiable in heading 8431, HTSUS, as a "part" of a machine of heading 8430, HTSUS. A part is either (1) an integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article, or (2) dedicated solely for use with an article. [internal quotation marks omitted]. *ABB, Inc. v. United States*, 28 Ct of Int'l Trade 1444, 1452; 346 F. Supp. 2d 1357, 1364; 26 Int'l Trade Rep. (BNA) 2327 (2004), *citing Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States*, 110 F.3d 774 (Fed. Cir. 1997).

Heading 8479, HTSUS, specifically provides for machines and mechanical appliances having individual functions not elsewhere specified or included. Accordingly, articles of heading 8479, HTSUS, must be a machine or mechanical appliance that has an individual mechanical function. A machine is a "device that amplifies or replaces human or animal effort to accomplish a

physical task…the operating of a machine may involve the transformation of chemical, thermal, electrical or nuclear energy into mechanical energy, or vice versa. Britannica Concise Encyclopedia at *www.britannica.com* /. Further, EN 84.79 (B)(II) explains that individual functions refers to "[m]echanical devices which cannot perform their function unless they are mounted on another machine or appliance, or incorporated in a more complex entity, **provided** that this function:… (ii) does not play an integral and inseparable part in the operation of such machine, appliance or entity…"

According to the facts provided, the subject perforating gun acts as a charge holder for explosive charges which are later detonated to perforate the subsurface well hole. Despite its indirect contribution to the drilling and production of oil, the subject merchandise is simply a passive carrier of "shape charges." It does not provide any mechanical advantage which facilitates the detonation of the charges nor does it, by its own operation, affect any mechanical outcome. Accordingly, we find that the instant merchandise is not a "machine" or a mechanical appliance within the meaning of heading 8479, HTSUS.

The subject perforating gun is not classifiable in headings 7304, 7305, or 7306, HTSUS. The commenter states that, based on the description of the subject merchandise, in relevant part, as a "long tube" with "holes cut out of it", the product may be "drilled" pipe. The commenter cites HQ 951010, dated May 7, 1992, to argue that CBP has classified "drilled" pipe in heading 7304, HTSUS. However, the merchandise in HQ 951010 was described as "hot finished seamless steel tubes". The protestant argued that the merchandise was "truck parts". The ruling found that the merchandise was not "something other than heading 7304, tubes or pipes or that they are made up into specific identifiable articles which would be excluded from heading 7304". Although the subject perforating gun may be tube-like in form, it is not ordinary tube or pipe. It is advanced beyond the ordinary tube or pipe stage, and made up into a specific identifiable article. The ENs for headings 7304, 7305, and 7306, HTSUS, specifically exclude tubes, pipes and hollow profiles made into specific identifiable articles.

The subject merchandise is a hollow tube-like container which relies on a detonator and other articles in order to function. Therefore, because the subject article has no independent or individual functions or capabilities, we find that the subject perforating gun assembly is properly classified in heading 7326, HTSUS, as an article of steel.

HOLDING:

By application of GRI 1, the subject perforating gun assembly is classifiable under heading 7326, HTSUS. It is specifically classified in subheading 7326.90.85, HTSUS, which provides for: "Other articles of iron or steel: Other: Other." The 2011 column one, general rate of duty is 2.9% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N012463, dated June 18, 2007, is hereby revoked.

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

Sincerely,

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

[ATTACHMENT B]

HQ H102845

January 11, 2013
CLA-2 OT:RR:CTF:TCM H102845 JER/JPJ
CATEGORY: Classification
TARIFF NO.: 7326.90.85

MS. MARY ANN COMSTOCK
UPS BROKERS OF CHOICE
P.O. BOX 164
SWEETGRASS, MT 59484

RE: Revocation of New York Ruling Letter C82398; Classification of a Perforating Gun Barrel

DEAR MS. COMSTOCK:

On December 22, 1997, U.S. Customs and Border Protection ("CBP") issued New York Ruling Letter ("NY") C82398 to you on behalf of MPB Technologies, Inc. ("MPB"), classifying a perforating gun barrel under heading 9305, of the Harmonized Tariff Schedule of the United States ("HTSUS"). CBP has recently received additional information regarding perforating guns and parts thereof. Accordingly, we have reviewed NY C82398 and found it to be incorrect for the reasons set forth below.

On May 16, 2012, pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published in the *Customs Bulletin*, Vol. 46, No. 21. One comment was received in support of the notice. However, the commenter suggests that while heading 7326 may indeed be the most appropriate heading, headings 7304, 7305 and 7306 should also be given consideration. The suggested headings are discussed in the Law and Analysis Section herein.

FACTS:

The subject merchandise, referred to as a perforating gun barrel, was described in NY C82398 as follows:

> The merchandise consists of an imported steel gun barrel, pre-drilled and produced in different sizes, which is used as a specialized component in the manufacture of a perforating gun.
>
> A perforating gun, known commercially as a Retrievable Tubing Gun, is defined as a device fitted with shaped charges or bullets that is lowered to the desired depth in a well and fired to create penetrating holes in underground casing, cement, and formations.

According to our research, a perforating gun assembly is a single-use "device used to *perforate* oil and gas wells in preparation for *production*. Containing several shaped explosive charges, perforating guns are available in a range of sizes and configurations. The diameter of the gun used is typically determined by the presence of wellbore restrictions or limitations imposed by the surface equipment."[1] Perforating guns are said to be lowered into the well hole to a desired depth and fired by the detonation of explosive

[1] *Perforating Gun*. *www.glossary.oilfield.slb.com*.

charges which are set inside the tube charge holder. The charges are fired through the perforating holes thus perforating the oil well casing and rock strata in several directions.[2]

ISSUE:

Whether the subject perforating gun barrell is classified (1) under headings 7304, 7305, or 7306, HTSUS, as tubes, pipes and hollow profiles, other tubes and pipes, or other tubes, pipes and hollow profiles, (2) under heading 7326, HTSUS, as an other article of iron or steel, or (3) under heading 9303, HTSUS, as a firearm or similar device which operates by the firing of an explosive charge, or under heading 9305, HTSUS, as a part or accessory of articles of headings 9301 to 9304, HTSUS.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

7304	Tubes, pipes and hollow profiles, seamless, of iron (other than cast iron) or steel.
7305	Other tubes and pipes (for example, welded, riveted or similarly closed), having circular cross-sections, the external diameter of which exceeds 406.4 mm, of iron or steel.
7306	Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel.
7326	Other articles of iron or steel:
9303	Other firearms and similar devices which operate by the firing of an explosive charge (for example, sporting shot-guns and rifles, muzzle-loading firearms, Very pistols and other devices designed to project only signal flares, pistols and revolvers for firing blank ammunition, captive-bolt humane killers, line-throwing guns):
9305	Parts and accessories of headings 9301 to 9304:

* * *

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

EN 73.04 provides, in pertinent part, that:

The heading **excludes** :

* * *

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[2] *See www.mtech.edu/research/grad/Perf.Presentation.ppt*; *see also*, *www.halliburton.com/stimgun*.

(f) Tubes, pipes and hollow profiles made up into specific identifiable articles. . .

EN 73.05 provides, in pertinent part, that:

The heading **does not cover**:

* * *

(c) Tubes or pipes made up into specific identifiable articles.

EN 73.06 provides, in pertinent part, that:

The heading **excludes**:

* * *

(f) Tubes, pipes and hollow profiles made up into specific identifiable articles. . .

EN 93.03, HTSUS, provides in pertinent part, that:

This heading includes all firearms **not covered by headings 93.01** and 93.02; it includes some devices which are not weapons but which operate by the firing of an explosive charge.

* * *

In order to classify the subject merchandise under heading 9303, HTSUS, it must be a firearm or *ejusdem generis*, (of the same class or kind) with those devices enumerated in the heading. The Court has held that, "As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms." *Nissho-Iwai American Corp. v. United States* (Nissho), 10 Court of Int'l Trade 154, 157 (1986). The exemplars named in heading 9303, HTSUS, share several characteristics which include: multiple usage, operating by the firing of an explosive charge activated by an internal triggering mechanism which sends a projectile through a barrel, and being hand-held.

A "firearm" is defined as "a weapon from which a shot is discharged." *Merriam-Webster's Collegiate Dictionary*, 10th ed., 437 (2001). It is also defined as being "a weapon, especially a pistol or rifle, capable of firing a projectile and using an explosive charge as a propellant." *www.thefreedictionary.com/firearm*. Further, a weapon is defined as "an instrument of attack or defense in combat, as a gun, missile or sword. *The American Heritage Dictionary of the English Language*, 3rd ed., 100, 222 (1992).

The subject perforating barrel (perforating device) consists of one long tube-like device with multiple perforations along its length from which multiple explosive charges exit in multiple directions. Further, the tube itself is not the explosive device. Therefore, under the canon of construction known as *ejusdem generis*, the subject perforating barrel can not be said to be similar in function, essential character or purpose to the enumerated examples of heading 9303, HTSUS. Moreover, the subject merchandise is used in connection with oil drilling and production rather than as a weapon. Accordingly, it is not described by the term "firearm." Based on the foregoing, the

subject perforating barrel cannot be classified in heading 9303, HTSUS, because it is not described by the heading.

A part is either (1) an integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article, or (2) dedicated solely for use with an article. [internal quotation marks omitted]. *ABB, Inc. v. United States*, 28 Ct of Int'l Trade 1444, 1452; 346 F. Supp. 2d 1357, 1364; 26 Int'l Trade Rep. (BNA) 2327 (2004), *citing Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States*, 110 F.3d 774 (Fed. Cir. 1997). Based on the aforementioned analysis and description of the subject merchandise, we find that the subject perforating barrel is not designed to be a part of any of the articles of heading 9303, HTSUS and is therefore not classifiable in heading 9305, HTSUS, as a "part" of a firearm or similar devices of heading 9303, HTSUS.

The subject perforating gun is not classifiable in headings 7304, 7305, or 7306, HTSUS. The commenter states that, based on the description of the subject merchandise, in relevant part, as a "long tube" with "holes cut out of it", the product may be "drilled" pipe. The commenter cites HQ 951010, dated May 7, 1992, to argue that CBP has classified "drilled" pipe in heading 7304, HTSUS. However, the merchandise in HQ 951010 was described as "hot finished seamless steel tubes". The protestant argued that the merchandise was "truck parts". The ruling found that the merchandise was not "something other than heading 7304, tubes or pipes or that they are made up into specific identifiable articles which would be excluded from heading 7304". Although the subject perforating gun may be tube-like in form, it is not ordinary tube or pipe. It is advanced beyond the ordinary tube or pipe stage, and made up into a specific identifiable article. The ENs for headings 7304, 7305, and 7306, HTSUS, specifically exclude tubes, pipes and hollow profiles made into specific identifiable articles.

The subject merchandise is a hollow tube-like container which relies on a detonator and other articles in order to function. We find that the subject charge holder is properly classified in heading 7326, HTSUS, as an article of steel because it is not specifically provided for elsewhere in the HTSUS. *See* EN 73.26.

HOLDING:

By application of GRI 1, the subject perforating barrel is classifiable under heading 7326, HTSUS. It is specifically classified in subheading 7326.90.85, HTSUS, which provides for: "Other articles of iron or steel: Other: Other." The 2012 column one, general rate of duty is 2.9% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY C82398, dated December 22, 1997, is hereby revoked.

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

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

[ATTACHMENT C]

HQ H102847

January 11, 2013

CLA-2 OT:RR:CTF:TCM H102847 JER/JPJ

CATEGORY: Classification

TARIFF NO.: 7326.90.85

MS. JOYCE RAY
NORMAN G. JENSEN, INC.; UPS BROKERS OF CHOICE
P.O. BOX 164
SWEETGRASS, MT 59484

RE: Revocation of New York Ruling Letter C83105; Classification of a Tube Charge Holder

DEAR MS. RAY:

On January 16, 1998, U.S. Customs and Border Protection ("CBP") issued New York Ruling Letter ("NY") C83105 to you on behalf of Lasertech, classifying a tube charge holder under heading 9305 of the Harmonized Tariff Schedule of the United States ("HTSUS"). CBP has recently received additional information regarding perforating guns assemblies. Accordingly, we have reviewed NY C83105 and found it to be incorrect for the reasons set forth below.

On May 16, 2012, pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published in the *Customs Bulletin*, Vol. 46, No. 21. One comment was received in support of the notice. However, the commenter suggests that while heading 7326 may indeed be the most appropriate heading, headings 7304, 7305 and 7306 should also be given consideration. The suggested headings are discussed in the Law and Analysis Section herein.

FACTS:

The subject merchandise, referred to as a "tube charge holder", was described in NY C83105 as follows:

> The imported article consists of a tube-like device called a charge holder which is a specialized component of a perforating gun. The charge holder is basically a long tube, up to 20 feet in length, with holes cut out of it. The design of the tube and the placement of the holes are made to exact specifications. The tube charge holder is fitted with directional, sealed, powdered charges and then combined with a perforating gun. The perforating gun is placed in an oil well and detonated, blowing holes in the casing and rock strata.

According to our research, a perforating gun assembly is a single-use device "used to *perforate* existing oil and gas wells in preparation for *production*. Containing several shaped explosive charges, perforating guns are available in a range of sizes and configurations. The diameter of the gun used is typically determined by the presence of wellbore restrictions or limitations imposed by the surface equipment."[1] Perforating guns are lowered into the well hole to a desired depth and fired by the detonation of explosive charges

[1] *Perforating Gun*. *www.glossary.oilfield.slb.com*.

which are set inside the tube charge holder. The charges are fired through the perforating holes thus perforating the oil well casing and rock strata in several directions.[2] The device at issue is not imported with a detonator.

ISSUE:

Whether the subject tube charge holder is classified (1) under headings 7304, 7305, or 7306, HTSUS, as tubes, pipes and hollow profiles, other tubes and pipes, or other tubes, pipes and hollow profiles, (2) under heading 7326, HTSUS, as an other article of iron or steel, or (3) under heading 9303, HTSUS, as a firearm or similar device which operates by the firing of an explosive charge, or under heading 9305, HTSUS, as a part or accessory of articles of headings 9301 to 9304, HTSUS.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

7304	Tubes, pipes and hollow profiles, seamless, of iron (other than cast iron) or steel.
7305	Other tubes and pipes (for example, welded, riveted or similarly closed), having circular cross-sections, the external diameter of which exceeds 406.4 mm, of iron or steel.
7306	Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel.
7326	Other articles of iron or steel:
9303	Other firearms and similar devices which operate by the firing of an explosive charge (for example, sporting shot-guns and rifles, muzzle-loading firearms, Very pistols and other devices designed to project only signal flares, pistols and revolvers for firing blank ammunition, captive-bolt humane killers, line-throwing guns):
9305	Parts and accessories of headings 9301 to 9304:

* * *

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

EN 73.04 provides, in pertinent part, that:

The heading **excludes**:

* * *

---

[2] *See www.mtech.edu/research/grad/Perf.Presentation.ppt*; *see also*, *www.halliburton.com/stimgun*.

(f) Tubes, pipes and hollow profiles made up into specific identifiable articles. . .

EN 73.05 provides, in pertinent part, that:

The heading **does not cover**:

* * *

(c) Tubes or pipes made up into specific identifiable articles.

EN 73.06 provides, in pertinent part, that:

The heading **excludes**:

* * *

(f) Tubes, pipes and hollow profiles made up into specific identifiable articles. . .

EN 93.03, HTSUS, provides in pertinent part, that:

This heading includes all firearms **not covered by headings 93.01** and 93.02; it includes some devices which are not weapons but which operate by the firing of an explosive charge.

* * *

In order to classify the subject merchandise under heading 9303, HTSUS, it must be a firearm or *ejusdem generis*, (of the same class or kind) with those devices enumerated in the heading. The Court has held that, "As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms." *Nissho-Iwai American Corp. v. United States* (Nissho), 10 Court of Int'l Trade 154, 157 (1986). The exemplars named in heading 9303, HTSUS, share several characteristics which include: multiple usage, operating by the firing of an explosive charge activated by an internal triggering mechanism which sends a projectile through a barrel, and being hand-held.

A "firearm" is defined as "a weapon from which a shot is discharged." *Merriam-Webster's Collegiate Dictionary*, 10th ed., 437 (2001). It is also defined as being "a weapon, especially a pistol or rifle, capable of firing a projectile and using an explosive charge as a propellant." *www.thefreedictionary.com/firearm*. Further, a weapon is defined as "an instrument of attack or defense in combat, as a gun, missile or sword. *The American Heritage Dictionary of the English Language*, 3rd ed., 100, 222 (1992).

The subject charge holder (perforating device) consists of one long tube-like device with multiple perforations along its length from which multiple explosive charges exit in multiple directions. Further, the tube itself is not the explosive device. Therefore, under the canon of construction known as *ejusdem generis*, the subject perforation device can not be said to be similar in function, essential character or purpose to the enumerated examples of heading 9303, HTSUS. Moreover, the subject merchandise is used in connection with oil drilling and production rather than as a weapon. Accordingly, it is

not described by the term "firearm." Based on the foregoing, the subject charge holder cannot be classified in heading 9303, HTSUS, because it is not described by the heading.

A part is either (1) an integral, constituent, or component part**,** without which the article to which it is to be joined, could not function as such article, or (2) dedicated solely for use with an article. [internal quotation marks omitted]. *ABB, Inc. v. United States*, 28 Ct of Int'l Trade 1444, 1452; 346 F. Supp. 2d 1357, 1364; 26 Int'l Trade Rep. (BNA) 2327 (2004), *citing Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States*, 110 F.3d 774 (Fed. Cir. 1997). Based on the aforementioned analysis and description of the subject merchandise, we find that the subject charge holder is not designed to be a part of any of the articles of heading 9303, HTSUS and is therefore not classifiable in heading 9305, HTSUS, as a "part" of a firearm or similar devices of heading 9303, HTSUS.

The subject perforating gun is not classifiable in headings 7304, 7305, or 7306, HTSUS. The commenter states that, based on the description of the subject merchandise, in relevant part, as a "long tube" with "holes cut out of it", the product may be "drilled" pipe. The commenter cites HQ 951010, dated May 7, 1992, to argue that CBP has classified "drilled" pipe in heading 7304, HTSUS. However, the merchandise in HQ 951010 was described as "hot finished seamless steel tubes". The protestant argued that the merchandise was "truck parts". The ruling found that the merchandise was not "something other than heading 7304, tubes or pipes or that they are made up into specific identifiable articles which would be excluded from heading 7304". Although the subject perforating gun may be tube-like in form, it is not ordinary tube or pipe. It is advanced beyond the ordinary tube or pipe stage, and made up into a specific identifiable article. The ENs for headings 7304, 7305, and 7306, HTSUS, specifically exclude tubes, pipes and hollow profiles made into specific identifiable articles.

The subject merchandise is a hollow tube-like container which relies on a detonator and other articles in order to function. We find that the subject charge holder is properly classified in heading 7326, HTSUS, as an article of steel because it is not specifically provided for elsewhere in the HTSUS. .

HOLDING:

By application of GRI 1, the subject charge holder used with perforating gun assemblies is classified under heading 7326, HTSUS. It is specifically classified in subheading 7326.90.85, HTSUS, which provides for: "Other articles of iron or steel: Other: Other." The 2012 column one, general rate of duty is 2.9% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY C83105, dated January 16, 1998, is hereby revoked.

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

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

GENERAL NOTICE

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 1 2013)

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

SUMMARY: The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in January 2013. The last notice was published in the CUSTOMS BULLETIN on February 7, 2013.

Corrections or updates may be sent to: Intellectual Property Rights Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, D.C. 20229–1177.

FOR FURTHER INFORMATION CONTACT: Delois Johnson, Paralegal, Intellectual Property Rights Branch, Regulations & Rulings, Office of International Trade, (202) 325–0088.

Dated: February 7, 2013

CHARLES R. STEUART
Chief,
Intellectual Property Rights Branch Regulations & Rulings Office of International Trade

CBP IPR RECORDATION — JANUARY 2013 2010

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 06–00195	1/28/2013	11/5/2022	ORVIS	THE ORVIS COMPANY INC.	No
TMK 13–00108	1/28/2013	8/23/2021	VENGE	SPECIALIZED BICYCLE COMPONENTS, INC.	No
TMK 13–00107	1/28/2013	8/26/2013	DESIGN	HERMAN MILLER, INC.	No
TMK 06–00150	1/31/2013	4/8/2023	DESIGN	INTERLEMO HOLDING SA	No
COP 86–00252	1/28/2013	1/28/2033	SUPER MARIO BROS.	NINTENDO OF AMERICA INC.	No
COP 87–00041	1/31/2013	1/31/2033	MACH RIDER	NINTENDO OF AMERICA INC	No
COP 93–00110	1/28/2013	1/28/2033	YOSHI (NES)	NINTENDO OF AMERICA INC.	No
COP 92–00351	1/28/2013	1/28/2033	FLASH STYLE GUIDE	DC COMICS INC.	No
COP 92–00352	1/28/2013	1/28/2033	SUPERMAN STYLE GUIDE	DC COMICS INC.	No
TMK 13–00112	1/31/2013	7/14/2019	CNAPMAK AND DESIGN	DESLY INTERNATIONAL CORP.	No
TMK 06–00734	1/11/2013	12/21/2022	ZANTAC	BOEHRINGER INGELHEIM PHARMA-CEUTICALS, INC.	No
TMK 02–00955	1/11/2013	1/6/2023	SENNENKO & DESIGN	KOTAKE SHOKAI, LTD.	No
TMK 03–00080	1/31/2013	10/12/2022	Y SHAPED DESIGN OF A SPORT BALL	ADIDAS INTERNATIONAL B.V.	No
TMK 03–00197	1/22/2013	12/1/2022	COTTON & DESIGN	COTTON INC.	No
TMK 03–00155	1/28/2013	11/12/2022	CONFIGURATION OF A TABLE WITH A WOODEN BASE AND GLASS	THE ISAMU NOGUCHI FOUNDATION AND GARDEN MUSEUM	Yes
TMK 03–00169	1/28/2013	12/22/2022	OFFICER'S	SWISS ARMY BRAND LTD.	No
TMK 03–00650	1/31/2013	12/31/2022	ANAHEIM ANGELS AND DESIGN	ANAHEIM ANGELS L.P.	No

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TMK 13–00127	1/31/2013	9/16/2013	EXFORGE	NOVARTIS AG	No
TMK 03–00893	1/31/2013	10/8/2022	NEW YORK & COMPANY	LERNCO, INC.	No
TMK 05–00275	1/31/2013	11/12/2022	CONFIGURATION OF A TABLE WITH A WOODEN BASE & GLASS	THE ISAMU NOGUCHI FOUNDATION & GARDEN MUSEUM	No
TMK 05–00403	1/31/2013	10/19/2022	EATON (STYLIZED)	EATON CORPORATION	No
TMK 13–00061	1/22/2013	8/5/2013	DESIGN	SENNHEISER LOGISTICS SERVICES GMBH & CO. KG	No
TMK 07–00211	1/22/2013	12/17/2022	EUCERIN AND DESIGN	BEIERSDORF AKTIENGESELLSCHAFT	No
TMK 13–00015	1/11/2013	1/2/2017	RESUSCI ANNE	LAERDAL MEDICAL A/S	No
TMK 07–00661	1/31/2013	10/22/2022	TINYLOGIC	FAIRCHILD SEMICONDUCTOR CORPORATION	No
TMK 13–00126	1/31/2013	9/1/2022	DESIGN	WHIRLPOOL PROPERTIES, INC.	No
TMK 03–00728	1/31/2013	1/7/2023	MARINERS AND DESIGN	THE BASEBALL CLUB OF SEATTLE, LP	No
TMK 09–00754	1/11/2013	12/24/2022	SNOOGLE	LEACHCO, INC.	No
TMK 10–00352	1/22/2013	12/8/2022	MAURO ARMELLINI	MUKENBRUN, CEM	No
COP 92–00353	1/28/2013	1/28/2033	BATMAN RETURNS STYLE GUIDE	DC COMICS INC.	No
TMK 10–01070	1/28/2013	10/26/2019	MIU MIU	PRADA S.A.	No
TMK 11–00266	1/31/2013	10/8/2022	LONGCHAMP AND DESIGN	S.A.S. JEAN CASSEGRAIN CORPORATION	No
TMK 11–00484	1/31/2013	11/5/2022	POKÈMON	NINTENDO OF AMERICA INC.	No

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TMK 11–00725	1/22/2013	12/24/2022	GUIDE SERIES	GANDER MOUNTAIN COMPANY	No
TMK 11–00947	1/31/2013	4/15/2023	DESIGN	SPEED STACKS, INC.	No
TMK 13–00048	1/22/2013	10/20/2019	VALUE GROOM	G & G DISTRIBUTION, INC. DBA RYAN'S PET SUPPLIES CORPORATION	No
TMK 13–00029	1/22/2013	5/22/2022	SUN-V AND DESIGN	TIME PLAZA	Yes
COP 13–00004	1/11/2013	1/11/2033	FROG ON A LEAF.	JAMES CHAE KIM	No
TMK 13–00063	1/22/2013	10/27/2022	BLANCPAIN (STYLIZED)	BLANCPAIN SA (BLANCPAIN AG) (BLANCPAIN LTD)	No
TMK 12–00445	1/11/2013	10/27/2022	BISSELL	BISSELL HOMECARE, INC.	No
TMK 13–00016	1/11/2013	2/20/2017	SAFE-T-GARD	GEORGIA-PACIFIC CONSUMER PRODUCTS LP	No
TMK 13–00125	1/31/2013	11/20/2022	SILVER BULLET	SHERRI JENSEN	No
TMK 13–00060	1/22/2013	2/7/2022	BRAWNY INDUSTRIAL	GEORGIA-PACIFIC CONSUMER PRODUCTS LP	No
TMK 13–00018	1/11/2013	8/23/2021	DESIGN (TEDDY BEAR)	S. TOUS S.L.	No
TMK 13–00019	1/11/2013	7/1/2013	TOUS	S. TOUS S.L.	No
COP 13–00011	1/31/2013	1/31/2033	POKEMON CONQUEST (US COMMERCIAL PACKAGING)	TECMO KOEI GAMES CO., LTD.	No
TMK 13–00062	1/22/2013	12/21/2014	ANGEL SOFT PS	GEORGIA-PACIFIC CONSUMER PRODUCTS LP	No

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TMK 13–00017	1/11/2013	1/24/2016	DESIGN (TEDDY BEAR)	S. TOUS, S.L.	No
TMK 13–00043	1/22/2013	8/5/2013	DESIGN (TEDDY BEAR)	S. TOUS, S.L.	No
TMK 13–00049	1/22/2013	4/23/2023	CAPRI	REYNOLDS INNOVATIONS INC.	No
TMK 13–00058	1/22/2013	12/26/2019	MISTY	REYNOLDS INNOVATIONS INC.	No
TMK 13–00042	1/22/2013	4/19/2021	COCO EYE WEAR	TIME PLAZA	No
TMK 13–00046	1/22/2013	4/21/2019	BYSTOLIC AND DESIGN	FOREST LABORATORIES, INC.	No
TMK 13–00057	1/22/2013	6/19/2022	RIG LIZARD	PERFORMANCE FABRICS, INC.	No
TMK 13–00044	1/22/2013	7/20/2013	LEO AND DESIGN	LEO PHARMA A/S	No
TMK 13–00056	1/22/2013	6/22/2020	GGT5	PERFORMANCE FABRICS, INC.	No
TMK 13–00051	1/22/2013	12/14/2020	MAMANATALIE	LAERDAL MEDICAL A/S	No
TMK 13–00041	1/22/2013	5/29/2022	ELEMENT EAGLE	TIME PLAZA	No
TMK 13–00047	1/22/2013	12/25/2017	PICATO	LEO LABORATORIES LIMITED	No
COP 13–00007	1/22/2013	1/22/2033	Mil MAKER.	NINTENDO OF AMERICA INC.,	No
TMK 13–00054	1/22/2013	6/2/2018	PRADA	PRADA S.A.	No
TMK 13–00050	1/22/2013	7/31/2022	HEAT ARMOR	PERFORMANCE FABRICS, INC.	No
COP 13–00008	1/22/2013	1/22/2033	STREETPASS MII PLAZA	NINTENDO OF AMERICA INC.	No
TMK 13–00052	1/22/2013	3/13/2017	DESIGN	PRADA S.A.	No
TMK 13–00053	1/22/2013	11/27/2022	SN STADELMAIER AND DESIGN	KUNSTATELIERS SLABBINCK NV	No
TMK 13–00055	1/22/2013	9/4/2022	RECTANGLE BOX AND DESIGN	TIME PLAZA	No
COP 13–00006	1/22/2013	1/22/2033	KID ICARUS: UPRISING.	NINTENDO OF AMERICA INC.,	No

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TMK 13–00022	1/22/2013	11/13/2022	ARROW HELl	DA WUSTER CORP	No
TMK 13–00023	1/22/2013	11/20/2022	BLACK CAT	SLJ DISTRIBUTING, INC. DBA THAT'S SCRAP, INC.	No
TMK 13–00024	1/22/2013	6/29/2020	PRADA MILANO	PRADA S.A.	No
TMK 13–00025	1/22/2013	10/11/2021	PRADA MILANO AND DESIGN	PRADA S.A.	No
TMK 13–00026	1/22/2013	2/10/2018	PRADA	PRADA S.A.	No
TMK 13–00027	1/22/2013	12/28/2019	PRADA DESIGN	PRADA S.A.	No
TMK 13–00040	1/22/2013	4/9/2022	VALENTINA AND DESIGN	SALSA TAMAZULA, S.A. DE C.V.	No
TMK 13–00028	1/22/2013	8/28/2022	UNIVERSAL SUN-V A AND DESIGN	TIME PLAZA	Yes
TMK 13–00033	1/22/2013	11/8/2021	PRADA MILANO	PRADA S.A.	No
TMK 13–00030	1/22/2013	6/26/2022	PRADA MILANO DAL 1913 AND DESIGN	PRADA S.A.	No
TMK 13–00031	1/22/2013	11/27/2022	SUREFIRE AND DESIGN	SUREFIRE LLC	No
TMK 13–00038	1/22/2013	10/3/2016	PACIFIC GARDEN	GEORGIA-PACIFIC CONSUMER PRODUCTS LP	No
TMK 13–00032	1/22/2013	8/28/2022	SUREFIRE AND DESIGN	SUREFIRE LLC	No
TMK 13–00034	1/22/2013	10/20/2019	PAW BROTHERS	G & G DISTRIBUTION INC., DBA RYAN'S PET SUPPLIES CORPORATION	No
TMK 13–00001	1/11/2013	9/11/2022	SAFE-T-GARD	GEORGIA-PACIFIC CONSUMER PRODUCTS LP	No

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TMK 13–00002	1/11/2013	11/27/2022	PROFORM	VIA, INC.	No
TMK 13–00004	1/11/2013	6/19/2021	DENSGLASS GOLD	GEORGIA-PACIFIC GYPSUM LLC	No
TMK 13–00007	1/11/2013	2/8/2021	TOUS AND DESIGN	S. TOUS, S.L.	No
TMK 13–00006	1/11/2013	11/13/2022	IKIDZ ROOMS	ASHLEY FURNITURE INDUSTRIES, INC.	No
TMK 13–00014	1/11/2013	12/26/2020	MAGGIE SOTTERO	MAGGIE SOTTERO DESIGNS, LLC	No
TMK 13–00037	1/22/2013	12/11/2014	SENNHEISER	SENNHEISER ELECTRONIC GMBH & CO. KG	No
TMK 13–00039	1/22/2013	11/30/2013	SENNHEISER AND DESIGN	SENNHEISER LOGISTICS SERVICES GMBH & CO. KG	No
COP 13–00005	1/22/2013	1/22/2033	BEACHBODY ULTIMATE RESET	BEACHBODY LLC.	No
TMK 13–00020	1/22/2013	7/24/2022	DESIGN (OMEGA DESIGN)	OMEGA SA (OMEGA AG) (OMEGA LTD.)	No
TMK 13–00003	1/11/2013	7/1/2013	PERFECT PANCAKE	ALLSTAR MARKETING GROUP, LLC	No
TMK 13–00010	1/11/2013	12/5/2016	EXTAVIA	NOVARTIS AG	No
TMK 13–00005	1/11/2013	10/2/2017	JACK WILLS	JACK WILLS LIMITED	No
COP 13–00001	1/11/2013	1/11/2033	ABSTRACT COLLECTION	PHILIPPE NARBONNE	No
TMK 13–00009	1/11/2013	7/26/2021	PORTION REDUCER 0 1 2 3 WITH DESIGN	MARCIA REEFER	No
COP 13–00002	1/11/2013	1/11/2033	THE STONE MOSAIC E COLLECTION	PHILIPPE NARBONNE	No
TMK 03–00416	1/22/2013	9/24/2022	STORM & DESIGN	RIRI GROUP SA	No

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TMK 13–00011	1/11/2013	12/30/2018	DESIGN	JACK WILLS LTD	No
TMK 13–00012	1/11/2013	5/15/2022	MAYABAGS	WORLDWRAPPERS, INC.	No
TMK 13–00008	1/11/2013	12/10/2022	DESIGN	GANDER MOUNTAIN COMPANY	No
TMK 13–00124	1/31/2013	4/8/2018	SOTTERO AND MIDGLEY	MAGGIE SOTTERO DESIGNS LLC	No
TMK 13–00100	1/28/2013	2/14/2022	ECOFRESH	MICHAEL BRANDT FAMILY TRUST	No
TMK 13–00035	1/22/2013	8/7/2022	E DESIGN	LIMITED STORES, LLC	No
TMK 13–00102	1/28/2013	12/18/2022	DESIGN	LEGACY SPORTS INTERNATIONAL, LLC	No
TMK 13–00099	1/28/2013	9/25/2017	DESTINATIONS BY MAGGIE SOTTERO	MAGGIE SOTTERO DESIGNS, LLC	No
COP 13–00010	1/28/2013	1/28/2033	SO SO HAPPY 2010 MAIN STYLE GUIDE.	ART IMPRESSIONS, INC.	No
TMK 13–00036	1/22/2013	2/24/2014	MAGGIE SOTTERO MEMORIES	MAGGIE SOTTERO DESIGNS, LLC	No
TMK 13–00021	1/22/2013	12/18/2022	TAKTIK	WIMO LABS, LLC	No
TMK 13–00095	1/28/2013	1/15/2023	PALETTES EAT. DRINK. PAINT.	BRUSHES BITES BOTTLES, LLC	No
TMK 13–00111	1/28/2013	7/14/2019	FLIRT BY MAGGIE SOTTERO AND LIPS DESIGN	MAGGIE SOTTERO DESIGNS, LLC	No
TMK 13–00097	1/28/2013	12/14/2020	REBECCA MINKOFF	REBECCA MINKOFF, LLC	No
TMK 13–00101	1/28/2013	1/15/2023	VIRTUALITY	SBG LABS INC.	No
TMK 13–00109	1/28/2013	8/7/2022	TAKTIK	WIMO LABS, LLC	No
TMK 13–00098	1/28/2013	7/14/2022	SCOTCHCAST	3M COMPANY	No
TMK 13–00105	1/28/2013	11/20/2022	GEAR NECKLACE	KINEKT DESIGN LLC	No

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TMK 13–00106	1/28/2013	10/16/2022	ANTIK (STYLIZED)	WIMO LABS LLC	No
TMK 13–00110	1/28/2013	10/16/2022	LUNATIK	WIMO LABS LLC	No
TMK 13–00103	1/28/2013	12/11/2022	MNML	SCOTT WILSON DESIGN, LTD.	No
TMK 13–00059	1/22/2013	1/6/2019	DESIGN (TEDDY BEAR OUILINES)	S. TOUS, S.L.	No
TMK 13–00081	1/28/2013	10/4/2021	BALADNA AND DESIGN	MIDLAND DISTRIBUTION, INC.	No
TMK 13–00104	1/28/2013	6/30/2022	3M (STYLIZED)	3M COMPANY	No
TMK 13–00079	1/28/2013	7/29/2018	STUART WEITZMAN	STUART WEITZMAN IP, LLC	No
TMK 13–00077	1/28/2013	7/14/2022	SCOTCHCAST	3M COMPANY	No
TMK 13–00076	1/28/2013	10/26/2022	SCOTCHCAST	3M COMPANY	No
TMK 13–00075	1/28/2013	6/30/2022	3M	3M COMPANY	No
TMK 13–00086	1/28/2013	10/28/2018	EVOLUTION STYLIZED	SENNHEISER LOGISTICS SERVICES GMBH & CO. KG	No
TMK 13–00078	1/28/2013	8/11/2017	RITTER	MIDMARK CORPORATION	No
COP 13–00009	1/28/2013	1/28/2033	CARDS AGAINST HUMANITY	CARDS AGAINST HUMANITY, LLC.	No
TMK 13–00045	1/22/2013	4/26/2015	BEAUTYBLENDER	REA.DEEMING BEAUTY, INC. DBA/BEAUTYBLENDER	No
TMK 13–00088	1/28/2013	8/5/2018	NOCONA	BOOT ROYALTY COMPANY, L.P.	No
TMK 13–00080	1/28/2013	3/18/2018	HELPING KIDS GET SMART ABOUT MONEY	MONEY SAVVY GENERATION INC.	No

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TMK 13–00094	1/28/2013	7/5/2021	S	SPECIALIZED BICYCLE COMPONENTS, INC.	No
TMK 13–00092	1/28/2013	7/5/2021	S	SPECIALIZED BICYCLE COMPONENTS, INC.	No
TMK 13–00083	1/28/2013	7/5/2021	S	SPECIALIZED BICYCLE COMPONENTS, INC.	No
TMK 13–00082	1/28/2013	6/15/2014	TARMAC	SPECIALIZED BICYCLE COMPONENTS, INC.	No
TMK 13–00091	1/28/2013	4/12/2021	SPECIALIZED	SPECIALIZED BICYCLE COMPONENTS, INC.	No
TMK 13–00123	1/31/2013	12/21/2020	GILENYA	NOVARTIS AG	No
TMK 13–00093	1/28/2013	8/30/2021	SPECIALIZED	SPECIALIZED BICYCLE COMPONENTS, INC.	No
TMK 13–00085	1/28/2013	8/30/2021	SPECIALIZED	SPECIALIZED BICYCLE COMPONENTS, INC.	No
TMK 13–00096	1/28/2013	11/4/2018	FORBIDDEN CITY	GENGHIS PRODUCTIONS, LTD	No
TMK 13–00013	1/11/2013	12/11/2022	ECO	I.S.T. ITALIA SISTEMI TECNOLOGICI S.R.L.	No
COP 13–00003	1/11/2013	1/11/2033	THE STONE TEXTURE COLLECTION.	PHILIPPE NARBONNE	No

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TMK 13–00090	1/28/2013	9/1/2022	MARTHA'S VINEYARD	MAY VINEYARDS, LLC LIMITED LIABILITY COMPANY	No
TMK 13–00118	1/31/2013	9/4/2022	UL	UL LLC	No
TMK 13–00114	1/31/2013	8/17/2020	SIGNIFOR	NOVARTIS AG	No
TMK 13–00089	1/28/2013	1/2/2017	N AND DESIGN	NATIONAL FOOTBALL LEAGUE	No
TMK 13–00113	1/31/2013	12/3/2022	DESIGN (FOOD MIXER)	WHIRLPOOL PROPERTIES, INC.	No
TMK 13–00122	1/31/2013	1/17/2022	DESIGN (ORANGE OVAL ATOP BROWN RECTANGLE)	E.T. BROWNE DRUG CO., INC.	No
TMK 03–00382	1/31/2013	11/19/2022	ROCKWOOD (& DESIGN)	ROCKWOOD PRODUCTS, INC.	No
TMK 13–00117	1/31/2013	7/14/2019	SPARTAK AND DESIGN	DESLY INTERNATIONAL CORP.	No
TMK 13–00121	1/31/2013	4/24/2017	DISNEY	DISNEY ENTERPRISES, INC.	No
TMK 13–00115	1/31/2013	11/13/2022	MELANIE M EXTRA MAGNIFICENT CHOCOLATE COLLECTION WITH DESIGN	DESLY INTERNATIONAL CORP.	No
TMK 13–00064	1/28/2013	12/9/2023	MONEY SAVVY PIG	MONEY SAVVY GENERATION INC.	No
TMK 13–00066	1/28/2013	3/15/2021	UNITE	UNITE EUROTHERAPY, INC.	No
TMK 13–00067	1/28/2013	11/27/2017	DESIGN	ELECTRONIC CONTROLS COMPANY	No
TMK 13–00120	1/31/2013	1/1/2023	DESIGN (BOTTLE)	E.T. BROWNE DRUG CO., INC.	No
TMK 13–00065	1/28/2013	2/20/2021	BODY GEOMETRY	SPECIALIZED BICYCLE COMPONENTS, INC.	No

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TMK 13–00087	1/28/2013	2/6/2021	BODY GEOMETRY	SPECIALIZED BICYCLE COMPONENTS, INC.	No
TMK 13–00068	1/28/2013	3/27/2017	DESIGN	ELECTRONIC CONTROLS COMPANY	No
TMK 13–00074	1/28/2013	10/16/2017	ECCO GROUP AND DESIGN	ELECTRONIC CONTROLS COMPANY	No
TMK 13–00072	1/28/2013	4/24/2017	HEADBED	LAERDAL MEDICAL A/S	No
TMK 13–00069	1/28/2013	1/4/2015	DESIGN	ELECTRONIC CONTROLS COMPANY	No
TMK 13–00119	1/31/2013	12/11/2022	DESIGN	OGOSPORT, LLC	No
TMK 13–00084	1/28/2013	5/10/2021	S-WORKS	SPECIALIZED BICYCLE COMPONENTS, INC.	No
TMK 13–00073	1/28/2013	4/8/2017	BODY GEOMETRY	SPECIALIZED BICYCLE COMPONENTS, INC.	No
TMK 13–00116	1/31/2013	1/17/2022	DESIGN (OVAL ATOP RECTANGLE)	E.T. BROWNE DRUG CO., INC.	No
TMK 13–00070	1/28/2013	1/25/2015	UNITE EUROTHERAPY	UNITE EUROTHERAPY, INC.	No
TMK 13–00071	1/28/2013	1/20/2021	DESIGN	ELECTRONIC CONTROLS COMPANY	No

Total Records: 169

Date as of: 2/6/2013

AGENCY INFORMATION COLLECTION ACTIVITIES:

Entry and Immediate Delivery Application and Simplified Entry

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 Entry and Immediate Delivery Application (Forms 3461 and 3461 ALT) and Simplified Entry. 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 April 12, 2013, 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, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

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, 90 K Street NE., 10th 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: Entry and Immediate Delivery Application and Simplified Entry.

OMB Number: 1651–0024.

Form Number: CBP Form 3461 and Form 3461 ALT.

Abstract: All items imported into the United States are subject to examination before entering the commerce of the United States. There are two procedures available to effect the release of imported merchandise, including "entry" pursuant to 19 U.S.C. 1484, and "immediate delivery" pursuant to 19 U.S.C. 1448(b). Under both procedures, CBP Forms 3461 and 3461 ALT are the source documents in the packages presented to Customs and Border Protection (CBP). The information collected on CBP Forms 3461 and 3461 ALT allow CBP officers to verify that the information regarding the consignee and shipment is correct and that a bond is on file with CBP. CBP also uses these forms to close out the manifest and to establish the obligation to pay estimated duties in the time period prescribed by law or regulation. CBP Form 3461 is also a delivery authorization document and is given to the importing carrier to authorize the release of the merchandise.

CBP Forms 3461 and 3461 ALT are provided for by 19 CFR 141 and 142. These forms and instructions are accessible at: *http://www.cbp.gov/xp/cgov/toolbox/forms/*.

Simplified Entry is a program for ACE entry summary filers in which importers or brokers may file Simplified Entry data in lieu of filing the CBP Form 3461. This data consists of 12 required elements: importer of record; buyer name and address; buyer employer identification number (consignee number), seller name and address; manufacturer/supplier name and address; Harmonized Tariff Schedule 10-digit number; country of origin; bill of lading; house air waybill number; bill of lading issuer code; entry number; entry type; and estimated shipment value. Three optional data elements are the container stuffing location; consolidator name and address, and ship to party name and address. The data collected under the Simplified Entry program is intended to reduce transaction costs, expedite cargo release, and enhance cargo security. The Simplified Entry filing minimizes the redundancy of data submitted by the filer to CBP through receiving carrier data from the carrier. This design allows the participants to file earlier in the transportation flow. Guidance on using

Simplified Entry may be found at *http://www.cbp.gov/xp/cgov/trade/trade_transformation/simplified_entry/*.

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

Type of Review: Extension (without change).

Affected Public: Businesses.

CBP Form 3461

Estimated Number of Respondents: 6,529.

Estimated Number of Responses per Respondent: 1,411.

Estimated Total Annual Responses: 9,210,160.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 2,302,540.

CBP Form 3461 ALT

Estimated Number of Respondents: 6,795.

Estimated Number of Responses per Respondent: 1,390.

Estimated Total Annual Responses: 9,444,069.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 472,203.

Simplified Entry

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1,410.

Estimated Total Annual Responses: 705,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 117,030.

Dated: January 29, 2013.

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

[Published in the Federal Register, February 11, 2013 (78 FR 9719)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Holders or Containers Which Enter the United States Duty Free

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.

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: Holders or Containers which enter the United States Duty Free. 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 information collection was previously published in the **Federal Register** (77 FR 69650) on November 20, 2012, 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 March 13, 2013.

ADDRESSES: Interested persons are invited to submit written comments on this 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 U.S. 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.

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, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites 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: Holders or Containers which Enter the United States Duty Free.

OMB Number: 1651–0035.

Form Number: None.

Abstract: All articles that are brought into the United States are subject to duty unless they are specifically exempt under the Harmonized Tariff Schedules of the United States (HTSUS), codified as 19 U.S.C. 1202. Item 9801.00.10 (HTSUS) provides that articles that were manufactured in the U.S. and exported and returned without having been advanced in value or improved in condition by any process of manufacture may be brought back into the U.S. duty-free. In addition, Item 9803.00.50 (HTSUS) provides for the duty-free entry of substantial holders or containers of foreign manufacture if duty had been paid upon a previous importation pursuant to the provisions of 19 CFR 10.41b.

Although an article may be brought back into the United States without being subject to duty, a consumption entry must nevertheless be made along with the reason for the article not being subject to duty set forth on the entry. However, an importer who brings in merchandise packed in U.S. manufactured containers or holders or previously duty-paid containers or holders, and does so several times a year involving a great many containers or holders, may mark the container or holder with the HTSUS number in lieu of filing of entry papers each time. CBP believes such frequent filing of entry papers for these containers or holders would be overly burdensome to the importer or shipper.

19 CFR 10.41 provides that substantial holders or containers are to have prescribed markings in clear and conspicuous letters of such a size that they will be easily discernable. Section 10.41b of the CBP regulations eliminates the need for an importer to file entry documents by instead requiring the marking of the containers or holders to indicate under which item number of the HTSUS the containers or holders are entitled duty free entry.

In order to comply with 19 CFR 10.41b, the owner of the holder or container is required to place the markings on a metal tag or plate containing the following information: 9801.00.10, HTSUS; the name of the owner; and the serial number assigned by the owner. In the case of serially numbered holders or containers of foreign manufacture for which free clearance under the second provision of item 9803.00.50 HTSUS is claimed, the owner must place the following markings containing the following information: 9803.00.50 HTSUS; the port code numbers of the port of entry; the entry number; the last two digits of the fiscal year of entry covering the importation of the holders and containers on which duty was paid; the name of the owner; and the serial number assigned by the owner.

ACTION: 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: 20.

Estimated Number of Responses per Respondent: 18.

Estimated Number of Total Annual Responses: 360.

Estimated Total Annual Burden Hours: 90.

Dated: February 6, 2013.

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