

Bureau of Customs and Border Protection

General Notices

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 2 2004)

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

SUMMARY: The copyrights, trademarks, and trade names recorded with U.S. Customs and Border Protection during the month of February 2004. The last notice was published in the CUSTOMS BULLETIN on March 3, 2004.

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

FOR FURTHER INFORMATION CONTACT: George Frederick McCray, Esq., Chief, Intellectual Property Rights Branch, (202) 572-8710.

Dated: March 10, 2004.

GEORGE FREDERICK MCCRAY, ESQ.,
Chief,
Intellectual Property Rights Branch.

U.S. CUSTOMS SERVICE
IPR RECORDATIONS ADDED IN FEBRUARY 2004

03/01/2004
15:05:19

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMM OR MSK	OWNER NAME	RES
COP0400029	20040204	20240204	TEA ROSE DOILY COLLECTION	ESPERANZA JEAN ISADA	N
COP0400030	20040206	20240206	VIKING HAT	BABU C. JOHN	N
COP0400031	20040218	20240218	NETWARE 6 5	NOVELL, INC.	N
COP0400032	20040223	20240223	DORA THE EXPLORER - FALL 2001 STYLE GUIDE	VIACOM INTERNATIONAL INC.	N
COP0400033	20040223	20240223	SPONGEBOB SQUAREPARTS - SEASONAL ART 2003 APPAREL	VIACOM INTERNATIONAL	N
COP0400034	20040223	20240223	SPONGEBOB SQUAREPARTS - FALL/WINTER 2003 APPAREL	VIACOM INTERNATIONAL	N
COP0400035	20040225	20240225	ECHOES II COLLECTION	ECHOES L.L.C.	N
COP0400036	20040225	20240225	TERRACAST 2000 CATALOG	TERRACAST, INC.	N
COP0400037	20040224	20240224	TERRACAST 2003 ART NOUVEAU COLLECTION	TERRACAST, INC.	N
COP0400038	20040225	20240225	TERRACAST 8TH EDITION CATALOG	TERRACAST, INC.	N
COP0400039	20040225	20240225	TERRACAST 1998 CATALOG	TERRACAST, INC.	N
COP0400040	20040225	20240225	FIRE FRAME FOR SCOOTERS	BOREEM INTERNATIONAL TRADING INC	N
SUBTOTAL RECORDATION TYPE 12					
TMK0400083	20040202	20121105	SPLIT-ENDER	TALAVERA HAIR PRODUCTS, INC.	N
TMK0400084	20040202	20040823	NECKAR (& SPEEDBAR DESIGN)	NATIONAL ASSOCIATION FOR STOCK	N
TMK0400085	20040202	20111031	DESIGN	TIANJI WILSHENG PHARMACEUTICAL	N
TMK0400086	20040202	20111031	MEMORATIVE DESIGN	FANTASY INC.	N
TMK0400087	20040203	20131018	MENESTONE & DESIGN (M)	POWERJUNG INC.	N
TMK0400088	20040203	20130410	ULTRABREATH	KINGSWAY TRADING, INC.	N
TMK0400089	20040204	20121126	MISCELLANEOUS DESIGN	CAO NGUYEN, INC.	N
TMK0400090	20040204	20120122	NANG HUONG CHO DAO	STULL TECHNOLOGIES, INC.	N
TMK0400091	20040204	20130812	DESIGN	ROBERT LEE & GEORGE WILLIAMS	N
TMK0400092	20040204	20130325	ZOUCH	KOHLER CO.	N
TMK0400093	20040204	20130714	KOHLER	BALTIMORE ORIOLES LTD PARTNERSHI	N
TMK0400094	20040204	20130921	ORTOLE BIRD DESIGN	FLORIDA MARLINS LIMITED PARTNERS	N
TMK0400095	20040204	20130907	FLORIDA MARLINS AND DESIGN	MICROSOFT CORPORATION	N
TMK0400096	20040205	20140111	STYLIZED FLAG DESIGN (BLACK AND WHITE)	MICROSOFT CORPORATION	N
TMK0400097	20040205	20140104	FLAG DESIGN (COLOR)	MICROSOFT CORPORATION	N
TMK0400098	20040205	20121224	DESIGN	HOLTKOETTER INTERNATIONAL, INC.	N
TMK0400099	20040205	20130211	DESIGN	HOLTKOETTER INTERNATIONAL, INC.	N
TMK0400100	20040205	20130304	DESIGN	HOLTKOETTER INTERNATIONAL, INC.	N
TMK0400101	20040205	20130909	METROID PRIME	NINTENDO OF AMERICA INC.	N
TMK0400102	20040205	20130408	DESIGN	NINTENDO OF AMERICA INC.	N
TMK0400103	20040205	20120331	NINTENDO POWER AND DESIGN	NINTENDO OF AMERICA INC.	N
TMK0400104	20040205	20101225	NINTENDO	NINTENDO OF AMERICA INC.	N
TMK0400105	20040205	20130608	KIRBY'S DREAM LAND	NINTENDO OF AMERICA INC.	N
TMK0400106	20040205	20130909	METROID PRIME	NINTENDO OF AMERICA INC.	N
TMK0400107	20040205	20130615	YOSHI	DRL ENTERPRISES, INC.	N
TMK0400108	20040205	20131016	OCB	LILLY ICOS L.L.C.	N
TMK0400109	20040205	20130610	CHALIS	EMPRESS INTERNATIONAL LTD.	N
TMK0400110	20040205	20130121	SHRIMP CARICATURE WITH SUNGLASSES	ADVANCE MAGAZINE PUBLISHERS INC.	N
TMK0400111	20040206	20110711	GOLF WORLD	ADVANCE MAGAZINE PUBLISHERS INC.	N
TMK0400112	20040206	20110606	GLAMOUR	BROOKSTONE COMPANY, INC.	N
TMK0400113	20040206	20130121	GHELL ALERT	MARKWINS INTERNATIONAL CORP.	N
TMK0400114	20040206	20120722	THE COLOR WORKSHOP	MARKWINS INTERNATIONAL CORP.	N
TMK0400115	20050604	20050604	THE COLOR INSTITUTE	MARKWINS INTERNATIONAL CORP.	N
TMK0400116	20040206	20070803	MARKWINS	MARKWINS INTERNATIONAL CORP.	N

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REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMM OR MSK	OWNER NAME	RES
TMK0400117	20040206	20091207	MARKWINS PRESENTS ACT	MARKWINS INTERNATIONAL CORP.	N
TMK0400118	20040206	20131111	GLAMOUR GIRLZ	MARKWINS INTERNATIONAL CORP.	N
TMK0400119	20040206	20040503	LINA GALE	MARKWINS INTERNATIONAL CORP.	N
TMK0400120	20040210	20121006	FX	CANON U.S.A., INC.	N
TMK0400121	20040211	20130904	GOLD COLOR DIE SPRINGS	THE WALLACE BARNES COMPANY	N
TMK0400122	20040211	20130904	RED COLOR DIE SPRINGS	THE WALLACE BARNES COMPANY	N
TMK0400123	20040211	20070111	BLUE COLOR DIE SPRINGS	THE WALLACE BARNES COMPANY	N
TMK0400124	20040211	20091012	POP BY MARKWINS	MARKWINS INTERNATIONAL CORP.	N
TMK0400125	20040211	20100718	POP (STYLIZED)	MARKWINS INTERNATIONAL CORP.	N
TMK0400126	20040212	20130904	GREEN COLOR DIE SPRINGS	THE WALLACE BARNES COMPANY	N
TMK0400127	20040217	20100116	CONFIGURATION OF A REFRACTOR	REICHERT, INC.	N
TMK0400128	20040217	20100404	WET'N' WILD U.S.A.	MARKWINS BEAUTY PRODUCTS, INC.	N
TMK0400129	20040217	20110630	WET'N' WILD	MARKWINS BEAUTY PRODUCTS, INC.	N
TMK0400130	20040217	20090516	TROPEZ (STLIZED)	MARKWINS BEAUTY PRODUCTS, INC.	N
TMK0400131	20040217	20130126	BLACK RADIANCE	MARKWINS BEAUTY PRODUCTS, INC.	N
TMK0400132	20040217	20090314	ARTMATIC U.S.A.	MARKWINS BEAUTY PRODUCTS, INC.	N
TMK0400133	20040217	20090516	HOMOPOLY & LOGO DESIGN	MARKWINS BEAUTY PRODUCTS, INC.	N
TMK0400134	20040217	20090425	HOMOPOLY & LOGO DESIGN	MARKWINS BEAUTY PRODUCTS, INC.	N
TMK0400135	20040217	20130826	DESIGNER FLEXIBLE HEAD TOOTHBRUSH	MARKWINS BEAUTY PRODUCTS, INC.	N
TMK0400136	20040218	20050209	CONVERSE AND DESIGN	CONVERSE INC.	N
TMK0400137	20040218	20050209	CONVERSE ALL STAR CHUCK TAYLOR & DESIGN	CONVERSE INC.	N
TMK0400138	20040218	20090805	CONVERSE ALL STAR CHUCK TAYLOR & DESIGN	CONVERSE INC.	N
TMK0400139	20040218	20121206	CONVERSE ALL STAR CHUCK TAYLOR & DESIGN	CONVERSE INC.	N
TMK0400140	20040218	20121206	CONVERSE ALL STAR CHUCK TAYLOR & DESIGN	CONVERSE INC.	N
TMK0400141	20040218	20041220	ONE STAR AND DESIGN	CONVERSE INC.	N
TMK0400142	20040218	20090422	CONVERSE	CONVERSE INC.	N
TMK0400143	20040218	20041220	CONVERSE	CONVERSE INC.	N
TMK0400144	20040218	20110313	ALL STAR AND DESIGN	CONVERSE INC.	N
TMK0400145	20040218	20060618	ALL STAR AND DESIGN	CONVERSE INC.	N
TMK0400146	20040218	20110210	ALL STAR AND DESIGN	CONVERSE INC.	N
TMK0400147	20040218	20131012	DESIGN	CONVERSE INC.	N
TMK0400148	20040218	20131021	BBRENTANO	CONVERSE INC.	N
TMK0400149	20040218	20060402	SCOOP	TOYOTA JIDOSHA KABUSHIKI	N
TMK0400150	20040218	20090420	DTS	BRENTANO HANDBAGS INC.	N
TMK0400151	20040218	20110724	DTS DIGITAL SURROUND	SCOOP MANAGEMENT, INC.	N
TMK0400152	20040218	20101128	DTS DIGITAL OUT	DIGITAL THEATER SYSTEMS, INC.	N
TMK0400153	20040218	20050516	CASTLE BREWED WITH THE SAME CARE SINCE 1895 THE TASTE	DIGITAL THEATER SYSTEMS, INC.	N
TMK0400154	20040223	20130819	DORA THE EXPLORER	DIGITAL THEATER SYSTEMS, INC.	N
TMK0400155	20040223	20130603	DORA THE EXPLORER	DIGITAL THEATER SYSTEMS, INC.	N
TMK0400156	20040223	20120101	DORA THE EXPLORER	SABRILLER FINANCE B.V.	N
TMK0400157	20040223	20060529	ROLAND	VIACOM INTERNATIONAL INC.	N
TMK0400158	20040223	20080112	ROLAND	VIACOM INTERNATIONAL INC.	N
TMK0400159	20040223	20080808	ROLAND	VIACOM INTERNATIONAL INC.	N
TMK0400160	20040223	20080308	ROLAND	AMERICAN ROLAND FOOD CORP.	N
TMK0400161	20040223	20080308	ROLAND	AMERICAN ROLAND FOOD CORP.	N
TMK0400162	20040225	20110515	ROLAND	AMERICAN ROLAND FOOD CORP.	N
TMK0400163	20040225	20140203	SMITH & WESSON	AMERICAN ROLAND FOOD CORP.	N
TMK0400164	20040225	20130629	COSAMIN	SMITH & WESSON CORP.	N
TMK0400165	20040225	20130629	SOLAR SCENTS	NUTRAMAX LABORATORIES, INC.	N
TMK0400166	20040225	20131216	SOLAR SCENTS	NUTRAMAX LABORATORIES, INC.	N
TMK0400167	20040225	20131216	SOLAR SCENTS	HOUSE OF MORAN CORPORATION	N

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DETAIL

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMM OR MSK	OWNER NAME	RES
TMK0400166	20040225	20131102	TOMMY BAHAMA	VIEWPOINT INTERNATIONAL INC.	N
TMK0400167	20040225	20140222	DESERT EAGLE	MAGNUM RESEARCH INC.	N
TMK0400168	20040225	20131111	PISCES	HOUSE OF MOHAN CORPORATION	N
TMK0400169	20040225	20131111	AQUARIUS	HOUSE OF MOHAN CORPORATION	N
TMK0400170	20040225	20131118	TAURIUS	HOUSE OF MOHAN CORPORATION	N
TMK0400171	20040225	20120701	U.S. POLO ASSOCIATION EXTREME SPORT	UNITED STATES POLO ASSOCIATION	N
TMK0400172	20040225	20131130	UNITED STATES POLO ASSOCIATION & DESIGN	UNITED STATES POLO ASSOCIATION	N
TMK0400173	20040225	20130708	U.S. POLO ASS'N U.S. PA & DESIGN	UNITED STATES POLO ASSOCIATION	N
TMK0400174	20040225	20130216	USPA	UNITED STATES POLO ASSOCIATION	N
TMK0400175	20040225	20080331	UNITED STATES POLO ASSOCIATION	UNITED STATES POLO ASSOCIATION	N
SUBTOTAL RECORDATION TYPE			93		
TMH0400002	20040210	99999999	DISPALCA	CARIBBEAN IMPORTS, INC.	N
SUBTOTAL RECORDATION TYPE			1		
TOTAL RECORDATIONS ADDED THIS MONTH			106		

Airport and Seaport User Fee Advisory Committee Meeting

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

ACTION: Notice of meeting.

SUMMARY: This document announces an open committee meeting of the Customs and Border Protection Airport and Seaport User Fee Federal Advisory Committee.

DATE: Wednesday, April 14, 2004, at 1 p.m.

ADDRESS: Customs International Briefing Conference Room (B 1.5-10), Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Roberto Williams, Office of Finance, Room 4.5A, 1300 Pennsylvania Avenue, Washington, DC 20229, telephone: (202) 927-1101; email: Roberto.M.Williams@dhs.gov.

SUPPLEMENTARY INFORMATION:

This document announces the twenty-seventh meeting of Customs and Border Protection Airport and Seaport User Fee Advisory Committee. The meeting will be held on Wednesday, April 14, 2004, at 1 p.m. at the Customs International Briefing Conference Room (B 1.5-10), Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

Purpose of Committee

The purpose of this Committee is the performance of advisory responsibilities pursuant to section 286(k) of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. 1356(k) and the Federal Advisory Committee Act, 5 U.S.C. app. 2. The responsibility of this standing Advisory Committee is to advise on issues related to the performance of Airport and Seaport immigration services. This advice should include, but need not be limited to, the time period which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. These responsibilities are related to the assessment of an immigration user fee pursuant to section 286(d) of the INA, as amended, 8 U.S.C. 1356(d). The Advisory Committee focuses its attention on those areas of most concern and benefit to the travel industry, the traveling public, and the Federal Government.

Agenda of Meeting

The agenda of the April 14 meeting is as follows:

Agenda:

1. Introduction of the Committee members.
2. Discussion of administrative issues.
3. Discussion of activities since last meeting.
4. Discussion of specific concerns and questions of Committee members.
5. Discussion of future traffic trends.
6. Discussion of relevant written statements submitted in advance by members of the public.
7. Scheduling of next meeting.

Public Participation

The meeting is open to the public, but advance notice of attendance is required to ensure adequate seating. In order to be included on the list of those cleared for admittance, persons planning to attend must notify, at least 5 days prior to the meeting, Roberto Williams, Office of Finance, Room 4.5A, 1300 Pennsylvania Avenue, Washington, DC 20229, telephone: (202) 927-1101; email: Roberto.M.Williams@dhs.gov. Members of the public may submit written statements at any time before or after the meeting to Mr. Williams for consideration by this Advisory Committee. Only written statements received by the contact person at least 5 days prior to the meeting will be considered for discussion at the meeting.

Dated: March 22, 2004

JO ELLEN COHEN,
Acting Assistant Commissioner;
Office of Finance.

[Published in the Federal Register, March 25, 2004 (69 FR 15356)]


19 CFR PART 177, SUBPART B**NOTICE OF ISSUANCE OF FINAL DETERMINATION
CONCERNING MULTI-FUNCTION PRINTERS**

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that the Bureau of Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of certain multi-function printers to be offered to the United States Government under an undesignated government procurement contract. The final determination found

that based upon the facts presented, the country of origin of the Canon iRC3200 multi-function printer is Japan.

DATE: The final determination was issued on March 17, 2004. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of March 23, 2004.

FOR FURTHER INFORMATION CONTACT: Edward Caldwell, Special Classification and Marking Branch, Office of Regulations and Rulings (202-572-8836).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on March 17, 2004, pursuant to Subpart B of Part 177, Customs Regulations (19 CFR Part 177, subpart B), CBP issued a final determination concerning the country of origin of certain multi-function printers to be offered to the United States Government under an undesignated government procurement contract. The CBP ruling number is HQ 562936. This final determination was issued at the request of Canon, Inc., under procedures set forth at 19 CFR Part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511-18).

The final determination concluded that, based upon the facts presented, the assembly in Japan of various Japanese- and Chinese-origin parts to create Canon iRC3200 multi-function printers substantially transformed the Chinese-origin components into a product of Japan.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the Federal Register within 60 days of the date the final determination is issued. Section 177.30, Customs Regulations (19 CFR 177.30), states that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the Federal Register.

Dated: March 17, 2004

SANDRA L. BELL,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*

Attachment

HQ 562936

March 17, 2004

MAR-2-05 RR:CR:SM 562936 EAC**CATEGORY: Marking**

MR. HARVEY M. APPLEBAUM, ESQ.

MR. DAVID R. GRACE, ESQ.

MR. MARK E. FELDMAN, ESQ.

COVINGTON & BURLING

*1201 Pennsylvania Avenue, N.W.**Washington, D.C. 20004-2401*

RE: U.S. Government Procurement; Final Determination; country of origin of multi-function printers; substantial transformation; 19 CFR Part 177

DEAR MESSRS. APPLEBAUM, GRACE, AND FELDMAN:

This is in response to your letter dated December 22, 2003, requesting a final determination under subpart B of Part 177, Customs Regulations (19 CFR 177.21 et seq.). Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2411 et seq.), U.S. Customs and Border Protection ("CBP") issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated foreign country or instrumentality for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of the Canon "iRC3200" multi-function printer that is assembled in Japan and which Canon intends to sell to the U.S. Government through its Canon U.S.A. affiliate. We note that Canon is a party-at-interest within the meaning of 19 CFR 177.22(d)(2), and is entitled to request this final determination.

FACTS:

Canon has requested this final determination in order to determine the country of origin of the Canon iRC3200 multi-function printer that is capable of performing printing, copying, scanning, and facsimile functions. The printer is comprised of four main subassemblies that have been identified as the printer unit, reader scanner unit, color infrared ("iR") controller unit, and control panel unit. The printer unit itself consists of four smaller subassemblies identified as the laser scanner unit, printer unit without laser scanner ("PWS"), drum unit, and toner cartridge. You state that the printer unit, assembled in Japan, performs the electrophotographic process which is described as the most essential task undertaken by the printer. You further state that the laser scanner unit is perhaps the most complex component of the printer and that its production requires the application of advanced manufacturing technologies.

It is our understanding that during the aforementioned electrophotographic process, a permanent photocopied image is placed onto a sheet of paper through the steps of exposure, development, transfer, and fixing. In describing the electrophotographic process, you state that during the first and most significant step, exposure, a computer image signal is converted into a laser drive signal which must be calibrated to cast a laser beam precisely onto a photosensitive drum. Following exposure, toner is electrostatically attracted to a latent image located on the surface of the photosensitive drum.

The toner develops the latent image into a visible image that is thereafter permanently affixed to printing paper by a fixing unit which is comprised of a heater, fixing film unit, and roller.

The laser scanner unit performs the exposure function that is, in your opinion, the most important and precise element of the electrophotographic process. The laser scanner unit is manufactured within Japan from parts that are predominantly of Japanese origin. With respect to the origin of the other components that form the printer unit, you state that the toner cartridge (which supplies toner to the printer unit) and drum unit (which performs the development processes) are manufactured within Japan from parts of Japanese origin. The PWS unit, on the other hand, is assembled in China. However, the intermediate transfer belt, which is described as the key component of the PWS unit, is manufactured in Japan. The intermediate transfer belt transforms four color images, which are created by four drum units, into a fully integrated color image that is transferred onto print paper.

The second major subassembly of the printer, the reader scanner unit, functions as the "reader" unit of the printer by storing information onto a hard disk that is controlled by the color iR controller unit. The reader scanner unit is assembled within China. However, components that you describe as the key parts of the unit, such as the Charge Coupled Device ("CCD"), lens unit, and xenon lamp, are manufactured in Japan. In regards to the purpose of each of these components, the xenon lamp radiates light onto a document, the lens unit focuses the light reflected from the document onto the sensor portion of the CCD, and the CCD converts the light signal into an electrical signal.

The third major component of the printer, the color iR controller unit, including the software embedded in the unit, is manufactured within Japan. The color iR controller unit integrates the local area network and executes multiple tasks (such as copying, printing, and scanning) efficiently on the network. You state that the cost incurred by Canon in researching and developing the color iR controller unit is substantial. The color iR controller unit consists of three main subassemblies: the MEDOC, which enables the simultaneous performance of multiple tasks; the GRAVES, which performs image processing functions; and the SURF, which allocates the burden of processing printing data between the computer and the printer.

The fourth major component of the printer is the control panel unit. The control panel unit is assembled in China. However, the color Liquid Crystal Display ("LCD"), which is described as the key component of the control panel unit, is manufactured in Japan. The LCD is part of the printer's "touch panel" that indicates the operational status of the printer.

As stated above, the printer's major subassemblies are assembled within Japan to form a completed Canon iRC3200 printer. A description of the processes undertaken to assemble a printer to completion, as set forth in a facsimile transmitted to our office on January 27, 2004, follows.

A. The Printer Unit

1. Laser Scanner Unit Assembly

An operator assembles a laser chip terminal onto a laser unit printed circuit board ("PCB") and adjusts the power of the laser beam. Then an operator attaches a collimator lens to the laser unit PCB after which the operator measures the focus of the laser spot and checks the exte-

rior of the laser unit. A series of component parts are then attached to the optical case. Such component parts have been identified as the lens supporting board unit, auto registration motor, anamorphosis lens, motor unit, Beam Detect ("BD") sensor unit, laser unit, reflection mirror, cylindrical lens, long deflective element mirror, and BD mirror. After attaching the components to the optical case, the operator adjusts the focus of the cylindrical lens, position of sub scanning, position of BD mirror, power of laser beam, and jitter. A cover is thereafter attached and the image patterns and laser scanner unit exterior are inspected.

2. Printer Unit Without Laser Scanner ("PWS") Assembly

Various plates, mounts, rails, guides, stays, shafts, and covers are assembled in order to complete the mechanical frames of the printer unit and constitute the first assembly steps of the PWS. Thereafter, the following components are assembled to the frames: toner cartridge drive assembly, drum drive assembly, developing drive assembly, intermediate transfer belt drive assembly, fixing drive assembly, four laser scanner units, pick-up motor drive unit, paper pick-up unit, duplex driver PCB, color iR controller unit, intermediate transfer belt unit, duplex unit, and fixing feeder unit. After attaching these various items, an operator uses cables to connect the components. The alignment of the rollers, intermediate transfer belt unit, laser beam angle, magnification, and starting point of laser scanning is adjusted. An operator then makes adjustments to the laser power, facsimile power, heaters, fans, and toner cartridge motor. Toner cartridges and drum units are subsequently inserted into the frame. An operator temporarily connects the reader scanner unit to the printer unit to check the image. Components used only for testing purposes, such as the four laser scanner units, color iR controller unit, drum units, and toner cartridges, are then removed from the printer and the PWS is packed for shipment.

3. Drum Unit Assembly

In order to complete the drum unit, an operator assembles numerous components, such as a photosensitive drum, primary charging roller, developing assembly, and developing cylinder. An operator uniformly coats the drum unit with photosensitive materials during assembly. Thereafter, the mechanical precision of the drum unit is inspected and the unit is packaged.

4. Toner Cartridge

Items such as toner cartridge units, toner cartridge holders, insert labels, logo labels, color labels, and side pads are assembled to complete the toner cartridge. An operator thereafter inspects the item and packs the toner cartridge.

B. Color iR Controller Unit

In order to assemble the color iR controller unit, an operator first combines the controller main PCB with the controller sub-PCB. Multiple components are then attached to the combined PCBs, including items such as a static random access memory PCB, boot read only memory, synchronous random access memory, fan, dust filter, and hard disk. The various components are subsequently connected with cables. An operator then inserts a

power supply cable into the hard disk and distribution units. The assembled color iR controller unit is thereafter inspected.

C. Reader Scanner Unit

In order to build the reader scanner unit, an operator begins by assembling a number of components such as a CCD, lens unit, xenon lamp, interface PCB, lamp regulator PCB, reader controller PCB, and sensor assembly. After connecting the components with cables, an operator adjusts the mechanical alignment of certain items that form the unit. Examples of such adjustments include modifying the position of the mirror assembly and the tension of belts and wires that move optical components, such as the CCD and mirror assembly. An operator then tests the functionality of the item's communication and paper size detection capabilities, the accuracy of input data, the starting point of scanning, and image signals. Upon successful completion of these tests, the reader scanner unit is packaged for shipment.

D. Control Panel Unit

An operator assembles items such as a control panel key PCB, key tops, and LCD in order to produce a control panel unit. The various items are connected with cables. Thereafter, the operator inspects and packages the unit for shipment.

E. Final Assembly

Using screws, an operator attaches four laser scanner units (yellow, magenta, cyan, and black) as well as a color iR controller unit to the PWS. An operator subsequently initializes the random access memory of the color iR controller unit and calibrates the angle of the laser beam, magnification performance, and the starting point of laser scanning. An operator then tests the laser's power and application communication within the printer unit. Drum units and toner cartridges are attached for testing. Thereafter, the starting point of sub-scanning, the blank spaces of right and left in the test print image, and the roller pressure of the fixing rollers are adjusted. The motors and sensors are tested and paper size data is registered. Next, the reader scanner and document feeder units are attached to the printer unit. Screws are utilized to attach covers to the printer and the exterior of the unit is inspected.

Upon completion of the aforementioned assembly procedures, an operator inspects the functionality of the assembled Canon iRC3200 printer. The level of precision of the assembled unit is further tested by printing test patterns and evaluating the images thereby produced. Upon successful completion of the final inspections, the completed iRC3200 is packaged and prepared for shipment.

ISSUE:

Whether the assembled Canon iRC3200 printers are considered to be products of Japan for purposes of U.S. Government procurement.

LAW AND ANALYSIS:

Under Subpart B of Part 177, 19 CFR 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy

American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also, 19 CFR 177.22(a).

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 573 F. Supp. 1149 (CIT 1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. See, C.S.D. 80-111, C.S.D. 85-25, C.S.D. 89-110, C.S.D. 89-118, C.S.D. 90-51, and C.S.D. 90-97. In C.S.D. 85-25, 19 Cust. Bull. 844 (1985), we held that for purposes of the Generalized System of Preferences, the assembly of a large number of fabricated components onto a printed circuit board in a process involving a considerable amount of time and skill results in a substantial transformation. In that case, in excess of 50 discrete fabricated components (such as resistors, capacitors, diodes, integrated circuits, sockets, and connectors) were assembled.

CBP has also previously considered, in a number of cases, whether components imported into a country for assembly into printers and other related items have been substantially transformed as a result of such processing. For example, in Headquarters Ruling Letter (“HRL”) 562495 dated November 13, 2002, color ink jet printers were assembled within Singapore from components obtained from Malaysia and a number of other countries. The assembly procedures undertaken in Singapore were described as follows:

1. Circuit board assembly for the input/output unit, left side, assembled to the chassis;
2. Power controller printed circuit board assembly assembled to the chassis;
3. Preheating thermal drum inserted into the chassis;
4. Paper path motor assembled to the chassis;
5. Stepper assembly motor assembly, with gear, assembled to the chassis;
6. Control panel cover assembly (user interface) assembled to the chassis;
7. High voltage power supply assembled to the chassis;
8. Input/output circuit assembly board, right, assembled to the chassis;
9. “Barracuda” print head assembly assembled to the chassis;

10. Purge control module assembled to the chassis;
11. Ink load assembly assembled to the chassis;
12. Electronic subsystem (ESS) controller board assembled to the chassis; and,
13. Front cover assembly assembled to the chassis.

Upon completion of the foregoing procedures, the assembled printers were subjected to high voltage electrical testing, inspected, packaged, and prepared for export to the United States.

After considering the totality of the circumstances in HRL 562495, we held that the various imported components were substantially transformed within Singapore and that the assembled printers were required to be marked as products of that country upon entry into the United States. In support of this determination, we noted that the processing operations that occurred within Singapore were complex and extensive, required the integration of 13 major subassemblies to the chassis, and that the resulting product was a new and distinct article of commerce that possessed a new name, character, and use.

Prior to the case cited above, CBP ruled in HRL 561734 dated March 22, 2001, 66 Fed. Reg. 17222, that Sharp multifunctional machines (printer, copier and fax machines) assembled in Japan were a product of Japan for purposes of government procurement. The machines in that case were comprised of 227 parts (108 parts obtained from Japan, 92 from Thailand, 3 from China, and 24 from "other" countries) and eight subassemblies, each of which was assembled in Japan. It was further noted that the scanner unit (one of the eight subassemblies assembled in Japan) was characterized as "the heart of the machine." See also, HRL 561568 dated March 22, 2001, 66 Fed. Reg. 17222.

In HRL 734050 dated June 17, 1991, on the other hand, we determined that the operations performed in China to assemble printers did not substantially transform the Japanese components utilized in those printers. The printers in that case were assembled within China from five main components identified as the "head", "mechanism", "circuit", "power source", and "outer case." The circuit, power source and outer case units were entirely assembled or molded in Japan. The head and mechanical units were manufactured in Japan but exported to China in an unassembled state. All five units were exported to China where the head and mechanical units were assembled with screws and screwdrivers. Thereafter, the head, mechanism, circuit, and power source units were mounted onto the outer case, also with screws and screwdrivers. It was stated that the value of the Japanese-origin components utilized in the printers far exceeded that of the Chinese-origin components. Based upon the foregoing facts, we held that, even though the printers were assembled to completion in China, the country of origin of the completed printers for marking purposes was Japan. In making this determination, we noted that the vast majority of the printer's parts were of Japanese origin and that the operations performed in China were only simple assembly operations.

As the cases set forth above demonstrate, in order to determine whether a substantial transformation occurs when components of various origins are assembled to form completed printers, CBP considers the totality of the circumstances and makes such decisions on a case-by-case basis. The country of origin of the printer's components, extent of the processing that occurs

within a given country, and whether such processing renders a product with a new name, character, or use are primary considerations in such cases. Additionally, factors such as resources expended on product design and development, extent and nature of post-assembly inspection procedures, and worker skill required during the actual manufacturing process will be considered when analyzing whether a substantial transformation has occurred; however, no one such factor is determinative.

As applied to the facts of this case, we find that the assembled Canon iRC3200 multi-function printer is a product of Japan for purposes of U.S. Government procurement. In making this determination, we note that a substantial portion of the printer's individual components and subassemblies are of Japanese origin. You have described a number of these individual components and subassemblies as the "most complex", "key", and "essential" of the printer. In this regard, we recognize that, in addition to the Japanese subassemblies, certain critical Japanese-origin parts are incorporated into the Chinese subassemblies, namely the reader scanner unit and the control panel unit. Furthermore, we find that the processing that occurs in Japan is complex and meaningful, requires the assembly of a large number of components, and renders a new and distinct article of commerce that possesses a new name, character, and use.

HOLDING:

Based upon the facts of this case, we find that the processing in Japan substantially transforms the components of Chinese origin. Therefore, the country of origin of the Canon iRC3200 printer is Japan for purposes of U.S. Government procurement.

Notice of this final determination will be given in the Federal Register as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Any party-at-interest may, within 30 days after publication of the Federal Register notice referenced above, seek judicial review of this final determination before the Court of International Trade.

SANDRA L. BELL,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*

[Published in the Federal Register, March 23, 2004 (69 FR 13577)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, March 24, 2004,

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

Larry L. Burton for SANDRA L. BELL,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*



19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF ROMET LARYNGECTOMY FILTER COVERS, BUCHANAN LARYNGECTOMY PROTECTORS AND STOMAFOAM SQUARES

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to the classification of Romet laryngectomy filter covers, Buchanan laryngectomy protectors, and Stomafoam squares.

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 intends to revoke a ruling concerning the tariff classification of Romet laryngectomy filter covers, Buchanan laryngectomy protectors, and Stomafoam squares, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before May 7, 2004.

ADDRESS: Written comments are to be addressed to Bureau of Customs and Border Protection, Office of Regulation and Rulings,

Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at 799 9th St. N.W. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch, (202) 572-8784.

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 Customs 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 Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs 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 Customs intends to revoke a ruling pertaining to the tariff classification of Romet laryngectomy filter covers, Buchanan laryngectomy protectors, and Stomafoam squares. Although in this notice Customs is specifically referring to Headquarters Ruling Letter (HQ) 951654, dated July 2, 1992, set forth as attachment "A" to this document, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to those 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 Customs 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, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs 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 951654, we ruled that all three laryngectomy covers were classified in subheading 9021.90.80, HTSUS, the provision for "Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof: Other: Other." We also ruled that the merchandise could be entered duty-free under subheading 9817.00.96, HTSUS, the provision for "Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons; parts and accessories (except parts and accessories of braces and artificial limb prosthetics) that are specially designed or adapted for use in the foregoing articles: Other," because the merchandise is specially designed for use by physically handicapped persons. We now believe that the items are correctly classified according to their material makeup, but retain duty free status under subheading 9817.00.96, HTSUS.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke HQ 951654, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 966874, set forth as attachment "B" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to

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

Dated: March 19, 2004

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 951654
July 2, 1992
CLA-2 CO:R:C:M 951654 NLP
CATEGORY: Classification
TARIFF NO.: 9021.90.80; 9817.00.96

MR. THOMAS M. LENNOX
LUMINAUD, INC.
8688 Tyler Blvd.
Mentor, Ohio 44060

RE: Tracheostoma covers; articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons; U.S. Note 4(a) to subchapter XVII, Chapter 98

DEAR MR. LENNOX:

This is in response to your letter dated March 9, 1992, requesting the tariff classification of tracheostoma covers (stoma covers) under the Harmonized Tariff Schedule of the United States (HTSUS). Three types of stoma covers were submitted for our review.

FACTS:

According to your submission, stoma covers are used by people who have had their larynx removed (laryngectomies) to replace the lost function of the nose. Since the larynx has been removed and the trachea turned to open in a stoma in the throat just above the lungs, the nose can no longer serve its purpose of warming and moisturizing inhaled air and in keeping airborne foreign materials out of the lungs. Stoma covers serve these functions and also absorb mucus secretions that may be expelled from the stoma and help ease breathing and avoid crusting and coughing.

The first type of stoma cover is called the Romet Laryngectomy Filter Cover, known as the Romet Cover or Romet Laryngectomee Filter. It is a dickey-type cotton knit cover with velcro fastenings. This stoma cover is suitable for outerwear and it will last indefinitely. It is about 8-1/2 inches by 11 inches and it is made in Italy.

The Buchanan Laryngectomee Protector is a bib-type cover that ties around the neck. It is made of white foam that is enclosed in a soft white cotton mesh covering. It is suitable for wearing at home or under regular clothing. This cover is typically used for a day and then it is washed. After 10 washings it should be discarded. The large one is 8-1/2 inches wide by 7-1/4 inches in length. The small one is 6-1/2 inches wide by 4-1/4 inches in length. This cover is made in Scotland.

The Stomafoam squares are small pieces of white foam held in place by a strip of medical grade, non-irritating, non-sensitizing adhesive. They would be used at home when the wearer is not dressed or under regular clothing or neckwear. They typically are used once and discarded. They are 2 inches by 2-1/2 inches. They are sold in bags of 30 individually wrapped squares. The wearer can choose between a cover that is 3/16 of an inch thick or 1/8 of an inch thick. They are not suitable for washing and reusing. These covers will be made in England.

ISSUE:

What is the tariff classification of the three stoma covers under the HTSUS?

Are the stoma covers classified in subheading 9817.00.96, HTSUS, which provides duty free treatment for articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons?

LAW AND ANALYSIS:

The classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's), taken in order.

GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. 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 may be applied, taken in order.

Heading 9021, HTSUS, provides for the following:

Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof.

The stoma covers are worn by people who have had their larynx removed. Since the larynx has been removed, the nose can no longer serve its purpose of warming and moisturizing inhaled air and in keeping airborne foreign materials out of the lungs.

The stoma covers serve these functions and also absorb mucus secretions that may be expelled from the stoma and help ease breathing and avoid crusting and coughing. As such, the stoma covers compensate for the disability of not having a larynx.

Therefore, the covers are appliances which are worn on the body to compensate for a disability and they are classified in subheading 9021.90.80, HTSUS.

Subheading 9817.00.96, HTSUS, provides that articles specially designed or adapted for the use or benefit of the blind or other physi-

cally or mentally handicapped persons are eligible for duty free treatment. U.S. Note 4(a) to subchapter XVII, Chapter 98, HTSUS, states that:

For purposes of subheadings 9817.00.92, 9817.00.94 and 9817.00.96, the term "blind or other physically or mentally handicapped persons" includes any person suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working.

People who have had their larynx removed suffer from a permanent physical impairment which limits their ability to breathe.

Therefore, for the purposes of subheading 9817.00.96, HTSUS, people who have had laryngectomies are considered physically handicapped as that term is defined in U.S. Note 4(a) to Subchapter XVII.

The three stoma covers at issue are used by people who have had laryngectomies to help them compensate for the lose of their larynx. The submitted covers are made of materials, such as cotton and foam, that will absorb moisture and will remain breathable. The covers are made of various thicknesses depending on the size of the stoma and the differing amounts of secretion.

Moreover, the covers have different types of closures, such as, ties, velcro fastenings and self-applied adhesive tape, which allow the wearer to choose a specific cover depending on various factors like one's neck shape, the tenderness of neck tissues and hand/arm use capability. Thus, it is our position that the stoma covers are specially designed for use by persons who have had laryngectomies and they are entitled to entry free of duty under subheading 9817.00.96, HTSUS.

HOLDING:

The stoma covers are classified in subheading 9021.90.80, HTSUS, which provides for orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof; other, other.

The stoma covers are articles specially designed or adapted for the use or benefit of those with a physical handicap. The stoma covers are classified in subheading 9817.00.96, HTSUS, and are eligible for duty-free treatment upon entry into the United States.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966874
CLA-2 RR:CR:GC 966874AM
CATEGORY: CLASSIFICATION
TARIFF NO.: 3919.90.50, 3926.90.98,
6117.80.9510, 9817.00.96

MR. THOMAS M. LENNOX
LUMINAUD, INC.
8688 Tyler Blvd.
Mentor, OH 44060

Re: Revocation of HQ 951654; Romet laryngectomy filter covers, Buchanan laryngectomy protectors, and Stomafoam squares

DEAR MR. LENNOX:

This is in reference to Headquarters Ruling Letter (HQ) 951654, dated July 2, 1992, regarding the classification of Romet laryngectomy filter covers, Buchanan laryngectomy protectors, and Stomafoam squares, pursuant to the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed the ruling and find it to be incorrect. This ruling sets forth the correct classifications.

FACTS:

Stoma covers are used by people who have had a laryngectomy, the surgical removal of the larynx. In this procedure, the trachea is rerouted to an opening in the neck called a stoma. Hence, inhaled air bypasses the nasopharynx. Stoma covers serve to replace the lost functions of the nasopharynx, namely to filter, warm and moisturize inhaled air and to absorb secretions expelled from the stoma.

Romet laryngectomy filter covers are dickey-type cotton knit covers with velcro fastenings measuring about 8.5 by 11 inches. In advertisements for this article found on the Internet, the colors and styles of the covers are emphasized with slogans such as "let neckbreathers dress in a relaxed and confident manner" (www.luminaud.com/images/bibs2.jpg). The Romet filter covers do not actually include a filtering material. One website states "Filters can be worn underneath" (www.eaglemedicalsupply.com/ProductDetails). The cover can be washed and used indefinitely.

The Buchanan laryngectomy protector is made of white foam enclosed in a cotton mesh covering that ties around the neck. It can be worn under clothing or at home. It is typically worn for one day and then washed. After 10 washings it should be discarded. It comes in two sizes, 8.5 x 7.25 inches and 6.5 x 4.25 inches.

Stomafoam squares are 2 x 2.5 inch pieces of foam either 1/8 or 3/16 inches thick. They are held in place over the stoma by a strip of adhesive. They are used at home or under regular clothing or neckwear and discarded after each use. They are sold in bags of 30 individually wrapped squares.

In HQ 951654, we ruled that all three laryngectomy covers were classified in subheading 9021.90.80, HTSUS, the provision for "Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture ap-

pliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof: Other: Other.” We also ruled that the merchandise could be entered duty-free under subheading 9817.00.96, HTSUS, the provision for “Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons; parts and accessories (except parts and accessories of braces and artificial limb prosthetics) that are specially designed or adapted for use in the foregoing articles: Other,” because the merchandise is specially designed for use by physically handicapped persons.

ISSUE:

Whether the three laryngectomy covers are classified as appliances worn on the body to compensate for a defect of disability, as filters, or as to their material make-up.

LAW AND ANALYSIS:

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the sub-headings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

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 are:

3919 Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls:

3919.90 Other:

3919.90.50 Other

* * * * *

3926 Other articles of plastics and articles of other materials of headings 3901 to 3914:

3926.90 Other:

3926.90.98 Other

* * * * *

6117	Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories:
6117.80	Other accessories:
	Other:
6117.80.95	Other:
6117.80.9510	Of cotton (359)
* * *	* * * * *
8421	Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof:
	Filtering or purifying machinery and apparatus for gases:
8421.39	Other:
8421.39.80	Other
* * *	* * * * *
9021	Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof:
9021.90	Other:
9021.90.80	Other

We have already recognized that the instant merchandise is classified in subheading 9817.00.96, HTSUS, which provides for duty-free treatment for articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons and parts and accessories of such articles. However, the heading text of 9817 and 9021, HTSUS, is not synonymous. Although the “defect or disability” language of heading 9021, HTSUS, is very close to the terms “physically . . . handicapped” in heading 9817, HTSUS, (and we need not attempt to ascertain any differences here), the “articles specially designed or adapted” language of heading 9817 could refer to a much larger set of goods than the “high precision” “appliances” of heading 9021.

In describing the general content and arrangement of Chapter 90, the EN states in pertinent part that: “[T]his Chapter covers a wide variety of instruments and apparatus which are, as a rule, characterised by their high finish and high precision.” The EN also lists the following exceptions to the general rule that the instruments and apparatus of this Chapter are high precision types: “ordinary goggles (heading 90.04), simple magnifying glasses and non-magnifying periscopes (heading 90.13), divided scales and school rules (heading 90.17) and fancy hygrometers, irrespective of their accuracy (heading 90.25).” Stoma supplies in general are not listed as one of the exceptions to the high precision rule. Stoma supplies are either disposable plastic ar-

articles packaged in boxes of 30, worn for a day, washed a few times, and discarded, or textile articles, chosen for their color and style, and worn and washed indefinitely as with other neckware. Therefore, we do not believe they are characterized by high finish and high precision.

Furthermore, the ENs to heading 9021, HTSUS, state, in pertinent part, the following:

(IV) HEARING AIDS

These are generally electrical appliances with a circuit containing one or more microphones (with or without amplifier), a receiver and a battery. The receiver may be worn internally or behind the ear, or it may be designed to be held in the hand against the ear.

This group is **restricted** to appliances for overcoming deafness; it therefore excludes articles such as headphones, amplifiers and the like used in conference rooms or by telephonists to improve the audibility of speech.

(V) OTHER APPLIANCES WHICH ARE WORN OR CARRIED,
OR IMPLANTED IN THE BODY, TO COMPENSATE FOR A
DEFECT OR DISABILITY

This group includes:

- (1) Speech-aids for persons having lost the use of their vocal cords as a result of an injury or a surgical operation. These consist essentially of an electronic impulse generator. When pressed against the neck, for example, they generate vibrations in the cavities of the throat which are modulated by the user to produce audible speech.
- (2) Pacemakers for stimulating defective heart muscles. These are roughly the size and weight of a pocket watch and are implanted beneath the skin of the patient's chest. They incorporate an electric battery and are connected by electrodes to the heart, which they provide with the impulses necessary for its functioning. Other types of pacemakers are used to stimulate other organs (for example, the lungs, the rectum or the bladder).
- (3) Electronic aids for the blind. These consist essentially of an ultrasonic transmitter-receiver powered by an electric battery. The frequency variations resulting from the time taken for the ultrasonic beam to travel out to an obstacle and be reflected back enable the user, through an appropriate device (e.g., an internal ear-piece), to detect the obstacle and judge its distance.
- (4) Appliances implanted in the body, used to support or replace the chemical function of certain organs (e.g., secretion of insulin).

The stoma filters and filter covers are nothing like either the hearing aids of the heading text or the listed examples in the ENs. First, all of the appliances listed are precision electronic devices that actively compensate for the defect or disability. Second, all of the examples assist or replace the function of a failed organ: they amplify sound when the ears have failed, they stimulate the vocal cords or the heart muscle when the larynx or heart has failed, or they pump insulin when the pancreas has stopped working. The instant goods do not actually do anything to assist or replace the function of an organ after its failure. The trachea still functions as a pathway for inhaled and

exhaled air, albeit bypassing the usual route through the nasopharynx. Foam stoma covers simply help filter and humidify the inhaled air and textile stoma covers keep the stoma discreet. Moreover, speech aids for people who have undergone a laryngectomy are specifically mentioned, whereas other accessories for the surgically created stoma are conspicuously absent.

The literature for both the Buchanan laryngectomy protectors and Stomafoam squares uses the word filter to describe their purpose. Heading 8421, HTSUS, provides for filters for gases. EN 84.21 states, in pertinent part, the following:

(B) Filtering or purifying machinery, etc., for gases.

These gas filters and purifiers are used to separate solid or liquid particles from gases, either to recover products of value (e.g., coal dust, metallic particles, etc., recovered from furnace flue gases), or to eliminate harmful materials (e.g., dust extraction, removal of tar, etc., from gases or smoke fumes, removal of oil from steam engine vapours).

They include:

- (1) Filters and purifiers acting solely by mechanical or physical means;** these are of two types. In the first type, as in liquid filters, the separating element consists of a porous surface or mass (felt, cloth, metallic sponge, glass wool, etc.). In the second type, separation is achieved by suddenly reducing the speed of the particles drawn along with the gas, so that they can then be collected by gravity, trapped on an oiled surface, etc. Filters of these types often incorporate fans or water sprays.

* * * * *

Filters of the second type include:

- (v) Dust extractors, smoke filters, etc.,** fitted with various types of obstructing elements to reduce the speed of the particles in the gas stream, e.g., baffle lattes, partitions perforated with non-corresponding orifices, circular or spiral circuits fitted with baffles, and cones of superimposed baffle rings.

[all emphasis in original.]

When worn over the stoma, the foam acts as a filter and humidifier for inhaled air. However, the examples of filters listed in EN 84.21 are incorporated into a device that moves the liquid or gas to be filtered. There are no examples in the EN that consist simply of the separating element or material as the filter. The Random House Dictionary of the English Language, the Unabridged Edition, (1973), defines apparatus as "1. A group of aggregate of instruments, machinery, tools, materials, etc., having a particular function or intended for a specific use. 2. Any complex instrument or mechanism for a particular purpose. 3. Any system or systematic organization of activities, functions, processes, etc., directed toward a specific goal: *the apparatus of government; espionage apparatus*. 4. *Physiol.* A group of structurally different organs working together in the performance of a particular function: *the digestive apparatus*." The foam stoma filters are not incorporated into a machine. Nor do they constitute a filtering "apparatus" based on the definition above. Other than the packaging of the foam, there is nothing to distinguish the foam from other foam cut to shape. Both the Buchanan laryngectomy protectors and the Stomafoam squares are simply pieces of

foam worn over a stoma secured by textile ties or by adhesive; a dust mask, of sorts, for a stoma rather than for the nose and mouth.

In NY 858666, dated December 18, 1990, and in NY 867238, dated December 2, 1991, a dust mask composed of non-woven textile fabric was classified as an "other made up article" in subheading 6307.90, HTSUS. The instant foam stoma filters, which function exactly like a dust mask, are therefore also classified as articles of their material make-up in chapter 39. Therefore, the Stomafoam squares are classified in subheading 3919.90.50, HTSUS, the provision for "Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls: Other: Other."

The Buchanan laryngectomy protector is a composite good of foam and textile materials. The foam accounts for most of the weight and all of the function of the article. It is therefore classified by GRI 3(b) in subheading 3926.90.98, HTSUS, the provision for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other."

The Romet laryngectomy filter cover is worn much like a necktie or cravat. It hides the stoma in a stylish way. It is therefore classified in subheading 6117.80.9510, HTSUS, the provision for "Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories: Other accessories: Other: Of cotton."

HOLDING:

The Romet laryngectomy filter cover is classified in subheading 6117.80.9510, HTSUS, the provision for "Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories: Other accessories: Other: Of cotton," in quota category 359.

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

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact the local CBP office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

The Stomafoam squares are classified in subheading 3919.90.50, HTSUS, the provision for "Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls: Other: Other."

The Buchanan laryngectomy protector is classified in 3926.90.98, HTSUS, the provision for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other."

Duty free status under subheading 9817.00.96, HTSUS, is unaffected.

EFFECT ON OTHER RULINGS:

HQ 951654, dated July 2, 1992, is revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

**REVOCAION OF TWO RULING LETTERS AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF CERTAIN WATERPROOF
CLOGS**

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

ACTION: Notice of revocation of two tariff classification ruling letters and revocation of treatment relating to the classification of certain waterproof clogs.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), this notice advises interested parties that Customs and Border Protection (CBP) is revoking two ruling letters relating to the tariff classification of certain waterproof clogs under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed actions was published on January 28, 2004, Vol. 38, No. 5, of the CUSTOMS BULLETIN. One comment was received in response to the notice. The comment identified a ruling on substantially similar merchandise.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 6, 2004.

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Textiles Branch: (202) 572-8713.

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 sec-

tion 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, a notice proposing to revoke New York Ruling Letter (NY) J87291, dated September 10, 2003, which classified waterproof clogs in subheading 6401.99.30, HTSUSA, was published in the January 28, 2004, CUSTOMS BULLETIN, Volume 38, No. 5. One comment was received in response to the notice, identifying an additional ruling on merchandise that was substantially similar to that which was subject to the proposed revocation.

As stated in the notice of proposed revocation, the notice covered 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, Customs is revoking any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise or the importer's or CBP's previous interpretation of the HTSUSA. 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 J87291, CBP ruled that a slip-on, clog-type shoe with a molded 100% rubber upper and outer sole (Item numbers AAW12540, 12541 and 12542) was classified in subheading 6401.99.3000, HTSUSA, which provides for "Waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes: Other footwear: Other: Designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather: Designed for use without closures."

In the recently identified Port Decision Letter (PD) H87387, CBP ruled that a similar slip-on, clog-type shoe with a molded 100% rubber upper and outer sole (style number 6070) was also classified in subheading 6401.99.3000, HTSUSA.

Based upon our analysis of the scope of the terms of subheadings 6401.99.3000, HTSUSA and 6401.99.8000, HTSUSA, the Legal Notes, and Treasury Decision (T.D.) 93-88, we have determined that the clogs subject to the two rulings above are properly classified in subheading 6401.99.8000, HTSUSA, the provision for "Waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having foxing or a foxing-like band applied or molded at the sole and overlapping the upper)."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY J87291, PD H87387 and any other ruling not specifically identified, to reflect the proper classification of the waterproof clogs according to the analysis contained in proposed Headquarters Ruling Letters (HQ) 966827 and HQ 966835, set forth as Attachments A and B, 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 merchandise.

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

DATED: March 18, 2004

Gail A. Hamill for MYLES B. HARMON,
Director;
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966827
March 18, 2004
CLA-2 RR:CR:TE 966827 KSH
TARIFF NO.: 6401.99.8000

MS. LINDA BROADFORD
RALPH LAUREN FOOTWEAR
1895 J.W. Foster Blvd.
Canton, MA 02021

RE: Revocation of New York Ruling Letter (NY) J87291, dated September 10, 2003; Classification of certain waterproof clogs

DEAR MS. BROADFORD:

This is in response to your letter of October 27, 2003, in which you request reconsideration of New York Ruling Letter (NY) J87291, issued to you on September 10, 2003, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a slip-on, clog-type shoe with a molded 100% rubber upper and outer sole. The clogs have been identified by Item numbers AAW12540, 12541 and 12542. The different numbers signify different colors. The clogs were classified in subheading 6401.99.3000, HTSUSA, which provides for "Waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes: Other footwear: Other: Designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather: Designed for use without closures." You argue that inasmuch as the heels of one wearing the clogs would be exposed, they are not designed as protection against water, oil, grease or chemicals or cold or inclement weather. We have reviewed NY J87291 and found it to be in error. Therefore, this ruling revokes NY J87291.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY J87291 was published on January 28, 2004, in Vol. 38, Number 5, of the CUSTOMS BULLETIN.

FACTS:

One sample was submitted in conjunction with your request for reconsideration. The sample is identified as Style AAW12541. It is a slip-on, clog-type shoe with a molded 100% rubber upper and outer sole. The clog has a textile lining and a removable footbed insole. The wearer's heel would be completely exposed when worn.

ISSUE:

Whether the clog is classifiable as protective footwear under subheading 6401.99.3000, HTSUSA, or as waterproof footwear under subheading 6401.99.8000, HTSUSA.

LAW AND ANALYSIS:

Classification of goods under the HTSUSA 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 Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings.

At issue, essentially, is whether the instant clogs are designed to protect against mere penetration by liquids, or designed to be worn over or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather.

“Waterproof footwear” is defined in Additional U.S. Note 3 to chapter 64, HTSUSA, which states:

For the purposes of heading 6401 “waterproof footwear” means footwear specified in the heading, designed to protect against penetration by water or other liquids, whether or not such footwear is primarily designed for such purposes.

The clog is clearly waterproof footwear. Subheading 6401.99, HTSUSA, provides for other waterproof footwear, other than that covering the ankle but not covering the knee, that is designed to be worn over or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather.

On November 17, 1993, in the Customs Bulletin, Volume 27, Number 46, CBP published Treasury Decision (T.D.) 93-88, which contains certain footwear definitions used by CBP import specialists to classify footwear. The footwear definitions were provided merely as guidelines and, although consulted here, are not to be construed as CBP rulings. With regard to “protection,” T.D. 93-88 states, in pertinent part:

Footwear is designed to be a “protection” against water, oil or cold or inclement weather only if it is substantially more of a “protection” against those items than the usual shoes of that type. For example, a leather oxford will clearly keep your feet warmer and drier than going barefoot, but they are not a “protection” in this sense. On the other hand the snow-jogger is the protective version of the non-protective jogging shoe.

Generally, open toe/open heel footwear is not designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather. T.D. 93-88 states:

In “open” toe shoes, all or part of the front of the wearer’s toes can be seen. In open heeled shoes, all or part of the back of the wearer’s heel can be seen.

For footwear classification purposes, CBP interprets the “heel” to be the rearmost boney part of the human foot, the top of which is located just below the Achilles tendon.

As previously noted, examination of the sample clog revealed no raised ridge at the heel. Since all of part of the wearer's heel would be visible, the clog is open-heeled footwear. T.D. 93-88 provides examples of footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather. Under the heading "Protection," it is stated in pertinent part that, footwear that is a "protection" against water includes:

4. Molded rubber clogs, which are the same shape as traditional Dutch wooden shoes. They are used in gardening on wet terrain.

Although it is a molded rubber clog, the clog is not in the same shape as traditional Dutch wooden shoes which have a closed heel. In light of the above analysis, and of the fact that the clogs constitute open-heeled footwear, we find that the clogs are not designed to be worn over or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather. See Headquarters Ruling Letter (HQ) 963224, dated March 22, 2003 (and compare HQ 965718, dated September 5, 2002).

HOLDING:

NY J87291, dated September 10, 2003, is hereby revoked.

The waterproof clog is classified in subheading 6401.99.8000, HTSUSA, the provision for "Waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having foxing or a foxing-like band applied or molded at the sole and overlapping the upper)." The General Column 1 Rate of Duty is free.

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

Gail A. Hamill for MYLES B. HARMON,
Director;
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966835
March 18, 2004
CLA-2 RR:CR:TE 966835 KSH
TARIFF NO.: 6401.99.8000

MS. DEBI FRENCH
MARISOL INTERNATIONAL, LLC
4300 Highline Boulevard, Suite 150
Oklahoma City, OK 73108

RE: Revocation of Port Decision Letter (PD) H87387, dated February 8, 2002; Classification of certain waterproof clogs

DEAR MS. FRENCH:

This is in response to your letter of December 9, 2003, in which you request reconsideration, on behalf of your client Midwest Quality Glove of Chillicothe, MO, of Port Decision Letter (PD) H87387, issued to your client on February 8, 2002, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of slip-on, clog-type shoes with a molded 100% rubber upper and outer sole. The clogs are identified by style number 6070. The clogs were classified in subheading 6401.99.3000, HTSUSA, which provides for "Waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes: Other footwear: Other: Designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather: Designed for use without closures." You submit that the footwear is of the same design and nature as footwear described in Headquarters Ruling Letter (HQ) 963224, dated March 22, 2002, in which we determined that the footwear was classified in subheading 6401.99.8000, HTSUSA, which provides for for "Waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having foxing or a foxing-like band applied or molded at the sole and overlapping the upper)." We have reviewed PD H87387 and found it to be in error. Therefore, this ruling revokes PD H87387.

FACTS:

Two samples were submitted in conjunction with your request for reconsideration. The samples are identified as style numbers 6070 and TG6073, the latter of which was the subject of, and correctly classified in, New York Ruling Letter (NY) K80201, issued to your client on November 12, 2003. The submitted samples are substantially similar, slip-on, clog-type shoes each with a molded 100% rubber upper and outer sole. The clogs have a textile

lining and a removable footbed insole. The wearer's heel would be partially exposed when worn.

ISSUE:

Whether the clog is classifiable as protective footwear under subheading 6401.99.3000, HTSUSA, or as waterproof footwear under subheading 6401.99.8000, HTSUSA.

LAW AND ANALYSIS:

Classification of goods under the HTSUSA 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 Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings.

At issue, essentially, is whether the instant clogs are designed to protect against mere penetration by liquids, or designed to be worn over or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather.

"Waterproof footwear" is defined in Additional U.S. Note 3 to chapter 64, HTSUSA, which states:

For the purposes of heading 6401 "waterproof footwear" means footwear specified in the heading, designed to protect against penetration by water or other liquids, whether or not such footwear is primarily designed for such purposes.

The clog is clearly waterproof footwear. Subheading 6401.99, HTSUSA, provides for other waterproof footwear, other than that covering the ankle but not covering the knee, that is designed to be worn over or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather.

On November 17, 1993, in the Customs Bulletin, Volume 27, Number 46, CBP published Treasury Decision (T.D.) 93-88, which contains certain footwear definitions used by CBP import specialists to classify footwear. The footwear definitions were provided merely as guidelines and, although consulted here, are not to be construed as CBP rulings. With regard to "protection," T.D. 93-88 states, in pertinent part:

Footwear is designed to be a "protection" against water, oil or cold or inclement weather only if it is substantially more of a "protection" against those items than the usual shoes of that type. For example, a leather oxford will clearly keep your feet warmer and drier than going barefoot, but they are not a "protection" in this sense. On the other hand the snow-jogger is the protective version of the non-protective jogging shoe.

Generally, open toe/open heel footwear is not designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather. T.D. 93-88 states:

In “open” toe shoes, all or part of the front of the wearer’s toes can be seen. In open heeled shoes, all or part of the back of the wearer’s heel can be seen.

For footwear classification purposes, CBP interprets the “heel” to be the rearmost boney part of the human foot, the top of which is located just below the Achilles tendon.

As previously noted, examination of the sample clogs revealed a raised ridge at the heel. Although the heel ridge distinguishes the subject clog from those with a lower, or no, heel ridge, the heel of one using the subject clog would always be at least partially visible. In this regard the clogs are open-heeled footwear. T.D. 93-88 provides examples of footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather. Under the heading “Protection,” it is stated in pertinent part that, footwear that is a “protection” against water includes:

4. Molded rubber clogs, which are the same shape as traditional Dutch wooden shoes. They are used in gardening on wet terrain.

Although it is a molded rubber clog, the clog is not in the same shape as traditional Dutch wooden shoes which have a closed heel. In light of the above analysis, and of the fact that the clogs constitute open-heeled footwear, we find that the clogs are not designed to be worn over or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather. See HQ 963224, dated March 22, 2003 (and compare HQ 965718, dated September 5, 2002).

HOLDING:

PD H87387, dated February 8, 2002, is hereby revoked.

The waterproof clog is classified in subheading 6401.99.8000, HTSUSA, the provision for “Waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having foxing or a foxing-like band applied or molded at the sole and overlapping the upper).” The General Column 1 Rate of Duty is free.

Gail A. Hamill for MYLES B. HARMON,

Director;

Commercial Rulings Division.

19 CFR PART 177**REVOCACTION OF RULING LETTERS AND TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
AL-PTBBA AND PARA-T-BUTYL BENZOIC ACID
ALUMINUM SALT**

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security

ACTION: Notice of revocation of two tariff classification ruling letters and treatment relating to the classification of AL-PTBBA and para-t-Butylbenzoic acid aluminum salt.

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 is revoking two rulings concerning the tariff classification of AL-PTBBA and para-t-Butylbenzoic acid aluminum salt, respectively, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocation was published on February 11, 2004, in Volume 38, Number 7, of the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after June 6, 2004.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, Commercial Rulings Division, (202) 572-8784.

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 Customs 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 Customs share re-

sponsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, a notice was published in the February 11, 2004, CUSTOMS BULLETIN, Volume 38, Number 7, proposing to revoke New York Ruling Letter (NY) 867971, dated November 21, 1991, and NY B80857, dated February 18, 1997, and to revoke any treatment accorded to substantially identical merchandise. No comments were received in response to this notice.

In NY 867971 and in NY B80857, the merchandise was classified in subheading 2916.39.45, HTSUS, the provision for "Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Other: Other: Other: Products described in additional U.S. note 3 to section VI." It is now Customs position that one of the two names given for the substance in each of the rulings was not correctly identified. We are revoking both rulings to clearly identify the two substances and their respective CAS registry numbers in each ruling, and correctly classify each substance.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, Customs is revoking any treatment it previously accorded to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Customs, pursuant to section 625(c)(1), is revoking NY 867971 and NY B80857, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 966773 and HQ 966774, which are set forth as Attachments "A" and "B" to this

notice. Additionally, pursuant to section 625(c)(2), Customs is revoking any treatment previously accorded by Customs 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: March 18, 2004

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966773
March 18, 2004
CLA-2 RR:CR:GC 966773 AM
CATEGORY: CLASSIFICATION
TARIFF NO.: 2916.39.45; 2916.39.75

MR. A.J. SPATARELLA
KANEMATSU USA
114 West 47th Street
New York, N.Y. 10036

Re: AL-PTBBA, bis [4-(1,1-dimethylethyl) benzoato-o] hydroxy aluminum;
Revocation of NY 867971

DEAR MR. SPATARELLA:

This is regarding New York Ruling Letter (NY) 867971, issued to you on November 21, 1991, classifying "AL-PTBBA also known as bis [4-(1,1-dimethylethyl) benzoato-o] hydroxy aluminum, CAS 13170-05-3," [sic] under the Harmonized Tariff Schedule of the United States (HTSUS), in subheading 2916.39.45, the provision for "Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Other: Other: Other: Products described in additional U.S. note 3 to section VI." We have now discovered that NY 867971 referred to two different substances, AL-PTBBA, CAS # 4067-14-5 and bis [4-(1,1-dimethylethyl) benzoato-o] hydroxy aluminum, CAS # 13170-05-3, each classified under different subheadings. We have reviewed NY 867971 and have determined that it must be revoked in order to correct and clarify the classification of the named products.

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. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY 867971 was pub-

lished on February 11, 2004, CUSTOMS BULLETIN, Volume 38, Number 7. No comments were received in response to this notice.

FACTS

The product is a salt of an aromatic monocarboxylic acid. CAS Number 13170-05-3, which was used in reference to the product in NY 867971, is not listed in the chemical appendix whereas CAS Number 4067-14-5, which was not referenced in NY 867971, is listed in the chemical appendix to the HTSUS.

A review of **CAS # 13170-05-3** results in the following chemical names and formulae:

Aluminum, bis [4-(1,1-dimethylethyl)benzoato-kO]hydroxy- (TSCA, PICCS)
 Aluminum, bis [4-(1,1-dimethylethyl)benzoato-O]hydroxy- (NDSL)
 Bis [4-(tert-butyl)benzoato-O]hydroxyaluminium (English, French, German) (NDSL, EINECS)
 bis [4-(terc-butil)benzoato-O]hidroxialuminio (Spanish) (EINECS)
 Aluminium, bis [4-(1,1-dimethylethyl)benzoato-O]hydroxy- (AICS)
 Bis [4-(1,1-dimethylethyl)benzoato-O]hydroxy aluminum (ECL, PICCS)
 BIS [4-(1,1-DIMETHYLETHYL)BENZOATO-O] HYDROXY ALUMINUM (PICCS)
 ALPTBB 300
 Aluminum hydroxy-di-p-tert-butylbenzoate
 Aluminum hydroxybis [4-(tert-butyl)benzoate]
 Aluminum, bis (p-tert-butylbenzoato)hydroxy-
 Aluminum, bis [4-(1,1-dimethylethyl)benzoato-O]-, hydroxide
 Aluminum, bis [4-(1-1 dimethylethyl) benzoate-O]hydroxide
 Bis (p-tert-butyl benzoate)hydroxyaluminum
 Hydroxyaluminum bis (p-tert-butylbenzoate)
 S 4030
 Sandostab 4030
 YK
 YK (nucleation agent)
 FORMULA: $C_{22}H_{27}AlO_5$

A search for **CAS #4067-14-5** results in the following chemical names and formulae:

Para-tert-butyl benzoic acid aluminum salt
 Benzoic acid, 4-(1,1-dimethylethyl)-, aluminum salt (TSCA, NDSL, ENCS)
 4-(1,1-Dimethylethyl)benzoate d'aluminium (French) (NDSL, EINECS)
 aluminium 4-(1,1-dimethylethyl)benzoate (EINECS)
 Aluminium-4-(1,1-dimethylethyl)benzoat (German) (EINECS)
 4-(1,1-dimetiletil)benzoato de aluminio (Spanish) (EINECS)
 Al 300
 Al 300 (nucleating agent)
 Aluminium p-tert-butylbenzoate
 Aluminum 4-tert-butylbenzoate
 Aluminum p-tert-butylbenzoate
 APBB
 Benzoic acid, p-tert-butyl-, aluminum salt
 p-tert-Butylbenzoic acid aluminum salt
 PTBBA-AL
 FORMULA: $C_{11}H_{14}O_2 \cdot 1:3Al$

ISSUE

What is the classification, in the HTSUS, of AL-PTBBA, bis [4-(1,1-dimethylethyl) benzoato-o] hydroxy aluminum, and products assigned CAS 13170-05-3 and CAS 4067-14-5?

LAW AND ANALYSIS

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

In understanding the language of 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 are the following:

- 2916 Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives:
- Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives:
- 2916.39 Other:
- Other:
- Other:
- 2916.39.45 Products described in additional U.S. note 3 to section VI
- 2916.39.75 Other

Additional U.S. Note 3 to Section VI, HTSUS, provides:

The term "products described in additional U.S. note 3 to section VI" refers to "any product not listed in the Chemical Appendix to the Tariff Schedule and—"

- (a) For which the importer furnishes the Chemical Abstracts Service (C.A.S.) registry number and certifies that such registry number is not listed in the Chemical Appendix to the Tariff Schedule; or

(b) Which the importer certifies not to have a C.A.S. registry number and not to be listed in the Chemical Appendix to the Tariff Schedule, either under the name used to make Customs entry or under any other name by which it may be known.

In NY 867971, the merchandise was identified by two different names, AL-PTBBA and bis [4-(1,1-dimethylethyl) benzoato-o] hydroxy aluminum. These are actually two different products. Only bis [4-(1,1-dimethylethyl) benzoato-o] hydroxy aluminum is assigned CAS # 13170-05-3, mentioned in the ruling, while AL-PTBBA is assigned CAS # 4067-14-5. CAS # 13170-05-3 is not listed in the Chemical Appendix but CAS # 4067-14-5 is so listed. Therefore, the classification for bis [4-(1,1-dimethylethyl) benzoato-o] hydroxy aluminum, CAS # 13170-05-3, and all other substances assigned this CAS number listed in the FACTS section of this ruling, is subheading 2916.39.45, the provision for "Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Other: Other: Other: Products described in additional U.S. note 3 to section VI." The classification for AL-PTBBA, CAS # 4067-14-5 and all other substances assigned this CAS number listed in the FACTS section of this ruling, is 2916.39.75, the provision for "Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Other: Other: Other: Products described in additional U.S. note 3 to section VI."

HOLDING

The classification for bis [4-(1,1-dimethylethyl) benzoato-o] hydroxy aluminum, CAS # 13170-05-3, and all other substances assigned this CAS number listed in the FACTS section of this ruling, is subheading 2916.39.45, the provision for "Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Other: Other: Other: Products described in additional U.S. note 3 to section VI."

The classification for AL-PTBBA, CAS # 4067-14-5, and all other substances assigned this CAS number listed in the FACTS section of this ruling, is 2916.39.75, the provision for "Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Other: Other: Other: Other: Other."

EFFECT ON OTHER RULINGS

NY 867971 is REVOKED to reflect the correct classification of the two different products named.

In accordance with 19 U.S.C. § 1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966774
March 18, 2004
CLA-2 RR:CR:GC 966774 AM
CATEGORY: CLASSIFICATION
TARIFF NO.: 2916.39.45, 2916.39.75

MR. JOSEPH J. CHIVINI
AUSTIN CHEMICAL COMPANY, INC.
1565 Barclay Blvd.
Buffalo Grove, IL 60089-4537

Re: para-t-Butylbenzoic acid aluminum salt; Bismethylethylbenzoatohydroxy aluminum, CAS 13170-05-3; Revocation of NY B80857

DEAR MR. CHIVINI:

This is regarding New York Ruling Letter (NY) B80857, issued to you on February 18, 1997, classifying "Para-t-Butyl benzoic acid aluminum salt, Bismethylethylbenzoatohydroxy aluminum, CAS 13170-05-3," (sic) under the Harmonized Tariff Schedule of the United States (HTSUS), in subheading 2916.39.45, the provision for "Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Other: Other: Other: Products described in additional U.S. note 3 to section VI." We have reviewed NY B80857 and have discovered that one of the chemical names used is not assigned the CAS number used therein.

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. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY B80857 was published on February 11, 2004, CUSTOMS BULLETIN, Volume 38, Number 7. No comments were received in response to this notice.

FACTS

Customs Laboratory Report, NY20030419, dated July 10, 2003, analyzing a similar product, states, in pertinent part, the following:

Product Name: p-tert-Butylbenzoic acid, aluminum salt
CAS Registry Name: 4-(1,1-Dimethylethyl)Benzoic Acid, Aluminum Salt

CAS Number: 4067-14-5
Which is listed in the chemical appendix (HTSUS 2003).

Stated use: Not Provided

Report: The product is a salt of an aromatic monocarboxylic acid . . .

Product Name: Bismethylethylbenzoatohydroxy aluminum

CAS Registry Name: BIS[94-91,1,-dimethylethyl)benzoato-KO]Hydroxyaluminum

CAS Number: 13170-05-03
Which is not listed in the chemical appendix (HTSUS 2003).

Stated use: Not provided

Report: The product is a salt of an aromatic monocarboxylic acid . . .

The two product (sic) are different compounds with different CAS names and numbers.

A review of **CAS # 13170-05-3** results in the following chemical names and formulae:

Aluminum, bis[4-(1,1-dimethylethyl)benzoato-kO]hydroxy- (TSCA, PICCS)

Aluminum, bis[4-(1,1-dimethylethyl)benzoato-O]hydroxy- (NDSL)

Bis[4-(tert-butyl)benzoato-O]hydroxyaluminium (English, French, German) (NDSL, EINECS) bis[4-(terc-butil)benzoato-O]hidroxialuminio (Spanish) (EINECS)

Aluminium, bis[4-(1,1-dimethylethyl)benzoato-O]hydroxy- (AICS)

Bis[4-(1,1-dimethylethyl)benzoato-O]hydroxy aluminum (ECL, PICCS)

BIS[4-(1,1-DIMETHYLETHYL)BENZOATO-O] HYDROXY ALUMINUM (PICCS)

ALPTBB 300

Aluminum hydroxy-di-p-tert-butylbenzoate

Aluminum hydroxybis[4-(tert-butyl)benzoate]

Aluminum, bis(p-tert-butylbenzoato)hydroxy-

Aluminum, bis[4-(1,1-dimethylethyl)benzoato-O]-, hydroxide

Aluminum, bis[4-(1-1 dimethylethyl) benzoate-O]hydroxide

Bis(p-tert-butyl benzoate)hydroxyaluminum

Hydroxyaluminum bis(p-tert-butylbenzoate)

S 4030

Sandostab 4030

YK

YK (nucleation agent)

FORMULA: $C_{22}H_{27}AlO_5$

A search for CAS #4067-14-5 results in the following chemical names and formulae:

para-tert-Butylbenzoic acid aluminum salt
 Benzoic acid, 4-(1,1-dimethylethyl)-, aluminum salt (TSCA, NDSL, ENCS)
 4-(1,1-Dimethylethyl)benzoate d'aluminium (French) (NDSL, EINECS)
 aluminium 4-(1,1-dimethylethyl)benzoate (EINECS)
 Aluminium-4-(1,1-dimethylethyl)benzoat (German) (EINECS)
 4-(1,1-dimetiletil)benzoato de aluminio (Spanish) (EINECS)
 Al 300
 Al 300 (nucleating agent)
 Aluminium p-tert-butylbenzoate
 Aluminum 4-tert-butylbenzoate
 Aluminum p-tert-butylbenzoate
 APBB
 Benzoic acid, p-tert-butyl-, aluminum salt
 p-tert-Butylbenzoic acid aluminum salt
 PTBBA-AL
 FORMULA: C₁₁H₁₄O₂.1:3Al

ISSUE

Where are para-t-Butylbenzoic acid, aluminum salt, CAS 4067-14-5, and Bismethylethylbenzoatohydrozy aluminum, CAS 13170-05-03, classified in the HTSUS?

LAW AND ANALYSIS

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

In understanding the language of 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 are the following:

2917 Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives:

Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives:

2917.39	Other:
	Other:
	Other:
2916.39.45	Products described in additional U.S. note 3 to section VI
2916.39.75	Other

Additional U.S. Note 3 to Section VI, HTSUS provides:

The term “products described in additional U.S. note 3 to section VI” refers to “any product not listed in the Chemical Appendix to the Tariff Schedule and—”

- (a) For which the importer furnishes the Chemical Abstracts Service (C.A.S.) registry number and certifies that such registry number is not listed in the Chemical Appendix to the Tariff Schedule; or
- (b) Which the importer certifies not to have a C.A.S. registry number and not to be listed in the Chemical Appendix to the Tariff Schedule, either under the name used to make Customs entry or under any other name by which it may be known.

In NY B80857, the merchandise was identified by two different names, para-t-Butylbenzoic acid aluminum salt and Bismethylethylbenzoatohydroxy aluminum. We have now discovered that these are two different substances. The merchandise was also identified by CAS # 13170-05-3, which corresponds to the chemical name Bismethylethylbenzoatohydroxy aluminum. CAS # 13170-05-3 is not listed in the Chemical Appendix. Bismethylethylbenzoatohydroxy aluminum, and all of the substances with the chemical names listed in the FACTS section of this document, *supra*, under CAS # 13170-05-3, are classified in subheading 2916.39.45, the provision for “Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Other: Other: Other: Products described in additional U.S. note 3 to section VI.”

The correct CAS # for para-t-Butylbenzoic acid aluminum salt is 4067-14-5, which is listed in the chemical appendix. Para-t-Butylbenzoic acid aluminum salt, and all of the substances with the chemical names listed in the FACTS section of this document, *supra*, under CAS # 4067-14-5, are classified in subheading 2916.39.75, the provision for “Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Other: Other: Other: Other.”

HOLDING

Bismethylethylbenzoatohydroxy aluminum, CAS # 13170-05-3, is classified in subheading 2916.39.45, the provision for “Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or

nitrosated derivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Other: Other: Other: Products described in additional U.S. note 3 to section VI.”

Para-t-Butylbenzoic acid aluminum salt, CAS # 4067-14-5, is classified in subheading 2916.39.75, the provision for “Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives: Aromatic monocarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives: Other: Other: Other: Other.”

EFFECT ON OTHER RULINGS

NY B80857 is REVOKED.

In accordance with 19 U.S.C. § 1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

**REVOCATION OF RULING LETTERS AND TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
TERMINAL BLOCKS**

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

ACTION: Notice of revocation of a tariff classification of ruling letters and treatment relating to the classification of certain terminal 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 revoking two ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States, (HTSUS), of terminal blocks. Similarly, CPB is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed actions was published in the Customs Bulletin on February 4, 2004. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 6, 2004.

FOR FURTHER INFORMATION CONTACT: Robert Dinerstein, General Classification Branch, at (202) 572-8721.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(1)), on February 4, 2004, a notice was published in the Customs Bulletin, Volume 38, Number 6, proposing to revoke New York Ruling Letters ("NY") F86670 and NY F86672, dated June 19, 2000, regarding the classification of terminal blocks. No comments were received in response to the notice.

As stated in the proposed notice, although CBP is specifically referring to NY F86670 and NY F86672, this notice covers any rulings on this merchandise that 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, as amended (19 U.S.C. § 1625 (c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUS. Any person involved with substantially identical merchandise should advise CBP during this notice period. An im-

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

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY F86670, NY F86672, and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 966674 (Attachment). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice.

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

DATED: March 23, 2004

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966674
March 23, 2004
CLA-2 RR:CR:GC 966674 RSD
CATEGORY: Classification
TARIFF No. 8536.90.40

MARK C. JOYE, ESQ.
JAIME A. JOINER, ESQ.
BAKER & HOSTETLER, LLP
1000 Louisiana, Suite 2000
Houston, Texas 77002-5009

RE: Revocation of NY F86670 and NY F86672; Terminal Blocks for voice and data telecommunications

DEAR MR. JOYE AND MS. JOINER:

This is in response to your letter dated July 18, 2003, on behalf of Krone, Inc., and Krone Comunicaciones S.A. de V.V. ("Krone-Mexico") requesting reconsideration of New York Ruling Letters NY F86670 dated June 19, 2000, and NY F86672 dated June 19, 2000, concerning the tariff classification of two types of terminal blocks. The National Commodity Specialist Division forwarded your letter with the accompanying submissions to our office. We also received samples of the two terminal blocks under consideration.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North

American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY F86670 and NY F86672, as described below, was published in the Customs Bulletin on February 4, 2004. No comments were received in response to the notice.

FACTS:

The subject merchandise consists of two voice and data telecommunication products that are referred to as terminal blocks. The two products are 1) 200-Pair Collocation Blocks (product number 6637 1 180-49) (NY F86670) and 2) Feed Through Termination Blocks (product number 6631 2 135-05) (NY F86672).

The 200-Pair Collocation Blocks are pre-terminated assemblies (connecting blocks) with a special disconnect feature that are pre-terminated to an industry standard high pair count (50-pin) female (socket) cable connectors. This feature allows for the rapid connection and/or breakout of telecommunication equipment circuits inside a building. Normally, these blocks would be used to provide a connection point for cables coming from telecommunication or computer electronic equipment, so that the cables could be connected, in turn, to the user circuits in an equipment room. The plastic blocks are mounted in a metal bracket with "Velcro" cable straps that help relieve strain, and a ground lug to attach to the electrical building ground, if it is required by the electrical building codes where they are installed. The special disconnect feature allows a repairperson to test a circuit without having to physically remove a cable from the block. This is achieved with the use of a 2-piece contact inside the blocks that can be opened by using special interface cords.

The Feed Through Termination Blocks ("FT") are connecting blocks that allow for the field termination of telecommunication cable conductors for voice or data circuits in an industry standard 25-pair group. The initials "FT" are used to designate the term for "feed through" which is the type of one-piece metal contact used in the block. The block would normally be used to provide a connection point for cables coming from a telephone or a computer jack at the user end, so that they could be connected, in turn, to a computer or a telephone circuit. It has a plastic housing and a base that allows it to mount mounting hardware, and it is color-coded in accordance with industry standards for using 4 pair (8 conductor) cables. This block does not actively use electricity, but only acts as a passive connection.

ISSUE:

Are the two terminal blocks classified as electrical apparatus for switching or protecting electric circuits . . . terminals in subheading 8536.90.40, HTSUS, or in subheading 8536.90.80, HTSUS, as electric apparatus for switching for protecting electrical circuits . . . other?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI'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 GRIs may then be applied. GRI 3(a) provides in pertinent part that where goods are, prima facie, classifiable under two or more headings, the heading which provides the most specific description

shall be preferred to headings providing a more general description. GRI 4 and GRI 5 are not applicable here. GRI 6 provides in pertinent part that the classification of goods in the subheadings of a heading shall be determined according to the above rules, on the understanding that only subheadings at the same level are comparable.

The Harmonized Commodity Description And Coding System Explanatory Notes (EN's) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the EN's provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system. Customs believes the EN's should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The HTSUS provisions under consideration are as follows:

8536	Electrical apparatus for switching or protecting electrical circuits, or for making connection to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1000 V:
8536.90	Other apparatus:
8536.90.40	Terminals, electrical splices and electrical couplings; wafer probers.
* * * * *	
8536.90.80	Other.
* * * * *	

Section (III) of EN 85.36 concerns "**APPARATUS FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS.**" The EN states that this apparatus is used to connect together the various parts of an electrical circuit: Section (III)(B) is entitled "**Other connectors, terminals, terminal strips, etc.**" It provides that:

These include small squares of insulating material fitted with electrical connectors (dominoes), terminals which are metal parts intended for the reception of conductors, and small metal parts designed to be fitted on the end of electrical wiring to facilitate electrical connection (spade terminals, crocodile clips, etc.).

Terminal strips consist of strips of insulating material fitted with a number of metal terminal or connectors to which electrical wiring can be fixed. The heading also covers tag strips or panels; these consist of a number of metal tags set in insulating material so that electric wires can be soldered to them. Tag strips are used in radio or other electrical apparatus.

The two items under consideration, the 200-pair collocation blocks and the feed through termination blocks, are both types of terminal blocks. The issue that must be resolved is whether terminal blocks should be classified as electrical apparatus for switching or protecting electric circuits...terminals in subheading 8536.90.40, HTSUS, or in subheading 8536.90.80, HTSUS, as electric apparatus for switching for protecting electrical circuits . . . other.

A tariff term that is not defined in the HTSUS or in the ENs is construed in accordance with its common and commercial meanings, which are presumed to be the same. Nippon Kogasku (USA) Inc. v. United States, 69 CCPA 89, 673 F. 2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. C.J. Tower & Sons v. United States, 69 CCPA 128, 673 F. 2d 1268 (1982).

To supplement the description of the term terminal provided in the ENs, you have presented a definition from the Merriam-Webster Online Dictionary for the word “terminal” as:

A device attached to the end of a wire or cable or to an electrical apparatus for convenience in making connections.

The phrase “terminal blocks” is not defined in the HTSUS or ENs. You cite a web site, www.cutler-hammer.eaton.com/unsecure/html/101basics/Module18/Output/WhatYouWillLearn.html, which defines “terminal blocks” as:

Terminal blocks are modular, insulated blocks that secure two or more wires together and consist of an insulation body and a clamping device. Their flexibility allows wiring to be centralized and makes it easier to maintain complex control circuits.

A terminal block secures two or more wires together to set up a circuit. Basically, there are just two parts: an insulating body and the current carrying parts.

The same web site continues:

Imagine the hassle involved with running wire from each device to the next, thus creating spiderweb of wiring. Instead, put a terminal block assembly inside a centralized control panel. You have now centralized and reduced the wiring so that a maintenance crew can quickly assess the status of the system and verify its performance . . .

When changes in the circuit need to be made, terminal blocks can be easily added or pulled off the rail without disrupting other wire terminations.

Along with reducing the complexity of control wiring, the plastic bodies of terminal blocks also prevent shorts and therefore provide greater safety to installers and maintenance crews.

Based on the information that was submitted, we find that terminal blocks are devices at the end of a wire or a cable used for connecting electrical circuits together. Accordingly, consistent with the description provided in EN 85.36, Section (II)(B), we conclude that terminal blocks can be considered as electrical terminals. We note that subheading 8536.90.40 HTSUS specifically includes electrical terminals. In contrast, the alternative tariff provision under consideration, subheading 8536.90.80, HTSUS, is a general basket provision for “Other.” Thus subheading 8536.90.40, HTSUS provides a more specific description of the merchandise than subheading 8536.90.80, HTSUS.

In reaching this conclusion, we are following the holding in NY H82293 dated July 2, 2001. In NY H82293, Customs considered the classification of binding post blocks, items that were identified as jumpering devices used in feeder distribution and cross-connect application for building entrance ter-

minals. The products consisted of a terminal block and pairs of electrical wiring. Customs determined that the applicable subheading for the binding post blocks was 8536.90.40, HTSUS. In essence, Customs held that the terminal blocks were classified as terminals in subheading 8536.90.40, HTSUS.

Accordingly, we conclude that the subject merchandise, the two types of terminal blocks, are classified in subheading 8536.90.40, HTSUS, as: "Electric apparatus for switching or protecting electric circuits, or for making connection to or in electrical circuits . . . : Other apparatus: Terminals, electrical splices and electrical couplings; wafer probers."

HOLDING:

Pursuant to GRI 6, the subject terminal boxes are classified in subheading 8536.90.40, HTSUS as "Electric apparatus for switching for protecting electric circuits, or for making connection to or in electrical circuits . . . for voltage not exceeding 1,000V: Other apparatus: Terminals, electrical splices and electrical couplings; wafer probers."

EFFECT ON OTHER RULINGS:

NY F866670 dated June 19, 2000 and NY F86672 dated June 19, 2000 are revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.



19 CFR PART 177

**PROPOSED REVOCATION OF RULING LETTERS AND
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
INDUSTRIAL SMOKING/COOKING APPARATUS**

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

ACTION: Notice of proposed revocation of ruling letters and treatment relating to tariff classification of industrial smoking/cooking apparatus.

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 intends to revoke two rulings relating to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of industrial smoking/cooking apparatus, and to revoke any treatment Customs has previously accorded to substantially identical transactions. These articles are used for the industrial preparation of meat products utilizing dry heat and

wet heat produced by an external source of steam. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before May 7, 2004.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C. 20220, during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 572-8779.

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), 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 based on the premise 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 Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, 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 declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other 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 Customs intends to revoke two rulings relating to the tariff classification of industrial smoking/cooking apparatus. Although in this notice Customs is specifically referring to two rulings, HQ 959217 and HQ 959485, this notice covers any rulings

on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones identified. No further rulings have been identified. Any party who has received an interpretative 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 Customs 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, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs 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 the effective date of the final decision on this notice.

In HQ 959217, dated August 15, 1996, an industrial hot smoker/cooker was held to be classifiable as an industrial furnace or oven, in subheading 8417.80.00, HTSUS. HQ 959217 is set forth as "Attachment A" to this document. In HQ 959485, dated November 13, 1996, a smokehouse or steam-operated apparatus for the commercial preparation of meat products, was held to be similarly classifiable. HQ 959485 is set forth as "Attachment B" to this document. These rulings were based on Customs belief that the apparatus was within the common and commercial meaning of the terms "furnace" and "oven" for purposes of heading 8417.

It is now Customs position that these articles are not furnaces or ovens for tariff purposes, but are classifiable in subheading 8419.81.90, HTSUS, as other machinery, whether or not electrically heated, for the treatment of materials by a change of temperature such as heating or cooking. Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke HQ 959217 and HQ 959485, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis in HQ 966949 and HQ 966950, which are set forth as "Attachment C" and "Attachment D" to this document, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this

action, we will give consideration to any written comments timely received.

DATED: March 23, 2004

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 959217
AUGUST 15, 1996
CLA-2 RR:TC:MM 959217 JAS
CATEGORY: Classification
TARIFF NO.: 8417.80.00

PORT DIRECTOR OF CUSTOMS
110 S. 4th. St.
Minneapolis, MN 55401

RE: PRD 3501-95-100086; Hot Air Smoking and Baking Machine for Meats, Walk-In, Steam Heated Industrial Oven for Cooking Poultry and Other Meats; Oven, Common Meaning, C.D. 3141; Heading 8419, Industrial Machinery for Heating and Cooking

DEAR PORT DIRECTOR:

This is our decision on Protest 3501-95-100086, filed against your classification of an industrial-type combination smoker/cooker from Germany. The entry was liquidated on January 13, 1995, and this protest was timely filed on March 9, 1995.

FACTS:

The merchandise under protest is the VEMAG Aeromat, a combined hot smoker/cooker used in the industrial preparation of turkey and other poultry meats. Submitted literature describes a walk-in chamber with sides, roof and door of polyurethane insulated base metal, and a chromium-nickel steel sheet floor. Utilizing a humidifier and air circulating fan with a range of between 10 degrees Celcius above ambient temperature and 95 degrees C, the apparatus heats the meat by means of steam passing through a heat exchanger. Apparatus of this type can also be equipped with a resistance heater powered by an electric current, but this type is not the subject of this protest. The VEMAG Aeromat is advertized for use in redding (browning), drying, smoking, boiling, spraying or hot air cooking, all in one operation. An optional heating system, that does not appear to be a part of this importation, permits baking at temperatures up to 140 degrees Celcius.

The machinery was entered under a provision in heading 8419, Harmonized Tariff Schedule of the United States (HTSUS), for machinery, whether or not electrically heated, for the treatment of materials by a process involv-

ing a change of temperature such as heating, cooking, etc. Your office determined that this apparatus utilizes heat generated by steam and, therefore, is nonelectric. The entry was liquidated under a provision in HTS heading 8417 for nonelectric industrial furnaces and ovens. The importer/protestant maintains the merchandise is precluded from heading 8417 as it is electrically operated. However, no claim is made under HTS heading 8514, a provision for industrial or laboratory electric furnaces and ovens. The literature does not support protestant's claim and refers only to the fact that the Vemag Aeromat utilizes steam to generate heat.

The provisions under consideration are as follows:

8417	Industrial or laboratory furnaces and ovens, including incinerators, nonelectric, and parts thereof:
8417.80.00	Other . . . the 1994 rate of duty
* * * *	
8419	Machinery . . . whether or not electrically heated, for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting...other than of a kind used for domestic purposes . . . :
8419.81	Other machinery, plant or equipment:
8419.81.50	Other cooking stoves, ranges and ovens . . . Free

ISSUE:

Whether the VEMAG Aeromat is a nonelectric industrial oven of heading 8417.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The **Harmonized Commodity Description And Coding System Explanatory Notes (ENs)** constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the **ENs** should always be consulted. See T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The **ENs** at p. 1173 exclude the following from heading 84.17: (g) Industrial or laboratory furnaces and ovens, including those for the separation of irradiated nuclear fuel by pyrometallurgical processes (heading 84.17 or 85.14, as the case may be). **ENs** at p. 1168 state only that heading 84.17 covers non-electrical industrial or laboratory furnaces and ovens, designed for the production of heat in chambers at high or fairly high temperatures by the combustion of fuel. The heading includes steam heated ovens. These notes are not helpful in clarifying the scope of heading 8417.

For heading 8417 purposes, the terms "furnace" and "oven" are not defined in the text of the HTSUS or in the **ENs**. In such cases tariff terms are to be

determined in accordance with their common and commercial meanings, which are presumed to be the same. Circumscribed only by the requirements that they be industry or laboratory types and nonelectric, an oven is a heated chamber or other enclosure used for baking, heating, drying or hardening. See **F. L. Smidth & Company v. United States**, 59 Cust. Ct. 276, C.D. 3141 (1967), in which the Customs Court established the common meaning of the term "oven" and determined that a kiln was within this common meaning.

HOLDING:

Under the authority of GRI 1, the VEMAG Aeromat is provided for in heading 8417. It is classifiable in subheading 8417.80.00, HTSUS.

The protest should be **DENIED**. In accordance with Section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, you should mail this decision, together with the Customs Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry or entries in accordance with the decision must be accomplished prior to mailing the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS and to the public via the Diskette Subscription Service, the Freedom of Information Act and other public access channels.

Marvin Amernick for JOHN DURANT,
Director,
Tariff Classification Appeals Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
 BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 959485
 NOVEMBER 13, 1996
CLA-2 RR:TC:MM 959485 JAS
CATEGORY: Classification
TARIFF NO.: 8417.80.00

PORT DIRECTOR OF CUSTOMS
 6747 Engle Road
 Middleburg Heights, OH 44130-7939

RE: PRD 4101-96-100224; Smokehouse Used in Meat Processing Plant; Steam Heated Oven Suitable for Hot and Cold Smoking, Cooking and Drying; Machinery for the Treatment of Materials by a Process Involving a Change of Temperature, Heading 8419; *Stella D'Oro Biscuit Co. v. U.S., F.L. Smidth & Company v. U.S.*, HQ 959379, HQ 959754

DEAR PORT DIRECTOR:

This is our decision on Protest 4101-96-100224, filed against your classification of a smokehouse from Germany. The entry was liquidated on January 12, 1996, and this protest timely filed on April 10, 1996. In preparing this decision, consideration was given to a supplemental submission from counsel for the protestant, dated May 31, 1996.

FACTS:

The merchandise in issue is described as a steam-operated commercial oven used in large scale production of meat products such as sausage, pepperoni, prosciutto, etc. It is designed to operate at temperatures ranging from 70 degrees to 200 degrees Fahrenheit and is used in heating, cooking, roasting, evaporating, steaming, drying and cooling applications.

The oven was entered under a duty-free provision in heading 8419, Harmonized Tariff Schedule of the United States (HTSUS), for other cooking stoves, ranges and ovens which are machinery, whether or not electrically heated, for the treatment of materials by a process involving a change of temperature. You determined that the smokehouse was more appropriately described by the terms of HTS heading 8417, as an industrial oven.

The heading 8419 claim advanced by counsel for the protestant is based on the assertion that notwithstanding the principal function of the smokehouse is to heat/cook foods because it is designed to maintain a temperature of between 50 and 200 degrees Fahrenheit (10 to 93 degrees Celsius), the unit also has the capability of completing the processing of food in the chamber by cooling at temperatures at or near freezing (32 degrees F). This is not a function appropriate to industrial ovens of heading 8417. Counsel maintains that the smokehouse is described both by the terms of heading 8417 and the terms of heading 8419, and that the apparatus operates at temperatures much lower than those required for goods of heading 8417.

The provisions under consideration are as follows:

8417	Industrial or laboratory furnaces and ovens, including incinerators, nonelectric, and parts thereof:
8417.80.00	Other . . . the 1995 rate of duty * * * *
8419	Machinery . . . whether or not electrically heated, for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting...other than of a kind used for domestic purposes...:
8419.81	Other machinery, plant or equipment:
8419.81.50	Other cooking stoves, ranges and ovens . . . Free

ISSUE:

Whether the smokehouse, as described, is an industrial oven for tariff purposes.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description And Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the **ENs** provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining

the classification of merchandise under the System. Customs believes the **ENs** should always be consulted. See T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The **ENs** at p. 1173 exclude the following from heading 84.19: (g) Industrial or laboratory furnaces and ovens, including those for the separation of irradiated nuclear fuel by pyrometallurgical processes (heading 84.17 or 85.14, as the case may be). **ENs** at p. 1168 state only that heading 84.17 covers non-electrical industrial or laboratory furnaces and ovens, designed for the production of heat in chambers at high or fairly high temperatures by the combustion of fuel. Specific operating temperatures or a range of temperatures are not indicated. While these notes are not helpful in clarifying the scope of heading 8417, it is clear that the provision for furnaces and ovens is to take precedence over a less specific provision for other machinery, plant or equipment. This conclusion was first stated in *Stella D'Oro Biscuit Co. v. United States*, 79 Cust. Ct. 28, C.D. 4709 (1977), with respect to identical provisions under the Tariff Schedules of the United States, the HTSUS predecessor tariff code.

For purposes of heading 8417, the terms "furnace" and "oven" are not defined in the text of the HTSUS or in the **ENs**. In such cases tariff terms are to be determined in accordance with their common and commercial meanings, which are presumed to be the same. Circumscribed only by the requirements that they be industry or laboratory types and nonelectric, an **oven** is a heated chamber or other enclosure used for baking, heating, drying or hardening. See *F.L. Smidth & Company v. United States*, 59 Cust. Ct. 276, C.D. 3141 (1967), in which the Customs Court established the common meaning of the term "oven" and determined that a kiln was within this common meaning. See HQ 959379, dated August 20, 1996, aff'd. by HQ 959754, dated October 10, 1996.

HOLDING:

Under the authority of GRI 1, the smokehouse is provided for in heading 8417. It is classifiable in subheading 8417.80.00.

The protest should be **DENIED**. In accordance with Section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, you should mail this decision, together with the Customs Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry or entries in accordance with the decision must be accomplished prior to mailing the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS and to the public via the Diskette Subscription Service, the Freedom of Information Act and other public access channels.

Marvin M. Amernick for JOHN DURANT,
Director,
Tariff Classification Appeals Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
 BUREAU OF CUSTOMS AND BORDER PROTECTION,
 HQ 966949
 CLA-2 RR:CR:GC 966949 JAS
 CATEGORY: Classification
 TARIFF NO.: 8419.81.90

WILLIAM L. GRIFFIN COMPANY
 7830 12th Ave. South
 Minneapolis, MN 55425

RE: VEMAG Aeromat, Smoker/Cooker for Industrial Preparation of Meat
 Products; HQ 959217 Revoked

DEAR SIRs:

HQ 959217, dated August 15, 1996, denied Protest 3501-95-100086, which you filed with the Port Director of Customs, Minneapolis, MN, on behalf of Robert Reiser Company, Inc., Canton, MA. This decision classified the VEMAG Aeromat combined hot smoker/cooker under subheading 8417.80.00, Harmonized Tariff Schedule of the United States (HTSUS), as other industrial or laboratory furnaces and ovens. We have reconsidered the classification in HQ 959217 and now believe that it is incorrect. Any liquidation or reliquidation of the entry or entries in Protest 3501-95-100086 will not be affected by this ruling, which sets forth the correct classification.

FACTS:

As described in HQ 959217, the VEMAG Aeromat, is a combined hot smoker/cooker used in the industrial preparation of turkey and other poultry meats. Submitted literature describes a walk-in chamber with sides, roof and door of polyurethane insulated base metal, and a chromium-nickel steel sheet floor. Utilizing a humidifier and air circulating fan with a range of between 10 degrees Celcius above ambient temperature and 95 degrees C, the apparatus heats the meat by means of steam passing through a heat exchanger. Apparatus of this type can also be equipped with a resistance heater powered by an electric current, but this type is not the subject of this protest. The VEMAG Aeromat is advertized for use in redding (browning), drying, smoking, boiling, spraying or hot air cooking, all in one operation. An optional heating system, that does not appear to be a part of this importation, permits baking at temperatures up to 140 degrees Celcius.

The provisions under consideration are as follows:

8417 Industrial or laboratory furnaces and ovens, including incinerators, nonelectric, and parts thereof:

8417.80.00 Other

* * * *

8419 Machinery . . . whether or not electrically heated, for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting . . . other than of a kind used for domestic purposes . . . :

8419.81 Other machinery, plant or equipment:
8419.81.50 Other cooking stoves, ranges and ovens
8419.81.90 Other

ISSUE:

Whether the VEMAG Aeromat is furnace or oven of heading 8417.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

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, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

HQ 959217 stated that the 8417 ENs were not helpful in clarifying the scope of that heading. It was further stated that the Aeromat appeared substantially similar to a kiln which was encompassed within the common and commercial meanings of the terms "furnace" and "oven" for tariff purposes. Thus, the conclusion followed that the Aeromat was also described by heading 8417. However, we note that the 8417 ENs do not distinguish between wet and dry heat, nor do they list operating temperatures for ovens of that heading. In addition, new and more precise sources of information now available to us indicates that as a class or kind smokehouses generally heat/cook using dry heat and wet heat produced by an external source of steam. The latter produces humidity which is necessary for fermentation, a curing process that liberates a culture which induces a chemical reaction in the meat. This appears to be part of the cooking process. Additionally, these sources also indicate that the term "oven" is restricted to apparatus that heat/cook using only dry heat. Upon careful consideration of all the available evidence, it now appears that the VERMAG Aeromat is not an oven, either under heading 8417 or heading 8419, but is other machinery of 8419.

HOLDING:

Under the authority of GRI 1, the VEMAG Aeromat is provided for in heading 8419. It is classifiable in subheading 8419.81.90, HTSUS. HQ 959217 is revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.
 BUREAU OF CUSTOMS AND BORDER PROTECTION,
 HQ 966950
 CLA-2 RR:CR:GC 966950 JAS
 CATEGORY: Classification
 TARIFF NO.: 8419.81.90

THOMAS J. O'DONNELL
 O'DONNELL, BYRNE & WILLIAMS
 20 N. Wacker Drive, Suite 1416
 Chicago, IL 60606

RE: Shroter Smokehouse, Smoker/Cooker for Industrial Preparation of
 Meat Products; HQ 959485 Revoked

DEAR SIR:

HQ 959485, dated November 13, 1996, denied Protest 4104-96-100224, which you filed with the Port Director of Customs, Middleburg Hts., OH., on behalf of Doscocil Foods, Inc., Jefferson, WI. This decision classified the Shroter Pepperroni smokehouse under subheading 8417.80.00, Harmonized Tariff Schedule of the United States (HTSUS), as other industrial or laboratory furnaces and ovens. We have reconsidered the classification in HQ 959485 and now believe that it is incorrect. Any liquidation or reliquidation of the entry or entries in Protest 4104-96-100224 will not be affected by this ruling, which sets forth the correct classification.

FACTS:

In HQ 959485, the Shroter Smokehouse was described as a steam-operated commercial oven used in large scale production of meat products such as sausage, pepperoni, prosciutto, etc. It is designed to operate at temperatures ranging from 70 degrees to 200 degrees Fahrenheit and is used in heating, cooking, roasting, evaporating, steaming, drying and cooling applications.

The claim you advanced in this protest under heading 8419, HTSUS, as other machinery for the treatment of materials by a process involving a change of temperature, was based on the assertion that notwithstanding the principal function of the smokehouse is to heat/cook foods because it is designed to maintain a temperature of between 50 and 200 degrees Fahrenheit (10 to 93 degrees Celsius), the unit also has the capability of completing the processing of food in the chamber by cooling at temperatures at or near freezing (32 degrees F). You argued this is not a function appropriate to industrial ovens of heading 8417.

The provisions under consideration are as follows:

8417 Industrial or laboratory furnaces and ovens, including incinerators, nonelectric, and parts thereof:

8417.80.00 Other

* * * *

- 8419 Machinery . . . whether or not electrically heated, for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting . . . other than of a kind used for domestic purposes . . . :
- 8419.81 Other machinery, plant or equipment:
- 8419.81.50 Other cooking stoves, ranges and ovens
- 8419.81.90 Other

ISSUE:

Whether the Shroter Smokehouse is a furnace or oven of heading 8417.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

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, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

HQ 959485 stated that the 8417 ENs were not helpful in clarifying the scope of that heading. It was further stated that the Shroter appeared substantially similar to a kiln which was encompassed within the common and commercial meanings of the terms “furnace” and “oven” for tariff purposes. Thus, the conclusion followed that the Shroter was also described by heading 8417. However, we note that the 8417 ENs do not distinguish between wet and dry heat, nor do they list operating temperatures for ovens of that heading. In addition, new and more precise sources of information now available to us indicates that as a class or kind smokehouses generally heat/cook using dry heat and wet heat produced by an external source of steam. The latter produces humidity which is necessary for fermentation, a curing process that liberates a culture which induces a chemical reaction in the meat. This appears to be part of the cooking process. Additionally, these sources also indicate that the term “oven” is restricted to apparatus that heat/cook using only dry heat. Upon careful consideration of all the available evidence, it now appears that the Shroter Smokehouse is not an oven, either under heading 8417 or heading 8419, but is other machinery of 8419.

HOLDING:

Under the authority of GRI 1, the Shroter Smokehouse is provided for in heading 8419. It is classifiable in subheading 8419.81.90, HTSUS. HQ 959485 is revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

