

# Bureau of Customs and Border Protection

## *General Notices*

### **AGENCY INFORMATION COLLECTION ACTIVITIES: Protest**

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

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Protest. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (71 FR 19197) on April 13, 2006, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before July 31, 2006.

**ADDRESSES:** Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget Desk Officer at [Nathan.Lesser@omb.eop.gov](mailto:Nathan.Lesser@omb.eop.gov).

### **SUPPLEMENTARY INFORMATION:**

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of

1995 (Pub. L.104–13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Title:** Protest

**OMB Number:** 1651–0017

**Form Number:** CBP Form 19

**Abstract:** This collection is used by an importer, filer, or any party at interest to petition CBP, or Protest any action or charge, made by the port director on or against any; imported merchandise, merchandise excluded from entry, or merchandise entered into or withdrawn from a bonded warehouse.

**Current Actions:** This submission is to extend the expiration date without a change to the burden hours.

**Type of Review:** Extension (without change)

**Affected Public:** Business

**Estimated Number of Respondents:** 3,750

**Estimated Time Per Respondent:** 6 hours

**Estimated Total Annual Burden Hours:** 67,995

**Estimated Total Annualized Cost on the Public:** N/A

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202–344–1429.

Dated: June 15, 2006

TRACEY DENNING,  
*Agency Clearance Officer,  
Information Services Branch.*

**Modification of the CBP NCAP Test Regarding  
Reconciliation for Entries Under the Dominican  
Republic-Central America-United States Free Trade  
Agreement**

**AGENCY:** Customs and Border Protection, Homeland Security.

**ACTION:** General notice.

**SUMMARY:** This document announces a modification to the Customs and Border Protection Automated Commercial System (ACS) Reconciliation prototype test that adds to the issues subject to the Reconciliation process those arising under the Dominican Republic-Central America-United States Free Trade Agreement. Other than this modification, the test remains the same as set forth in previously published **Federal Register** notices.

**DATES:** The test modification set forth in this document is effective on September 28, 2006. The two-year testing period of this Reconciliation prototype commenced on October 1, 1998, and was extended indefinitely starting October 1, 2000. Applications to participate in the test will be accepted throughout the duration of the test.

**ADDRESSES:** Written inquiries regarding participation in the Reconciliation prototype test and/or applications to participate should be addressed to Ms. Monica Crockett, Reconciliation Team, Bureau of Customs and Border Protection, 1300 Pennsylvania Ave. NW, Room 5.2A, Washington, D.C. 20229-0001. Answers to inquiries regarding the test are also available at Recon.Help@dhs.gov.

**FOR FURTHER INFORMATION CONTACT:** Ms. Monica Crockett at (202) 344-2511.

**SUPPLEMENTARY INFORMATION:**

**Background**

Reconciliation, a planned component of the National Customs Automation Program (NCAP), as provided for in Title VI (Subtitle B) of the North American Free Trade Agreement Implementation Act (the NAFTA Implementation Act; Pub. L. 103-182, 107 Stat. 2057 (December 8, 1993)), is currently being tested by the Bureau of Customs and Border Protection (CBP) under the CBP Automated Commercial System (ACS) Prototype Test. CBP announced and explained the test in a general notice document published in the **Federal Register** (63 FR 6257) on February 6, 1998. Clarifications and operational changes were announced in subsequent **Federal Register** notices: 63 FR 44303, published on August 18, 1998; 64 FR 39187, published

on July 21, 1999; 64 FR 73121, published on December 29, 1999; 66 FR 14619, published on March 13, 2001; 67 FR 61200, published on September 27, 2002 (with a correction document published at 67 FR 68238 on November 8, 2002); 69 FR 53730, published on September 2, 2004; 70 FR 1730, published on January 10, 2005; and 70 FR 46882, published on August 11, 2005. A **Federal Register** (65 FR 55326) notice published on September 13, 2000, extended the prototype indefinitely. This document announces a modification to the Reconciliation test to expand the issues subject to Reconciliation to include those arising under the Dominican Republic-Central America-United States Free Trade Agreement. Aside from this modification, the test remains as set forth in the previously published **Federal Register** notices.

For application requirements, see the **Federal Register** notices published on February 6, 1998, and August 18, 1998. Additional information regarding the test can be found at [http://www.customs.gov/xp/cgov/import/cargo\\_summary/reconciliation/](http://www.customs.gov/xp/cgov/import/cargo_summary/reconciliation/).

### **Reconciliation Generally**

Reconciliation is the process that allows an importer, at the time an entry summary is filed, to identify undeterminable information (other than that affecting admissibility) to CBP and to provide that outstanding information at a later date. The importer identifies the outstanding information by means of an electronic “flag” which is placed on the entry summary at the time the entry summary is filed and payment (applicable duty, taxes, and fees) is made. Previously published **Federal Register** documents have set forth that the issues for which an entry summary may be “flagged” (for the purpose of later reconciliation) are limited and relate to: (1) value issues other than claims based on latent manufacturing defects; (2) classification issues, on a limited basis; (3) issues concerning value aspects of entries filed under heading 9802, Harmonized Tariff Schedule of the United States (HTSUS) (9802 issues); and (4) issues concerning merchandise entered under the North American Free Trade Agreement (NAFTA issues/claims) and under the United States – Chile Free Trade Agreement (CFTA or Chile issues/claims) that are eligible for treatment under 19 U.S.C. 1520(d).

The flagged entry summary (the underlying entry summary) is liquidated for all aspects of the entry except those issues that were flagged. The means of providing the outstanding information at a later date relative to the flagged issues is through the filing of a Reconciliation entry. The flagged issues will be liquidated at the time the Reconciliation entry is liquidated. Any adjustments in duties, taxes, and/or fees owed will be made at that time. (See the February

6, 1998, **Federal Register** notice for a more detailed presentation of the basic Reconciliation process.)

CBP reminds test participants that the filing of a Reconciliation entry, like the filing of a regular consumption entry, is governed by 19 U.S.C. 1484 and can be done only by the importer of record as defined in that statute.

### **Test Modification**

#### The Agreement and the Implementation Act

The Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR or the Agreement) was entered into by the governments of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and the United States on August 5, 2004. The United States Congress approved the CAFTA-DR in the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (the Implementation Act), Public Law 109-53, 119 Stat. 462 (19 U.S.C. 4001 et seq.). Under the Implementation Act, the provisions of the CAFTA-DR become effective for individual CAFTA-DR countries (defined under the Implementation Act to include all countries that are signatory to the Agreement except the United States) only when the Agreement enters into force for a CAFTA-DR country upon issuance of a presidential proclamation to that effect, an action that is conditioned upon the fulfillment of certain requirements (i.e., the CAFTA-DR country has taken measures to comply with the provisions of the Agreement). Importations of originating goods of such a CAFTA-DR country are entitled to the benefits of the Agreement as of the effective date set forth in the presidential proclamation and in accordance with the Implementation Act and new General Note 29 of the Harmonized Tariff Schedule of the United States (HTS).

As of the date of this notice, the Agreement has entered into force for three CAFTA-DR countries: El Salvador, in accordance with Presidential Proclamation 7987, issued on February 28, 2006 (71 FR 10827; March 2, 2006)(see also U.S. International Trade Commission (USITC) Publication 3829, February 2006), and Honduras and Nicaragua, in accordance with Presidential Proclamation 7996, issued on March 31, 2006 (71 FR 16971; April 4, 2006)(see also USITC Publication 3845, April 2006).

#### Ordinary CAFTA-DR claim and post-importation CAFTA-DR claim under 19 U.S.C. 1520(d)

A claim for preferential tariff treatment for an originating CAFTA-DR good, in accordance with CAFTA-DR and applicable procedures (regulations are forthcoming), is made at the time of entry

summary. (See General Note 29, HTSUS, for rules of origin.) However, in some instances, an importer may not be able to make the claim at that time, usually because the importer does not possess all the information or documentation required. In those instances, an importer may make a post-importation CAFTA-DR claim under 19 U.S.C. 1520(d) (section 1520(d)), pursuant to an amendment to that section made by the Implementation Act (section 207). Under this amendment to section 1520(d), entries of goods qualifying under CAFTA-DR rules of origin are eligible for reliquidation when preferential tariff treatment under CAFTA-DR is not claimed at the time of importation, notwithstanding that a protest under 19 U.S.C. 1514 (section 1514) is not timely filed. (A section 1514 protest is a means of objecting to, among other things, the liquidation of an entry by filing the protest within 180 days of the liquidation (or other protestable decision or action by CBP).) A claimant must file a claim under section 1520(d) within one year of the applicable importation and meet other requirements, such as applicable documentary requirements, including (when requested by CBP) the filing of a certification or information demonstrating that the entered goods are originating CAFTA-DR goods.

#### Post-importation CAFTA-DR claim under Reconciliation

This notice announces that a post-importation claim for preferential tariff treatment under section 1520(d) for an entry filed pursuant to the CAFTA-DR also may be made under the Reconciliation test, in the same way as a post-importation NAFTA or Chile claim may be made (see, respectively, notices published in the **Federal Register** on September 27, 2002, and September 2, 2004, cited previously). This alternative requires that an importer follow the Reconciliation test procedure which, in contrast to the ordinary section 1520(d) procedure described above, requires action at the time of entry. That action is to flag the entry summary for the CAFTA-DR issue(s), which will be followed later by the filing of a Reconciliation entry within one year of the applicable importation. It is noted that CAFTA-DR Reconciliation entries cannot include other Reconciliation-eligible issues; i.e., a CAFTA-DR Reconciliation entry is limited to covering only CAFTA-DR issues (claims). NAFTA and Chile Reconciliation entries/claims are similarly limited.

This CAFTA-DR Reconciliation alternative is available for eligible importations involving any eligible CAFTA-DR country (a CAFTA-DR country as to which the Agreement has entered into force) 90 days after the date this notice is published in the **Federal Register**.

#### Reconciliation CAFTA-DR claim precludes claims by other means

CBP emphasizes that once an importer flags an entry summary for CAFTA-DR issues for Reconciliation, indicating that it is pursu-

ing the post-importation, section 1520(d) claim through the Reconciliation process, the only means of perfecting the CAFTA-DR claim is by completing the Reconciliation process by filing a timely Reconciliation entry. (See the September 27, 2002, **Federal Register** notice for an explanation of this same limitation relative to NAFTA and Chile issues.) By flagging the entry summary, the importer makes a commitment to perfect the claim only through the Reconciliation process - to, in effect, waive filing the claim any other way. Thus, once entries have been flagged for Reconciliation of CAFTA-DR issues, CBP will not accept a claim filed for those entries under the ordinary section 1520(d) procedure. This will prevent dual filings for the same underlying entry summaries.

#### Benefits of Reconciliation

Finally, CBP recommends the use of the Reconciliation test procedure for making post-importation CAFTA-DR claims because the test procedure provides the importer with several benefits. First, using the test procedure is a simpler means of filing claims: i.e., the importer is able to make potentially thousands of CAFTA-DR claims on one Reconciliation entry. Second, the importer can receive one check from CBP rather than many (even up to thousands) upon CBP's liquidation of a Reconciliation entry and issuance of a refund. Third, because processing CAFTA-DR claims under Reconciliation is simpler for CBP, the refund delivery system is more efficient.

Dated: June 23, 2006

WILLIAM S. HEFFELFINGER III,  
*Acting Assistant Commissioner,  
Office of Field Operations.*

[Published in the Federal Register, June 30, 2006 (71 FR 37596)]

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### **QUARTERLY IRS INTEREST RATES USED IN CALCULATING INTEREST ON OVERDUE ACCOUNTS AND REFUNDS ON CUSTOMS DUTIES**

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

**ACTION:** General notice.

**SUMMARY:** This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning July 1, 2006, the interest rates for overpayments will increase from 6 to 7 percent for corporations and from 7 to 8 percent for non-corporations, and the interest

rate for underpayments will increase from 7 to 8 percent. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

**EFFECTIVE DATE:** July 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ron Wyman, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614-4516.

**SUPPLEMENTARY INFORMATION:**

**Background**

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2006-30, the IRS determined the rates of interest for the calendar quarter beginning July 1, 2006, and ending September 30, 2006. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (5%) plus three percentage points (3%) for a total of eight percent (8%). For corporate overpayments, the rate is the Federal short-term rate (5%) plus two percentage points (2%) for a total of seven percent (7%). For overpayments made by non-corporations, the rate is the Federal short-term rate (5%) plus three percentage points (3%) for a total of eight percent (8%). These interest rates are subject to change for the calendar quarter beginning October 1, 2006, and ending December 31, 2006.

For the convenience of the importing public and Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

<u>Beginning Date</u>	<u>Ending Date</u>	<u>Under- payments (percent)</u>	<u>Over- payments (percent)</u>	<u>Corporate Overpay- ments (Eff. 1-1-99) (percent)</u>
070174	063075	6%	6%	
070175	013176	9 %	9 %	
020176	013178	7 %	7 %	
020178	013180	6 %	6 %	
020180	013182	12 %	12 %	
020182	123182	20 %	20 %	
010183	063083	16 %	16 %	
070183	123184	11 %	11 %	
010185	063085	13 %	13 %	
070185	123185	11 %	11 %	
010186	063086	10 %	10 %	
070186	123186	9 %	9 %	
010187	093087	9 %	8 %	
100187	123187	10 %	9 %	
010188	033188	11 %	10 %	
040188	093088	10 %	9 %	
100188	033189	11 %	10 %	
040189	093089	12 %	11 %	
100189	033191	11 %	10 %	
040191	123191	10 %	9 %	
010192	033192	9 %	8 %	
040192	093092	8 %	7 %	
100192	063094	7 %	6 %	
070194	093094	8 %	7 %	
100194	033195	9 %	8 %	
040195	063095	10 %	9 %	
070195	033196	9 %	8 %	
040196	063096	8 %	7 %	
070196	033198	9 %	8 %	
040198	123198	8%	7%	
010199	033199	7%	7%	6%
040199	033100	8%	8%	7%
040100	033101	9%	9%	8%
040101	063001	8%	8%	7%
070101	123101	7%	7%	6%
010102	123102	6%	6%	5%
010103	093003	5%	5%	4%
100103	033104	4%	4%	3%
040104	063004	5%	5%	4%
070104	093004	4%	4%	3%
100104	033105	5%	5%	4%

<u>Beginning Date</u>	<u>Ending Date</u>	<u>Under- payments (percent)</u>	<u>Over- payments (percent)</u>	<u>Corporate Overpay- ments (Eff. 1-1-99) (percent)</u>
040105	093005	6%	6%	5%
100105	063006	7%	7%	6%
070106	093006	8%	8%	7%

Dated: June 26, 2006

DEBORAH J. SPERO,  
*Acting Commissioner,*  
*Bureau of Customs and Border Protection.*

[Published in the Federal Register, June 30, 2006 (71 FR 37598)]

DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS.

*Washington, DC, June 28, 2006,*

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.

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

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**19 CFR PART 177**

**REVOCATION OF RULING LETTER AND TREATMENT  
RELATING TO TARIFF CLASSIFICATION OF ELECTRODE  
STEAM HUMIDIFIERS**

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

**ACTION:** Revocation of ruling letter and treatment relating to tariff classification of electrode steam humidifiers.

**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 CBP is revoking a ruling relating to the classification of electrode steam humidifiers under the Harmonized Tariff Schedule of the United States (HTSUS), and revoking any treatment CBP has previously accorded to substantially identical transactions. These articles add humidity to air using steam created by introducing electricity to electrodes immersed in water. Notice of the proposed revocation was published on May 17, 2006, in the *Customs Bulletin*, Vol. 40, No. 21. No comments were received in response to this notice.

**EFFECTIVE DATE:** This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 10, 2006.

**FOR FURTHER INFORMATION CONTACT:** James A. Seal, Tariff Classification and Marking Branch (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 CBP 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 CBP 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 CBP to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to CBP's obligations, a notice was published on May 17, 2006, in the *Customs Bulletin*, Volume 40, Number 21, proposing to revoke HQ 958017, dated February 13, 1996, which classified certain industrial-type humidifiers in subheading 8543.80.75, HTSUS, as other electrical machines and apparatus having individual functions. No comments were received in response to this notice.

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ 958017 to reflect the proper classification of the described humidifiers in subheading 8516.10.0080, Harmonized Tariff of the United States Annotated, as electric instantaneous or storage water heaters and immer-

sion heaters, in accordance with the analysis in HQ 968027, which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment it previously accorded 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: June 21, 2006

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

Attachment

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 968027  
June 21, 2006  
CLA-2 RR:CTF:TCM 968027 JAS  
CATEGORY: Classification  
TARIFF NO.: 8516.10.0080

TOWER GROUP INTERNATIONAL, INC.  
205 West Service Road  
Champlain, NY 12919

RE: Electrode Steam Humidifiers; HQ 958017 Revoked

DEAR SIRs:

In HQ 958017, which the Director, Tariff Classification Appeals (now Commercial and Trade Facilitation) Division, Headquarters, issued to you on February 13, 1996, on behalf of Nortec Industries, Inc., Ogdensburg, NY, certain electrode steam humidifiers were found to be classifiable as other electrical machines and apparatus, having individual functions, not specified or included elsewhere in [chapter 85], in subheading 8543.80.75, Harmonized Tariff Schedule of the United States (HTSUS).

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of HQ 958017 was published on May 17, 2006, in the *Customs Bulletin*, Volume 40, Number 21. No comments were received in response to this notice.

As stated in the May 17 notice, HQ 958017 represents a decision on a protest filed with the Port Director, U.S. Customs and Border Protection, Ogdensburg, NY, on behalf of Nortec Industries, Inc. Therefore, CBP's revocation of HQ 958017 will affect the legal principles in that decision but the liquidation or reliquidation of the underlying entries remains undisturbed. See San Francisco Newspaper Printing Co. v. United States, 620 F. Supp. 738, 9 CIT 517 (1985).

## FACTS:

The humidifiers were described in HQ 958017 as creating steam which is used to add moisture, i.e., humidity, to the air that passes through a furnace. The steam is produced by means of hot water produced by an electric current generated between electrodes immersed in the water. The model NHMC humidifier is imported with a blower unit, which is in a separate housing that is mounted to the humidifier, while the model MES humidifier is imported without a blower unit, in which case the furnace blower is utilized to propel the steam and air stream through ductwork and into the environment. Both models are operated by microcomputer.

Submitted literature identifies humidifiers with design features and specifications that suggest industrial applications. The cycle of operation is described "On demand from the humidistat, the primary contractor is energized; the fill solenoid opens and allows water to enter the cylinder through the fill cup; current flows between the electrodes in the water; once full load amps are reached the fill valve closes; as water boils away the low amp trigger reactivates the fill valve; pure steam is discharged, the water-borne minerals are left behind in the cylinder gradually increasing water conductivity; auto-drain takes over only when water is fully concentrated."

The humidifiers were entered under subheading 8479.89.10, HTSUS, which provides for machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter, electromechanical appliances with self-contained electric motor, air humidifiers or dehumidifiers. They were classified in liquidation under subheading 8419.19.00, HTSUS, which provides for nonelectric instantaneous or storage water heaters. HQ 958017 held that neither of these provisions described the humidifiers and they were classified in subheading 8543.80.75, HTSUS.

The HTSUS provisions under consideration are as follows:

8516	Electric instantaneous or storage water heaters and immersion heaters; . . . ; other electrothermic appliances of a kind used for domestic purposes; . . . ; parts thereof:
8516.10.00	Electric instantaneous or storage water heaters and immersion heaters
	* * * *
8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in [chapter 85]; parts thereof:
	Other machines and apparatus:
8543.89	Other:
	Other:
	Other:
8543.89.96 (formerly 80.75)	Other

## ISSUE:

Whether electrode steam humidifier models NHMC and MES are goods of heading 8516.

## LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), goods are to be classified 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. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. U.S. Customs and Border Protection believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Initially, we are aware that air humidifiers and dehumidifiers which are electromechanical appliances with self-contained electric motor are provided for by name in subheading 8479.89.10, HTSUS. HQ 958017 noted that fact but concluded both heading 8479 and heading 8543, by their terms, must yield to a heading or headings which more specifically describe the humidifiers, either in Chapters 84 or 85, or elsewhere in the HTSUS.

HQ 958017 discounted heading 8516, electrothermic appliances of a kind used for domestic purposes, on the basis that the provision was limited to domestic-type appliances. This is incorrect. The provision in heading 8516 for electric instantaneous or storage water heaters and immersion heaters is not circumscribed by the requirement that that they be for domestic purposes. We have again considered this provision and now believe that it describes the merchandise at issue.

The 85.16 ENs, under (A) ELECTRIC INSTANTANEOUS OR STORAGE WATER HEATERS AND IMMERSION HEATERS, describe (4) Electrode hot water boilers in which an [alternating current] AC passes through the water between two electrodes. Thus, electrode hot water boilers produce hot water. The term *boiler* frequently is used to describe appliances that produce both steam and hot water. The Institution of Electrical Engineers (IEE) publishes *The Electrician's Guide*, 16<sup>th</sup> Ed. which defines an *electrode heater or boiler* as a device which heats the water contained, or raises steam. [www.tic-direct.co.uk/Book/7.11.2.htm](http://www.tic-direct.co.uk/Book/7.11.2.htm). Further, the website for the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) contains a reference to the Herrmidifier Company that offers the Herrtronic MD series self-contained electrode boilers, designed for steam humidification systems in computer rooms, telecommunication switchgear facilities and laboratory cleanrooms. [www.ashrae.org](http://www.ashrae.org). This information warrants the conclusion that the function of electrode boilers is to produce hot water with steam being a byproduct for the purpose of introducing moisture into the air (humidity). Such apparatus is provided for in heading 8516. This finding eliminates heading 8543 from consideration.

## HOLDING:

Under the authority of GRI 1, the electrode steam humidifiers, models NHMC and MES, are provided for in heading 8516. They are classifiable in subheading 8516.10.0080, HTSUSA.

**EFFECT ON OTHER RULINGS:**

HQ 958017, dated February 13, 1996, is revoked. 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 and Trade Facilitation Division.*

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**PROPOSED REVOCATION OF A RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO TARIFF  
CLASSIFICATION OF AN AUDIO VISUAL LAPTOP**

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

**ACTION:** Proposed revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of an audio visual laptop.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that the Bureau of Customs and Border Protection (CBP) is proposing to revoke a ruling letter relating to the tariff classification of an audio visual laptop under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also proposing to revoke any treatment previously accorded by it to substantially identical transactions.

**DATE:** Comments must be received on or before August 11, 2006.

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke a ruling letter pertaining to the tariff classification of an audio visual laptop. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) K88339, dated August 17, 2004 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In NY K88339, CBP ruled that the Qosimo AV Notebook PC E15 was classified in heading 8528, HTSUS, which provides for: “Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke NY K88339 and is proposing to revoke or modify any other ruling not specifically identified, to reflect the proper classification of audio visual laptops according to the analysis contained in Headquarters Ruling Letters (HQ) 967655, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

DATED: June 26, 2006

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

Attachments



[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
NY K88339  
August 17, 2004 CLA-2-85: RR: NC: 1:108 K88339  
CATEGORY: Classification  
TARIFF NO.: 8528.12.7201

MS. IVY WONG  
TOSHIBA  
9740 Irvine Boulevard  
Irvine, California 92618-1697

RE: The tariff classification of a laptop computer/television from China.

DEAR MS. WONG:

In your letter dated August 4, 2004 you requested a tariff classification ruling.

The item in question is the Toshiba audio video laptop personal computer denoted under the brand name of Qosmio. Internally within the company it is denoted as model number E15.

The item, in the form of a laptop personal computer, is actually a dual functioning device. It is equipped with an Intel Pentium M processor 735, 64MB Graphics, 512 MB memory, a 15" XGA screen, 80GB hard disk drive, fixed 2-spindle DVD drives, WiFi 802.11g, XP-MCE operating system and an integrated TV tuner.

This device clearly has two distinct independent functions. It can operate as a personal computer and as a television. The tuner provides the television function through the reception and demodulation of an NTSC television broadcast signal. Television broadcasts are viewed directly on the 15 - inch flat panel screen. It is important to note that the TV tuner actually sits on top of the main system board where the central processing unit is located.

The traditional internal TV tuner on other laptops is a separate device that is connected to the expansion port. This tuner is neither an expansion card nor does it connect to the PC expansion bus.

The TV signals are controlled and processed by the tuner and not by any other PC hardware contained within this particular laptop model. The television is operated independently from the regular computer functions without the use of any software and the computer does not have to be turned on for one to receive NTSC television broadcast signals. The device does function as a dual device with each function operating independently at the discretion of the user.

Note 3 to Section XVI of the Harmonized Tariff Schedule of the United States (HTS) provides, in pertinent part, that unless the context requires otherwise, machines adapted for the purpose of performing two or more complimentary or alternative functions are to be classified as if consisting only of that component or being that machine which performs the principal function.

Based upon the submitted information it is the opinion of this office that the Qosmio audio video laptop personal computer does not have a single principal function. Therefore classification will be in accordance with GRI 3c which indicates that when goods cannot be classified by reference to GRI 3a or 3b, they shall be classified under the heading which occurs last in numerical order among those which merit equal consideration.

The applicable subheading for the Qosmio audio video laptop personal computer will be 8528.12.7201 Harmonized Tariff Schedule of the United States (HTS), which provides for Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors: reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus: Color: With a flat panel screen: Other: Other. The rate of duty will be 5 percent ad valorem This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Michael Contino at 646-733-3014.

ROBERT B. SWIERUPSKI,

*Director;*

*National Commodity Specialist Division.*

## [ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 967655  
CLA-2 RR: CTF:TCM 967655 KSH  
CATEGORY: Classification  
TARIFF NO.: 8471.30.0000

MR. JOEL WINNICK, ESQ.  
MS. TERRY POLINO, ESQ.  
HOGAN & HARTSON, LLP  
*Columbia Square*  
*555 13<sup>th</sup> Street, N.W.*  
*Washington, D.C. 20004-1109*

RE: Revocation of New York Ruling Letter (NY) K88339, dated August 17, 2004; Classification of an Audio/Video Laptop.

DEAR MR. WINNICK AND MS. POLINO:

This is in response to your letter of April 1, 2005, on behalf of your client Toshiba America Information Systems, Inc. (TAIS), in which you request reconsideration of New York Ruling Letter (NY) K88339, issued on August 17, 2004, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of the Qosmio AV Notebook PC E15 (Qosmio). The Qosmio was classified in heading 8528, HTSUS, which provides for: "Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors." We regret the delay in responding.

In your request for reconsideration, you have advised us that the Qosmio's audio visual function requires the user to turn on the computer and is fully dependent upon the PC's operating systems. You have also stated that the Qosmio has the general characteristics of an automatic data processing (ADP) machine, the purchaser of the Qosmio expects to principally be buying an ADP machine, the Qosmio is designed, manufactured, marketed and sold in a channel of trade and an environment of sale devoted to ADP machines and it is used principally by consumers as an ADP machine. Accordingly, you argue that the principal function of the Qosmio is as an ADP machine that should be classified in heading 8471, HTSUS, which provides for: "Automatic data processing machines and units thereof . . .". In accordance with your request for reconsideration of NY K88339 and in light of this newly submitted information, including information submitted in conjunction with the meeting held with members of my staff on January 27, 2006, the Bureau of Customs and Border Protection (CBP) has reviewed the classification of this item and has determined that the cited ruling is in error.

## FACTS:

The Qosmio is a clamshell-configured notebook computer which measures 13.31" by 11.22" by 1.70" and weighs approximately 8.2 lbs. The Qosmio contains the following core hardware and software components:

80GB Hard Disk Drive  
512 MB RAM  
Intel Pentium M Processor 735  
Intel 855PM System Chipset  
Microsoft XP Media Center Edition Operating System  
15" XGA TruBrite Display  
CD/DVD  
NVIDIA GeForce FX Go5200 Graphics  
Harmon/Kardon premium stereo speakers  
Four USB 2.0 Ports  
Integrated V.92 Modem, 10/100 Ethernet  
Keyboard and touchpad  
Parallel Linux Operating System  
Wireless LAN B and G  
Bluetooth Enabled  
Surround Sound  
Bridge Media Adapter  
DVD  
S-video input and output for DVR, DVD and other video applications  
i.Link for high speed communications  
Analog TV tuner

The audio visual features of the Qosmio may be employed through either of the Qosmio's two operating systems (Windows XP Media Center Edition and Linux). However, users who do not need to simultaneously run the audio visual features and perform data processing functions controlled by the Windows XP Media Center may chose to exclusively run the Linux operating system. Two separate power buttons allow the user to choose either the TV or computer features.

If the TV power button is used, the data stream is picked up by the ADP peripheral interconnect bus and is transferred through the ADP system bus to the ADP processor and memory. Stated another way, the TV cannot function without the ADP hardware. Its electrical and logical functions are directed through the ADP machine.

**ISSUE:**

Whether the Qosmio is classified in heading 8528, HTSUS, as reception apparatus for television or in heading 8471, HTSUS, as an automatic data processing machine.

**LAW AND ANALYSIS:**

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

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 Harmonized System. CBP believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof:
8471.30.00	Portable digital automatic data processing machines, weighing not more than 10 kg, consisting of at least a central processing unit, a keyboard and a display
8528	Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors:
	Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus:
8528.12	Color:
	With a flat panel screen:
	Other:
8528.12.7201	Other.”

Note 5(A) to chapter 84, HTSUS, defines the term “automatic data processing machines” for the purposes of heading 8471 as digital machines which must be capable of (1) storing the processing program or programs and at least the data immediately necessary for execution of the program; (2) being freely programmed in accordance with the requirements of the user; (3) performing arithmetical computations specified by the user; and (4) executing, without human intervention, a processing program which requires them to modify their execution, by logical decision during the processing run.

Pursuant to Note 5(A)(a), the Qosmio *prima facie* meets the terms of Heading 8471, HTSUS, as an ADP machine. However, it is also capable of displaying a variety of tv signals and other audio visual information which is provided for, *eo nomine*, under heading 8528, HTSUS, as reception apparatus for television.

The Qosmio is therefore considered a composite machine that has the functions of both an ADP machine and a reception apparatus for television. Classification of composite machines is regulated by Note 3 to Section XVI, HTSUS, which provides that:

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

It is the principal use of the class or kind of goods to which the imports belong at or immediately prior to the time of importation and not the principal use of the specific import that is controlling under the General Rules of Interpretation. *See Group Italglass U.S.A., Inc. v. United States*, 17 C.I.T. 1177, 1177, 839 F. Supp. 866, 867 (1993)

The courts have provided factors, which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: (1) general physical characteristics; (2) expectation of the ultimate purchaser; (3) channels of trade; (4) environment of sale (accompanying accessories, manner of advertisement and display); and (5) usage of the merchandise. *See Lenox Collections v. U.S.*, 20 CIT 194, 196 (1996). *See also U.S. v. Carborundum Co.*, 63 CCPA 98, 102, 536 F. 2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976); *Kraft, Inc. v. U.S.*, 16 CIT 483, 489 (1992); and *G. Heileman Brewing Co. v. U.S.*, 14 CIT 614, 620 (1990).

In considering these factors, we note that the 15 inch screen size, screen resolution of 1024 by 768, standard 84 key keyboard and touch pad, USB and i.Link ports, hard drive and clamshell configuration are consistent with the general physical characteristics of an ADP machine. In this regard, we note that the Qosmio is not an ADP unit but is a complete, integrated ADP machine. (Cf. the classification opinion by World Customs Organization (WCO), Harmonized System Committee (HSC), at its 19<sup>th</sup> Session to classify a multimedia personal computer system consisting of three separately housed units: a 14" (35 cm) colour television receiver (display) with a digital processing unit, a keyboard (input unit), and an infra-red remote control device in subheading 8471.49, HTS, and NY K82971, dated February 26, 2004, in which a Gateway 610 Media Center PC desktop computer system with integrated TV tuner card was classified in subheading 8471.49.1095, HTSUS.

The TV tuner and ADP are not two separate machines. Rather, the TV function is dependent on the ADP hardware. Even when the TV is in use the Intel Pentium M Processor 735, Intel 855PM chipset and memory chips are ADP hardware that must be used.

Probative evidence included in your submission indicates that consumers are primarily purchasing the Qosmio for its ADP functions with ancillary interest in the audio visual functions. The Qosmio is marketed and sold in channels of trade for ADP machines. The Qosmio is sold in the ADP departments of consumer electronic retailers and are advertised as such. The Qosmio is also sold to retailers who primarily sell ADP equipment and software. Further, evidence has been submitted that the overwhelming majority of purchasers use the Qosmio for its data processing functions while few regularly use the Qosmio to watch television.

Based on the *Carborundum* factors and the information above, we find that the principal function of the Qosmio is an ADP machine of heading 8471, HTSUS.

**HOLDING:**

By application of GRI 1 and Note 3 to Section XVI, the Qosmio is classified in heading 8471, HTSUS. It is specifically provided for in subheading

8471.30.0000, HTSUS, which provides for: "Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included; Portable digital automatic data processing machines, weighing not more than 10kg, consisting of at least a central processing unit, a keyboard and a display." The column one, general rate of duty is free.

**EFFECT ON OTHER RULINGS:**

NY K88339, dated August 17, 2004, is hereby revoked.

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