U.S. Customs Service

General Notices

CUSTOMS COBRA FEES ADVISORY COMMITTEE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: This document announces a change to the date and time of the first scheduled meeting of the U.S. Customs COBRA Fees Advisory Committee. This notice also publishes the provisional agenda for the meeting and identifies representatives from the private sector transportation industry that have been appointed by the Commissioner of Customs as COBRA Fees Advisory Committee members.

DATES: The first meeting of the U.S. Customs COBRA Fees Advisory Committee has been rescheduled for July 15, 2002, from 1:00 p.m. to 3:00 p.m., in room 6.4–B of the Ronald Reagan Building located at 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Interested parties must provide Customs with notice of their intent to attend the meeting by July 11, 2002. Notice may be provided to Carlene Warren at (202) 927–1391 or via email at *Carlene.warren@customs.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Carlene Warren, U.S. Customs Service, Office of Field Operations, Passenger Programs, at (202) 927–1391 or via email at *Carlene.warren@customs.treas.gov.*

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c), as amended by the Miscellaneous Trade and Technical Corrections Act of 1999 (Pub. L. 106–36), directs the Commissioner of Customs to establish an advisory committee whose membership consists of representatives from the airline, cruise ship, and other transportation industries who may be subject to fees under 19 U.S.C. 58c.

The Committee will advise the Commissioner of Customs on issues relating to inspection services performed by the Customs Service, including issues pertaining to the time periods during which inspections should be performed, the proper number and deployment of inspection officers, and the amount of any proposed fees.

The Commissioner of Customs has appointed the following representatives from the private sector transportation industry as COBRA Fees Advisory Committee members:

(1) Kathy Hansen, Manager, Customs Compliance Con-Way Transportation Services, Inc.;
(2) Ann W. White, Director of Industry Affairs, American Airlines;
(3) Barbara Kostuk, Director, Federal Affairs & Facilitation Air Transport Association;
(4) Benson Bowditch, Jr., Manager, Compliance Department Lykes Brothers Steamship Company; and
(5) Joseph Mangiaracino, Team Leader, National Customer Service Center Union Pacific Railroad

On June 14, 2002, a notice published in the Federal Register (67 FR 40983) announced that the first COBRA Fee Advisory Committee meeting was scheduled for June 28, 2002.

This notice announces that the meeting has been rescheduled. The first meeting of the COBRA Fees Advisory Committee is now scheduled for July 15, 2002, from 1:00 p.m. to 3:00 p.m., in room 6.4–B of the Ronald Reagan Building located at 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. The meeting is open to the public; however, participation in the Committee's deliberations is limited to Committee members and Customs and Treasury Department staff. Interested parties, other than Advisory Committee members, who wish to attend the meeting should contact Carlene Warren by July 11, 2002, at (202) 927–1391 or via email at *Carlene.warren@customs.treas.gov.*

At this meeting, the Advisory Committee is expected to pursue the following agenda. The agenda may be modified prior to the meeting.

AGENDA

I. Opening remarks by COBRA Fees Advisory Committee Chairperson, Deputy Commissioner of the U.S. Customs Service, Douglas M. Browning.
II. Briefing by Office of Finance—Budget
III. Topics for Discussion

1. Consideration of New Fees:

a. In Light of New Security Procedures and Equipment;
b. Fees on Cargo

IV. Other Business
V. Adjourn

Dated: July 3, 2002.

DOUGLAS M. BROWNING,
Deputy Commissioner of Customs.

[Published in the Federal Register, July 8, 2002 (67 FR 45185)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, July 11, 2002.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for Michael T. Schmitz, Assistant Commissioner,
Office of Regulations and Rulings.)

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF THE "XYRON 510" MACHINE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of ruling letter and revocation of treatment relating to tariff classification of the "Xyron 510" machine.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (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 modifying one ruling pertaining to the tariff classification of the "Xyron 510" machine under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before August 23, 2002.

ADDRESS: Written comments are to be addressed to the U.S. Customs Service, 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 Service, 799 9th Street, NW, Washington, D.C during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Deborah Stern, General Classification Branch (202) 572–8785.

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, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to modify one ruling letter pertaining to the tariff classification of the "Xyron 510" machine. Although in this notice Customs is specifically referring to one ruling (NY H81167), 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 the one identified. No additional 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 Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), 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 to the importer's or Customs' previous interpretation of the Harmonized Tariff Schedule of the United States. 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 its agents for importations of merchandise subsequent to the effective date of the final notice of the proposed action.

In NY H81167, dated June 5, 2001 (Attachment A), Customs classified the "Xyron 500 Create-a-Sticker" and the "Xyron 510 4 in 1 machine" in subheading 8479.89.97, HTSUS, as other machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter. Various parts for both machines and for a machine substantially similar to the "Xyron 510" were also classified in the ruling in subheading 8479.90.95, HTSUS, which provides for parts of the machines of heading 8479, HTSUS.

It is now Customs position that the "Xyron 510" is provided for in subheading 8420.10.90, HTSUS, which provides for "Calendering or other rolling machines, other than for metals or glass, and cylinders therefor; parts thereof: calendering or other rolling machines: other."

According to the Harmonized Commodity Description and Coding System Explanatory Notes (ENs), machines of heading 8420, HTSUS, consist of two or more parallel cylinders or rollers revolving with their surfaces in more or less close contact so as to perform certain functions, such as the application of dressings or surface coatings, by either pressure of the cylinders alone or by pressure combined with friction, heat or moisture.

The "Xyron 510" is a sticker maker, laminator, label maker and magnet maker. It consists, in pertinent part, of a crank handle and two geared rubber-covered rollers with their surfaces close together, which, when cranked, applies pressure, bringing the articles and materials together to apply an adhesive or laminate. That is, the rollers revolve in close contact to apply dressings or surface coatings, such as adhesive or laminate, by the pressure of the rollers. The "Xyron 510" is a rolling machine as described by the ENs to heading 8420, HTSUS. The machine was classified elsewhere because, as we stated in NY H81167, the machines of heading 8420 featured "a degree of physical robustness and pressure which the Xyron 510 lacks."

A product literally included in a tariff definition may nonetheless be excluded upon a showing of legislative intent, *United States v. Andrew Fisher Cycle Co*., 57 C.C.P.A. 102, 426 F.2d 1308, 1311 (CCPA 1970), but there must be "strong and sufficient indications that it was the intent of Congress" to exclude the product at issue. *Id.* There is no indication the "Xyron 510" should be excluded. We therefore conclude that the "Xyron 510" is classifiable as an other rolling machine of heading 8420, HTSUS. As such, parts for the "Xyron 510" and for the machine substantially similar to the "Xyron 510" are classifiable as parts of a machine of heading 8420, HTSUS, in subheading 8420.99.90, HTSUS, which provides for "Calendering or other rolling machines, other than for metals or glass, and cylinders therefor; parts thereof: parts: other."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY H81167 and any other ruling not specifically identified, to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analyses set forth in HQ 965289 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs in-

tends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Before taking this action, we will give consideration to any written comments timely received.

Dated: June 26, 2002.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, June 5, 2001.

CLA–2–84:RR:NC:1:103 H81167
Category: Classification
Tariff No. 8479.89.9797,
8479.90.9595, and 9802.00.80

MR. ED KWAS
EXPEDITORS TRADEWIN, LLC
1015 Third Avenue, 12th Floor
Seattle, WA 98104

Re: The tariff classification of the Xyron 500, Xyron 510, and parts thereof from China.

DEAR MR. KWAS:

In your letter dated May 7, 2001 on behalf of Xyron Inc. you requested a tariff classification ruling.

With your inquiry you submitted descriptive literature and a sample of the Xyron 500 Create-a-Sticker and the Xyron 510 4 in 1 machines, as well as samples of certain components of these units. The Xyron 500 is intended for use by adults and children for craft, home, school and office projects. It applies adhesive to the back of labels, cards, photos, clip art and similar articles up to five inches in width, making them into stickers. It is manually operated and basically consists of a plastic housing with a feed and output tray, toothed tear bar, replaceable cartridge holding a roll of plastic film and a roll of paper coated with permanent or repositional adhesive, and geared rollers turned by a knob. To use the unit, a card, photo, or similar object is placed on the feed tray. The article is guided into the unit while the user turns the knob by hand, causing a length of the plastic film and adhesive coated paper to be pulled off their holders. The article is pressed between the paper and plastic film as it passes between a roller and a flat bar, thus transferring the adhesive from the paper to the back of the article. The balance of the adhesive sticks to the plastic film, which is then wound onto a separate roller. The paper, with the sticky article attached, is cut from the roll by pulling it manually against the tear bar. The article, now containing a uniform adhesive coating on its back, can then be peeled from the sheet of paper and stuck onto a desired surface. The Xyron 500 is 9.5 inches wide, 6 inches high, 8.6 inches deep, and weighs approximately 3 pounds.

The Xyron 510 is a sticker maker, laminator, label maker and magnet maker. It is similar to the Xyron 500, but features a crank handle, sliding cutting blade, and two geared rubber-covered rollers about 1 inch in diameter to bring the article and materials together. Depending on the rolls of material in the replaceable cartridge inserted into the unit, it can laminate one or both sides of a card or similar article up to 5 inches wide with plastic film, apply an adhesive to the back of the article to create a sticker, laminate the top and simul-

taneously apply adhesive to the back of the article, or laminate the top and glue the back of the article to a flexible magnetic material, thus creating a personalized refrigerator magnet. It is also made of plastic, and is 14.1 inches wide, 5.7 inches high, and 8.6 inches deep. It weighs approximately 5 pounds.

The first group of seven plastic parts for the Xyron 500 you submitted will be imported and then assembled with other components of domestic origin to make a replaceable cartridge. Three of the seven parts, a gear, roller holder, and side frame, are imported assembled together to form a single piece. The other four parts consist of the second side frame with film and paper spools, the back tear strip, and two flat panels which will provide rigidity to the assembled cartridge.

A second set of four parts which you submitted consists of twin plastic holders for the two rolls of material, as well as two flat plastic panels which, when assembled together with other U.S. made components (film/adhesive rolls, cores, and a washer), form a cartridge for the Xyron 510.

The third set of four plastic parts are identical to the second set in design and use. They are intended, after assembly into a cartridge unit, for use in a unit which is virtually the same as the Xyron 510 but is made by a competitor, Brother.

Finally, the fourth group of two plastic parts consists of a housing with an attached roller and a portion of the frame of a unit to which three plastic pieces (a gear wheel, a roller, and a sliding cutter blade) are attached. These components will also be used in a Xyron 510 type machine sold by Brother.

You further stated in your letter that the cutter blade for the Xyron 510 and equivalent Brother unit, the material on the shaft of the bottom roller for both these units, and a label attached to the inside top cover of the Xyron 510 are purchased in the United States and sent to China for assembly into the complete units.

You suggested that the Xyron 500 and Xyron 510 units may be classifiable in subheading 8420.10.90, Harmonized Tariff Schedule of the United States (HTS), which provides for calendering or other rolling machines, other than for metals or glass: other. You also suggested that the various parts described above should be classified in subheading 8420.99.90, HTS, a provision for parts of calendering or other rolling machines: other: other.

Calendering or other rolling machines of heading 8420, according to the Harmonized Commodity Description and Coding System Explanatory Notes, utilize the pressure generated by two or more parallel cylinders or rollers to perform certain functions, including rolling a raw material into a sheet, producing certain effects (such as smoothing, polishing, or embossing) on the surface of a sheet which passes between the rollers, applying dressings or surface coatings, or bonding fabrics. The Xyron 500 is used to create a sticker and is not a calendering or other rolling machine since it utilizes a roller and a plastic bar, rather than two or more rollers, to perform its function. Thus it cannot be classified in subheading 8420.10.90, HTS.

The Xyron 510 is used to create stickers, magnets, and laminated articles by means of two rollers which bring these materials together and generate minimal pressure. However, tariff terms do not necessarily include everything within their literal meaning (see United States v. Andrew Fisher Cycle Co., Inc., 57 CCPA 102, 107, C.A.D. 986 (1970), and related cases). In our opinion the Xyron 510 is not within the tariff meaning of the term calender or other rolling machine. The exemplars listed in the Explanatory Notes indicate that the calenders and rolling machines of heading 8420 feature a degree of physical robustness and pressure which the Xyron 510 lacks. Accordingly, it also is not classifiable in subheading 8420.10.90, HTS.

The applicable subheading for the Xyron 500 and Xyron 510 will be 8479.89.9797, Harmonized Tariff Schedule of the United States (HTS), which provides for machines and mechanical appliances having individual functions, not specified or included elsewhere (in chapter 84): other machines and mechanical appliances: other: other: other: other. The rate of duty will be 2.5 percent ad valorem.

The applicable subheading for the various parts described above will be 8479.90.9595, HTS, which provides for parts of machines and mechanical appliances having individual functions, not specified or included elsewhere (in chapter 84): other: other. The rate of duty will be free.

Components of American origin which are sent to China to be assembled into these machines may be eligible for classification in subheading 9802.00.80, HTS, which provides for articles, except goods of heading 9802.00.90 and goods imported under provisions of

subchapter XX, assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating and painting. Articles so classified are subject to a duty upon the full value of the imported article, less the cost or value of such products of the United States.

In accordance with your request, the samples will be returned to you.

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 Alan Horowitz at 212–637–7027.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 965289 DBS
Category: Classification
Tariff No. 8420.10.90 and 8420.99.90

MR. CHRISTOPHER R. WALL
PILLSBURY WINTHROP, LLP
1133 Connecticut Avenue, NW
Washington, DC 20036–4305

Re: "Xyron 510" machine; NY H81167 modified.

DEAR MR. WALL:

In NY H81167, issued to your client, Xyron, Inc., on June 5, 2001, the Director, National Commodity Specialist Division, New York, classified the "Xyron 500 Create-a-Sticker" and the "Xyron 510 4 in 1 machine," ("Xyron 510") in subheading 8479.89.97, Harmonized Tariff Schedule of the United States (HTSUS), as other machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter. Various parts for both machines and for a machine substantially similar to the "Xyron 510" were also classified in the ruling in subheading 8479.90.95, HTSUS, which provides for parts of the machines of heading 8479, HTSUS. We have reconsidered the classification of the "Xyron 510" and its accompanying parts, and now believe NY H81167 is, in part, incorrect.

Facts:

The Xyron 510 is a sticker maker, laminator, label maker and magnet maker. It features a crank handle, sliding cutting blade, and two geared rubber-covered rollers about 1 inch in diameter to bring the article and materials together. Depending on the rolls of material in the replaceable cartridge inserted into the unit, it can laminate one or both sides of a card or similar article up to 5 inches wide with plastic film, apply an adhesive to the back of the article to create a sticker, laminate the top and simultaneously apply adhesive to the back of the article, or laminate the top and glue the back of the article to a flexible magnetic material, thus creating a personalized refrigerator magnet. It is also made of plastic, and is 14.1 inches wide, 5.7 inches high, and 8.6 inches deep. It weighs approximately 5 pounds. A sample was submitted.

In addition, sample sets of parts for use with either the "Xyron 510" or for the unit which is substantially similar to the Xyron 510 but is made by a competitor was submitted

to the National Commodity Specialist Division, New York. As described in NY H81167, one set consisted of twin plastic holders for the two rolls of material, two flat plastic panels which, when assembled together with other U.S. made components (film/adhesive rolls, cores, and a washer), form a cartridge for the Xyron 510. Another set consisted of parts identical to the aforementioned set in design and use intended, after assembly into a cartridge unit, for use with the competitor's unit. And another set was two plastic parts consisting of a housing with an attached roller and a portion of the frame of a unit to which three plastic pieces (a gear wheel, a roller, and a sliding cutter blade) are attached. These components will also be used in a Xyron 510 type machine sold by the competitor.

You contend that the "Xyron 510" is a calendering machine classifiable in subheading 8420.10.90, HTSUS, which provides for other calendering or other rolling machines. You further contend that the requirement enumerated in NY H81167 that machines of heading 8420, HTSUS, feature "a degree of physical robustness and pressure" introduces a criterion that is not legally defensible. In the alternative, you argue that the "Xyron 510" and its parts are classifiable as other office machines, classifiable in heading 8472, HTSUS and parts of other office machines, classifiable in heading 8473, HTSUS.

Issues:

Whether the "Xyron 510" is classifiable as a calendering or other rolling machine of heading 8420, HTSUS.

Law and Analysis:

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

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs 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:

8420	Calendering or other rolling machines, other than for metals or glass, and cylinders therefor; parts thereof:
8420.10	Calendering or other rolling machines:
8420.10.90	Other
* * * * * * *	
	Parts:
8420.99	Other:
8420.99.90	Other
* * * * * * *	
8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof:
	Other machines and mechanical appliances:
8479.89	Other:
	Other:
8479.89.97	Other
* * * * * * *	
8479.90	Parts:
8479.90.95	Other

Your first claim is that the "Xyron 510" is a calendering machine classifiable in heading 8420, HTSUS. We turn to the EN for this heading to determine if the machine is described therein. EN 84.20 provides, in pertinent part, as follows:

> With the **exception** of metal-rolling or metal-working machines * * * this heading covers **calendering or other rolling machines,** whether specialised to a particular industry or not.

These machines consist essentially of two or more parallel cylinders or rollers revolving with their surfaces in more or less close contact so as to perform the following operations, either by pressure of the cylinders alone or by pressure combined with friction, heat or moisture:

(1) The rolling into sheet form of material (including bakery, confectionery, biscuit, etc., doughs, chocolate, rubber, etc.) fed to the rollers in a plastic condition.

* * * * * * *

(3) The application of dressings or surface coatings.

* * * * * * *

Machines of this kind are employed in various industries (e.g. the paper, textile, leather, linoleum, plastics or rubber manufacturing industries)

In certain industries particular names are given to calendering machines (e.g. ironing machines in laundries, finishing mangles for the textile industry, or supercalenders for the paper industry) but they are classified in this heading whether called calendering machines or not * * *.

The exemplars listed in the EN all refer to machines for manufacturing and various other industrial uses. It is clear that the machines contemplated to be classified in this heading are predominantly industrial machines. However, the EN also provides for certain items for domestic use, as it also states "The heading covers smoothing or ironing machines of the calendar type, whether or not for domestic use." Further, the ENs do not specifically exclude small or domestic-type machines. Rather, they exclude industrial machines that are "somewhat similar to calender or rolling machines" that "do not fulfil the purposes described" in the EN cited above.

As stated in the facts section, the "Xyron 510" is a sticker maker, laminator, label maker and magnet maker. It consists, in pertinent part, of a crank handle and two geared rubber-covered rollers with their surfaces close together, which, when cranked, applies pressure, bringing the articles and materials together to apply an adhesive or laminate. That is, the revolving rollers are in close contact to apply dressings or surface coatings by pressure of the rollers alone. The machine fulfills the description and purposes of a machine of heading 8420, HTSUS.

A product literally included in a tariff definition may nonetheless be excluded upon a showing of legislative intent, *United States v. Andrew Fisher Cycle Co.*, 57 C.C.P.A. 102, 426 F.2d 1308, 1311 (CCPA 1970), but there must be "strong and sufficient indications that it was the intent of Congress" to exclude the product at issue. *Id.* We stated in NY H81167, the machines of heading 8420 featured "a degree of physical robustness and pressure which the Xyron 510 lacks." Though this is true, as the machine is a lightweight, domestic item, there is no indication this article should be excluded.

We note that Chapter 84, Note 2 provides that, subject to Note 3 to Section XVI, which is not applicable here, a machine which answers to a description in one or more of the headings 8401 to 8424 and also answers to a description in one or more of the headings 8425 to 8480 is to be classified under the appropriate heading in the former group. It is unnecessary to address whether the machine may be classified as an office machine of heading 8472, HTSUS, or a machine of heading 8479, HTSUS, because the machine would still be classified in heading 8420, HTSUS, by virtue of the aforementioned note.

We conclude that the "Xyron 510" is classifiable as a rolling machine of heading 8420, HTSUS. Therefore, parts for the "Xyron 510" are classifiable, pursuant to Section XVI, Note 2(b), HTSUS, in subheading 8420.99.90, HTSUS, which also provides for parts of the machines of heading 8420, to the extent that Section XVI, Note 2(b) is inapplicable.

Holding:

The "Xyron 510" is classifiable in subheading 8420.10.90, HTSUS, which provides for, "Calendering or other rolling machines, other than for metals or glass, and cylinders therefor; parts thereof: calendering or other rolling machines: other." Parts for the "Xyron 510" and for the machine substantially similar to the "Xyron 510" are classified in subheading 8420.99.90, HTSUS, which provides for "Calendering or other rolling machines, other than for metals or glass, and cylinders therefor; parts thereof: parts: other."

Effect on Other Rulings:

NY H81167, dated June 5, 2001, is hereby MODIFIED with respect to the classification of the "Xyron 510," parts for the "Xyron 510," and parts for the machine substantially similar to the "Xyron 510."

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF AGGLOMERATED STONE SLABS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation and modification of ruling letters and revocation of treatment relating to the tariff classification of agglomerated stone slabs under the Harmonized Tariff Schedule of the United States ("HTSUS").

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 one ruling and to modify another, and to revoke any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of agglomerated stone slabs. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before August 23, 2002.

ADDRESS: Written comments are to be addressed to the U.S. Customs Service, 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 Service, 799 9th Street, NW, Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch: (202) 572–8776.

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, this notice advises interested parties that Customs intends to revoke New York Ruling Letter (NY) E89493, dated February 7, 2000, and to modify NY F82849, dated June 8, 2000, both which pertain (in the case of NY F82849, in pertinent part) to the tariff classification of agglomerated stone slabs. NYs E89493 and F82849 are set forth as "Attachment A" and "Attachment B", respectively, to this document.

Although in this notice Customs is specifically referring to two rulings, NYs E89493 and F82849, this notice covers any rulings on similar merchandise that may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases; 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, other than the referenced rulings (see above), 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 or other relevant statutes. 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.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY E89493 and to modify NY F82849 as it pertains to the classification of agglomerated stone slabs, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed HQs 965586 and 965585 (*see* "Attachment C" and "Attachment D", respectively, 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: July 2, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, February 7, 2000.

CLA–2–68:RR:NC:2:226 E89493
Category: Classification
Tariff No. 6810.19.5000

MR. NORMAN STONE
HALSTEAD INTERNATIONAL
289 Greenwich Avenue
Greenwich, CT 06830

Re: The tariff classification of an agglomerated stone slab from Korea.

DEAR MR. STONE:

In your letter dated November 4, 1999, you requested a tariff classification ruling. A representative sample of the item was submitted and was sent to our Customs laboratory for analysis.

The subject article, which is identified as "Topstone Granyte", is a square piece of cut stone that is grey in texture and surface polished. It measures approximately 10 cm square and 1.2 cm thick. You stated that this product will be imported in a slab size (1200 mm x 3000 mm).

You indicated in your letter that this item is composed of natural stone agglomerated with plastic resin. An analysis of the sample by our Customs laboratory was consistent with your description.

The applicable subheading for the agglomerated stone slab will be 6810.19.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles of * * * artificial stone, whether or not reinforced: tiles, flagstones, bricks and similar articles: other: other. The rate of duty will be 3.9 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 Jacob Bunin at 212–637–7074.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, June 8, 2000.

CLA–2–68:RR:NC:2:226 F82849
Category: Classification
Tar1ff No. 6810.19.5000, 6810.19.1200,
7020.00.6000, 7013.99.4000, 7013.99.5000,
7013.99.8000, and 7013.99.9000

MR. PAUL MEYER
NIK AND ASSOCIATES
800 S. Hindry Avenue
Unit A
Inglewood, CA 90301

Re: The tariff classification of agglomerated stone slabs, agglomerated glass slabs, agglomerated stone tiles and agglomerated glass tiles from Italy.

DEAR MR. MEYER:

In your letter dated February 1, 2000, on behalf of your client, European Natural Stone Co., you requested a tariff classification ruling. Illustrative samples were submitted and were sent to our Customs laboratory for analysis.

You indicated in your presentation that this merchandise will be imported in both slab and tile forms.

According to the literature that you submitted, the subject article, which is identified as "Silestone", is a slab or tile that is composed of natural stone agglomerated with plastics resin or glass agglomerated with plastics resin. An analysis of a few illustrative samples by our Customs laboratory was not inconsistent with your description. Of course, in order to be certain of the classification of a specific product, you must obtain information from your supplier indicating whether the item consists principally of stone agglomerated with resin or glass agglomerated with resin.

When the product is an agglomerated stone slab, the applicable subheading will be 6810.19.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles of * * * artificial stone, whether or not reinforced: tiles, flagstones, bricks and similar articles: other: other. The rate of duty will be 3.9 percent ad valorem.

When the product is an agglomerated stone tile, the applicable subheading will be 6810.19.1200, HTS, which provides for articles of * * * artificial stone, whether or not reinforced: tiles, flagstones, bricks and similar articles: other: floor and wall tiles: of stone agglomerated with binders other than cement. The rate of duty will be 4.9 percent ad valorem.

When the product is an agglomerated glass slab, the applicable subheading will be 7020.00.6000, HTS, which provides for other articles of glass: other. The rate of duty will be 5 percent ad valorem.

When the product is an agglomerated glass tile with a value as imported not over $0.30 each, the applicable subheading will be 7013.99.4000, HTS, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes * * *: other glassware: other: other: valued not over $0.30 each. The rate of duty will be 38 percent ad valorem.

When the product is an agglomerated glass tile with a value as imported over $0.30 but not over $3 each, the applicable subheading will be 7013.99.5000, HTS, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes * * *: other glassware: other: other: valued over $0.30 but not over $3 each. The rate of duty will be 30 percent ad valorem.

When the product is an agglomerated glass tile with a value as imported over $3 but not over $5 each, the applicable subheading will be 7013.99.8000, HTS, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes * * *: other glassware: other: other: valued over $3 but not over $5 each. The rate of duty will be 12.8 percent ad valorem.

When the product is an agglomerated glass tile with a value as imported over $5 each, the applicable subheading will be 7013.99.9000, HTS, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes * * *: oth-

er glassware: other: other: valued over $5 each. The rate of duty will be 7.2 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 Jacob Bunin at 212–637–7074.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 965586 AML
Category: Classification
Tariff No. 6810.99.00

MR. NORMAN STONE
HALSTEAD INTERNATIONAL
289 Greenwich Avenue
Greenwich, CT 06830

Re: "Topstone Granyte" agglomerated stone slabs; NY E89493 revoked.

DEAR MR. STONE:

This is in regard to New York Ruling Letter (NY) E89493, issued to you on February 7, 2000, concerning the classification of "Topstone Granyte" agglomerated stone slabs. In NY E89493, the agglomerated stone slab, imported in 1200 millimeter (mm) by 3000 mm (approximately 4 feet by 10 feet) pieces, was classified under subheading 6810.19.50, Harmonized Tariff Schedule of the United States (HTSUS), which provides for articles of * * * artificial stone * * * tiles, flagstones, bricks and similar articles: other: other. We have reviewed NY F89493 and determined that its conclusion concerning the classification of agglomerated stone slab is incorrect. This ruling sets forth the correct classification.

Facts:

NY F89439 set forth the facts under consideration, in pertinent part, as follows:

> The subject article, which is identified as "Topstone Granyte", is a square piece of cut stone that is gray in texture and surface polished. It measures approximately 10 cm square and 1.2 cm thick. You stated that this product will be imported in a slab size (1200 mm x 3000 mm).
>
> You indicated in your letter that this item is composed of natural stone agglomerated with plastic resin. An analysis of the sample by our Customs laboratory was consistent with your description.

Issue:

Whether the agglomerated stone slabs at issue are classifiable as articles of cement, of concrete or of artificial stone, whether or not reinforced: tiles, flagstones, bricks and similar articles: other: floor and wall tiles: of stone agglomerated with binders other than cement: under subheading 6810.19.50, HTSUS, or as other articles of artificial stone under subheading 6810.99.00, HTSUS?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1,

and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. GRI 6 provides that for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, by appropriate substitution of terms, to GRIs 1 through 5, on the understanding that only subheadings at the same level are comparable.

The HTSUS provisions under consideration are as follows:

6810	Articles of cement, of concrete or of artificial stone, whether or not reinforced:
	Tiles, flagstones, bricks and similar articles:
6810.19	Other:
	Floor and wall tiles:
6810.19.12	Of stone agglomerated with binders other than cement:
6810.19.50	Other.
	Other articles:
6810.99.00	Other.

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. Customs believes the ENs should always be consulted. See T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The agglomerated stone slabs are *prima facie* classifiable in Chapter 68, which provides for, *inter alia*, stone, plaster, cement, asbestos, mica or similar materials. The General ENs to Chapter 68 provide, in pertinent part, as follows:

> Some of the goods [included in Chapter 68] may be agglomerated by means of binders, contain fillers, be reinforced, or in the case of products such as abrasives or mica be put up on a backing or support of textile material, paper, paperboard or other materials.
>
> Most of these products and finished articles are obtained by operations (*e.g.*, shaping, moulding), which alter the form rather than the nature of the constituent material. Some are obtained by agglomeration (*e.g.*, articles of asphalt, or certain goods such as grinding wheels which are agglomerated by vitrification of the binding material); others may have been hardened in autoclaves (sand-lime bricks). The Chapter also includes certain goods obtained by processes involving a more radical transformation of the original raw material (*e.g.*, fusion to produce slag wool, fused basalt, etc.).

Within Chapter 68, heading 6810, HTSUS, provides for, among other things, articles of artificial stone. Additional U.S. Note 2 to Chapter 68, HTSUS, states that "for the purposes of heading 6810, the term "tiles" does not include any article 3.2 cm or more in thickness."

The ENs to heading 6810 provide, in pertinent part, as follows:

> Artificial stone is an imitation of natural stone obtained by agglomerating pieces of natural stone or crushed or powdered natural stone (limestone, marble, granite, porphyry, serpentine, etc.) with lime or cement or other binders (*e.g.*, plastics). Articles of artificial stone include those of "terrazzo", "granito", etc.

In response to a protest concerning similar articles, we have reexamined whether the articles in question should be considered to be raw materials that cannot be considered to be tiles, bricks, flagstones, etc. as described by subheading 6810.19.50, HTSUS. Therefore, in accordance with GRI 6 above, we must determine whether the articles are similar to tiles, flagstones and bricks, classifiable in the first subprovision of heading 6810, HTSUS, or as other articles in the basket provision at the same level.

In Headquarters Ruling Letter 084608, dated August 24, 1989, in determining the classification of, among other things, agglomerated stone counter tops, we consulted various sources concerning the meaning of the terms "tiles" and "flagstones". (A tariff term that is not defined in the HTSUS or in the ENs is construed in accordance with its common and commercial meaning. *Nippon Kogaku (USA) Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). See also *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982) and *Hasbro Industries, Inc. v. U.S.*, 703 F. Supp. 941 (CIT 1988), aff'd, 879 F.2d 838 (1989)) We concluded in HQ 084608 that counter tops and channel systems made of agglomerated, artificial stone were classified under subheading 6810.99.00, HTSUS, as articles of cement, of concrete or of artificial stone, whether or not reinforced, other articles, other.

In HQ 085410, dated January 4, 1990, we addressed the Additional U.S. Notes to Chapter 68 vis-à-vis the size criteria for tiles and slabs in headings 6802 and 6810, HTSUS. We declined to adopt an absolute standard regarding the dimensions of such articles, in essence deciding to classify such articles on a case-by-case basis. We stated in this regard as follows:

> [W]e agree that the terms of Chapter 68, and indeed the entire tariff schedule, must be considered in *pari materia*, and that all the terms of the schedule must have meaning. However, we are of the opinion that the Additional U.S. Notes apply only to the tariff heading to which the notes, by their terms, refer. Despite your contention to the contrary, the drafters of the HTSUSA clearly manifested their intent to restrict the definitions of the terms "slab" and "tile" by referring to a specific heading in each note. It is our opinion that a rigid, uniform application of a "tile" or "slab" definition throughout the chapter was not, and is not, contemplated by the Nomenclature.
>
> * * * * * * *
>
> [W]e are of the opinion that the term "tiles" does not encompass articles which are so large that they cannot rationally be considered "tiles". It was in this light that we compared the large building components to the "slabs" of heading 6802, and found them to be *ejusdem generis*. We did not, as your letter suggests, purport to make the concept of "slabs" in heading 6802, HTSUSA, "applicable with equal force to the classification of 'artificial stone' articles in HTS 6810". Our intent was simply to illustrate that larger articles are contemplated by the Nomenclature. In terms of heading 6810, those types of articles are properly classified as items "other" than tiles.
>
> * * * * * * *
>
> We did not, nor do we now, intend to specify precise dimensions or surface areas which will define "tiles" and "other" articles for the purposes of heading 6810, HTSUSA, other than those found in the relevant Legal Notes. In our opinion, the principal use of the term "tile(s)" in the stone or similar industries, is in reference to products having sides which measure up to 18 inches. Again, we are not prescribing absolute limits or dimensions in this regard. However, given these general guidelines, it is clear that articles such as the small building components addressed in your original request would be considered a "tile" in the stone trade, and they are classified as such.

We note that the Court of International Trade (in *Blakley Corp. v. United States*, 22 CIT 635, 15 F. Supp. 2d 865 (CIT 1998)) considered the definition of the terms "tile" and "slab" in Additional U.S. Note 1 of Chapter 68, and, in reaching the same conclusion regarding the Additional U.S. Note, gave imprimatur to the conclusions made in HQ 085410.

There is evidence that the instant merchandise will be further worked following importation into various kitchen counter tops, vanities and fireplace surrounds. The articles at issue are of substantial size, approximately 4 feet by 10 feet and presumably weigh a significant amount. We conclude that they cannot, in their condition as imported, be construed to be tile, flagstone or brick or similar articles. The terms tile, flagstone or brick connote articles that can easily be manipulated by hand and arranged, fixed or set in place to collectively comprise a floor, ceiling, wall or structure. The articles at issue, in their condition as imported, are unwieldy and cannot be likened to the articles contemplated within subheading 6810.19.50, HTSUS.

We liken the slabs of agglomerated stone to goods presented in material lengths that must be further worked prior to installation. In such instances, there is no recognizable article and the material length is precluded from classification as a part, even though the material may be dedicated for making the individual articles. *Avins Industrial Products Co. v. United States*, 515 F.2d 782 (CCPA 1975). In HQ 955346, dated February 9, 1994, which concerned the classification of coils of stainless steel curved wire designed for the manufacture of piston rings for automobile engines, we stated that:

> [u]nder a longstanding Customs principle, goods which are material when entered are not classifiable as a particular article unfinished. See *Sandvik Steel, Inc. v. U.S.*, 321 F.Supp. 1031, 66 Cust. Ct. 12, C.D. 4161 (1971) (shoe die knife steel in coils and cutting rules in lengths, without demarcations for cutting or bending, held to be material rather than unfinished knives or cutting blades); *The Harding Co. v. U.S.*, 23 Cust. Ct. 250 (1936) (rolls of brake lining held to be material because the identity of the brake lining was not fixed with certainty*); Naftone, Inc. v. U.S.*, 67 Cust. Ct. 340, C.D. 4294 (1971) (rolls of plastic film without demarcations for cutting despite having only one use held to be insulating material). See also HQ 952938, dated August 4, 1993, and HQ 084610, dated May 17, 1990.

Therefore, at GRI 6, the instant slabs of agglomerated stone are considered to be goods imported in material form. They are not similar to tiles, flagstones or bricks, but rather are other articles of artificial stone.

Holding:

Under the authority of GRI 6, the agglomerated quartz sheets are classified under subheading 6810.99.00, HTSUS, which provides for other articles of artificial stone.

Effect on Other Rulings:

NY F89439 is revoked.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 965585 AML
Category: Classification
Tariff No. 6810.99.00

MR. PAUL MEYER
NIK AND ASSOCIATES
800 South Hindry Avenue
Unit A
Inglewood, CA 90301

Re: "Silestone" agglomerated stone slabs; NY F82849 modified.

DEAR MR. MEYER:

This is in regard to New York Ruling Letter (NY) F82849, dated June 8, 2000, issued to you on behalf of European Natural Stone Co., concerning the classification of various "Silestone" articles which were classified as agglomerated stone slabs and tiles and agglomerated glass slabs and tiles. In NY F82849, agglomerated stone slab, among other articles not relevant to this decision, were classified under subheading 6810.19.50, Harmonized Tariff Schedule of the United States (HTSUS), which provides for articles of * * * artificial stone * * * tiles, flagstones, bricks and similar articles: other: other. We have reviewed NY F82849 and determined that its conclusion concerning agglomerated stone slab is incorrect. This ruling sets forth the correct classification of the agglomerated stone slab.

Facts:

NY F82849 set forth the facts under consideration, in pertinent part, as follows:

> The subject article, which is identified as "Silestone", is a slab or tile that is composed of natural stone agglomerated with plastics resin or glass agglomerated with plastics resin. An analysis of a few illustrative samples by our Customs laboratory was not inconsistent with [that] description.
>
> When the product is an agglomerated stone slab, the applicable subheading will be 6810.19.50, HTSUS, which provides for articles of stone, whether or not reinforced: tiles, flagstones, bricks and similar articles: other: other.

Issue:

Whether the agglomerated stone slabs at issue are classifiable as articles of cement, of concrete or of artificial stone, whether or not reinforced: tiles, flagstones, bricks and similar articles: other: floor and wall tiles: of stone agglomerated with binders other than cement: under subheading 6810.19.50, HTSUS, or as other articles of artificial stone under subheading 6810.99.00, HTSUS?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. GRI 6 provides that for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, by appropriate substitution of terms, to GRIs 1 through 5, on the understanding that only subheadings at the same level are comparable.

The HTSUS provisions under consideration are as follows:

6810	Articles of cement, of concrete or of artificial stone, whether or not reinforced:
	Tiles, flagstones, bricks and similar articles:
6810.19	Other:
	Floor and wall tiles:
6810.19.12	Of stone agglomerated with binders other than cement:
6810.19.50	Other.
	Other articles:
6810.99.00	Other.

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. Customs believes the ENs should always be consulted. See T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The agglomerated stone slabs are *prima facie* classifiable in Chapter 68, which provides for, *inter alia*, stone, plaster, cement, asbestos, mica or similar materials. The General ENs to Chapter 68 provide, in pertinent part, as follows:

> Some of the goods [included in Chapter 68] may be agglomerated by means of binders, contain fillers, be reinforced, or in the case of products such as abrasives or mica be put up on a backing or support of textile material, paper, paperboard or other materials.
>
> Most of these products and finished articles are obtained by operations (*e.g.*, shaping, moulding), which alter the form rather than the nature of the constituent material. Some are obtained by agglomeration (*e.g.*, articles of asphalt, or certain goods such as grinding wheels which are agglomerated by vitrification of the binding material); others may have been hardened in autoclaves (sand-lime bricks). The Chapter also includes certain goods obtained by processes involving a more radical transformation of the original raw material (*e.g.*, fusion to produce slag wool, fused basalt, etc.).

Within Chapter 68, heading 6810, HTSUS, provides for, among other things, articles of artificial stone. Additional U.S. Note 2 to Chapter 68, HTSUS, states that "for the purposes of heading 6810, the term "tiles" does not include any article 3.2 cm or more in thickness."

The ENs to heading 6810 provide, in pertinent part, as follows:

> Artificial stone is an imitation of natural stone obtained by agglomerating pieces of natural stone or crushed or powdered natural stone (limestone, marble, granite, porphyry, serpentine, etc.) with lime or cement or other binders (*e.g.*, plastics). Articles of artificial stone include those of "terrazzo", "granito", etc.

At issue is whether the articles in question should be considered to be raw materials that will be further worked following importation that cannot be considered to be tiles, bricks, flagstones, etc. as described by subheading 6810.19.50, HTSUS. Therefore, in accordance with GRI 6 above, we must determine whether the articles are similar to tiles, flagstones and bricks, classifiable in the first subprovision of heading 6810, HTSUS, or as other articles in the basket provision at the same level.

In Headquarters Ruling Letter 084608, dated August 24, 1989, in determining the classification of, among other things, agglomerated stone counter tops, we consulted various sources concerning the meaning of the terms "tiles" and "flagstones". (A tariff term that is not defined in the HTSUS or in the ENs is construed in accordance with its common and

commercial meaning. *Nippon Kogaku (USA) Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). See also *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982) and *Hasbro Industries, Inc. v. U.S.*, 703 F. Supp. 941 (CIT 1988), aff'd, 879 F.2d 838 (1989)) We concluded in HQ 084608 that counter tops and channel systems made of agglomerated, artificial stone were classified under subheading 6810.99.00, HTSUS, as articles of cement, of concrete or of artificial stone, whether or not reinforced, other articles, other.

In HQ 085410, dated January 4, 1990, we addressed the Additional U.S. Notes to Chapter 68 vis-à-vis the size criteria for tiles and slabs in headings 6802 and 6810, HTSUS. We declined to adopt an absolute standard regarding the dimensions of such articles, in essence deciding to classify such articles on a case-by-case basis. We stated in this regard as follows:

> [W]e agree that the terms of Chapter 68, and indeed the entire tariff schedule, must be considered in *pari materia*, and that all the terms of the schedule must have meaning. However, we are of the opinion that the Additional U.S. Notes apply only to the tariff heading to which the notes, by their terms, refer. Despite your contention to the contrary, the drafters of the HTSUSA clearly manifested their intent to restrict the definitions of the terms "slab" and "tile" by referring to a specific heading in each note. It is our opinion that a rigid, uniform application of a "tile" or "slab" definition throughout the chapter was not, and is not, contemplated by the Nomenclature.
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> * * * * * * *
>
> [W]e are of the opinion that the term "tiles" does not encompass articles which are so large that they cannot rationally be considered "tiles". It was in this light that we compared the large building components to the "slabs" of heading 6802, and found them to be *ejusdem generis*. We did not, as your letter suggests, purport to make the concept of "slabs" in heading 6802, HTSUSA, "applicable with equal force to the classification of 'artificial stone' articles in HTS 6810". Our intent was simply to illustrate that larger articles are contemplated by the Nomenclature. In terms of heading 6810, those types of articles are properly classified as items "other" than tiles.
>
> * * * * * * *
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> We did not, nor do we now, intend to specify precise dimensions or surface areas which will define "tiles" and "other" articles for the purposes of heading 6810, HTSUSA, other than those found in the relevant Legal Notes. In our opinion, the principal use of the term "tile(s)" in the stone or similar industries, is in reference to products having sides which measure up to 18 inches. Again, we are not prescribing absolute limits or dimensions in this regard. However, given these general guidelines, it is clear that articles such as the small building components addressed in your original request would be considered a "tile" in the stone trade, and they are classified as such.

We note that the Court of International Trade (in *Blakley Corp. v. United States*, 22 CIT 635, 15 F. Supp. 2d 865 (CIT 1998)) considered the definition of the terms "tile" and "slab" in Additional U.S. Note 1 of Chapter 68, and, in reaching the same conclusion regarding the Additional U.S. Note, gave imprimatur to the conclusions made in HQ 085410.

There is evidence that the instant merchandise will be further worked following importation into various kitchen counter tops, vanities and fireplace surrounds. The articles at issue are of substantial size, approximately 4 feet by 10 feet and presumably weigh a significant amount. We conclude that they cannot, in their condition as imported, be construed to be tile, flagstone or brick or similar articles. The terms tile, flagstone or brick connote articles that can easily be manipulated by hand and arranged, fixed or set in place to collectively comprise a floor, ceiling, wall or structure. The articles at issue, in their condition as imported, are unwieldy and cannot be likened to the articles contemplated within subheading 6810.19.50, HTSUS.

We liken the slabs of agglomerated stone to goods presented in material lengths that must be further worked prior to installation. In such instances, there is no recognizable article and the material length is precluded from classification as a part, even though the material may be dedicated for making the individual articles. *Avins Industrial Products Co. v. United States*, 515 F.2d 782 (CCPA 1975). In HQ 955346, dated February 9, 1994, which concerned the classification of coils of stainless steel curved wire designed for the manufacture of piston rings for automobile engines, we stated that:

> [u]nder a longstanding Customs principle, goods which are material when entered are not classifiable as a particular article unfinished. See *Sandvik Steel, Inc. v. U.S.*, 321 F.Supp. 1031, 66 Cust. Ct. 12, C.D. 4161 (1971) (shoe die knife steel in coils and cutting rules in lengths, without demarcations for cutting or bending, held to be material rather than unfinished knives or cutting blades); *The Harding Co. v. U.S.*, 23

Cust. Ct. 250 (1936) (rolls of brake lining held to be material because the identity of the brake lining was not fixed with certainty*); Naftone, Inc. v. U.S.*, 67 Cust. Ct. 340, C.D. 4294 (1971) (rolls of plastic film without demarcations for cutting despite having only one use held to be insulating material). See also HQ 952938, dated August 4, 1993, and HQ 084610, dated May 17, 1990.

Therefore, at GRI 6, the instant slabs of agglomerated stone are considered to be goods imported in material form. They are not similar to tiles, flagstones or bricks, but rather are other articles of artificial stone.

Holding:

Under the authority of GRI 6, the agglomerated quartz slabs are classified under subheading 6810.99.00, HTSUS, which provides for other articles of artificial stone.

Effect on Other Rulings:

NY F82849 is modified.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE COUNTRY OF ORIGIN MARKING REQUIREMENTS APPLICABLE TO SCREWDRIVER AND DRILL BITS

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Notice of proposed modification of ruling letter and revocation of treatment relating to the country of origin of screwdriver and drill bits for marking purposes.

SUMMARY: 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 modify a ruling pertaining to the country of origin marking requirements applicable to screwdriver and drill bits and revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before August 23, 2002.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kristen K. Ver Steeg, Special Classification and Marking Branch, (202) 927–2327.

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 modify a ruling letter pertaining to the country of origin marking requirements applicable to screwdriver bits imported into the United States. Although in this notice Customs is specifically referring to New York Ruling NYF8648, dated December 13, 1999, 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 the one 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 NY F8648, Customs considered drill or screwdriver bits imported in plastic bags, each of which contained 25 identical bits. In that case, Customs held that the imported articles were exempt from individual marking pursuant to 19 CFR 134.32(e), as articles that could not be marked prior to shipment except at an expense economically prohibitive of their importation and held that marking both the plastic bag and the outermost container with the phrase "Made in Taiwan" was acceptable for purposes of 19 U.S.C. 1304. NY F80648 is set forth as Attachment A to this document.

Upon reconsideration, we find that the position taken by Customs in F80648, *supra,* regarding the country of origin marking requirements applicable to the imported articles was erroneous. As a result of further review, it is our determination that the imported drill and driver bits that are subsequently repackaged in the United States are subject to special marking requirements, and that the waiver of these requirements was improper.

Accordingly, Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to modify F80648, and any other ruling not specifically identified, to reflect this position, pursuant to the analysis set forth in proposed Headquarters Ruling 561693, which is 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 similar transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: July 3, 2002.

MYLES. B. HARMON,
Acting Director,
Commercial Rulings Division.

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, December 13, 1999.

CLA–2–82:RR:NC:1: 115 F80648
Category: Classification
Tariff No. 8207.90.7585

MR. CHRISTOPHER GARCIA
KUEHNE & NAGEL
8870 Boggy Creek Rd. Suite 100
Orlando, FL 32824

Re: The tariff classification of Screwdriver and Drill Bits from Taiwan.

DEAR MR. GARCIA:

In your letter dated December 6, 1999 you requested a tariff classification ruling and a marking ruling on behalf of your client Qualtool Inc.

The sample submitted is a sealed plastic bag that holds 25 drill or screwdriver bits that are *a*pproximately 3 inches in length each. The bag is marked Made in Taiwan R.O.C. in a contrasting color and is legible.

The applicable subheading for the Drill and Screwdriver Bits will be 8207.90.7585, Harmonized Tariff Schedule of the United States (HTS), which provides for Interchangeable tools for handtools, whether or not power-operated, or for machine-tools (for example. For pressing, stamping, punching tapping, threading, drilling, boring, broaching, milling, turning or screwdriving); base metal parts thereof: Other: Other: Other: The rate of duty will be 3.7% ad valorem.

Please note the rate of duty will be the same in 2000.

In your inquiry you request a marking waiver on the individual bits as being economically prohibitive. The bits are sold for 14 cents a piece and die-stamping would be next to impossible. Under Part 134 of the Customs Regulations "Country Of Origin" unless excepted by law, Section 304, Tariff Act of 1930, as amended, requires that every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly. Indelibly, and permanently as the nature of the article (or container) will permit, in such manner as to indicate to an ultimate purchaser in the United States the English name of of the country of origin of the article, at the time of importation into the customs territory of the United States. Containers of articles excepted from marking shall be marked with the name of the country of origin of the article unless the container is also excepted from marking.

Section 134.32 of the Customs Regulations Subpart D allows for general exceptions to marking requirements and the article states that Articles that cannot be marked prior to shipment to the United States except at an expense economically prohibitive of its importation. Conditions described in your letter would allow the waiver of marking for each bit. However the outermost cartons as well as the hermetically sealed bags must be marked "Made in Taiwan".

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 Melvyn Birnbaum at 212–637–7017.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

MAR 2–05 RR:CR:SM 561693 KKV
Category: Marking
MS. JOAN STANDLEE

QUALTOOL, INC.
28415 Lake Industrial Blvd.
Tavares, FL 32778

Re: Modification of NY F80648 concerning the country of origin marking requirements applicable to imported screwdriver/drill bits repackaged in the U.S.; T.D. 74–122; T.D. 82–214; 134.32(c); economically prohibitive; exception not justification for permanent non-compliance.

DEAR MS. STANDLEE:

This is in response to your letter dated January 13, 2000 (and subsequent sample submission by letter dated January 25, 2002), submitted in conjunction with the reconsideration of New York ruling F80648, dated December 3, 1999, issued to a broker on your behalf, which addressed both the tariff classification and country of origin marking requirements applicable to imported screwdriver and drill bits from Taiwan. We regret the delay in responding.

Facts:

The record before us indicates that Qualtool, Inc. is a manufacturer of fastening tools that also imports screwdriver and drill bits to complete their product line. In a letter dated June 4, 1996, which was forwarded to the National Commodity Specialist Division, New York, for response, Qualtool requested a ruling regarding the country of origin marking requirements applicable to imported screwdriver bits. In response, the New York office issued NY A85558, dated July 19, 1996, which set forth both the general marking requirements and exceptions to the marking statute (19 U.S.C. 1304). With the exception of the phrase "screwdriver bits," the issued ruling contains no description of the merchandise or its dimensions, nor does the ruling set forth the manner in which the screwdriver bits are sold. However, based upon the information provided in the ruling request, Customs stated that "[i]n your particular instance, subsection (d) applies which provides for the exception to the marking requirements for articles for which the marking of the containers will reasonable indicate the origin of the articles."

Some time later, in a letter dated December 6, 1999, addressed to Customs New York office, Qualtool requested a binding classification ruling with regard to a prospective shipment of drill and screwdriver bits to be imported from Taiwan. A waiver of the country of origin marking was also requested with regard to the shipment, pursuant to 19 CFR 134.32(c), on the grounds that marking the shipment prior to importation was economically prohibitive. Customs was informed that both the bags and the outermost cartons would be marked "Made in Taiwan" and that the bits would be sold to distributors in the sealed, marked bags. Based upon the facts presented, Customs New York office issued F80648, dated December 13, 1999, holding that the shipment of screwdriver and drill bits were classifiable in subheading 8207.90.7585, Harmonized Tariff Schedule of the United States (HTSUS), and granted a marking waiver for the shipment.

Shortly after the issuance of NY F80648, *supra*, the tariff classification provided therein was called into question, although it is not clear from the written record before us whether Customs or Qualtool initiated the reconsideration. However, in a letter from its broker dated January 13, 2000, Qualtool submitted a new sample, stating that Customs previous ruling had "apparently misclassified the bits" and also requested that the information regarding the marking waiver previously granted be included in the Customs response. Additional information in support of the marking waiver was submitted in a letter dated February 17, 2000. The new sample and supporting documentation were forwarded to the Office of Regulations and Rulings, Customs Headquarters, for response.

Upon review of the decision in NY F80648, *supra*, Customs determined that the tariff classification provided therein was incorrect and issued Headquarters Letter Ruling (HRL) 963763, dated May 15, 2001, which modified that portion of NY F80648 pertaining to tariff classification, holding that the merchandise at issue was properly classifiable un-

der subheading 8207.90.60, HTSUS. The country of origin marking issue is the subject of this separate response.

With regard to NY F80638, we note that the merchandise under consideration in that ruling was described as "drill or screwdriver bits that are approximately 3 inches in length." Inasmuch as the request for reconsideration was accompanied by hex shank insert bits measuring only one inch in length, we requested and received a second sample—a star (six point) hex shank power bit, measuring 2¾ inches in length—which Qualtool submits as representative of the merchandise at issue in NY F80648. At the shank end, the power bit is die-stamped with the part number "64–T8."

Issue:

What are the country of origin marking requirements applicable to the imported drill and driver bits?

Law and Analysis:

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304) provides that, unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. 1304 was "that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will." *United States v. Friedlaender & Co. Inc*., 27 CCPA 297, 302, C.A.D. 104 (1940). Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

The marking of imported drill and/or screwdriver bits has been addressed by Customs at great length. Section 134.42, Customs Regulations (19 CFR 134.42), provides that the marking of certain articles shall be by specific methods as may be prescribed by the Commissioner of Customs. Pursuant to this authority, Customs issued Treasury Decision (T.D.) 74–122, 39 Fed. Reg. 13538 (April 15, 1974) and T.D. 84–214, 49 Fed.Reg. 40802 (October 18, 1984), both of which impose special marking requirements for imported rotary metal cutting tools.

In T.D. 74–122, *supra*, Customs established that rotary metal cutting tools (*i.e*., tools for hand tools or machine tools which are designed to be fitted to such tools and which cannot be used independently and include tools for pressing, stamping, drilling, tapping, threading, boring, broaching, milling, cutting, dressing, mortising or screw-driving of the kind classified in items 649.43, 649.44 and 649.46, Tariff Schedules of the United States) must be marked by means of die stamping in a contrasting color, raised lettering, engraving, or some other method of producing a legible, conspicuous and permanent mark to clearly indicate the country of origin to the ultimate purchaser in the United States. Specifically excluded from methods of acceptable marking were ink stamping, tagging with adhesive labels or any other impermanent form of marking which could be smudged, blurred or otherwise easily obliterated or removed. However, imported rotary metal cutting tools could be excepted from individual marking if they would reach the ultimate purchaser in the U.S. in individual tubes or containers which were legibly, conspicuously and permanently marked to indicate the country of origin of the tools therein.

Subsequent to the issuance of T.D. 74–122, two trade associations representing the domestic rotary metal cutting tool industry requested that Customs change its practice in regard to this commodity because of alleged abuses of the exemption allowing tools to be unmarked if they were sold in marked containers. It was claimed that such tools were often removed from their containers before reaching the ultimate purchaser in the U.S.

After reviewing domestic industry's petition, the public comments received in response to the proposed change of practice and the available evidence, Customs concluded that the exception created in T.D. 74–122 to individual tool marking was being abused. To correct this problem, Customs issued T.D. 84–214, *supra*, which reaffirmed the manner of marking of rotary cutting tools set (die-stamping in contrasting color, raised lettering, engraving, etc.), but modified the exception provided by T.D. 74–122, stating:

> Rotary metal cutting tools may not be excepted from individual country of origin marking merely because they are imported in individual tubes or containers that are

marked *unless* it can be shown to the satisfaction of Customs officers at the port of entry that the containers are of a kind that are virtually certain to reach ultimate purchasers unopened, *i.e.*, twist drill sets imported in sealed index storage boxes or in retail blister packs which are designed for retail marketing and in which the majority of twist drills in the set are incapable of being individually marked.

Rotary metal cutting tools imported in individual tubes or containers of cardboard or plastic must be individually marked in accordance with T.D. 74–122 notwithstanding that the container is marked.

Further, T.D. 84–214 reaffirmed that, in accordance with ORR 639–69, dated January 2, 1970, twist drills having a diameter *less than* three sixteenths (3/16) of an inch shall be considered incapable of being marked. When these drills are imported in bulk, the containers shall be marked and the importer shall be subject to the certification requirements of 19 CFR 134.25, Custom Regulations (19 CFR 134.25).

With regard to the subject merchandise, a star (six point) hex shank power bit, measuring 2¾ inches in length, we note that the shank end has a diameter of four sixteenths (4/16) of an inch. Therefore, the bits are not deemed incapable of being marked—indeed, we note that the model number "64–T8" is already clearly die-stamped into one side. Moreover, the bits are not imported in sealed storage boxes or retail blister packs designed for retail marketing, but are, instead, imported in bulk in plastic bags. Once imported, the bits are sold to wholesale distributors such as Black & Decker, Vermont American and Skil-Bosch, who re-package the bits for retail sellers Home Depot, Sears, *etc.* Alternately the bits may be sold loose, from "fishbowl" displays also sold by Qualtool. Therefore, upon entry into the U.S., the bits must be individually marked with their country of origin by die-stamping in contrasting color, raised lettering, engraving, *etc.*, in accordance with the principles set forth in T.D. 74–122 and T.D. 84–214. *See* HRL 731363, dated January 1, 1989, "[r]otary metal cutting tools of greater than 3/16″ diameter, imported in an insubstantial container or in bulk, must be individually marked to show country of origin notwithstanding the fact that they are or will be packaged in a container showing the origin of the tool." *See also* 731938, dated January 9, 1989. And HRL 560978, dated July 24, 1998, where Customs held that screwdriver bits die-stamped with "Czech Republic" or "Czech Rep" satisfies the special marking requirements. Additionally, in light of the fact that Customs is now informed that the bits will be subsequently repackaged in the U.S., the required certifications of 19 CFR 134.26 must be executed at the time of importation.

Holding:

Drill and driver bits measuring greater than 3/16″ in diameter which are imported in bulk in plastic bags and subsequently re-packaged in the U.S. must be individually marked with their country of origin at the time of importation, by die-stamping in contrasting color, raised lettering, engraving, etc., in accordance with the principles set forth in T.D. 74–122 and T.D. 84–214, pursuant to 19 U.S.C. 1304 and 19 CFR 134.42. Accordingly, NY F80648 is hereby modified.

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

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF MULTIFUNCTIONAL DIGITAL OFFICE MACHINES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letters, and treatment relating to tariff classification of multifunctional digital office machines.

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 seven ruling letters pertaining to the tariff classification of multifunctional digital office machines under the Harmonized Tariff Schedule of the United States ("HTSUS"). Customs also 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 August 23, 2002.

ADDRESS: Written comments are to be addressed to the U.S. Customs Service, 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 Service, 799 9th Street, NW, Washington, D.C during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Tom Peter Beris, General Classification Branch, (202) 572–8789.

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 re-

quirements. 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, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke New York Ruling Letters (NY) 892321; F80927; E81729; E80322; E82212; E80009; and D87961 pertaining to the tariff classification of certain multifunctional digital office machines. Although in this notice Customs is specifically referring to these seven rulings, 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 the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), 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. 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 its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY 892321, dated December 8, 1993; NY D87961, dated February 25, 1999, NY E80009, dated April 1, 1999; NY E80322, dated April 9, 1999; NY E81729, dated May 12, 1999; NY E82212, dated May 18, 1999; and NY F80927, dated December 27, 1999, set forth as Attachments A through G, respectively, to this document, Customs classified multifunctional digital office machines as either photocopying apparatus or units of automatic data processing ("ADP") systems, even though it was indicated that these machines printed via digital technology and were not readily connectable to ADP machines at the time of their importation.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke these seven rulings 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 HQ 965527; HQ 965636; HQ 965679; HQ

965680; HQ 965681; HQ 965682; and HQ 965697 (*see* Attachments H through N, respectively, to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: July 3, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, December 8, 1993.

CLA–2–90:S:N:N1:110 892321
Category: Classification
Tariff No. 9009.12.0000

RICOH CORPORATION
5 Dedrick Place
West Caldwell, NJ 07006

Re: The tariff classification of a multi-functional fax/copier/printer from Japan.

DEAR MR. VALDES:

In your letter dated November 19, 1993, yqu requested a tariff classification ruling. The merchandise under consideration involves a Ricoh MV715 multi-functional fax/copier/printer. The MV715 incorporates the functions of a high speed laser fax hub, and digital photocopying apparatus, with an optional PC printer interface. In facsimile mode, the Ricoh MV715 fax/copier/printer is designed as a laser hub for fax networks, and other applications. Its high speed modem transmits documents to other 14.4 kilobytes per second machines, in six seconds per letter-size page, over regular telephone Lines. Its 500 sheet paper capacity is supplied by two cassettes holding 250 sheets each accommodating various sizes of paper. The MV715 fax/copier/printer permits users to scan documents into memory while the unit is printing, receiving, or sending documents from memory.

In copy mode, the Ricoh MV715 fax/copier/printer operates as an electrostatic photocopying machine by reproducing the original image via an intermediate onto the copy (indirect process), producing 15 copies per minute at 400 by 400 dots-per-inch resolution. It provides many digital capabilities as standard features, including reduction and enlargement with increments of 25 to 400 percent, directional magnification and series copying.

The Ricoh Mv7l5 fax/copier/printer meets the definition of a "composite" machine as defined in Legal Note 3 of Section XVI of the HTS, since this machine is capable of performing two or more complementary functions such as faxing, copying or printing. Since this machine does not appear to have a principal function, it should be classified under the heading which occurs last in numerical order among those which equally merit consideration as noted in GRI of the HTS.

The applicable subheading for the Ricoh MV715 fax/copier/printer will be 9009.12.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for electrostatic photocopying apparatus which operates by reproducing the original image via an intermediate onto the copy (indirect process). The rate of duty will be 3.7 percent ad valorem.

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

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

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, February 25, 1999.

CLA–2–84:RR:NC:1:110 D87961
Category: Classification
Tariff No. 8471.60.6100

MR. FUSAE NARA
WINTHROP, STIMSON, PUTNAM & ROBERTS
One Battery Park Plaza
New York, NY 10004–1490

Re: The tariff classification of multifunctional digital copier/printers from Japan.

DEAR MR. NARA:

In your letter dated February 12, 1999, on behalf of Sharp Electronics Corporation, you requested a tariff classification ruling.

The merchandise under consideration involves the models AR–5132 and AR–335 digital copier/printers which incorporate a laser printer engine. Both models are designed to be used as output units in an automatic data processing (ADP) machine environment, in addition to functioning as a copier.

When an optional controller board is attached, the AR–5132 and the AR–335 function as a printer. Documents can be printed from a personal computer directly connected to the parallel port of either model or from personal computers connected to model AR–5132 or model AR–335 by means of a local area network (LAN).

The AR–5132 features 400 dots per inch (dpi) resolution and is capable of printing more than 20 pages per minute when printing on standard letter size paper. The resolution of the AR–335 is 600 dpi. It is also capable of printing more than 20 pages of standard letter size paper per minute.

The AR–5132 and AR–335 multifunctional digital copier/printers also function as digital copiers. When used as copiers, the merchandise produces black and white copies with 256 levels of gradation. The digital copier incorporates a scanning mechanism that reads the document to be copied, which is converted into digital signals, which are then fed to the internal printer memory. A copy of the document is then printed from the internal printer memory by using the laser print mechanism. Thus when the subject multifunction equipment is used as a digital copier, the system uses the same laser printer engine that is used for printing documents when the product is used as a printer.

The AR–5132 and AR–335 meet the definition of a "composite good" (printer, copier) made up of different components which are described in different provisions of the HTS. Although these two models of digital copier/printers may be used as digital copiers, they appear to be principally used as digital printers for ADP network systems. The digital copying function is a subsidiary function which also utilizes the product's laser printing components. Noting GRI–3(b), the "essential character" of these digital copier/printers appears to be as network printers. These machines are also similar to the multifunctional copier/printers devices which are noted in NY Ruling Letters D85157, NY D80821, and NY D80267.

The applicable subheading for the model AR–5132 and AR–335 multifunctional digital copier/printers will be 8471.60.6100, Harmonized Tariff Schedule of the United States (HTS), which provides for other laser printer units capable of producing more than 20 pages per minute. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Art Brodbeck at 212–637–7019.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, April 1, 1999.

CLA–2–84:RR:NC:1:110 E80009
Category: Classification
Tariff No. 8471.60.5200

MR. R. BRIAN BURKE
RODE & QUALEY
ATTORNEYS AT LAW
295 Madison Avenue
New York, NY 10017

Re: The tariff classification of a Model 7410 digital printer/copier/fax from Japan.

DEAR MR. BURKE:

In your letter dated March 30, 1999, on behalf of Konica Business Technologies, Inc., you requested a tariff classification ruling.

The merchandise under consideration involves a Konica model 7410 that is basically a combination digital printer/copier/fax machine. This multifunctional machine is designed to meet the needs of a small workgroup or a home based business, and features a powerful 600 x 600 dpi, and a 12 pages per minute digital laser print engine.

The digital laser print engine of this model 7410 is used both for printing input from the ADP system as well as input from the scanner. The machine is Macintosh compatible through a third party device, and the optional GDI Windows printing configuration allows printing from any Windows application. It can also be networked through an optional Ethernet print server. The 7410 features several different printing options, including PCL5e, PCL 5e Postscript Level 2 Compatibility and GDI Interfaces, that support a wide range of applications.

The 7410 also functions as a stand-alone copier at the rate of 12 copies per minute through the 30-page automatic document feeder on 8.5″ x 11″ plain paper. The 7410 also copies at a rate of 10 copies per minute from the platen.

It is also a high quality plain paper fax machine, since it incorporates a 14.4 modem, 300 x 300 print resolution, that runs at 6 second transmission speed. It allows you to fax direct from the 7410 or your PC in normal, fine or super fine resolutions.

Although this multifunctional machine has three functions, it appears to be principally used as an ADP printer noting the machines network capability, high print speed and powerful 600 x 600 DPI resolution. The printing module of this machine is also used for both the ADP output as well as the copying and fax function. Noting in part Legal Note 5 (B) to Chapter 84 of the HTS, and GRI–3 (b), this "composite good" appears to have the "essential character" of a digital ADP printer. Please note also HQ ruling letter 958348 and NY ruling letter D88682 for similar merchandise.

The applicable subheading for the Konica model 7410 digital printer/fax/copier will be 8471.60.5200, Harmonized Tariff Schedule of the United States (HTS), which provides for other laser printers incorporating at least the media transport, control and print mechanisms. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Art Brodbeck at 212–637–7019.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, April 9, 1999.

CLA–2–84:RR:NC:1:110 E80322
Category: Classification
Tariff No. 8471.60.5100

MR. RAYMOND A. VALDES
RICOH CORPORATION
Five Dedrick Place
West Caldwell, NJ 07006

Re: The tariff classification of multifunctional printer/copier/fax units from Japan.

DEAR MR. VALDES:

In your letter dated April 2, 1999, you requested a tariff classification ruling.

The merchandise under consideration involves five models of multifunctional printer/copier/fax units, which are known as the "Ricoh Aficio" 340, 350, 450, 550 and 650 (Aficios). These machines are multifunctional imaging devices, which perform printing, copying, scanning, and facsimile functions, and can be connected to an automatic data processing (ADP) system via optional printer controllers.

The "Ricoh Aficio" 340, 350, 450, 550, and 650 are similar to the "Ricoh Aficio" 200, 250 and 401, which was the subject NY Ruling D82304. All the machines are multifunctional imaging apparatus that perform printing, copying, scanning and facsimile functions, and are designed to be used as output units for laser printing. With the optional print controllers, each model in the "Aficio" series is capable of operating in a Local Area Network or client/server workgroup environment with printer server.

Ricoh Corporation also imports these models for use by their Savin and Gestetner Corporation subsidiaries under different model designations as follows:

Savin: 9935D for Aficio 340; 9935DP for Aficio 350; 9945DP for Aficio 450; 9955DP for Aficio 550 and 9965DP for Aficio 650

Gestetner: 3235s for Aficio 340; 3235 for Aficio 350; 3245 for Aficio 450; 3255 for Aficio 550 and 3265 for Aficio 650

The Aficios produce digital black and white output at 600 x 600 dots per inch (dpi), with 65 graduations per dot. The Aficios 340/350 each print 35 ppm; the 450, 45 ppm; the 550, 55 ppm; and the 650, 65 ppm. Each employs laser print engines (electrographic process), and utilize PCL 6 with Post Script 3 (option upgrade), and can be upgraded to include up to 72 MB of internal printer memory. The Aficios all have automatic paper feeders, and paper capacity from 3, 100 to 3, 500 sheets, with capability of printing on various paper sizes with maximum output size of 11″ x 17″.

These machines are capable of performing printing, copying, and facsimile functions, and are in one common housing. They all meet the definition of a composite good made up of different components, which are described under different provisions of the HTS. Noting GRI–3(b) to the HTS, these composite goods would thus be classified as if they consisted of the material or component, which gives them their "essential character". Noting their high print speed and the fact that these units are the most efficient as networked printers, they would appear to have an "essential character" of a networked automatic data processing machine document printer.

These models are also similar to the other multifunctional printer/copier/fax machines, which were the subject of NY Ruling Letters D82304 and NY C83939. These models also

meet the definition of a "unit" of an ADP system, as per Legal Note 5(B) to Chapter 84 of the HTS.

The applicable subheading for the "Ricoh Aficio" 340, 350, 450, 550 and 650 as well as the "Savin" comparable models, namely 9935D. 9935DP, 9945DP, 9955DP and 9965DP and "Gestetner" comparable units, namely 3235s, 3235, 3245, 3255 and 3265 will be 8471.60.5100, Harmonized Tariff Schedule of the United States (HTS), which provides for laser printer units, capable of producing more than 20 pages per minute. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Art Brodbeck at 212–637–7019.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, May 12, 1999.

CLA–2–84:RR:NC:1:110 E81729
Category: Classification
Tariff No. 8471.60.5100

MR. RAYMOND A. VALDES
RICOH CORPORATION
Five Dedrick Place
West Caldwell, NJ 07006

Re: The tariff classification of multifunctional printer/copier/fax units from Japan.

DEAR MR. VALDES:

In your letter dated April 30, 1999, you requested a tariff classification ruling.

The merchandise under consideration involves two models of multifunctional printer/copier/fax units that are known as the "Ricoh Aficios" 355 and 455. These machines are multifunctional imaging devices, which perform printing, copying, scanning, and facsimile functions, and can be connected to an automatic data processing (ADP) system via optional printer controllers.

The "Ricoh Aficios" 355 and 455 are similar to the "Ricoh Aficios 340, 350, 450, 550, and 650 which were the subject of NY Ruling E80322. These machines are multifunctional products that offer copier, facsimile, and printer functions, which can operate independently and simultaneously with other functions operating in the background. The multifunction output is interleaved with the copy mode output.

The Ricoh Aficio 355 and 455 are similar to the Aficio 200, 250, and 401, except for some minor updates. These prior Aficio models were the subjects of NY Ruling D82304. All the machines are multifunctional imaging apparatus that perform printing, copying, scanning and facsimile functions, and are specifically designed to be used as output units for laser printing. With optional printer controllers, each model in the Aficio series is capable of operating in a Local Area Network or client/server workgroup environment with printer server.

Ricoh Corporation also imports these models for use by their subsidiary, Savin Corporation, but with different model designations than Ricoh's as follows:

Savin: 2035DP for Ricoh Aficio 355 and 2045DP for Ricoh Aficio 455.

The Aficios produce digital black and white output at 600 x 600 dots per inch (dpi), with 65 graduations per dot. The Aficios 355 and 455 print at 35 pages per minute. Each uses laser print engines (electrographic process), and utilize PCL 6, with Post Script 3 (option

upgrade), and can be upgraded to include up to 72 MB of internal printer memory. The Aficios all have automatic paper feeders, and paper capacity from 3,100 to 3,500 sheets, with a capability of printing on various paper sizes, with maximum output size of 11″ x 17″.

The Aficios 355 and 455 are capable of performing printing, copying, and facsimile functions, and are in one common housing. These machines meet the definition of a "composite good" made up of different components, which are described under different provisions of the HTS. Noting GRI–3(b) of the HTS these "composite goods" would thus be classified as if they consisted of the material or component, which gives them their "essential character". Noting their high print speed and the fact that these units are the most efficient as networked printers, they would appear to have an "essential character" of a networked automatic data processing machine document printer.

These models are also similar to other multifunctional printer/copier/fax machines, which were the subject of NY Ruling Letters E80322 and NY D82304. These models also meet the definition of a "unit" of an ADP system, as per Legal Note 5(B) to Chapter 84 of the HTS.

The applicable subheading for the "Ricoh Aficios" 355 and 455 as well as the "Savin" comparable models, namely 2035DP and 2045DP will be 8471.60.5100, Harmonized Tariff Schedule of the United States (HTS), which provides for laser printer units, capable of producing more than 20 pages per minute. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Art Brodbeck at 212–637–7019.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, May 18, 1999.

CLA–2–84:RR:NC:1:110 E82212
Category: Classification
Tariff No. 8471.60.5100

MR. R. BRIAN BURKE
RODE & QUALEY
295 Madison Avenue
New York, NY 10017

Re: The tariff classification of a multifunctional digital printer/copier from Japan.

DEAR MR. BURKE:

In your letter dated May 13, 1999, on behalf of Konica Business Technologies, Inc., you requested a tariff classification ruling.

The merchandise under consideration involves the "Konica" model 7065 digital printer/copier. This multifunctional digital printer/copier can be interfaced to an automatic data processing (ADP) system through the optional IP–303 print controller.

The "Konica" model 7065 multifunctional digital printer/copier features a powerful digital laser print engine that permits selectable print resolutions from 400 to 600 dots per inch (DPI). This high speed dual beam laser print engine can print up to 65 pages per minute at 400 DPI resolution and more than 55 pages per minute at 600 DPI resolution. The machine can reduce images to 33 % or increase images to 400% of their original size. The machine can be connected to ADP systems through the optional Konica IP–303 print controller. The model 7065 supports all major computer operating systems and protocols such as Windows 3.x, 95 & NT; Macintosh; Unix; as/400; Novell NetWare; IBM LAN Server;

and LAN Manager. The model 7065 can also support AppleTalk (EtherTalk), IPX/SPX, NetBIOS and TCP/IP.

Although the Konica model 7065 can be used as "stand alone" digital copier, its design features allow it to serve as a network printer and workgroup document system for high volume, high productivity office environments. The digital print engine of the machine is used for both printing input from the ADP system as well as input from the scanner.

The "Konica" model 7065 digital printer/copier is a composite good that appears to have the "essential character" of an output printer for ADP systems, noting GRI–3(b). Similar multifunctional printers were the subject of NY Ruling Letters E80008, NY D88835, and NY D85921.

The applicable subheading for the "Konica" model 7065 digital printer/copier will be 8471.60.5100, Harmonized Tariff Schedule of the United States (HTS), which provides for laser printer units, capable of producing more than 20 pages per minute. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Art Brodbeck at 212–637–7019.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT G]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, December 27, 1999.

CLA–2–84:RR:NC:1:110 F80927
Category: Classification
Tariff No. 8471.60.5200

MR. RAYMOND VALDES
RICOH CORPORATION
Five Dedrick Place
West Caldwell, NJ 07006

Re: The tariff classification of multifunctional printer units from Japan.

DEAR MR. VALDES:

In your letter dated December 5, 1999, you requested a tariff classification ruling.

The merchandise under consideration involves a multifunctional printer/copier unit, and a multifunctional printer/copier/fax unit that are known as the "Ricoh 150, and Ricoh 180. These machines are multifunctional digital imaging devices that perform printing, copying, and facsimile functions, and can be connected to an automatic data processing (ADP) system via optional printer controllers.

The Ricoh 150 unit is a multifunctional digital imaging system that performs printing and copying functions, specifically designed to be used as an output unit for laser printing. With optional printer controllers, this model in this Aficio series is capable of operating in a Local Area Network or client/server workgroup environment with printer server.

The Ricoh 150 unit produces digital black and white output at 600 x 600 dots per inch (dpi), with up to 256 graduations per dot. The unit weights 120 pounds and use laser print engines (electrophotographic process). The Aficio 150 prints up to 15 pages per minute. This model utilizes PCL 5e, PCL 6 and Adobe PostScript 3 and can be upgraded to include up to 80 MB of internal printer memory.

The Ricoh Aficio 180 unit is a multifunctional digital imaging system that performs printing, copying and facsimile functions specifically designed to be used to be used as an output unit for laser printing. With optional printer controllers, this model in this Aficio series is capable of operating in a Local Area Network or client/server workgroup environment with printer server.

The Ricoh Aficio 180 units produce digital black and white output at 600 x 600 dots per inch (dpi), with up to 256 graduations per dot. The unit weights 120 pounds and user laser print engines (electrophotographic process). The Aficio 180 prints up to 18 pages per minute. This model utilizes PCL 5e, PCL 6 and Adobe PostScript 3 and can be upgraded to include up to 80 MB of internal memory.

Both units employ automatic paper feeders with a total paper capacity of 1,350 sheets for the Aficio 180 and 350 sheets for the Aficio 150. These units are capable of printing on various paper sizes with a maximum output size of 11 inches by 17 inches.

These machines meet the definition of a composite good made up of different components, which are described under different provisions of the HTS. Noting GRI–3(b) to the HTS, these composite goods would thus be classified as if they consisted of the material or component, which gives them their "essential character". Noting their high print speed and the fact that these units are the most efficient as networked printers, they would appear to have an "essential character" of a networked automatic data processing machine document printer.

These models are also similar to other multifunctional printer units that were the subject of NY Ruling Letters E80322, NY D82304, and NY C83939. These models also meet the definition of a "unit" of an ADP system, as per Legal Note 5(B) to Chapter 84 of the HTS.

The applicable subheading for the Ricoh Aficio 150 and 180 multifunctional digital printer units will be 8471.60.5200, Harmonized Tariff Schedule of the United States (HTS), which provides for other laser printer units. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Art Brodbeck at 212–637–7019.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT H]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR: CR: GC 965527 TPB
Category: Classification
Tariff No. 8472.90.80

MR. RAYMOND VALDES
RICOH CORPORATION
5 Dedrick Place
West Caldwell, NJ 07006

Re: Ricoh MV715 Multi-function Digital Office Machine; Fax, Copier, Optional Printer Interface; NY 892321 Revoked.

DEAR MR. VALDES:

This is in reference to NY 892321, issued to you on December 8, 1993, in response to your letter of November 19, 1993 to the Director, Customs National Commodity Specialist Division, New York, requesting a tariff classification ruling on the Ricoh MV715 multifunction digital office machine under the Harmonized Tariff Schedule of the United States ("HTSUS").

NY 892321 classified the MV715 multi-function digital office machine under subheading 9009.12.00, HTSUS. We have had an opportunity to review this classification, and now believe it to be incorrect for the reasons explained below. This ruling also provides the correct classification for the Ricoh MV715.

Facts:

The product at issue is a multi-function digital office machine, model Ricoh MV715, which combines the functions of a high-speed laser fax hub and digital copying apparatus. In its imported condition, the MV715 functions as a stand alone digital fax/copier. A printer interface is an optional item for the MV715. This would allow the MV715 to function as an ADP laser printer, however, this is not in the machine at time of importation.

In facsimile mode, the Ricoh MV715 fax/copier is designed as a laser hub for fax networks, and other applications. Its high speed modem transmits documents to other 14.4 kilobytes per second ("kbps") machines, in six seconds per letter-size page, over regular telephone lines. The MV715 multifunction digital office machine permits users to scan documents into memory while the unit is printing, receiving or sending documents from memory.

In copying mode, the MV715 has a platen-type digital scanner, which allows it to scan books and other bulky items. Individual documents may also be scanned through the document feeder. It has variable magnification from 25% to 400% in 1% increments and has an output of 15 pages per minute.

The HTSUS provisions under consideration are as follows:

8443	Printing machinery used for printing by means of printing type, blocks, plates, cylinders and other printing components of heading 8442; ink-jet printing machines, other than those of heading 8471; machines for uses ancillary to printing; parts thereof:
8472	Other office machines (for example hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines):
8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunications for carrier-current line systems or for digital line systems * * *
9009	Photocopying apparatus incorporating an optical system or of the contact type and thermocopying apparatus; parts and accessories thereof:

Issue:

What is the classification of the Ricoh MV715 multi-function digital office 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 neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

As imported, the Ricoh MV715 is a multi-function digital office machine that has the capability to transmit and receive faxes via a built in modem and to scan documents and convert them to digital signals, which the MV715 can store in temporary memory. The MV715 can either transmit stored documents via the fax, or print them via the attached laser print engine. The print function, in this case, is a necessary component to both the fax and scanning capabilities of the MV715.

Heading 9009, HTSUS, provides for "photocopying apparatus incorporating an optical system or of the contact type and thermocopying apparatus; parts and accessories thereof." EN 90.09(A) states that an optical system projects an optical image of an original document on to a light sensitive surface, and components for the developing and printing of the image. With this in mind, it is the opinion of Customs that all photo-copying apparatus of heading 9009, whether electrostatic, contact or thermal design, operate by means of exposing (1) a photosensitive material or surface with (2) light that is reflected directly from the object to be copied. This process produces an "optical image" to produce a copy.

An optical image is the optical counterpart of an object, produced by an optical device (as a lens or mirror); the image is formed by the light rays from a light source that traverse an

optical system. The optical image of an object is produced by the light distribution coming from each point of the object at the image plane of an optical system. See *McGraw-Hill Multimedia Encyclopedia of Science and Technology, Version 2.1*. A photocopying apparatus functions by a process which places an optical image, reflected from the object, onto a photosensitive surface.

Multi-function digital machines, or "copiers", incorporate an optical reader, or scanner coupled with an output device to print onto paper that which has been scanned or recorded. An optical reader cannot produce a photo-copy from an optical image. It does not operate by the reflection and exposure of an optical image onto a photosensitive surface. Instead, optical readers operate with a CCD chip to scan and convert individual points of light from an object into a digital data file. Therefore, consideration of heading 9009 is excluded by the terms of the heading.

Note 3 to Section XVI provides that:

> Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted 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.

In this case, the MV715 is a composite machine, which is composed of a fax machine and a digital copier. These two machines are adapted for the purpose of performing two alternative functions (i.e., faxing and copying).

The MV715 cannot be classified under heading 8443, HTSUS, because it does not meet the terms of the heading. It does not print by any of the methods described in that heading, but rather through laser technology. Therefore, the headings under consideration are 8472, HTSUS, which provides for office printers other than those of heading 8443 or 8471; and heading 8517, HTSUS, which provides for facsimile machines. Following Note 3 to Section XVI, HTSUS, this composite machine will be classified by its principal function.

To assist in determining the principal function of a machine, we examine a number of factors, and while no one is determinative, they are indicative of principal function. After conducting independent research (ex., researching web-sites retailing new and used digital machines; examining advertising brochures; etc.), we believe that it is the printing performed by the digital copier that imparts the principal function of this multi-function digital office machine. Therefore, pursuant to Section XVI, Note 3, HTSUS, the MV715 will be classified as if it consisted solely as a digital copier of heading 8472, HTSUS.

The MV715 meets the terms of heading 8472, HTSUS. It is an office machine other than those that are classifiable in earlier headings of chapter 84, or in heading 9009, HTS. Therefore, the Ricoh MV715 is properly classified under 8472.90.80, HTSUS, which provides for office printing machines other than those of heading 8443 or 8471, HTSUS.

Holding:

At GRI 1 the principal function of a multi-function digital office machine that can fax and copy is that of copying. Thus, the proper classification of the multi-function digital office machine is under subheading 8472.90.80, HTSUS, which provides for other office machines0other0printing machines other than those of heading 8443 or 8471.

Effects on Other Rulings:

NY 892321 is revoked.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

[ATTACHMENT I]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR: CR: GC 965636 TPB
Category: Classification
Tariff No. 8472.90.80

MR. FUSAE NARA
WINTHROP, STIMSON, PUTNAM & ROBERTS
One Battery Park Plaza
New York, NY 10004

Re: Sharp Electronics; AR–335; AR–5132; Multi-function Digital Office Machine; Copier; Optional Printer Interface; NY D87961 Revoked.

DEAR MR. NARA:

This is in reference to NY D87961, issued to you on February 25, 1999, in response to your letter of February 12, 1999 to the Director, Customs National Commodity Specialist Division, New York, requesting a tariff classification ruling on the Sharp models AR–335 and AR–5132 multi-function digital office machines under the Harmonized Tariff Schedule of the United States ("HTSUS").

NY D87961 classified the multi-function digital office machines under subheading 8471.60.6100, HTSUS. We have had an opportunity to review this classification, and now believe it to be incorrect for the reasons explained below. This ruling also provides the correct classification for the Sharp AR–335 and AR–5132.

Facts:

The products at issue are multi-function digital office machines, Sharp models AR–335 and AR–5132. They are describe in NY D87961 as follows:

> The merchandise under consideration involves the models AR–5132 and AR–335 digital copier/printers which incorporate a laser printer engine. Both models are designed to be used as output units in an automatic data processing (ADP) machine environment, in addition to functioning as a copier.
>
> When an optional controller board is attached, the AR–5132 and the AR–335 function as a printer. Documents can be printed from a personal computer directly connected to the parallel port of either model or from personal computers connected to model AR–5132 or model AR–335 by means of a local area network (LAN).
>
> The AR–5132 features 400 dots per inch (dpi) resolution and is capable of printing more than 20 pages per minute when printing on standard letter size paper. The resolution of the AR–335 is 600 dpi. It is also capable of printing more than 20 pages of standard letter size paper per minute.
>
> The AR–5132 and AR–335 multifunctional digital copier/printers also function as digital copiers. When used as copiers, the merchandise produces black and white copies with 256 levels of gradation. The digital copier incorporates a scanning mechanism that reads the document to be copied, which is converted into digital signals which are then fed to the internal printer memory. A copy of the document is then printed from the internal printer memory by using the laser print mechanism. Thus when the subject multifunction equipment is used as a digital copier, the system uses the same laser printer engine that is used for printing documents when the product is used as a printer.

* * * * * * *

A printer interface is an optional item for both machines. This interface would allow them to function as ADP laser printers. However, this part is not in the machines at time of importation.

The HTSUS provisions under consideration are as follows:

8443	Printing machinery used for printing by means of printing type, blocks, plates, cylinders and other printing components of heading 8442; ink-jet printing machines, other than those of heading 8471; machines for uses ancillary to printing; parts thereof:
8471	Automatic data processing machines, and units thereof; magnetic or optical readers, machines for transcribing data onto media in coded form and machines for processing such data, not elsewhere specified or included:

8472 Other office machines (for example hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines):

Issue:

What is the classification of the Sharp AR–335 and 5132 multi-function digital office machines?

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 neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

As imported, the AR–335 and AR–5132 are digital imaging systems, which scan documents and store them as digital information in memory. The data is then printed via a connected print engine. Classification of units of ADP machines is governed by the terms of Legal Note 5 to Chapter 84, HTSUS, which provides in relevant part as follows:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being part of an complete system if it meets all the following conditions:
>
> (a) * * *
>
> (b) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.
>
> (C) * * *
>
> (D) Printers, keyboards, X-Y co-ordinate devices and disk storage units which satisfy the conditions of paragraphs (B)(b) and (B)(c) above, are in all cases to be classified as units of heading No. 8471.
>
> (E) * * *

The information provided for the AR–335 and AR–5132 indicate that in order for them to function as ADP printers, an optional controller board is required. Therefore, the machines do not meet the conditions laid out in Note 5(B)(b) to Chapter 84, HTSUS, because they are not connectable to an ADP system at the time of their importation.

Prior to January 1, 2002, these types of machines were classifiable under heading 8443, HTSUS, as printing machines. See HQ 957981, dated July 9, 1997, classifying a four color digital printer under heading 8443; and HQ 959651, also dated July 9, 1997, classifying similar merchandise under heading 8443. However, the terms of that heading have been amended so that digital print machines can no longer be classified under that heading.

Because these digital printers do not meet the terms of note 5(B) to chapter 84, nor do they meet the terms of heading 8443, HTSUS, they are classified under heading 8472, specifically under subheading 8472.90.80, which provides for other office machines, other printing machines, other than those of heading 8443 or 8471.

Holding:

For the reasons stated above, classification of the Sharp models AR–335 and 5132 multifunction digital office machines is under subheading 8472.90.80, HTSUS, which provides for other office machines0other0printing machines other than those of heading 8443 or 8471.

Effects on Other Rulings:

NY D87961 is revoked.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

[ATTACHMENT J]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR: CR: GC 965679 TPB
Category: Classification
Tariff No. 8472.90.80

MR. R. BRIAN BURKE
RODE & QUALEY
55 West 39th Street
New York, NY 10018

Re: Konica Model 7410; Multi-function Digital Office Machine; Fax; Copier; Optional Printer Interface; NY E80009 Revoked.

DEAR MR. BURKE:

This is in reference to NY E80009, issued to you on April 1, 1999, in response to your letter of March 30, 1999 to the Director, Customs National Commodity Specialist Division, New York, requesting a tariff classification ruling on the Konica Model 7410 multi-function digital office machines under the Harmonized Tariff Schedule of the United States ("HTSUS").

NY E80009 classified the multi-function digital office machine under subheading 8471.60.5200, HTSUS. We have had an opportunity to review this classification, and now believe it to be incorrect for the reasons explained below. This ruling also provides the correct classification for the Konica 7410.

Facts:

The product at issue is a multi-function digital office machine, Konica Model 7410. It is describe in NY E80009 as follows:

> The merchandise under consideration involves a Konica Model 7410 that is basically a combination digital printer/copier/fax machine. This machine is designed to meet the needs of a small workgroup or a home based business, and features a powerful 600x600 dpi, and a 12 pages per minute digital laser print engine.
>
> The digital laser print engine of this model 7410 is used both for printing from the ADP system as well as input from the scanner. The machine is Macintosh compatible through a third party device, and the optional GDI Windows printing configuration allows printing from any Windows application. It can also be networked through an optional Ethernet print server. * * *
>
> The 7410 also functions as a stand-alone copier at the rate of 12 copies per minute through the 30-page automatic document feeder on 8.5″ x 11″ plain paper. The 7410 also copies at a rate of 10 copies per minute from the platen.
>
> It is also a high quality plain paper fax machine, since it incorporates a 14.4 modem, 300x300 print resolution, that runs at 6 second transmission speed. * * *
>
> * * * * * * *

The HTSUS provisions under consideration are as follows:

8443	8443 Printing machinery used for printing by means of printing type, blocks, plates, cylinders and other printing components of heading 8442; ink-jet printing machines, other than those of heading 8471; machines for uses ancillary to printing; parts thereof:
8471	Automatic data processing machines, and units thereof; magnetic or optical readers, machines for transcribing data onto media in coded form and machines for processing such data, not elsewhere specified or included:
8472	Other office machines (for example hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines):
8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunications for carrier-current line systems or for digital line systems * * *

Issue:

What is the classification of the Konica 7410 multi-function digital office 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 neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

As imported, the 7410 is a multi-function digital office machine that has the capability to transmit and receive faxes via a built in modem and to scan documents and convert them to digital signals, which it can store in temporary memory. The 7410 can either transmit stored documents via the fax, or print them via the attached laser print engine. The print function, in this case, is a necessary component to both the fax and scanning capabilities of the multifunction machine.

Note 3 to Section XVI provides that:

> Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted 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.

In this case, the 7410 is a composite machine, which is composed of a fax machine and a digital copier. These two machines are adapted for the purpose of performing two alternative functions (i.e., faxing and copying). To assist in determining the principal function of a machine, we examine a number of factors, and while no one is determinative, they are indicative of principal function. After conducting independent research, we believe that it is the printing performed by the digital copier that imparts the principal function of this multi-function digital office machine.

The 7410 prints via a connected laser print engine. Classification of units of ADP machines is governed by the terms of Legal Note 5 to Chapter 84, HTSUS, which provides in relevant part as follows:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being part of an complete system if it meets all the following conditions:
>
> (a) * * *
>
> (b) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.
>
> (C) * * *
>
> (D) Printers, keyboards, X-Y co-ordinate devices and disk storage units which satisfy the conditions of paragraphs (B)(b) and (B)(c) above, are in all cases to be classified as units of heading No. 8471.
>
> (E) * * *

The information provided for the 7410 indicates that in order for it to function as an ADP printer, optional controllers are required. Therefore, the 7410 does not meet the conditions laid out in Note 5(B)(b) to Chapter 84, HTSUS, because it is not connectable to an ADP machine at the time of its importation.

Prior to January 1, 2002, this type of machine was classifiable under heading 8443, HTSUS, as a printing machine. See HQ 957981, dated July 9, 1997, classifying a four-color digital printer under heading 8443; and HQ 959651, also dated July 9, 1997, classifying similar merchandise under heading 8443. However, the terms of that heading have been amended so that digital print machines can no longer be classified under that heading.

Because this digital printer does not meet the terms of note 5(B) to chapter 84, nor does it meet the terms of heading 8443, HTSUS, it is classified under heading 8472, specifically under subheading 8472.90.80, which provides for other office machines, other printing machines, other than those of heading 8443 or 8471.

Holding:

At GRI 1 the principal function of a multi-function digital office machine that can fax and copy is that of copying. Thus, for the reasons stated above, classification of the Konica Model 7410 multi-function digital office machine is under subheading 8472.90.80, HTSUS, which provides for other office machines * * * other * * * printing machines other than those of heading 8443 or 8471.

Effects on Other Rulings:

NY E80009 is revoked.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

[ATTACHMENT K]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR: CR: GC 965680 TPB
Category: Classification
Tariff No. 8472.90.80

MR. RAYMOND VALDES
RICOH CORPORATION
5 Dedrick Place
West Caldwell, NJ 07006

Re: Ricoh Aficio 340; Ricoh Aficio 350; Ricoh Aficio 450; Ricoh Aficio 550; Ricoh Aficio 650; Multi-function Digital Office Machine; Fax; Copier; Optional Printer Interface; NY E80322 Revoked.

DEAR MR. VALDES:

This is in reference to NY E80322, issued to you on April 9, 1999, in response to your letter of April 2, 1999 to the Director, Customs National Commodity Specialist Division, New York, requesting a tariff classification ruling on the Ricoh Aficios, models 340, 350, 450, 550 and 650 multi-function digital office machines under the Harmonized Tariff Schedule of the United States ("HTSUS").

NY E80322 classified the multi-function digital office machines under subheading 8471.60.5100, HTSUS. We have had an opportunity to review this classification, and now believe it to be incorrect for the reasons explained below. This ruling also provides the correct classification for the Ricoh Aficios.

Facts:

The products at issue are multi-function digital office machines, Ricoh Aficio models 340, 350, 450, 550 and 650. They are describe in NY E80322 as follows:

> The merchandise under consideration involves five models of multifunctional printer/copier/fax units which are known as "Ricoh Aficio" 340, 350, 450, 550 and 650 (Aficios). These machines are multifunctional imaging devices which perform printing, copying, scanning, and facsimile functions, and can be connected to an automatic data processing (ADP) system via optional printer controllers.
>
> * * * * * * *
>
> All machines are multifunctional imaging apparatus that perform printing, copying, scanning and facsimile functions, and are specifically designed to be used as output units for laser printing. With optional printer controllers, each model in the Aficio series is capable of operating in a Local Area Network or client/server workgroup environment with printer server.
>
> * * * * * * *

> The Aficios produce digital black and white output at 600 x 600 dots per inch (dpi), with 65 graduations per dot. The Aficios 340/350 print at 35 ppm; the 450, 45 ppm; the 550 55ppm; and the 650 65 ppm. Each employs laser print engines (electrographic process) * * *
>
> These machines are capable of performing printing, copying, and facsimile functions, and are in one common housing.

* * * * * * *

The HTSUS provisions under consideration are as follows:

8443 Printing machinery used for printing by means of printing type, blocks, plates, cylinders and other printing components of heading 8442; ink-jet printing machines, other than those of heading 8471; machines for uses ancillary to printing; parts thereof:

8471	8443 Automatic data processing machines, and units thereof; magnetic or optical readers, machines for transcribing data onto media in coded form and machines for processing such data, not elsewhere specified or included:
8472	Other office machines (for example hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines):
8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunications for carrier-current line systems or for digital line systems * * *

Issue:

What is the classification of the five Ricoh Aficio multi-function digital office machines?

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 neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

As imported, the Aficios are multi-function digital office machines that have the capability to transmit and receive faxes via a built in modem and to scan documents and convert them to digital signals, which they can store in temporary memory. The Aficios can either transmit stored documents via the fax, or print them via the attached laser print engine. The print function, in this case, is a necessary component to both the fax and scanning capabilities of the multifunction machine.

Note 3 to Section XVI provides that:

> Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted 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.

In this case, the Aficios are composite machines, which are composed of a fax machine and a digital copier. These two machines are adapted for the purpose of performing two alternative functions (i.e., faxing and copying). To assist in determining the principal function of a machine, we examine a number of factors, and while no one is determinative, they are indicative of principal function. After conducting independent research, we believe that it is the printing performed by the digital copier that imparts the principal function of these multi-function digital office machines.

The Aficios print via a connected laser print engine. Classification of units of ADP machines is governed by the terms of Legal Note 5 to Chapter 84, HTSUS, which provides in relevant part as follows:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being part of an complete system if it meets all the following conditions:

(a) * * *
(b) It is connectable to the central processing unit either directly or through one or more other units; and
(c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.
(C) * * *
(D) Printers, keyboards, X-Y co-ordinate devices and disk storage units which satisfy the conditions of paragraphs (B)(b) and (B)(c) above, are in all cases to be classified as units of heading No. 8471.
(E) * * *

The information provided for the Aficios indicates that in order for them to function as ADP printers, optional controllers are required. Therefore, they do not meet the conditions laid out in Note 5(B)(b) to Chapter 84, HTSUS, because they are not connectable to ADP machines at the time of their importation.

Prior to January 1, 2002, these types of machines were classifiable under heading 8443, HTSUS, as a printing machine. See HQ 957981, dated July 9, 1997, classifying a four-color digital printer under heading 8443; and HQ 959651, also dated July 9, 1997, classifying similar merchandise under heading 8443. However, the terms of that heading have been amended so that digital print machines can no longer be classified under that heading.

Because these digital printers do not meet the terms of note 5(B) to chapter 84, nor do they meet the terms of heading 8443, HTSUS, they are classified under heading 8472, specifically under subheading 8472.90.80, which provides for other office machines, other printing machines, other than those of heading 8443 or 8471.

Holding:

At GRI 1 the principal function of a multi-function digital office machines that can fax and copy is that of copying. Therefore, classification of the Aficios 340, 350, 450, 550 and 650 multi-function digital office machines is under subheading 8472.90.80, HTSUS, which provides for other office machines * * * other * * * printing machines other than those of heading 8443 or 8471.

Effects on Other Rulings:

NY E80322 is revoked.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

[ATTACHMENT L]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR: CR: GC 965681 TPB
Category: Classification
Tariff No. 8472.90.80

MR. RAYMOND VALDES
RICOH CORPORATION
5 Dedrick Place
West Caldwell, NJ 07006

Re: Ricoh 355; Ricoh 455; Multi-function Digital Office Machine; Fax, Copier, Optional Printer Interface; NY E81729 Revoked.

DEAR MR. VALDES:

This is in reference to NY E81729, issued to you on May 12, 1999, in response to your letter of April 30, 1999 to the Director, Customs National Commodity Specialist Division, New York, requesting a tariff classification ruling on the Ricoh 355 and Ricoh 455 multi-function digital office machines under the Harmonized Tariff Schedule of the United States ("HTSUS").

NY E81729 classified the multi-function digital office machines under subheading 8471.60.5100, HTSUS. We have had an opportunity to review this classification, and now believe it to be incorrect for the reasons explained below. This ruling also provides the correct classification for the Ricoh 355 and Ricoh 455.

Facts:

The products at issue are multi-function digital office machines, models Ricoh Aficio 355 and Aficio 455. They are describe in NY E81729 as follows:

> These machines are multifunctional imaging devices, which perform printing, copying, scanning, and facsimile functions, and can be connected to an automatic data processing (ADP) machine via optional printer controllers.
>
> * * * * * * *
>
> All machines are multifunctional imaging apparatus that perform printing, copying, scanning and facsimile functions, and are specifically designed to be used as output units for laser printing. With optional printer controllers, each model in the Aficio series is capable of operating in a Local Area Network or client/server workgroup environment with printer server.
> The Aficios produce digital black and white output at 600 x 600 dots per inch (dpi), with 65 graduations per dot. The Aficios 355 and 455 print at 35 pages per minute. Each uses laser print engines (electrographic process) * * *
>
> The Aficios 355 and 455 are capable of performing printing, copying, and facsimile functions, and are in one common housing.
>
> * * * * * * *

The HTSUS provisions under consideration are as follows:

8443	8443 Printing machinery used for printing by means of printing type, blocks, plates, cylinders and other printing components of heading 8442; ink-jet printing machines, other than those of heading 8471; machines for uses ancillary to printing; parts thereof:
8471	Automatic data processing machines, and units thereof; magnetic or optical readers, machines for transcribing data onto media in coded form and machines for processing such data, not elsewhere specified or included:
8472	Other office machines (for example hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines):
8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunications for carrier-current line systems or for digital line systems * * *

Issue:

What is the classification of the Ricoh Aficios 355 and 455 multi-function digital office machines?

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 neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

As imported, the Aficios are multi-function digital office machines that have the capability to transmit and receive faxes via a built in modem and to scan documents and convert them to digital signals, which they can store in temporary memory. The Aficios can either transmit stored documents via the fax, or print them via the attached laser print engine. The print function, in this case, is a necessary component to both the fax and scanning capabilities of the multifunction machines.

Note 3 to Section XVI provides that:

> Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted 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.

In this case, the Aficios are composite machines, which are composed of a fax machine and a digital copier. These two machines are adapted for the purpose of performing two alternative functions (i.e., faxing and copying). To assist in determining the principal function of a machine, we examine a number of factors, and while no one is determinative, they are indicative of principal function. After conducting independent research, we believe that it is the printing performed by the digital copier that imparts the principal function of these multi-function digital office machines.

The Aficios print via a connected laser print engine. Classification of units of ADP machines is governed by the terms of Legal Note 5 to Chapter 84, HTSUS, which provides in relevant part as follows:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being part of an complete system if it meets all the following conditions:
>
> (a) * * *
>
> (b) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.
>
> (C) * * *
>
> (D) Printers, keyboards, X-Y co-ordinate devices and disk storage units which satisfy the conditions of paragraphs (B)(b) and (B)(c) above, are in all cases to be classified as units of heading No. 8471.
>
> (E) * * *

The information provided for the Ricoh Aficios indicates that in order for them to function as ADP printers, optional controllers are required. Therefore, the Aficios do not meet the conditions laid out in Note 5(B)(b) to Chapter 84, HTSUS, because they are not connectable to ADP machines at the time of their importation.

Prior to January 1, 2002, these types of machines were classifiable under heading 8443, HTSUS, as printing machines. See HQ 957981, dated July 9, 1997, classifying a four-color digital printer under heading 8443; and HQ 959651, also dated July 9, 1997, classifying similar merchandise under heading 8443. However, the terms of that heading have been amended so that digital print machines can no longer be classified under that heading.

Because these digital printers do not meet the terms of note 5(B) to chapter 84, nor do they meet the terms of heading 8443, HTSUS, they are classified under heading 8472, specifically under subheading 8472.90.80, which provides for other office machines, other printing machines, other than those of heading 8443 or 8471.

Holding:

At GRI 1 the principal function of multi-function digital office machines that can fax and copy is that of copying. Thus, classification of the Ricoh Aficio 355 and 455 multi-function digital office machines is under subheading 8472.90.80, HTSUS, which provides for other office machines * * * other * * * printing machines other than those of heading 8443 or 8471.

Effects on Other Rulings:

NY E81729 is revoked.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

[ATTACHMENT M]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR: CR: GC 965682 TPB
Category: Classification
Tariff No. 8472.90.80

MR. R. BRIAN BURKE
RODE & QUALEY
55 West 39th Street
New York, NY 10018

Re: Konica Model 7065; Multi-function Digital Office Machine; Copier; Optional Printer Interface; NY E82212 Revoked.

DEAR MR. BURKE:

This is in reference to NY E82212, issued to you on May 18, 1999, in response to your letter of May 13, 1999 to the Director, Customs National Commodity Specialist Division, New York, requesting a tariff classification ruling on the Konica Model 7065 multi-function digital office machine under the Harmonized Tariff Schedule of the United States ("HTSUS").

NY E82212 classified the multi-function digital office machine under subheading 8471.60.5100, HTSUS. We have had an opportunity to review this classification, and now believe it to be incorrect for the reasons explained below. This ruling also provides the correct classification for the Konica 7065.

Facts:

The product at issue is a multi-function digital office machine, Konica Model 7065. It is describe in NY E82212 as follows:

> The merchandise under consideration involves the "Konica" model 7065 that is basically a combination digital printer/copier. This multifunctional digital printer/copier can be interfaced to an automatic data processing (ADP) system through the optional IP–303 print controller.
>
> The "Konica" model 7065 multifunctional digital printer/copier features a powerful digital laser print engine that permits a selectable print resolution from 400 to 600 dots per inch (DPI). This high speed dual beam laser print engine can print up to 65 pages per minute and 400 DPI resolution.

* * * * * * *

The HTSUS provisions under consideration are as follows:

8443	8443 Printing machinery used for printing by means of printing type, blocks, plates, cylinders and other printing components of heading 8442; ink-jet printing machines, other than those of heading 8471; machines for uses ancillary to printing; parts thereof:
8471	Automatic data processing machines, and units thereof; magnetic or optical readers, machines for transcribing data onto media in coded form and machines for processing such data, not elsewhere specified or included:
8472	Other office machines (for example hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines):

Issue:

What is the classification of the Konica 7065 multi-function digital office 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 neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

As imported, the 7065 is a digital imaging system, which scans documents and stores them as digital information in memory. The data is then printed via a connected print engine. Classification of units of ADP machines is governed by the terms of Legal Note 5 to Chapter 84, HTSUS, which provides in relevant part as follows:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being part of an complete system if it meets all the following conditions:
>
> (a) * * *
>
> (b) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.
>
> (C) * * *
>
> (D) Printers, keyboards, X-Y co-ordinate devices and disk storage units which satisfy the conditions of paragraphs (B)(b) and (B)(c) above, are in all cases to be classified as units of heading No. 8471.
>
> (E) * * *

The information provided for the 7065 indicates that in order for it to function as an ADP printer, an optional IP–303 print controller is required. Therefore, the 7065 does not meet the conditions laid out in Note 5(B)(b) to Chapter 84, HTSUS, because it is not connectable to an ADP machine at the time of importation.

Prior to January 1, 2002, this type of machine was classifiable under heading 8443, HTSUS, as a printing machine. See HQ 957981, dated July 9, 1997, classifying a four color digital printer under heading 8443; and HQ 959651, also dated July 9, 1997, classifying similar merchandise under heading 8443. However, the terms of that heading have been amended so that digital print machines can no longer be classified under that heading.

Because this digital printer does not meet the terms of note 5(B) to chapter 84, nor does it meet the terms of heading 8443, HTSUS, it is classified under heading 8472, specifically under subheading 8472.90.80, which provides for other office machines, other printing machines, other than those of heading 8443 or 8471.

Holding:

For the reasons stated above, classification of the Konica Model 7065 multi-function digital office machine is under subheading 8472.90.80, HTSUS, which provides for other office machines * * * other * * * printing machines other than those of heading 8443 or 8471.

Effects on Other Rulings:

NY E82212 is revoked.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

[ATTACHMENT N]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR: CR: GC 965697 TPB
Category: Classification
Tariff No. 8472.90.80

MR. RAYMOND VALDES
RICOH CORPORATION
5 Dedrick Place
West Caldwell, NJ 07006

Re: Ricoh 150; Ricoh 180; Multi-function Digital Office Machine; Fax; Copier; Optional Printer Interface; NY F80927 Revoked.

DEAR MR. VALDES:

This is in reference to NY F80927, issued to you on December 27, 1999, in response to your letter of December 5, 1999 to the Director, Customs National Commodity Specialist Division, New York, requesting a tariff classification ruling on the Ricoh 150 and Ricoh 180 multi-function digital office machines under the Harmonized Tariff Schedule of the United States ("HTSUS").

NY F80927 classified the multi-function digital office machines under subheading 8471.60.5200, HTSUS. We have had an opportunity to review this classification, and now believe it to be incorrect for the reasons explained below. This ruling also provides the correct classification for the Ricoh 150 and Ricoh 180.

Facts:

The products at issue are multi-function digital office machines, models Ricoh Aficio 150 and 180. They are describe in NY F80927 as follows:

> These machines are multifunctional digital imaging devices that perform printing, copying, and facsimile functions, and can be connected to an automatic data processing (ADP) system via optional printer controllers.
>
> This Ricoh 150 unit is a multifunctional digital imaging system that performs printing and copying functions, specifically designed to be used as an output unit for laser printing. With optional printer controllers, this model in this Aficio series is capable of operating in a Local Area Network or client/server workgroup environment with printer server.
>
> * * * * * * *
>
> The Ricoh Aficio 180 unit is a multifunctional digital imaging system that performs printing, copying and facsimile functions specifically designed to be used to be used [*sic*] as an output unit for laser printing. With optional printer controllers, this model in this Aficio series is capable of operating in a Local Area Network or client/server workgroup environment with print server.

A printer interface is an optional item for both machines. This interface would allow them to function as ADP laser printers. However, this part is not in the machines at time of importation.

The distinguishing feature between the two models is that the Aficio 180 has additional facsimile functions, which allow it to transmit documents at 33.3Kbps.

The HTSUS provisions under consideration are as follows:

8443	Printing machinery used for printing by means of printing type, blocks, plates, cylinders and other printing components of heading 8442; ink-jet printing machines, other than those of heading 8471; machines for uses ancillary to printing; parts thereof:
8471	Automatic data processing machines, and units thereof; magnetic or optical readers, machines for transcribing data onto media in coded form and machines for processing such data, not elsewhere specified or included:
8472	Other office machines (for example hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines):

8517 Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunications for carrier-current line systems or for digital line systems * * *

Issue:

What is the classification of the Ricoh Aficio 150 and 180 multi-function digital office machines?

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 neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

We will first consider the classification of the Ricoh Aficio 150. The Aficio 150 is a digital imaging system, which scans documents and stores them as digital information in memory. The data is then printed via a connected print engine. Classification of units of ADP machines is governed by the terms of Legal Note 5 to Chapter 84, HTSUS, which provides in relevant part as follows:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being part of an complete system if it meets all the following conditions:
>
> (a) * * *
>
> (b) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.
>
> (C) * * *
>
> (D) Printers, keyboards, X-Y co-ordinate devices and disk storage units which satisfy the conditions of paragraphs (B)(b) and (B)(c) above, are in all cases to be classified as units of heading No. 8471.
>
> (E) * * *

The information provided for the Ricoh Aficio 150 indicates that in order for it to function as an ADP printer, optional controllers are required. Therefore, the Aficio 150 does not meet the conditions laid out in Note 5(B)(b) to Chapter 84, HTSUS, because it is not connectable to an ADP machine at the time of importation.

Prior to January 1, 2002, these types of machines were classifiable under heading 8443, HTSUS, as printing machines. See HQ 957981, dated July 9, 1997, classifying a four color digital printer under heading 8443; and HQ 959651, also dated July 9, 1997, classifying similar merchandise under heading 8443. However, the terms of that heading have been amended so that digital print machines can no longer be classified under that heading.

Because these digital printers do not meet the terms of note 5(B) to chapter 84, nor do they meet the terms of heading 8443, HTSUS, they are classified under heading 8472, specifically under subheading 8472.90.80, which provides for other office machines, other printing machines, other than those of heading 8443 or 8471.

We next turn our attention to the Ricoh Aficio 180. As imported, the Aficio 180 is a multifunction digital office machine that has the capability to transmit and receive faxes via a built in modem and to scan documents and convert them to digital signals, which it can store in temporary memory. The Aficio 180 can either transmit stored documents via the fax, or print them via the attached laser print engine. The print function, in this case, is a necessary component to both the fax and scanning capabilities of the multifunction machine.

Note 3 to Section XVI provides that:

> Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted 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.

In this case, the Aficio 180 is a composite machine, which is composed of a fax machine and a digital copier. These two machines are adapted for the purpose of performing two alternative functions (i.e., faxing and copying).

As in the case with the Aficio 150 above, the Aficio 180 cannot be classified under heading 8471, HTSUS, because it is not connectable to an ADP machine without the addition of an optional printer interface, which is not incorporated into the machine at the time of its importation. Similarly, the Aficio 180 cannot be classified under heading 8443, HTSUS, either, because it does not meet the terms of the heading. The Aficio 180 does not print by any of the methods described in that heading, but rather through laser technology. Therefore, the headings under consideration are 8472, HTSUS, which provides for office printers other than those of heading 8443 or 8471; and heading 8517, HTSUS, which provides for facsimile machines. Following Note 3 to Section XVI, HTSUS, this composite machine will be classified by its principal function.

To assist in determining the principal function of a machine, we examine a number of factors, and while no one is determinative, they are indicative of principal function. After conducting independent research, we believe that it is the printing performed by the digital copier that imparts the principal function of this multi-function digital office machine. Therefore, pursuant to Section XVI, Note 3, HTSUS, the Aficio 180 will be classified as if it consisted solely of a digital copier of heading 8472, HTSUS.

The Aficio 180 meets the terms of heading 8472, HTSUS. It is an office machine other than those that are classifiable in earlier headings of chapter 84, or in heading 9009, HTS. Therefore, it is properly classified under 8472.90.80, HTSUS, which provides for office printing machines other than those of heading 8443 or 8471, HTSUS.

Holding:

For the reasons stated above, the classification of the Ricoh Aficio 150 and 180 multifunction digital office machines is under subheading 8472.90.80, HTSUS, which provides for other office machines * * * other * * * printing machines other than those of heading 8443 or 8471.

Effects on Other Rulings:

NY F80927 is revoked.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF PLASTIC GLITTER

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of plastic glitter.

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 a ruling letter pertaining to the tariff classification of plastic glitter under the Harmonized Tariff Schedule of the United States (HTSUS). Customs is also revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published on June 5, 2002, in Volume 36, Number 23, of the CUSTOMS BULLETIN. 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 September 23, 2002.

FOR FURTHER INFORMATION CONTACT: Joe Shankle, Textiles Branch, (202) 572–8824.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on 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 Customs obligations, notice proposing to revoke New York Ruling Letter (NY) E89859, dated December 3, 1999, and to revoke

any treatment accorded to substantially identical merchandise was published in the June 5, 2002, CUSTOMS BULLETIN, Volume 36, Number 23. No comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but which 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 have advised Customs 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 Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions that is contrary to the position set forth in this notice. 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 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 have advised Customs during the comment 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 of merchandise subsequent to the effective date of this final decision.

In NY E89859, Customs classified a vial of metallized plastic glitter in subheading 5601.30.0000, HTSUSA, which provides, in pertinent part, for textile flock and dust and mill neps. Based on our analysis of the scope of the terms of subheadings 5601.30.000, HTSUSA, and 3926.90.9880 HTSUSA, the Legal Notes, and the Explanatory Notes, the plastic glitter of the type discussed herein, is classifiable under subheading 3926.90.9880, HTSUSA, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY E89859, and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter 965632 (Attached). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions that is contrary to the position 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: July 11, 2002.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 5, 2002.

CLA–2 RR:CR:TE 965632 JFS
Category: Classification
Tariff No. 3926.90.9880

MR. JOSEPH HOFFACKER
BARTHCO TRADE CONSULTANTS, INC.
7575 Holstein Avenue
Philadelphia, PA 19153

Re: Classification of Plastic Glitter; Revocation of NY E89859.

DEAR MR. HOFFACKER:

This letter is to inform you that Customs has reconsidered New York Ruling Letter (NY) E89859, dated December 3, 1999, issued to you on behalf of your client, Consolidated Stores, Inc., concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of plastic glitter. After review of NY E89859, it has been determined that the classification of the plastic glitter in subheading 5601.30.0000, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes NY E89859.

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 E89859 was published on June 5, 2002, in the CUSTOMS BULLETIN, *Volume 36, Number 23*. As explained in the notice, the period within which to submit comments on this proposal was until July 5, 2002. No comments were received in response to this notice.

Facts:

A vial of plastic glitter was submitted for consideration in NY E89859. The glitter was described as being "made from sheets of metallized plastic which is cut into strips and further cut into tiny pieces."

Issue:

What is the proper classification of plastic glitter.

Law and Analysis

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

In NY E89859, Customs classified the plastic glitter as a textile material in subheading 5601.30.0000, HTSUSA, which provides, in pertinent part, for textile flock and dust and

mill neps. The rationale for classifying the glitter as flock was that during the manufacturing process the plastic sheeting had been reduced to plastic strip. If plastic strip has an apparent width of 5 mm or less, it is considered a textile for purposes of Section XI of the tariff. See, Note 1(g) to Section XI. Customs believes that the classification determination of glitter is not solely controlled by the fact that the plastic sheeting from which the glitter was derived had, at one point during the manufacturing process, been reduced to plastic strip. Glitter, as imported, consists of small particles or flakes of plastic and is classified as a plastic material of chapter 39.

At the subheading level, plastic glitter is classified in subheading 3926.90.9880, HTSUSA, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other. The general column one rate of duty is 5.3 percent *ad valorem*.

Holding:

NY E89859 is revoked. Plastic glitter is classified in subheading 3926.90.9880, HTSUSA, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other. The general column one rate of duty is 5.3 percent *ad valorem*

Effect on Other Rulings:

NY E89859 dated December 3, 1999, is hereby REVOKED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF A TOTE BAG

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to the classification of a tote bag.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking one ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a tote bag. Similarly, Customs is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed actions was published June 5, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 23. 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 September 23, 2002.

FOR FURTHER INFORMATION CONTACT: Timothy Dodd, Textiles Branch: (202) 572–8819.

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, a notice was published in the June 5, 2002, CUSTOMS BULLETIN, Vol. 36, No. 23, proposing to revoke New York Ruling Letter (NY) H86082 (January 7, 2002), relating to the tariff classification of a tote bag, and to revoke any treatment accorded to substantially identical transactions. The period to submit comments expired on July 5, 2002. No comments were received.

In New York Ruling Letter (NY) H86082, dated January 7, 2002, the Customs Service classified a tote bag under subheading 4202.92.3005, HTSUSA, which provides for, in pertinent part, travel, sports and similar bags, with outer surface of textile materials, of paper yarn.

After review of NY H86082, Customs has determined that the proper classification for the tote bag is subheading 4602.10.2920, HTSUSA, which provides for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah: Of vegetable materials: Luggage, handbags and flatgoods, whether or not lined: Other, Handbags." Headquarters Ruling Letter (HQ) 965382 revoking NY H86082 is set forth in the Attachment to this document.

Although in this notice Customs is specifically referring to one New York Ruling Letter (NY), this revocation covers any rulings on this merchandise which 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 have advised Customs during the comment period.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY H86082, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 965382, *supra*. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs 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: July 8, 2002.

JOHN E. ELKINS,
Chief,
Textiles Classification Branch.

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 8, 2002.

CLA–2 RR:CR:TE 965382 ttd
Category: Classification
Tariff No. 4602.10.2920

MR. WILLIAM ORTIZ, EXECUTIVE VICE PRESIDENT
S.J. STILE ASSOCIATES LTD.
181 South Franklin Ave.
Valley Stream, NY 11581

Re: Revocation of New York Ruling Letter H86082, dated January 7, 2002; Tote Bag; Paper Yarn.

DEAR MR. ORTIZ:

This is in response to your letter, dated January 16, 2002, filed on behalf of Wathne Ltd., requesting reconsideration, in part, of New York Ruling Letter (NY) H86082, dated January 7, 2002, regarding classification of a tote bag under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of NY H86082, Customs has determined that the classification of the tote bag in subheading 4202.92.3005, HTSUSA, is incorrect. For the reasons that follow, this ruling revokes NY H86082.

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 H86082 was published on June 5, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 23. As explained in the notice, the period within which to submit comments on this proposal was until July 5, 2002. No comments were received in response to the notice.

Facts:

In NY H86082, the tote bag under consideration was classified in subheading 4202.92.3005, HTSUSA, which provides for travel, sports and similar bags, with outer surface of textile materials, of paper yarn. The article at issue is identified as the "Tyler Group" style. The item is a double handled ladies tote bag designed to contain personal effects and accessories during travel. The body of the bag is manufactured of natural plaited straw material that is wholly covered on the exterior with woven paper strips,

which are folded longitudinally. The interior is textile lined and features a zippered back wall pocket. It measures approximately 16 inches in width by 11 inches in height with a 6 inch base. The top center of the bag is secured by means of a tie ribbon-like closure.

In your submission of January 16, 2002, you suggest classification of the subject merchandise in heading 4602.10.2920, HTSUSA.

Issue:

What is the proper classification of the subject merchandise?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes * * *." In the event that 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 of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. *See* T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

Subheading 4202.92, HTSUSA, provides in part for other articles not more specifically provided for in the preceding subheadings of 4202, HTSUSA, with outer surfaces of sheeting of plastic or of textile materials. Included within subheading 4202.92, HTSUSA, are travel, sports and similar bags. The exterior of the subject tote bag is not "of sheeting of plastic," therefore, its outer surface must be made of textile material to fall within subheading 4202.92, HTSUSA. Accordingly, to be classified as a bag with an outer surface of textile material under subheading 4202.92, the woven paper tote bag at issue must be constructed of paper yarn within Section XI, HTSUSA, which covers textiles and textile articles. Pursuant to Section XI, the classification of paper yarns is governed by heading 5308, HTSUSA, which expressly provides for, *inter alia*, paper yarn. The EN to heading 5308 explain that paper yarn is obtained by twisting or rolling lengthwise strips of moist paper. The EN further state that the heading does not cover paper simply folded one or more times lengthwise.

In Headquarters Ruling Letter (HQ) 957758, dated June 23, 1995, Customs classified a handbag constructed of woven paper yarns in subheading 4202.22.8060, HTSUSA. In that ruling, we distinguished between paper yarn and paper strips, finding that paper yarn is made by either twisting or rolling. Similarly, in HQ 080832, dated March 14, 1989, we classified certain luggage items mainly composed of paper yarns and man-made fiber yarns under subheading 4202.12.8080, as suitcases with outer surface of textile materials.

In NY H86082, when the merchandise at issue was initially examined, Customs believed that the subject tote bag was made of paper yarn, and therefore classified the bag in subheading 4202.92, HTSUSA, a provision for travel, sports and similar bags with outer surface of textile materials. After further review, we find that the subject bag, unlike the handbag in HQ 957758, is not constructed of paper yarn. Rather, the tote bag under consideration is composed of paper strips that are folded lengthwise and then woven into the shape of the bag. There is no evidence that the instant strips of paper are twisted or rolled. As the subject paper strips have been folded longitudinally and not twisted or rolled prior to being woven, the tote bag is not made of paper yarn in the manner described by the EN to heading 5308, HTSUSA. Accordingly, the subject item is not properly classified in subheading 4202.92, HTSUSA, the provision for travel, sports and similar bags with outer surface of textile materials.

Having precluded classification in subheading 4202.92, heading 4602, HTSUSA, covers, among other things, basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601. Heading 4601, HTSUSA, provides for plaits and similar products of plaiting materials, whether or not assembled into strips, plaiting materials, plaits and similar products of plaiting materials, bound together in parallel strands or woven, in sheet form, whether or not being finished articles (for example, mats, matting, screens). Note 1 to Chapter 46, HTSUSA, describes "*plaiting materials*" as materials in a state or form suitable for plaiting, interlacing or sim-

ilar processes, including strips of paper. The EN to heading 4601 provide in pertinent part that goods covered under heading 4601, HTSUSA, include plaiting materials formed of strands woven together in the manner of warp and weft fabrics.

In HQ 082996, dated August 22, 1989, Customs ruled that a plaited paper handbag, constructed of strips of paper woven together in a warp and weft manner, was properly classified in heading 4602, HTSUSA, as an other article made up from goods of heading 4601. In this case, the strips of paper comprising the outer surface of the tote bag, like the paper strips in HQ 082996, are plaiting materials as defined in Note 1 to Chapter 46, HTSUSA, as they are suitable for weaving or plaiting the shape of the subject bag. Moreover, the tote bag under consideration, like the handbag in HQ 082996, is an other article made up from goods of heading 4601 and therefore is properly classified in heading 4602, HTSUSA.

As the subject woven paper tote bag is made of plaited paper strips, it is classified under subheading 4602.10.2920, HTSUSA, which provides for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah: Of vegetable materials: Luggage, handbags and flatgoods, whether or not lined: Other, Handbags."

Holding:

Based on the foregoing, the subject merchandise is classified in subheading 4602.10.2920, HTSUSA, which provides for "Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah: Of vegetable materials: Luggage, handbags and flatgoods, whether or not lined: Other, Handbags." The applicable rate of duty is 5.3 percent *ad valorem*.

NY H86082, dated January 7, 2002, is hereby REVOKED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

JOHN E. ELKINS,
Chief,
Textiles Classification Branch.

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF A WELDED TUBE MILL

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of ruling letter and revocation of treatment relating to tariff classification of a welded tube mill.

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 modifying a ruling letter pertaining to the tariff classification of a welded tube mill under the Harmonized Tariff Schedule of the United States ("HTSUS"), and is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published in the CUSTOMS BULLETIN on May 22, 2002. The only comment received is discussed in the attached ruling HQ 965296.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 23, 2002.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 572–8780.

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, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the CUSTOMS BULLETIN on May 22, 2002, Volume 36, Number 21, proposing to modify NY 810478, dated June 12, 1995, a ruling letter pertaining to the tariff classification of a welded tube mill. One comment was received in response to the notice. That comment is discussed in HQ 965296, which is set forth as the Attachment to this document.

As stated in the proposed notice, this modification will cover any rulings on the subject merchandise which may exist but which 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 have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking 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. Any person involved in substantially identical transactions should have advised Customs during the comment 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 its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying NY 810478 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 965296. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service 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: July 9, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 9, 2002.

CLA–2 RR:CR:GC 965296 GOB
Category: Classification
Tariff No. 8462.21.80 and 8462.29.80

JOHN EATON
BRISTOL METALS, INC.
PO. Box 1589
Bristol, TN 37621–1589

Re: Welded Tube Mill; NY 810478 Modified.

DEAR MR. EATON:

This letter is with respect to NY 810478, issued to you by the Area Director, U.S. Customs Service, New York Seaport, on June 12, 1995, which involved the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of a welded tube mill and an uncoiler.

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 810478, as described below, was published in the CUSTOMS BULLETIN on May 22, 2002, Volume 36, Number 21.

One comment was received in response to the notice. The commenter makes the following claims: 1. The welded tube mill of NY 810478 precisely fits the description of rolling mills in EN 84.55; 2. A welded tube mill does not bend, fold, flatten, or straighten metal—it continuously rolls metal strip into the form of a tube; and 3. EN 84.62 does not actually describe a machine that forms a complete cylinder or tube—it describes a more simple machine. Our response to the commenter's claims is as follows: 1. The welded tube mill in NY 810478 does not precisely fit the description in EN 84.55 because EN 84.55 provides no reference to welding; 2. The continuous rolling of the metal strip into a tube is bending. The machine at issue in NY 810478 takes flat strip metal and bends it into the shape of a

tube; and 3. EN 84.62 provides in pertinent part as follows: **"Bending machines.** These include machines for working flat products (sheets, plates and strips) which, by passing the products through three or four sets of rollers, give them a cylindrical curve (for this the rollers are parallel as with **tube forming machines**) * * *" [Emphasis of "bending machines" in original. Emphasis of "tube forming machines" supplied.]

In summary, the commenter's claims have not persuaded us to substantively amend or withdraw our proposal to modify NY 810478.

Facts:

In NY 810478, the merchandise at issue was described as follows:

> The equipment will be set up in-line to produce welded tube from flat strip as follows: (1) uncoiler; (2) strip leveler; (3) endwelder (TIG welder joins outgoing and incoming coil); (4) roll forming section; (5) mechanical welding table; (6) three cathodes TIG and plasma welding unit; (7) seam tracking system; (8) spray cooling section; (9) tube seam grinding unit; (10) inside bead rolling (flattens the weld on the inside); (11) final calibrating and tube straightening; (12) roll out table; (13) flying cut-off saw; (14) complete drive and control cabinet; (15) control data registration system; [and] (16) four tooling sets for four sizes of pipe, 10, 12, 14 and 16 inch.

In NY 810478, Customs classified the welded tube mill (with the exception of the uncoiler which was determined to be eligible for classification in subheading 9801.00.10, HTSUS) in subheading 8515.31.00, HTSUS.

Issue:

Whether the welded tube mill is a good of heading 8462, HTSUS?

Law and Analysis:

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

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The HTSUS provisions under consideration are as follows:

8455	Metal-rolling mills and rolls therefor; parts thereof:
8455.10.00	Tube mills
* * * * * * *	
8462	* * * machine tools (including presses) for working metal by bending, folding, straightening, flattening, shearing, punching or notching * * *
	Bending, folding, straightening or flattening machines (including presses):
8462.21	Numerically controlled:
8462.21.80	Other
8462.29	Other:
8462.29.80	Other
* * * * * * *	
8515	* * * magnetic pulse or plasma arc soldering, brazing or welding machines and apparatus, whether or not capable of cutting * * *
	Machines and apparatus for arc (including plasma arc) welding of metals:
8515.31.00	Fully or party automatic
* * * * * * *	

Note 4 to Section XVI, HTSUS (which includes Chapters 84 and 85, HTSUS) provides as follows:

> Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by

electric cables or other devices) intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 85, then the whole falls to be classified in the heading appropriate to that function.

EN 84.55 provides in pertinent part as follows:

Rolling mills are metal working machines consisting essentially of a system of rollers between which the metal is passed; the metal is rolled out or shaped by the pressure exerted by the rollers, and at the same time the rolling modifies the structure of the metal and improves its quality * * *

* * * Other roller machines (e.g., for gumming metal foil on to a paper support) (**heading 84.20**), bending, folding, straightening or flattening machines (**heading 84.62**) are not regarded as rolling mills in the sense described above and are therefore **excluded** from this heading.

Rolling mills are of various types according to the particular rolling operations for which they are designed, viz.:

(A) Rolling out to reduce the thickness with a corresponding increase in length (e.g., in the rolling of ingots into blooms, billets or slabs; rolling of slabs into sheet, strip, etc.).

(B) Rolling of blooms, billets, etc., to form a particular cross-section (e.g., in the production of bars, rods, angles, shapes, sections, girders, railway rails).

(C) Rolling tubes.

(D) Rolling of wheel blanks or wheel rim blanks (e.g., to shape the flanges of railway wheels).

[All emphasis in original.]

EN 84.62 provides in pertinent part as follows:

The heading covers certain machine tools, listed in the heading text, which work by changing the shape or form of metal or metal carbides.

* * * * * * *

The heading includes:

* * * * * * *

(2) **Bending machines.** These include machines for working flat products (sheets, plates and strips) which, by passing the products through three or four sets of rollers, give them a cylindrical curve (for this the rollers are parallel as with tube forming machines) or else a conical shape * * *; machines for working non-flat products (bars, rods, angles, shapes, sections, tubes). These machines work either by means of forming rollers, by press bending, or, for tubes (and, in particular, oil pipes), by drawing their ends while the main section is held by a fixed cylinder.

[Emphasis in original.]

HSC Decision

In HSC NC0319E1 (See Annex H/11 to Doc. NC0340E2; HSC/26/Nov. 2000), the Harmonized System Committee of the World Customs Organization "agreed unanimously with the conclusions of the United States and of the Secretariat to classify the machinery [tube mill machinery, described below] at issue in heading 84.62, rather than in heading 84.55." The HSC had determined that only headings 8455 and 8462 merited consideration (i.e., heading 8515 did not merit consideration). In the *Compendium of Classification Opinions* (p. 34E), the HSC classified the following machinery in subheading 8462.21 or 8462.29 (depending upon whether or not it is numerically controlled):

Welded tube mill machinery presented without welding equipment, used to process coiled metal strip into tubular forms. The machinery consists of the following components: an edge trimmer; breakdown and forming rolls; idler vertical closing rolls and fin pass rolls. [Emphasis in original.]

As we stated in T.D. 89–80, decisions in the *Compendium of Classification Opinions* should be treated in the same manner as the EN's, i.e., while neither legally binding nor dispositive, they provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. T.D. 89–80 further states that EN's and decisions in the *Compendium of Classification Opinions* "should receive considerable weight."

A welded tube mill essentially takes coiled metal strip, passes it through a series of bending rolls which gradually form it into a cylindrical tube, welds the seam to close the tube,

sizes the welded tube, and cuts it off to the desired length. The merchandise at issue here is a complete welded tube mill.

With respect to the applicability of heading 8455, HTSUS, we note the exclusion from heading 8455, HTSUS, in EN 84.55, excerpted above, of "* * * bending, folding, straightening and flattening machines (heading **84.62**) * * *" The subject welded tube mill is essentially a metal forming or bending machine which would exclude it from heading 8455, HTSUS. Further, we find that the welded tube mill is not a rolling mill described in EN 84.55, excerpted above (see (A) through (D)). Additionally, EN 84.55 provides several specific examples (not excerpted above)) of the rolling mills of the type referred to in (C) and (D). Welded tube mills are not included in these specific examples. With respect to the applicability of heading 8515, HTSUS, we note that the welding operation is a comparatively minor component of the tube mill.

We find that the welded tube mill consists of several components which are intended to contribute together to the clearly defined function of forming the metal. The components are either separate or interconnected by devices within the meaning of Note 4 to Section XVI, HTSUS. Therefore, by Note 4 to Section XVI, HTSUS, we conclude that the function of the welded tube mill is essentially a metal forming operation which involves a bending of the metal so as to impart a cylindrical curve to the metal sheet to form a tube. Accordingly, we find that the welded tube mill is described in heading 8462, HTSUS. See EN 84.62, excerpted above. If it is numerically controlled, it is classified in subheading 8462.21.80, HTSUS, as: "* * * machine tools (including presses) for working metal by bending, folding, straightening, flattening, shearing, punching or notching * * *: Bending, folding, straightening or flattening machines (including presses): Numerically controlled: * * * Other." If it is not numerically controlled, it is classified in subheading 8462.29.80, HTSUS, as: "* * * machine tools (including presses) for working metal by bending, folding, straightening, flattening, shearing, punching or notching * * *: Bending, folding, straightening or flattening machines (including presses): * * * Other: * * * Other."

Our determination is consistent with the decision of the Harmonized System Committee described above. Also, see HQ 965198 dated May 1, 2002 for a similar determination.

Holding:

The welded tube mill is described in heading 8462, HTSUS, as: "* * * machine tools (including presses) for working metal by bending, folding, straightening, flattening, shearing, punching or notching * * *" If it is numerically controlled it is classified in subheading 8462.21.80, HTSUS. If it is not numerically controlled it is classified in subheading 8462.29.80, HTSUS.

Effect on Other Rulings:

NY 810478 is modified. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF CREAM

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of ruling letter and revocation of treatment relating to the classification of cream.

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. 103–1 82, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling letter pertaining to the tariff classification of cream and revoking any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed modification was published in the CUSTOMS BULLETIN of May 29, 2002, Vol. 36, No. 22. No comments were received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after September 23, 2002.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, General Classification Branch, 202–572–8778.

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, a notice was published on May 29, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 22, proposing to modify New York Ruling Letter (NY) E83139, dated

June 25, 1999, pertaining to the tariff classification of cream under the Harmonized Tariff Schedule of the United States (HTSUS). No comments were received in reply to the notice.

In NY E83139, dated June 25, 1999, the classification of a product commonly referred to as Puck Cream Pure and Natural was determined to be in subheading 0402.99.7000, HTSUS, if the product was entered under quota, or 0402.99.9000, HTSUS, if entered outside the quota. Since the issuance of that ruling, Customs has had a chance to review the classification of this merchandise and has determined that classification is in error. The correct classification of Puck Cream Pure and Natural, which is a liquid cream that has not been concentrated or sweetened, is subheading 0401.30.0500, HTSUS, if the product is entered under quota. If the quota rate is closed, the classification is in subheading 0401.30.2500, HTSUS. The classifications provided for two other products in NY E83139 are correct and are not affected by this action.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is modifying NY E83139, 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) 964777 *(see* "Attachment" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

As stated in the proposal notice, this modification will cover any rulings on this merchandise which 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 have advised the Customs Service 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 the Customs Service 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 have advised Customs during the notice period. An importer's failure to advise the Customs Service 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 their agents for importations of merchandise subsequent to the effective date of 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: July 8, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 8, 2002.

CLA–2 RR:CR:GC 964777ptl
Category: Classification
Tariff No. 0401.30.0500/0401.30.2500

MS. LARA AUSTRINS
RODRIGUEZ, O'DONNELL, FUERST, GONZALEZ & WILLIAMS
20 North Wacker Drive
Suite 1416
Chicago, IL 60606

Re: Puck Cream Pure and Natural; Modification of NY E83139.

DEAR MS. AUSTRINS:

This is in response to your letters of January 4, 2001 and April 24, 2002, on behalf of Ziyad Brothers Importing, requesting reconsideration of NY E83139, dated June 25, 1999, insofar as it related to the classification of Puck Cream Pure and Natural, under the Harmonized Tariff Schedule of the United States (HTSUS). NY E83139 was issued to Schmidt, Pritchard and Company, Inc., on behalf of both Ziyad Brothers and MD Foods, USA, Inc., and classified three products. The classification of the other two products has not been questioned and is not affected by this ruling. A copy of this ruling is being provided to Schmidt, Pritchard and Company.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of NY E83139 was published on May 29, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 22. No comments were received.

Facts:

Puck Cream Pure and Natural is described as plain flavored Danish cream. It contains fresh cream from cow's milk, butterfat (minimum 23 percent), vegetable thickeners (soybean oil, sodium alginate, and locust bean gum), and salt. The product is solely preserved by sterilization. It is packed in cylindrical tins (with snap tops) that measure 2-15/16 inches in diameter and 2 inches in height. The net weight is 6 ounces.

In your request for reconsideration, you point out that the Puck Cream Pure and Natural does not contain any added sugar or other sweetening matter. Because of this, you state that the Puck Cream Pure and Natural should not be classified in subheading 0402.99.7000 or 0402.99.9000, HTSUS, but rather should be classified in subheading 0402.91.1000 or 0402.91.7000, HTSUS, depending on whether it is entered under quota or not.

We have reviewed your letter and agree that the classification provided for Puck Cream Pure and Natural in NY E 83139 is incorrect. However, for the reasons stated below, we do not agree that the product is classified in the subheading you have suggested. As discussed below, the correct classification of Puck Cream Pure and Natural is subheading 0401.30.0500, HTSUS, or 0401.30.2500, HTSUS, depending on whether the product is imported within the quota.

Issue:

What is the classification of Puck Cream Pure and Natural?

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). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, 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 in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

0401	Milk and cream, not concentrated nor containing added sugar or other sweetening matter:
0401.30	Of a fat content, by weight, exceeding 6 percent:
	Of a fat content, by weight, not exceeding 45 percent:
* * * * * * *	
0401.30.0500	Described in additional U.S. note 5 to this chapter and entered pursuant to its provisions
0401.30.2500	Other[1]
	([1] See Subheadings 9904.04.01–9904.04.08)
0402	Milk and cream, concentrated or containing added sugar or other sweetening matter:
	Other
0402.91	Not containing added sugar or other sweetening matter:
	Described in additional U.S. note 11 to this chapter and entered pursuant to its provisions:
0402.91.1000	In airtight containers
	Other
0402.91.7000	In airtight containers[1]
	([1] See subheadings 9904.05.02–9904.05.19)
0402.99	Other:
	Other:
0402.99.7000	Described in additional U.S. note 10 to this chapter and entered pursuant to its provisions
0402.99.9000	Other[2]
	([2] See subheadings 9904.04.50–9904.05.01)

The classification of Puck Cream Pure and Natural, an all-liquid cream, will be under GRI 1, with consideration given to the direction provided in the EN to heading 0401.

The EN to heading 04.01 states:

> This heading covers milk (as defined in Note 1 to this Chapter) and cream, whether or not pasteurized, sterilized or otherwise preserved, homogenised or peptonised; but it **excludes** milk and cream which have been concentrated or which contain added sugar or other sweetening matter **(heading 04.02)** and curdled, fermented or acidified milk and cream **(heading 04.03).**

The EN to heading 04.02 states:

> This heading covers milk (as defined in Note 1 to this Chapter) and cream, concentrated (for example, evaporated) or containing added sugar or other sweetening matter, whether liquid, paste or solid (in blocks, powder or granules) and whether or not preserved or reconstituted.

Heading 0401 provides for all liquid cream which is not concentrated or which does not contain added sugar or other sweetening matter. Heading 0402 provides for cream that is concentrated (for example evaporated) or which contains added sugar or other sweetening matter.

In rulings on a variety of cream products, Customs has held that cream that is neither concentrated, nor sweetened, and that has a fat content exceeding 6 percent by weight, but not exceeding 45 percent, is classifiable in subheading 0401.30.0500, if entered under quota, or 0401.30.2500, if entered outside the quota.

In NY 813695, dated August 30, 1995, "Balade Low Fat Whipping Cream" is cream containing butterfat (20 percent minimum), non-fat milk solids (8 percent), and carrageen (0.015 percent) was classified in subheadings 0401.30.0500/0401.30.2500, HTSUS.

In NY C81266, dated October 31, 1997, "Danish Dairy Cream" composed of 99 percent pasteurized cow's cream and one percent vegetable thickening agents E471 (monoglycerides and diglycerides of edible fatty acids), E403 (sodium alginate), and E410 (locust bean gum) was classified in subheadings 0401.30.0500/0401.30.2500, HTSUS.

In NY C82114, dated December 8 1997, "Elle and Vire Special Cream for Fast Sauces—20 Percent" was classified in subheadings 0401.30.0500/0401.30.2500, HTSUS. The "20 Percent" indicated the fat content by weight. The ingredients were 63 percent cream (made from cow's milk), 35.7 percent skim milk, 0.5 percent monoglycerides and diglycerides, 0.3 percent sodium alginate, 0.3 percent xanthan gum, and 0.2 percent carotene.

In NY E85271, dated July 30, 1999, a coffee cream, is a milk product which has cream, vitamin fortification, with a milk fat content of 12 percent or 10 percent was classified in subheadings 0401.30.0500/0401.30.2500, HTSUS.

In all these, and other uncited rulings, Customs has consistently held that cream which is not concentrated and does not contain added sugar or other sweetening matter is classifiable in heading 0401, HTSUS.

Accordingly, the classification you have requested, 0402, HTSUS, which covers cream that is either concentrated or contains added sugar or other sweetening matter is inappropriate because of the composition of Puck Cream Pure and Natural. Because Puck Cream Pure and Natural is neither concentrated nor contains added sugar or other sweetening matter, the original classification provided by Customs in NY E83139 in subheadings 0402.99.70/0402.99.90, HTSUS, is incorrect. The correct classification of Puck Cream Pure and Natural is subheading 0401.30.0500, HTSUS, or 0401.30.2500, HTSUS, depending on whether it is entered under quota or not.

Holding:

Puck Cream Pure and Natural, containing fresh cream from cow's milk, butterfat (minimum 23 percent), vegetable thickeners (soybean oil, sodium alginate, and locust bean gum), and salt, is classified in tariff rate quota subheading 0401.30.0500, HTSUS, If the tariff rate quota has closed, the product is classified in subheading 0401.30.2500, HTSUS.

NY E83139, dated June 25, 1999, is modified in accordance with this letter insofar as it relates to the classification of Puck Cream Pure and Natural. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF REMOVABLE ROAD TAPE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of removable road tape.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (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 one ruling letter pertaining to the tariff classification of removable road tape, 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 June 5, 2002, in the CUSTOMS BULLETIN. 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 23, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Stern, General Classification Branch (202) 572–8785.

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, as amended (19 U.S.C. 1625(c)(1)), a notice was published on June 5, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 23, proposing to revoke NY F87908, dated October 18, 2000, which classified removable road tape in subheading 7018.90.50, Harmonized Tariff Schedule of the United States (HTSUS), as other articles of glass beads. 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. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one 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 have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking 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 to 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 comment period. An importer's reliance on treatment of a 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.

In NY F87908, dated October 18, 2000, removable road tape consisting of non-vulcanized nitrile-butadiene rubber, hot melt adhesive, glass beads and a polyurethane topcoat, was found to be classifiable in subheading 7018.90.50, HTSUS, which provides for other articles of glass beads. At that time, Customs believed that none of the components imparted the essential character of the product and thus could not classify the good according to General Rule of Interpretation (GRI) 3(b). Customs applied GRI 3(c), classifying the product according to the heading that occurred last in numerical order among those meriting equal consideration.

It is now Customs position that the product does have an essential character, and is thus classifiable according to GRI 3(b), negating the need to apply GRI 3(c). Explanatory Note VIII to GRI 3(b), states, "The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods." The

unvulcanized rubber component imparts the essential character of the removable road tape because it makes up the bulk of the product in weight, mass and value. It is the base material of the product. Without it, there would be no tape. Moreover, it is the rubber material that imparts the qualities, such as durability, necessary for the tape to be used as intended. Therefore, it is classifiable according to GRI 3(b) in subheading 4005.91.00, HTSUS, which provides for "Compounded rubber, unvulcanized, in primary forms or in plates, sheets or strip: other: plates, sheets, and strip."

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY F87908, and any other ruling not specifically identified, to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analysis set forth in HQ 965678, which is set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical merchandise.

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

Dated: July 5, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 5, 2002.

CLA–2: RR:CR:GC 965678 DBS
Category: Classification
Tariff No. 4005.91.00

MR. JONAS SVENSSON
TRELLEBORG INDUSTRI AB
Nygatan–102
SE 231 45
Trelleborg, Sweden

Re: Revocation of NY F87908; removable road tape; mixtures; GRI 3(b).

DEAR MR. SVENSSON:

In NY F87908, issued to you on October 18, 2000, the Director, National Commodity Specialist Division, New York, classified "Trelleborg Removable Road Tape" in subheading 7018.90.50, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of glass beads. We have reconsidered the classification of this article and now believe it is incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed

revocation of the above identified ruling was published on June 5, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 23. No comments were received in response to the notice.

Facts:

These are the facts as stated in NY F87908:

> The subject article, which is identified as "Trelleborg Removable Road Tape", is composed of four components: non-vulcanized nitrile-butadiene rubber, hot melt adhesive, glass beads and a polyurethane topcoat. You indicated that the urethane is applied to the rubber sheet and the glass beads are metered onto the urethane surface. The bottom surface is treated with a hot melt adhesive that is protected with a paper peel-off backing.
>
> An analysis of the sample by our Customs laboratory was consistent with your description.
>
> You indicated in your letter that the road tape will be used to form temporary lane markings, e.g., at repair or construction sites. It will be available in yellow, orange, white and black. The standard dimensions are 10, 12 and 15 cm in width and 100 meters in length, and in special dimensions of 20 to 50 cm in width and 25 to 100 meters in length.

NY F87908 stated that none of the components of the road tape imparted the essential character of the product. Thus, it was classified according to General Rule of Interpretation 3(c), which requires classification in the heading that occurs last in numerical order among those which equally merit consideration, in heading 7018, HTSUS, which provides for glass beads.

Counsel for Trelleborg Rubore, Inc. submitted additional information on June 26, 2001, about the "Trelleborg Removable Road Tape" in support of an Application for Further Review of Protest #1704–01–100177 it filed pursuant to 19 C.F.R. 174.23. We have taken this information into consideration while reviewing NY F87908. The pertinent parts of that submission are included below.

The product is imported in rectangular-shaped strips. The white and yellow tapes consist of unvulcanized rubber tape coated with pigmented polyurethane coating, reflective spherical glass ("ballotini"), glass grains for skid resistance, a rubber-based pressure-sensitive adhesive and a small amount of silicone release agent, which is applied to the adhesive to permit the tape to be unrolled without sticking to itself. The yellow tape and white tape are used to provide temporary lines on road surfaces during road construction. Due to the ballotini, the white and yellow forms are reflective. The black tape is not coated with ballotini or pigmented polyurethane coating. It is used to cover existing painted lines on roads. The black tape is coated with glass or aluminum oxide grains for skid resistance. The orange tape is not imported into the United States.

In addition, counsel submitted charts demonstrating that the unvulcanized rubber comprises 60% or more of the weight and 49% or more of the value of this product, along with arguments supporting classification in heading 4005, HTSUS, which is the provision for unvulcanized rubber.

Issue:

Whether removable road tape is classifiable according to GRI 3(b), and, if so, what is the essential character?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that 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.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs 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:

4005	Compounded rubber, unvulcanized, in primary forms or in plates, sheets or strip:
	Other:
4005.91.00	Plates, sheets, and strip

* * * * * * *

7018	Glass beads, imitation pearls, imitation precious or semiprecious stones and similar glass smallwares and articles thereof other than imitation jewelry; glass eyes other than prosthetic articles; statuettes and other ornaments of lamp-worked glass, other than imitation jewelry; glass microspheres not exceeding 1 mm in diameter:
7018.90	Other:
7018.90.50	Other

GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. The removable road tape is a combination of four or more materials, consisting partly of unvulcanized rubber strip, classifiable in heading 4005, HTSUS, partly of glass beads classifiable in heading 7018, HTSUS, and partly of various other components, each classifiable in different headings. As such, the items are not specifically provided for in any one heading. For tariff purposes, they constitute goods consisting of two or more substances or materials, which are not classified according to GRI 1.

GRI 2(b) requires that the "classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." GRI 3(a) states, in pertinent part, "when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods * * * those headings are to be regarded as equally specific * * *." As each heading refers to part only of the road tape, they are considered equally specific. The product cannot be classified according to GRI 3(a).

GRI 3(b) provides for "composite goods consisting of different materials or made up of different components * * * which cannot be classified according to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable." Explanatory Note VIII to GRI 3(b), states, "The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods."

The unvulcanized rubber comprises at least 60% of the weight of the product and contributes the majority of value to the product. It makes up the bulk of the product (i.e. mass) and it is the base material, or substrate, of the product. Without it, there would be no tape. The rubber component is necessary regardless of time of day, or whether making new lines or covering existing lines. Moreover, it is the rubber material that imparts the qualities, such as durability, necessary for the tape to be used as intended. According to the nature of the rubber in the tape, its bulk, quantity, value, and to the role of the rubber in relation to the use of the tape, the rubber imparts the essential character of the tape for tariff purposes.

The ballotini, the glass grains, and polyurethane coating contribute to the functions of the tapes, but they are merely features. NY F87908 found each component merited equal consideration. However, the ballotini, used for reflective purposes at night, is not necessary for daytime use, and the black tape is made without ballotini. Therefore, the ballotini does not merit equal consideration. Further, a composite good cannot be classified under a heading that does not describe any part of the good. The black tape cannot be classified in heading 7018, HTSUS. Neither can the yellow and white tape because, again, the ballotini does not merit equal consideration. As it does not merit equal consideration, and as the rubber does impart the essential character of the product, GRI 3(c) was erroneously applied.

For the reasons above we conclude that NY F87908 was in error. This good is classifiable according to GRI 3(b) in subheading 4005.91.00, HTSUS, which provides for "Compounded rubber, unvulcanized, in primary forms or in plates, sheets or strip: other: plates, sheets, and strip."

Holding:

"Trelleborg Removable Road Tape" is classifiable subheading 4005.91.00, HTSUS, which provides for "Compounded rubber, unvulcanized, in primary forms or in plates, sheets or strip: other: plates, sheets, and strip."

Effect on Other Rulings:

NY F87908, dated October 18, 2000 is hereby revoked. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF FOOT-PROPELLED SCOOTERS AND A SCOOTER REPAIR KIT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation and modification of ruling letters and revocation of treatment relating to tariff classification of foot-propelled scooters and a scooter repair kit.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (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 twelve ruling letters and modifying another pertaining to the tariff classification of foot-propelled scooters and a scooter repair kit, 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 May 29, 2002, in the CUSTOMS BULLETIN. Several comments were received, all in support of the proposed actions.

DATE: The revocations and modification are effective for merchandise entered or withdrawn from warehouse for consumption on or after September 23, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Stern, General Classification Branch (202) 572–8785.

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, as amended (19 U.S.C. 1625(c)(1)), a noticed was published on May 29, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 22, proposing to revoke NY G86035, dated January 5, 2001, NY G84149, dated November 9, 2001, NY G83804, dated November 3, 2000, NY G80928, dated August 15, 2000, NY G86641, dated February 6, 2001, NY G87032, dated February 20, 2001, NY G87262, dated February 27, 2001, in which Customs classified certain foot-propelled scooters in subheading 8716.80.50, HTSUS, as other vehicles not mechanically propelled, and proposing to modify NY G83603, dated November 9, 2000, in which Customs individually classified certain articles of a scooter repair kit (polyurethane wheels, foam handles and grip tape) in subheading 8716.90.50, HTSUS, which provides for parts of articles of heading 8716, HTSUS. Several comments were received, all in support of the proposed actions.

As stated in the proposed notice, this revocation 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. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period. During the comment period, five additional rulings on substantially similar merchandise were identified that also required revocation. NY G83140, dated November 3, 2000, NY F86094, dated May 24, 2000, NY G80648, dated August 23, 2000, NY G83141, dated November 3, 2000, and NY G81605, dated August 29, 2000, classified substantially similar foot-propelled scooters in subheading 8716.80.50, HTSUS.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking 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 to 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 this notice period. An importer's reliance on treatment of substantially identical transactions or on a specific ruling concerning merchandise covered by this notice which was not identified may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

In the twelve cited rulings, Customs classified certain foot-propelled scooters in subheading 8716.80.50, HTSUS, as other vehicles not mechanically propelled. It is now Customs position that the scooters subject to the twelve rulings are provided for *eo nomine* in subheading 9501.00.40, HTSUS, which provides for "Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof: wheeled toys designed to be ridden by children and parts and accessories thereof: other." Explanatory Note 95.01 describes foot-propelled scooters and states that scooters are among the toys provided for in that heading. A scooter may be designed to be ridden by children and still capable of use on occasion by adults, or even to transport cargo. Nothing in heading 9501 requires sole use by children. These uses do not exclude the instant scooters from classification in heading 9501. Accordingly, those scooters are classifiable according to General Rule of Interpretation (GRI) 1 in subheading 9501.00.40, HTSUS.

Customs notes that the Harmonized System Committee of the World Customs Organization recently decided that substantially similar two- or three-wheeled scooters, similar to the instant scooters, with adjustable steering columns, small solid front and rear wheels and usually a foot brake on the rear wheel, were classifiable according to GRI 1 under heading 9501, HTSUS.

In NY G83603, dated November 9, 2000, Customs individually classified articles of a scooter repair kit in various provisions. The polyurethane wheels, foam handles and grip tape were classified in subheading 8716.90.50, HTSUS, which provides for parts of articles of heading 8716, HTSUS. As we no longer believe that the aforementioned scooters are classifiable in heading 8716, HTSUS, parts of those scooters are not classifiable in heading 8716, HTSUS. The polyurethane wheels, foam handles and grip tape should be classified in subheading 9501.00.40, HTSUS, as parts of wheeled toys designed to be ridden by children.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY G86035, NY G84149, NY G83804, NY G80928, NY G86641, NY G87032 and NY G87262, NY G83140, NY F86094, NY G80648, NY G83141 and NY G81605 and is modifying NY G83603, and any other ruling not specifi-

cally identified, to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analyses set forth in HQ 965510, HQ 965511, HQ 965512, HQ 965513, HQ 965514, HQ 965515, HQ 965516, HQ 965755, HQ 965756, HQ 965757, HQ 965758, HQ 965760 and HQ 965517 (Attachments A through M, respectively). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical merchandise.

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

Dated: July 9, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 9, 2002.

CLA–2: RR:CR:GC 965510 DBS
Category: Classification
Tariff No. 9501.00.40

MR. PHILIP W. MASON
TRADERS CUSTOMS BROKERAGE, LTD.
75 The East Mall, Suite 205
Toronto, Ontario, Canada M8Z 5W3

Re: Revocation of NY G86035; Scooter Model MW 1050.

DEAR MR. MASON:

In NY G86035, issued to you on January 5, 2001, the Director, National Commodity Specialist Division, New York, classified the Scooter Model MW 1050 in subheading 8716.80.50, Harmonized Tariff Schedule of the United States (HTSUS), as other vehicles not mechanically propelled. We have reconsidered the classification of this article and now believe it is incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of the above identified ruling was published on May 29, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 22. Several comments were received, all in support of the proposed actions.

Facts:

The Scooter Model 1050 is a foot-propelled scooter made from aluminum or stainless steel. It has a mechanism near the front wheel that allows it to be folded for carry or storage. The wheels are approximately 4 inches in diameter and are made from tough, resilient plastic, with ball or roller bearings, resembling those used on skateboards. The height of the adjustable steering column ranges from 40 to 75 cm (15.7 to 29.5 in.) The weight carrying capacity is 80 kg (176 lbs.). The platform length ranges from 50 to 70 cm (19.7 to 27.6 in.)

Issue:

Whether foot-propelled scooters are classifiable as other vehicles, not mechanically propelled, of heading 8716, HTSUS, or as wheeled toys of heading 9501, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that 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.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs 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:

8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
8716.80	Other vehicles:
8716.80.50	Other.
* * * * * * *	
9501	Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof:
	Wheeled toys designed to be ridden by children and parts and accessories thereof:
9501.00.40	Other.

According to the ENs, heading 8716, HTSUS, covers a group of non-mechanically propelled vehicles that were constructed for transporting goods or persons. The vehicles of this heading are designed to be towed by other vehicles, pushed or pulled by hand, or drawn by animals. The Scooter Model MW 1050 was designed to be propelled by direct pressure of the foot to the ground. It was not designed to be pulled by vehicle, hand or animal. Further, it was not constructed for the transport of goods.

EN 95.01(A) states, in pertinent part, that wheeled toys designed to be ridden by children are "usually designed for propulsion by the child itself either by means of pedals, hand levers or other simple devices which transmit power to the wheels though a chain or rod, or, as in the case of certain scooters, by direct pressure of the child's foot against the ground." EN 95.01(A)(2) specifically enumerates scooters as toys included in this heading.

Heading 9501 is an *eo nomine* classification provision for wheeled toys, namely scooters, designed to be ridden by children. An *eo nomine* provision is one that describes a commodity by a specific name, as opposed to use. The name is usually one common in commerce. Absent limiting language or indicia of contrary legislative intent, such a provision covers all forms of the article. *See National Advanced Sys. v. United States*, 26 F.3d 1107, 1111 (Fed. Cir. 1994). An *eo nomine* provision may be limited by use, but such use limitation should not be read into an *eo nomine* provision unless the name itself inherently suggests a type of use. *See United States v. Quon Quon Co.,* 46 C.C.P.A. 70, 72–73 (1959), *cited by Carl Zeiss, Inc. v. United States,* 195 F.3d 1375, 1379 (Fed. Cir. 1999).

This *eo nomine* provision is limited. First, anything classifiable in that heading must be a toy. The term "toy" is also not defined in the HTSUS. However, the general EN for Chapter 95 states that the "Chapter covers toys of all kinds whether designed for the amusement of children or adults." Second, it must be designed to be ridden by children. Though this term suggests a use, that use does not control tariff classification entirely. The word "designed," found in many phrases throughout the HTSUS, is "ambiguous, being susceptible of interpretation as 'intended' or as 'particularly and specially constructed.'" *Karoware, Inc., v. United States*, 564 F. 2d 77, 82 (CCPA 1977). It is well established that whether an article is "specifically designed" or "specially constructed" for a particular purpose is determined by various factors, such as an examination of the article itself, its capabilities, as well as its actual use or uses. *See Pacific Trail Sportswear v. United States,*

5 C.I.T. 206 (1983). We must therefore consider various factors in determining the scope of heading 9501.

The EN to heading 9501 lists scooters among the *toys* covered by the heading. The ENs, in describing scooters that are propelled by foot, suggest they are considered wheeled toys. The instant scooter, as with other similar scooters, has a relatively sturdy, yet small, lightweight, portable construction. It can be adjusted to accommodate various sized persons within the weight carrying capacity (176 lbs.). Foot-propelled scooters with 100mm hard rubber wheels, like this one, generally obtain a speed of 4 mph, which is within the range of speeds of an adult walking briskly. Unlike a bicycle, designed for transportation, foot-propelled scooters are not fast enough to adequately flow with traffic on the street and cannot be maneuvered easily by its design.

In terms of actual uses, children ride scooters in their driveways, around their neighborhoods, to friends' houses, to school. In 2000, the Consumer Product Safety Commission (CPSC) reported 90% of scooter-related injuries were to children under 15. The CPSC, as well as many scooter advertisers, recommend parental supervision. Much of the literature available about scooters on the internet is geared towards children.

Adults also enjoy playing on scooters. Some adults commute to work because this type of scooter is portable and lightweight. Some scooter manufacturers direct advertising only to the adult market. Scooters such as the subject model are often advertised to both younger children and teenagers, though some scooters may also be advertised to adults. In short, scooters serve both as a plaything and as personal transportation for relatively short distances. "When amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose is incidental to the amusement." *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 33 (1977).

Certain scooters are clearly designed with a primary purpose other than amusement. Some scooters have platforms ideal for toting goods. Motor-powered scooters can travel at speeds in excess of 15 mph, which is ideal for transportation. Computerized scooter devices are far too advanced to be designed primarily to amuse. Any amusement is incidental to the utility of these types of scooters. On the other hand, the foot-propelled scooter at issue has no additional or special feature that would tip the scales in favor of utility.

In addition, though a wheeled toy of heading 9501, HTSUS, must be designed to be ridden by children, there is nothing to suggest that the wheeled toys must be solely used by children. In *Marubeni America Corp. v. United States*, 35 F.3d 530, 535 (Fed.Cir. 1994), a case focusing on whether a motor vehicle was principally designed for the transport of persons or of goods, the court opined that, to answer the question, "one must look at both the structural and auxiliary design features, as neither by itself is determinative." That is, even if an object has a primary or principal design, it is not automatically controlling. *See, e.g., Sears Roebuck & Co. v. United States*, 22 F.3d 1082 (Fed.Cir. 1994).

The *Marubeni* court rejected a proposition requiring that the design of vehicles at issue be for the sole use of transporting persons, excluding all other uses, in part because both the heading and the ENs specifically mentioned station wagons, which are dual-purpose vehicles. Similarly, the specific inclusion of scooters in both the legal text and the ENs, and the specific description in the ENs of foot-propelled scooters, does not support a requirement of sole use by children of heading 9501, HTSUS. A scooter may be designed to be ridden by children and still capable of use on occasion by adults, or even to transport cargo.

Moreover, "tariff terms are written for the future as well as the present, meaning that tariff terms can be expected to encompass merchandise not known to commerce at the time of their enactment, provided the new article possesses an essential resemblance to the one named in the statute." *United States v. Standard Surplus Sales, Inc.,* 69 C.C.P.A. 34, 667 F.2d 1011, 1014 (CCPA 1981). The change from the Tariff Schedules of the United States (TSUS), the precursor to the HTSUS, to the HTSUS was intended to provide consistent tariff treatment. Item 732.43, TSUS, provided, in pertinent part, for: "Tricycles, scooters, wagons, pedal cars, and other wheeled goods (except skates), all the foregoing designed to be ridden by children, and parts thereof." provided for scooters. The continuity of the *eo nomine* designation in the two texts supports the classification of this scooter in heading 9501. Today's foot-propelled scooters, while admittedly more advanced, closely resemble the foot-propelled scooters that enjoyed popularity in the United States in the 1930's and 1950's, as well as other foot-propelled scooters previously classified in heading 9501. Thus, heading 9501 encompasses the scooter at issue.

In HSC 28 in November 2001 (Annex HG/16 to Doc. NC0510E2), the Harmonized System Committee (HSC) of the World Customs Organization (WCO) determined the classification of two- or three-wheeled scooters with adjustable steering columns, small solid front and rear wheels and generally a foot brake on the rear wheel, in heading 9501, by application of GRI 1. In essence, the HSC determined that nothing in the heading required that wheeled toys be used solely by children. The scooters examined by the HSC are substantially similar to the scooter at issue. Classification opinions of the HSC may provide assistance in the understanding of the international agreement, the Harmonized System, on which the HTSUS is based. The HSC decision is consistent with our decision here.

For the reasons above we conclude that NY G86035 was in error. Accordingly, the instant foot-propelled scooter is classifiable under heading 9501, HTSUS, rather than heading 8716, HTSUS.

Holding:

Scooter Model 1050 is classified in subheading 9501.00.40, HTSUS, which provides for "Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof: wheeled toys designed to be ridden by children and parts and accessories thereof: other."

Effect on Other Rulings:

NY G86035, dated January 5, 2001, is hereby revoked. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 9, 2002.

CLA–2: RR:CR:GC 965511 DBS
Category: Classification
Tariff No. 9501.00.40

MR. BOB KING
MEIJER, INC.
2929 Walker, N.W.
Grand Rapids, MI 49544–9428

Re: Revocation of NY G84149; Power Edge Streetboard.

DEAR MR. KING:

In NY G84149, issued to you on November 9, 2000, the Director, National Commodity Specialist Division, New York, classified the Power Edge Streetboard in subheading 8716.80.50, Harmonized Tariff Schedule of the United States (HTSUS), as other as other vehicles not mechanically propelled. We have reconsidered the classification of this article and now believe it is incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of the above identified ruling was published on May 29, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 22. Several comments were received, all in support of the proposed actions.

Facts:

The Power Edge Streetboard (UPC #7–13733–46924) is a foot-propelled scooter that you stated was designed to be ridden by children and teenagers. The board has two plastic

wheels connected to a 19.5 inch (49.5 cm) long board made of aluminum alloy with an adjustable handle bar and foot brake. You state that the handlebar may be raised to a height of approximately 24 inches (61 cm) from its base. It has two removable foam padded grips. The Streetboard can be folded and the grips removed for storage in the carry bag that accompanies the scooter.

Issue:

Whether foot-propelled scooters are classifiable as other vehicles, not mechanically propelled, of heading 8716, HTSUS, or as wheeled toys of heading 9501, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that 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.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs 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:

8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
8716.80	Other vehicles:
8716.80.50	Other.
* * * * * * *	
9501	Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof:
	Wheeled toys designed to be ridden by children and parts and accessories thereof:
9501.00.40	Other.

According to the ENs, heading 8716, HTSUS, covers a group of non-mechanically propelled vehicles that were constructed for transporting goods or persons. The vehicles of this heading are designed to be towed by other vehicles, pushed or pulled by hand, or drawn by animals. The Power Edge Streetboard was designed to be propelled by direct pressure of the foot to the ground. It was not designed to be pulled by vehicle, hand or animal. Further, it was not constructed for the transport of goods.

EN 95.01(A) states, in pertinent part, that wheeled toys designed to be ridden by children are "usually designed for propulsion by the child itself either by means of pedals, hand levers or other simple devices which transmit power to the wheels though a chain or rod, or, as in the case of certain scooters, by direct pressure of the child's foot against the ground." EN 95.01(A)(2) specifically enumerates scooters as toys included in this heading.

Heading 9501 is an *eo nomine* classification provision for wheeled toys, namely scooters, designed to be ridden by children. An *eo nomine* provision is one that describes a commodity by a specific name, as opposed to use. The name is usually one common in commerce. Absent limiting language or indicia of contrary legislative intent, such a provision covers all forms of the article. *See National Advanced Sys. v. United States*, 26 F.3d 1107, 1111 (Fed. Cir. 1994). An *eo nomine* provision may be limited by use, but such use limitation should not be read into an *eo nomine* provision unless the name itself inherently suggests a type of use. *See United States v. Quon Quon Co.,* 46 C.C.P.A. 70, 72–73 (1959), *cited by Carl Zeiss, Inc. v. United States,* 195 F.3d 1375, 1379 (Fed. Cir. 1999).

This *eo nomine* provision is limited. First, anything classifiable in that heading must be a toy. The term "toy" is also not defined in the HTSUS. However, the general EN for Chapter 95 states that the "Chapter covers toys of all kinds whether designed for the amusement of children or adults." Second, it must be designed to be ridden by children. Though this term suggests a use, that use does not control tariff classification entirely. The word

"designed," found in many phrases throughout the HTSUS, is "ambiguous, being susceptible of interpretation as 'intended' or as 'particularly and specially constructed.'" *Karoware, Inc., v. United States*, 564 F. 2d 77, 82 (CCPA 1977). It is well established that whether an article is "specifically designed" or "specially constructed" for a particular purpose is determined by various factors, such as an examination of the article itself, its capabilities, as well as its actual use or uses. *See Pacific Trail Sportswear v. United States,* 5 C.I.T. 206 (1983). We must therefore consider various factors in determining the scope of heading 9501.

The EN to heading 9501 lists scooters among the *toys* covered by the heading. The ENs, in describing scooters that are propelled by foot, suggest they are considered wheeled toys. The instant scooter, as with other similar scooters, has a relatively sturdy, yet small, lightweight, portable construction. It can be adjusted to accommodate various sized persons. Foot-propelled scooters with 100mm hard rubber wheels, like this one, generally obtain a speed of 4 mph, which is within the range of speeds of an adult walking briskly. Unlike a bicycle, designed for transportation, foot-propelled scooters are not fast enough to adequately flow with traffic on the street and cannot be maneuvered easily by its design.

In terms of actual uses, children ride scooters in their driveways, around their neighborhoods, to friends' houses, to school. In 2000, the Consumer Product Safety Commission (CPSC) reported 90% of scooter-related injuries were to children under 15. The CPSC, as well as many scooter advertisers, recommend parental supervision. Much of the literature available about scooters on the internet is geared towards children.

Adults also enjoy playing on scooters. Some adults commute to work because this type of scooter is portable and lightweight. Some scooter manufacturers direct advertising only to the adult market. Scooters such as the subject model are often advertised to both younger children and teenagers, though some scooters may also be advertised to adults. In short, scooters serve both as a plaything and as personal transportation for relatively short distances. "When amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose is incidental to the amusement." *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 33 (1977).

Certain scooters are clearly designed with a primary purpose other than amusement. Some scooters have platforms ideal for toting goods. Motor-powered scooters can travel at speeds in excess of 15 mph, which is ideal for transportation. Computerized scooter devices are far too advanced to be designed primarily to amuse. Any amusement is incidental to the utility of these types of scooters. On the other hand, the foot-propelled scooter at issue has no additional or special feature that would tip the scales in favor of utility.

In addition, though a wheeled toy of heading 9501, HTSUS, must be designed to be ridden by children, there is nothing to suggest that the wheeled toys must be solely used by children. In *Marubeni America Corp. v. United States*, 35 F.3d 530, 535 (Fed.Cir. 1994), a case focusing on whether a motor vehicle was principally designed for the transport of persons or of goods, the court opined that, to answer the question, "one must look at both the structural and auxiliary design features, as neither by itself is determinative." That is, even if an object has a primary or principal design, it is not automatically controlling. *See, e.g., Sears Roebuck & Co. v. United States*, 22 F.3d 1082 (Fed.Cir. 1994).

The *Marubeni* court rejected a proposition requiring that the design of vehicles at issue be for the sole use of transporting persons, excluding all other uses, in part because both the heading and the ENs specifically mentioned station wagons, which are dual-purpose vehicles. Similarly, the specific inclusion of scooters in both the legal text and the ENs, and the specific description in the ENs of foot-propelled scooters, does not support a requirement of sole use by children of heading 9501, HTSUS. A scooter may be designed to be ridden by children and still capable of use on occasion by adults, or even to transport cargo.

Moreover, "tariff terms are written for the future as well as the present, meaning that tariff terms can be expected to encompass merchandise not known to commerce at the time of their enactment, provided the new article possesses an essential resemblance to the one named in the statute." *United States v. Standard Surplus Sales, Inc.,* 69 C.C.P.A. 34, 667 F.2d 1011, 1014 (CCPA 1981). The change from the Tariff Schedules of the United States (TSUS), the precursor to the HTSUS, to the HTSUS was intended to provide consistent tariff treatment. Item 732.43, TSUS, provided, in pertinent part, for: "Tricycles, scooters, wagons, pedal cars, and other wheeled goods (except skates), all the foregoing designed to be ridden by children, and parts thereof." provided for scooters. The continuity of the *eo nomine* designation in the two texts supports the classification of this scooter

in heading 9501. Today's foot-propelled scooters, while admittedly more advanced, closely resemble the foot-propelled scooters that enjoyed popularity in the United States in the 1930's and 1950's, as well as other foot-propelled scooters previously classified in heading 9501. Thus, heading 9501 encompasses the scooter at issue.

In HSC 28 in November 2001 (Annex HG/16 to Doc. NC0510E2), the Harmonized System Committee (HSC) of the World Customs Organization (WCO) determined the classification of two- or three-wheeled scooters with adjustable steering columns, small solid front and rear wheels and generally a foot brake on the rear wheel, in heading 9501, by application of GRI 1. In essence, the HSC determined that nothing in the heading required that wheeled toys be used solely by children. The scooters examined by the HSC are substantially similar to the scooter at issue. Classification opinions of the HSC may provide assistance in the understanding of the international agreement, the Harmonized System, on which the HTSUS is based. The HSC decision is consistent with our decision here.

For the reasons above we conclude that NY G84149 was in error. Accordingly, the instant foot-propelled scooter is classifiable under heading 9501, HTSUS, rather than heading 8716, HTSUS.

Holding:

The Power Edge Streetboard is classified in subheading 9501.00.40, HTSUS, which provides for "Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof: wheeled toys designed to be ridden by children and parts and accessories thereof: other."

Effect on Other Rulings:

NY G84149, dated November 9, 2000, is hereby revoked. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 9, 2002.

CLA–2: RR:CR:GC 965512 DBS
Category: Classification
Tariff No. 9501.00.40

MR. PAUL LEITNER
CONTINENTAL AGENCY, INC.
535 Brea Canyon Rd.
Walnut, CA 91789

Re: Revocation of NY G83804; Ninja Children's Mini-Scooter.

DEAR MR. LEITNER:

In NY G83804, issued to you on behalf of Zenital, Inc., on November 3, 2000, the Director, National Commodity Specialist Division, New York, classified the Ninja Children's Mini-Scooter in subheading 8716.80.50, Harmonized Tariff Schedule of the United States (HTSUS), as other as other vehicles not mechanically propelled. We have reconsidered the classification of this article and now believe it is incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of the above identified ruling was published on May 29, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 22. Several comments were received, all in support of the proposed actions.

Facts:

You submitted a sample and advertising literature of the "Ninja Children's Mini-Scooter." You stated that the scooter is designed and marketed for use by children. The scooter is made of an unspecified metal alloy. It has two 100-mm (4 in.) PU wheels. The handlebars fold and are adjustable in height. The scooter also has an alloy fender that is also used as the brake. The scooter is foldable for ease in transport. Its folded size is 23.6″ x 4.3″ x 6.3″. It weighs 6.2 lbs. You stated that Zenital's scooter is designed and marketed for use by children and that the packaging expressly identifies it as a "Children's Mini-Scooter". In NY G83804, your proposed classification under heading 9501, HTSUS, as wheeled toys designed to be ridden by children, was rejected because the scooter was not designed to be limited to use by children.

Issue:

Whether foot-propelled scooters are classifiable as other vehicles, not mechanically propelled, of heading 8716, HTSUS, or as wheeled toys of heading 9501, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that 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.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs 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:

8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
8716.80	Other vehicles:
8716.80.50	Other.
* * * * * * *	
9501	Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof:
	Wheeled toys designed to be ridden by children and parts and accessories thereof:
9501.00.40	Other.

According to the ENs, heading 8716, HTSUS, covers a group of non-mechanically propelled vehicles that were constructed for transporting goods or persons. The vehicles of this heading are designed to be towed by other vehicles, pushed or pulled by hand, or drawn by animals. The Ninja Children's Mini-Scooter was designed to be propelled by direct pressure of the foot to the ground. It was not designed to be pulled by vehicle, hand or animal. Further, it was not constructed for the transport of goods.

EN 95.01(A) states, in pertinent part, that wheeled toys designed to be ridden by children are "usually designed for propulsion by the child itself either by means of pedals, hand levers or other simple devices which transmit power to the wheels though a chain or rod, or, as in the case of certain scooters, by direct pressure of the child's foot against the ground." EN 95.01(A)(2) specifically enumerates scooters as toys included in this heading.

Heading 9501 is an *eo nomine* classification provision for wheeled toys, namely scooters, designed to be ridden by children. An *eo nomine* provision is one that describes a commodity by a specific name, as opposed to use. The name is usually one common in commerce. Absent limiting language or indicia of contrary legislative intent, such a provision covers all forms of the article. *See National Advanced Sys. v. United States*, 26 F.3d 1107, 1111 (Fed. Cir. 1994). An *eo nomine* provision may be limited by use, but such use limitation should not be read into an *eo nomine* provision unless the name itself inherently suggests a type of use. *See United States v. Quon Quon Co.,* 46 C.C.P.A. 70, 72–73 (1959), *cited by Carl Zeiss, Inc. v. United States,* 195 F.3d 1375, 1379 (Fed. Cir. 1999).

This *eo nomine* provision is limited. First, anything classifiable in that heading must be a toy. The term "toy" is also not defined in the HTSUS. However, the general EN for Chapter 95 states that the "Chapter covers toys of all kinds whether designed for the amusement of children or adults." Second, it must be designed to be ridden by children. Though this term suggests a use, that use does not control tariff classification entirely. The word "designed," found in many phrases throughout the HTSUS, is "ambiguous, being susceptible of interpretation as 'intended' or as 'particularly and specially constructed.'" *Karoware, Inc., v. United States*, 564 F. 2d 77, 82 (CCPA 1977). It is well established that whether an article is "specifically designed" or "specially constructed" for a particular purpose is determined by various factors, such as an examination of the article itself, its capabilities, as well as its actual use or uses. *See Pacific Trail Sportswear v. United States,* 5 C.I.T. 206 (1983). We must therefore consider various factors in determining the scope of heading 9501.

The EN to heading 9501 lists scooters among the *toys* covered by the heading. The ENs, in describing scooters that are propelled by foot, suggest they are considered wheeled toys. The instant scooter, as with other similar scooters, has a relatively sturdy, yet small, lightweight, portable construction. It can be adjusted to accommodate various sized persons. Foot-propelled scooters with 100mm hard rubber wheels, like this one, generally obtain a speed of 4 mph, which is within the range of speeds of an adult walking briskly. Unlike a bicycle, designed for transportation, foot-propelled scooters are not fast enough to adequately flow with traffic on the street and cannot be maneuvered easily by its design.

In terms of actual uses, children ride scooters in their driveways, around their neighborhoods, to friends' houses, to school. In 2000, the Consumer Product Safety Commission (CPSC) reported 90% of scooter-related injuries were to children under 15. The CPSC, as well as many scooter advertisers, recommend parental supervision. Much of the literature available about scooters on the internet is geared towards children.

Adults also enjoy playing on scooters. Some adults commute to work because this type of scooter is portable and lightweight. Some scooter manufacturers direct advertising only to the adult market. Scooters such as the subject model are often advertised to both younger children and teenagers, though some scooters may also be advertised to adults. In short, scooters serve both as a plaything and as personal transportation for relatively short distances. "When amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose is incidental to the amusement." *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 33 (1977).

Certain scooters are clearly designed with a primary purpose other than amusement. Some scooters have platforms ideal for toting goods. Motor-powered scooters can travel at speeds in excess of 15 mph, which is ideal for transportation. Computerized scooter devices are far too advanced to be designed primarily to amuse. Any amusement is incidental to the utility of these types of scooters. On the other hand, the foot-propelled scooter at issue has no additional or special feature that would tip the scales in favor of utility.

In addition, though a wheeled toy of heading 9501, HTSUS, must be designed to be ridden by children, there is nothing to suggest that the wheeled toys must be solely used by children. In *Marubeni America Corp. v. United States*, 35 F.3d 530, 535 (Fed.Cir. 1994), a case focusing on whether a motor vehicle was principally designed for the transport of persons or of goods, the court opined that, to answer the question, "one must look at both the structural and auxiliary design features, as neither by itself is determinative." That is, even if an object has a primary or principal design, it is not automatically controlling. *See, e.g., Sears Roebuck & Co. v. United States*, 22 F.3d 1082 (Fed.Cir. 1994).

The *Marubeni* court rejected a proposition requiring that the design of vehicles at issue be for the sole use of transporting persons, excluding all other uses, in part because both the heading and the ENs specifically mentioned station wagons, which are dual-purpose vehicles. Similarly, the specific inclusion of scooters in both the legal text and the ENs, and the specific description in the ENs of foot-propelled scooters, does not support a requirement of sole use by children of heading 9501, HTSUS. A scooter may be designed to be ridden by children and still capable of use on occasion by adults, or even to transport cargo.

Moreover, "tariff terms are written for the future as well as the present, meaning that tariff terms can be expected to encompass merchandise not known to commerce at the time of their enactment, provided the new article possesses an essential resemblance to the one named in the statute." *United States v. Standard Surplus Sales, Inc.,* 69 C.C.P.A. 34, 667 F.2d 1011, 1014 (CCPA 1981). The change from the Tariff Schedules of the United

States (TSUS), the precursor to the HTSUS, to the HTSUS was intended to provide consistent tariff treatment. Item 732.43, TSUS, provided, in pertinent part, for: "Tricycles, scooters, wagons, pedal cars, and other wheeled goods (except skates), all the foregoing designed to be ridden by children, and parts thereof." provided for scooters. The continuity of the *eo nomine* designation in the two texts supports the classification of this scooter in heading 9501. Today's foot-propelled scooters, while admittedly more advanced, closely resemble the foot-propelled scooters that enjoyed popularity in the United States in the 1930's and 1950's, as well as other foot-propelled scooters previously classified in heading 9501. Thus, heading 9501 encompasses the scooter at issue.

In HSC 28 in November 2001 (Annex HG/16 to Doc. NC0510E2), the Harmonized System Committee (HSC) of the World Customs Organization (WCO) determined the classification of two- or three-wheeled scooters with adjustable steering columns, small solid front and rear wheels and generally a foot brake on the rear wheel, in heading 9501, by application of GRI 1. In essence, the HSC determined that nothing in the heading required that wheeled toys be used solely by children. The scooters examined by the HSC are substantially similar to the scooter at issue. Classification opinions of the HSC may provide assistance in the understanding of the international agreement, the Harmonized System, on which the HTSUS is based. The HSC decision is consistent with our decision here.

For the reasons above we conclude that G83804 was in error. Accordingly, the instant foot-propelled scooter is classifiable under heading 9501, HTSUS, rather than heading 8716, HTSUS.

Holding:

The "Ninja Children's Mini-Scooter" is classified in subheading 9501.00.40, HTSUS, which provides for "Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof: wheeled toys designed to be ridden by children and parts and accessories thereof: other."

Effect on Other Rulings:

NY G83804, dated November 3, 2000, is hereby revoked. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 9, 2002.

CLA–2: RR:CR:GC 965513 DBS
Category: Classification
Tariff No. 9501.00.40

MR. RON REUBEN
DANZAS AEI CUSTOMS BROKERAGE SERVICES
5510 West 102nd St.
Los Angeles, CA 90045

Re: Revocation of G80928; "Micro Scooter".

DEAR MR. REUBEN:

In NY G80928, issued to you on behalf of Huffy Bicycles, Inc., on August 15, 2000, the Director, National Commodity Specialist Division, New York, classified the "Micro Scooter" in subheading 8716.80.50, Harmonized Tariff Schedule of the United States (HTSUS), as other as other vehicles not mechanically propelled. We have reconsidered the classification of this article and now believe it is incorrect.

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

Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of the above identified ruling was published on May 29, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 22. Several comments were received, all in support of the proposed actions.

Facts:

The "Micro Scooter" is a foot-propelled scooter that consists of an aluminum platform 20 inches (50.8 cm) long by 4 inches (10 cm) wide, with a retractable, two position steering column measuring from 18 inches (45.7 cm) to 31 inches (78.7 cm). The desired extension is locked into place by a locking lever located on the column. The steering column is welded to a two-position swivel that is mounted on the platform. One position locks the steering column into a ready-to-use position, perpendicular to the platform. The other position locks the steering column into a snug, carrying or storage position parallel to the platform. A lever is used to change positions.

The scooter has two hard plastic wheels, both with a 4-inch diameter. The rear wheel is welded to the rear of the platform and the front wheel is welded to the steering column. The rear wheel is protected by a 2–inch by 5-inch fender. The fender also provides some braking ability when the user presses the fender directly onto the rear wheel. The scooter weighs 6.5 lbs. For storage compactness, the two steering handles can be removed by pushing the buttons in the eyeholes on the top of the steering column. The weight carrying capacity of this scooter is 250 lbs. (113 kg). However, the box in which the scooter is sold has printed on it a recommended weight limit of 200 lbs. (90.7 kg).

In NY G80928, your proposed classification under heading 9501, HTSUS, as wheeled toys designed to be ridden by children, was rejected because the scooter was not designed to be limited to use by children.

Issue:

Whether foot-propelled scooters are classifiable as other vehicles, not mechanically propelled, of heading 8716, HTSUS, or as wheeled toys of heading 9501, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that 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.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs 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:

8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
8716.80	Other vehicles:
8716.80.50	Other.
* * * * * * *	
9501	Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof:
	Wheeled toys designed to be ridden by children and parts and accessories thereof:
9501.00.40	Other.

According to the ENs, heading 8716, HTSUS, covers a group of non-mechanically propelled vehicles that were constructed for transporting goods or persons. The vehicles of this heading are designed to be towed by other vehicles, pushed or pulled by hand, or drawn by animals. The Micro Scooter was designed to be propelled by direct pressure of the foot to the ground. It was not designed to be pulled by vehicle, hand or animal. Further, it was not constructed for the transport of goods.

EN 95.01(A) states, in pertinent part, that wheeled toys designed to be ridden by children are "usually designed for propulsion by the child itself either by means of pedals, hand levers or other simple devices which transmit power to the wheels though a chain or rod, or, as in the case of certain scooters, by direct pressure of the child's foot against the ground." EN 95.01(A)(2) specifically enumerates scooters as toys included in this heading.

Heading 9501 is an *eo nomine* classification provision for wheeled toys, namely scooters, designed to be ridden by children. An *eo nomine* provision is one that describes a commodity by a specific name, as opposed to use. The name is usually one common in commerce. Absent limiting language or indicia of contrary legislative intent, such a provision covers all forms of the article. *See National Advanced Sys. v. United States*, 26 F.3d 1107, 1111 (Fed. Cir. 1994). An *eo nomine* provision may be limited by use, but such use limitation should not be read into an *eo nomine* provision unless the name itself inherently suggests a type of use. *See United States v. Quon Quon Co.,* 46 C.C.P.A. 70, 72–73 (1959), *cited by Carl Zeiss, Inc. v. United States,* 195 F.3d 1375, 1379 (Fed. Cir. 1999).

This *eo nomine* provision is limited. First, anything classifiable in that heading must be a toy. The term "toy" is also not defined in the HTSUS. However, the general EN for Chapter 95 states that the "Chapter covers toys of all kinds whether designed for the amusement of children or adults." Second, it must be designed to be ridden by children. Though this term suggests a use, that use does not control tariff classification entirely. The word "designed," found in many phrases throughout the HTSUS, is "ambiguous, being susceptible of interpretation as 'intended' or as 'particularly and specially constructed.'" *Karoware, Inc., v. United States*, 564 F. 2d 77, 82 (CCPA 1977). It is well established that whether an article is "specifically designed" or "specially constructed" for a particular purpose is determined by various factors, such as an examination of the article itself, its capabilities, as well as its actual use or uses. *See Pacific Trail Sportswear v. United States,* 5 C.I.T. 206 (1983). We must therefore consider various factors in determining the scope of heading 9501.

The EN to heading 9501 lists scooters among the *toys* covered by the heading. The ENs, in describing scooters that are propelled by foot, suggest they are considered wheeled toys. The instant scooter, as with other similar scooters, has a relatively sturdy, yet small, lightweight, portable construction. It can be adjusted to accommodate various sized persons within the weight carrying capacity (250 lbs.). Foot-propelled scooters with 100mm hard rubber wheels, like this one, generally obtain a speed of 4 mph, which is within the range of speeds of an adult walking briskly. Unlike a bicycle, designed for transportation, foot-propelled scooters are not fast enough to adequately flow with traffic on the street and cannot be maneuvered easily by its design.

In terms of actual uses, children ride scooters in their driveways, around their neighborhoods, to friends' houses, to school. In 2000, the Consumer Product Safety Commission (CPSC) reported 90% of scooter-related injuries were to children under 15. The CPSC, as well as many scooter advertisers, recommend parental supervision. Much of the literature available about scooters on the internet is geared towards children.

Adults also enjoy playing on scooters. Some adults commute to work because this type of scooter is portable and lightweight. Some scooter manufacturers direct advertising only to the adult market. Scooters such as the subject model are often advertised to both younger children and teenagers, though some scooters may also be advertised to adults. In short, scooters serve both as a plaything and as personal transportation for relatively short distances. "When amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose is incidental to the amusement." *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 33 (1977).

Certain scooters are clearly designed with a primary purpose other than amusement. Some scooters have platforms ideal for toting goods. Motor-powered scooters can travel at speeds in excess of 15 mph, which is ideal for transportation. Computerized scooter devices are far too advanced to be designed primarily to amuse. Any amusement is incidental to the utility of these types of scooters. On the other hand, the foot-propelled scooter at issue has no additional or special feature that would tip the scales in favor of utility.

In addition, though a wheeled toy of heading 9501, HTSUS, must be designed to be ridden by children, there is nothing to suggest that the wheeled toys must be solely used by children. In *Marubeni America Corp. v. United States*, 35 F.3d 530, 535 (Fed.Cir. 1994), a case focusing on whether a motor vehicle was principally designed for the transport of persons or of goods, the court opined that, to answer the question, "one must look at both the

structural and auxiliary design features, as neither by itself is determinative." That is, even if an object has a primary or principal design, it is not automatically controlling. *See, e.g., Sears Roebuck & Co. v. United States*, 22 F.3d 1082 (Fed.Cir. 1994).

The *Marubeni* court rejected a proposition requiring that the design of vehicles at issue be for the sole use of transporting persons, excluding all other uses, in part because both the heading and the ENs specifically mentioned station wagons, which are dual-purpose vehicles. Similarly, the specific inclusion of scooters in both the legal text and the ENs, and the specific description in the ENs of foot-propelled scooters, does not support a requirement of sole use by children of heading 9501, HTSUS. A scooter may be designed to be ridden by children and still capable of use on occasion by adults, or even to transport cargo.

Moreover, "tariff terms are written for the future as well as the present, meaning that tariff terms can be expected to encompass merchandise not known to commerce at the time of their enactment, provided the new article possesses an essential resemblance to the one named in the statute." *United States v. Standard Surplus Sales, Inc.,* 69 C.C.P.A. 34, 667 F.2d 1011, 1014 (CCPA 1981). The change from the Tariff Schedules of the United States (TSUS), the precursor to the HTSUS, to the HTSUS was intended to provide consistent tariff treatment. Item 732.43, TSUS, provided, in pertinent part, for: "Tricycles, scooters, wagons, pedal cars, and other wheeled goods (except skates), all the foregoing designed to be ridden by children, and parts thereof." provided for scooters. The continuity of the *eo nomine* designation in the two texts supports the classification of this scooter in heading 9501. Today's foot-propelled scooters, while admittedly more advanced, closely resemble the foot-propelled scooters that enjoyed popularity in the United States in the 1930's and 1950's, as well as other foot-propelled scooters previously classified in heading 9501. Thus, heading 9501 encompasses the scooter at issue.

In HSC 28 in November 2001 (Annex HG/16 to Doc. NC0510E2), the Harmonized System Committee (HSC) of the World Customs Organization (WCO) determined the classification of two- or three-wheeled scooters with adjustable steering columns, small solid front and rear wheels and generally a foot brake on the rear wheel, in heading 9501, by application of GRI 1. In essence, the HSC determined that nothing in the heading required that wheeled toys be used solely by children. The scooters examined by the HSC are substantially similar to the scooter at issue. Classification opinions of the HSC may provide assistance in the understanding of the international agreement, the Harmonized System, on which the HTSUS is based. The HSC decision is consistent with our decision here.

For the reasons above we conclude that NY G80928 was in error. Accordingly, the instant foot-propelled scooter is classifiable under heading 9501, HTSUS, rather than heading 8716, HTSUS.

Holding:

The "Micro Scooter" is classified in subheading 9501.00.40, HTSUS, which provides for "Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof: wheeled toys designed to be ridden by children and parts and accessories thereof: other."

Effect on Other Rulings:

NY G80928, dated August 15, 2000, is hereby revoked. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 9, 2002.

CLA–2: RR:CR:GC 965514 DBS
Category: Classification
Tariff No. 9501.00.40

MR. MILTON WEINBERG
TOWER GROUP INTERNATIONAL, INC.
2400 Marine Avenue
Redondo Beach, CA 90278

Re: Revocation of NY G86641; "I-Go" Scooter.

DEAR MR. WEINBERG:

In NY G86641, issued to you on behalf of Trentech, LLC, on February 6, 2001, the Director, National Commodity Specialist Division, New York, classified the "I-Go" Scooter in subheading 8716.80.50, Harmonized Tariff Schedule of the United States (HTSUS), as other as other vehicles not mechanically propelled. We have reconsidered the classification of this article and now believe it is incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of the above identified ruling was published on May 29, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 22. Several comments were received, all in support of the proposed actions.

Facts:

The "I-Go" Scooter is a foot-propelled scooter consisting of an aluminum platform, retractable steering column that can be locked in various heights to make allowance for the size of the operator, two hard plastic wheels and is designed to support up to 175 lbs. (79 kg) in weight. The scooter can be folded when not in use. In NY G86641, your proposed classification under heading 9501, HTSUS, as wheeled toys designed to be ridden by children, was rejected because the scooter was not designed to be limited to use by children.

Issue:

Whether foot-propelled scooters are classifiable as other vehicles, not mechanically propelled, of heading 8716, HTSUS, or as wheeled toys of heading 9501, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that 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.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs 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:

8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
8716.80	Other vehicles:
8716.80.50	Other.

* * * * * * *

9501	Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof:
	Wheeled toys designed to be ridden by children and parts and accessories thereof:
9501.00.40	Other.

According to the ENs, heading 8716, HTSUS, covers a group of non-mechanically propelled vehicles that were constructed for transporting goods or persons. The vehicles of this heading are designed to be towed by other vehicles, pushed or pulled by hand, or drawn by animals. The "I-Go" Scooter was designed to be propelled by direct pressure of the foot to the ground. It was not designed to be pulled by vehicle, hand or animal. Further, it was not constructed for the transport of goods.

EN 95.01(A) states, in pertinent part, that wheeled toys designed to be ridden by children are "usually designed for propulsion by the child itself either by means of pedals, hand levers or other simple devices which transmit power to the wheels though a chain or rod, or, as in the case of certain scooters, by direct pressure of the child's foot against the ground." EN 95.01(A)(2) specifically enumerates scooters as toys included in this heading.

Heading 9501 is an *eo nomine* classification provision for wheeled toys, namely scooters, designed to be ridden by children. An *eo nomine* provision is one that describes a commodity by a specific name, as opposed to use. The name is usually one common in commerce. Absent limiting language or indicia of contrary legislative intent, such a provision covers all forms of the article. *See National Advanced Sys. v. United States*, 26 F.3d 1107, 1111 (Fed. Cir. 1994). An *eo nomine* provision may be limited by use, but such use limitation should not be read into an *eo nomine* provision unless the name itself inherently suggests a type of use. *See United States v. Quon Quon Co.,* 46 C.C.P.A. 70, 72–73 (1959), *cited by Carl Zeiss, Inc. v. United States,* 195 F.3d 1375, 1379 (Fed. Cir. 1999).

This *eo nomine* provision is limited. First, anything classifiable in that heading must be a toy. The term "toy" is also not defined in the HTSUS. However, the general EN for Chapter 95 states that the "Chapter covers toys of all kinds whether designed for the amusement of children or adults." Second, it must be designed to be ridden by children. Though this term suggests a use, that use does not control tariff classification entirely. The word "designed," found in many phrases throughout the HTSUS, is "ambiguous, being susceptible of interpretation as 'intended' or as 'particularly and specially constructed.'" *Karoware, Inc., v. United States*, 564 F. 2d 77, 82 (CCPA 1977). It is well established that whether an article is "specifically designed" or "specially constructed" for a particular purpose is determined by various factors, such as an examination of the article itself, its capabilities, as well as its actual use or uses. *See Pacific Trail Sportswear v. United States,* 5 C.I.T. 206 (1983). We must therefore consider various factors in determining the scope of heading 9501.

The EN to heading 9501 lists scooters among the *toys* covered by the heading. The ENs, in describing scooters that are propelled by foot, suggest they are considered wheeled toys. The instant scooter, as with other similar scooters, has a relatively sturdy, yet small, lightweight, portable construction. It can be adjusted to accommodate various sized persons within the weight carrying capacity (175 lbs.). Foot-propelled scooters with 100mm hard rubber wheels, like this one, generally obtain a speed of 4 mph, which is within the range of speeds of an adult walking briskly. Unlike a bicycle, designed for transportation, foot-propelled scooters are not fast enough to adequately flow with traffic on the street and cannot be maneuvered easily by its design.

In terms of actual uses, children ride scooters in their driveways, around their neighborhoods, to friends' houses, to school. In 2000, the Consumer Product Safety Commission (CPSC) reported 90% of scooter-related injuries were to children under 15. The CPSC, as well as many scooter advertisers, recommend parental supervision. Much of the literature available about scooters on the internet is geared towards children.

Adults also enjoy playing on scooters. Some adults commute to work because this type of scooter is portable and lightweight. Some scooter manufacturers direct advertising only to the adult market. Scooters such as the subject model are often advertised to both younger children and teenagers, though some scooters may also be advertised to adults. In short, scooters serve both as a plaything and as personal transportation for relatively short distances. "When amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian pur-

pose, or the utility purpose is incidental to the amusement." *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 33 (1977).

Certain scooters are clearly designed with a primary purpose other than amusement. Some scooters have platforms ideal for toting goods. Motor-powered scooters can travel at speeds in excess of 15 mph, which is ideal for transportation. Computerized scooter devices are far too advanced to be designed primarily to amuse. Any amusement is incidental to the utility of these types of scooters. On the other hand, the foot-propelled scooter at issue has no additional or special feature that would tip the scales in favor of utility.

In addition, though a wheeled toy of heading 9501, HTSUS, must be designed to be ridden by children, there is nothing to suggest that the wheeled toys must be solely used by children. In *Marubeni America Corp. v. United States*, 35 F.3d 530, 535 (Fed.Cir. 1994), a case focusing on whether a motor vehicle was principally designed for the transport of persons or of goods, the court opined that, to answer the question, "one must look at both the structural and auxiliary design features, as neither by itself is determinative." That is, even if an object has a primary or principal design, it is not automatically controlling. *See, e.g., Sears Roebuck & Co. v. United States*, 22 F.3d 1082 (Fed.Cir. 1994).

The *Marubeni* court rejected a proposition requiring that the design of vehicles at issue be for the sole use of transporting persons, excluding all other uses, in part because both the heading and the ENs specifically mentioned station wagons, which are dual-purpose vehicles. Similarly, the specific inclusion of scooters in both the legal text and the ENs, and the specific description in the ENs of foot-propelled scooters, does not support a requirement of sole use by children of heading 9501, HTSUS. A scooter may be designed to be ridden by children and still capable of use on occasion by adults, or even to transport cargo.

Moreover, "tariff terms are written for the future as well as the present, meaning that tariff terms can be expected to encompass merchandise not known to commerce at the time of their enactment, provided the new article possesses an essential resemblance to the one named in the statute." *United States v. Standard Surplus Sales, Inc.*, 69 C.C.P.A. 34, 667 F.2d 1011, 1014 (CCPA 1981). The change from the Tariff Schedules of the United States (TSUS), the precursor to the HTSUS, to the HTSUS was intended to provide consistent tariff treatment. Item 732.43, TSUS, provided, in pertinent part, for: "Tricycles, scooters, wagons, pedal cars, and other wheeled goods (except skates), all the foregoing designed to be ridden by children, and parts thereof." provided for scooters. The continuity of the *eo nomine* designation in the two texts supports the classification of this scooter in heading 9501. Today's foot-propelled scooters, while admittedly more advanced, closely resemble the foot-propelled scooters that enjoyed popularity in the United States in the 1930's and 1950's, as well as other foot-propelled scooters previously classified in heading 9501. Thus, heading 9501 encompasses the scooter at issue.

In HSC 28 in November 2001 (Annex HG/16 to Doc. NC0510E2), the Harmonized System Committee (HSC) of the World Customs Organization (WCO) determined the classification of two- or three-wheeled scooters with adjustable steering columns, small solid front and rear wheels and generally a foot brake on the rear wheel, in heading 9501, by application of GRI 1. In essence, the HSC determined that nothing in the heading required that wheeled toys be used solely by children. The scooters examined by the HSC are substantially similar to the scooter at issue. Classification opinions of the HSC may provide assistance in the understanding of the international agreement, the Harmonized System, on which the HTSUS is based. The HSC decision is consistent with our decision here.

For the reasons above we conclude that NY G86641 was in error. Accordingly, the instant foot-propelled scooter is classifiable under heading 9501, HTSUS, rather than heading 8716, HTSUS.

Holding:

The "I-Go" Scooter is classified in subheading 9501.00.40, HTSUS, which provides for "Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof: wheeled toys designed to be ridden by children and parts and accessories thereof: other."

Effect on Other Rulings:

NY G86641, dated February 6, 2001, is hereby revoked. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 9, 2002.

CLA–2: RR:CR:GC 965515 DBS
Category: Classification
Tariff No. 9501.00.40

MR. ARLEN T. EPSTEIN
TOMPKINS & DAVIDSON, LLP
One Astor Plaza
1515 Broadway
New York, NY 10036–8901

Re: Revocation of NY G87032; "Zinger" Scooter.

DEAR MR. EPSTEIN:

In NY G87032, issued to you on behalf of your client, E & B Giftware, Inc., on February 20, 2001, the Director, National Commodity Specialist Division, New York, classified the "Zinger" Scooter in subheading 8716.80.50, Harmonized Tariff Schedule of the United States (HTSUS), as other as other vehicles not mechanically propelled. We have reconsidered the classification of this article and now believe it is incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of the above identified ruling was published on May 29, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 22. Several comments were received, all in support of the proposed actions.

Facts:

The "Zinger" Scooter is a foot-propelled scooter with a platform measuring approximately 16 inches (40.6 cm) in length by 4 inches (10 cm) in width. It has polyurethane wheels measuring approximately 4 inches (100 mm) in diameter, and an adjustable handlebar with a locking lever that extends to a height of approximately 32 inches (81.2 cm). The handlebar features removable snap-in padded handles that are attached to the frame by a cord. The scooter has a friction-operated foot brake that is engaged when the rider pushes down on a metal cover over the rear wheel with his/her foot. The maximum user's weight capacity is approximately 220 lbs.

You state that you believe that the '"Zinger" scooter is designed for use by children ages 7 and up, and is unsuitable for use by adults. In NY G87032, your proposed classification under heading 9501, HTSUS, as wheeled toys designed to be ridden by children, was rejected because the scooter was not designed to be limited to use by children.

Issue:

Whether foot-propelled scooters are classifiable as other vehicles, not mechanically propelled, of heading 8716, HTSUS, or as wheeled toys of heading 9501, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the head-

ings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that 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.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs 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:

8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
8716.80	Other vehicles:
8716.80.50	Other.
* * * * * * *	
9501	Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof:
	Wheeled toys designed to be ridden by children and parts and accessories thereof:
9501.00.40	Other.

According to the ENs, heading 8716, HTSUS, covers a group of non-mechanically propelled vehicles that were constructed for transporting goods or persons. The vehicles of this heading are designed to be towed by other vehicles, pushed or pulled by hand, or drawn by animals. The "Zinger" Scooter was designed to be propelled by direct pressure of the foot to the ground. It was not designed to be pulled by vehicle, hand or animal. Further, it was not constructed for the transport of goods.

EN 95.01(A) states, in pertinent part, that wheeled toys designed to be ridden by children are "usually designed for propulsion by the child itself either by means of pedals, hand levers or other simple devices which transmit power to the wheels though a chain or rod, or, as in the case of certain scooters, by direct pressure of the child's foot against the ground." EN 95.01(A)(2) specifically enumerates scooters as toys included in this heading.

Heading 9501 is an *eo nomine* classification provision for wheeled toys, namely scooters, designed to be ridden by children. An *eo nomine* provision is one that describes a commodity by a specific name, as opposed to use. The name is usually one common in commerce. Absent limiting language or indicia of contrary legislative intent, such a provision covers all forms of the article. *See National Advanced Sys. v. United States*, 26 F.3d 1107, 1111 (Fed. Cir. 1994). An *eo nomine* provision may be limited by use, but such use limitation should not be read into an *eo nomine* provision unless the name itself inherently suggests a type of use. *See United States v. Quon Quon Co.,* 46 C.C.P.A. 70, 72–73 (1959), *cited by Carl Zeiss, Inc. v. United States,* 195 F.3d 1375, 1379 (Fed. Cir. 1999).

This *eo nomine* provision is limited. First, anything classifiable in that heading must be a toy. The term "toy" is also not defined in the HTSUS. However, the general EN for Chapter 95 states that the "Chapter covers toys of all kinds whether designed for the amusement of children or adults." Second, it must be designed to be ridden by children. Though this term suggests a use, that use does not control tariff classification entirely. The word "designed," found in many phrases throughout the HTSUS, is "ambiguous, being susceptible of interpretation as 'intended' or as 'particularly and specially constructed.'" *Karoware, Inc., v. United States*, 564 F. 2d 77, 82 (CCPA 1977). It is well established that whether an article is "specifically designed" or "specially constructed" for a particular purpose is determined by various factors, such as an examination of the article itself, its capabilities, as well as its actual use or uses. *See Pacific Trail Sportswear v. United States,* 5 C.I.T. 206 (1983). We must therefore consider various factors in determining the scope of heading 9501.

The EN to heading 9501 lists scooters among the *toys* covered by the heading. The ENs, in describing scooters that are propelled by foot, suggest they are considered wheeled toys. The instant scooter, as with other similar scooters, has a relatively sturdy, yet small, lightweight, portable construction. It can be adjusted to accommodate various sized persons within the weight carrying capacity (220 lbs.). Foot-propelled scooters with 100mm hard

rubber wheels, like this one, generally obtain a speed of 4 mph, which is within the range of speeds of an adult walking briskly. Unlike a bicycle, designed for transportation, foot-propelled scooters are not fast enough to adequately flow with traffic on the street and cannot be maneuvered easily by its design.

In terms of actual uses, children ride scooters in their driveways, around their neighborhoods, to friends' houses, to school. In 2000, the Consumer Product Safety Commission (CPSC) reported 90% of scooter-related injuries were to children under 15. The CPSC, as well as many scooter advertisers, recommend parental supervision. Much of the literature available about scooters on the internet is geared towards children.

Adults also enjoy playing on scooters. Some adults commute to work because this type of scooter is portable and lightweight. Some scooter manufacturers direct advertising only to the adult market. Scooters such as the subject model are often advertised to both younger children and teenagers, though some scooters may also be advertised to adults. In short, scooters serve both as a plaything and as personal transportation for relatively short distances. "When amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose is incidental to the amusement." *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 33 (1977).

Certain scooters are clearly designed with a primary purpose other than amusement. Some scooters have platforms ideal for toting goods. Motor-powered scooters can travel at speeds in excess of 15 mph, which is ideal for transportation. Computerized scooter devices are far too advanced to be designed primarily to amuse. Any amusement is incidental to the utility of these types of scooters. On the other hand, the foot-propelled scooter at issue has no additional or special feature that would tip the scales in favor of utility.

In addition, though a wheeled toy of heading 9501, HTSUS, must be designed to be ridden by children, there is nothing to suggest that the wheeled toys must be solely used by children. In *Marubeni America Corp. v. United States*, 35 F.3d 530, 535 (Fed.Cir. 1994), a case focusing on whether a motor vehicle was principally designed for the transport of persons or of goods, the court opined that, to answer the question, "one must look at both the structural and auxiliary design features, as neither by itself is determinative." That is, even if an object has a primary or principal design, it is not automatically controlling. *See, e.g., Sears Roebuck & Co. v. United States*, 22 F.3d 1082 (Fed.Cir. 1994).

The *Marubeni* court rejected a proposition requiring that the design of vehicles at issue be for the sole use of transporting persons, excluding all other uses, in part because both the heading and the ENs specifically mentioned station wagons, which are dual-purpose vehicles. Similarly, the specific inclusion of scooters in both the legal text and the ENs, and the specific description in the ENs of foot-propelled scooters, does not support a requirement of sole use by children of heading 9501, HTSUS. A scooter may be designed to be ridden by children and still capable of use on occasion by adults, or even to transport cargo.

Moreover, "tariff terms are written for the future as well as the present, meaning that tariff terms can be expected to encompass merchandise not known to commerce at the time of their enactment, provided the new article possesses an essential resemblance to the one named in the statute." *United States v. Standard Surplus Sales, Inc.,* 69 C.C.P.A. 34, 667 F.2d 1011, 1014 (CCPA 1981). The change from the Tariff Schedules of the United States (TSUS), the precursor to the HTSUS, to the HTSUS was intended to provide consistent tariff treatment. Item 732.43, TSUS, provided, in pertinent part, for: "Tricycles, scooters, wagons, pedal cars, and other wheeled goods (except skates), all the foregoing designed to be ridden by children, and parts thereof." provided for scooters. The continuity of the *eo nomine* designation in the two texts supports the classification of this scooter in heading 9501. Today's foot-propelled scooters, while admittedly more advanced, closely resemble the foot-propelled scooters that enjoyed popularity in the United States in the 1930's and 1950's, as well as other foot-propelled scooters previously classified in heading 9501. Thus, heading 9501 encompasses the scooter at issue.

In HSC 28 in November 2001 (Annex HG/16 to Doc. NC0510E2), the Harmonized System Committee (HSC) of the World Customs Organization (WCO) determined the classification of two- or three-wheeled scooters with adjustable steering columns, small solid front and rear wheels and generally a foot brake on the rear wheel, in heading 9501, by application of GRI 1. In essence, the HSC determined that nothing in the heading required that wheeled toys be used solely by children. The scooters examined by the HSC are substantially similar to the scooter at issue. Classification opinions of the HSC may provide

assistance in the understanding of the international agreement, the Harmonized System, on which the HTSUS is based. The HSC decision is consistent with our decision here.

For the reasons above we conclude that G87032 was in error. Accordingly, the instant foot-propelled scooter is classifiable under heading 9501, HTSUS, rather than heading 8716, HTSUS.

Holding:

The "Zinger" Scooter is classified in subheading 9501.00.40, HTSUS, which provides for "Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof: wheeled toys designed to be ridden by children and parts and accessories thereof: other."

Effect on Other Rulings:

NY G87032, dated February 20, 2001, is hereby revoked. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT G]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 9, 2002.

CLA–2: RR:CR:GC 965516 DBS
Category: Classification
Tariff No. 9501.00.40

MS. ANNIE CHIK
UNIPAC SHIPPING, INC.
182–09 149th Rd., 2d Floor
Jamaica, NY 11434

Re: Revocation of NY G87262; "Promotion" Scooter.

DEAR MS. CHIK:

In NY G87262, issued to you on behalf of Better Built Product, Inc., on February 27, 2001, the Director, National Commodity Specialist Division, New York, classified the "Promotion" Scooter in subheading 8716.80.50, Harmonized Tariff Schedule of the United States (HTSUS), as other as other vehicles not mechanically propelled. We have reconsidered the classification of this article and now believe it is incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of the above identified ruling was published on May 29, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 22. Several comments were received, all in support of the proposed actions.

Facts:

"Promotion" Scooter, item No. S8102, is a foot-propelled scooter that has an adjustable handle. The platform is constructed of aluminum alloy/steel base. The platform measures approximately 15 inches (38 cm) in length. The base has a non-slip sand grip. The wheels are 100 mm (4 in.) and made of "injection PVC." The scooter is approximately 35 inches (89 cm) tall. The instant product is designed for individuals age 7 plus. In NY G87262, your proposed classification under heading 9501, HTSUS, as wheeled toys designed to be ridden by children, was rejected because the scooter was not designed to be limited to use by children.

Issue:

Whether foot-propelled scooters are classifiable as other vehicles, not mechanically propelled, of heading 8716, HTSUS, or as wheeled toys of heading 9501, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that 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.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs 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:

8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
8716.80	Other vehicles:
8716.80.50	Other.
* * * * * * *	
9501	Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof:
	Wheeled toys designed to be ridden by children and parts and accessories thereof:
9501.00.40	Other.

According to the ENs, heading 8716, HTSUS, covers a group of non-mechanically propelled vehicles that were constructed for transporting goods or persons. The vehicles of this heading are designed to be towed by other vehicles, pushed or pulled by hand, or drawn by animals. The "Promotion" Scooter was designed to be propelled by direct pressure of the foot to the ground. It was not designed to be pulled by vehicle, hand or animal. Further, it was not constructed for the transport of goods.

EN 95.01(A) states, in pertinent part, that wheeled toys designed to be ridden by children are "usually designed for propulsion by the child itself either by means of pedals, hand levers or other simple devices which transmit power to the wheels though a chain or rod, or, as in the case of certain scooters, by direct pressure of the child's foot against the ground." EN 95.01(A)(2) specifically enumerates scooters as toys included in this heading.

Heading 9501 is an *eo nomine* classification provision for wheeled toys, namely scooters, designed to be ridden by children. An *eo nomine* provision is one that describes a commodity by a specific name, as opposed to use. The name is usually one common in commerce. Absent limiting language or indicia of contrary legislative intent, such a provision covers all forms of the article. *See National Advanced Sys. v. United States*, 26 F.3d 1107, 1111 (Fed. Cir. 1994). An *eo nomine* provision may be limited by use, but such use limitation should not be read into an *eo nomine* provision unless the name itself inherently suggests a type of use. *See United States v. Quon Quon Co.*, 46 C.C.P.A. 70, 72–73 (1959), *cited by Carl Zeiss, Inc. v. United States,* 195 F.3d 1375, 1379 (Fed. Cir. 1999).

This *eo nomine* provision is limited. First, anything classifiable in that heading must be a toy. The term "toy" is also not defined in the HTSUS. However, the general EN for Chapter 95 states that the "Chapter covers toys of all kinds whether designed for the amusement of children or adults." Second, it must be designed to be ridden by children. Though this term suggests a use, that use does not control tariff classification entirely. The word "designed," found in many phrases throughout the HTSUS, is "ambiguous, being susceptible of interpretation as 'intended' or as 'particularly and specially constructed.'" *Karoware, Inc., v. United States*, 564 F. 2d 77, 82 (CCPA 1977). It is well established that whether an article is "specifically designed" or "specially constructed" for a particular purpose is determined by various factors, such as an examination of the article itself, its capabilities, as well as its actual use or uses. *See Pacific Trail Sportswear v. United States,* 5 C.I.T. 206 (1983). We must therefore consider various factors in determining the scope of heading 9501.

The EN to heading 9501 lists scooters among the *toys* covered by the heading. The ENs, in describing scooters that are propelled by foot, suggest they are considered wheeled toys.

The instant scooter, as with other similar scooters, has a relatively sturdy, yet small, lightweight, portable construction. It can be adjusted to accommodate various sized persons. Foot-propelled scooters with 100mm hard rubber wheels, like this one, generally obtain a speed of 4 mph, which is within the range of speeds of an adult walking briskly. Unlike a bicycle, designed for transportation, foot-propelled scooters are not fast enough to adequately flow with traffic on the street and cannot be maneuvered easily by its design.

In terms of actual uses, children ride scooters in their driveways, around their neighborhoods, to friends' houses, to school. In 2000, the Consumer Product Safety Commission (CPSC) reported 90% of scooter-related injuries were to children under 15. The CPSC, as well as many scooter advertisers, recommend parental supervision. Much of the literature available about scooters on the internet is geared towards children.

Adults also enjoy playing on scooters. Some adults commute to work because this type of scooter is portable and lightweight. Some scooter manufacturers direct advertising only to the adult market. Scooters such as the subject model are often advertised to both younger children and teenagers, though some scooters may also be advertised to adults. In short, scooters serve both as a plaything and as personal transportation for relatively short distances. "When amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose is incidental to the amusement." *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 33 (1977).

Certain scooters are clearly designed with a primary purpose other than amusement. Some scooters have platforms ideal for toting goods. Motor-powered scooters can travel at speeds in excess of 15 mph, which is ideal for transportation. Computerized scooter devices are far too advanced to be designed primarily to amuse. Any amusement is incidental to the utility of these types of scooters. On the other hand, the foot-propelled scooter at issue has no additional or special feature that would tip the scales in favor of utility.

In addition, though a wheeled toy of heading 9501, HTSUS, must be designed to be ridden by children, there is nothing to suggest that the wheeled toys must be solely used by children. In *Marubeni America Corp. v. United States*, 35 F.3d 530, 535 (Fed.Cir. 1994), a case focusing on whether a motor vehicle was principally designed for the transport of persons or of goods, the court opined that, to answer the question, "one must look at both the structural and auxiliary design features, as neither by itself is determinative." That is, even if an object has a primary or principal design, it is not automatically controlling. *See, e.g., Sears Roebuck & Co. v. United States*, 22 F.3d 1082 (Fed.Cir. 1994).

The *Marubeni* court rejected a proposition requiring that the design of vehicles at issue be for the sole use of transporting persons, excluding all other uses, in part because both the heading and the ENs specifically mentioned station wagons, which are dual-purpose vehicles. Similarly, the specific inclusion of scooters in both the legal text and the ENs, and the specific description in the ENs of foot-propelled scooters, does not support a requirement of sole use by children of heading 9501, HTSUS. A scooter may be designed to be ridden by children and still capable of use on occasion by adults, or even to transport cargo.

Moreover, "tariff terms are written for the future as well as the present, meaning that tariff terms can be expected to encompass merchandise not known to commerce at the time of their enactment, provided the new article possesses an essential resemblance to the one named in the statute." *United States v. Standard Surplus Sales, Inc.,* 69 C.C.P.A. 34, 667 F.2d 1011, 1014 (CCPA 1981). The change from the Tariff Schedules of the United States (TSUS), the precursor to the HTSUS, to the HTSUS was intended to provide consistent tariff treatment. Item 732.43, TSUS, provided, in pertinent part, for: "Tricycles, scooters, wagons, pedal cars, and other wheeled goods (except skates), all the foregoing designed to be ridden by children, and parts thereof." provided for scooters. The continuity of the *eo nomine* designation in the two texts supports the classification of this scooter in heading 9501. Today's foot-propelled scooters, while admittedly more advanced, closely resemble the foot-propelled scooters that enjoyed popularity in the United States in the 1930's and 1950's, as well as other foot-propelled scooters previously classified in heading 9501. Thus, heading 9501 encompasses the scooter at issue.

In HSC 28 in November 2001 (Annex HG/16 to Doc. NC0510E2), the Harmonized System Committee (HSC) of the World Customs Organization (WCO) determined the classification of two- or three-wheeled scooters with adjustable steering columns, small solid front and rear wheels and generally a foot brake on the rear wheel, in heading 9501, by application of GRI 1. In essence, the HSC determined that nothing in the heading required that wheeled toys be used solely by children. The scooters examined by the HSC are sub-

stantially similar to the scooter at issue. Classification opinions of the HSC may provide assistance in the understanding of the international agreement, the Harmonized System, on which the HTSUS is based. The HSC decision is consistent with our decision here.

For the reasons above we conclude that NY G87262 was in error. Accordingly, the instant foot-propelled scooter is classifiable under heading 9501, HTSUS, rather than heading 8716, HTSUS.

Holding:

The "Promotion" Scooter is classified in subheading 9501.00.40, HTSUS, which provides for "Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof: wheeled toys designed to be ridden by children and parts and accessories thereof: other."

Effect on Other Rulings:

NY G87262, dated February 27, 2001, is hereby revoked. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT H]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 9, 2002.

CLA–2: RR:CR:GC 965755 DBS
Category: Classification
Tariff No. 9501.00.40

MS. GILDA E. JENNINGS
CUSTOMS COMPLIANCE COORDINATOR
KMART RESOURCE CENTER
3100 West Big Beaver Road
Troy, MI 48084–3163

Re: Revocation of NY G83140; "Slider" and "Skeeter" Aluminum Scooters

DEAR MS. JENNINGS:

In NY G83140, issued to you on November 3, 2000, the Director, National Commodity Specialist Division, New York, classified the "Slider" and "Skeeter" Aluminum Scooters in subheading 8716.80.50, Harmonized Tariff Schedule of the United States (HTSUS), as other as other vehicles not mechanically propelled. We have reconsidered the classification of these articles and now believe the ruling is incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of rulings classifying substantially similar merchandise was published on May 29, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 22. Several comments were received, all in support of the proposed actions. This ruling was identified during the comment period.

Facts:

The "Slider" Aluminum Scooter, contract #R1040, has an exterior surface is made of aluminum and weighs 7.6 lbs. The handlebar adjusts to heights ranging from 32 inches to 36 inches and the footplate is 20 inches in length. The scooter consists of ball bearing wheels, a steel alloy brake arm, and "soft sure" grip handles. The easy lock and lever release allows for easy carrying and storage. The maximum weight limit is 220 lbs.

The "Skeeter" Aluminum Scooter, contract #I1580, is actually made of lightweight steel and weighs 10.5 lbs. The scooter consists of a 14-inch steel deck, Fender Friction

braking system, 100-mm in-line skate wheels and folds easily for carrying and storage. The platform accommodates a range of children's shoe sizes from that of a small child to a teen.

Issue:

Whether foot-propelled scooters are classifiable as other vehicles, not mechanically propelled, of heading 8716, HTSUS, or as wheeled toys of heading 9501, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that 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.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs 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:

8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
8716.80	Other vehicles:
8716.80.50	Other.
* * * * * * *	
9501	Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof:
	Wheeled toys designed to be ridden by children and parts and accessories thereof:
9501.00.40	Other.

According to the ENs, heading 8716, HTSUS, covers a group of non-mechanically propelled vehicles that were constructed for transporting goods or persons. The vehicles of this heading are designed to be towed by other vehicles, pushed or pulled by hand, or drawn by animals. The "Slider" and "Skeeter" Aluminum Scooters were designed to be propelled by direct pressure of the foot to the ground. They were not designed to be pulled by vehicle, hand or animal. Further, they were not constructed for the transport of goods.

EN 95.01(A) states, in pertinent part, that wheeled toys designed to be ridden by children are "usually designed for propulsion by the child itself either by means of pedals, hand levers or other simple devices which transmit power to the wheels though a chain or rod, or, as in the case of certain scooters, by direct pressure of the child's foot against the ground." EN 95.01(A)(2) specifically enumerates scooters as toys included in this heading.

Heading 9501 is an *eo nomine* classification provision for wheeled toys, namely scooters, designed to be ridden by children. An *eo nomine* provision is one that describes a commodity by a specific name, as opposed to use. The name is usually one common in commerce. Absent limiting language or indicia of contrary legislative intent, such a provision covers all forms of the article. *See National Advanced Sys. v. United States*, 26 F.3d 1107, 1111 (Fed. Cir. 1994). An *eo nomine* provision may be limited by use, but such use limitation should not be read into an *eo nomine* provision unless the name itself inherently suggests a type of use. *See United States v. Quon Quon Co.*, 46 C.C.P.A. 70, 72–73 (1959), *cited by Carl Zeiss, Inc. v. United States,* 195 F.3d 1375, 1379 (Fed. Cir. 1999).

This *eo nomine* provision is limited. First, anything classifiable in that heading must be a toy. The term "toy" is also not defined in the HTSUS. However, the general EN for Chapter 95 states that the "Chapter covers toys of all kinds whether designed for the amusement of children or adults." Second, it must be designed to be ridden by children. Though this term suggests a use, that use does not control tariff classification entirely. The word "designed," found in many phrases throughout the HTSUS, is "ambiguous, being susceptible of interpretation as 'intended' or as 'particularly and specially constructed.'" *Karo-*

ware, Inc., v. United States, 564 F. 2d 77, 82 (CCPA 1977). It is well established that whether an article is "specifically designed" or "specially constructed" for a particular purpose is determined by various factors, such as an examination of the article itself, its capabilities, as well as its actual use or uses. *See Pacific Trail Sportswear v. United States,* 5 C.I.T. 206 (1983). We must therefore consider various factors in determining the scope of heading 9501.

The EN to heading 9501 lists scooters among the *toys* covered by the heading. The ENs, in describing scooters that are propelled by foot, suggest they are considered wheeled toys. The instant scooters, as with other similar scooters, have relatively sturdy, yet small, lightweight, portable constructions. Both may accommodate various sized persons. Foot-propelled scooters with 100mm hard rubber wheels, like these, generally obtain a speed of 4 mph, which is within the range of speeds of an adult walking briskly. Unlike a bicycle, designed for transportation, foot-propelled scooters are not fast enough to adequately flow with traffic on the street and cannot be maneuvered easily by its design.

In terms of actual uses, children ride scooters in their driveways, around their neighborhoods, to friends' houses, to school. In 2000, the Consumer Product Safety Commission (CPSC) reported 90% of scooter-related injuries were to children under 15. The CPSC, as well as many scooter advertisers, recommend parental supervision. Much of the literature available about scooters on the internet is geared towards children.

Adults also enjoy playing on scooters. Some adults commute to work because this type of scooter is portable and lightweight. Some scooter manufacturers direct advertising only to the adult market. Scooters such as the subject model are often advertised to both younger children and teenagers, though some scooters may also be advertised to adults. In short, scooters serve both as a plaything and as personal transportation for relatively short distances. "When amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose is incidental to the amusement." *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 33 (1977).

Certain scooters are clearly designed with a primary purpose other than amusement. Some scooters have platforms ideal for toting goods. Motor-powered scooters can travel at speeds in excess of 15 mph, which is ideal for transportation. Computerized scooter devices are far too advanced to be designed primarily to amuse. Any amusement is incidental to the utility of these types of scooters. On the other hand, the foot-propelled scooter at issue has no additional or special feature that would tip the scales in favor of utility.

In addition, though a wheeled toy of heading 9501, HTSUS, must be designed to be ridden by children, there is nothing to suggest that the wheeled toys must be solely used by children. In *Marubeni America Corp. v. United States*, 35 F.3d 530, 535 (Fed.Cir. 1994), a case focusing on whether a motor vehicle was principally designed for the transport of persons or of goods, the court opined that, to answer the question, "one must look at both the structural and auxiliary design features, as neither by itself is determinative." That is, even if an object has a primary or principal design, it is not automatically controlling. *See, e.g., Sears Roebuck & Co. v. United States*, 22 F.3d 1082 (Fed.Cir. 1994).

The *Marubeni* court rejected a proposition requiring that the design of vehicles at issue be for the sole use of transporting persons, excluding all other uses, in part because both the heading and the ENs specifically mentioned station wagons, which are dual-purpose vehicles. Similarly, the specific inclusion of scooters in both the legal text and the ENs, and the specific description in the ENs of foot-propelled scooters, does not support a requirement of sole use by children of heading 9501, HTSUS. A scooter may be designed to be ridden by children and still capable of use on occasion by adults, or even to transport cargo.

Moreover, "tariff terms are written for the future as well as the present, meaning that tariff terms can be expected to encompass merchandise not known to commerce at the time of their enactment, provided the new article possesses an essential resemblance to the one named in the statute." *United States v. Standard Surplus Sales, Inc.,* 69 C.C.P.A. 34, 667 F.2d 1011, 1014 (CCPA 1981). The change from the Tariff Schedules of the United States (TSUS), the precursor to the HTSUS, to the HTSUS was intended to provide consistent tariff treatment. Item 732.43, TSUS, provided, in pertinent part, for: "Tricycles, scooters, wagons, pedal cars, and other wheeled goods (except skates), all the foregoing designed to be ridden by children, and parts thereof." provided for scooters. The continuity of the *eo nomine* designation in the two texts supports the classification of this scooter in heading 9501. Today's foot-propelled scooters, while admittedly more advanced, closely resemble the foot-propelled scooters that enjoyed popularity in the United States in the

1930's and 1950's, as well as other foot-propelled scooters previously classified in heading 9501. Thus, heading 9501 encompasses the scooter at issue.

In HSC 28 in November 2001 (Annex HG/16 to Doc. NC0510E2), the Harmonized System Committee (HSC) of the World Customs Organization (WCO) determined the classification of two- or three-wheeled scooters with adjustable steering columns, small solid front and rear wheels and generally a foot brake on the rear wheel, in heading 9501, by application of GRI 1. In essence, the HSC determined that nothing in the heading required that wheeled toys be used solely by children. The scooters examined by the HSC are substantially similar to the scooters at issue. Classification opinions of the HSC may provide assistance in the understanding of the international agreement, the Harmonized System, on which the HTSUS is based. The HSC decision is consistent with our decision here.

For the reasons above we conclude that NY G83140 is in error. Accordingly, the instant foot-propelled scooters are classifiable under heading 9501, HTSUS, rather than heading 8716, HTSUS.

Holding:

The "Slider" and "Skeeter" Aluminum Scooters are classified in subheading 9501.00.40, HTSUS, which provides for "Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof: wheeled toys designed to be ridden by children and parts and accessories thereof: other."

Effect on Other Rulings:

NY G83140, dated November 3, 2000, is hereby revoked. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT I]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 9, 2002.

CLA–2: RR:CR:GC 965756 DBS
Category: Classification
Tariff No. 9501.00.40

MS. JEANNINE MILLS
ACADEMY SPORTS & OUTDOORS
1800 North Mason Road
Katy, TX 77449

Re: Revocation of NY F86094; "Rollin' On" Folding Scooter.

DEAR MS. MILLS:

In NY F86094, issued to you on May 24, 2000, the Director, National Commodity Specialist Division, New York, classified the "Rollin' On" Folding Scooter in subheading 8716.80.50, Harmonized Tariff Schedule of the United States (HTSUS), as other as other vehicles not mechanically propelled. We have reconsidered the classification of this article and now believe it is incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of rulings classifying substantially similar merchandise was published on May 29, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 22. Several comments were received, all in support of the proposed actions. This ruling was identified during the comment period.

Facts:

Style–370 "Rollin' On" Folding Scooter is made of aluminum and is imported inside a nylon carrying bag specifically designed to transport and protect the folded scooter when not in use. The scooter itself has a wheel diameter of 4 inches and its platform measures 15¾ inches in length and 4 inches in width. It has adjustable handlebars that may be raised up to 34 inches or lowered to 26 inches depending on one's height. The width of the handlebars extends 13.5 inches. The scooter is propelled by standing on the platform and pushing off the pavement with one's leg.

Issue:

Whether foot-propelled scooters are classifiable as other vehicles, not mechanically propelled, of heading 8716, HTSUS, or as wheeled toys of heading 9501, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that 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.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs 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:

8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
8716.80	Other vehicles:
8716.80.50	Other.
* * * * * * *	
9501	Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof:
	Wheeled toys designed to be ridden by children and parts and accessories thereof:
9501.00.40	Other.

According to the ENs, heading 8716, HTSUS, covers a group of non-mechanically propelled vehicles that were constructed for transporting goods or persons. The vehicles of this heading are designed to be towed by other vehicles, pushed or pulled by hand, or drawn by animals. The "Rollin' On" Folding Scooter was designed to be propelled by direct pressure of the foot to the ground. It was not designed to be pulled by vehicle, hand or animal. Further, it was not constructed for the transport of goods.

EN 95.01(A) states, in pertinent part, that wheeled toys designed to be ridden by children are "usually designed for propulsion by the child itself either by means of pedals, hand levers or other simple devices which transmit power to the wheels though a chain or rod, or, as in the case of certain scooters, by direct pressure of the child's foot against the ground." EN 95.01(A)(2) specifically enumerates scooters as toys included in this heading.

Heading 9501 is an *eo nomine* classification provision for wheeled toys, namely scooters, designed to be ridden by children. An *eo nomine* provision is one that describes a commodity by a specific name, as opposed to use. The name is usually one common in commerce. Absent limiting language or indicia of contrary legislative intent, such a provision covers all forms of the article. *See National Advanced Sys. v. United States*, 26 F.3d 1107, 1111 (Fed. Cir. 1994). An *eo nomine* provision may be limited by use, but such use limitation should not be read into an *eo nomine* provision unless the name itself inherently suggests a type of use. *See United States v. Quon Quon Co.*, 46 C.C.P.A. 70, 72–73 (1959), *cited by Carl Zeiss, Inc. v. United States,* 195 F.3d 1375, 1379 (Fed. Cir. 1999).

This *eo nomine* provision is limited. First, anything classifiable in that heading must be a toy. The term "toy" is also not defined in the HTSUS. However, the general EN for Chap-

ter 95 states that the "Chapter covers toys of all kinds whether designed for the amusement of children or adults." Second, it must be designed to be ridden by children. Though this term suggests a use, that use does not control tariff classification entirely. The word "designed," found in many phrases throughout the HTSUS, is "ambiguous, being susceptible of interpretation as 'intended' or as 'particularly and specially constructed.'" *Karoware, Inc., v. United States*, 564 F. 2d 77, 82 (CCPA 1977). It is well established that whether an article is "specifically designed" or "specially constructed" for a particular purpose is determined by various factors, such as an examination of the article itself, its capabilities, as well as its actual use or uses. *See Pacific Trail Sportswear v. United States,* 5 C.I.T. 206 (1983). We must therefore consider various factors in determining the scope of heading 9501.

The EN to heading 9501 lists scooters among the *toys* covered by the heading. The ENs, in describing scooters that are propelled by foot, suggest they are considered wheeled toys. The instant scooter, as with other similar scooters, has a relatively sturdy, yet small, lightweight, portable construction. It can be adjusted to accommodate various sized persons. Foot-propelled scooters with 100mm hard rubber wheels, like this one, generally obtain a speed of 4 mph, which is within the range of speeds of an adult walking briskly. Unlike a bicycle, designed for transportation, foot-propelled scooters are not fast enough to adequately flow with traffic on the street and cannot be maneuvered easily by its design.

In terms of actual uses, children ride scooters in their driveways, around their neighborhoods, to friends' houses, to school. In 2000, the Consumer Product Safety Commission (CPSC) reported 90% of scooter-related injuries were to children under 15. The CPSC, as well as many scooter advertisers, recommend parental supervision. Much of the literature available about scooters on the internet is geared towards children.

Adults also enjoy playing on scooters. Some adults commute to work because this type of scooter is portable and lightweight. Some scooter manufacturers direct advertising only to the adult market. Scooters such as the subject model are often advertised to both younger children and teenagers, though some scooters may also be advertised to adults. In short, scooters serve both as a plaything and as personal transportation for relatively short distances. "When amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose is incidental to the amusement." *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 33 (1977).

Certain scooters are clearly designed with a primary purpose other than amusement. Some scooters have platforms ideal for toting goods. Motor-powered scooters can travel at speeds in excess of 15 mph, which is ideal for transportation. Computerized scooter devices are far too advanced to be designed primarily to amuse. Any amusement is incidental to the utility of these types of scooters. On the other hand, the foot-propelled scooter at issue has no additional or special feature that would tip the scales in favor of utility.

In addition, though a wheeled toy of heading 9501, HTSUS, must be designed to be ridden by children, there is nothing to suggest that the wheeled toys must be solely used by children. In *Marubeni America Corp. v. United States*, 35 F.3d 530, 535 (Fed.Cir. 1994), a case focusing on whether a motor vehicle was principally designed for the transport of persons or of goods, the court opined that, to answer the question, "one must look at both the structural and auxiliary design features, as neither by itself is determinative." That is, even if an object has a primary or principal design, it is not automatically controlling. *See, e.g., Sears Roebuck & Co. v. United States*, 22 F.3d 1082 (Fed.Cir. 1994).

The *Marubeni* court rejected a proposition requiring that the design of vehicles at issue be for the sole use of transporting persons, excluding all other uses, in part because both the heading and the ENs specifically mentioned station wagons, which are dual-purpose vehicles. Similarly, the specific inclusion of scooters in both the legal text and the ENs, and the specific description in the ENs of foot-propelled scooters, does not support a requirement of sole use by children of heading 9501, HTSUS. A scooter may be designed to be ridden by children and still capable of use on occasion by adults, or even to transport cargo.

Moreover, "tariff terms are written for the future as well as the present, meaning that tariff terms can be expected to encompass merchandise not known to commerce at the time of their enactment, provided the new article possesses an essential resemblance to the one named in the statute." *United States v. Standard Surplus Sales, Inc.,* 69 C.C.P.A. 34, 667 F.2d 1011, 1014 (CCPA 1981). The change from the Tariff Schedules of the United States (TSUS), the precursor to the HTSUS, to the HTSUS was intended to provide consistent tariff treatment. Item 732.43, TSUS, provided, in pertinent part, for: "Tricycles,

scooters, wagons, pedal cars, and other wheeled goods (except skates), all the foregoing designed to be ridden by children, and parts thereof." provided for scooters. The continuity of the *eo nomine* designation in the two texts supports the classification of this scooter in heading 9501. Today's foot-propelled scooters, while admittedly more advanced, closely resemble the foot-propelled scooters that enjoyed popularity in the United States in the 1930's and 1950's, as well as other foot-propelled scooters previously classified in heading 9501. Thus, heading 9501 encompasses the scooter at issue.

In HSC 28 in November 2001 (Annex HG/16 to Doc. NC0510E2), the Harmonized System Committee (HSC) of the World Customs Organization (WCO) determined the classification of two- or three-wheeled scooters with adjustable steering columns, small solid front and rear wheels and generally a foot brake on the rear wheel, in heading 9501, by application of GRI 1. In essence, the HSC determined that nothing in the heading required that wheeled toys be used solely by children. The scooters examined by the HSC are substantially similar to the scooter at issue. Classification opinions of the HSC may provide assistance in the understanding of the international agreement, the Harmonized System, on which the HTSUS is based. The HSC decision is consistent with our decision here.

For the reasons above we conclude that NY F86094 was in error. Accordingly, the instant foot-propelled scooter is classifiable under heading 9501, HTSUS, rather than heading 8716, HTSUS.

Holding:

The "Rollin' On" Folding Scooter is classified in subheading 9501.00.40, HTSUS, which provides for "Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof: wheeled toys designed to be ridden by children and parts and accessories thereof: other."

Effect on Other Rulings:

NY F86094, dated May 24, 2000, is hereby revoked. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT J]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 9, 2002.

CLA–2: RR:CR:GC 965757 DBS
Category: Classification
Tariff No. 9501.00.40

MS. ALICE LU
ATICO INTERNATIONAL USA, INC.
503 S. Andrews Avenue
Fort Lauderdale, FL 33301

Re: Revocation of NY G80648; Foldable Rollerboard Scooter.

DEAR MS. LU:

In NY G80648, issued to you on August 23, 2000, the Director, National Commodity Specialist Division, New York, classified the Foldable Rollerboard Scooter in subheading 8716.80.50, Harmonized Tariff Schedule of the United States (HTSUS), as other as other vehicles not mechanically propelled. We have reconsidered the classification of this article and now believe it is incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of rulings classifying substantially similar merchandise was published on May

29, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 22. Several comments were received, all in support of the proposed actions. This ruling was identified during the comment period.

Facts:

The Foldable Rollerboard Scooter, Item # C65H–00350. The scooter is made of aluminum alloy and has two 100 mm (4 in.) PU wheels. The handlebars are adjustable and can be raised to an approximate height of three feet. The rider stands on the Rollerboard and propels it by pushing off with one leg.

Issue:

Whether foot-propelled scooters are classifiable as other vehicles, not mechanically propelled, of heading 8716, HTSUS, or as wheeled toys of heading 9501, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that 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.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs 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:

8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
8716.80	Other vehicles:
8716.80.50	Other.
* * * * * * *	
9501	Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof:
	Wheeled toys designed to be ridden by children and parts and accessories thereof:
9501.00.40	Other.

According to the ENs, heading 8716, HTSUS, covers a group of non-mechanically propelled vehicles that were constructed for transporting goods or persons. The vehicles of this heading are designed to be towed by other vehicles, pushed or pulled by hand, or drawn by animals. The Foldable Rollerboard Scooter was designed to be propelled by direct pressure of the foot to the ground. It was not designed to be pulled by vehicle, hand or animal. Further, it was not constructed for the transport of goods.

EN 95.01(A) states, in pertinent part, that wheeled toys designed to be ridden by children are "usually designed for propulsion by the child itself either by means of pedals, hand levers or other simple devices which transmit power to the wheels though a chain or rod, or, as in the case of certain scooters, by direct pressure of the child's foot against the ground." EN 95.01(A)(2) specifically enumerates scooters as toys included in this heading.

Heading 9501 is an *eo nomine* classification provision for wheeled toys, namely scooters, designed to be ridden by children. An *eo nomine* provision is one that describes a commodity by a specific name, as opposed to use. The name is usually one common in commerce. Absent limiting language or indicia of contrary legislative intent, such a provision covers all forms of the article. *See National Advanced Sys. v. United States*, 26 F.3d 1107, 1111 (Fed. Cir. 1994). An *eo nomine* provision may be limited by use, but such use limitation should not be read into an *eo nomine* provision unless the name itself inherently suggests a type of use. *See United States v. Quon Quon Co.*, 46 C.C.P.A. 70, 72–73 (1959), *cited by Carl Zeiss, Inc. v. United States,* 195 F.3d 1375, 1379 (Fed. Cir. 1999).

This *eo nomine* provision is limited. First, anything classifiable in that heading must be a toy. The term "toy" is also not defined in the HTSUS. However, the general EN for Chap-

ter 95 states that the "Chapter covers toys of all kinds whether designed for the amusement of children or adults." Second, it must be designed to be ridden by children. Though this term suggests a use, that use does not control tariff classification entirely. The word "designed," found in many phrases throughout the HTSUS, is "ambiguous, being susceptible of interpretation as 'intended' or as 'particularly and specially constructed.'" *Karoware, Inc., v. United States*, 564 F. 2d 77, 82 (CCPA 1977). It is well established that whether an article is "specifically designed" or "specially constructed" for a particular purpose is determined by various factors, such as an examination of the article itself, its capabilities, as well as its actual use or uses. *See Pacific Trail Sportswear v. United States,* 5 C.I.T. 206 (1983). We must therefore consider various factors in determining the scope of heading 9501.

The EN to heading 9501 lists scooters among the *toys* covered by the heading. The ENs, in describing scooters that are propelled by foot, suggest they are considered wheeled toys. The instant scooter, as with other similar scooters, has a relatively sturdy, yet small, lightweight, portable construction. It can be adjusted to accommodate various sized persons. Foot-propelled scooters with 100mm hard rubber wheels, like this one, generally obtain a speed of 4 mph, which is within the range of speeds of an adult walking briskly. Unlike a bicycle, designed for transportation, foot-propelled scooters are not fast enough to adequately flow with traffic on the street and cannot be maneuvered easily by its design.

In terms of actual uses, children ride scooters in their driveways, around their neighborhoods, to friends' houses, to school. In 2000, the Consumer Product Safety Commission (CPSC) reported 90% of scooter-related injuries were to children under 15. The CPSC, as well as many scooter advertisers, recommend parental supervision. Much of the literature available about scooters on the internet is geared towards children.

Adults also enjoy playing on scooters. Some adults commute to work because this type of scooter is portable and lightweight. Some scooter manufacturers direct advertising only to the adult market. Scooters such as the subject model are often advertised to both younger children and teenagers, though some scooters may also be advertised to adults. In short, scooters serve both as a plaything and as personal transportation for relatively short distances. "When amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose is incidental to the amusement." *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 33 (1977).

Certain scooters are clearly designed with a primary purpose other than amusement. Some scooters have platforms ideal for toting goods. Motor-powered scooters can travel at speeds in excess of 15 mph, which is ideal for transportation. Computerized scooter devices are far too advanced to be designed primarily to amuse. Any amusement is incidental to the utility of these types of scooters. On the other hand, the foot-propelled scooter at issue has no additional or special feature that would tip the scales in favor of utility.

In addition, though a wheeled toy of heading 9501, HTSUS, must be designed to be ridden by children, there is nothing to suggest that the wheeled toys must be solely used by children. In *Marubeni America Corp. v. United States*, 35 F.3d 530, 535 (Fed.Cir. 1994), a case focusing on whether a motor vehicle was principally designed for the transport of persons or of goods, the court opined that, to answer the question, "one must look at both the structural and auxiliary design features, as neither by itself is determinative." That is, even if an object has a primary or principal design, it is not automatically controlling. *See, e.g., Sears Roebuck & Co. v. United States*, 22 F.3d 1082 (Fed.Cir. 1994).

The *Marubeni* court rejected a proposition requiring that the design of vehicles at issue be for the sole use of transporting persons, excluding all other uses, in part because both the heading and the ENs specifically mentioned station wagons, which are dual-purpose vehicles. Similarly, the specific inclusion of scooters in both the legal text and the ENs, and the specific description in the ENs of foot-propelled scooters, does not support a requirement of sole use by children of heading 9501, HTSUS. A scooter may be designed to be ridden by children and still capable of use on occasion by adults, or even to transport cargo.

Moreover, "tariff terms are written for the future as well as the present, meaning that tariff terms can be expected to encompass merchandise not known to commerce at the time of their enactment, provided the new article possesses an essential resemblance to the one named in the statute." *United States v. Standard Surplus Sales, Inc.,* 69 C.C.P.A. 34, 667 F.2d 1011, 1014 (CCPA 1981). The change from the Tariff Schedules of the United States (TSUS), the precursor to the HTSUS, to the HTSUS was intended to provide consistent tariff treatment. Item 732.43, TSUS, provided, in pertinent part, for: "Tricycles,

scooters, wagons, pedal cars, and other wheeled goods (except skates), all the foregoing designed to be ridden by children, and parts thereof." provided for scooters. The continuity of the *eo nomine* designation in the two texts supports the classification of this scooter in heading 9501. Today's foot-propelled scooters, while admittedly more advanced, closely resemble the foot-propelled scooters that enjoyed popularity in the United States in the 1930's and 1950's, as well as other foot-propelled scooters previously classified in heading 9501. Thus, heading 9501 encompasses the scooter at issue.

In HSC 28 in November 2001 (Annex HG/16 to Doc. NC0510E2), the Harmonized System Committee (HSC) of the World Customs Organization (WCO) determined the classification of two- or three-wheeled scooters with adjustable steering columns, small solid front and rear wheels and generally a foot brake on the rear wheel, in heading 9501, by application of GRI 1. In essence, the HSC determined that nothing in the heading required that wheeled toys be used solely by children. The scooters examined by the HSC are substantially similar to the scooter at issue. Classification opinions of the HSC may provide assistance in the understanding of the international agreement, the Harmonized System, on which the HTSUS is based. The HSC decision is consistent with our decision here.

For the reasons above we conclude that NY G80648 was in error. Accordingly, the instant foot-propelled scooter is classifiable under heading 9501, HTSUS, rather than heading 8716, HTSUS.

If the carrying case is imported with the scooter in retail box then the carrying case is not subject to visa and quota restraints. However, if the carrying case is imported and sold separately then it would be classified elsewhere and possibly subject to applicable visa and quota restraints depending on the country of origin of the carrying case.

Holding:

The "Oxygen" brand scooter and carrying case are classified in subheading 9501.00.40, HTSUS, which provides for "Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof: wheeled toys designed to be ridden by children and parts and accessories thereof: other."

Effect on Other Rulings:

NY G80648, dated August 23, 2000, is hereby revoked. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT K]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 9, 2002.

CLA–2: RR:CR:GC 965758 DBS
Category: Classification
Tariff No. 9501.00.40

MS. CAROL HAGYARD
A.N. DERINGER, INC.
1010 Niagara Street
Buffalo, NY 14213

Re: Revocation of NY G83141; "Oxygen" Scooter and Carrying Case.

DEAR MS. HAGYARD:

In NY G83141, issued to you on behalf of Seven Stars Sports, November 3, 2000, the Director, National Commodity Specialist Division, New York, classified the "Oxygen" Scooter in subheading 8716.80.50, Harmonized Tariff Schedule of the United States

(HTSUS), as other as other vehicles not mechanically propelled. We have reconsidered the classification of this article and now believe it is incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of rulings classifying substantially similar merchandise was published on May 29, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 22. Several comments were received, all in support of the proposed action. Several comments were received, all in support of the proposed actions. This ruling was identified during the comment period.

Facts:

The "Oxygen" Scooter has an aluminum frame and the handle can be adjusted to varying heights. The literature depicts the scooter with two wheels. No dimensions were provided; however the scooter appears to be similar in design and construction to other scooters being imported into the United States that we have classified. The scooter comes with a carrying case in a retail box and that they are not sold separately. The carrying case is made of nylon cloth with polypropylene waterproof coating back strap with 1-inch plastic buckle and silk screen logo. You state that some retail boxes are marked "Bonus Carrying Case."

Issue:

Whether foot-propelled scooters are classifiable as other vehicles, not mechanically propelled, of heading 8716, HTSUS, or as wheeled toys of heading 9501, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that 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.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs 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:

8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
8716.80	Other vehicles:
8716.80.50	Other.
* * * * * * *	
9501	Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof:
	Wheeled toys designed to be ridden by children and parts and accessories thereof:
9501.00.40	Other.

According to the ENs, heading 8716, HTSUS, covers a group of non-mechanically propelled vehicles that were constructed for transporting goods or persons. The vehicles of this heading are designed to be towed by other vehicles, pushed or pulled by hand, or drawn by animals. The "Oxygen" Scooter was designed to be propelled by direct pressure of the foot to the ground. It was not designed to be pulled by vehicle, hand or animal. Further, it was not constructed for the transport of goods.

EN 95.01(A) states, in pertinent part, that wheeled toys designed to be ridden by children are "usually designed for propulsion by the child itself either by means of pedals, hand levers or other simple devices which transmit power to the wheels though a chain or rod, or, as in the case of certain scooters, by direct pressure of the child's foot against the ground." EN 95.01(A)(2) specifically enumerates scooters as toys included in this heading.

Heading 9501 is an *eo nomine* classification provision for wheeled toys, namely scooters, designed to be ridden by children. An *eo nomine* provision is one that describes a commodity by a specific name, as opposed to use. The name is usually one common in commerce. Absent limiting language or indicia of contrary legislative intent, such a provision covers all forms of the article. *See National Advanced Sys. v. United States*, 26 F.3d 1107, 1111 (Fed. Cir. 1994). An *eo nomine* provision may be limited by use, but such use limitation should not be read into an *eo nomine* provision unless the name itself inherently suggests a type of use. *See United States v. Quon Quon Co.,* 46 C.C.P.A. 70, 72–73 (1959), *cited by Carl Zeiss, Inc. v. United States,* 195 F.3d 1375, 1379 (Fed. Cir. 1999).

This *eo nomine* provision is limited. First, anything classifiable in that heading must be a toy. The term "toy" is also not defined in the HTSUS. However, the general EN for Chapter 95 states that the "Chapter covers toys of all kinds whether designed for the amusement of children or adults." Second, it must be designed to be ridden by children. Though this term suggests a use, that use does not control tariff classification entirely. The word "designed," found in many phrases throughout the HTSUS, is "ambiguous, being susceptible of interpretation as 'intended' or as 'particularly and specially constructed.'" *Karoware, Inc., v. United States*, 564 F. 2d 77, 82 (CCPA 1977). It is well established that whether an article is "specifically designed" or "specially constructed" for a particular purpose is determined by various factors, such as an examination of the article itself, its capabilities, as well as its actual use or uses. *See Pacific Trail Sportswear v. United States,* 5 C.I.T. 206 (1983). We must therefore consider various factors in determining the scope of heading 9501.

The EN to heading 9501 lists scooters among the *toys* covered by the heading. The ENs, in describing scooters that are propelled by foot, suggest they are considered wheeled toys. The instant scooter, as with other similar scooters, has a relatively sturdy, yet small, lightweight, portable construction. It can be adjusted to accommodate various sized persons. Foot-propelled scooters with 100mm hard rubber wheels, like this one, generally obtain a speed of 4 mph, which is within the range of speeds of an adult walking briskly. Unlike a bicycle, designed for transportation, foot-propelled scooters are not fast enough to adequately flow with traffic on the street and cannot be maneuvered easily by its design.

In terms of actual uses, children ride scooters in their driveways, around their neighborhoods, to friends' houses, to school. In 2000, the Consumer Product Safety Commission (CPSC) reported 90% of scooter-related injuries were to children under 15. The CPSC, as well as many scooter advertisers, recommend parental supervision. Much of the literature available about scooters on the internet is geared towards children.

Adults also enjoy playing on scooters. Some adults commute to work because this type of scooter is portable and lightweight. Some scooter manufacturers direct advertising only to the adult market. Scooters such as the subject model are often advertised to both younger children and teenagers, though some scooters may also be advertised to adults. In short, scooters serve both as a plaything and as personal transportation for relatively short distances. "When amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose is incidental to the amusement." *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 33 (1977).

Certain scooters are clearly designed with a primary purpose other than amusement. Some scooters have platforms ideal for toting goods. Motor-powered scooters can travel at speeds in excess of 15 mph, which is ideal for transportation. Computerized scooter devices are far too advanced to be designed primarily to amuse. Any amusement is incidental to the utility of these types of scooters. On the other hand, the foot-propelled scooter at issue has no additional or special feature that would tip the scales in favor of utility.

In addition, though a wheeled toy of heading 9501, HTSUS, must be designed to be ridden by children, there is nothing to suggest that the wheeled toys must be solely used by children. In *Marubeni America Corp. v. United States*, 35 F.3d 530, 535 (Fed.Cir. 1994), a case focusing on whether a motor vehicle was principally designed for the transport of persons or of goods, the court opined that, to answer the question, "one must look at both the structural and auxiliary design features, as neither by itself is determinative." That is, even if an object has a primary or principal design, it is not automatically controlling. *See, e.g., Sears Roebuck & Co. v. United States*, 22 F.3d 1082 (Fed.Cir. 1994).

The *Marubeni* court rejected a proposition requiring that the design of vehicles at issue be for the sole use of transporting persons, excluding all other uses, in part because both the heading and the ENs specifically mentioned station wagons, which are dual-purpose

vehicles. Similarly, the specific inclusion of scooters in both the legal text and the ENs, and the specific description in the ENs of foot-propelled scooters, does not support a requirement of sole use by children of heading 9501, HTSUS. A scooter may be designed to be ridden by children and still capable of use on occasion by adults, or even to transport cargo.

Moreover, "tariff terms are written for the future as well as the present, meaning that tariff terms can be expected to encompass merchandise not known to commerce at the time of their enactment, provided the new article possesses an essential resemblance to the one named in the statute." *United States v. Standard Surplus Sales, Inc.,* 69 C.C.P.A. 34, 667 F2d 1011, 1014 (CCPA 1981). The change from the Tariff Schedules of the United States (TSUS), the precursor to the HTSUS, to the HTSUS was intended to provide consistent tariff treatment. Item 732.43, TSUS, provided, in pertinent part, for: "Tricycles, scooters, wagons, pedal cars, and other wheeled goods (except skates), all the foregoing designed to be ridden by children, and parts thereof." provided for scooters. The continuity of the *eo nomine* designation in the two texts supports the classification of this scooter in heading 9501. Today's foot-propelled scooters, while admittedly more advanced, closely resemble the foot-propelled scooters that enjoyed popularity in the United States in the 1930's and 1950's, as well as other foot-propelled scooters previously classified in heading 9501. Thus, heading 9501 encompasses the scooter at issue.

In HSC 28 in November 2001 (Annex HG/16 to Doc. NC0510E2), the Harmonized System Committee (HSC) of the World Customs Organization (WCO) determined the classification of two- or three-wheeled scooters with adjustable steering columns, small solid front and rear wheels and generally a foot brake on the rear wheel, in heading 9501, by application of GRI 1. In essence, the HSC determined that nothing in the heading required that wheeled toys be used solely by children. The scooters examined by the HSC are substantially similar to the scooter at issue. Classification opinions of the HSC may provide assistance in the understanding of the international agreement, the Harmonized System, on which the HTSUS is based. The HSC decision is consistent with our decision here.

For the reasons above we conclude that NY G83141 was in error. Accordingly, the instant foot-propelled scooter is classifiable under heading 9501, HTSUS, rather than heading 8716, HTSUS.

If the carrying case is imported with the Scooter in retail box then the carrying case is not subject to visa and quota restraints. However, if the carrying case is imported and sold separately then it would be classified elsewhere and possibly subject to applicable visa and quota restraints depending on the country of origin of the carrying case.

Holding:

The "Oxygen" Scooter and Carrying Case are classified in subheading 9501.00.40, HTSUS, which provides for "Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof: wheeled toys designed to be ridden by children and parts and accessories thereof: other."

Effect on Other Rulings:

NY G83141, dated November 3, 2000, is hereby revoked. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT L]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 9, 2002.

CLA–2: RR:CR:GC 965760 DBS
Category: Classification
Tariff No. 9501.00.40

MR. ORLANDO RODRIGUEZ
ALMACENES PITUSA, INC.
PO. Box 839
Hato Rey Station
San Juan, PR 00919–0839

Re: Revocation of NY G81605; "Speedy" Foldable Scooter.

DEAR MR. RODRIGUEZ:

In NY G81605, issued to you on August 29, 2000, the Director, National Commodity Specialist Division, New York, classified the "Speedy" Foldable Scooter in subheading 8716.80.50, Harmonized Tariff Schedule of the United States (HTSUS), as other as other vehicles not mechanically propelled. We have reconsidered the classification of this article and now believe it is incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of rulings classifying substantially similar merchandise was published on May 29, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 22. Several comments were received, all in support of the proposed actions. This ruling was identified during the comment period.

Facts:

The "Speedy" Foldable Scooter, Item # SC–08CR, is made of aluminum alloy and has 100 mm (4 in.) PU cast wheels. The handlebars are foam covered. The scooter can support a weight of 160 kgs. (approx. 320 lbs.). The scooter is not motorized. The scooter folds and collapses for storage into an imitation nylon carry bag that is included with the scooter.

Issue:

Whether foot-propelled scooters are classifiable as other vehicles, not mechanically propelled, of heading 8716, HTSUS, or as wheeled toys of heading 9501, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that 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.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs 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:

8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
8716.80	Other vehicles:
8716.80.50	Other.

* * * * * * *

9501	Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof:
	Wheeled toys designed to be ridden by children and parts and accessories thereof:
9501.00.40	Other.

According to the ENs, heading 8716, HTSUS, covers a group of non-mechanically propelled vehicles that were constructed for transporting goods or persons. The vehicles of this heading are designed to be towed by other vehicles, pushed or pulled by hand, or drawn by animals. The "Speedy" Foldable Scooter was designed to be propelled by direct pressure of the foot to the ground. It was not designed to be pulled by vehicle, hand or animal. Further, it was not constructed for the transport of goods.

EN 95.01(A) states, in pertinent part, that wheeled toys designed to be ridden by children are "usually designed for propulsion by the child itself either by means of pedals, hand levers or other simple devices which transmit power to the wheels though a chain or rod, or, as in the case of certain scooters, by direct pressure of the child's foot against the ground." EN 95.01(A)(2) specifically enumerates scooters as toys included in this heading.

Heading 9501 is an *eo nomine* classification provision for wheeled toys, namely scooters, designed to be ridden by children. An *eo nomine* provision is one that describes a commodity by a specific name, as opposed to use. The name is usually one common in commerce. Absent limiting language or indicia of contrary legislative intent, such a provision covers all forms of the article. *See National Advanced Sys. v. United States*, 26 F.3d 1107, 1111 (Fed. Cir. 1994). An *eo nomine* provision may be limited by use, but such use limitation should not be read into an *eo nomine* provision unless the name itself inherently suggests a type of use. *See United States v. Quon Quon Co.*, 46 C.C.P.A. 70, 72–73 (1959), *cited by Carl Zeiss, Inc. v. United States,* 195 F.3d 1375, 1379 (Fed. Cir. 1999).

This *eo nomine* provision is limited. First, anything classifiable in that heading must be a toy. The term "toy" is also not defined in the HTSUS. However, the general EN for Chapter 95 states that the "Chapter covers toys of all kinds whether designed for the amusement of children or adults." Second, it must be designed to be ridden by children. Though this term suggests a use, that use does not control tariff classification entirely. The word "designed," found in many phrases throughout the HTSUS, is "ambiguous, being susceptible of interpretation as 'intended' or as 'particularly and specially constructed.'" *Karoware, Inc., v. United States*, 564 F. 2d 77, 82 (CCPA 1977). It is well established that whether an article is "specifically designed" or "specially constructed" for a particular purpose is determined by various factors, such as an examination of the article itself, its capabilities, as well as its actual use or uses. *See Pacific Trail Sportswear v. United States,* 5 C.I.T. 206 (1983). We must therefore consider various factors in determining the scope of heading 9501.

The EN to heading 9501 lists scooters among the *toys* covered by the heading. The ENs, in describing scooters that are propelled by foot, suggest they are considered wheeled toys. The instant scooter, as with other similar scooters, has a relatively sturdy, yet small, lightweight, portable construction. It can be adjusted to accommodate various sized persons. Foot-propelled scooters with 100mm hard rubber wheels, like this one, generally obtain a speed of 4 mph, which is within the range of speeds of an adult walking briskly. Unlike a bicycle, designed for transportation, foot-propelled scooters are not fast enough to adequately flow with traffic on the street and cannot be maneuvered easily by its design.

In terms of actual uses, children ride scooters in their driveways, around their neighborhoods, to friends' houses, to school. In 2000, the Consumer Product Safety Commission (CPSC) reported 90% of scooter-related injuries were to children under 15. The CPSC, as well as many scooter advertisers, recommend parental supervision. Much of the literature available about scooters on the internet is geared towards children.

Adults also enjoy playing on scooters. Some adults commute to work because this type of scooter is portable and lightweight. Some scooter manufacturers direct advertising only to the adult market. Scooters such as the subject model are often advertised to both younger children and teenagers, though some scooters may also be advertised to adults. In short, scooters serve both as a plaything and as personal transportation for relatively short distances. "When amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utility purpose is incidental to the amusement." *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 33 (1977).

Certain scooters are clearly designed with a primary purpose other than amusement. Some scooters have platforms ideal for toting goods. Motor-powered scooters can travel at speeds in excess of 15 mph, which is ideal for transportation. Computerized scooter devices are far too advanced to be designed primarily to amuse. Any amusement is incidental to the utility of these types of scooters. On the other hand, the foot-propelled scooter at issue has no additional or special feature that would tip the scales in favor of utility.

In addition, though a wheeled toy of heading 9501, HTSUS, must be designed to be ridden by children, there is nothing to suggest that the wheeled toys must be solely used by children. In *Marubeni America Corp. v. United States*, 35 F.3d 530, 535 (Fed.Cir. 1994), a case focusing on whether a motor vehicle was principally designed for the transport of persons or of goods, the court opined that, to answer the question, "one must look at both the structural and auxiliary design features, as neither by itself is determinative." That is, even if an object has a primary or principal design, it is not automatically controlling. *See, e.g., Sears Roebuck & Co. v. United States*, 22 F.3d 1082 (Fed.Cir. 1994).

The *Marubeni* court rejected a proposition requiring that the design of vehicles at issue be for the sole use of transporting persons, excluding all other uses, in part because both the heading and the ENs specifically mentioned station wagons, which are dual-purpose vehicles. Similarly, the specific inclusion of scooters in both the legal text and the ENs, and the specific description in the ENs of foot-propelled scooters, does not support a requirement of sole use by children of heading 9501, HTSUS. A scooter may be designed to be ridden by children and still capable of use on occasion by adults, or even to transport cargo.

Moreover, "tariff terms are written for the future as well as the present, meaning that tariff terms can be expected to encompass merchandise not known to commerce at the time of their enactment, provided the new article possesses an essential resemblance to the one named in the statute." *United States v. Standard Surplus Sales, Inc.,* 69 C.C.P.A. 34, 667 F.2d 1011, 1014 (CCPA 1981). The change from the Tariff Schedules of the United States (TSUS), the precursor to the HTSUS, to the HTSUS was intended to provide consistent tariff treatment. Item 732.43, TSUS, provided, in pertinent part, for: "Tricycles, scooters, wagons, pedal cars, and other wheeled goods (except skates), all the foregoing designed to be ridden by children, and parts thereof." provided for scooters. The continuity of the *eo nomine* designation in the two texts supports the classification of this scooter in heading 9501. Today's foot-propelled scooters, while admittedly more advanced, closely resemble the foot-propelled scooters that enjoyed popularity in the United States in the 1930's and 1950's, as well as other foot-propelled scooters previously classified in heading 9501. Thus, heading 9501 encompasses the scooter at issue.

In HSC 28 in November 2001 (Annex HG/16 to Doc. NC0510E2), the Harmonized System Committee (HSC) of the World Customs Organization (WCO) determined the classification of two- or three-wheeled scooters with adjustable steering columns, small solid front and rear wheels and generally a foot brake on the rear wheel, in heading 9501, by application of GRI 1. In essence, the HSC determined that nothing in the heading required that wheeled toys be used solely by children. The scooters examined by the HSC are substantially similar to the scooter at issue. Classification opinions of the HSC may provide assistance in the understanding of the international agreement, the Harmonized System, on which the HTSUS is based. The HSC decision is consistent with our decision here.

For the reasons above we conclude that NY G81605 was in error. Accordingly, the instant foot-propelled scooter is classifiable under heading 9501, HTSUS, rather than heading 8716, HTSUS.

Holding:

The "Speedy" Foldable Scooter is classified in subheading 9501.00.40, HTSUS, which provides for "Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof: wheeled toys designed to be ridden by children and parts and accessories thereof: other."

Effect on Other Rulings:

NY G81605, dated August 29, 2000, is hereby revoked. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT M]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 9, 2002.

CLA–2: RR:CR:GC 965517 DBS
Category: Classification
Tariff No. 9501.00.40

MR. JOSEPH R. HOFFACKER
BARTHCO TRADE CONSULTANTS, INC.
7575 Holstein Avenue
Philadelphia, PA 19153

Re: Modification of NY G83603; Scooter Hop-Up Repair Kit.

DEAR MR. HOFFACKER:

In NY G83603, issued to you on behalf of K.B. Toys, on November 9, 2000, the Director, National Commodity Specialist Division, New York, classified the items in the Scooter Hop-Up Repair Kit in various subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), We have reconsidered the classification of certain articles in that kit and now believe the ruling, in part, to be incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of the above identified ruling was published on May 29, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 22. Several comments were received, all in support of the proposed actions.

Facts:

Scooter Hop-Up Repair Kit is used to upgrade two-wheeled, foot-propelled scooters. It consists of 2 100mm (4 in.) polyeurethane hand poured wheels, 4 ABEC speed bearings built into the wheels, 2 foam handles, grip tape, which provides an abrasive surface to the platform of a scooter, a sheet of decorative stickers, 2 Allen wrenches and a shoulder strap, for carrying the scooter. The NY ruling classified the wheels, foam handles and grip tape under subheading 8716.90.50, HTSUS, which provides for parts of trailers, semi-trailers and other vehicles not mechanically propelled.

Issue:

Whether certain parts of foot-propelled scooters are classifiable as parts of wheeled toys of heading 9501, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that 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.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs 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:

8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
8716.90	Other vehicles:
8716.90.50	Other.

* * * * * * *

9501	Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof:
	Wheeled toys designed to be ridden by children and parts and accessories thereof:
9501.00.40	Other.

Customs has reconsidered the classification of numerous two-wheeled, foot-propelled scooters that had been classified in subheading 8716.80.50, HTSUS, as other vehicles not mechanically propelled. We found, in HQ 965510, 965511, 965512, 965513, 965514, 965515 and 965516, all dated this date, that these scooters are properly classified in subheading 9501.00.40, HTSUS, as they are provide for *eo nomine* in heading 9501, HTSUS. As the scooters are now classified as scooters, replacement parts for scooters should be classified accordingly. *See* General EN to Chapter 95, HTSUS. Therefore, the wheels, the foam handles and the grip tape classified in NY G83603 as parts of other vehicles not mechanically propelled can no longer be classified in heading 8716, HTSUS. Rather, they are classifiable as parts of the goods of heading 9501, HTSUS.

For the reason above we conclude that NY G83603 was in error.

Holding:

The wheels, foam handles and grip tape of the Scooter Hop-Up Repair Kit are each classified in subheading 9501.00.40, HTSUS, which provides for "Wheeled toys designed to be ridden by children (for example, tricycles, scooters, pedal cars); dolls' carriages and dolls' strollers; parts and accessories thereof: wheeled toys designed to be ridden by children and parts and accessories thereof: other."

Effect on Other Rulings:

NY G83603, dated November 9, 2000, is hereby modified. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)