U.S. Customs and Border Protection

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING CERTAIN DIGITAL PROJECTORS

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection ("CBP") has issued a final determination concerning the country of origin of certain digital projectors. Based upon the facts presented, CBP has concluded that the assembly and programming operations performed in Taiwan substantially transform the non-TAA country components of the projectors. Therefore, the country of origin of the projectors is Taiwan for purposes of U.S. government procurement.

DATES: The final determination was issued on July 29, 2011. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination on or before September 12, 2011.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Valuation and Special Programs Branch: (202) 325–0034.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on July 29, 2011, pursuant to subpart B of part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of digital projectors which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H146735, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concluded that, based upon the facts presented, the assembly and programming operations performed in Taiwan substantially transform the non-TAA country components of the projectors. Therefore, the country of origin of the projectors is Taiwan for purposes of U.S. government procurement.

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

Dated: July 29, 2011.

SANDRA L. BELL,
Executive Director,
Regulations and Rulings,
Office of International Trade.

Attachment

HQ H146735

July 29, 2011
MAR–2 OT:RR:CTF:VS H146735 HkP
Category: Marking

MUNFORD PAGE HALL, ESQ.
WILLIAM C. SJOBERG, ESQ.
ADDUCI, MASTRIANI & SCHAUMBERG LLP
1200 SEVENTEENTH STREET, NW
WASHINGTON, DC 20036.

RE: Final Determination; Substantial Transformation; Country of Origin of Certain Digital Projectors

DEAR MR. HALL AND MR. SJOBERG:

This is in response to your letter dated January 21, 2011, requesting a final determination on behalf of a foreign manufacturer, pursuant to subpart B of part 177 of the U.S. Customs and Border Protection (CBP) Regulations (19 C.F.R. Part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (TAA), as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of two models of digital projectors. We note that as the manufacturer of the digital projectors, the foreign manufacturer is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination.

FACTS:

According to the submitted information, the subject merchandise is two models of digital projectors, Model A and Model B (collectively, the digital projector). The projector is a 9cm x 30cm x 20cm, 2.5kg, digital light processing (DLP) projector, designed to use a high-intensity discharge (HID) arc lamp as the light source to project images from computers and other video sources. It can produce an image size of up to 307 inches diagonally. The main differences between Model A and Model B are the resolution of the projected image and the throw ratio (basically the viewing distance from the screen).

The projector is composed of the following components:

Components of Taiwanese origin include:

(1) System firmware, which controls the functions of the keypad, remote controller, USB port, lamp brightness, volume, and on-screen display main menu, as well as image processing. The fully assembled projector is programmed in Taiwan with this firmware.

(2) Power control firmware, used to control the on/off function of the projector and to retrieve the input/output (I/O) setting of the projector in the latest turn-off from an electronically erasable programmable read only memory (EEPROM). The firmware detects the power signal and transmits the command to the low voltage power supply (LVPS) to output the required voltage for the system and the lamp. The firmware also controls the operation

of the fans and detects their operating status. The fully assembled projector is programmed in Taiwan with this firmware.

(3) Extended Display Identification Data (EDID) firmware, a Video Electronics Standard Association (VESA) data format that contains basic information about the projector and its capabilities, including vendor information, maximum image size, color characteristics, factory pre-set timings, frequency range limits, and character strings for the model name and serial number. The information is stored in the display and uses the Display Data Channel (DDC) to communicate between the projector and a personal computer graphics adapter. The system uses this information for configuration purposes. The fully assembled projector is programmed in Taiwan with this firmware.

(4) Network firmware, which contains the network protocol, is used to receive instructions to control the projector from a remote user using a computer. The firmware may be updated in Taiwan during the assembly and testing processes.

Components of Chinese origin include:

(1) Bottom cover module, comprised of parts from Korea, China, and Taiwan.

(2) Elevator module, used to adjust the height of the projector, comprised of parts from China and Japan.

(3) Right cover module, comprised of parts from China.

(4) Input/Output (I/O) cover module, comprised of parts from China.

(5) Top cover module, comprised of parts from Japan, Taiwan, China, the U.S., and Korea.

(6) Cosmetic module, comprised of parts from China.

(7) Fan modules, comprised of the system (axial) fan module and the lamp blower module attached to the lamp housing, comprised of parts from China.

(8) Lamp driver (ballast) module, comprised of parts from China.

(9) Lamp driver firmware, used to control lamp ignition and to obtain the ballast waveform that controls the output current with respect to the angle of the color wheel. White light, generated by a high intensity discharge arc lamp, passes through the filter to generate different colors. The firmware is programmed into an IC on the lamp driver module (Chinese component no. 8) in China.

(10) Color wheel module, which includes the color wheel, photo sensor board with photo sensor, and bracket. It acts as a time-varying wavelength filter to allow certain wavelengths of light to pass through at the appropriate times so that the filtered light may be modulated by the light valve, DMD (digital micromirror device, *i.e.,* an optical semiconductor), to produce the projected image with full color. Module parts are from Japan, China, and Taiwan.

(11) Zoom ring module, comprised of parts from China.

(12) Lamp module, comprised of parts from China.

(13) Lamp cover module, comprised of parts from China.

(14) Semi-finished optical engine module, which includes a Taiwanese-origin DMD, a DMD board, an optical lens, a projection lens, and rod integrator. Module parts are from Taiwan and China.

(15) Main board module, which stores the system firmware (Taiwanese component no. 1) on a Taiwanese-origin DDP2431 processor, comprised of parts from China, the Czech Republic, Taiwan, Japan, Korea, and the U.S.

(16) Low voltage power supply (LVPS) module, comprised of parts from Taiwan, Japan, Korea, China, and the U.S.

(17) Local area network (LAN) module board, comprised of parts from the U.S. and unnamed countries. It is programmed with Taiwanese-origin network firmware (Taiwanese component no. 4) in China.

(18) Miscellaneous items: screws, EMI gaskets, tape (Mylar and 3M), 16-pin wiring, brackets, main board spacers, insulating rubber, Mylar film, and elevator feet.

Modules 1–8 and 10–17 are assembled in China and shipped to Taiwan. The miscellaneous Chinese components described at no. 18 above are also shipped to Taiwan to be assembled with the 16 Chinese modules.

In Taiwan, the imported modules and components are inspected and then assembled into a complete digital projector using the Chinese screws, EMI gaskets, tape (Mylar and 3M), 16-pin wiring, brackets, main board spacers, insulating rubber, Mylar film, and an elevator foot. The projector is then programmed with the power control firmware and system firmware developed in Taiwan, and then subjected to various tests. During the testing stage, the projector is also loaded with Taiwanese-origin EDID firmware, which programs the identification of the projector into the EEPROM on the main board.

ISSUE:

What is the country of origin of the projector for purposes of U.S. government procurement?

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 C.F.R. § 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

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

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

See also 19 C.F.R. § 177.22(a).

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States,* 573 F. Supp. 1149 (Ct. Int'l Trade 1983), *aff'd,* 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation.

In *Data General* v. *United States,* 4 Ct. Int'l Trade 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States (predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States), the programming of a

foreign PROM (Programmable Read-Only Memory chip) in the United States substantially transformed the PROM into a U.S. article. In programming the imported PROMs, the U.S. engineers systematically caused various distinct electronic interconnections to be formed within each integrated circuit. The programming bestowed upon each circuit its electronic function, that is, its "memory" which could be retrieved. A distinct physical change was effected in the PROM by the opening or closing of the fuses, depending on the method of programming. This physical alteration, not visible to the naked eye, could be discerned by electronic testing of the PROM. The court noted that the programs were designed by a U.S. project engineer with many years of experience in "designing and building hardware." While replicating the program pattern from a "master" PROM may be a quick one-step process, the development of the pattern and the production of the "master" PROM required much time and expertise. The court noted that it was undisputed that programming altered the character of a PROM. The essence of the article, its interconnections or stored memory, was established by programming. The court concluded that altering the non-functioning circuitry comprising a PROM through technological expertise in order to produce a functioning read only memory device, possessing a desired distinctive circuit pattern, was no less a "substantial transformation" than the manual interconnection of transistors, resistors and diodes upon a circuit board creating a similar pattern.

You argue that Taiwan is the country of origin of the projector because it is the country in which the following actions occur: design and development of the projector, including the main board; addition of the majority of the value (materials and labor); fabrication of many parts, including the data processors (the DMD and DDP2431) that are claimed to be the major functional parts of the projector; development of four of the five firmware files used to operate the projector; programming of the main board with system firmware and programming of the control panel with power control firmware; assembly of the Chinese modules with disparate parts to make a functional projector; and, testing and adjustment of the projector. You point out that 60 percent of the total cost of materials (including accessories and packing material) comes from the United States and TAA designated countries, and that the processing in Taiwan will require 180 steps, including assembly, programming, testing, and packing.

Further, you claim that the Chinese modules are substantially transformed in Taiwan when they are assembled into a projector. As a result of the color wheel module being assembled with the semi-finished optical engine module in Taiwan, the HID arc lamp can be used as a light source and the DMD can be used as a light valve to produce color images. When the lamp ballast is connected to the LVPS, the ballast gains a power source, and when connected to the main board, the lamp can be controlled. Connecting the Chinese main board module to the semi-finished optical engine module, the DMD board, fan modules, and color wheel module allows all the boards attached to the main module to be controlled. The LVPS powers the main board so that the modules attached to it can operate. Finally, assembling the top cover module with the main board module allows the projector to be controlled through the keypad.

You state that factors such as the resources expended on design and development, extent and nature of post-assembly inspection and testing

procedure, and worker skill required during the manufacturing process have been considered in determining whether a substantial transformation occurred. In support of your position you cite Headquarters Ruling Letters (HQ) H100055 (May 8, 2010), H034843 (May 5, 2009), and H015324 (April 23, 2008), 559534 (June 4, 1996), among others.

HQ H100055 concerned a motorized lift unit, designed, developed and engineered in Sweden, for an overhead patient lift system. The PCBA was assembled and programmed prior to its importation in Sweden but it was designed in Sweden and its software program was written in Sweden. The unit was then assembled in Sweden, which included the manufacture of the electrical motor. CBP found that the manufacturing and testing operations in Sweden were sufficiently complex and meaningful to transform the individual components into the lift unit, thereby making Sweden the country of origin of the unit. HQ H034843 concerned a USB flash drive partially manufactured in China and in Israel or the United States. CBP concluded that there was a substantial transformation either in Israel or in the United States, depending on the location where the final three manufacturing operations took place. HQ H015324 involved stereoscopic displays assembled in the U.S. from non-U.S. parts. U.S. assembly resulted in a substantial transformation of imported LCD monitors and a beamsplitter mirror.

In this case, the bottom cover module, elevator module, right cover module, I/O cover module, cosmetic module, two fan modules, lamp driver module programmed in China with Chinese firmware, zoom ring module, lamp module, lamp cover module, semi-finished optical engine module, color wheel module, main board module, top cover module, LAN module programmed in China with Taiwanese-origin firmware, and the LVPS module, from China are assembled together in Taiwan with other Chinese components to form a complete projector. After assembly, the projector is programmed in Taiwan with three types of firmware developed in Taiwan. The first, power control firmware, is used to control on/off functions and to retrieve the input/output setting from the last time the projector was turned off. The second, system firmware, controls the functions of the keypad, remote control, USB port, lamp brightness, volume, on-screen display menu, and image processing. The third, EDID firmware, contains basic information about the projector, such as maximum image size, color characteristics, factory pre-set timings, and frequency range limits. We find that the assembly and programming operations performed in Taiwan are sufficiently complex and meaningful so as to create a new article with a new character, name and use. *See, for e.g.,* HQ H034843 and H100055. Moreover, we note that some of the Chinese modules were made using Taiwanese parts. Through the operations undertaken in Taiwan, the individual parts lose their identities and become integral to the new and different article, i.e., the projector. *See Belcrest Linens.* Accordingly, we find that the country of origin of the projector is Taiwan.

HOLDING:

Based on the facts in this case, we find that the assembly and programming operations performed in Taiwan substantially transform the non-TAA country components of the projector. Therefore, the country of origin of the Model A and Model B projectors is Taiwan for purposes of U.S. government procurement.

Notice of this final determination will be given in the **Federal Register**, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

SANDRA L. BELL,
Executive Director,
Regulations and Rulings Office
of International Trade.

[Published in the Federal Register, August 11, 2011 (76 FR 49782)]

ADVISORY COMMITTEE ON COMMERCIAL OPERATIONS OF CUSTOMS AND BORDER PROTECTION (COAC)

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

ACTION: Committee management; notice of Federal Advisory Committee meeting.

SUMMARY: The Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) will meet on August 18, 2011, in Long Beach, CA. The meeting will be open to the public. As an alternative to on-site attendance, U.S. Customs and Border Protection will also offer a live webcast of the COAC meeting via the Internet.

DATES: COAC will meet on Thursday, August 18, 2011, from 1 p.m. to 5:30 p.m. Please note that the meeting may close early if the committee has completed its business.

Registration: If you plan on attending via webcast, please register online at *https://apps.cbp.gov/te_registration/?w=55* by close-of-business on August 12, 2011. Please feel free to share this information with interested members of your organizations or associations. If you plan on attending on-site, please register either online at *https://apps.cbp.gov/te_registration/?w=48* or by e-mail to *tradeevents@dhs.gov* by close-of-business on August 12, 2011.

ADDRESSES: The meeting will be held at the Westin Long Beach Hotel, in the Centennial Ballroom, Salon A, 333 East Ocean Boulevard, Long Beach, CA 90802. All visitors report to the Foyer of the Salon A.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the "Agenda" section below.

Comments must be submitted in writing no later than August 12, 2011 and must be identified by USCBP– 2011–0024 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http:// www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: Tradeevents@dhs.gov.* Include the docket number in the subject line of the message.

- *Fax:* 202–325–4290.
- *Mail:* Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 5.2A, Washington, DC 20229.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the COAC, go to *http://www.regulations.gov.*

There will be two public comment periods held during the meeting on August 18, 2011. On-site speakers are requested to limit their comments to 3 minutes. Contact the individual listed below to register as a speaker. Please note that the public comment period for on-site speakers may end before the time indicated on the schedule that is posted on the CBP Web page at the time of the meeting. Comments can also be made electronically anytime during the COAC meeting webcast, but please note that webcast participants will not be able to provide oral comments. Comments submitted electronically will be read into the record at some time during the meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue, NW., Room 5.2A, Washington, DC 20229; telephone 202– 344–1440; facsimile 202–325–4290.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The COAC provides advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within DHS or the Department of the Treasury.

Agenda

The COAC will meet to review, discuss next steps and formulate recommendations on the following two issues:

- Review and Discuss Managing by Account: Center of Excellence and Expertise (CEE) and Account Executive Pilot Programs.
- Review and Discuss Role of the Broker, A Broker Revision Project.

Prior to the COAC taking action on either of these two issues, members of the public will have an opportunity to provide comments orally or, for comments submitted electronically during the meeting, by reading the comments into the record.

The COAC will receive an update on the following Customs and Border Protection Initiatives and Subcommittee issues:

- Update on Automated Commercial Environment (ACE): What's new? What's planned?
- Update on the Work of the Enhancing Air Cargo Security Subcommittee.
- Update on the Work of Land Border Security Initiatives Subcommittee.
- Update on the Work of the One U.S. Government at the Border—Interagency Issues Subcommittee.
- Update on the Work of the Antidumping and Countervailing Duties (AD/CVD) Enhancements Subcommittee.
- Update on the Work of the Enhancing Intellectual Property Rights Enforcement Efforts Subcommittee.

Dated: July 28, 2011.

MARIA LUISA O'CONNELL,
Senior Advisor for Trade and
Public Engagement,
Office of Trade Relations.

[Published in the Federal Register, August 2, 2011 (76 FR 46312)]

RECEIPT OF PETITION TO RECONCILE INCONSISTENT CUSTOMS AND BORDER PROTECTION DECISIONS CONCERNING THE TARIFF CLASSIFICATION OF CN–9 SOLUTION

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

ACTION: Notice of receipt of petition to reconcile inconsistent Customs and Border Protection classification decisions; solicitation of comments.

SUMMARY: Customs and Border Protection ("CBP") has received a petition, dated June 6, 2010, submitted by an importer ("petitioner") under 19 CFR 177.13, requesting the reconciliation of inconsistent classification decisions under the Harmonized Tariff Schedule of the

United States ("HTSUS") of a certain CN–9 solution that has been liquidated under subheading 2842.90.90, HTSUS, at the Port of Baltimore on June 3, 2010, and under subheading 3102.60.00, HTSUS, at the Port of Long Beach on October 13, 2009. The petitioner contends that the proper classification for the CN–9 Solution is in subheading 3102.60.00, HTSUS, as "Mineral or chemical fertilizers, nitrogenous: Double salts and mixtures of calcium nitrate and ammonium nitrate." This document invites comments with regard to the correctness of each classification.

DATES: Comments must be received on or before August 24, 2011

ADDRESSES: You may submit comments, identified by *docket number,* by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments via docket number USCBP–2011–0025.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 799 9th Street, NW., (Mint Annex), Washington, DC 20229–1179.

Instructions: All submissions received must include the agency name and docket number for this petition to reconcile inconsistent decisions concerning the tariff classification of CN–9 Solution. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read any comments received go to *http://www.regulations.gov*. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark, Trade and Commercial Regulations Branch, at (202) 325–0118. Please note that any submitted comments that CBP receives by mail will be posted on the above-referenced docket for the public's convenience.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade at (202) 325–0036.

SUPPLEMENTARY INFORMATION:

Background

A petition has been filed under section 177.13, CBP regulations (19 CFR 177.13), on behalf of Yara North America, Inc. ("Yara"). Yara is a subset of Yara International ASA, a global firm specializing in agricultural products and environmental protection agents. It is a supplier of mineral fertilizers. As an importer of these products, Yara has received inconsistent classification decisions on its merchandise at different ports. As such, Yara meets the requirements as an interested party set forth in 19 CFR 177.13(a)(2) and 19 U.S.C. 1514(c) and meets the requirements regarding the types of decisions subject to petition set forth in 19 CFR 177.13(a)(1) and 19 U.S.C. 1514(a). Furthermore, having filed this petition within 90 days of the latest decision it received from a port, Yara meets the timeliness requirements of 19 CFR 177.13(a)(3). Lastly, Yara also meets the requirements of 19 CFR 177.13(b)(2), and specifically 19 CFR 177.13(b)(2)(i) in that their petition contains a complete description of the inconsistent decisions of which they complain. Their petition includes enough information to demonstrate the inconsistency of the decisions at the Ports. Furthermore, the company has submitted a sample that has been tested at Customs and Border Protection ("CBP") laboratories. Yara is requesting that CBP classify the imported merchandise in subheading 3102.60.00, Harmonized Tariff Schedule of the United States (HTSUS).

This transaction in particular concerns Yara's importation of CN–9 Solution, a hydrated ammonium calcium nitrate double salt that is primarily used as a fertilizer but is also used for waste water treatment. Yara entered the subject merchandise at the Port of Long Beach between January 24, 2009 and September 8, 2009, and the Port of Baltimore on April 20, 2010, under subheading 3102.60.00, HTSUS, as "Mineral or chemical fertilizers, nitrogenous: Double salts and mixtures of calcium nitrate and ammonium nitrate." Citing Legal Note 2(a)(v) to Chapter 31, HTSUS, the Port of Long Beach liquidated the subject merchandise as entered.

Citing Legal Note 5 to Chapter 28, HTSUS, the Port of Baltimore liquidated the subject merchandise under subheading 2842.90.90, HTSUS, as "Other salts of inorganic acids or peroxoacids (including aluminosilicates whether or not chemically defined), other than azides: Other: Other."

Comments

Pursuant to section 177.13(c), CBP regulations (19 CFR 177.13(c)), before making a determination on this matter, CBP invites written comments on this petition to resolve inconsistent CBP decisions.

The comments received in response to this notice, will be available for public inspection on the docket at *http://www.regulations.gov*. Please note that any submitted comments that CBP receives by mail will be posted on the above-referenced docket for the public's convenience.

Authority: This notice is published in accordance with section 177.13(c), CBP Regulations (19 CFR 177.13(c)).

Dated: August 3, 2011.

SANDRA L. BELL,
Executive Director,
Regulations and Rulings,
Office of International Trade.

[Published in the Federal Register, August 9, 2011 (76 FR 48875)]

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 7 2011)

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

SUMMARY: Presented herein are the copyrights, trademarks, and trade names recorded with U.S. Customs and Border Protection during the month of July 2011. The last notice was published in the CUSTOMS BULLETIN on July 13, 2011.

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

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

Dated: August 4, 2011

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

CBP IPR RECORDATION — JULY 2011

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 87–00048	7/21/2011	7/21/2031	DONKEY KONG 3	NINTENDO OF AMERICA INC	No
TMK 05–01072	7/27/2011	3/27/2021	TAMIFLU	HOFFMANN-LA ROCHE INC.	No
TMK 02–00060	7/21/2011	6/30/2021	SEIKO (STYLIZED LETTERING)	SEIKO HOLDINGS KABUSHIKI KAISHA T/A SEIKO HOLDINGS CORPORATION	No
TMK 02–00088	7/27/2011	5/19/2021	DELIRIUM	MOVADO LLC.	No
TMK 02–00549	7/27/2011	8/21/2021	SECURE CARE MATCHMAKER I.D. (PLUS DESIGN)	SECURE CARE PRODUCTS, INC.	No
TMK 04–00194	7/7/2011	7/17/2021	PANTHER AND DESIGN	PRESTIGE AUTOTECH CORPORATION	No
TMK 11–00854	7/27/2011	1/24/2016	SKUNK2 RACING AND DESIGN	GROUP-A AUTOSPORTS	No
TMK 05–00336	7/21/2011	6/27/2021	OLD TIMER	TAYLOR BRANDS LLC	No
TMK 11–00855	7/27/2011	3/15/2021	CREATOR AND DESIGNER OF FASHION	PUCCI COMPANY	No
TMK 06–01198	7/7/2011	4/3/2021	DESIGN ONLY	COLUMBIA SPORTSWEAR COMPANY	No
TMK 11–00862	7/27/2011	7/22/2018	ANGRY BIRDS	THE HARTZ MOUNTAIN CORPORATION	No
TMK 11–00838	7/25/2011	12/1/2019	GOLDEN STATE WARRIORS	GOLDEN STATE WARRIORS, LLC	No
TMK 11–00843	7/25/2011	9/17/2012	ORLA KIELY	ORLA KIELY	No
TMK 11–00844	7/25/2011	9/1/2012	YSL	LUXURY GOODS INTERNATIONAL (L.G.I.) S.A.	No
TMK 11–00840	7/25/2011	6/30/2019	HEART TO HEART	KASHI COMPANY	No

CBP IPR RECORDATION — JULY 2011

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 11–00839	7/25/2011	12/15/2019	DETROIT PISTONS AND DESIGN	DETROIT PISTONS BASKETBALL COMPANY	No
TMK 11–00842	7/25/2011	1/12/2013	YVES SAINT LAURENT	LUXURY GOODS INTERNATIONAL (L.G.I.) S.A.	No
TMK 11–00841	7/25/2011	12/28/2014	TRUVADA	GILEAD SCIENCES, INC.	No
TMK 11–00853	7/25/2011	12/11/2017	DESIGN	ORLA KIELY AND DJ ROWAN	No
TMK 11–00864	7/27/2011	1/2/2017	QCT AND DESIGN	OSG TAP AND DIE, INC.	No
TMK 11–00850	7/25/2011	1/31/2016	MEMPHIS GRIZZLIES AND DESIGN	HOOPS L.P.	No
TMK 11–00845	7/25/2011	9/26/2016	SOCIAL SMOKE	SOCIAL SMOKE, INC	No
TMK 11–00849	7/25/2011	11/12/2012	ELEMENT SKATEBOARDS	ROCKET TRADEMARKS PTY LTD	No
TMK 11–00846	7/25/2011	4/25/2016	PHITEN (STYLIZED)	PHITEN CO. LTD CORPORATION JAPAN	No
TMK 11–00852	7/25/2011	6/14/2021	DESIGN	SULZER MIXPAC AG	No
TMK 11–00823	7/21/2011	8/20/2012	P	PHITEN CO. LTD	No
TMK 11–00856	7/27/2011	5/6/2018	U. S. VINTAGE ESTABLISHED 1995 ATHLETIC DEPT - GENUINE QUALITY GOODS - AUTHENTIC WEAR	EXIST, INC.	No
TMK 11–00848	7/25/2011	10/16/2011	WIND WATER FIRE EARTH	ROCKET TRADEMARKS PTY LTD	No
TMK 11–00809	7/19/2011	1/10/2016	PORSCHE STUTTGART AND DESIGN	DR. ING. H.C. F. PORSCHE AKTIENGESELLSCHAFT	No
TMK 11–00825	7/21/2011	10/29/2012	ELEMENT	ROCKET TRADEMARKS PTY LTD	No

CBP IPR RECORDATION — JULY 2011

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 11–00861	7/27/2011	8/20/2012	ELEMENT FOR LIFE	ROCKET TRADEMARKS PTY LTD	No
TMK 11–00847	7/25/2011	12/8/2012	JAMES BOND 007	DANJAQ, LLC	No
TMK 11–00810	7/19/2011	10/8/2012	ECHO	XCALIBER INTERNATIONAL LTD., L.L.C.	No
TMK 11–00824	7/21/2011	9/2/2013	EDGEFIELD	XCALIBER INTERNATIONAL LTD., L.L.C.	No
TMK 05–00402	7/21/2011	6/12/2021	ROADRANGER	EATON CORPORATION	No
TMK 11–00811	7/19/2011	11/7/2016	PACIFIC GIRL	EXIST, INC.	No
TMK 11–00851	7/25/2011	9/11/2017	WORLD VINTAGE	EXIST INC.	No
TMK 11–00826	7/21/2011	8/31/2020	OCEAN BREEZE	EXIST, INC.	No
COP 11–00081	7/25/2011	7/25/2031	MULTI-STEM LEAF P″RINT COLOUR-WAY	ORLA KIELY	No
TMK 11–00796	7/15/2011	3/18/2018	FULVEX	CORE INTELLECTUAL PROPERTIES HOLDINGS L.L.C.	No
TMK 09–00620	7/27/2011	4/30/2022	STURDY MOUNT	FORTUNE PRODUCTS, INC.	No
TMK 11–00827	7/25/2011	1/2/2021	EX	JOHN MEZZALINGUA ASSOCIATES, INC. D/B/A PPC	No
TMK 11–00797	7/15/2011	10/23/2021	OLUX	STIEFEL LABORATORIES INC.	No
COP 11–00080	7/15/2011	7/15/2031	RED BIRD, YELLOW BIRD, BLUE BIRD, WHITE BIRD & BLACK BIRD.	ROVIO M0BILE OY	No

CBP IPR RECORDATION — JULY 2011

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 11–00798	7/15/2011	10/19/2020	NO BONES ABOUT IT	FELINE INSTINCTS, LLC	No
TMK 11–00822	7/21/2011	8/25/2019	BOND GIRL 007	DANJAQ, LLC	No
COP 11–00079	7/15/2011	7/15/2031	HELMET PIG, MOUSTACHE PIG & GREEN PIG.	ROVIO MOBILE OY.	No
COP 11–00075	7/7/2011	7/7/2031	MIGHTY EAGLE	ROVIO MOBILE OY.	No
TMK 11–00837	7/25/2011	11/23/2020	007 & STYLIZED HANDGUN	DANJAQ, LLC	No
TMK 11–00788	7/7/2011	8/31/2020	FLAG DESIGN	ADIDAS INTERNATIONAL MARKETING BV PRIVATE LLC	No
TMK 11–00789	7/7/2011	3/15/2021	CONFIGURATION OF A TOOLBOX	QUALITY CRAFT INDUSTRIES INC.	No
TMK 04–00192	7/7/2011	6/26/2021	PANTHER (STYLIZED)	PRESTIGE AUTOTECH CORPORATION	No
TMK 11–00812	7/19/2011	4/12/2021	SUPRA AND DESIGN	ONE DISTRIBUTION SARL	No
TMK 03–00850	7/7/2011	3/26/2022	CUTTER & BUCK	CUTTER & BUCK INC.	No
TMK 11–00801	7/15/2011	4/3/2017	EXIST	EXIST, INC.	No
TMK 11–00799	7/15/2011	6/14/2021	AB ROCKET TWISTER	E. MISHAN & SONS INC.	No
COP 11–00076	7/15/2011	7/15/2031	AB ROCKET TWISTER BOX ARTWORK	E. MISHAN & SONS, INC.	No
TMK 11–00803	7/15/2011	5/31/2021	IWRAP	HI-P NORTH AMERICA, INC.	No
COP 11–00078	7/15/2011	7/15/2031	CROSLITE CHARACTER	CROCS, INC.,	No
TMK 11–00829	7/25/2011	1/10/2016	PORSCHE	DR. ING. H.C. F. PORSCHE AKTIENGESELLSCHAFT	No
COP 11–00082	7/25/2011	7/25/2031	MONSTER ENERGY CAN ART	HANSEN BEVERAGE COMPANY	No

CBP IPR RECORDATION — JULY 2011

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
COP 11–00077	7/15/2011	7/15/2031	LO-CARB MONSTER ENERGY CAN ART	HANSEN BEVERAGE COMPANY	No
TMK 11–00790	7/7/2011	4/20/2020	ESPAÑA MIA	ELITE FOODS LLC.	No
TMK 11–00836	7/25/2011	12/15/2012	007 AND STYLIZED HANDGUN	DANJAQ, LLC	No
TMK 11–00804	7/15/2011	8/7/2017	ATRIPLA	BRISTOL~MYERS SQUIBB & GILEAD SCIENCES LLC	No
TMK 11–00830	7/25/2011	5/3/2021	BROWNBERRY	BROWNBERRY LLC	No
TMK 11–00833	7/25/2011	6/28/2021	BLACKWATER	BLK BRANDS LLC	No
TMK 11–00813	7/21/2011	12/9/2016	KEITLER	KEITLER INTERNATIONAL, INC.	No
TMK 11–00814	7/21/2011	4/5/2021	CONSTANZA	LA TABACALERA, C. POR A.	No
TMK 11–00806	7/15/2011	9/8/2018	BUN THAP CHUA BRAND AND DESIGN	VINH-SANH TRADING CORPORATION	No
TMK 11–00787	7/7/2011	10/21/2020	GUCCI	GUCCI AMERICA, INC.	No
TMK 11–00805	7/15/2011	8/24/2020	CROCS	CROCS, INC.	No
TMK 11–00791	7/15/2011	6/25/2012	VIREAD	GILEAD SCIENCES, INC.	No
TMK 11–00795	7/15/2011	7/30/2020	DESIGN OF A STYLIZED BALL	THE WIFFLE BALL, INC.	No
TMK 11–00816	7/21/2011	8/6/2012	DESIGN (TREE DEVICE)	ROCKET TRADEMARKS PTY LTD	No
TMK 11–00794	7/15/2011	7/12/2015	DESIGN (THE LEITER K)	KYOCERA CORPORATION	No
TMK 11–00793	7/15/2011	6/28/2021	VALUKASE	ARION INTERNATIONAL INCORPORATED	No

CBP IPR RECORDATION — JULY 2011

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 11–00792	7/15/2011	3/24/20?-1	WIFFLE	THE WIFFLE BALL, INC.	No
TMK 11–00815	7/21/2011	12/22/2019	LA MORENA DE MEXICO	GRUPO OMOR S.A. DE C.V.	No
TMK 11–00817	7/21/2011	7/25/2016	DELICASEA	INTERNATIONAL MARKETING SPECIALIST, INC.	No
TMK 11–00818	7/21/2011	12/24/2012	SPA CAPSULE	SIMULATED ENVIRONMENT CONCEPTS, INC	No
TMK 11–00834	7/25/2011	3/23/2022	FAMILY MIX	AMERICAN LICORICE CO.	No
TMK 11–00831	7/25/2011	4/12/2021	VOYAGER	PLANTRONICS, INC.	No
TMK 11–00835	7/25/2011	11/30/2014	D'ANGELICO	D'ANGELICO GUITARS OF AMERICA, LLC	No
TMK 11–00828	7/25/2011	2/1/2016	WIFFLE	THE WIFFLE BALL, INC.	No
TMK 11–00821	7/21/2011	9/16/2013	EXETER	XCALIBER INTERNATIONAL LTD., L.L.C.	No
TMK 11–00807	7/19/2011	10/21/2013	OC	PURDUE PHARMA L.P.	No
TMK 11–00863	7/27/2011	5/24/2021	DESIGN (SILHOUEITE OF A MOOSE)	ABERCROMBIE & FITCH TRADING CO.	No
TMK 11–00800	7/15/2011	5/15/2020	CHOPARD	CHOPARD USA LTD.	No
TMK 11–00802	7/15/2011	2/26/2018	DESIGN (CONCENTRIC CIRCLES)	MICROSOFT CORPORATION	No
TMK 11–00808	7/19/2011	9/28/2019	DALIA	TRANS MID-EAST SHIPPING AND TRADING AGENCY. INC.	No
TMK 11–00820	7/21/2011	1/31/2016	ELEMENT	ROCKET TRADEMARKS PTY LTD	No

CBP IPR RECORDATION — JULY 2011

Recordation No.	Effective Date	Expiration Date	Name of Cop/Tmk/Tnm	Owner Name	GM Restricted
TMK 11–00860	7/27/2011	9/23/2018	DESIGN	HOLDING ONE, INC.	No
COP 11–00084	7/27/2011	7/27/2031	ENERGY BEAM BLUE	EVEREADY BATTERY COMPANY, INC	No
TMK 11–00832	7/25/2011	4/27/2020	D'ANGELICO	D'ANGELICO GUITARS OF AMERICA, LLC	No
TMK 11–00819	7/21/2011	7/5/2021	NISSAN (STYLIZED)	NISSAN JIDOSHA KABUSHIKI KAISHA	No
COP 11–00083	7/27/2011	7/27/2031	ENERGY BEAM GREEN	EVEREADY BATTERY COMPANY, INC.	No
TMK 11–00857	7/27/2011	7/1/2020	JUICY COUTURE	JUICY COUTURE, INC.	No
TMK 11–00859	7/27/2011	6/1/2015	9 AND DESIGN	EVEREADY BATTERY COMPANY, INC.	No
TMK 04–00461	7/21/2011	7/17/2021	NUIT D'ORIENT	PARIS PERFUMES, INC.	No
TMK 11–00858	7/27/2011	6/1/2019	9 AND DESIGN	EVEREADY BATTERY COMPANY, INC.	No
COP 11–00086	7/27/2011	7/27/2031	ENERGY BEAM GREEN CARD	EVEREADY BATTERY COMPANY, INC.	No
COP 11–00085	7/27/2011	7/27/2031	ENERGY BEAM YELLOW CARD	EVEREADY BATTERY COMPANY, INC.	No

Total Records: 103
Date as of: 8/3/2011

19 CFR PART 177

Proposed Revocation of Two Ruling Letters and Proposed Revocation of Treatment Relating to Classification of Trunk/Cab Organizers

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

ACTION: Notice of proposed revocation of two ruling letters and treatment relating to the classification of trunk/cab organizers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CPB proposes to revoke two rulings concerning the classification of trunk/cab organizers under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB intends to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before September 23, 2011.

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

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to revoke a ruling pertaining to the classification of a trunk/cab organizer. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) K84392, dated March 25, 2004 (Attachment "A"), and NY J86790, dated July 24, 2003 (Attachment "B"), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the 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 CBP during this notice period.

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

In NY K84392 and NY J86790, CBP ruled that the subject trunk/cab organizers are classified in subheading 8708.29.50, HTSUS, which provides for "Parts and accessories of motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other…: Other." These rulings are incorrect because the subject organizers are better classified in subheading 4202.92.90, HTSUS, which provides for "Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY K84392, NY J86790, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter ("HQ") H092277. (*see* Attachment "C" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: August 10, 2011

ALLYSON MATTANAH
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT A]

March 25, 2004
CLA-2–87:RR:NC:MM:101 K84392
CATEGORY: Classification
TARIFF NO.: 8708.29.5060

MS. ROSEMARY DUMOND
NEAR NORTH CUSTOMS BROKERS INC.
20 ELLIOTT AVENUE
BARRIE, ONTARIO L4N 4V7

RE: The tariff classification of a *Trunk/Cab Organizer* from China

DEAR MS. DUMOND:

In your letter dated March 15, 2004 you requested a tariff classification ruling on behalf of your client P & P China Automotive.

You submitted four samples: 5083, 80210, 4205, and 5772. You state that these items are made to order and cut to size from specs ordered from the automotive industry. They are shipped to GM, Ford, BMW, Volkswagen, and DURA Automotive. You state that these organizers are made of vinyl and felt and fit into a trunk to hold the jack, lug wrench, hub cap puller, tool for removing wheel cap bolts and any other tools for changing the tires.

From the samples submitted there are no handles for portability of these organizers and it appears that their sole function is to remain within the trunk of a motor vehicle.

The applicable subheading for the *Trunk/Cab Organizer* (four samples) will be 8708.29.5060, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other…Other. The rate of duty will be 2.5% 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 Robert DeSoucey at 646–733–3008.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT B]

NY J86790

July 24, 2003
CLA-2–87:RR:NC:MM:101 J86790
CATEGORY: Classification
TARIFF NO.: 8708.29.5060

MR. STEPHEN C. LIU
PACIFIC CENTURY CUSTOMS SERVICE
11099 S. LA CIENEGA BOULEVARD #202
LOS ANGELES, CALIFORNIA 90045

RE: The tariff classification of a "*Truck Organizer*" from China

DEAR MR. LIU:

In your letter dated July 17, 2003 you requested a tariff classification ruling.

You submitted a sample of a "Truck Organizer" - *Style Number TOH-4022-HA, Remark: Microfiber Print.* This item is made of microfiber and is an open top storage trunk insert for SUV's, trucks, cars, mobile homes, etc. The item is used to store auto accessories and other items. There are three additional pockets for storage with flaps that are secured with hook-and-loop fasteners. The size is approximately 16"Lx11"Wx4"H when closed and can be expanded to 16"x23"x4". There is no lid, closure or handles on the item. The item is not a container or a case. It is similar to an open box. You state that the sample you have submitted is made of microfiber material however, it can be made of other textile materials in the future.

The applicable subheading for the "*Truck Organizer*" will be 8708.29.5060, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other…Other. The rate of duty will be 2.5% 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 Robert DeSoucey at 646–733–3008.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT C]

HQ H092277
CLA-2 OT:RR:CTF:TCM HQ H092277 TNA
CATEGORY: Classification
TARIFF NO.: 4202.92.90

MS. ROSEMARY DUMOND
NEAR NORTH CUSTOMS BROKERS, INC.
20 ELLIOT AVENUE
BARRIE, ONTARIO L4N4V7

RE: Revocation of NY K84392 and NY J86790; Classification of a Trunk/Cab Organizer from China

DEAR MS. DUMOND:

This letter is in reference to New York Ruling Letter ("NY") K84392, issued to P&P China Automotive on March 25, 2004, and NY J86790, issued to Pacific Century Customs Service on July 24, 2003 concerning the tariff classification of a Trunk/Cab Organizer. In that ruling, U.S. Customs and Border Protection ("CBP") classified the Trunk/Cab Organizer under subheading 8708.29.50, Harmonized Tariff Schedule of the United States ("HTSUS"), as "Parts and accessories of motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other…: Other." We have reviewed NY K84392 and NY J86790 and found them to be in error. For the reasons set forth below, we hereby revoke NY K84392 and NY J86790.

FACTS:

The subject merchandise consists of five models of trunk organizers, model numbers 5083, 80210, 4205, and 5772; and Style Number TOH-4022-HA. Model numbers 5083, 80210, 4205, and 5772 are made to order and cut to size, and are imported to be shipped to companies such as General Motors, Ford, BMW, Volkswagen, and Dura Automotive. They are made of vinyl and felt and are shaped to fit into the trunk of a car. They contain interiors that have pouches sewn into them, but these pouches are not specifically shaped or fitted to carry any kind of tool. The merchandise contains straps and hook-and-eye closures, but does not have exterior handles of any kind. Overall, these organizers are designed to remain in the trunk of a vehicle.

Style Number TOH-4022-HA is made of microfiber and is an open top storage trunk insert for SUV's, trucks, cars, mobile homes, etc. The item is used to store auto accessories and other items. There are three additional pockets for storage with flaps that are secured with hook-and-loop fasteners. The size is approximately 16″Lx11″Wx4″H when closed and can be expanded to 16″x23″x4″. There is no lid, closure or handles on the item. The item is not a container or a case. It is similar to an open box. While the submitted sample was made of microfiber, the merchandise can be made of other textile materials in the future.

In NY K84392, dated March 25, 2004, and NY J86790, dated July 24, 2003, CBP classified the Trunk/Cab Organizer under subheading 8708.29.50, HTSUS, as: "Parts and accessories of motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other…: Other.

ISSUE:

Whether trunk/cab organizers made of microfiber, felt and vinyl are classified in heading 4202, HTSUS, as containers, or under heading 8708, HTSUS, as pars or accessories of motor vehicles?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (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.

The HTSUS provisions under consideration are as follows:

4202		Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:
		Other:
4202.92		With outer surface of sheeting of plastic or of textile materials:
		Other:
4202.92.90		Other
* * * * * * * * * * * * *		
8708		Parts and accessories of the motor vehicles of headings 8701 to 8705:
		Other parts and accessories of bodies (including cabs):
8708.29		Other:
8708.29.50		Other

Additional U.S. Rule of Interpretation 1(c) states, in relevant part:

In the absence of special language or context which otherwise requires-

(c) a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for "parts" or "parts and accessories" shall not prevail over a specific provision for such a part or accessory;

Note 3 to Section XVII reads, in pertinent part:

3. References in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN (III)(C)(4) to Section XVII, HTSUS, states, in pertinent part:

> (C) **Parts and accessories covered more specifically elsewhere in the Nomenclature**.
>
> Parts and accessories, even if identifiable as for the articles of this Section, are **excluded** if they are covered more specifically by another heading elsewhere in the Nomenclature, e.g.:…
>
> (4) Tool bags of leather or of composition leather, of vulcanised fibre, etc. (**heading 42.02**).

The EN for heading 4202, HTSUS, states, in pertinent part:

> This heading covers only the articles specifically named therein and similar containers.
>
> These containers may be rigid or with a rigid foundation, or soft and without foundation.
>
> Subject to Notes 1 and 2 to this Chapter, the articles covered by the first part of the heading may be of any material. The expression "similar containers" in the first part includes hat boxes, camera accessory cases, cartridge pouches, sheaths for hunting or camping knives, portable tool boxes or cases, specially shaped or internally fitted to contain particular tools with or without their accessories, etc.
>
> The articles covered by the second part of the heading must, however, be only of the materials specified therein or must be wholly or mainly covered with such materials or with paper (the foundation may be of wood, metal, etc.). For this purpose the expression "of leather or of composition leather" includes, inter alia, patent leather, patent laminated leather and metallised leather. The expression "similar containers" in this second part includes note-cases, writing-cases, pen-cases, ticket-cases, needle-cases, key-cases, cigar-cases, pipe-cases, tool and jewellery rolls, shoe-cases, brush-cases, etc.…
>
> The heading does not cover:…
>
> (f) Tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (generally, heading *39.26* or *73.26*).

The EN for heading 8708 states, in pertinent part:

> This heading covers parts and accessories of the motor vehicles of headings *87.01* to *87.05*, **provided** the parts and accessories fulfil **both** the following conditions:
>
> (i) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles;
>
> and (ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note).

In NY K84392 and NY J86790, CBP classified the subject merchandise under heading 8708, HTSUS, as other parts and accessories of motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs). In accordance with Additional U.S. Rule of Interpretation 1(c), and as illustrated by EN (III)(C)(4) to Section XVII, HTSUS, however, if the trunk organizer is classifiable in heading 4202, HTSUS, it cannot be classified in heading 8708, HTSUS.

Inasmuch as trunk organizers are not named in heading 4202, HTSUS, we must determine whether the subject trunk organizer is a similar container to those listed there. "In order to classify the subject goods as 'similar' under 4202, we must look to factors which would identify the merchandise as being *ejusdem generis* (of a similar kind) to those specified in the provision." *See* HQ 964318, dated October 11, 2001. In *Totes, Inc. v. United States*, 69 F.3d 495 (Fed. Cir. 1995), affirming *Totes, Inc. v. United States*, 18 C.I.T. 919; 865 F. Supp. 867, 16 Int'l Trade Rep. (BNA) 2283; 1994 Ct. Intl. Trade LEXIS 180 (Ct. Int'l Trade 1994), the Federal Circuit stated that "as applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purpose that unite the articles enumerated *eo nomine* [by name] in order to be classified under the general terms." *Totes*, 69 F.3d. 495, 498.

In *Totes*, the Federal Circuit affirmed the Court of International Trade's finding that the rule of *ejusdem generis* requires only that the subject merchandise share "the essential characteristics" of the goods listed *eo nomine* in 4202, and that these characteristics were those of "organizing, storing, protecting, and carrying various items." *Id.* In fact, the merchandise that was at issue in *Totes* was one style of the company's trunk organizer. *See Totes, Inc. v. United States*, 18 C.I.T. 919; 865 F. Supp. 867, 16 Int'l Trade Rep. (BNA) 2283; 1994 Ct. Intl. Trade LEXIS 180 (Ct. Int'l Trade 1994). At trial, Plaintiff argued that the merchandise should be classified under heading 8708, HTSUS, as car accessories, or under heading 6307, HTUS, as "Other" made up articles of textiles. The court addressed these arguments and overruled them, affirming CBP's classification of the merchandise under Heading 4202, HTSUS. *Id*. at 928. In doing so, the court noted that:

> whether portability of the import is a primary or ancillary feature, is not legally controlling in its classification as 'similar containers' under Heading 4202. Thus, even assuming that the trunk organizer's portability or design for carrying is ancillary to its storage purpose, the trunk organizers are nonetheless *ejusdem generis* with the exemplar containers in Heading 4202 - precisely the purpose of jewelry boxes that are used primarily to organize, store and protect articles, and only incidentally (if at all) to transport the contents. *Id*. at 926.

Prior CBP rulings have adhered to this standard, classifying products similar to the subject merchandise under heading 4202, HTSUS, regardless of whether the items have handles. *See*, e.g., HQ 963473, dated March 22, 2002 ("like the Totes organizers, the console organizer is not principally designed to be carried, but the fact that it is designed to fit on the floor between the seats (with hook attachment strips to secure it in place) indicates that the container is suitable to effectively transport various items in a

vehicle, while it organizes, stores, and protects them."); NY L81831, dated January 11, 2005; NY L80488, dated November 8, 2004 (classifying a trunk organizer under subheading 4202.92.90, HTSUS); NY I87171, dated October 11, 2002 (classifying "Bed Baskets" organizer bags designed for use in the trunk of a car under subheading 4202.92.90, HTSUS); and HQ 086884, dated August 13, 1990 (classifying another model of Totes' trunk organizers under subheading 4202.92.90, HTSUS.)

Furthermore, the fact that the subject merchandise does not possess handles for carrying does not exclude it from heading 4202, HTSUS. In HQ 956140, dated October 29, 1994, we stated that "to the extent that portability is a requirement, articles classifiable in heading 4202 need not be primarily designed for this purpose. Thus, the fact that the tool cases may primarily be used to store their contents does not remove them from the scope of the heading. Similarly, the fact that the cases may more easily be carried if a handle were present is not dispositive. Rather, to satisfy the portability requirement it is sufficient if, in terms of their design, it is reasonable and foreseeable that the articles may be used to transport their contents…. there is no absolute requirement that these containers possess handles (e.g. a spectacle case, which is enumerated in the first part of the heading, does not ordinarily possess handles)." *See also* HQ H064875, dated January 4, 2010.

In the present case, the subject merchandise is intended to be used to store various tools in the trunk of a car, both for the convenience of the owner and to keep these items from shifting during travel. There can be little doubt that the merchandise is "suitable to effectively transport various items in a vehicle, while it organizes, stores, and protects them." *See* HQ 963473.

The subject merchandise is also distinguishable from NY L81789, dated January 14, 2005; and NY L81790, dated January 15, 2005. The items at issue in these rulings are referred to as "collapsible storage bins/baskets." As such, they are not substantially similar to the instant merchandise. They are not designed for use in the trunk of a car. They contain no pockets or means of protection for the items placed inside them. They contain no lid or closure, and, though, they incorporate a single handle, it could not be used to transport the contents of the bin. As a result, they could not be used to transport, organize, or protect items that are kept in them. The subject merchandise, by contrast, contains internal pouches that can be used to organize various items, and closures to protect the items. Furthermore, the subject merchandise was created for transporting items inside a vehicle. As a result, CBP finds that the subject merchandise meets the *Totes* standard of *ejusdem generis* with the merchandise listed in heading 4202, HTSUS, and can be classified under that heading. Furthermore, the items in NY L81789 and NY L81790 were designed to be collapsible or foldable when not in use, whereas the subject merchandise is more substantial. Thus, in accordance with the terms of Additional U.S. Rule of Interpretation 1(c) and the relevant ENs, because the trunk organizer is classifiable in heading 4202, HTSUS, it cannot be classified in heading 8708, HTSUS.

Hence, CBP finds that the subject trunk/cab organizers are classified under subheading 4202.92.90, HTSUS, which provides for "Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags,

knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other."

HOLDING:

Under the authority of GRI 1, the subject trunk/cab organizers are provided for in subheading 4202.92.90, HTSUS, which provides for "Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other." The general, column one, duty rate is 17.6% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY K84392, dated March 25, 2004, and NY J86790, dated July 24, 2003, are REVOKED.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

CC: Mr. Stephen C. Liu, Pacific Century Customs Service

PROPOSED REVOCATION OF RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A UTILITY VEHICLE

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

ACTION: Notice of proposed revocation of one ruling letter and proposed revocation of treatment relating to tariff classification of the WorkMax 800 utility vehicle.

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 Modern-

ization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to revoke one ruling letter relating to the tariff classification of a utility vehicle under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before September 23, 2011.

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

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024

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

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP is proposing to revoke a ruling letter pertaining to the tariff classification of the WorkMax 800 utility vehicle. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) N129146, dated November 18, 2010 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

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

In NY N129146, CBP determined that the WorkMax 800 utility vehicle was classified in heading 8704, HTSUS, which provides for "motor vehicles for the transport of goods." It is now CBP's position that the WorkMax 800 is classified in heading 8709, HTSUS, which provides for "Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles: Vehicles: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N129146 and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the subject vehicle according to the analysis contained in proposed Headquarters Ruling Letter H147081, set forth as Attachment B to this document.

Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: August 10, 2011

RICHARD MOJICA
For
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N129146
November 18, 2010
CLA-2–87:OT:RR:NC:N1:101
CATEGORY: Classification
TARIFF NO.: 8704.21.0000

DIMITRI MILTIADES, CUSTOMS SPECIALIST
JCB INC.
2000 BAMFORD BLVD.
POOLER, GA 31322–9504

RE: The tariff classification of an off-road vehicle from China

DEAR MR. MILTIADES,

In your letter dated October 25, 2010, you requested a tariff classification ruling.

The item under consideration has been identified as the Workman 800 Utility Vehicle. The Workman 800 is a four-wheeled, self-propelled vehicle that is used to haul materials in factories, warehouses, golf courses and sports fields. It is powered by a 3-cylinder, 20-horsepower diesel engine with a top speed of 25 mph. You state in your request that the Workman 800 has a 3-gear belt-drive, CVT transmission, rack and pinion steering and front and rear disc brakes. In addition, you state that the Workman 800 has a payload capacity of 400 kg which can be manually dumped by the operator.

The applicable classification subheading for the Workman 800 Utility Vehicle will be 8704.21.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Motor vehicles for the transport of goods: Other, with compression-ignition internal combustion piston engine (diesel or semi-diesel): G.V.W. not exceeding 5 metric tons." The rate of duty will be 25%.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is

imported. If you have any questions regarding the ruling, contact National Import Specialist Richard Laman at 646–733–3017.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity Specialist Division

[ATTACHMENT B]

HQ H147081
CLA-2 RR:CTF:TCM H147081 CKG
CATEGORY: Classification
TARIFF NO: 8709.19.00

LYNN WENDT
WENDT & TEMPLES, LLC
401 WESTPARK COURT
PEACHTREE CITY, GEORGIA

RE: Proposed revocation of NY N129146; classification of WorkMax 800 utility vehicle

DEAR MS. WENDT,

This is in reference to New York Ruling Letter (NY) N129146, which U.S. Customs and Border Protection (CBP) issued to JCB, Inc. on November 18, 2010, classifying the WorkMax 800 utility vehicle in heading 8704, HTSUS, as a motor vehicle for the transport of goods. For the reasons set forth below, we have determined that the classification of the WorkMax 800 in heading 8704, HTSUS was incorrect.

FACTS:

The Workmax 800 is a four-wheeled, self-propelled vehicle that is used to haul materials in factories, warehouses, golf courses and sports fields. The WorkMax 800 features an open cab with a protective roll bar frame—no doors, windows or roof. It has a rear cargo tilt bed. It is powered by a 3-cylinder, 20-horsepower diesel engine with a top speed of 25 mph. The vehicle weighs 1565 lbs unladen, and has a load capacity of 1323 lbs/400kg. It measures 111.7 inches in length, and has a turning radius of 169 inches. The WorkMax has a 3-gear belt-drive, CVT transmission, rack and pinion steering and front and rear disc brakes. It also features design elements indicating substantial off-road use, including a "[h]eavy-duty dual element air filter standard, protecting the engine in all environments." The filter intake is also mounted high to allow wading through water with no risk to the engine. The Workmax is fitted with either off-road tires or turf tires.

ISSUE:

Whether the WorkMax 800 utility vehicle is classified as works truck in heading 8709, HTSUS, based on prior CBP rulings classifying similar merchandise therein, or whether it is classified in heading 8704, as a vehicle for the transport of goods.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

8704:	Motor vehicles for the transport of goods:	
	Other vehicles, with spark-ignition internal combustion reciprocating piston engine:	
8704.31.00	G.V.W. not exceeding 5 metric tons	
	* * * * *	
8709:	Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; …; parts of the foregoing vehicles…:	
	Vehicles:	
8709.19.00:	Other…	
	* * * * *	

The EN for heading 8709 states, in pertinent part, as follows:

This heading covers a group of self-propelled vehicles of the types used in factories, warehouses, dock areas or airports for the short distance transport of various loads (goods or containers) or, on railway station platforms, to haul small trailers.

Such vehicles are of many types and sizes. They may be driven either by an electric motor with current supplied by accumulators or by an internal combustion piston engine or other engine.

The main features common to the vehicles of this heading which generally distinguish them from the vehicles of heading *87.01*, *87.03* or *87.04* may be summarised as follows:

(1) Their construction and, as a rule, their special design features, make them unsuitable for the transport of passengers or for the transport of goods by road or other public ways.

(2) Their top speed when laden is generally not more than 30 to 35 km/h.

(3) Their turning radius is approximately equal to the length of the vehicle itself.

Vehicles of this heading do not usually have a closed driving cab, the accommodation for the driver often being no more than a platform on which he stands to steer the vehicle. Certain types may be equipped with a protective frame, metal screen, etc., over the driver's seat.

The vehicles of this heading may be pedestrian controlled.

Works trucks are self-propelled trucks for the transport of goods which are fitted with, for example, a platform or container on which the goods are loaded.

…

The heading **excludes** :

…

(c) Dumpers (heading **87.04**).

* * * * *

You request classification of the instant merchandise as a works truck of heading 8709, HTSUS, based on prior rulings issued by CBP classifying similar merchandise in heading 8709. The rulings claimed to be inconsistent include Headquarters Ruling Letter (HQ) 954173, dated September 22, 1993;

HQ 960303, May 13, 1997; HQ 965246 November 6, 2001; HQ 966332, August 5, 2003; NY N024041, March 10, 2008; NY G87244, February 27, 2001; and NY C83109, January 29, 1998. In particular, CBP determined in HQ 966332, HQ 954173, HQ 960303, NY G87244, and NY C83109 that highly similar vehicles featuring an open cab, no doors, windows or windshield, small size, rear cargo bed, and low speed, were classified as works trucks of heading 8709, HTSUS.

Like the WorkMax 800, the above vehicles were designed for use in multiple environments, including significant off-road use (e.g., turf care, golf courses, agricultural work, landscaping, construction), while remaining unsuitable for on-road use due to the lack of safety features required by national regulations (e.g., doors, windows, roof, seat belts, turn signals, turn signals, hazard lights…). In particular, the WorkMan 3000 (HQ 966332), the Mules (HQ 954173), the Carryall VI XL (HQ 960303) and the Works Trucks of NY N011554 and NY N024041 share certain physical characteristics with the WorkMax 800 which are more typical of vehicles of heading 8704; the WorkMan 3000 and the Mules feature tilt/dump cargo beds, and the Carryall and the two Works Trucks have a turning radius substantially longer than the length of the vehicle (25.5 inches for the Carryall, 52.4 inches for the Works Trucks). Like the WorkMax 800, the WorkMan 3000, the Works Truck and Works Truck Model MUV700, and the Juli dump carts (NY I86040 and NY H87062) also have a maximum speed higher than the 30–35 kilometers per hour range specified in the EN.

Given the similarities between the WorkMax 800 and other vehicles classified in 8709 by the rulings discussed above, the WorkMax 800 is also classified as a works truck of heading 8709, HTSUS.

HOLDING:

By application of GRI 1, the WorkMax 800 is classified in heading 8709, HTSUS, specifically subheading 8709.19.00, HTSUS, which provides for "Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles: Vehicles: Other." The 2011 column one, general rate of duty is Free.

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

EFFECT ON OTHER RULINGS:

NY N129146, dated November 18, 2010, is hereby revoked.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

19 CFR PART 177

Proposed Revocation of Ruling Letters and Proposed Revocation of Treatment Relating to Classification of Hulled Pumpkin Seeds

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the classification of hulled pumpkin seeds.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CPB proposes to revoke eight ruling letters concerning the classification of hulled pumpkin seeds under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB intends to revoke any treatment previously accorded by CPB to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before September 23, 2011.

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

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch, at (202) 325–0036.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke four ruling letters concerning to the admissibility of certain knives with spring-assisted opening mechanisms. Although in this notice CBP is specifically referring to the revocation of Headquarters Ruling Letters (HQ) 954648, dated August 5, 1993 (Attachment A); NY 885798, dated May 25, 1993 (Attachment B); NY C81606, dated November 14, 2007 (Attachment C); NY C80043, dated October 2, 1997 (Attachment D); NY 856226, dated September 19, 1990 (Attachment E); HQ 958495, dated November 21, 1995 (Attachment F); HQ 955091, dated February 9, 1994 (Attachment G); and HQ 955317, dated February 9, 1994 (Attachment H), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to those 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 admissibility of merchandise subject to this notice should advise CBP during this notice period.

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

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

In HQ 954648, NY 885798, NY C81606, NY C80043, NY 856226, HQ 958495, HQ 955091, and HQ 955317, CBP determined that raw hulled pumpkin seeds that were not roasted, salted or otherwise prepared, were classified in heading 1209, HTSUS, because they were not primarily used for human consumption. Based on our recent review and reconsideration of HQ 954648, NY 885798, NY C81606, NY C80043, NY 856226, HQ 958495, HQ 955091, and HQ 955317, we have determined that these products are primarily imported for human consumption. This is consistent with an opinion issued by the World Customs Organization, Opinion Number 1212.99/1, dated Mach 2008. It is now our position that raw hulled pumpkin seeds are classified in heading 1212, HTSUS, as being of a kind used primarily for human consumption.

Pursuant to 19 U.S.C. §1625(c)(1), CBP intends to revoke HQ 954648, NY 885798, NY C81606, NY C80043, NY 856226, HQ 958495, HQ 955091, and HQ 955317, and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper admissibility determination pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) H108019 (Attachment I). Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

Dated: August 10, 2011

ALLYSON MATTANAH
for
MYLES HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT A]

HQ 954648
August 5, 1993
CLA-2 CO:R:C:F 954648 JGH
CATEGORY: Classification
TARIFF NO.: 1209.91.8080

MS. SANDRA L. PETERSEN
CONAGRA DRIED FRUIT & NUT COMPANY
1050 SANSOME STREET
SUITE 400
SAN FRANCISCO, CALIFORNIA 94111–1334

RE: Classification of "Chinese pumpkin seed kernels"; Reconsideration of New York Ruling Letter (NYRL) 885798, dated May 25, 1993

DEAR MS. PETERSEN:

In your letter of June 14, 1993, to the Area Director, New York Seaport, you inquire why pumpkin seeds are classifiable under the provision for seeds of a kind used for sowing, other vegetable seeds, in subheading 1209.91.8080, HTSUS.

FACTS:

The seeds are described as raw, shelled, pumpkin seed kernels.

ISSUE:

Classification of raw, shelled pumpkin seeds.

LAW & ANALYSIS:

Heading 1209 covers seeds which are predominantly used for sowing. The fact that the particular seed is no longer capable of germination, according to the Explanatory Notes (ENs) to Heading 1209, does not remove them from this heading; the ENs further state that the seeds classified in Chapter 12 may be whole, broken, crushed, husked, or shelled; that they may have undergone moderate heat treatment designed mainly to ensure better preservation, for de-bittering, or to facilitate their use does not remove them from classification as seeds; however, the ENs emphasize such treatment is only permitted if it does not alter the character of the seeds as natural products and does not make them suitable for a specific use rather than a general use.

The seeds in question are described as raw, shelled pumpkin seeds; they were not roasted and salted or otherwise prepared or preserved; nor are they vegetable products used primarily for human consumption in heading 1212, or are they predominantly used as oil bearing seeds in heading 1207, HTSUS, since their use as a source of extractable oil is a minor one. Rather, as they remain suitable for general use, they are classifiable as seeds in heading 1209.

HOLDING:

Raw, shelled pumpkin seed kernels are classified as seeds used for sowing, other vegetable seeds, in subheading 1209.91.8080, HTSUS.

NYRL 885798 is affirmed.

Sincerely,

JOHN DURANT,
Director
Commercial Rulings Division

[ATTACHMENT B]

NY 885798

May 25, 1993
CLA-2–12:S:N:N7:231–885798
CATEGORY: Classification
TARIFF NO.: 1209.91.8080

MS. CECILIA CASTELLANOS
WITHROW ZERWEKH
1241 WATSON CENTER ROAD
WILMINGTON PARK, CA 90745

RE: The tariff classification of "Chinese pumpkin seed kernels" from China.

DEAR MS. CASTELLANOS:

In your letter dated April 29,1993, on behalf of Conagra Dried Fruit and Nut, you requested a tariff classification ruling.

The product in question is described as raw, shelled pumpkin seed kernels. They are not roasted, prepared or preserved.

The applicable subheading for these pumpkin seeds will be 1209.91.8080, Harmonized Tariff Schedule of the United States (HTS), which provides for seeds, fruits and spores of a kind used for sowing: other: vegetable seeds: other. The rate of duty will be 3.3 cents per kilogram.

Additional requirements may be imposed on this product by the United States Department of Agriculture. You may contact the USDA at:

United States Department of Agriculture
Animal and Plant Health Inspection Service
1201 Corbin Street
Elizabeth, New Jersey 07201

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.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

[ATTACHMENT C]

NY C81606
November 14, 1997
CLA-2–12:RR:NC:2:231 C81606
CATEGORY: Classification
TARIFF NO.: 1209.91.8055

MR. ROBERT MARQUETANT
LIGHTLINK
35 BRIGHTON PLACE
LAGUNA NIGUEL, CA 92677–4712

RE: The tariff classification of pumpkin seeds from Austria and Hungary.

DEAR MR. MARQUETANT:

In your letter, dated November 4, 1997, you have requested a tariff classification ruling.

The merchandise is comprised of pumpkin seeds (pumpkin seed kernels). They may be shelled, unshelled, or without shells grown. They will be raw and plain, unsalted, not treated, not preserved, and not roasted. They will be packed and sold at retail in bulk for human consumption and industrial processing. They will be sold in bulk at food stores, and will also be marketed to the bakery and milling industries, the vegetable oil industry, the nutritional supplements industry, and the pharmaceutical industry. Additional commercial or industrial bulk applications may also be targeted. The packaging will be in 10 kilogram, 25 kilogram, 40 kilogram, 50 kilogram, or other size paper or plastic bags. In your correspondence you indicate that there are three options for export:

Option 1: Austria is the country of origin.

Option 2A: Hungary is the country of origin; the merchandise enters the commerce of Austria and it is stored in Austria.

Option 2B: Hungary is the country of origin.

The applicable subheading for the pumpkin seeds will be 1209.91.8055, Harmonized Tariff Schedule of the United States (HTS), which provides seeds, fruits and spores, of a kind used for sowing, other, vegetable seeds, other, pumpkin. The rate of duty will be 2.4 cents per kilogram.

Articles classifiable under subheading 1209.91.8055, HTS, which are products of Hungary, and which do not enter the commerce of any other country (Option 2B only), are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 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 Ralph Conte at (212) 466–5759.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity
Specialist Division

[ATTACHMENT D]

NY C80043

October 2, 1997
CLA-2–12:RR:NC:2:231 C80043
CATEGORY: Classification
TARIFF NO.: 1209.91.8055

MR. ROBERT MARQUETANT
LIGHTLINK
35 BRIGHTON PLACE
LAGUNA NIGUEL, CA 92677–4712

RE: The tariff classification of pumpkin seeds from Austria and Hungary.

DEAR MR. MARQUETANT:

In your letter, dated September 24, 1997, you have requested a tariff classification ruling.

The merchandise is comprised of pumpkin seeds (pumpkin seed kernels). They may be shelled, unshelled, or without shells grown. They will be raw and plain, unsalted, not treated, not preserved, and not roasted. They will be packed and sold at retail in bulk for human consumption. The packaging will be in 10 kilogram, 25 kilogram, 40 kilogram, 50 kilogram, or other size paper or plastic bags. In your correspondence you indicate that there are three options for export:

Option 1: Austria is the country of origin.

Option 2A: Hungary is the country of origin; the merchandise enters the commerce of Austria and it is stored in Austria.

Option 2B: Hungary is the country of origin.

The applicable subheading for the pumpkin seeds will be 1209.91.8055, Harmonized Tariff Schedule of the United States (HTS), which provides seeds, fruits and spores, of a kind used for sowing, other, vegetable seeds, other, pumpkin. The rate of duty will be 2.4 cents per kilogram.

Articles classifiable under subheading 1209.91.8055, HTS, which are products of Hungary, and which do not enter the commerce of any other country (Option 2B only), are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 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 Ralph Conte at (212) 466–5759.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity
Specialist Division

[ATTACHMENT E]

NY 856226
September 19, 1990
CLA-2–12:S:N:N1:231–856226
CATEGORY: Classification
TARIFF NO.: 1209.91.8080

MR. KENT SUNAKODA
JAMES J. BOYLE & COMPANY
2525 CORPORATE PLACE #100
MONTEREY PARK, CA 91754

RE: The tariff classification of "Chinese pumpkin seed kernels" from China.

DEAR MR. SUNAKODA:

In your letter dated September 4, 1990, on behalf of Kasho (USA) Inc., of San Francisco, CA, you requested a tariff classification ruling.

The product in question is described as pumpkin seed kernels shelled or unshelled that are de-husked and imported ready for human consumption in raw, uncooked form with no salt, seasoning, flavoring, or additives. They are not roasted, prepared or preserved.

The applicable subheading for these pumpkin seeds will be 1209.91.8080, Harmonized Tariff Schedule of the United States (HTS), which provides for seeds, fruits and spores of a kind used for sowing: other: vegetable seeds: other. The rate of duty will be 3.3 cents per kilogram.

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.

Sincerely,

JEAN F. MAGUIRE
Area Director
New York Seaport

[ATTACHMENT F]

HQ 958495
November 21, 1995
CLA-2 RR:TC:FC 958495 ALS
CATEGORY: Classification
TARIFF NO.: 1209.91.8055

PORT DIRECTOR OF CUSTOMS
U.S. CUSTOMS SERVICE
300 S. FERRY ST.
TERMINAL ISLAND, CA 90731

RE: Application for Further Review of Protest 2704–95–102052, dated June 28, 1995, Concerning Chinese Snow White Pumpkin Seeds

DEAR MS. ADAMS:

This ruling is on a protest that was filed against a decision of April 7, 1995, issued by your port, concerning the subject pumpkin seeds.

FACTS:

The merchandise under consideration is Chinese snow white pumpkin seeds in the shell. The importer has noted that the subject seeds are of substantially lesser value than pumpkin seeds utilized for sowing, that they do not meet the minimum germination standard set by the Federal Seed Act, and that any germination requirement is destroyed by various processes undertaken subsequent to importation.

ISSUE:

What is the proper classification for the subject pumpkin seeds?

LAW AND ANALYSIS:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI's) taken in order.

GRI 1 provides that the classification is determined first in accordance with the terms of the headings and any relative section and chapter notes. If GRI 1 fails to classify the goods and if the headings and legal notes do not otherwise require, the remaining GRI's are applied, taken in order.

We note that the entry covering the pumpkin seeds was liquidated in subheading 1209.91.8055, HTSUSA, which provides for seeds, fruits and spores, of a kind used for sowing, other, vegetable seeds, fruits and spores, of a kind used for sowing, other, vegetable, other, pumpkin. The protestant suggests that the pumpkin seeds should be classified in subheading 1404.90.0000, HTSUSA, which provides for vegetable products not elsewhere specified or included, other, or in subheading 1207.99.0000, HTSUSA, which provides for oil seeds and oleaginous fruits, whether or not broken, other, other.

The protestant contends that the pumpkin seeds will be used for human consumption and not for sowing, and that the processing of the pumpkin seeds after importation renders them incapable of germination. We, however, note that neither actual nor principle use, whether commercial or non-commercial, governs the classification of the pumpkin seeds. The seeds do not even have to be capable of germinating. In this regard we note legal note

3 to Chapter 12, HTSUSA, provides: "For the purposes of heading 1209,...vegetable seeds...are seeds of a kind used for sowing.'"

In view of the above and since merchandise is classified in its condition at the time of importation, the processing that occurs subsequent to importation and the intended use of the product do not impact on the classification of the seeds. The Federal Seed Act provision regarding the categorization of seeds as capable of germinating is inapplicable to the tariff classification of the seeds.

In this regard, we note that the Explanatory Notes to the Harmonized System (EN), which represents the views of the international classification experts, provides in heading 12.09:

This heading covers all seeds, fruit and spores or a kind used for sowing. It includes such products even if they are no longer capable of germination.

In Headquarters Ruling Letter (HRL) 955091 of February 9, 1994, which covered hulled pumpkin seeds, we noted that although the seeds were used primarily for human consumption, they were, pursuant to the noted legal note and EN, considered as 'seeds of a kind used for sowing.'" Based thereon we concluded that those seeds were classifiable in subheading 1209.91.8055, HTSUSA. We have concluded that such conclusion is appropriate in the instant protest.

This subheading is more specific than subheading 1404.90.0000, HTSUSA, suggested by the importer, which provides for vegetable products not elsewhere specified or included. Also, we do not believe that the instant seeds would be considered a vegetable product of the type specified in that subheading.

We also do not agree that subheading 1207.99.0000, HTSUSA, alternatively suggested by the importer, is an appropriate subheading. In this regard, we note that the General Explanatory Note to Chapter 12 of the Harmonized System provides that "[H]eadings 12.01 to 12.07 cover seeds and fruits of a kind used for the extraction...of edible or industrial oils and fats, whether presented for that purpose, for sowing or for other purposes." We are not aware of pumpkin seeds being used for their oils. We note that the only uses suggested by the importer were human consumption and sowing.

Further, we note that the EN to heading 1207 specifies that "This heading covers seeds and fruits of a kind used for the extraction of edible or industrial oils and fats, other than those specified in headings 12.01 to 12.06 ..." In examining headings 1201 through 1206, we find no mention of pumpkin seeds. The aforementioned EN also specifies that heading 1207 covers multiple additional seeds and nuts. Pumpkin seeds are not contained in that listing. Based on this and the findings in the foregoing paragraph, we have concluded that pumpkin seeds are not covered by heading 1207 or subheading 1207.99.0000, HTSUSA, as suggested by the importer.

HOLDING:

Chinese snow white pumpkin seeds, regardless of the use for which intended or their germination capability, are classifiable in subheading 1209.91.8055, HTSUSA. Merchandise so classifiable is subject to a general rate of duty of 3 cents per kilogram.

Since the classification indicated above is the same as the classification under which the entry was liquidated, you are instructed to deny the protest in full.

A copy of this decision should be attached to the Customs Form 19 and provided to the protestant as part of the notice of action on the protest.

In accordance with Section 3A(11)(b) of Customs Directive 099 3553–065, dated August 4, 1993, Subject: Revised Protest Directive, this decision should be provided by your office to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entries in accordance with this decision must be accomplished prior to the mailing of the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS and the public via the Diskette Subscription Service, Freedom of Information Act and other public access channels.

Sincerely,

JOHN DURANT,
Director
Tariff Classification
Appeals Division

[ATTACHMENT G]

HQ 955091
February 9, 1994
CLA-2 CO:R:C:F 955091 ASM
CATEGORY: Classification
TARIFF NO.: 1209.91.8055

MR. RICHARD J. SULLIVAN
PRESIDENT
ASSOCIATION OF FOOD INDUSTRIES, INC.
5 RAVINE DRIVE
P.O. BOX 776
MATAWAN, NJ 07747

RE: Request for Reconsideration of HRL 954317 concerning the tariff classification of hulled pumpkin seeds.

DEAR MR. SULLIVAN:

This letter is in response to your request for a reconsideration of Headquarters Ruling Letter (HRL) 954317, dated August 5, 1993, regarding the classification of hulled pumpkin seeds.

FACTS:

On August 5, 1993, in response to your initial request for a ruling as to the proper classification of hulled pumpkin seeds, Customs issued HRL 954317, which held that hulled pumpkin seeds are classifiable under the provision for other seeds, fruits and spores, of a kind used for sowing, other vegetable seeds, in subheading 1209.91.8080, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). This subheading, now renumbered to 1209.91.8055, is dutiable at a column one general rate of 3.3 cents per kg.

This office received your request for reconsideration of HRL 954317 on September 28, 1993. In this request, you assert that the proper classification of hulled pumpkin seeds would be under subheading 1212.99.0000 HTSUSA, as "Locust beans, seaweeds and other algae, sugar beet and sugar cane, fresh or dried, whether or not ground; fruit stones and kernels and other vegetable products (including unroasted chicory roots of the variety Cichorium intybus sativum) of a kind used primarily for human consumption, not elsewhere specified or included: Other: Other." Subheading 1212.99.0000 HTSUSA is duty free at the column one general rate.

ISSUE:

Whether the hulled pumpkin seeds should be classified in the provision for other seeds, fruits and spores, of a kind used for sowing, or the provision for other vegetable products of a kind used primarily for human consumption.

LAW AND ANALYSIS:

Classification of merchandise under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI's). As stated in GRI 1, the classification is determined first in accordance with the terms of the headings which must be read in conjunction with the relative notes. If GRI 1 fails to classify the goods and if the heading and legal notes do not otherwise require, the remaining GRI's are applied in their appropriate order. The Explanatory Notes to the Harmonized Commodity Description and Coding System (EN's),

facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI's.

The product in question, hulled pumpkin seeds, is a vegetable product which can be used for human consumption. It is important to note, however, that subheading 1212.99.0000 HTSUSA provides for "...other vegetable products of a kind used primarily for human consumption, not elsewhere specified or included (emphasis supplied)." As such, pumpkin seeds cannot be classified pursuant to subheading 1212.99.0000 HTSUSA because they are specifically provided for under subheading 1209.91.8055 HTSUSA which covers other seeds, fruits and spores of a kind used for sowing.

Although you have submitted statistics to demonstrate that pumpkin seeds imported into the United States are used primarily for human consumption and not for sowing, Note 3 to Chapter 12 of the HTSUSA indicates that, "For the purposes of heading 1209, ...vegetable seeds,...are to be regarded as seeds of a kind used for sowing (emphasis supplied)." Thus, regardless of the intended use of the product, Legal Note 3 to Chapter 12, requires us to consider these hulled pumpkin seeds as "seeds of a kind used for sowing."

HOLDING:

The hulled pumpkin seeds are classified in subheading 1209.91.8055 HTSUSA, which provides for "Seeds, fruits and spores, of a kind used for sowing: Other: Other: Pumpkin" dutiable at the general column one rate of 3.3 cents/kg. Accordingly, HRL 954317, dated August 5, 1993, is affirmed.

Sincerely,

JOHN DURANT,
Director
Commercial Rulings Division

[ATTACHMENT H]

HQ 954317

August 5, 1993
CLA-2 CO:R:C:F 954317 JGH
CATEGORY: Classification
TARIFF No.: 1209.91.8080

MR. RICHARD J. SULLIVAN
ASSOCIATION OF FOOD INDUSTRIES, INC.
5 RAVINE DRIVE
P.O. BOX 776
MATAWAN, NEW JERSEY 07747

RE: Classification of Hulled Pumpkin Seeds

DEAR MR. SULLIVAN:

Your letter of May 28, 1993, concerns the classification of pumpkin seeds under the Harmonized Tariff Schedules of the United States (HTSUS).

FACTS:

It is your contention that hulled pumpkin seeds should be classifiable under the heading 1207, the provision for other oil seeds, and not in heading 1209, which provides for seeds, fruit and spores, of a kind used for sowing. You maintain that pumpkin seeds are oil seeds from which oil is extracted and consumed, although you acknowledge that the use of the oil is a rather minor use of the product.

In the alternative you suggest that pumpkin seeds, as a snack food, could be classified under heading 1212 which covers other vegetable products of a kind used primarily for human consumption, not elsewhere specified or included.

ISSUE:

Whether pumpkin seeds are classifiable as oil seeds in heading 1207, TSUS or seeds of a kind used for sowing in subheading 1209.91.8080, HTSUS.

LAW & ANALYSIS:

The Explanatory Notes (ENs) for Heading 1201 to 1207 state that the headings cover seeds and fruit of a kind used for the extraction of edible or industrial oils and fats, whether or not they are presented for that purpose, for sowing or for other purposes. These headings do not, however, include products of heading 0801 or 0802, olives or certain seeds and fruits from which oil may be extracted but which are primarily used for other purposes.

As the ENs indicate, to be classifiable in heading 1207, pumpkin seeds would have to be primarily used for the extraction of oil. There is no indication that this is so with pumpkin seeds; in fact, you note that the use of pumpkin seed oil "is a rather minor use of the product." It is significant that the ENs list 27 types of oil-bearing seeds provided for in heading 1207.99, HTSUS, but the pumpkin seed is not one of them.

Heading 1212 includes fruit stones and kernels and other vegetable products of a kind used primarily for human consumption, not elsewhere specified or included. Although pumpkin seeds may be used as a snack food, they are not primarily used for human consumption.

One reason you suggest for excluding pumpkin seeds from heading 1209 is that the ENs state that heading 1209 does not include fruit of chapter 8, and you feel that pumpkins might be classified as a fruit. However, the ENs for heading 0709 - Other Vegetables - fresh or Chilled - list pumpkins as being classified under that heading.

The ENs for heading 1209 state that it covers all seeds, fruit and spores of a kind used for sowing. It includes such products even if they are no longer capable of germination. However, it does not include products which, "although intended for sowing, are classified elsewhere in the Nomenclature because they are normally used other than for sowing." Thus, even though pumpkin seeds may be used for other purposes, such as a snack food, the evidence is that they are primarily used for sowing; the fact that the seeds are hulled, and, thus, no longer suitable for sowing, does not prevent classification in this heading, as the ENs state that it includes the seeds even though they are whole, broken, crushed, husked or shelled.

HOLDING:

Hulled pumpkin seeds are classifiable under the provision for other seeds, fruits and spores, of a kind used for sowing, other vegetable seeds, in subheading 1209.91.8080, HTSUS. The rate of duty in the General Column is 3.3 cents per kg.

Sincerely,

JOHN DURANT,
Director
Commercial Rulings Division

[ATTACHMENT I]

HQ H108019
CLA-2 OT:RR:CTF:TCM H108019 TNA
CATEGORY: Classification
TARIFF NO.: 1212.99.91

MS. SANDRA L. PETERSEN
CONAGRA DRIED FRUIT & NUT COMPANY
1050 SANSOME STREET, SUITE 400
SAN FRANCISCO, CALIFORNIA 94111–1334

RE: Revocation of HQ 954648, NY 885798, NY C81606, NY C80043, NY 856226, HQ 958495, HQ 955091, and HQ 954317; Classification of hulled pumpkin seeds

DEAR MS. PETERSEN:

This letter is in reference to Headquarters Ruling Letter ("HQ") 954648, issued to ConAgra Dried Fruit and Nut Company on August 5, 1993, concerning the tariff classification of Chinese pumpkin seed kernels from China, as well as New York Ruling Letter ("NY") 885798, dated May 25, 1993; NY C81606, dated November 14, 1997; NY C80043, dated October 2, 1997; NY 856226, dated September 19, 1990; HQ 958495, dated November 21, 1995; HQ 955091, dated February 9, 1994; and HQ 954317, dated August 5, 1993, all concerning the tariff classification of hulled pumpkin seeds. In these rulings, U.S. Customs and Border Protection ("CBP") classified the merchandise under subheading 1209.91.80, Harmonized Tariff Schedule of the United States ("HTSUS"), as "Seeds, fruits and spores of a kind used for sowing: Other: Vegetable seeds: Other." We have reviewed HQ 954648, NY 885798, NY C81606, NY C80043, NY 856226, HQ 958495, HQ 955091, and HQ 954317 and found them to be in error. For the reasons set forth below, we hereby revoke HQ 954648, NY 885798, NY C81606, NY C80043, NY 856226, HQ 958495, HQ 955091, and HQ 954317.

FACTS:

The merchandise at issue in HQ 954648 consisted of pumpkin seed kernels. The seeds are described as raw, shelled (hulled), pumpkin seed kernels that are not roasted, prepared or preserved. They are packed and sold at retail in bulk for human consumption and industrial processing. They are sold in differently sized containers, such as 10 kilogram, 25 kilogram, 40 kilogram, 50 kilogram, or other sized paper or plastic bags. They are sold in bulk at food stores and are also marketed to the bakery and milling industries, the vegetable oil industry, the nutritional supplements industry, and the pharmaceutical industry.

The merchandise at issue in NY 885798, NY C81606, NY C80043, NY 856226, HQ 958495, HQ 955091, and HQ 954317 was described similarly. NY 885798 classified Chinese pumpkin seed kernels described as raw, shelled pumpkin seed kernels that were not roasted, prepared or preserved. NY C81606 and NY C80043 classified pumpkin seeds that were described in the same terms as HQ 954648. NY 856226 classified seed kernels shelled or unshelled that are de-husked and imported ready for human consumption in raw, uncooked form with no salt, seasoning, flavoring, or additives. They are

not roasted, prepared or preserved. HQ 958495 classified Chinese snow white pumpkin seeds in the shell. Both HQ 955091 and HQ 954317 classified hulled pumpkin seeds.

The "hull" of a seed is defined as "the shell, pod, or husk of peas and beans; the outer covering or rind of any fruit or seed," and is used synonymously with the term "husk." *See* www.oed.com (defining "husk" as "the dry outer integument of certain fruits and seeds; esp. the hard fibrous sheath of grain, nuts, etc.; a glume or rind.") Thus, the term "hulled" means "stripped of the hull or husk." *See* www.oed.com. Similarly, the term "shelled" means "deprived of the shell; from which the shell has been removed or shed." *See* www.oed.com.

In HQ 954648, NY 885798, NY C81606, NY C80043, NY 856226, HQ 958495, HQ 955091, and HQ 954317, CBP classified the pumpkin seeds under subheading 1209.91.80, HTSUS, as: "Seeds, fruits and spores of a kind used for sowing: Other: Vegetable seeds: Other."

ISSUE:

Whether pumpkin seed kernels should be classified in subheading 1209.91.80, HTSUS, as seeds, fruits and spores of a kind used for sowing: other vegetable seeds; or in subheading 1212.99.91, HTSUS, as other of a kind used primarily for human consumption, not elsewhere specified or included?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). 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.

The HTSUS provisions under consideration are as follows:

1209	Seeds, fruits and spores of a kind used for sowing:	
	Other:	
1209.91		Vegetable seeds:
1209.91.80		Other

* * * * * * * * * * * *

1212	Locust beans, seaweeds and other algae, sugar beet and sugar cane, fresh, chilled, frozen or dried, whether or not ground; fruit stones and kernels and other vegetable products (including unroasted chicory roots of the variety Cichorium intybus sativum) of a kind used primarily for human consumption, not elsewhere specified or included:	
	Other:	
1212.99		Other:
1212.99.91		Other

Legal Note 3 to Chapter 12 provides that:

> For the purposes of heading 1209, beet seeds, grass and other herbage seeds, seeds of ornamental flowers, vegetable seeds, seeds of forest trees,

seeds of fruit trees, seeds of vetches (other than those of the species Vicia faba) or of lupines are to be regarded as "seeds of a kind used for sowing".

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

The EN to heading 1209, HTSUS, provides, in pertinent part:

> This heading covers all seeds, fruit and spores of a kind used for sowing. It includes such products even if they are no longer capable of germination. However, it **does not include** products such as those mentioned at the end of this Explanatory Note, which, although intended for sowing, are classified elsewhere in the Nomenclature because they are normally used other than for sowing.
>
> The heading **excludes**:
>
> (a) Mushroom spawn (**heading 06.02**).
>
> (b) Leguminous vegetables and sweet corn (**Chapter 7**).
>
> (c) Fruit of **Chapter 8**.
>
> (d) Spices and other products of **Chapter 9**.
>
> (e) Cereal grains (**Chapter 10**).
>
> (f) Oil seeds and oleaginous fruits of **headings 12.01 to 12.07**.
>
> (g) Seeds and fruit which **are themselves** of a kind used primarily in perfumery, in pharmacy, or for insecticidal, fungicidal or similar purposes (**heading 12.11**).
>
> (h) Locust beans (heading **12.12**).

The EN to heading 1212, HTSUS, provides, in pertinent part:

> (D) **Fruit stones and kernels and other vegetable products (including unroasted chicory roots of the variety** *Cichorium intybus sativum***) of a kind used primarily for human consumption, not elsewhere specified or included.**
>
> This group includes fruit stones and kernels and other vegetable products of a kind mainly used, directly or indirectly, for human consumption, but not elsewhere specified or included in the Nomenclature.
>
> It therefore includes kernels of peaches (including nectarines), apricots and plums (used mainly as substitutes for almonds). These products remain in the heading even though they may also be used for the extraction of oil.

Additional U.S. Rule of Interpretation 1(a) states that "a tariff classification controlled by use is determined in accordance with the principal use of the class or kind of goods to which the imported goods belong." Courts have provided several factors to apply when determining whether merchandise falls within a particular class or kind of good. They include: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels of trade in which the merchandise moves; (4) the environment of the sale (e.g. the manner in which the merchandise is

advertised and displayed); (5) the usage of the merchandise; (6) the economic practicality of so using the import; and (7) the recognition in the trade of this use. *See United States v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976) ("*Carborundum*").

By their terms, headings 1209 and 1212, HTSUS, are use provisions. Classification therein is therefore subject to an analysis of the *Carborundum* factors. First, we examine the packaging and marketing of the subject merchandise, which is packed and sold at retail in bulk at food stores. It is also marketed to the bakery and milling industries, the vegetable oil industry, the nutritional supplements industry, and the pharmaceutical industry. These are all industries and stores that cater to human consumption. The subject merchandise is also packaged in 10 kilogram, 25 kilogram, 40 kilogram, 50 kilogram, or other size paper or plastic bags. This, too, indicates the expectations of the ultimate consumer in that the merchandise is bought in relatively smaller packages by stores or individuals, rather than by farmers to sow a field.

In addition, the rulings under review contained a statement by the importer that the subject merchandise was incapable of germination, as it was fit for human consumption, was being imported for this purpose alone. This also speaks to these seeds' use for human consumption rather than for sowing, as seeds for sowing, as a class or kind, generally are subject to different standards, and are sold in different channels of trade, than seeds for human consumption.

Furthermore, in terms of the merchandises' general physical characteristics, these seeds are not only incapable of germination, they are unsuitable for sowing. They have been modified from their natural form to remove the hull so as to become edible. A hulled seed no longer has its protective shell, one of the characteristics of a seed used for sowing. Once a seed has been hulled, it is fit only to be eaten and would not be planted with the expectation of growing a crop. We therefore find that the subject merchandise is of the class or kind of goods principally used for human consumption rather than for sowing. As such, it is classified under heading 1212, HTSUS, and specifically under subheading 1212.99.91, HTSUS, which provides for: "Locust beans, seaweeds and other algae, sugar beet and sugar cane, fresh, chilled, frozen or dried, whether or not ground; fruit stones and kernels and other vegetable products (including unroasted chicory roots of the variety Cichorium intybus sativum) of a kind used primarily for human consumption, not elsewhere specified or included: other: other: other."

We note that Legal Note 3 to Chapter 12 defines vegetable and fruit seeds as being of the kind used for sowing. Furthermore, EN 12.09 states that the heading covers all seeds of a kind used for sowing, including such products even if they are no longer capable of germination. We interpret this language to encompass the type of seeds normally of the kind used for sowing, even if the individual seeds that fall into this category cannot actually germinate. Seeds destined for sowing would not only be in the shell, but are typically produced in a way that ensures a certain race line with the required genetic code and perhaps also be chemically treated to promote germination. The subject seeds, by contrast, are not treated this way; to the contrary, the are imported for use in human consumption and are classified in heading 1212, HTSUS.

Our determination is also consistent with a recent decision by the World Customs Organization ("WCO") on pumpkin seeds fit for human consumption published in the Compendium of Classification Opinions on the Harmonized Commodity Description and Coding System where the classification of pumpkin seeds fit for human consumption. *See* Opinion No. 1212.99/1 of the WCO's Compendium of Classification Opinions (March 2008). 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, the 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. *See* T.D. 89–80.

HOLDING:

Under the authority of GRI 1, the subject pumpkin seeds are classified in subheading 1212.99.91, HTSUS, which provides for "Locust beans, seaweeds and other algae, sugar beet and sugar cane, fresh, chilled, frozen or dried, whether or not ground; fruit stones and kernels and other vegetable products (including unroasted chicory roots of the variety Cichorium intybus sativum) of a kind used primarily for human consumption, not elsewhere specified or included: Other: Other: Other." The 2010 column one general rate of duty is duty free.

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

EFFECT ON OTHER RULINGS:

HQ 954648, dated August 5, 1993; NY 885798, dated May 25, 1993; NY C81606, dated November 14; NY C80043, dated October 2, 1997; NY 856226, dated September 19, 1990; HQ 958495, dated November 21, 1995; HQ 955091, dated February 9, 1994; and HQ 954317, dated August 5, 1993, are REVOKED.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF POLYPHENYLENE SULFIDE

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

ACTION: Notice of revocation of one ruling letter and revocation of treatment relating to tariff classification of polyphenylene sulfide.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking one ruling letter relating to the tariff classification of polyphenylene sulfide under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin* Vol. 45, No. 26, on June 22, 2011. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 24, 2011.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke New York Ruling Letter (NY) N027045, dated May 22, 2008 was published on June 22, 2011, in Volume 45, Number 26, of the *Customs Bulletin*. No comments were received in response to this notice.

As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. 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 CBP during the comment period.

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

> In NY N027045, CBP determined that a polyphenylene sulfide homopolymer reinforced with glass was classified in heading 3907, HTSUS, which provides for "Polyacetals, other polyethers and epoxide resins, in primary forms; polycarbonates, alkyd resins, polyallyl esters and other polyesters, in primary forms."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N027045, in order to reflect the proper classification of polyphenylene sulfide according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H110997, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: August 4, 2011

ALLYSON MATTANAH
For
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H110997
August 4, 2011
CLA-2 OT:RR:CTF:TCM H110997 CkG
CATEGORY: Classification
TARIFF NO.: 3911.90.25

MS. JANET C. WALLETT
825 OLD TRAIL ROAD
ETTERS, PA 17319

Re: Revocation of NY N027045; classification of polyphenylene sulfide

DEAR MS. WALLETT,

This is in reference to New York Ruling Letter (NY) N027045, issued by the Customs and Border Protection (CBP) National Commodity Division on May 22, 2008, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of polyphenylene sulfide. We have reconsidered this decision, and for the reasons set forth below, have determined that classification of polyphenylene sulfide as polyether of heading 3907, HTSUS, is incorrect.

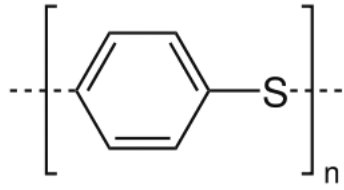
Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N027045 was published on June 22, 2011, in Volume 45, Number 26, of the *Customs Bulletin*. No comments were received in response to this notice.

FACTS:

NY N027045, dated May 22, 2008, describes the product at issue as follows:

> DIC PPS FZ-1140-D5 Black consists of polyphenylene sulfide homopolymer (CAS-25212–74–2) glass reinforced (40%) molding resin with carbon black (0.75%) and a mold release agent (1%). The black colored resin will be imported in pellet form for use in the manufacture of injection molded plastic housings for electronic connectors.
>
> DIC PPS FZ-1140-D5 Natural consists of polyphenylene sulfide homopolymer (CAS-25212–74–2) glass reinforced (40%) molding resin with a mold release agent (1%). The natural colored resin will be imported in pellet form for use in the manufacture of injection molded plastic housings for electronic connectors.

Polyphenylene sulfide (PPS) is a thermoplastic polymer containing a phenylene ring (a modified aromatic compound derived from benzene by the removal of two hydrogen atoms—i.e., with a chemical formula of C_6H_4 instead of C_6H_6) and sulfur atom which are linked in alternating para-position. Polyphenylene sulfide has the empirical formula $(C_6H_4S)_n$. A diagram of its chemical structure is included below. The Chemical Abstracts Service Registry number of the DIC polyphenylene sulfide is CAS CAS-25212–74–2. Polyphenylene sulfide is thermoplastic, meaning that the plastic becomes soft and formable when heated, and rigid and usable as a formed article when cooled. Each time it is reheated it can be reshaped or formed into a new article.



ISSUE:

Whether polyphenylene sulfide is classified in heading 3907, HTSUS, as an "other" polyether, or in heading 3911, HTSUS, as a polysulfide.

LAW AND ANALYSIS:

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

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the HTSUS. While not legally binding or 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 at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

3907:	Polyacetals, other polyethers and epoxide resins, in primary forms; polycarbonates, alkyd resins, polyallyl esters and other polyesters, in primary forms:	
3907.20.00:	Other polyethers . . .	

* * * * *

3907:	Polyacetals, other polyethers and epoxide resins, in primary forms; polycarbonates, alkyd resins, polyallyl esters and other polyesters, in primary forms:	
3907.20.00:	Other polyethers . . .	
3911:	Petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones and other products specified in note 3 to this chapter, not elsewhere specified or included, in primary forms:	
3911.90:	Other:	
	Other:	
		Containing monomer units which are aromatic or modified aromatic, or which are obtained, derived or manufactured in whole or in part therefrom:

* * * * *

		Thermoplastic:
3911.90.25:		Other . . .

* * * * *

Note 3(b) to Chapter 39, HTSUS, states as follows:

> Headings 3901 to 3911 apply only to goods of a kind produced by chemical synthesis, falling in the following categories: Resins, not highly polymerized, of the coumarone-indene type (heading 3911);

* * * * *

Note 6 to Chapter 39 states:

In headings 3901 to 3914, the expression "primary forms" applies only to the following forms:

> (a) Liquids and pastes, including dispersions (emulsions and suspensions) and solutions;
> (b) Blocks of irregular shape, lumps, powders (including molding powders), granules, flakes and similar bulk forms.

* * * * *

The EN to Chapter 39 provides as follows:

PRIMARY FORMS

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

(1) **Liquids and pastes.** These may be the basic polymer which requires "curing" by heat or otherwise to form the finished material, or may be dispersions (emulsions and suspensions) or solutions of the uncured or partly cured materials. In addition to substances necessary for "curing" (such as hardeners (cross-linking agents) or other co-reactants and accelerators), these liquids or pastes may contain other materials such as plasticisers, stabilisers, fillers and colouring matter, chiefly intended to give the finished products special physical properties or other desirable characteristics…

(2) **Powder, granules and flakes.** In these forms they are employed for moulding, for the manufacture of varnishes, glues, etc. and as thickeners, flocculants, etc. They may consist of the unplasticised materials which become plastic in the moulding and curing process, or of materials to which plasticisers have been added; these materials may incorporate fillers (e.g., wood flour, cellulose, textile fibres, mineral substances, starch), colouring matter or other substances cited in Item (1) above.

EN 39.07 (2) provides as follows:

This heading covers:

(2) **Other polyethers**. Polymers obtained from epoxides, glycols or similar materials and characterised by the presence of ether-functions in the polymer chain. They are not to be confused with the polyvinyl ethers of **heading *39.05***, in which the ether-functions are substituents on the polymer chain. The most important members of this group are poly(oxyethylene) (polyethylene glycol), polyoxypropylene and polyphenylene oxide (PPO) (more correctly named poly (dimethylphenylene-oxide)). These products have a variety of uses, PPO being used, like the polyacetals, as engineering plastics, polyoxypropylene as an intermediate for polyurethane foam.

EN 39.11 provides, in pertinent part, as follows:

This heading covers the following products:

…

(2) **Polysulphides** are polymers characterised by the presence of monosulphide linkages in the polymer chain, for example, poly(phenylene sulphide). In polysulphides each sulphur atom is bound on both sides by carbon atoms, as opposed to the thioplasts of Chapter 40, which contain sulphur-sulphur linkages. Polysulphides are used in coatings and in moulded articles, for example, aircraft and automobile parts, pump impellers.

* * * * *

Initially, we note that both headings at issue pertain to polymers in primary forms. Primary forms are defined in Note 6 to the Chapter as liquids and pastes, including dispersions (emulsions and suspensions) and solutions; and Blocks of irregular shape, lumps, powders (including molding powders), granules, flakes and similar bulk forms. The General ENs to the Chapter make clear that additions such as fillers, coloring matter and other substances added to primary forms do not effect classification as such. The glass reinforcement, mold release agent and color added to the instant PPS does not therefore effect its classification under GRI 1 as PPS. *See HQ 965290*, dated June 5, 2002.

The ENs make clear that PPS is a type of polysulfide because the sulfur atoms in the structure are bound on both sides by carbon atoms. It is therefore fully described by the terms of heading 3911, HTSUS. NY N027045 classified two polyphenylene sulfide homopolymer (CAS-25212–74–2) molding resins in heading 3907, HTSUS, as an "other" polyether. This classification was incorrect. Polyphenylene sulfide is not classifiable as a polyether of heading 3907, HTSUS. A polyether is characterized by an *oxygen atom* connected to two *alkyl* or *aryl* groups (i.e., an oxygen atom linked on both sides by carbon-hydrogen compounds). Polyphenylene sulfide does not contain any oxygen atoms in its chemical structure. Polyphenylene sulfide is thus classified in heading 3911, HTSUS, as a polysulfide.

HOLDING:

By application of GRI 1, polyphenylene sulfide is classified in heading 3911, HTSUS, specifically subheading 3911.90.25, which provides for "Petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones and other products specified in note 3 to this chapter, not elsewhere specified

or included, in primary forms: Other: Other: Containing monomer units which are aromatic or modified aromatic, or which are obtained, derived or manufactured in whole or in part therefrom: Thermoplastic: Other." The 2010 general, column one rate of duty is 6.1% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N027045, dated May 22, 2008, is hereby revoked. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

Sincerely,

ALLYSON MATTANAH
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

PROPOSED MODIFICATION OF RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF THE ANTIBIOTIC DRUG AZITHROMYCIN

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

ACTION: Notice of proposed modification of ruling letters and treatment relating to tariff classification of the antibiotic drug Azithromycin.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to modify and/or revoke ruling letters relating to the tariff classification of the antibiotic drug Azithromycin under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATES: Comments must be received on or before September 23, 2011.

ADDRESSES: Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W. (Mint Annex), Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., Washington, D.C. 20001 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

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

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP intends to modify ruling letters pertaining to the tariff classification of the antibiotic drug Azithromycin. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) C88143, dated July 13, 1998, (Attachment A), and NY F86114 dated May 5, 2000 (Attachment B), this notice 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 advise CBP during this notice period.

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

In NY C88143 and NY F86114, CBP determined that the drug Azithromycin was classified in the heading 2941, HTSUS, specifically subheading 2941.50.00, HTSUS, which provides for "Antibiotics: Erythromycin and its derivatives; salts thereof". It is now CBP's position that the drug Azithromycin is properly classified in heading 2941, HTSUS, specifically subheading 2941.90.50., HTSUS, which provides for: "Antibiotics: Other: Other: Other".

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY C88143 and NY F86114, and to revoke or modify any other ruling not specifically identified, to reflect the proper classification of Azithromycin according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H128140, set forth as Attachment C to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: August 8, 2011

ALLYSON MATTANAH
For
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY C88143

July 13, 1998
CLA-2–29:RR:NC:2:238 C88143
CATEGORY: Classification
TARIFF NO.: 2933.59.4500; 2941.50.0000;
2933.90.5300

MS. LIZ NEGER
SST CORPORATION
635 BRIGHTON ROAD
P.O. BOX 1649
CLIFTON, NJ 07015–1649

RE: The tariff classification of Nefazodone (CAS-83366–66–9) and Nefazodone Hydrochloride (CAS-82752–00–6), imported in bulk form, from Italy; and Azithromycin (CAS-83905–01–5), Enalapril (75847–73–3) and Enalapril Maleate (CAS-76095–16–4), imported in bulk form, from India

DEAR MS. NEGER:

In your letter dated May 12, 1998, you requested a tariff classification ruling.

The first two products, Nefazodone and Nefazodone Hydrochloride (the hydrochloride salt of Nefazodone), are indicated for use as antidepressants. The third product, Azithromycin, is a semisynthetic derivative of Erythromycin, which is a naturally occurring macrolide antibiotic. It is indicated for use as an antibacterial drug. The fourth and fifth products, Enalapril (the ethylester of Enalaprilat, a long-acting angiotensin-converting enzyme inhibitor) and Enalapril Maleate (the maleate salt of Enalapril), are indicated for use in the treatment of hypertension.

The applicable subheading for Nefazodone and Nefazodone Hydrochloride, imported in bulk form, will be 2933.59.4500, Harmonized Tariff Schedule of the United States (HTS), which provides for: "Heterocyclic compounds with nitrogen hetero-atom(s) only: Compounds containing a pyrimidine ring (whether or not hydrogenated) or piperazine ring in the structure: Other: Drugs: Aromatic or modified aromatic: Antidepressants, tranquilizers and other psychotherapeutic agents." Pursuant to General Note 13, HTS, the rate of duty will be free.

The applicable subheading for Azithromycin, imported in bulk form, will be 2941.50.0000, HTS, which provides for: "Antibiotics: Erythromycin and its derivatives; salts thereof." The rate of duty will be free.

The applicable subheading for Enalapril and Enalapril Maleate, imported in bulk form, will be 2933.90.5300, HTS, which provides for: "Heterocyclic compounds with nitrogen hetero-atom(s) only: Other: Aromatic or modified aromatic: Other: Drugs: Cardiovascular drugs: Other." Pursuant to General Note 13, HTS, the rate of duty will be free.

This merchandise may be subject to the requirements of the Federal Food, Drug, and Cosmetic Act, which is administered by the U.S. Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (301) 443–6553.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Harvey Kuperstein at 212–466–5770.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT B]

NY F86114

May 5, 2000
CLA-2–29:RR:NC:2:238 F86114
CATEGORY: Classification
TARIFF NO.: 2941.50.0000; 2933.90.9000;
2933.29.4500; 2933.90.5300; 2933.39.4100

MR. ALLA KUTSENKO
ICC CHEMICAL CORPORATION
460 PARK AVENUE
NEW YORK, NY 10022

RE: The tariff classification of **Azithromycin** (*CAS-83905–01–5*); **Captopril** (*62571–86–2*); **Cimetidine** (*CAS-51481–61–9*); **Enalapril** (*CAS -75847–73–3*); and **Felodipine** (*CAS-72509–76–3*), all imported in bulk form, from China

DEAR MR. KUTSENKO:

In your letter dated April 20, 2000, you requested a tariff classification ruling.

The first product, Azithromycin, is a semisynthetic derivative of Erythromycin, a naturally occurring macrolide antibiotic. It is indicated for use as an antibacterial drug. The second product, Captopril, is an angiotensin-converting enzyme (ACE) inhibitor indicated for use in the treatment of hypertension and congestive heart failure. The third product, Cimetidine, is an antagonist to histamine H_2 receptors. It inhibits the secretion of gastric acid, and is indicated, inter alia, for the treatment of peptic ulcer and gastroesophageal reflux disease (GERD). The fourth product, Enalapril, is the ethyl ester of Enalaprilat, a long-acting angiotensin-converting enzyme (ACE) inhibitor. It is indicated for the treatment of hypertension. The fifth product, Felodipine, is a calcium channel blocker used as a vasodilator in the treatment of hypertension.

The applicable subheading for Azithromycin, imported in bulk form, will be 2941.50.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for "[A]ntibiotics: Erythromycin and its derivatives; salts thereof." The rate of duty will be free.

The applicable subheading for Captopril, imported in bulk form, will be 2933.90.9000, HTS, which provides for "[H]eterocyclic compounds with nitrogen hetero-atom(s) only: Other: Other: Drugs." Pursuant to General Note 13, HTS, the rate of duty will be free.

The applicable subheading for Cimetidine, imported in bulk form, will be 2933.29.4500, HTS, which provides for "[H]eterocyclic compounds with nitrogen hetero-atom(s) only: Compounds containing an unfused imidazole ring (whether or not hydrogenated) in the structure: Other: Other: Drugs. Pursuant to General Note 13, HTS, the rate of duty will free. The applicable subheading for Enalapril, imported in bulk form, will be 2933.90.5300, HTS, which provides for "[H]eterocyclic compounds with nitrogen hetero-atom(s) only: Other: Aromatic or modified aromatic: Other: Drugs: Cardiovascular drugs: Other." Pursuant to General Note 13, HTS, the rate of duty will be free.

The applicable subheading for Felodopine, imported in bulk form, will be 2933.39.4100, HTS, which provides for "[H]eterocyclic compounds with nitro-

gen hetero-atom(s) only: Compounds containing an unfused pyridine ring (whether or not hydrogenated) in the structure: Other: Other: Drugs: Other." Pursuant to General Note 13, HTS, the rate of duty will be free.

This merchandise may be subject to the requirements of the Federal Food, Drug, and Cosmetic Act, which is administered by the U.S. Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number 301–443–1544.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177). A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Harvey Kuperstein at 212–637–7068.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity
Specialist Division

[ATTACHMENT C]

HQ H128140

August 8, 2011
CLA–2 OT:RR:CTF:TCM H128140 AMM
CATEGORY: Classification
TARIFF NO.: 2941.90.50

MR. ALLA KUTSENKO
ICC CHEMICAL CORPORATION
460 PARK AVENUE
NEW YORK, NY 10022

RE: Modification of New York Ruling Letters C88143 and F86114; classification of antibiotic drug Azithromycin

DEAR MR. KUTSENKO,

This is in regard to New York Ruling Letter (NY) F86114, dated May 5, 2000, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of the antibiotic drug Azithromycin. In NY F86114, Customs and Border Protection (CBP) classified the Azithromycin under subheading 2941.50.00, HTSUS, as a derivative of Erithromycin. We have reconsidered those rulings and have determined that Azithromycin is provided for in subheading 2941.90.50, HTSUS, as an other antibiotic.

FACTS:

Azithromycin (CAS-83905–01–5) is described in the technical literature as a semisynthetic derivative of Erythromycin (CAS-114–07–8), a naturally occurring macrolide antibiotic. In structure, the central skeleton of Erythromycin consists of a 14-membered lactone ring (13-ethyl-13-tridecanolide) with ten asymmetric centers, and two linked sugars. The first sugar can be either L-Cladinose or L-Mycarose. The second sugar is D-Desosamine. Azithromycin differs chemically from Erythromycin in that a methyl-substituted nitrogen atom is incorporated into the lactone ring, thus making the lactone ring a 15-membered ring that does not contain the original Erythromycin skeleton.

ISSUE:

Is the antibiotic drug Azithromycin properly classified under subheading 2941.50.00, HTSUS, which provides for: "Antibiotics: Erythromycin and its derivatives; salts thereof", or under subheading 2941.90.50, HTSUS, as "Antibiotics: Other: Other: Other"?

LAW AND ANALYSIS:

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

The HTSUS provisions at issue are as follows:

2941	Antibiotics:	
2941.50.00		Erythromycin and its derivatives; salts thereof
----------		
* * *		
2941	Antibiotics:	
2941.90		Other:
		Other:
2941.90.50		Other

Note 1 of Chapter 29, HTSUS, states, in pertinent part: "Except where the context otherwise requires, the headings of this chapter apply only to: (a) Separate chemically defined organic compounds, whether or not containing impurities…"

Subheading Note 1 of Chapter 29, HTSUS, states:

> Within any one heading of this chapter, derivatives of a chemical compound (or group of chemical compounds) are to be classified in the same subheading as that compound (or group of compounds) provided that they are not more specifically covered by any other subheading and that there is no residual subheading named 'Other' in the series of subheadings concerned.

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

The EN for Heading 29.41 states, in pertinent part, the following: "In this heading, the term 'derivatives' refers to active antibiotic compounds which could be obtained from a compound of this heading and which retain the essential characteristics of the parent compound, including its basic chemical structure."

The EN for Subheading 2941.50 states, in pertinent part, the following:

> Erythromycin derivatives are active antibiotics whose molecules contain the following constituents of the erythromycin skeleton : 13-ethyl-13-tridecanolide with linked desosamine and mycarose (or cladinose). Esters are also considered as derivatives. This subheading includes, *inter alia*, clarithromycin (INN) and dirithromycin (INN). However, azithromycin (INN) which contains a 15-atom central ring and picromycin which contains no cladinose or mycarose, are not regarded as erythromycin derivatives.

There is no dispute that Azithromycin is classified in heading 2941, HTSUS. Rather, the issue is the proper 8-digit national tariff rate that is applicable. As a result, GRI 6 applies.

GRI 6 states:

> 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, *mutatis mutandis*, to the above rules on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

Azithromycin is an antibiotic, and the technical literature describes it as a semi-synthetic derivative of Erythromycin. Classification of derivatives proceeds under Subheading Note 1 of Chapter 29, HTSUS. Here, derivatives are specifically covered by subheading 2941.50, so the definition of the word "derivative" is at issue.

The word "derivative" is not specifically defined in Chapter 29 of the HTSUS. "Derivative" is "a term used in organic chemistry to express the relation between certain known or hypothetical substances and the compound formed from them by simple chemical processes in which the nucleus or skeleton of the parent substance exists." *Van Nostrand's Scientific Encyclopedia, 5th Edition*, 2005, p. 475. Under the Explanatory Notes for Heading 29.41, a derivative must "retain the essential characteristics of the parent compound, including its basic chemical structure."

The basic chemical structure of Erithromycin contains a 14-member lactone ring. The chemical structure of Azithromycin is similar, but it contains a 15-member lactone ring instead. Additionally, the ketogroup attached to the carbon atom in the 10th position has been removed, and a methyl-substituted amine group has been added to the ring between the carbon atoms in the 10th and 11th position of the Erythromycin ring. The Azithromycin ring has 15 members, whereas the Erythromycin ring has 14 members. Azithromycin no longer contains the nucleus or skeleton of the parent substance, as specified in *Van Nostrand's Encyclopedia*, nor the parent compound's basic chemical structure, in accordance with EN 29.41. In addition, the EN to subheading 2941.50 specifically excludes Azithromycin from classification as an Erythromycin derivative.

Azithromycin is not a derivative of Erythromycin, and cannot be classified under subheading 2941.50, HTSUS. It must be classified under subheading 2941.90, HTSUS, instead. The product then properly falls under subheading 2941.90.50, HTSUS, which provides for: "Antibiotics: Other: Other: Other."

Our analysis also applies to NY C88143, dated July 13, 1998, which classified Azithromycin under heading 2941, HTSUS, specifically in subheading 2941.50.00, HTSUS, which provides for "Antibiotics: Erythromycin and its derivatives; …". As the Azithromycin of NY C88143 is substantially similar to the Azithromycin of NY F86114, we find that it is also properly classified by operation of GRI 1 under subheading 2941.90.50, HTSUS, which provides for "Antibiotics: Other: Other: Other", based on all of the foregoing.

HOLDING:

By application of GRI 6, the antibiotic drug product Azithromycin is classified in subheading 2941.90.50, HTSUS, which provides for: "Antibiotics: Other: Other: Other." The column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

New York Ruling Letters C88143, dated July 13, 1998, and F86114 dated May 5, 2000, are hereby MODIFIED.

Sincerely,

ALLYSON MATTANAH
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

REVOCATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN PLUSH ANIMALS WITH LIGHTS

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

ACTION: Notice of revcocation of two ruling letters and treatment relating to the tariff classification of the plush "Twilight Turtle" and "Kozy Light Monkey".

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking two ruling letters relating to the tariff classification of certain plush animals with lights under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 26, on June 22, 2011. 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 October 24, 2011.

FOR FURTHER INFORMATION CONTACT: Beth Green, Tariff Classification and Marking Branch: (202) 325-0347.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI, this notice advises interested parties that CBP is revoking two ruling letters relating to the tariff classification of certain plush animals with lights. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) L83764, dated April 27, 2005, and NY K88764, dated September 3, 2004, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the rulings identified above. 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 have advised CBP during this notice period.

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

notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY L83764 and NY K88764 in order to reflect the proper classification of certain plush animals with lights according to the analysis contained in Headquarters Ruling Letter (HQ) H128417, which is attached to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 26, 2011

RICHARD MOJICA
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

HQ H128417

July 26, 2011
CLA-2 OT:RR:CTF:TCM H128417 EG
CATEGORY: Classification
TARIFF NO.: 9503.00.00

MS. LORI MURPHY
U.S. JHI CORPORATION
5975 HWY T
SPRING GREEN, WI 53588

RE: Revocation of NY L83764, dated April 27, 2005 and NY K88764, dated September 3, 2004: Classification of the "Twilight Turtle"

DEAR MS. MURPHY:

This is in reference to New York Ruling Letter (NY) L83764, dated April 27, 2005, issued to you concerning the tariff classification of a product identified as the "Twilight Turtle" under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (CBP) classified the subject article in subheading 9405.40.80, HTSUS, which provides for lamps and lighting fittings of a material other than base metal. We have reviewed NY L83764 and find it to be in error. For the reasons set forth below, we hereby revoke NY L83764.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed revocation was published on June 22, 2011, in the *Customs Bulletin*, Volume 45, No. 26. CBP received no comments in response to this notice.

FACTS:

The subject article is the "Twilight Turtle," a battery-operated plush turtle with lights. The Twilight Turtle is composed of textile plush body parts (the head, feet and tail), as well as a textile plush torso with a bottom flap covering a battery case. The upper portion of its body is covered with a perforated plastic shell. Underneath the shell are several LED light bulbs. When illuminated, light shines through the shell to project the pattern of seven constellations onto the surfaces surrounding the Twilight Turtle. The shell incorporates an on/off switch, as well as buttons the user may push to change the color of the light to blue or white. The Twilight Turtle includes an automatic timer that turns off the light after 45 minutes. The Twilight Turtle's packaging includes a star guide booklet so that the user can identify and learn about the projected constellations.

The Twilight Turtle has received the following awards from the toy industry: "Specialty Toy of the Year," "Creative Toy Award" and "Best Toys for Kids." It is marketed as a toy and sold in toy stores.

ISSUE:

Is the Twilight Turtle classified as a lamp or lighting fitting of heading 9405, HTSUS, or as a toy of heading 9503, 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 2 through 6 may then be applied in order.

The 2011 HTSUS provisions at issue are as follows:

9405	Lamps and lighting fittings including searchlights and spotlights and parts therof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
9405.40	Other electric lamps and lighting fittings:
9405.40.80	Other…
	* * *
9503.00.00	Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof…
	* * *

Additional U.S. Rule of Interpretation 1(a), HTSUS, provides, in relevant part, that:

> In the absence of special language or context which otherwise requires:
>
> … a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

* * *

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 95.03 states, in pertinent part:

D) Other toys.

> This group covers toys intended essentially for the amusement of persons (children or adults)….

* * *

The first issue is whether NY L83764 properly classified the Twilight Turtle as a lamp or lighting fitting of heading 9405, HTSUS. Heading 9405, HTSUS, is a catch-all basket provision for lamps and lighting fittings which are not classified elsewhere in the HTSUS because it contains the phrase: "not elsewhere specified or included." *I.B.M. v. United States*, 152 F.3d 1332, 1338 (Ct. Int'l Trade 1998). As is pertinent here, Note 1(l) to Chapter 94 states that "toy furniture or toy lamps or lighting fittings (heading 9503)" are excluded from classification in Chapter 94. Therefore, if the Twilight Turtle

can be classified under heading 9503, HTSUS, as a toy, according to GRI 1, it is precluded from classification under heading 9405, HTSUS.

Heading 9503 provides, in pertinent part, for "other toys." In *Minnetonka Brands v. United States*, 110 F. Supp. 2d 1020, 1026 (Ct. Int'l Trade 2000), the U.S. Court of International Trade (CIT) concluded that heading 9503, HTSUS, is a "principal use" provision within the meaning of Additional U.S. Rule of Interpretation 1(a), HTSUS. Therefore, classification under heading 9503, HTSUS, is controlled by the principal use of goods of the class or kind to which the imported goods belong at or immediately prior to the date of the importation. *Id.* In *Lenox Collections v. United States*, 20 Ct. Int'l Trade 194, 196 (1996), the CIT held that principal use is "the use which exceeds any other single use." Thus to be classified as a toy in heading 9503, HTSUS, an article must belong to the same class or kind of goods which have the same principal use as toys.

In *Minnetonka*, the court determined that a toy must be designed and used principally for amusement and should not serve a utilitarian purpose. *Id.*, 110 F. Supp. at 1026. In *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28 (1977), the U.S. Customs Court (predecessor to the U.S. Court of International Trade) held that when amusement and utility become locked in controversy, the question is whether the amusement is incidental to the utilitarian purpose, or vice versa. *Id.* at 33. EN 95.03(d) also states that the principal use of a toy is "for the amusement of persons (children or adults)."

To determine whether an article is included in a particular class or kind of merchandise, CBP considers a variety of factors, including: (1) the general physical characteristics of the merchandise; (2) the channels, class or kind of trade in which the merchandise moves (where the merchandise is sold); (3) the expectation of the ultimate purchasers; (4) the environment of the sale (i.e., accompanying accessories and marketing); (5) usage, if any, in the same manner as merchandise which defines the class. *See United States v. Carborundum Co.*, 536 F.2d 373, 377 (Cust. Ct. 1976).

Applying the *Carborundum* factors, we find that the Twilight Turtle belongs to a class or kind of goods principally used for people's amusement. It is a three-dimensional turtle with a stuffed head, arms, legs and tail. Its size, shape, appearance and plush components provide a clear invitation for children to play, snuggle and relax with it. Secondly, it is marketed as a toy and is sold at toy stores such as Toys R Us.[1] Moreover, it has received numerous awards from the toy industry, including "Specialty Toy of the Year" and the "Creative Toy Award." Thirdly, the expectation of its ultimate purchaser is that the Twilight Turtle will help a child fall asleep as he or she plays with it. Finally, the Twilight Turtle is used in the same manner as other toys; a child can play with it using the included storybook and star guide to identify the constellations or simply by pushing its buttons to change the colors of the projected lights.

Based on all of the foregoing, we conclude that the Twilight Turtle is classifiable as a toy in heading 9503, HTSUS. Inasmuch as the article is

[1] *http://www.toysrus.com* (last viewed on February 25, 2011).

classified in heading 9503, HTSUS, it is precluded from classification under heading 9405, HTSUS. *See* Note 1(l) to Chapter 94.

HOLDING:

By application of GRI 1 (Additional U.S. Rule of Interpretation 1(a) and Note 1(l) to Chapter 94), the article identified as the "Twilight Turtle" is classifiable under heading 9503, HTSUS. Specifically, it is classifiable under subheading 9503.00.00, HTSUS, which provides for "… other toys …" The column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY L83764, dated April 27, 2005, and NY K88764, dated September 3, 2004, are hereby revoked.

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

Sincerely,

RICHARD MOJICA
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

MODIFICATION OF FOUR RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE ELIGIBILITY OF CERTAIN GARMENTS WITH BELTS (COMPOSITE GOODS) FOR PREFERENTIAL TARIFF TREATMENT

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

ACTION: Notice of modification of four ruling letters and revocation of treatment relating to the eligibility of certain garments imported with belts (composite goods) for preferential tariff treatment under General Note 3(a)(v), the United States – Israel Free Trade Area Implementation Act, or the United States – Jordan Free Trade Area Implementation Act.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying four ruling letters relating to the eligibility for preferential

treatment under General Note 3(a)(v), the United States – Israel Free Trade Area Implementation Act, or the United States – Jordan Free Trade Area Implementation Act of certain garments imported with belts (composite goods). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 45., No. 22, on May 25, 2011.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 24, 2011.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Valuation and Special Classification Branch, (202) 325-0046.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice was published in the *Customs Bulletin*, Vol. 45., No. 22, dated May 25, 2011, proposing to modify New York (NY) Ruling Letter K80820, dated December 23, 2003; NY N013984, dated July 17, 2007; NY N019427, dated November 29, 2007; and NY N118184, dated August 24, 2010; relating to the eligibility for preferential treatment under General Note 3(a)(v), the United States – Israel Free Trade Area Implemen-

tation Act, or the United States – Jordan Free Trade Area Implementation Act of certain garments imported with belts (composite goods). Two comments were received in response to this proposed action.

One comment supported CBP's proposed action, but asked for a clarification of facts claimed to be misstated in NY N013984 relating to a scenario unaffected by this action, and for a clarification of the final decision regarding the other scenarios that the shorts and belt combinations are eligible for preferential treatment under the Israeli Free Trade Agreement. CBP has made the changes in the final decision requested by this commenter.

The other comment argues the proposed rulings erred by using section 102.21(c)(2) to determine the origin of the composite goods, and that the origin should rather have been based on the application of section 102.21(c)(4). The commenter argues the belts undergo a separate belt assembly in one country and are then assembled with the garments in another country; therefore, the composite goods are not wholly assembled in a single country and section 102.21(c)(2) is not applicable.

We note that there have been decisions issued by CBP adopting the approach advocated by the commenter. However, CBP also has issued decisions taking the same approach set forth in the proposal. As noted by the commenter, the conclusion remains the same regardless of which approach is taken; however, the commenter believes because the composite good components, *i.e.*, the garment and the belt, are wholly assembled in different countries, the composite good is not wholly assembled and thus origin cannot be determined by application of section 102.21(c)(2).

As noted in each ruling, the origin of the composite good in each case is determined by the origin of the garment, as the garment is the component which imparts the essential character to the composite good. The country of origin of the belt component of the composite good need not be determined separately. This is the reason the analysis in the rulings concluded at section 102.21(c)(2). Once the garment's origin was determined, there was no need to proceed further in the hierarchy of section 102.21. Again, we note CBP has issued decisions where the analysis proceeds to section 102.21(c)(4); however it is not necessary as the conclusion reached is the same. Therefore, we will not modify the origin analysis in the rulings.

The other comment seeks modification of the treatment of sets which were also the subject of three of the New York rulings at issue. The commenter requests CBP modify the rulings to allow the garments to receive preferential tariff treatment if they alone would qualify. The commenter also seeks modification of HQ H026124,

dated July 15, 2010, for the same purpose. The commenter recognizes the longstanding practice that the origin of each article in a set is determined separately and argues that those articles in the set that separately qualify be granter preferential tariff treatment under the programs addressed in the rulings at issue. The commenter focuses his comments on HQ H026124 which was not the subject of the proposed action. While the commenter disagrees with CBP's analysis that disqualifies all articles of the sets at issue from preferential treatment under the United States – Jordan Free Trade Agreement and claims the pants should be eligible for preferential treatment under that Agreement, the commenter does acknowledge that the belts would not be eligible because of their separate origin, as prescribed by section 102.21(d).

We disagree with the commenter's approach, as the good for which preferential treatment is sought is the set. By simply entering the components of the set separately, an importer would achieve the result sought by the commenter. Therefore, with respect to the commenter's request that CBP extend the modifications of the New York rulings at issue to include the garment and belt sets and modify H026124, we decline to do so.

Finally, the commenter remarks that CBP did not examine the underlying determinations that the garment and belt combinations were sets or composite goods as stated in the rulings being modified. The commenter seeks greater clarity in distinguishing garment and belt combination sets versus composite goods. We did not question the underlying determinations in the rulings at issue as we did not have samples of the garment and belt combinations to review. The distinction between combinations considered to be a set versus combinations considered to be a composite good falls to the definition of composite goods and sets in the Explanatory Notes to the Harmonized Commodity Description and Coding System. Such determinations are therefore necessarily made on a case-by-case basis.

As stated in the proposed notice, this modification will cover any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C.1625 (c)(2)), as amended by section 623 of Title VI, CBP is

revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer's failure to advise CBP of substantially identical transactions, or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY K80820, NY N013984, NY N019427, and NY N118184, CBP determined that certain pants or shorts imported with belts as composite goods did not qualify for preferential tariff treatment under General Note 3(a)(v), the United States – Israel Free Trade Area Implementation Act, or the United States – Jordan Free Trade Area Implementation Act because the accompanying belts were produced in China and merely added to pants or shorts which otherwise would qualify under the aforementioned preferential tariff programs. After reviewing these decisions, CBP determined they were in error and conflicted with Headquarters Ruling (HQ) 563246, dated July 7, 2005, in which CBP determined that shorts and a belt were a product of Jordan and qualified for duty free treatment under the United States – Jordan Free Trade Area Implementation Act, even though a Chinese-origin belt was added to the shorts in Jordan, because it was a composite good.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY K80820, NY N013984, NY N019427, and NY N118184, and any other ruling not specifically identified to reflect the proper preferential tariff treatment eligibility of the merchandise pursuant to the analysis set forth in HQ H135360, HQ H135361 and HQ H141201, set forth as Attachments A through C to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: July 26, 2011

MONIKA R. BRENNER
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ H135360

July 26, 2011
OT:RR:CTF:VS H135360 CMR
CATEGORY: Classification

MS. STACY BAUMAN
AMERICAN SHIPPING COMPANY, INC.
140 SYLVAN AVENUE
ENGLEWOOD CLIFFS, NJ 07632

RE: Modification of New York Ruling Letter K80820; eligibility of composite good consisting of pants with a self-fabric belt for preferential tariff treatment under General Note 3(a)(v) of the Harmonized Tariff Schedule of the United States (HTSUS) and under the United States – Jordan Free Trade Area Implementation Act

DEAR MS. BAUMAN:

Customs and Border Protection (CBP) issued New York Ruling Letter (NY) K80820, dated December 23, 2003, to you in response to your request on behalf of Dress Barn Inc. for a ruling on the classification and eligibility for preferential tariff treatment of a garment produced, in part, in a Qualifying Industrial Zone (QIZ), or in Jordan. We have had occasion to review the decision in NY K80820. We erred with respect to the composite good, consisting of the pants and a self-fabric textile belt being denied preferential tariff treatment as a product of a QIZ or a product of Jordan. Accordingly, NY K80820 is modified as set forth below.

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 K80820 was published in the *Customs Bulletin*, Volume 45, Number 22, on May 25, 2011. Two comments were received during the notice and comment period. One comment supported CBP's action while the other comment sought a broader modification.

FACTS:

As set forth in NY K80820, in relevant part:

> The pants at issue, style DB3215, are constructed from 100 percent polyester woven fabric with a 100 percent polyester woven lining. The pants have a partially elasticized waistband with belt loops, a front fly zipper, a button at the waistband that closes in the left-over-right direction, side seam pockets, and hemmed leg openings. The pants will be imported with either a self fabric textile belt or a polyurethane belt.
>
> * * *
>
> You have indicated that the garment will be produced either in Jordan or in an approved "Qualifying Industrial Zone." The manufacturing operations for the [garment] will be done in accordance with one of the following scenarios:
>
> * * *

SCENARIO B

China

- Fabric is woven
- Waistband elastic is formed
- Pocketing fabric is formed
- Self-fabric belt is wholly made into a finished product

Jordan or QIZ

- Body fabric is cut into components
- Elastic is cut into components
- All assembly of the pants is completed
- All finishing operations are completed in Jordan, garment with Chinese origin self-fabric belt is shipped directly to the US.

SCENARIO D

China

- Fabric is woven
- Waistband elastic is formed and cut to length
- Pocketing fabric is formed; pockets are made
- Self-fabric belt is wholly made into a finished product

Jordan or QIZ

- Body fabric is cut into components
- All assembly of the pants is completed
- All finishing operations are completed in Jordan, garment with Chinese origin self-fabric belt is shipped directly to the US.

ISSUE:

Is the composite good consisting of polyester woven pants and a self-fabric textile belt a product of Jordan qualifying for preferential treatment under the United States – Jordan Free Trade Area Implementation Act or a product of a QIZ qualifying for preferential treatment under GN 3(a)(v), HTSUS?

LAW AND ANALYSIS:

On October 24, 2000, the United States and the Hashemite Kingdom of Jordan signed the U.S.-Jordan Free Trade Agreement (JFTA). The provisions of the JFTA were adopted by the United States with the enactment on

September 28, 2001 of the United States-Jordan Free Trade Area Implementation Act (the "JFTA Act"), Public Law 107–43, 115 Stat. 243 (19 U.S.C. 2112 note). On December 7, 2001, the President signed Proclamation 7512 to implement the provisions of the JFTA. The Proclamation, published in the *Federal Register* on December 13, 2001 (66 FR 64497), modified the Harmonized Tariff Schedule of the United States ("HTSUS") as set forth in Annexes I and II of the Proclamation. General Note (GN) 18, HTSUS, incorporated the relevant U.S.-Jordan Free Trade Agreement rules of origin as set forth in the United States-Jordan Free Trade Area Implementation Act. Customs and Border Protection (CBP) Regulations implementing the JFTA are set forth in Volume 19 of the Code of Federal Regulations at Part 10, Subpart K, §§ 10.701 through 10.712 (19 CFR §§ 10.701 through 10.712).

Under GN 3(a)(v), HTSUS, articles which are the product of the West Bank, the Gaza Strip or a QIZ and which are imported directly to the United States from the West Bank, the Gaza Strip, a QIZ or Israel qualify for duty-free treatment, provided the sum of (1) the cost or value of materials produced in the West Bank, the Gaza Strip, QIZ, or Israel, plus (2) the direct costs of processing operations performed in the West Bank, the Gaza Strip, QIZ or Israel, is not less than 35% of the appraised value of such articles when imported into the U.S. An article is considered to be a "product of" the West Bank, the Gaza Strip, or a QIZ if it is either wholly the growth, product or manufacture of one of those areas or a new or different article of commerce that has been grown, produced or manufactured in one of those areas.

NY K80820 classified the pants and self fabric belt combination as a composite good of heading 6204, HTSUS. In determining whether the pants and belt combination at issue is eligible for preferential treatment under the JFTA, we look to GN 18 which provides at paragraph (b):

> For purposes of this note, subject to the provisions of subdivisions (d) and (e), goods imported into the customs territory of the United States are eligible for treatment as "products of Jordan" only if–
>
> (i) such goods are imported directly from Jordan into the customs territory of the United States, and
>
> (ii) they are–
>
> (A) wholly the growth, product or manufacture of Jordan, or
>
> (B) new or different articles of commerce that have been grown, produced or manufactured in Jordan and meet the requirements of subdivision (c) of this note.

Paragraph (d) of GN 18 provides in relevant part:

> (d) *Textile and apparel articles*.
>
> (i) For purposes of this note, a textile or apparel article imported directly from Jordan into the customs territory of the United States shall be eligible for tariff treatment provided in subdivision (a) of this note only if –
>
> * * *

(D) the article is any other textile or apparel article that is wholly assembled in Jordan from its component pieces.

Such textile and apparel articles not wholly obtained or produced in Jordan must comply with the requirements of this subdivision and of subdivision (c)(ii) of this note.

Paragraph (c)(ii) of GN 18 provides, in pertinent part:

. . ., goods are eligible for the tariff treatment provided in this note if the sum of–

(A) the cost or value of the materials produced in Jordan, plus

(B) the direct costs of processing operations performed in Jordan, is not less than 35 percent of the appraised value of such article at the time it is entered. * * *

Therefore, in this case, in order for the pants and belt combination to be a "products of Jordan" eligible for preferential tariff treatment under the JFTA, the composite good must be produced or manufactured in Jordan into new or different article of commerce and meet the 35 percent value-added requirement of GN 18(c)(ii).

As the goods are classifiable under heading 6204, HTSUS, the textile and apparel provision of GN 18(d) cited above applies. We must also refer to the CBP Regulations applicable to the JFTA. Section 10.709 (19 CFR § 10.709) provides in relevant part:

(a) *General.* Except as otherwise provided in paragraph (b) of this section, a good imported directly from Jordan into the customs territory of the United States will be eligible for preferential tariff treatment under the US–JFTA only if:

(1) The good is either:
(i) Wholly the growth, product, or manufacture of Jordan; or
(ii) A new or different article of commerce that has been grown, produced, or manufactured in Jordan; and

(2) With respect to a good described in paragraph (a)(1)(ii) of this section, the good satisfies the value-content requirement specified in § 10.710 of this subpart.

* * *

(c) *Textile and apparel goods.* For purposes of determining whether a textile or apparel good meets the requirements of paragraph (a)(1) of this section, the provisions of § 102.21 of this chapter will apply.

The JFTA Act provides for "Rules of Origin" in Section 102 of the Act. Section 102(c) provides the specific rules for textile and apparel articles. Section 102(e) provides for the issuance of regulations by the Secretary of the Treasury as may be necessary to carry out Section 102. In House Report 107-176, Part 1, "United States-Jordan Free Trade Area Implementation Act", dated July 31, 2001, the explanation of Section 102 includes the following with regard to the textile and apparel product rules of origin:

> However, in addition, section 102 prescribes specific origin rules for textile and apparel products, **consistent with those set out in paragraph 9 of Annex 2.2 of the Agreement, and in section 334 of P.L. 103-465, the Uruguay Round Agreements Act (the so-called 'Breaux-Cardin' rule.)** For apparel products, this rule means that the place of assembly will generally determine origin of the product. A textile product will be considered to originate where the fabric is knit or woven.

Emphasis added.

The House Report reflects that Congress viewed the textile and apparel rules of origin set forth in the JFTA Act and in the JFTA Agreement to be consistent with the rules set forth in section 334 of the Uruguay Round Agreements Act, codified at 19 U.S.C. § 3592. The rules of section 334 are implemented in § 102.21 of the CBP Regulations. Those regulations were issued as a final rule, after public comment, on September 5, 1995 in the *Federal Register*. *See* 60 *Federal Register* 46188.

The textile and apparel rules of origin set forth in the JFTA and the JFTA Act are nearly verbatim to the same rules set forth in 19 U.S.C. § 3592. Therefore, the determination of whether a textile set or textile composite good is a "product of" Jordan for purposes of the JFTA should be consistent with that same result reached by the application of § 102.21.

The composite good at issue is classified in heading 6204, HTSUS and is produced from processing occurring in more than one country. As such, under § 102.21(c)(2), we look to the rule for goods of heading 6204 set forth in § 102.21(e). The applicable rule requires that if the good consists of two or more component parts that it undergo a change to an assembled good of heading 6204 from unassembled components provided the change is the result of the good being wholly assembled in a single country, territory or possession. "Wholly assembled" is defined in § 102.21(b)(6) as meaning:

> that all components, of which there must be at least two, preexisted in essentially the same condition as found in the finished good and were combined to form the finished good in a single country, territory or insular possession. Minor attachments and minor embellishments (for example, appliqués, beads, spangles, embroidery, buttons) not appreciably affecting the identity of the good, and minor subassemblies (for example, collars, cuffs, plackets, pockets), will not affect the status of a good as "wholly assembled" in a single country, territory, or insular possession.

Based on the information provided, the pants are "wholly assembled" in Jordan and therefore are a "product of" of Jordan.

In HQ 563246, dated July 7, 2005, a composite good consisting of a pair of shorts and a matching belt was determined to be a product of Jordan for purposes of the JFTA. The shorts determined the classification of the composite good and thus, the origin of the shorts which were cut and sewn in Jordan, determined the origin of the composite good. See HQ 960033, dated January 30, 1997, wherein the origin of a composite good consisting of a vest and belt was determined by the origin of the vest as it imparted the essential character of the good. ("Since the instant vest and belt are considered a composite good and the vest imparts the essential character of the composite good, the country of origin of the vest will determine the origin for the composite good and the country of origin of the belt will not be determined separately.") See also, HQ 959342, dated July 18, 1996, wherein the origin of a dress and self-fabric belt was based on the origin of the dress as it imparted

the essential character to the composite good. Similarly, in this case, the pants determine the classification of the composite good as they impart its essential character. Thus, as in HQ 563246, the origin of the accompanying belt which is joined to the pants in Jordan, is not relevant to the determination that the composite good is a product of Jordan.[2]

Similarly, with regard to the eligibility of the subject pants and self-fabric belt under GN 3(a)(v) as a product of a QIZ, we apply the rules of origin set forth in 19 CFR § 102.21. As the processing in the QIZ is the same as the processing which would occur in Jordan, the result is the same. The country of origin of the composite good consisting of the pants and self-fabric belt is the QIZ.

We note that the reason cited for denying preferential treatment to the composite good in NY K80820 was Treasury Decision (T.D.) 91-7. This was an error. T.D. 91-7 set forth the position of the Customs Service with regard to the tariff treatment and country of origin marking of sets, mixtures and composite goods prior to the enactment of section 334 of the Uruguay Round Agreements Act which is codified at 19 U.S.C. § 3592, the statutory basis for 19 CFR § 102.21.

In HQ 559983, dated August 22, 1996, the Customs Service (now CBP) considered the marking of a dress and belt composite good. The composite good had been the subject of HQ 959342, dated July 18, 1996, which applied § 102.21 to determine the origin of the dress and belt to be the country in which the dress components were fully assembled, country B. In the ruling, we stated:

> Since 19 CFR 102.21 implements section 334 of the Uruguay Round Agreements Act which applies 'for purposes of the customs laws,' and 19 U.S.C. 1304 is a Customs law, the country of origin of the dress and self-fabric belt for marking purposes is Country B. Therefore, only a single country of origin marking on the dress will be needed for the dress and belt composite good.

We noted in HQ 559983 that the decision reached therein was consistent with the "common sense" approach of T.D. 91-7 and that the analysis presented in that T.D. need not be used.

HOLDING:

Under scenarios B and D, the country of origin of the composite good consisting of the woven polyester pants with a self-fabric textile belt is either Jordan or the QIZ, *i.e.*, where the pants are wholly assembled. Provided that the 35 percent value added requirement is met, the pants and belt would qualify for preferential treatment under the JFTA or GN 3(a)(v). NY K80820

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[2] The determination of the origin of composite goods under 19 CFR § 102.21 contrasts with the determination of the origin of sets under that provision due to § 102.21(d) which specifically addresses the origin of sets containing textile goods and requires that the origin of each item in the set be separately determined.

is hereby modified with respect to the matters addressed herein. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

Sincerely,

MONIKA R. BRENNER
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT B]

HQ H135361
July 26, 2011
OT:RR:CTF:VS H135361 CMR
CATEGORY: Classification

MS. REBECCA CHEUNG
MACY'S MERCHANDISING GROUP
11 PENN PLAZA
NEW YORK, NY 10001

RE: Modification of New York Ruling Letters N013984 and N019427; eligibility of composite goods consisting of shorts with a belt and pants with a belt for preferential tariff treatment under General Note 3(a)(v) of the Harmonized Tariff Schedule of the United States (HTSUS)

DEAR MS. CHEUNG:

Customs and Border Protection (CBP) issued New York Ruling Letter (NY) N013984, dated July 17, 2007, and NY N019427, dated November 29, 2007, to you in response to your requests for rulings on the classification and eligibility for preferential tariff treatment of certain garments produced, in part, in a Qualifying Industrial Zone (QIZ). We have had occasion to review the decisions in NY N013984 and NY N019427 and have determined that they each contain an error with regard to the decision on the eligibility of goods produced under scenario A (concerning the sash and textile belt only) in each ruling. Accordingly, NY N013984 and NY N019427 are modified as set forth below.

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 K80820 was published in the *Customs Bulletin*, Volume 45, Number 22, on May 25, 2011. Two comments were received during the notice and comment period. One comment supported CBP's action and sought a clarification in this decision of certain facts, while the other comment sought a broader modification.

FACTS:

As set forth in NY N013984 state in relevant part:

> The submitted [boys'] shorts, style 1000, are constructed from 100 percent cotton yarn dyed fabric. The shorts have five belt loops, a front fly zipper, a button at the waistband that closes in the left-over-right direction, side entry pockets below the waist, two set-in rear welt pockets with button closures, expandable pant leg cargo pockets and hemmed leg openings. The shorts will be imported [into the U.S.] with a textile web belt. . . . The textile web belt . . [has a] metal D ring closures. . . .
>
> You have indicated that the garments will be produced in Egypt in an approved "Qualifying Industrial Zone." The manufacturing operations for the shorts are done in accordance with one of the following scenarios, A, B and C:

Under scenarios A, B and C, the shorts were made from imported rolls of fabric by cutting and sewing in a QIZ in Egypt. The issue was the duty free treatment of the shorts with an accompanying belt. The scenarios were described in NY N013984, with regard to the textile web belt as follows:

SCENARIO A

- Belt wholly formed in China, imported into Egypt QIZ to be assembled with shorts for import into the U.S.

* * *

We note that in scenarios B and C, the belts (texile or polyurethane) were manufactured in Egypt. NY N013984 misstated the belt production in Egypt which in fact consisted of the belt material being cut to both length and width prior to assembly of the belt in Egypt. The shorts and belt combinations in scenarios B and C were determined to be eligible for preferential treatment under General Note 3(a)(v) of the HTSUS as products of the Qualifying Industrial Zone.

The facts provided in NY N019427, state in relevant part:

> Style 3000 is a pair of women's pants constructed from 98 percent cotton and 2 percent spandex woven twill fabric. The pants have a flat waistband with five belt loops, a front zipper with a button and a hook and bar closure that fastens right over left and a woven textile sash belt threaded through the belt loops. The pants also feature two front pockets, two back pockets with a button closure and hemmed leg openings with a side slit.

Four manufacturing scenarios were presented in NY N019427. In all four scenarios the pants were cut and sewn in a QIZ in Egypt from foreign fabric. We are only concerned herein with scenario A described below:

Scenario A:

> The sash belt is formed in China and shipped to the QIZ factory in Egypt. The sash belt is threaded through the pant belt loops. The pants and sash belt will be exported directly to the United States.

* * *

In NY N013984 and NY N019427, CBP classified the woven shorts with textile web belt (NY N013984) and the woven pants with sash belt (NY N019427) as composite goods with the garments imparting the essential character to the goods and thus determining the classification of the composite goods.

ISSUE:

Are the composite goods consisting of woven shorts with textile web belt (NY N013984) and woven pants with sash belt (NY N019427) which were the subject of NY N013984 and NY N019427, respectively, eligible for preferential treatment under GN 3(a)(v), HTSUS, as products of a QIZ?

LAW AND ANALYSIS:

Under GN 3(a)(v), HTSUS, articles which are the product of the West Bank, the Gaza Strip or a QIZ and which are imported directly to the United States from the West Bank, the Gaza Strip, a QIZ or Israel qualify for duty-free treatment, provided the sum of (1) the cost or value of materials produced in the West Bank, the Gaza Strip, QIZ, or Israel, plus (2) the direct costs of processing operations performed in the West Bank, the Gaza Strip, QIZ or Israel, is not less than 35% of the appraised value of such articles when imported into the U.S. An article is considered to be a "product of" the West Bank, the Gaza Strip, or a QIZ if it is either wholly the growth, product or manufacture of one of those areas or a new or different article of commerce that has been grown, produced or manufactured in one of those areas.

With regard to the eligibility of the subject boys' shorts with textile belt and the subject women's pants with textile sash, we apply the rules of origin set forth in 19 CFR § 102.21 to determine whether these goods qualify as a product of a QIZ under GN 3(a)(v). The composite goods at issue are classified in headings 6203 (boys' shorts) and 6204 (women's pants) and are produced from processing occurring in more than one country. As such, under § 102.21(c)(2), we look to the rule set forth for goods of headings 6203 and 6204 set forth in section (e) of § 102.21. The applicable rule requires that if the good consists of two or more component parts that it undergo a change to an assembled good of the heading (6203 or 6204) from unassembled components provided the change is the result of the good being wholly assembled in a single country, territory or possession. "Wholly assembled" is defined in § 102.21(b)(6) as meaning:

> that all components, of which there must be at least two, preexisted in essentially the same condition as found in the finished good and were combined to form the finished good in a single country, territory or insular possession. Minor attachments and minor embellishments (for example, appliqués, beads, spangles, embroidery, buttons) not appreciably affecting the identity of the good, and minor subassemblies (for example, collars, cuffs, plackets, pockets), will not affect the status of a good as "wholly assembled" in a single country, territory, or insular possession.

Based on the information provided, the boys' shorts and the women's pants are "wholly assembled" in a QIZ and therefore they are "products of" the QIZ.

In HQ 960033, dated January 30, 1997, the origin of a composite good consisting of a vest and belt was determined by the origin of the vest as it imparted the essential character of the good. ("Since the instant vest and belt are considered a composite good and the vest imparts the essential character of the composite good, the country of origin of the vest will determine the origin for the composite good and the country of origin of the belt will not be determined separately.") *See also,* HQ 959342, dated July 18, 1996, wherein the origin of a dress and self-fabric belt was based on the origin of the dress as it imparted the essential character to the composite good. In HQ 563246, dated July 7, 2005, a composite good consisting of a pair of shorts and a matching belt was determined to be a product of Jordan for purposes of the JFTA. The shorts determined the classification of the composite good and thus, the origin of the shorts which were cut and sewn in Jordan, determined the origin of the composite good. Accordingly, with regard to the Chinese-origin textile belt, as the good at issue is classifiable as a composite good, the

origin of the garment determines the origin of the composite good and thus whether the composite good is considered a "product of" the QIZ.[1]

We note that the reason cited for denying preferential treatment to the composite good in NY K80820 was Treasury Decision (T.D.) 91-7. This was an error. T.D. 91-7 set forth the position of the Customs Service with regard to the tariff treatment and country of origin marking of sets, mixtures and composite goods prior to the enactment of section 334 of the Uruguay Round Agreements Act which is codified at 19 U.S.C. § 3592, the statutory basis for 19 CFR § 102.21.

In HQ 559983, dated August 22, 1996, the Customs Service (now CBP) considered the marking of a dress and belt composite good. The composite good had been the subject of HQ 959342, dated July 18, 1996, which applied § 102.21 to determine the origin of the dress and belt to be the country in which the dress components were fully assembled, country B. In the ruling, we stated:

Since 19 CFR 102.21 implements section 334 of the Uruguay Round Agreements Act which applies 'for purposes of the customs laws,' and 19 U.S.C. 1304 is a Customs law, the country of origin of the dress and self-fabric belt for marking purposes is Country B. Therefore, only a single country of origin marking on the dress will be needed for the dress and belt composite good.

We noted in HQ 559983 that the decision reached therein was consistent with the "common sense" approach of T.D. 91-7 and that the analysis presented in that T.D. need not be used.

HOLDING:

Under scenario A in NY N013984[2] and under scenario A in NY N019427, the country of origin of the composite good consisting of woven boys' shorts with textile web belt or woven women's pants with textile sash belt, respectively, is the QIZ, *i.e.*, where the shorts or pants are wholly assembled. As such, the composite goods are "products of" the QIZ in which the shorts or pants are wholly assembled. Provided that the 35 percent value added requirement is met, the composite goods would qualify for preferential treatment under GN 3(a)(v). NY N013984 and NY N019427 are 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*.

Sincerely,

MONIKA R. BRENNER
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

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[1] The determination of the origin of composite goods under 19 CFR § 102.21 contrasts with the determination of the origin of sets under that provision due to § 102.21(d) which specifically addresses the origin of sets containing textile goods and requires that the origin of each item in the set be separately determined.

[2] As a result of this modification, all the scenarios in NY N013984 (scenarios A, B and C) result in goods qualifying for preferential tariff treatment as goods of the QIZ.

[ATTACHMENT C]

HQ H141201

July 26, 2011
OT:RR:CTF:VS H141201 CMR
CATEGORY: Classification

MS. ANNETTE DIAMOND
LIZ CLAIBORNE INC.
2 CLAIBORNE AVENUE
HQ2 7/S
NORTH BERGEN, NJ 07047

RE: Modification of New York Ruling Letter N118184; eligibility of composite good consisting of pants with a belt for preferential tariff treatment under General Note 3(a)(v) of the Harmonized Tariff Schedule of the United States (HTSUS)

DEAR MS. DIAMOND:

Customs and Border Protection (CBP) issued New York Ruling Letter (NY) N118184, dated August 24, 2010, to you in response to your request for a ruling on the classification and eligibility for preferential tariff treatment of a certain garment produced, in part, in a Qualifying Industrial Zone (QIZ). We have had occasion to review the decision in NY N118184. With respect to our denial of the composite good, consisting of the pants and a textile belt, for preferential tariff treatment as a product of a QIZ, we erred. Accordingly, NY N118184 is modified as set forth below.

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 K80820 was published in the *Customs Bulletin*, Volume 45, Number 22, on May 25, 2011. Two comments were received during the notice and comment period. One comment supported CBP's action while the other comment sought a broader modification.

FACTS:

As set forth in NY N118184 states in relevant part:

> The submitted sample, Axcess style AQMU6755, is a pair of women's pants with a textile belt. The pants are constructed from 98 percent cotton and 2 percent spandex woven fabric. The capri length pants have a flat waistband with five belt loops; a left over right fly opening with a zipper and button closure; two front pockets; one coin pocket; two back patch pockets with embroidery; and hemmed leg openings with a turned up cuff. As this garment has a left over right closure, the presumption is that the garment will be for men. However, it is clear based on the cut of the garment that it was designed for women. Therefore, the pants will be classified as a woman's garment. A woven textile belt with a buckle has been threaded through the belt loops. The belt is constructed from 100 percent polyester fabric.
>
> You state the manufacturing operations for the pants and belts are as follows:

> The Chinese fabric for the pants is shipped in rolls to the QIZ facility. The fabric is cut and assembled in the Egypt QIZ into pants. The textile belt will be made in China and shipped to the Egypt QIZ where it will be looped into the garment. The pants and textile belt will be exported directly to the United States.

The pants and textile belt were classified in NY N118184 as a composite good in heading 6204, Harmonized Tariff Schedule of the United States, based upon the pants imparting the essential character, and thus determining the classification, of the combination.

ISSUE:

Is the composite good consisting of the woven pants with a textile belt eligible for preferential treatment under GN 3(a)(v), HTSUS, as a product of a QIZ?

LAW AND ANALYSIS:

Under GN 3(a)(v), HTSUS, articles which are the product of the West Bank, the Gaza Strip or a QIZ and which are imported directly to the United States from the West Bank, the Gaza Strip, a QIZ or Israel qualify for duty-free treatment, provided the sum of (1) the cost or value of materials produced in the West Bank, the Gaza Strip, QIZ, or Israel, plus (2) the direct costs of processing operations performed in the West Bank, the Gaza Strip, QIZ or Israel, is not less than 35% of the appraised value of such articles when imported into the U.S. An article is considered to be a "product of" the West Bank, the Gaza Strip, or a QIZ if it is either wholly the growth, product or manufacture of one of those areas or a new or different article of commerce that has been grown, produced or manufactured in one of those areas.

With regard to the eligibility of the subject women's pants with textile belt, we apply the rules of origin set forth in 19 CFR § 102.21 to determine whether this good qualifies as a product of a QIZ under GN 3(a)(v). The composite good at issue is classified in heading 6204, HTSUS, and is produced from processing occurring in more than one country. As such, under § 102.21(c)(2), we look to the rule set forth for goods of heading 6204 set forth in section (e) of § 102.21. The applicable rule requires that if the good consists of two or more component parts that it undergo a change to an assembled good of heading 6204 from unassembled components provided the change is the result of the good being wholly assembled in a single country, territory or possession. "Wholly assembled" is defined in § 102.21(b)(6) as meaning:

> that all components, of which there must be at least two, preexisted in essentially the same condition as found in the finished good and were combined to form the finished good in a single country, territory or insular possession. Minor attachments and minor embellishments (for example, appliqués, beads, spangles, embroidery, buttons) not appreciably affecting the identity of the good, and minor subassemblies (for example, collars, cuffs, plackets, pockets), will not affect the status of a good as "wholly assembled" in a single country, territory, or insular possession.

Based on the information provided, the women's pants are "wholly assembled" in the QIZ and therefore they are "products of" the QIZ.

In HQ 960033, dated January 30, 1997, the origin of a composite good consisting of a vest and belt was determined by the origin of the vest as it imparted the essential character of the good. ("Since the instant vest and belt

are considered a composite good and the vest imparts the essential character of the composite good, the country of origin of the vest will determine the origin for the composite good and the country of origin of the belt will not be determined separately.") *See also,* HQ 959342, dated July 18, 1996, wherein the origin of a dress and self-fabric belt was based on the origin of the dress as it imparted the essential character to the composite good. In HQ 563246, dated July 7, 2005, a composite good consisting of a pair of shorts and a matching belt was determined to be a product of Jordan for purposes of the JFTA. The shorts determined the classification of the composite good and thus, the origin of the shorts which were cut and sewn in Jordan, determined the origin of the composite good. Accordingly, with regard to the Chinese-origin textile belt, as the good at issue is classifiable as a composite good, the origin of the garment determines the origin of the composite good and thus whether the composite good is considered a "product of" the QIZ.[1]

We note that the reason cited for denying preferential treatment to the composite good in NY K80820 was Treasury Decision (T.D.) 91-7. This was an error. T.D. 91-7 set forth the position of the Customs Service with regard to the tariff treatment and country of origin marking of sets, mixtures and composite goods prior to the enactment of section 334 of the Uruguay Round Agreements Act which is codified at 19 U.S.C. § 3592, the statutory basis for 19 CFR § 102.21.

In HQ 559983, dated August 22, 1996, the Customs Service (now CBP) considered the marking of a dress and belt composite good. The composite good had been the subject of HQ 959342, dated July 18, 1996, which applied § 102.21 to determine the origin of the dress and belt to be the country in which the dress components were fully assembled, country B. In the ruling, we stated:

> Since 19 CFR 102.21 implements section 334 of the Uruguay Round Agreements Act which applies 'for purposes of the customs laws,' and 19 U.S.C. 1304 is a Customs law, the country of origin of the dress and self-fabric belt for marking purposes is Country B. Therefore, only a single country of origin marking on the dress will be needed for the dress and belt composite good.

We noted in HQ 559983 that the decision reached therein was consistent with the "common sense" approach of T.D. 91-7 and that the analysis presented in that T.D. need not be used.

HOLDING:

The country of origin of the subject composite good consisting of women's pants with a textile belt is the QIZ, *i.e.*, where the pants are wholly assembled. As such, the composite good is a "product of" the QIZ in which the pants are wholly assembled. Provided that the 35 percent value added requirement is met, the composite good would qualify for preferential treatment under GN 3(a)(v). NY N118184 is hereby modified. In accordance with

[1] The determination of the origin of composite goods under 19 CFR § 102.21 contrasts with the determination of the origin of sets under that provision due to § 102.21(d) which specifically addresses the origin of sets containing textile goods and requires that the origin of each item in the set be separately determined.

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

Sincerely,
MONIKA R. BRENNER
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF MOTORIZED UTILITY VEHICLES

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

ACTION: Notice of revocation of three ruling letters and revocation of treatment relating to tariff classification of motorized utility vehicles.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking HQ 965246, dated November 6, 2001, HQ 964598, dated November 13, 2001, and NY H87834, dated January 28, 2002, relating to the tariff classification of motorized utility vehicles under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin* Vol. 40, No. 33, on August 9, 2006. Four comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 24, 2011.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke HQ 965246, dated November 6, 2001, HQ 964598, dated November 13, 2001, and NY H87834, dated January 28, 2002 was published on August 9, 2006, in Volume 40, Number 33, of the *Customs Bulletin*. CBP received four comments in response to the notice.

As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. 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 CBP during the comment period.

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

on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

In HQ 965246, HQ 964598, and NY H87834, CBP determined that the subject vehicles, identified as the Micro Truk and the Multicab Original, were classified in heading 8709, HTSUS, which provides for "Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ 965246, HQ 964598, and NY H87834, in order to reflect the proper classification of the subject vehicles according to the analysis contained in proposed Headquarters Ruling Letters (HQ) W968312 and W968313, which are attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: August 2, 2011

ALLYSON MATTANAH
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ W968312
August 2, 2011
CLA-2 RR:CTF:TCM 968312 CKG
CATEGORY: Classification
TARIFF NO: 8704.31.0020

CARIDAD BERDUT, ESQ.
PHILIP L. ROBINS, ESQ.
ADDUCI, MASTRIANI & SCHAUMBERG, L.L.P.
1200 SEVENTEENTH STREET, N.W., FIFTH FLOOR
WASHINGTON, D.C. 20036

RE: Micro Truk; HQ 965246 and HQ 964598 Revoked

DEAR MS. BERDUT:

This is in reference to HQ 965246, which U.S. Customs and Border Protection (CBP) issued to Harvey B. Fox on November 6, 2001, on behalf of Metro Motors Corporation. Certain merchandise described as a Micro Truk was found to be classified as a self-propelled works truck, in subheading 8709.19.00, Harmonized Tariff Schedule of the United States (HTSUS). Likewise, in HQ 964598, dated November 13, 2001, the Micro Truk models 1010 and 1020 were found to be similarly classifiable.

Pursuant to Section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of HQ 965246 and HQ 964598 was published on August 9, 2006, in the *Customs Bulletin*, Volume 40, Number 33. Four comments were received in response to this notice, one favoring the proposed revocations and three, including yours, opposing the proposed revocations. We will discuss these comments, and our response, in the body of this ruling.

As stated in the notice, HQ 964598 represents a decision on Protest 1803–01–100014, filed at the CBP Port of Jacksonville, FL, on behalf of Metro Motors Corporation. Therefore, the proposed revocation of HQ 964598 will affect the legal principles in that decision but the liquidation or reliquidation of the underlying entries remains undisturbed. *San Francisco Newspaper Printing Co. v. United States*, 620 F. Supp. 738, 9 CIT 517 (1985).

FACTS:

The Micro Truk has cab-over design, seating capacity for two people and a rear cargo bed with fold-down sides and tailgate. It is available as a 130-inch Standard Bed, model 1010, or a 145-inch Long Bed, model 1020. The vehicle is powered by a 38 hp, gasoline spark ignition internal combustion engine, and has a 3-speed manual transmission and 4-wheel hydraulic brakes. Design features include front bumper, headlights, taillights, brake lights and turn signals, and four-way flashers. The Micro Truk is also equipped with two-speed intermittent wipers with washer, heater, defroster, rearview and sideview mirrors, seat belt and dome light. It is capable of a 24 mph (38.6 km) maximum speed.

Product literature indicates that these vehicles are used on-road in Japan for transport purposes, then sold to small companies in the United States

who resell them for use in service applications hereafter described. The vehicle is marketed for use in the United States in airports and hangers, manufacturing and maintenance yards, landscaping, golf course and facility maintenance, security, i.e., police and fire protection, food service delivery, and in athletic applications such as removing injured players from the field and moving around equipment and personnel.

ISSUE:

Whether the Micro Truk is classified as a works truck of heading 8709, or a motor vehicle for the transport of goods of heading 8704.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

8704:	Motor vehicles for the transport of goods:	
	Other vehicles, with spark-ignition internal combustion reciprocating piston engine:	
8704.31.00		G.V.W. not exceeding 5 metric tons
	* * * * *	
8709:	Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; …; parts of the foregoing vehicles…:	
	Vehicles:	
8709.11.00:		Electrical…
8709.19.00:		Other…
	* * * * *	

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN for heading 8704 provides, in pertinent part:

> …
> Included in this category of motor vehicles are those commonly known as "multipurpose" vehicles (e.g., van-type vehicles, pick-up type vehicles and certain sports utility vehicles). The following features are indicative of

the design characteristics generally applicable to the vehicles which fall in this heading:

(b) Presence of a separate cabin for the driver and passengers and a separate open platform with side panels and a drop-down tailgate (pick-up vehicles);

* * * * *

The EN for heading 8709 states:

This heading covers a group of self-propelled vehicles of the types used in factories, warehouses, dock areas or airports for the short distance transport of various loads (goods or containers) or, on railway station platforms, to haul small trailers.

Such vehicles are of many types and sizes. They may be driven either by an electric motor with current supplied by accumulators or by an internal combustion piston engine or other engine.

The main features common to the vehicles of this heading which generally distinguish them from the vehicles of heading *87.01*, *87.03* or *87.04* may be summarised as follows:

(1) Their construction and, as a rule, their special design features, make them unsuitable for the transport of passengers or for the transport of goods by road or other public ways.

(2) Their top speed when laden is generally not more than 30 to 35 km/h.

(3) Their turning radius is approximately equal to the length of the vehicle itself.

Vehicles of this heading do not usually have a closed driving cab, the accommodation for the driver often being no more than a platform on which he stands to steer the vehicle. Certain types may be equipped with a protective frame, metal screen, etc., over the driver's seat.

The vehicles of this heading may be pedestrian controlled.

Works trucks are self-propelled trucks for the transport of goods which are fitted with, for example, a platform or container on which the goods are loaded.

Small tank trucks of a kind generally used in railway stations, whether or not fitted with subsidiary pumps, are also classified here.

* * * * *

Heading 8709 covers vehicles of a kind used in the environments specified in the heading text. This is a provision governed by "use." *Group Italglass v. United States*, 17 CIT 226 (1993). Additional U.S. Rule of Interpretation 1(b). As such, it is the principal use of the class or kind of vehicles to which the Micro Truk belongs that governs classification here. In this context, principal use is that use which exceeds any other single use of the merchandise. In *United Statesv. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), *cert. denied*, 429 U.S. 979 (1976), a the court set forth factors considered pertinent in determining whether imported merchandise falls within a particular class or kind. These include the general physical characteristics of the merchandise, the expectation of the ultimate purchas-

ers, the channels, class or kind of trade in which the merchandise moves, the environment of sale (i.e., accompanying accessories and the manner in which the merchandise is advertised and displayed), the use, if any, in the same manner as merchandise which defines the class, the economic practicality of so using the import and the recognition in the trade of this use.

As noted above, the EN lists certain design features that distinguish works trucks of that heading from vehicles of heading 8704. These include 1) their construction and, as a rule, special design features which make them unsuitable for the transport of goods by road or other public ways (emphasis added); their top speed when laden is generally not more than 30 to 35 km/h; and 3) their turning radius is approximately equal to the length of the vehicle. Vehicles of heading 8709 do not usually have a closed driving cab, the accommodation for the driver often being no more than a platform on which he stands to steer the vehicle; and, such vehicles are fitted with, for example, a platform or container on which the goods are loaded.

The issue in this case is whether the design characteristics of the merchandise together with evidence of its use in factories, warehouses, dock areas or airports for short distance transport of goods. In the absence of such evidence, the classification will fall to heading 8704.

The Micro Truk has numerous design features that all motor vehicles for the transport of goods of heading 8704 have, and that indicate on-road uses. It is equipped with headlights and taillights, brake lights and turn signals, and four-way flashers. It has comfort and convenience items like interior mirrors, shoulder and lap restraints, and safety glass. It has cab-over design (an enclosed driving cab), a feature that vehicles of heading 8709 do not usually possess. In vehicles of heading 8709, on the other hand, the accommodation for the driver often is no more than a platform on which he stands to steer the vehicle. Finally, we note that pick-up vehicles are specifically listed in the EN to heading 8704, HTSUS.

The design features of the Micro Truk do not, however, place it squarely within heading 8709, HTSUS. The Micro Truk's advertised top speed with a standard payload is 20 mph or 32.19 km/h. This is within the parameters stated in EN 87.09. A works truck turning radius is listed in the EN as approximately equal to the length of the vehicle itself. The overall length of the Micro Truk Long Bed model is 145 inches and is "approximately" equal to the Micro Truk's minimum turning radius, which is listed in submitted specifications as 149 inches; however, the Micro Truk Standard Bed model is listed as 130 inches long, which makes the turning radius of 149 inches on this model significantly greater. HQ 965246 and HQ 964598 concluded that these lengths were approximately equal to the vehicle's minimum turning radius. We acknowledge now that as applied to the Micro Truk Standard Bed model, this statement is in error. Because one model of the Micro Truk meets the terms of the EN while the other model does not, CBP finds that this criterion is inconclusive.

In a letter to Metro Motors, dated January 25, 1999, the National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation, concluded that it was not a "motor vehicle" for the purpose of regulations administered by that agency because it was not one "manufactured primarily for use on the public streets, roads, or highways." Specifically, the NHTSA noted that the company's product literature, and warning labels on the vehicles will indicate that they should not be considered to be motor vehicles. The registration documents would indicate that they will not conform to all

safety and emissions standards applicable to on-road vehicles in the United States. Despite these factors, the NHTSA also stated that the vehicles closely resemble small trucks and vans used on public roads. As a result, NHTSA observed that some states may register certain models for highway use. Indeed, according to the Insurance Institute for Highway Safety [1], 17 states currently allow minitrucks on specific portions of public roads, and of those, 5 states require the minitrucks to comply with the LSV safety requirements issued by the NHTSA with regard to similar vehicles. [2]

In HQ 965246 and HQ 964598, CBP regarded the NHTSA letter as evidence that the Micro Truk was not suitable for on-road use. On further consideration, the NHTSA letter is ambiguous as to the use of the merchandise. We note that regulations of other agencies dealing with non-tariff matters have no legal bearing on the classification of goods under the HTSUS. *Bestfoods v. United States*, 342 F. Supp. 2d 1312 (Ct. Int'l. Trade, 2004); *Marubeni America Corp. v. United States*, 821 F. Supp. 1521 (1993). Moreover, the NHTSA letter analyzed above was based, in large part, on the importer's statements that the vehicles were neither advertised for nor intended for use on public roads. However, as cited above, the NHTSA letter states, "It is possible that States would permit [the Micro Truk] to be registered for highway use. In fact, the State of Maryland has issued an emissions approval certificate for one of the vehicles." In addition, the NHTSA letter describes vehicles as "hav[ing] the appearance of small [passenger-carrying vans] and trucks." The United States Court of International Trade has stated that a passenger car need not be defined as such by NHTSA, among other agencies, to be principally designed for carrying persons. CBP finds that the evidence demonstrates that whether or not the Micro Truk is actually certified for on-road use in this country, the design features of the vehicle, as described, adapt the vehicle (i.e., make it suitable) for use by road or other public way.

We now consider the uses to which the Micro Truk is put. The EN to heading 8709 states that goods of that heading should be of the type used in factories, warehouses, dock areas or airports for the short distance transport of goods. Applying the Carborundum factors, we found product literature and information available on relevant websites. The merchandise is marketed for use in the United States for the purposes stated in the heading text of 8709. In addition, however, they are also advertised for use on roads in corporate and university campuses, by security forces such as police and fire companies. They are used for outdoor recreation on golf courses, in hunting and fishing pursuits, around campgrounds and marinas, and in athletic applications such as removing injured players from the field and moving around equipment and personnel. They can haul boats, trailers, hayride wagons,

[1] *http://www.iihs.org/laws/minitrucks.aspx*

[2] National Highway Traffic Safety Administration *Final Rule 49 CFR Part 571* [Docket No. NHTSA 98–3949] created a new class of vehicles (Low Speed Vehicles) subject to its own safety requirements. Low Speed Vehicles include any 4-wheeled vehicle, other than a truck, with a maximum speed greater than 20 mph, but not greater than 25mph. LSVs will be subject to a new Federal Motor Vehicle Safety Standard, No. 500, which requires LSVs to be equipped with basic items of safety equipment: headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, parking brake, windshields, rearview mirrors, seat belts and vehicle identification numbers.

etc., any of which could involve on-road use. It is obvious from these examples that the Micro Truk and other mini trucks are used in many of the same venues and for the same purposes as are vehicles for the transport of goods of heading 8704, uses which fall outside the scope of heading 8709, HTSUS.

Turning to the comments received on the proposed revocation, one comment favoring the proposed revocations of HQ 965246 and HQ 964598 urges CBP to maintain a distinction based on design features between those motorized utility vehicles properly classified as works trucks in heading 8709 and those similar to the Micro Truk.

The three comments opposing the proposed revocation make two main points. First, they state that the GRIs and a class or kind/principal use analysis properly applied will result in classification in heading 8709. Stated another way, the ENs should not control classification of the Micro Truk under the HTSUS. Second, it is claimed that CBP has inconsistently applied the heading 8709 ENs in classifying the Micro Truk. For example, HQ 965246, which we are now revoking, revoked an earlier ruling classifying the Micro Truk in heading 8704. The comments conclude that this evidences considerable uncertainty on CBP's part as to how vehicles like the Micro Truk are to be classified.

As to the claim of CBP's inconsistent application of the 8709 ENs in classifying vehicles said to be substantially similar to the Micro Truk, CBP has consistently classified pickup trucks of all sizes in heading 8704, HTSUS. *See* HQ *W968379*, dated January 25, 2007; *HQ 082591*, dated October 31, 1989; *HQ 083081*, dated May 4, 1989; *NY 862497*, dated May 3, 1991; *NY 878894*, dated October 16, 1992; *NY 894929*, dated February 28, 1994; *NY 808556*, dated April 17,1995. CBP has classified other vehicles in heading 8709, HTSUS, which are claimed to be similar to the Micro Truk. The rulings claimed to be inconsistent include HQ 954173, dated September 22, 1993, HQ 960303, dated May 13, 1997, NY G87244, dated February 27, 2001, and NY H87062, dated January 10, 2002. We note that the vehicles in these rulings lack all or most of the safety features required by the NHTSA regulations for low-speed vehicles approved for on-road use; i.e., closed cabs, roof, windshield, doors, turn signals, hazard lights, side mirrors, taillights, flashers, and seat belts (all of which the Micro Truks possess).

The revocation of HQ 965246 and HQ 964598 is intended to remove any potential uncertainty in the classification of motorized utility vehicles similar to the Micro Truk by making clear the criteria to be used in classifying this type of vehicle. In this ruling, CBP has applied the Carborundum factors. The evidence demonstrates that the vehicle is designed for use by road or public way. CBP finds that the Micro Truk lacks most of the design features listed in the 8709 ENs as common to works trucks. The evidence of record does not demonstrate that the Micro Truk belongs to that class or kind of motorized utility vehicle principally used as a works truck of heading 8709. Thereofre, classification under heading 8709, HTSUS, is precluded. CBP finds that the Micro Truk has certain features which indicate that it is designed for the transport of goods. Consequently, the Micro Truk meets the terms of heading 8704, HTSUS, as a motor vehicle for the transport of goods.

HOLDING:

By application of GRI 1, the Micro Truk is provided for in heading 8704, HTSUS, specifically subheading 8704.31.00, as a motor vehicle for the transport of goods with the G.V.W. not exceeding 5 metric tons. The 2011 general, column one rate of duty is 25% *ad valorem* duty.

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

EFFECT ON OTHER RULINGS:

HQ 965246, dated November 6, 2001, and HQ 964598, dated November 13, 2001, are hereby revoked. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

Sincerely,

ALLYSON MATTANAH
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT B]

HQ W968313

August 2, 2011
CLA-2 RR:CTF:TCM 968313 CKG
CATEGORY: Classification
TARIFF NO: 8704.31.0020

MR. ROBERT REYFORD
R&D MOTORSPORTS
T4525 TOWN HALL ROAD
WASAU, WISCONISN 54403

RE: Multicab Original Pick-Up Lift Up 4WD; NY H87834 revoked

DEAR MR. REYFORD:

This is in reference to NY H87834, which was issued to you on January 28, 2002, by the Director, National Commodity Specialist Division, U.S. Customs and Border Protection (CBP). In NY H87834, CBP classified the Multicab Original Pick-Up Lift Up 4WD in subheading 8709.19.00 of the Harmonized Tariff Schedule of the United States (HTSUS).

Pursuant to Section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY H87834 was published on August 9, 2006, in the *Customs Bulletin*, Volume 40, Number 33. Four comments were received in response to this notice, one favoring the proposed revocations and three opposing the proposed revocations. We will discuss these comments, and our response, in the body of this ruling.

FACTS:

With your January 18, 2002, ruling request you submitted a picture, with specifications, of a small motorized utility vehicle called the "Multicab Original Pick-Up Lift Up 4WD" ("the Original"). You indicated that the vehicle was a small pickup truck a little bigger than an ATV. It is made in Japan where it is used on-road for transport purposes. You state that for shipping into the United States the roof and various other parts would be removed so that it could be shipped in one container. You further state that it your intention to sell these vehicles as off-road farm vehicles. You are also checking with the EPA and DOT to *see* if the truck would be legal for highway use.

Some of the features of this vehicle are a 3-cylinder gasoline engine, 500 cc displacement, 5 speed manual transmission, seating capacity for 2 passengers, center console box, sun visor, interior lamp, signal lights, front plain matting, upholstered ceiling, two-tone acrylic paint.

ISSUE:

Whether the Multicab Original Pick-Up is classified in heading 8704, HTSUS, as a motor vehicle for the transport of goods, or in heading 8709, HTSUS, as a works truck.

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall

be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

8704:	Motor vehicles for the transport of goods:	
	Other vehicles, with spark-ignition internal combustion reciprocating piston engine:	
8704.31.00		G.V.W. not exceeding 5 metric tons
	* * * * *	
8709:	Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; …; parts of the foregoing vehicles…:	
	Vehicles:	
8709.11.00:		Electrical…
8709.19.00:		Other…
	* * * * *	

The EN for heading 8704 provides, in pertinent part:

…

Included in this category of motor vehicles are those commonly known as "multipurpose" vehicles (e.g., van-type vehicles, pick-up type vehicles and certain sports utility vehicles). The following features are indicative of the design characteristics generally applicable to the vehicles which fall in this heading:

(c) Presence of a separate cabin for the driver and passengers and a separate open platform with side panels and a drop-down tailgate (pick-up vehicles);

The EN for heading 8709 states:

This heading covers a group of self-propelled vehicles of the types used in factories, warehouses, dock areas or airports for the short distance transport of various loads (goods or containers) or, on railway station platforms, to haul small trailers.

Such vehicles are of many types and sizes. They may be driven either by an electric motor with current supplied by accumulators or by an internal combustion piston engine or other engine.

The main features common to the vehicles of this heading which generally distinguish them from the vehicles of heading *87.01*, *87.03* or *87.04* may be summarised as follows:

(1) Their construction and, as a rule, their special design features, make them unsuitable for the transport of passengers or for the transport of goods by road or other public ways.

(2) Their top speed when laden is generally not more than 30 to 35 km/h.

(4) Their turning radius is approximately equal to the length of the vehicle itself.

Vehicles of this heading do not usually have a closed driving cab, the accommodation for the driver often being no more than a platform on which he stands to steer the vehicle. Certain types may be equipped with a protective frame, metal screen, etc., over the driver's seat.

The vehicles of this heading may be pedestrian controlled.

Works trucks are self-propelled trucks for the transport of goods which are fitted with, for example, a platform or container on which the goods are loaded.
Small tank trucks of a kind generally used in railway stations, whether or not fitted with subsidiary pumps, are also classified here.

* * * * *

You expressed the opinion that heading 8703, HTSUS, which provides for motor vehicles principally designed for the transport of persons, might apply. For the reasons that follow, we do not believe that the Original is a motor vehicle of heading 8703, HTSUS, nor a works truck of heading 8709, HTSUS, as CBP concluded in NY H87834.

The Original and other substantially similar vehicles are marketed to a wide range of potential users for transport purposes. They are advertised for use on factor floors, in airports, military bases, theme parks, for golf course maintenance, to haul spare parts, tools, fertilizer, sand, etc. These uses have even expanded to include transporting hunters and other recreational users and their gear off-road in wooded areas.

Turning to the comments received on the proposed revocations, one comment favoring the revocations urges CBP to maintain a distinction based on design features between those motorized utility vehicles properly classified as works trucks in heading 8709 and those similar to the Original.

The three comments opposing the proposed revocation make two main points. First, they state that the GRIs and a class or kind/principal use analysis properly applied will result in classification in heading 8709. Stated another way, the ENs should not control classification of these trucks under the HTSUS. Second, it is claimed that CBP has inconsistently applied the heading 8709 ENs in classifying the Original. The comments conclude that this evidences considerable uncertainty on CBP's part as to how vehicles like the Original are to be classified.

Heading 8709 covers vehicles of a kind used in the environments specified in the heading text. This is a provision governed by "use." *Group Italglass v. United States*, 17 CIT 226 (1993). Additional U.S. Rule of Interpretation 1(b). As such, it is the principal use of the class or kind of vehicles to which the Micro Truk belongs that governs classification here. In this context, principal use is that use which exceeds any other single use of the merchandise. In *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), *cert. denied*, 429 U.S. 979 (1976), a the court set forth factors considered pertinent in determining whether imported merchandise falls within a particular class or kind. These include the general physical characteristics of the merchandise, the expectation of the ultimate purchas-

ers, the channels, class or kind of trade in which the merchandise moves, the environment of sale (i.e., accompanying accessories and the manner in which the merchandise is advertised and displayed), the use, if any, in the same manner as merchandise which defines the class, the economic practicality of so using the import and the recognition in the trade of this use. In this case, only evidence of the general physical characteristics of the Original has been presented.

In this latter respect, the EN to 8709 lists certain design features that distinguish works trucks of that heading from vehicles of heading 8704. These include 1) their construction and, as a rule, special design features which make them unsuitable for the transport of goods by road or other public ways (emphasis added); their top speed when laden is generally not more than 30 to 35 km/h; and 3) their turning radius is approximately equal to the length of the vehicle. Vehicles of heading 8709 do not usually have a closed driving cab, the accommodation for the driver often being no more than a platform on which he stands to steer the vehicle; and, such vehicles are fitted with, for example, a platform or container on which the goods are loaded.

Your submission acknowledged uncertainty over whether the Original meets EPA and DOT requirements for highway use in the U.S. To be "suitable" for a particular purpose is to be adapted to that use or purpose. Information available to us indicates that some states would permit vehicles similar to the Original to be registered for highway use. In fact, the State of Maryland has issued an emissions approval certificate for one of the vehicles. This would suggest that the vehicle is at least suitable for on-road use. Moreover, the Original is equipped with numerous design features common to small pickup trucks, including headlights, taillights and windshield wipers. Also included are comfort and convenience items like a center console box, sun visor, interior lamp, signal lights, front plain matting, upholstered ceiling, and two-tone acrylic paint. These features also suggest significant on-road uses. CBP finds that the evidence demonstrates that whether or not the Original is actually certified for on-road use in this country, the design features of the vehicle, as described, adapt the vehicle (i.e., make it suitable) for use by road or other public way.

As to the other physical characteristics listed in the 8709 ENs, the Original's top speed with a standard payload is not indicated, nor is its overall length or minimum turning radius. However, the Original has cab-over design (an enclosed driving cab), a feature which vehicles of heading 8709 do not usually possess. Finally, the Original has an enclosed cargo bed with drop-down sides and tailgate and a maximum payload capacity of 650 kg, about half the vehicle's gross weight of 1260 kg. This is indicative of the vehicle's cargo-carrying capability and is a design feature common to standard pickup trucks. We note that pick-up vehicles are specifically listed in the EN to heading 8704, HTSUS.

On balance, CBP finds that the Original lacks most of the design features listed in the 8709 ENs as common to vehicles of that heading. Additional evidence that would allow us to apply the remaining factors in *Carborundum* has not been provided.

As to the claim of CBP's inconsistent application of the 8709 ENs in classifying vehicles said to be substantially similar to the Original, CBP has consistently classified pickup trucks of all sizes in heading 8704, HTSUS. *See*

HQ *W968379*, dated January 25, 2007; *HQ 082591*, dated October 31, 1989; *HQ 083081*, dated May 4, 1989; *NY 862497*, dated May 3, 1991; *NY 878894*, dated October 16, 1992; *NY 894929*, dated February 28, 1994; *NY 808556*, dated April 17,1995. CBP has classified other vehicles in heading 8709, HTSUS, which are claimed to be similar to the Original. The rulings claimed to be inconsistent include HQ 954173, dated September 22, 1993, HQ 960303, dated May 13, 1997, NY G87244, dated February 27, 2001, and NY H87062, dated January 10, 2002. We note that the vehicles in these rulings in fact lack all or most of the safety features required by the NHTSA regulations for low-speed vehicles approved for on-road use; i.e., closed cabs, roof, windshield, doors, turn signals, hazard lights, side mirrors, taillights, flashers, and seat belts.

HOLDING:

By application of GRI 1, Original is provided for in heading 8704, HTSUS, specifically subheading 8704.31.00, as a motor vehicle for the transport of goods with the G.V.W. not exceeding 5 metric tons. The 2011 general, column one rate of duty is 25% *ad valorem* duty.

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

EFFECT ON OTHER RULINGS:

NY H87834, dated January 28, 2002, is revoked. In accordance with 19 U.S.C. § 1625(c), this ruling become effective 60 days after its publication in the *Customs Bulletin*.

Sincerely,

ALLYSON MATTANAH
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

19 CFR PART 177

Modification of Ruling Letter and Revocation of Treatment Relating to the Definition of the Term "Cut But Not Set" in Subheading 7103.99.10, HTSUS

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

ACTION: Notice of modification of ruling letter and treatment relating to the definition of the term "cut but not set" in Chapter 71, 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 CPB is modifying a ruling concerning the definition of the term "cut but not set" as it is used in subheading 7103.99.10, HTSUS, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB is revoking any treatment previously accorded by CPB to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 20, on May 11, 2011. One comment was received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 24, 2011.

FOR FURTHER INFORMATION CONTACT: Tamar Anolic, Tariff Classification and Marking Branch: (202) 325–0036.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Imple-

mentation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is modifying a ruling letter pertaining to the definition of "cut but not set" as it appears in subheading 7103.99.10, HTSUS. Although in this notice CBP is specifically referring to Headquarters Ruling Letter (HQ) H012548, dated February 12, 2008, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the 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 have advised CBP during this notice period.

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying HQ H012548 in order to reflect the proper definition of the phrase "cut but not set" as it appears in subheading 7103.99.10, HTSUS, according to the analysis contained in Headquarters Ruling Letter (HQ) H140915, which is attached to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: August 8, 2011

RICHARD MOJICA
For
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H140915

August 8, 2011

CLA-2 OT:RR:CTF:TCM H140915 TNA

CATEGORY: Classification

TARIFF NO.: N/A

CHRISTOPHER BOWMAN, IMPORT SPECIALIST
ANCHORAGE SERVICE PORT
U.S. CUSTOMS AND BORDER PROTECTION
605 W. 4TH AVE., SUITE 230
ANCHORAGE, AK 99501

RE: Modification of HQ H012548; Definition of the term "cut but not set" in Subheading 7103.99.10, HTSUS

DEAR MR. BOWMAN:

This letter is in reference to Headquarters Ruling Letter ("HQ") H012548, an Internal Advice issued to the Port of Anchorage on February 12, 2008, concerning the definition of the term "cut but not set" in Chapter 71, HTSUS. We have reviewed HQ H012548 and found it to be partly in error. For the reasons set forth below, we hereby modify HQ H012548.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify HQ H012548 was published on May 11, 2011, in Volume 45, Number 20, of the *Customs Bulletin*. CBP received one comment in response to this notice, which is addressed in the ruling.

FACTS:

On May 3, 2007, the Port of Anchorage requested internal advice on the definition of the term "cut but not set" as used in Chapter 71 of the Harmonized Tariff Schedule of the United States ("HTSUS") and specifically, in subheading 7103.99.10, HTSUS, which provides for:

> Precious stones (other than diamonds) and semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semi-precious stones, temporarily strung for convenience of transport: Otherwise worked: Other: **Cut but not set**, and suitable for use in the manufacture of jewelry.
> [Emphasis supplied].

In the resulting ruling, HQ H012548, CBP defined the term "cut" to mean "a process that creates new facets, or angled surfaces, on the gemstone." We distinguished "cutting" from the process of "polishing," which we said "simply smoothes and brightens the surface of the gemstone." Furthermore, we defined the term "set" to mean "a mount or a base, either permanent or temporary, that holds a stone in place and is a part of the jewelry itself."

On February 8, 2011, CBP met with representatives of the Gemological Institute of America to obtain guidance regarding the industry definition of "cut" gemstones.

ISSUE:

What is the definition the term "cut but not set" as used in subheading 7103.99.10, HTSUS?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). 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.

Heading 7103, HTSUS, provides, in pertinent part:

7103	Precious stones (other than diamonds) and semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semi-precious stones, temporarily strung for convenience of transport:		
7103.10		Unworked or simply sawn or roughly shaped:	
7103.10.20			Unworked
7103.10.40			Other
		* * * *	
		Otherwise worked:	
7103.99		Other:	
7103.99.10			Cut but not set, and suitable for use in the manufacture of jewelry
7103.99.50			Other

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

The EN to heading 7103, HTSUS, provides, in pertinent part:

> The provisions of the second paragraph of the Explanatory Note to heading 71.02 apply, *mutatis mutandis*, to this heading.

The EN to heading 7102, HTSUS, provides, in pertinent part:

> The heading covers unworked stones, and stones worked, e.g., by cleaving, sawing, bruting, tumbling, faceting, grinding, polishing, drilling, engraving (including cameos and intaglios), preparing as doublets, **provided** they are neither set nor mounted.
>
> [Emphasis in the original.]

The EN to subheading 7103.10, HTSUS, provides, in pertinent part:

> This subheading includes stones roughly worked by sawing (e.g., into thin strips), cleaving (splitting along the natural plane of the layers) or bruting, i.e., stones which have only a provisional shape and clearly have to be further worked. The strips may also be cut into discs, rectangles, hexagons or octagons, provided all the surfaces and ridges are rough, matt and unpolished.

The EN to subheadings 7103.91, HTSUS, and 7103.99, HTSUS, provides, in pertinent part:

> Subheadings 7103.91 and 7103.99 cover polished or drilled stones, engraved stones (including cameos and intaglios) and stones prepared as doublets or triplets.

As in HQ H012548, we begin our analysis by noting that the term "cut but not set," as it is used in subheading 7103.99.10, HTSUS, is not defined by any of the relevant tariff headings, legal notes or ENs. As a result, CBP is permitted to consult dictionaries and other lexicographic materials to determine the term's common meaning. *See, e.g., Lonz, Inc. v. United States, 46 F.3d 1098 (Fed. Cir. 1995)*. The term in question is then construed in accordance with its common and commercial meanings, which are presumed to be the same. *See, e.g., Nippon Kogasku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982); *Toyota Motor Sales, Inc. v. United States*, 7 C.I.T. 178 (Ct. Int'l Trade 1984); *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375 (Fed. Cir. 1999); *Lonza*, 46 F.3d 1098.

I. The Definition of "Cut"

In HQ H012548, noting that the term "cut" is used interchangeably with the terms "fashioning," "girdling," and "bruting," CBP defined the term "cut" as "a process that creates new facets, or angled surfaces, on the gemstone."[1] In coming to this definition, we relied on numerous lexicographic sources. *See* HQ H012548, *citing to* Mohsen Manutchehr-Danai, *Dictionary of Gems and Gemology* (2nd ed. 2005); Gemological Institute of America, *The GIA Diamond Dictionary* (3rd ed. 1993); Jewelers' Circular-Keystone, *Jewelers' Dictionary* (3rd ed. 1976).

Further research into the definition of the term "cut" shows that in both lexicographic sources and within the gemstone industry, the term is interpreted more broadly than as defined in HQ H012548. *The Dictionary of Gems and Gemology*, 6th ed., by Robert M. Shipley, defines "cutting" as:

> a term in general use to mean fashioning and therefore to include the operations not only of sawing (which technically is only the cutting operation in fashioning), but of grinding, polishing and faceting.

It also defines "cut stone" as "a stone which has been fashioned as a gem, as distinguished from an uncut or rough stone." *See* Robert M. Shipley, *The Dictionary of Gems and Gemology*, (6th ed. 2008).

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[1] In HQ H012548, CBP cited the following definitions of the terms "fashioning" and "girdling":

> *Fashioning*: (1) a general term used to describe the entire process of manufacturing a polished diamond from the rough, including design, cleaving, sawing, bruting, and polishing; also called cutting. (2) industry term for bruting (the GIA Diamond Dictionary. 3rd ed. Santa Monica, CA; Gemological Institute of America, 1993. ISBN: 0–87311–026–9.
>
> *Girdling*: The process by which round diamonds are given their circular or fancy shape, also known as cutting, bruting or rounding (Jewlers' Dictionary. 3rd ed. Radnor, PA: Jewlers' Circular-Keystone, 1976. ISBN: 0–931744–01–6).

"Bruting" is "a method of roughly cutting diamonds by rubbing one against another." It is "another term for shaping and grinding rough diamond or other transparent gemstones." *See The Dictionary of Gems and Gemology*, 3rd ed., edited by Mohsen Manutchehr-Danai, Germany: Springer, 2009.

Similarly, *The Dictionary of Gems and Gemology*, (3rd ed. 2009) edited by Mohsen Manutchehr-Danai, defines "cutting" as:

> the process of cutting or sawing, grinding, polishing, faceting of precious stone, or other materials to improve its brilliancy, on revolving diamond-charged grinding wheels. After cutting normally, it has symmetrical shape, either in cabochon.[2] Also called fashioning.

It defines "fashioning," in turn, as "a general name for sawing, cleaving, rounding up, faceting, polishing, and other operations of manufacturing of diamonds and other gemstones." *Id.*

Based on the foregoing, we find that the definition of "cut" as espoused in HQ H012548 is too narrow. Therefore, we now expand it to conform to its common and commercial meaning and find that the term "cutting," also called "fashioning," is a process whose application distinguishes the resulting gemstones from rough stones (i.e., stones which are unworked or simply sawn or roughly shaped). *See* subheading 7103.10, HTSUS. It can involve one or more of the following processes: carving[3], cleaving[4], sawing[5], girdling, bruting, grinding[6], faceting, polishing, cabbing, and tumbling[7].

In HQ H012548, CBP stated that cutting and polishing gemstones are two different processes. There, we noted that Mohsen Manutchehr-Danai's *Dictionary of Gems and Gemology* (2nd ed. 2005) defines "polishing" as "the final process after placing the facets on the gemstone, which has been rubbed with various abrasives to smooth and brighten the surface. The final polishing by machine is used to achieve a lustrous surface." *See* HQ H012548, citing Mohsen Manutchehr-Danai, *Dictionary of Gems and Gemology* (2nd ed. 2005). We therefore defined the term "polishing" as a process that "simply smoothes and brightens the surface of a gemstone" and concluded that the definition of "cut" did not include polishing.

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[2] A "cabochon" is "an unfaceted, highly polished, cut gemstone, in which the top of the gem forms a dome-shaped or curved, convex surface." *See The Dictionary of Gems and Gemology*, 3rd ed., edited by Mohsen Manutchehr-Danai, Germany: Springer, 2009.

[3] "Carving" is defined as the decoration of gemstone, metal, or a figure or design, produced by carving." *See The Dictionary of Gems and Gemology*, 3rd ed., edited by Mohsen Manutchehr-Danai, Germany: Springer, 2009.

[4] "Cleaving" is defined as "the technique of splitting or parting of a rough diamond crystal into two or more portions along the cleavage plane (four cleavage planes parallel to the octahedral faces), used in fashioning of diamond but rarely in other gemstones." *See The Dictionary of Gems and Gemology*, 3rd ed., edited by Mohsen Manutchehr-Danai, Germany: Springer, 2009.

[5] "Sawing" is defined as a process used to cut a diamond or other gemstones into two or more parts in directions other than the cleavage directions. *See The Dictionary of Gems and Gemology*, 3rd ed., edited by Mohsen Manutchehr-Danai, Germany: Springer, 2009.

[6] "Grinding" is defined as "the technique girdling of round diamonds." *See The Dictionary of Gems and Gemology*, 3rd ed., edited by Mohsen Manutchehr-Danai, Germany: Springer, 2009.

[7] "Tumbling" is defined as "the process of polishing gemstones without having been pre-shaped into irregular, rounded, baroque-shaped pebbles. Large quantities of cheaper stones are tumbled in a rotating or vibrating drum known as a 'tumbler,' first with abrasive powder and then with a polishing agent." *See The Dictionary of Gems and Gemology*, 3rd ed., edited by Mohsen Manutchehr-Danai, Germany: Springer, 2009.

Upon reconsideration, we note that some definitions of the term "cutting," as it pertains to gemstones, includes the operation of polishing. *See, e.g.*, Robert M. Shipley, *The Dictionary of Gems and Gemology*, (6th ed. 2008) (defining "cutting" as a term in general use to mean fashioning and therefore to include the operations not only of sawing, (which technically is only the cutting operation of fashioning) but of grinding…, *polishing*, and faceting."); and Mohsen Manutchehr-Danai, *The Dictionary of Gems and Gemology* (3rd ed. 2009) (defining "cutting" as "the process of cutting or sawing, grinding, *polishing*, faceting of previous stone or other materials to improve its brilliancy."). [Emphasis supplied.] As a result, we find that the process of cutting may include polishing.

CBP received one comment that challenged this new definition of "cut but not set." The commenter argues that the nomenclature of subheading 7103.99.10, HTSUS, is restrictive, in contrast to the terms of subheading 7103.99.50, HTSUS, which, as a basket provision, should be broader in scope than the subheadings before it. As such, the commenter argues that this ruling expands the definition of "cut but not set" beyond what Congress intended when it implemented the tariff schedule. In support of this argument, the commenter submitted documents to show that the phrase "cut but not set" has been a part of the tariff schedule at least as far back as 1890. As a result, the commenter argues that employing the modern industry definitions of the term "cut" may detract from the original intent of the framers of this tariff provision.

In response, we note that the common and commercial definitions of tariff terms are derived from the current common and commercial meanings, rather than the meanings that may have been understood at the time of the tariff schedule's implementation. First, the United States Customs Court, the predecessor to the Court of International Trade, stated that there is no presumption that a commercial designation is carried over from tariff schedule to tariff schedule. *See E. Dillingham, Inc. v. United States*, 30 Cust. Ct. 187; 1953 Cust. Ct. LEXIS 27. Thus, even if we agreed with the commenter that the term "cut" had a different meaning when the tariff schedule was first enacted, we would still be obligated to examine today's commercial and common meaning.

Furthermore, the Court of international Trade has said that if a party wishes to show that merchandise is not included in the commercial definition, it would not be sufficient to show that at, or prior to, the enactment of the tariff law, the merchandise was always known by a name other than the tariff term. *Bar Zel Expediters, Inc v. United States*, 3 C.I.T. 84; 544 F.Supp. 868; 1982 Ct. Intl. Trade LEXIS 2047 (Ct. Int'l Tr. 1982). In the present case, the materials submitted do not exclude the possibility that the meaning of "cut" does not include today's commercial meaning. *See Bar Zel Expediters, Inc.*, 3 C.I.T. 84, 89. Lastly, tariff terms are written for the future as well as the present, which means that tariff terms are expected to encompass merchandise not known to commerce at the time of their enactment, as long as the new article possesses an essential resemblance to the one named in the statute. *Id.* at 101. We interpret this language as giving current commercial meanings more weight than past definitions. As a result, we will adhere to the current common and commercial definitions of the term "cut."

II. The Definition of "Set"

In HQ H012548, we also defined the term "set" as it is used in Chapter 71, HTSUS. There, we stated that a "setting" was a "the part of a piece of jewelry into which a stone or other gem is directly set, with claws, bezel, or other means of clamping over the edge or girdle of the stone to hold it in place." We further stated that a "setting" was "any kind of gemstones set in a mount." *See HQ H012548, citing to Jewelers' Dictionary 3rd ed. Radnor, PA: Jewelers' Circular-Keystone, 1976.; Dictionary of Gems and Gemology*, 2nd ed. Germany: Springer, 2005.. We also concluded that a setting could be either permanent or temporary, and was not synonymous with the term "temporarily strung together for convenience of transport," which meant not being held firmly in place by a definite setting. *See* HQ 959831 and HQ 959687, both dated April 1, 1997; *Dictionary of Gems and Gemology*, 2nd ed. Germany: Springer, 2005. Further research shows that this definition remains consistent with the common and commercial meaning of the term "set." As a result, we continue to adhere to this definition.

HOLDING:

Gemstones classifiable under subheading 7103.99.10, HTSUS, must be "cut" i.e., a process whose application distinguishes the resulting gemstones from rough stones (i.e., stones which are unworked or simply sawn or roughly shaped) and which involves one or more of the following processes: carving, cleaving, sawing, girdling, bruting, grinding, faceting, polishing, cabbing, and tumbling. Furthermore, they cannot be "set" i.e., held in place by a mount or a base that forms a part of the jewelry itself.

EFFECT ON OTHER RULINGS:

HQ H012548, dated February 12, 2008 is MODIFIED.

Sincerely,

RICHARD MOJICA
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

REVOCATION OF SIX RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF CERTAIN BEVERAGE DISPENSERS

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

ACTION: Revocation of six classification ruling letters and revocation of treatment relating to the classification of certain beverage dispensers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking six ruling letters relating to the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of certain beverage dispensers. CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published in the *Customs Bulletin*, Volume 44, No. 24 on June 9, 2010. No comments were received in response to this notice.

DATES: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 24, 2011.

FOR FURTHER INFORMATION CONTACT: Jean R. Broussard, Tariff Classification and Marking Branch: (202) 325–0284.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended, a notice was published in the *Customs Bulletin*, Volume 44, No. 24 on June 9, 2010, proposing to revoke six ruling letters on the classification of beverage dispensers. Although

in that notice, CBP specifically proposed to revoke New York Ruling Letter (NY) N025129, dated April 10, 2008; NY R03851, dated May 30, 2006; NY N016275, dated September 13, 2007; NY I82366, dated July 5, 2002; NY R04997, dated October 26, 2006 and; NY L89010, dated December 12, 2005, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N025129, NY R03851, NY N016275, NY I82366, NY R04997 and NY L89010 to reflect the proper classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letter (HQ) H044960; H044958; H044956; H044957; H058924; and H044959, set forth as Attachments A-F to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: August 2, 2011

ALLYSON MATTANAH
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ H044960

August 2, 2011
CLA-2 OT:RR:CTF:TCM H044960 JRB
CATEGORY: Classification
TARIFF NO.: 6912.00.48

MS. AMY MORGAN
COSTCO WHOLESALE
999 LAKE DRIVE
ISSAQUAH, WASHINGTON 98027

RE: Revocation of NY N025129; Classification of a ceramic beverage jar

DEAR MS. MORGAN:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) N025129, issued to you on April 10, 2008, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a ceramic beverage jar. The merchandise was classified under heading 8481, HTSUS, which provides for "Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof." We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY N025129.

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 was published on June 9, 2010, in the *Customs Bulletin*, Volume 44, No. 24. No comments were received in response to this notice.

FACTS:

The merchandise at issue was described as follows in NY N025129:

> [A] ceramic beverage jar/dispenser, item 109009. This portable beverage jar is a composite good that both stores and dispenses a liquid. The jar stands 16 inches tall and is made of earthenware ceramic with a matching removable earthenware lid. In addition, it includes a plastic hand operated tap/spigot at the base of the jar that dispenses the liquid. The jar is intended to sit on a table or countertop.

ISSUE:

Whether the ceramic beverage jar is classified in heading 8481, HTSUS, as a valve or heading 6912, HTSUS, as ceramic kitchenware.

LAW AND ANALYSIS:

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

The relevant HTSUS provisions are as follows:

6912:	Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china:
8481:	Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof:

The merchandise at issue consists of a ceramic jar and lid of heading 6912, HTSUS and a tap of heading 8481, HTSUS. When goods are, prima facie, classifiable in two or more headings, they must be classified in accordance with GRI 3, which provides, in relevant part, as follows:

> (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
>
> (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
>
> * * * *

In this case, headings 6912 and 8481, HTSUS, each refer to only part of the merchandise. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b) as a composite good because it is "made up of different components," which are "adapted one to the other and [be] mutually complementary and . . . together . . . form a whole which would not normally be offered for sale in separate parts." *See* EN IX to GRI 3(b). *Infra*.

In classifying the articles pursuant to a GRI 3(b) analysis, the goods are classified as if they consisted of the component that gives them their essential character.

In relevant part, the ENs[1] to GRI 3(b) state:

> (VII) In all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
>
> (VIII) The factor which determines 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.

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

(IX) For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole, but also those with separable components, provided these components are adapted one to the other and are mutually complementary, and that together they form a whole which would not normally be offered for sale in separate parts… As a general rule, the components of these composite goods are put up in a common packing.

* * *

There have been several court decisions on "essential character" for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. *See Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (citations omitted) (2005), "the essential character of an article is that which is indispensable to the structure, core or condition of the article, i.e., what it is." *See also Conair Corporation v. United States*, 29 Ct. Int'l Trade, 888, 895 (citations omitted) (2005), (discussing "the concept of 'essential character' found in GRI 3(b)").

In this instance, the ceramic beverage jar performs the necessary role of storing the water, provides the aesthetic appeal and provides the greatest bulk. The tap distributes the water but is dependent upon the earthenware jar for its water supply. As such, we find that the essential character of the ceramic beverage jar with plastic tap is provided by the jar.

HOLDING:

By application of GRI 3(b), the ceramic beverage jar is classified in heading 6912, HTSUS. It is provided for in subheading 6912.00.48, HTSUS, which provides for: "Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: Tableware and kitchenware: Other: Other: Other: Other." The column one, general rate of duty is 9.8% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N025129, dated April 10, 2008, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Sincerely,

ALLYSON MATTANAH
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT B]

HQ H044958

August 2, 2011
CLA-2 OT:RR:CTF:TCM H044958 JRB
CATEGORY: Classification
TARIFF NO.: 3926.90.99

MR. TROY D. CRAGO
ATICO INTERNATIONAL USA, INC.
501 SOUTH ANDREWS AVENUE
FORT LAUDERDALE, FL 33301

RE: Revocation of NY R03851; Classification of a water tank set

DEAR MR. CRAGO:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) R03851, issued to you on May 30, 2006, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a water tank set. The merchandise was classified under heading 8481, HTSUS, which provides for "Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof." We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY R03851.

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 was published on June 9, 2010, in the *Customs Bulletin*, Volume 44, No. 24. No comments were received in response to this notice.

FACTS:

The merchandise at issue was described as follows in NY R03851:

> [A] water tank set, item number W038BA03046. The set is comprised of a refillable water bottle, a ceramic dispenser pot with plastic ring and valve, and a metal stand. The water bottle, dispenser and stand are imported together and are presumably packed together ready for retail sale. The dispenser pot incorporates a hand-operated valve with a spout to control the flow of water from the storage bottle.

In addition, to the facts provided for in NY R03851, CBP reviewed the initial request from you and wishes to include that the refillable bottle is made of polycarbonate plastic.

ISSUE:

Whether the water tank set is classified in heading 8481, HTSUS, as a valve or heading 3926, HTSUS, as an other article of plastic, heading 6914, as other ceramic articles or heading 7323, HTSUS, as table, kitchen or other household articles of steel.

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be

determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The relevant HTSUS provisions are as follows:

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

7323: Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel:

8481: Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof:

The merchandise at issue consists of a refillable water bottle of heading 3926, HTSUS and ceramic dispenser pot incorporating a plastic ring and a valve with a spout (a tap) of heading 8481, HTSUS and a steel stand. When goods are, prima facie, classifiable in two or more headings, they must be classified in accordance with GRI 3, which provides, in relevant part, as follows:

> (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
>
> (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
>
> * * * *

In this case, headings 3926, 7323 and 8481, HTSUS, each refer to only part of the merchandise. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b) as a set because they are *prima facie* classifiable in more than one heading, are used for the specific activity of dispensing water and are put up for sale without repacking. *See* EN X to GRI 3(b). *Infra*.

In classifying the articles pursuant to a GRI 3(b) analysis, the goods are classified as if they consisted of the component that gives them their essential character.

In relevant part, the ENs[1] to GRI 3(b) state:

[1] The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice

(IX) In all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(X) 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.

(X) For the purposes of this Rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which:
(a) consist of at least two different articles which are, prima facie, classifiable in different headings . . .;
(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
(c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

* * *

There have been several court decisions on "essential character" for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. *See Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (citations omitted) (2005), "the essential character of an article is that which is indispensable to the structure, core or condition of the article, i.e., what it is." *See also Conair Corporation v. United States*, 29 Ct. Int'l Trade, 888, 895 (citations omitted) (2005), (discussing "the concept of 'essential character' found in GRI 3(b)").

In this instance, the refillable water bottle provides the indispensable role of storing the water and being the tank in the water tank set. The pot with its valve distributes the water but is dependent upon the refillable water bottle for its water supply and will only be used when the consumer dispenses the water. In contrast, the refillable water bottle continuously stores the water. The metal stand merely elevates the tank but does not affect its water storage capacity. As such, we find that the essential character of the water tank set is provided by the refillable water bottle.

HOLDING:

By application of GRI 3(b), the water tank set is classified in heading 3926, HTSUS. It is provided for in subheading 3926.90.99, HTSUS, which provides for: "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other." The column one, general rate of duty is 5.3% *ad valorem*.

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

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to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EFFECT ON OTHER RULINGS:

NY R03851, dated May 30, 2006, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Sincerely,

ALLYSON MATTANAH
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT C]

HQ H044956

August 2, 2011
CLA-2 OT:RR:CTF:TCM H044956 JRB
CATEGORY: Classification
TARIFF NO.: 3926.90.98

MS. MARTHA DE CASTRO
BED BATH & BEYOND
650 LIBERTY AVE.
UNION, NJ 07083

RE: Revocation of NY N016275; Classification of a "World Globe Liquor Dispenser"

DEAR MS. DE CASTRO:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) N016275, issued to you on September 13, 2007, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of the "World Globe Liquor Dispenser." The merchandise was classified under heading 8481, HTSUS, which provides for "Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof." We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY N016275.

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 was published on June 9, 2010, in the *Customs Bulletin*, Volume 44, No. 24. No comments were received in response to this notice.

FACTS:

The merchandise at issue was described as follows in NY N016275:

> "World Globe Liquor Dispenser", item number 1942… consists of a plastic globe shaped dispenser with a metal stand. The stand incorporates a hand-operated valve with a spout that controls the flow of liquid. The handle is turned counter-clockwise on the nozzle to dispense liquids and turned clockwise to stop liquid flow.

Since the issuance of NY N016275, we have determined that the stand is made of zinc alloy and iron, with the zinc alloy predominating by weight.

ISSUE:

Whether the World Globe Liquor Dispenser is classified in heading 7907, HTSUS, as an other article of zinc, heading 8481, HTSUS, as a valve or heading 3926, HTSUS, as an other article of plastic.

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be

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

The relevant HTSUS provisions are as follows:

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

8481: Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof:

The merchandise at issue consists of a plastic globe of heading 3926, HTSUS and a zinc stand which incorporates a valve and a spout (a tap) of heading 8481, HTSUS.[1] When goods are, prima facie, classifiable in two or more headings, they must be classified in accordance with GRI 3, which provides, in relevant part, as follows:

> (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
>
> (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
>
> * * * *

In this case, headings 3926 and 8481, HTSUS, each refer to only part of the merchandise. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b) because they meet the definition of a set because they are *prima facie* classifiable in more than one heading, are put for the specific activity of dispensing water and are put up for sale without repacking. *See* EN X to GRI 3(b). *Infra*.

In classifying the articles pursuant to a GRI 3(b) analysis, the goods are classified as if they consisted of the component that gives them their essential character.

In relevant part, the ENs[2] to GRI 3(b) state:

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[1] The zinc stand which incorporates a tap is a composite good because it is "made up of different components," which are "adapted one to the other and are mutually complementary and . . . together . . . form a whole which would not normally be offered for sale in separate parts." *See* EN IX to GRI 3(b).

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

(XI) In all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(XII) 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.

(X) For the purposes of this Rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which:
(a) consist of at least two different articles which are, prima facie, classifiable in different headings . . .;
(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
(c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

* * *

There have been several court decisions on "essential character" for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. *See Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (citations omitted) (2005), "the essential character of an article is that which is indispensable to the structure, core or condition of the article, i.e., what it is." *See also Conair Corporation v. United States*, 29 Ct. Int'l Trade, 888, 895 (citations omitted) (2005), (discussing "the concept of 'essential character' found in GRI 3(b)").

In this instance, the plastic globe performs the crucial role of storing the liquor, provides the aesthetic appeal and has the greatest bulk. The tap distributes the liquor but is dependent upon the globe to provide the liquor and will only be used when the consumer dispenses the liquor from within. The metal stand merely elevates the globe but does not affect its storage capacity. In contrast, the plastic globe dispenser continuously stores the liquor. As such, the essential character is provided by the plastic globe dispenser.

HOLDING:

By application of GRI 3(b), the "World Globe Liquor Dispenser" is classified in heading 3926, HTSUS. It is provided for in subheading 3926.90.99, HTSUS, which provides for: "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other." The 2009 column one, general rate of duty is 5.3% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N016725, dated September 13, 2007, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Sincerely,

ALLYSON MATTANAH
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT D]

HQ H044957

August 2, 2011
CLA-2 OT:RR:CTF:TCM H044957 JRB
CATEGORY: Classification
TARIFF NO.: 3926.90.99

MS. LESA R. HUBBARD
J.C. PENNEY PURCHASING CORPORATION
P.O. BOX 10001
DALLAS, TEXAS 75301–0001

RE: Revocation of NY I82366; Classification of a "mini" water dispenser

DEAR MS. HUBBARD:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) I82366, issued to you on July 5, 2002, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a "mini" water dispenser. The merchandise was classified under heading 8481, HTSUS, which provides for "Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof." We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY I82366.

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 was published on June 9, 2010, in the *Customs Bulletin*, Volume 44, No. 24. No comments were received in response to this notice.

FACTS:

The merchandise at issue was described as follows in NY I82366:

> [A] mini dispenser…comprised of a dispensing base and an inverted water bottle that essentially replicates in miniature a typical bottled water dispenser. You indicate that the dispenser is designed to hold and dispense the eight, eight ounce glasses of water that are generally recommended for daily drinking. Both the base and bottle are constructed of plastic and are imported shrink-wrapped and packaged together for retail sale. The base incorporates a hand-operated valve with a spout to control the flow of water from the storage bottle.

ISSUE:

Whether the water bottle dispenser is classified in heading 8481, HTSUS, as a valve or heading 3926, HTSUS, as an other article of plastic.

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be

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

The relevant HTSUS provisions are as follows:

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

8481: Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof

The merchandise at issue consists of a plastic water bottle of heading 3926, HTSUS, and a dispensing base with a hand operated valve with a spout, i.e., a tap of heading 8481, HTSUS[1]. When goods are, prima facie, classifiable in two or more headings, they must be classified in accordance with GRI 3, which provides, in relevant part, as follows:

> (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
>
> (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
>
> * * * *

In this case, headings 3926 and 8481, HTSUS, each refer to only part of the merchandise. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b) because they are *prima facie* classifiable in more than one heading, are put for the specific activity of dispensing water and are put up for sale without repacking. *See* EN X to GRI 3(b). *Infra*.

In classifying the articles pursuant to a GRI 3(b) analysis, the goods are classified as if they consisted of the component that gives them their essential character.

In relevant part, the ENs[2] to GRI 3(b) state:

---

[1] The dispensing base with a tap is a composite good because it is "made up of different components," which are "adapted one to the other and [be] mutually complementary and . . . together . . . form a whole which would not normally be offered for sale in separate parts." *See* EN IX to GRI 3(b).

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

(XIII) In all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(XIV) 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.

(IX) For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole, but also those with separable components, provided these components are adapted one to the other and are mutually complementary, and that together they form a whole which would not normally be offered for sale in separate parts… As a general rule, the components of these composite goods are put up in a common packing.

(X) For the purposes of this Rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which:
(a) consist of at least two different articles which are, prima facie, classifiable in different headings . . .;
(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
(c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

* * *

There have been several court decisions on "essential character" for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. *See Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (citations omitted) (2005), "the essential character of an article is that which is indispensable to the structure, core or condition of the article, i.e., what it is." *See also Conair Corporation v. United States*, 29 Ct. Int'l Trade, 888, 895 (citations omitted) (2005), (discussing "the concept of 'essential character' found in GRI 3(b)").

In this instance, the water bottle performs the necessary role of holding the water. The tap distributes the water but is dependent upon the bottle to provide the water to dispense and will only be used when the consumer dispenses the water. In contrast, the water bottle continuously stores the water. As such, the essential character of the set is provided by the water bottle.

HOLDING:

By application of GRI 3(b), the "mini" water dispenser is classified in heading 3926, HTSUS. It is provided for in subheading 3926.90.99, HTSUS, which provides for: "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other." The column one, general rate of duty is 5.3% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY I82366, dated July 5, 2002, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Sincerely,

ALLYSON MATTANAH
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT E]

HQ H058924

August 2, 2011
CLA-2 OT:RR:CTF:TCM H058924 JRB
CATEGORY: Classification
TARIFF NO.: 3926.90.99

MR. TODD W. STUMPF
STONEPATH LOGISTICS
1930 6TH AVENUE
SUITE 401
SEATTLE, WA 98134

RE: Revocation of NY R04997; Classification of a water bottle dispenser

DEAR MR. STUMPF:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) R04997, issued to you on behalf of your client Pacific Direct, on October 26, 2006, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a water dispenser. The merchandise was classified under heading 8481, HTSUS, which provides for "Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof." We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY R04997.

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 was published on June 9, 2010, in the *Customs Bulletin*, Volume 44, No. 24. No comments were received in response to this notice.

FACTS:

The merchandise at issue was described as follows in NY R04997:

> [A] water dispenser … comprised of a plastic water bottle and a plastic stand. The stand incorporates a hand-operated valve to control the flow of water from the bottle.

ISSUE:

Whether the water bottle dispenser is classified in heading 8481, HTSUS, as a valve or heading 3926, HTSUS, as an other article of plastic.

LAW AND ANALYSIS:

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

The relevant HTSUS provisions are as follows:

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

8481: Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof

The merchandise at issue consists of a plastic water bottle and stand of heading 3926, HTSUS, and a stand incorporating a hand operated valve (a tap) of heading 8481, HTSUS. When goods are, prima facie, classifiable in two or more headings, they must be classified in accordance with GRI 3, which provides, in relevant part, as follows:

> (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
>
> (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
>
> * * * *

In this case, headings 3926 and 8481, HTSUS, each refer to only part of the merchandise. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b) as set because they are *prima facie* classifiable in more than one heading, are used for the specific activity of dispensing water and are put up for sale without repacking. *See* EN X to GRI 3(b). *Infra*.

In classifying the articles pursuant to a GRI 3(b) analysis, the goods are classified as if they consisted of the component that gives them their essential character.

In relevant part, the ENs[1] to GRI 3(b) state:

> (XV) In all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
>
> (XVI) 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.

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

(X) For the purposes of this Rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which:
(a) consist of at least two different articles which are, prima facie, classifiable in different headings . . .;
(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
(c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

* * * *

There have been several court decisions on "essential character" for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. *See Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (citations omitted) (2005), "the essential character of an article is that which is indispensable to the structure, core or condition of the article, i.e., what it is." *See also Conair Corporation v. United States*, 29 Ct. Int'l Trade, 888, 895 (citations omitted) (2005), (discussing "the concept of 'essential character' found in GRI 3(b)").

In this instance, the water bottle performs the necessary role of holding the water and provides the greatest bulk. The valve distributes the water but is dependent upon the bottle to provide the water and will only be used when the consumer dispenses the water. In contrast, the water bottle continuously stores the water. As such, the essential character is provided by the water bottle.

HOLDING:

By application of GRI 3(b), the water bottle dispenser is classified in heading 3926, HTSUS. It is provided for in subheading 3926.90.99, HTSUS, which provides for: "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other." The column one, general rate of duty is 5.3% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY R04997, dated October 26, 2006, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Sincerely,

ALLYSON MATTANAH
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT F]

HQ H044959

August 2, 2011
CLA-2 OT:RR:CTF:TCM H044959 JRB
CATEGORY: Classification
TARIFF NO.: 3926.90.99

MS. LORIANNE ALDINGER
RITE AID CORPORATION
P.O. BOX 3165
HARRISBURG, PA 17105

RE: Revocation of NY L89010; Classification of a Penguin Water Dispenser

DEAR MS. ALDINGER:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) L89010, issued to you on December 12, 2005, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a Penguin Water Dispenser. The merchandise was classified under heading 8481, HTSUS, which provides for "Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof." We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY L89010.

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 was published on June 9, 2010, in the *Customs Bulletin*, Volume 44, No. 24. No comments were received in response to this notice.

FACTS:

The merchandise at issue was described as follows in NY L89010:

> The dispenser is comprised of a dispensing base, which is in the shape of a penguin, and an inverted water bottle. Both the base and bottle are constructed of plastic and are imported packaged together for retail sale. The base incorporates a hand-operated valve with a spout to control the flow of water from the storage bottle.

ISSUE:

Whether the Penguin Water Dispenser is classified in heading 8481, HTSUS, as a valve or heading 3926, HTSUS, as an other article of plastic.

LAW AND ANALYSIS:

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

The relevant HTSUS provisions are as follows:

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

8481: Taps, cocks, valves and similar appliances, for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves; parts thereof

The merchandise at issue consists of a plastic water bottle and stand of heading 3926, HTSUS, and a tap, i.e., a valve with a spout of heading 8481, HTSUS. When goods are, prima facie, classifiable in two or more headings, they must be classified in accordance with GRI 3, which provides, in relevant part, as follows:

> (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
>
> (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
>
> * * * *

In this case, headings 3926 and 8481, HTSUS, each refer to only part of the merchandise. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b) as a set because they are *prima facie* classifiable in more than one heading, are used for the specific activity of dispensing water and are put up for sale without repacking. *See* EN X to GRI 3(b). *Infra*.

In classifying the articles pursuant to a GRI 3(b) analysis, the goods are classified as if they consisted of the component that gives them their essential character.

In relevant part, the ENs[1] to GRI 3(b) state:

> (XVII) In all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
>
> (XVIII) 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.

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

(X) For the purposes of this Rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which:
(a) consist of at least two different articles which are, prima facie, classifiable in different headings . . .;
(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
(c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

* * * *

There have been several court decisions on "essential character" for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. *See Structural Industries v. United States*, 360 F. Supp. 2d 1330, 1336 (citations omitted) (2005), "the essential character of an article is that which is indispensable to the structure, core or condition of the article, i.e., what it is." *See also Conair Corporation v. United States*, 29 Ct. Int'l Trade, 888, 895 (citations omitted) (2005), (discussing "the concept of 'essential character' found in GRI 3(b)").

In this instance, the water bottle performs the necessary role of holding the water. The valve distributes the water but is dependent upon the bottle to provide the water and will only be used when the consumer dispenses the water. In contrast, the water bottle continuously stores the water. As such, the essential character is provided by the water bottle.

HOLDING:

By application of GRI 3(b), the Penguin Water Dispenser is classified in heading 3926, HTSUS. It is provided for in subheading 3926.90.99, HTSUS, which provides for: "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other." The column one, general rate of duty is 5.3% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY L89010, dated December 12, 2005, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Sincerely,

ALLYSON MATTANAH
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

MODIFICATION AND REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN MONOCLONAL ANTIBODY MEDICAMENTS

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

ACTION: Notice of modification and revocation of ruling letters and treatment relating to tariff classification of monoclonal antibody medicaments.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is modifying two ruling letters and revoking two ruling letters relating to the tariff classification of certain monoclonal antibody medicaments under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 45, No. 20, on May 11, 2011. 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 October 24, 2011.

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

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625 (c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP is modifying two ruling letters and revoking two ruling letters pertaining to the tariff classification of certain monoclonal antibody medicaments. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letters (NY) K83806, dated March 15, 2004, and NY K83509, dated March 12, 2004, and the revocation of NY K86861, dated June 18, 2004, and NY H85059, dated August 22, 2001, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the rulings identified above. 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 have advised CBP during this notice period.

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

In NY K83806, CBP determined that the drugs Raptiva® (Efalizumab), Rituxan® (Rituximab), and Xolair® (Omalizumab) were classified in heading 3004, HTSUS, specifically subheading 3004.90.91, HTSUS, which provides for "Medicaments … consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale: Other: Other". In NY K83509, CBP similarly determined that the drugs Avastin™ (Bevacizumab) and Herceptin® (Trastuzumab) were classified in subheading 3004.90.91, HTSUS. In NY K86861, CBP simi-

larly determined that the drug Antegren® (Natalizumab) was classified in subheadings 3003.90.00 and 3004.90.91, HTSUS, depending on whether the drug was in bulk or single-dose form. In NY H85059, CBP similarly determined that the drug Campath® (Alemtuzumab) was classified subheading 3004.90.90 HTSUS (revision 2001), which provides for "Medicaments … consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale: Other: Other".

It is now CBP's position that the above-identified monoclonal antibody products are properly classified in heading 3002, HTSUS, specifically subheading 3002.10.01, HTSUS, which provides for: which provides for "Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products: Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes".

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY K83806 and NY K83509, and revoking NY K86861 and NY H85059, in order to reflect the proper classification of the subject monoclonal antibody medicaments according to the analysis contained in Headquarters Ruling Letter (HQ) H110421, set forth as Attachment A to this document, HQ H110420 (Attachment B), HQ H110419 (Attachment C), and HQ H128157 (Attachment D). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: August 2, 2011

ALLYSON MATTANAH
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ H110421

August 2, 2011
CLA–2 OT:RR:CTF:TCM H110421 AMM
CATEGORY: Classification
TARIFF NO.: 3002.10.01

MR. RON REUBEN
DANZAS AEI CUSTOMS BROKERAGE SERVICES
5510 WEST 102ND STREET
LOS ANGELES, CA 90045

RE: Modification of New York Ruling Letter K83806; classification of monoclonal antibody medicaments

DEAR MR. REUBEN,

This is in regard to New York Ruling Letter (NY) K83806, dated March 15, 2004, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of certain monoclonal antibody drug products. In NY K83806, Customs and Border Protection (CBP) classified the drug products Raptiva® (Efalizumab), Rituxan® (Rituximab), and Xolair® (Omalizumab) under heading 3004, HTSUS. We have reconsidered this ruling and have determined that these monoclonal antibody drug products are provided for in heading 3002, HTSUS.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify NY K83806 was published on May 11, 2011, in Volume 45, Number 20, of the Customs Bulletin. CBP received no comments in response to this notice.

FACTS:

Raptiva® is a medicament containing Efalizumab, an immunosuppressive recombinant humanized IgGI kappa isotype monoclonal antibody, as the active ingredient. It is indicated for the treatment of adults with with chronic moderate-to-severe plaque psoriasis. Raptiva® (Efalizumab) for injection is supplied as a lyophilized, sterile powder to deliver 125 mg of efalizumab per single-use vial. Each Raptiva® carton contains four trays, with each tray containing one single-use vial designed to deliver 125 mg of efalizumab, one single-use prefilled diluent syringe containing 1.3 mL sterile water for injection, two 25 gauge x 5/8 inch needles, two alcohol prep pads, and a package insert with an accompanying patient information insert.

Rituxan® is a medicament containing Rituximab, a genetically engineered chimeric murine/human monoclonal antibody directed against the CD20 antigen found on the surface of normal and malignant B lymphocytes, as the active ingredient. It is intended for use in the treatment of CD20-positive, B-cell non-Hodgkin's lymphoma. Rituxan® (Rituximab) is supplied as a sterile, clear, colorless, preservative-free liquid put up in single-use vials.

Xolair® is a medicament containing Omalizumab, a recombinant DNA-derived humanized IgG1 kappa monoclonal antibody that selectively binds to human immunoglobulin E (IgE), as the active ingredient. It is indicated for the treatment of asthma. Xolair® (Omalizumab) for subcutaneous use is supplied as a lyophilized, sterile powder in a single-use, 5-cc vial that is designed to deliver 150 mg of Xolair® upon reconstitution with 1.4 mL of sterile water.

NY K83806 classified Raptiva,® Rituxan,® and Xolair® under subheading 3004.90.91, HTSUS, which provides for: "Medicaments … consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale: Other: Other".

ISSUE:

Are the the subject monoclonal antibody medicaments properly classified under heading 3002, HTSUS, as "modified immunological products," or under heading 3004, HTSUS, as "medicaments … consisting of mixed or unmixed products for therapeutic or prophylactic uses?"

LAW AND ANALYSIS:

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

The HTSUS provisions at issue are as follows:

3002	Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products:
3002.10.01	Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes:
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3004	Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale:
3004.90	Other:
3004.90.91	Other:

Note 2 of Chapter 30, HTSUS, states: "For the purposes of heading 3002, the expression 'modified immunological products' applies only to monoclonal antibodies (MABs), antibody fragments, antibody conjugates and antibody fragment conjugates."

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

The EN to Heading 30.02 states, in pertinent part:

This heading covers:

* * *

(C) Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes. These products include:

* * *

(2) Modified immunological products, whether or not obtained by means of biotechnological processes.
Products used for diagnostic or therapeutic purposes and for immunological tests are to be regarded as falling within this product group. They can be defined as follows:

(a) Monoclonal antibodies (MABs) - specific immunoglobulins from selected and cloned hybridoma cells cultured in a culture medium or ascites.

* * *

The products of this heading remain classified here whether or not in measured doses or put up for retail sale and whether in bulk or in small packings.

Ruling K83806 classified the above-identified products under heading 3004, HTSUS. However, the heading specifically excludes goods which can be classified under heading 3002, HTSUS. Therefore, if the above-identified products can be properly classified under heading 3002 HTSUS, they are precluded from classification under heading 3004, HTSUS.

All three products, Raptiva®, Rituxan®, and Xolair®, contain monoclonal antibodies as their active ingredient. Monoclonal antibodies (MAbs) are included within the definition of "modified immunological products". *See* Note 2 to Chapter 30, HTSUS; EN 30.02(C)(2)(a). MAbs are used therapeutically to stimulate the immune system. Here, the MAbs are put up in measured doses for retail sale, but remain classified in heading 3002, HTSUS. *See* EN 30.02. Therefore, the above identified drug products are properly classified under heading 3002, HTSUS, and are excluded from classification under heading 3004, HTSUS. The products are specifically provided for under subheading 3002.10.01, HTSUS, which provides for: "Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products: Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes".

HOLDING:

By application of GRI 1, the drug products Raptiva®, Rituxan®, and Xolair® are classified in subheading 3002.10.01, HTSUS, which provides for "… modified immunological products, whether or not obtained by means of biotechnological processes …: Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes". The rate of duty is free. Duty rates are provided for your convenience and are subject to change.

EFFECT ON OTHER RULINGS:

New York Ruling Letter K83806, dated March 15, 2004, is hereby MODIFIED.

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

Sincerely,

ALLYSON MATTANAH
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT B]

HQ H110420

August 2, 2011
CLA–2 OT:RR:CTF:TCM H110420 AMM
CATEGORY: Classification
TARIFF NO.: 3002.10.01

MR. RON REUBEN
DANZAS AEI CUSTOMS BROKERAGE SERVICES
5510 WEST 102ND STREET
LOS ANGELES, CA 90045

RE: Modification of New York Ruling Letter K83509; classification of monoclonal antibody medicaments

DEAR MR. REUBEN,

This is in regard to New York Ruling Letter (NY) K83509, dated March 12, 2004, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of certain monoclonal antibody drug products. In NY K83509, Customs and Border Protection (CBP) classified the drug products Avastin™ (bevacizumab), and Herceptin® (trastuzumab) under heading 3004, HTSUS. We have reconsidered this ruling and have determined that these monoclonal antibody drug products are provided for in heading 3002, HTSUS.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify NY K83509 was published on May 11, 2011, in Volume 45, Number 20, of the Customs Bulletin. CBP received no comments in response to this notice.

FACTS:

Avastin™ (bevacizumab) is a medicament containing Bevacizumab, a recombinant humanized monoclonal antibody to vascular endothelial growth factor (VEGF), as the active ingredient. It is indicated for the treatment of metastatic carcinoma of the colon or rectum. Avastin™ (bevacizumab) is supplied as a sterile solution in single-use glass vials.

Herceptin® (trastuzumab) is a medicament containing Trastuzumab, a recombinant DNA-derived humanized monoclonal antibody, as the active ingredient. It is indicated for the treatment of metastatic breast cancer. Herceptin® (trastuzumab) is supplied as a lyophilized, sterile powder in multi-dose vials. Each vial, in turn, is packaged with a vial of diluent in a paperboard box.

NY K83509 classified Avastin™ and Herceptin® under subheading 3004.90.91, HTSUS, which provides for: "Medicaments … consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale: Other: Other".

ISSUE:

Are the the subject monoclonal antibody medicaments properly classified under heading 3002, HTSUS, as "modified immunological products," or under heading 3004, HTSUS, as "medicaments … consisting of mixed or unmixed products for therapeutic or prophylactic uses?"

LAW AND ANALYSIS:

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

The HTSUS provisions at issue are as follows:

3002	Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products:
3002.10.01	Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes:
----------	----------
3004	Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale:
3004.90	Other:
3004.90.91	Other:

Note 2 of Chapter 30, HTSUS, states: "For the purposes of heading 3002, the expression 'modified immunological products' applies only to monoclonal antibodies (MABs), antibody fragments, antibody conjugates and antibody fragment conjugates."

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

The EN to Heading 30.02 states, in pertinent part:

This heading covers:

* * *

(C) Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes. These products include:

* * *

(2) Modified immunological products, whether or not obtained by means of biotechnological processes.

Products used for diagnostic or therapeutic purposes and for immunological tests are to be regarded as falling within this product group. They can be defined as follows:

(a) Monoclonal antibodies (MABs) - specific immunoglobulins from selected and cloned hybridoma cells cultured in a culture medium or ascites.

* * *

The products of this heading remain classified here whether or not in measured doses or put up for retail sale and whether in bulk or in small packings.

Ruling K83509 classified the above-identified products under heading 3004, HTSUS. However, the heading specifically excludes goods which can be classified under heading 3002, HTSUS. Therefore, if the above-identified products can be properly classified under heading 3002 HTSUS, they are precluded from classification under heading 3004, HTSUS.

Both products, Avastin™ and Herceptin®, contain monoclonal antibodies as their active ingredient. Monoclonal antibodies (MAbs) are included within the definition of "modified immunological products". *See* Note 2 to Chapter 30, HTSUS; EN 30.02(C)(2)(a). MAbs are used therapeutically to stimulate the immune system. Here, the MAbs are put up in measured doses for retail sale, but remain classified in heading 3002, HTSUS. *See* EN 30.02. Therefore, the above identified drug products are properly classified under heading 3002, HTSUS, and are excluded from classification under heading 3004, HTSUS. The products are specifically provided for under subheading 3002.10.01, HTSUS, which provides for: "Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products: Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes"

HOLDING:

By application of GRI 1, the drug products Avastin™ and Herceptin® are properly classified under subheading 3002.10.01, HTSUS, which provides for "… modified immunological products, whether or not obtained by means of biotechnological processes …: Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes". The rate of duty is free. Duty rates are provided for your convenience and are subject to change.

EFFECT ON OTHER RULINGS:

New York Ruling Letter K83509, dated March 12, 2004, is hereby MODIFIED.

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

Sincerely,

ALLYSON MATTANAH
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT C]

HQ H110419

August 2, 2011
CLA–2 OT:RR:CTF:TCM H110419 AMM
CATEGORY: Classification
TARIFF NO.: 3002.10.01

MR. HERBERT J. LYNCH, ESQ.
SULLIVAN & LYNCH, P.C.
56 ROLAND STREET, SUITE 303
BOSTON, MA 02129–1223

RE: Revocation of New York Ruling Letter K86861; classification of monoclonal antibody medicaments

DEAR MR. LYNCH,

This is in regard to New York Ruling Letter (NY) K86861, dated June 18, 2004, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of certain monoclonal antibody drug products. In NY K86861, Customs and Border Protection (CBP) classified the drug product Antegren® (natalizumab) under headings 3003 and 3004, HTSUS. We have reconsidered this ruling and have determined that these monoclonal antibody drug products are provided for in heading 3002, HTSUS.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY K86861 was published on May 11, 2011, in Volume 45, Number 20, of the Customs Bulletin. CBP received no comments in response to this notice.

FACTS:

NY K86861 described the Antegren® product as follows:

> The subject products consist of Antegren® (natalizumab) mixed with excipients and imported in bulk form, and Antegren® (natalizumab) mixed with excipients and imported put up in single-dose vials. Antegren® is the registered trade name for an investigational drug having the nonproprietary (generic) name: natalizumab, a humanized monoclonal antibody designed to inhibit the migration of immune cells into chronically inflamed tissue where these cells may cause or maintain inflammation. You indicate in your letter that, on May 25, 2004, your client submitted a Biologics License Application (BLA) to the FDA, based on data obtained and analyzed from the first year of FDA-regulated Phase lll clinical trials, for the approval of Antegren® (natalizumab) for the treatment of multiple sclerosis (MS). You further indicate that Antegren® (natalizumab) is currently in FDA-regulated Phase lll clinical trials to evaluate its efficacy for use in the treatment of Crohn's disease, and in FDA-regulated Phase ll clinical trials to evaluate its efficacy for use in the treatment of rheumatoid arthritis.

NY K86861 classified Antegren® mixed with excipients and imported in bulk form under subheading 3003.90.00, HTSUS, which provides for: "Medicaments … consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale: Other", and Antegren® mixed with excipients and imported put up in single dose vials under subheading 3004.90.91, HTSUS, which provides for: "Medicaments … consisting of

mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale: Other: Other".

ISSUE:

What is the proper classification of the subject monoclonal antibody medicaments?

LAW AND ANALYSIS:

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

The HTSUS provisions at issue are as follows:

3002	Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products:
3002.10.01	Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes:
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3003	Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale:
3003.90.00	Other
---	---
3004	Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale:
3004.90	Other:
3004.90.91	Other:

Note 2 of Chapter 30, HTSUS, states: "For the purposes of heading 3002, the expression 'modified immunological products' applies only to monoclonal antibodies (MABs), antibody fragments, antibody conjugates and antibody fragment conjugates."

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

The EN to Heading 30.02 states, in pertinent part:

This heading covers:

* * *

(C) Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes. These products include:

* * *

(2) Modified immunological products, whether or not obtained by means of biotechnological processes.
Products used for diagnostic or therapeutic purposes and for immunological tests are to be regarded as falling within this product group. They can be defined as follows:

(a) Monoclonal antibodies (MABs) - specific immunoglobulins from selected and cloned hybridoma cells cultured in a culture medium or ascites.

The products of this heading remain classified here whether or not in measured doses or put up for retail sale and whether in bulk or in small packings.

Ruling K83806 classified Antegren® under headings 3003 and 3004, HTSUS, depending on whether it was imported in bulk form or put up in single-dose vials. However, both headings specifically exclude goods which can be classified under heading 3002, HTSUS. Therefore, if the above-identified product can be properly classified under heading 3002 HTSUS, it is precluded from classification under headings 3003 or 3004, HTSUS.

Antegren® contains monoclonal antibodies as its active ingredient. Monoclonal antibodies (MAbs) are included within the definition of "modified immunological products". *See* Note 2 to Chapter 30, HTSUS; EN 30.02(C)(2)(a). MAbs are used therapeutically to stimulate the immune system. Here, the MAbs are put up in measured doses for retail sale, but remain classified in heading 3002, HTSUS. *See* EN 30.02. Therefore, the above identified drug product is properly classified under heading 3002, HTSUS, and is excluded from classification under headings 3003 and 3004, HTSUS. The product is specifically provided for under subheading 3002.10.01, HTSUS, which provides for: "Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products: Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes"

HOLDING:

By application of GRI 1, the drug product Antegren® is classified in subheading 3002.10.01, HTSUS, which provides for "… modified immunological products, whether or not obtained by means of biotechnological processes …: Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes". The rate of duty is free. Duty rates are provided for your convenience and are subject to change.

EFFECT ON OTHER RULINGS:

New York Ruling Letter K86861, dated June 18, 2004, is hereby REVOKED.

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

Sincerely,

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT D]

HQ H128157

August 2, 2011
CLA–2 OT:RR:CTF:TCM H128157 AMM
CATEGORY: Classification
TARIFF NO.: 3002.10.01

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

RE: Revocation of New York Ruling Letter H85059; classification of monoclonal antibody medicaments

DEAR MR. HOFFACKER,

This is in regard to New York Ruling Letter (NY) H85059, dated August 22, 2001, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of certain monoclonal antibody drug products. In NY H85059, Customs and Border Protection (CBP) classified the drug product Campath® (alemtuzumab) under heading 3004, HTSUS. We have reconsidered this ruling and have determined that these monoclonal antibody drug products are provided for in heading 3002, HTSUS.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY H85059 was published on May 11, 2011, in Volume 45, Number 20, of the Customs Bulletin. CBP received no comments in response to this notice.

FACTS:

NY H85059 described the Campath® product as follows:

> Campath® (Alemtuzumab), consists of a medicament containing Campath-1H, a recombinant DNA-derived humanized monoclonal antibody, as the active ingredient. Campath® (Alemtuzumab), which is supplied put up in single-use clear-glass ampoules, is indicated for the treatment of B-cell chronic lymphocytic leukemia.

NY H85059 classified Campath® under subheading 3004.90.90, HTSUS (revision 2001), which provides for: "Medicaments … consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale: Other: Other".

ISSUE:

Are the the subject monoclonal antibody medicaments properly classified under heading 3002, HTSUS, as "modified immunological products," or under heading 3004, HTSUS, as "medicaments … consisting of mixed or unmixed products for therapeutic or prophylactic uses?"

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be

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

The HTSUS provisions at issue are as follows:

3002	Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products:
3002.10.01	Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes:
----------	----------
3004	Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale:
3004.90	Other:
3004.90.91	Other:

Note 2 of Chapter 30, HTSUS, states: "For the purposes of heading 3002, the expression 'modified immunological products' applies only to monoclonal antibodies (MABs), antibody fragments, antibody conjugates and antibody fragment conjugates."

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

The EN to Heading 30.02 states, in pertinent part:

This heading covers:

* * *

(C) Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes. These products include:

* * *

(2) Modified immunological products, whether or not obtained by means of biotechnological processes.

Products used for diagnostic or therapeutic purposes and for immunological tests are to be regarded as falling within this product group. They can be defined as follows:

(a) Monoclonal antibodies (MABs) - specific immunoglobulins from selected and cloned hybridoma cells cultured in a culture medium or ascites.

* * *

> The products of this heading remain classified here whether or not in measured doses or put up for retail sale and whether in bulk or in small packings.

Ruling H85059 classified Campath® under heading 3004, HTSUS. However, this heading specifically excludes goods which can be classified under heading 3002, HTSUS. Therefore, if the above-identified product can be properly classified under heading 3002 HTSUS, it is precluded from classification under heading 3004, HTSUS.

Campath® contains monoclonal antibodies as its active ingredient. Monoclonal antibodies (MAbs) are included within the definition of "modified immunological products". *See* Note 2 to Chapter 30, HTSUS; EN 30.02(C)(2)(a). MAbs are used therapeutically to stimulate the immune system. Here, the MAbs are put up in measured doses for retail sale, but remain classified in heading 3002, HTSUS. *See* EN 30.02. Therefore, the above identified drug product is properly classified under heading 3002, HTSUS, and is excluded from classification under heading 3004, HTSUS. The product is specifically provided for under subheading 3002.10.01, HTSUS, which provides for: "Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products: Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes".

HOLDING:

By application of GRI 1, the drug product Campath® is classified in subheading 3002.10.01, HTSUS, which provides for "… modified immunological products, whether or not obtained by means of biotechnological processes … : Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes". The rate of duty is free. Duty rates are provided for your convenience and are subject to change.

EFFECT ON OTHER RULINGS:

New York Ruling Letter H85059, dated August 22, 2001, is hereby REVOKED.

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

Sincerely,

ALLYSON MATTANAH
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

AGENCY INFORMATION COLLECTION ACTIVITIES:

Crewman's Landing Permit

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

ACTION: 30-Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Crewman's Landing Permit (CBP Form I–95). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 31353) on May 31, 2011, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before September 8, 2011.

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Alien Crewman Landing Permit.

OMB Number: 1651–0114.

Form Number: Form I–95.

Abstract: CBP Form I–95, *Crewman's Landing Permit,* is prepared and presented to CBP by the master or agent of vessels and aircraft arriving in the United States for alien crewmen applying for landing privileges. This form is provided for by 8 CFR 251.1(c) which states that, with certain exceptions, the master, captain, or agent shall present this form to CBP for each nonimmigrant alien crewman on board. In addition, pursuant to 8 CFR 252.1(e), CBP Form I–95 serves as the physical evidence that an alien crewmember has been granted a conditional permit to land temporarily, and it is also a prescribed registration form under 8 CFR 264.1 for crewmen arriving by vessel or air. CBP Form I–95 is authorized by Section 252 of the Immigration and Nationality Act (8 U.S.C. 1282) and is accessible at *http://forms.cbp.gov/pdf/*

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours or to this collection of information.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 433,000.

Total Number of Estimated Annual Responses: 433,000.

Estimated time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 35,939.

Dated: August 3, 2011.

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

AGENCY INFORMATION COLLECTION ACTIVITIES:

Certificate of Origin

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

ACTION: 30-Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Certificate of Origin (CBP Form 3229). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 19119) on April 6, 2011, allowing for a 60-day comment period. One comment was received. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before September 12, 2011.

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

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

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Certificate of Origin.

OMB Number: 1651–0016.

Form Number: CBP Form 3229.

Abstract: CBP Form 3229, Certificate of Origin, is used by shippers to declare that goods being imported into the United States are produced or manufactured in a U.S. insular possession from materials grown, produced or manufactured in such possession, and to list the foreign materials included in the goods, including their description and value. CBP Form 3229 is used as documentation for goods entitled to enter the U.S. free of duty. This form is authorized by General Note 3(a)(iv) of the Harmonized Tariff Schedule of the Untied States (19 U.S.C. 1202) and is provided for by 19 CFR 7.3 CBP Form 3229 is accessible at: *http://forms.cbp.gov/pdf/CBP_Form_3229.pdf.*

Current Actions: CBP proposes to extend the expiration date of this information collection with a change to the burden hours based on revised estimates by CBP of the number of forms filed annually. There is no change to the information being collected or to CBP Form 3229.

Type of Review: Extension (with change).

Affected Public: Businesses.

Estimated Number of Respondents: 113.

Estimated Number of Responses per Respondent: 20.

Estimated Number of Total Annual Responses: 2,260.

Estimated Time per Response: 22 minutes.

Estimated Total Annual Burden Hours: 814.

Dated: August 8, 2011.

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