

# U.S. Customs and Border Protection



## RE-ACCREDITATION AND RE-APPROVAL OF INTERTEK CALEB BRETT AS A COMMERCIAL GAUGER

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

**ACTION:** Notice of re-approval of Intertek Caleb Brett, Ponce, Puerto Rico, as a commercial gauger.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.13, Intertek Caleb Brett, Ponce, Puerto Rico 00717-2235, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the gauger service requested. Alternatively, inquiries regarding the gauger services this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [http://www.cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/org\\_and\\_operations.xml](http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml).

**DATES:** The re-approval of Intertek Caleb Brett as a commercial gauger became effective on March 10, 2010. The next triennial inspection date will be scheduled for March 2013.

**FOR FURTHER INFORMATION CONTACT:** Donald Cousins, Director, Scientific Services, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1331 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1295.

Dated: August 16, 2011.

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

[Published in the Federal Register, October 19, 2011 (76 FR 64966)]

**RE-ACCREDITATION AND RE-APPROVAL OF SGS NORTH AMERICA, INC. AS A COMMERCIAL GAUGER AND LABORATORY**

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

**ACTION:** Notice of re-approval of SGS North America, Inc., Bayonne, New Jersey, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.13, SGS North America, Inc., Bayonne, New Jersey 07002, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to *[http://www.cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/org\\_and\\_operations.xml](http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml)*.

**DATES:** The re-approval of SGS North America, Inc. as a commercial gauger and laboratory became effective on May 2, 2011. The next triennial inspection date will be scheduled for May 2014.

**FOR FURTHER INFORMATION CONTACT:** Donald Cousins, Director, Scientific Services, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1331 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1295.

Dated: August 16, 2011.

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

**RE-ACCREDITATION AND RE-APPROVAL OF  
INSPECTORATE AMERICA CORPORATION AS A  
COMMERCIAL GAUGER AND LABORATORY**

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

**ACTION:** Notice of re-approval of Inspectorate America Corporation, Savannah, Georgia, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.13, Inspectorate America Corporation, Savannah, Georgia 31415, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [http://www.cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/org\\_and\\_operations.xml](http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml).

**DATES:** The re-approval of Inspectorate America Corporation as a commercial gauger and laboratory became effective on May 19, 2011. The next triennial inspection date will be scheduled for May 2014.

**FOR FURTHER INFORMATION CONTACT:** Donald Cousins, Director, Scientific Services, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1331 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1295.

Dated: August 16, 2011.

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

**RE-ACCREDITATION AND RE-APPROVAL OF OMNI  
HYDROCARBON MEASUREMENT, INC. AS A  
COMMERCIAL GAUGER**

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

**ACTION:** Notice of re-approval of Omni Hydrocarbon Measurement, Inc., Crosby, Texas, as a commercial gauger.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.13, Omni Hydrocarbon Measurement, Inc., Crosby, Texas 77532, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the gauger service requested. Alternatively, inquiries regarding the gauger services this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [http://www.cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/org\\_and\\_operations.xml](http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml).

**DATES:** The re-approval of Omni Hydrocarbon Measurement, Inc. as a commercial gauger became effective on April 28, 2011. The next triennial inspection date will be scheduled for April 2014.

**FOR FURTHER INFORMATION CONTACT:** Donald Cousins, Director, Scientific Services, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1331 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1295.

Dated: August 16, 2011.

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

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**ACCREDITATION AND APPROVAL OF INTERTEK USA,  
INC., AS A COMMERCIAL GAUGER AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., Carr. # 28, Km 2.0, Ind. Park Luchetti, Bayamon, PR 00960, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: [http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/).

**DATES:** The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on February 25, 2010. The next triennial inspection date will be scheduled for February 2013.

**FOR FURTHER INFORMATION CONTACT:** Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: October 6, 2011.

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

[Published in the Federal Register, October 19, 2011 (76 FR 64963)]



**ACCREDITATION AND APPROVAL OF INTERTEK USA,  
INC., AS A COMMERCIAL GAUGER AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 2780 Highway 69 N, Nederland, TX 77627, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: [http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on May 11, 2011. The next triennial inspection date will be scheduled for May 2014.

**FOR FURTHER INFORMATION CONTACT:** Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: October 6, 2011.

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

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**ACCREDITATION AND APPROVAL OF INTERTEK USA,  
INC., AS A COMMERCIAL GAUGER AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 149 Pintail St., St. Rose, LA 70087, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. [http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/).

**DATES:** The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on June 22, 2011. The next triennial inspection date will be scheduled for June 2014.

**FOR FURTHER INFORMATION CONTACT:** Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: October 6, 2011.

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

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**ACCREDITATION AND APPROVAL OF SAYBOLT LP, AS A  
COMMERCIAL GAUGER AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of Saybolt LP, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt LP, 1809 Magnolia Ave, Port Neches, TX 77651, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. [http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The accreditation and approval of Saybolt LP, as commercial gauger and laboratory became effective on May 19, 2011. The next triennial inspection date will be scheduled for May 2014.

**FOR FURTHER INFORMATION CONTACT:** Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: October 6, 2011.

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

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**ACCREDITATION AND APPROVAL OF INSPECTORATE  
AMERICA CORPORATION, AS A COMMERCIAL GAUGER  
AND LABORATORY**

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



**ACTION:** Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 16025-C Jaintoport Blvd., Houston, TX 77015, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: [http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on July 13, 2011. The next triennial inspection date will be scheduled for July 2014.

**FOR FURTHER INFORMATION CONTACT:** Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: October 6, 2011.

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

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**ACCREDITATION AND APPROVAL OF SGS NORTH  
AMERICA, INC. AS A COMMERCIAL GAUGER AND  
LABORATORY**

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

**ACTION:** Notice of approval of SGS North America, Inc., Carson, California, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, SGS North America, Inc., Carson, California 90746, has been approved to gauge and test petroleum and petroleum products, organic chemicals and vegetable oils, for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [http://www.cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/org\\_and\\_operations.xml](http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml).

**DATES:** The approval of SGS North America, Inc. as a commercial gauger and approved laboratory became effective on May 26, 2011. The first triennial inspection date will be scheduled for May 2014.

**FOR FURTHER INFORMATION CONTACT:** Donald Cousins, Director, Scientific Services, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1331 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1295.

Dated: August 16, 2011.

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

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

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

**ACTION:** General notice.

**SUMMARY:** This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs

duties. For the calendar quarter beginning October 1, 2011, the interest rates for overpayments will be 2 percent for corporations and 3 percent for non-corporations, and the interest rate for underpayments will be 3 percent for both corporations and non-corporations. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

**EFFECTIVE DATE:** October 1, 2011.

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

**SUPPLEMENTARY INFORMATION:**

**Background**

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

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

In Revenue Ruling 2011-18, the IRS determined the rates of interest for the calendar quarter beginning October 1, 2011, and ending on December 31, 2011. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%) for both corporations and non-corporations. For corporate overpayments, the rate is the Federal short-term rate (1%) plus one percentage point (1%) for a total of two percent (2%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%). These interest rates are subject to change for the calendar quarter beginning January 1, 2012, and ending March 31, 2012.

For the convenience of the importing public and Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate

interest on overdue accounts and refunds of customs duties, is published in summary format.

| Beginning date | Ending date | Under-payments (percent) | Over-payments (percent) | Corporate over-payments (Eff. 1-1-99) (percent) |
|----------------|-------------|--------------------------|-------------------------|---|
| 070174 .....   | 063075      | 6                        | 6                       | .....   |
| 070175 .....   | 013176      | 9                        | 9                       | .....   |
| 020176 .....   | 013178      | 7                        | 7                       | .....   |
| 020178 .....   | 013180      | 6                        | 6                       | .....   |
| 020180 .....   | 013182      | 12                       | 12                      | .....   |
| 020182 .....   | 123182      | 20                       | 20                      | .....   |
| 010183 .....   | 063083      | 16                       | 16                      | .....   |
| 070183 .....   | 123184      | 11                       | 11                      | .....   |
| 010185 .....   | 063085      | 13                       | 13                      | .....   |
| 070185 .....   | 123185      | 11                       | 11                      | .....   |
| 010186 .....   | 063086      | 10                       | 10                      | .....   |
| 070186 .....   | 123186      | 9                        | 9                       | .....   |
| 010187 .....   | 093087      | 9                        | 8                       | .....   |
| 100187 .....   | 123187      | 10                       | 9                       | .....   |
| 010188 .....   | 033188      | 11                       | 10                      | .....   |
| 040188 .....   | 093088      | 10                       | 9                       | .....   |
| 100188 .....   | 033189      | 11                       | 10                      | .....   |
| 040189 .....   | 093089      | 12                       | 11                      | .....   |
| 100189 .....   | 033191      | 11                       | 10                      | .....   |
| 040191 .....   | 123191      | 10                       | 9                       | .....   |
| 010192 .....   | 033192      | 9                        | 8                       | .....   |
| 040192 .....   | 093092      | 8                        | 7                       | .....   |
| 100192 .....   | 063094      | 7                        | 6                       | .....   |
| 070194 .....   | 093094      | 8                        | 7                       | .....   |
| 100194 .....   | 033195      | 9                        | 8                       | .....   |
| 040195 .....   | 063095      | 10                       | 9                       | .....   |
| 070195 .....   | 033196      | 9                        | 8                       | .....   |

| Beginning date | Ending date | Under-payments (percent) | Over-payments (percent) | Corporate over-payments (Eff. 1–1–99) (percent) |
|----------------|-------------|--------------------------|-------------------------|---|
| 040196 .....   | 063096      | 8                        | 7                       | .....   |
| 070196 .....   | 033198      | 9                        | 8                       | .....   |
| 040198 .....   | 123198      | 8                        | 7                       | .....   |
| 010199 .....   | 033199      | 7                        | 7                       | 6   |
| 040199 .....   | 033100      | 8                        | 8                       | 7   |
| 040100 .....   | 033101      | 9                        | 9                       | 8   |
| 040101 .....   | 063001      | 8                        | 8                       | 7   |
| 070101 .....   | 123101      | 7                        | 7                       | 6   |
| 010102 .....   | 123102      | 6                        | 6                       | 5   |
| 010103 .....   | 093003      | 5                        | 5                       | 4   |
| 100103 .....   | 033104      | 4                        | 4                       | 3   |
| 040104 .....   | 063004      | 5                        | 5                       | 4   |
| 070104 .....   | 093004      | 4                        | 4                       | 3   |
| 100104 .....   | 033105      | 5                        | 5                       | 4   |
| 040105 .....   | 093005      | 6                        | 6                       | 5   |
| 100105 .....   | 063006      | 7                        | 7                       | 6   |
| 070106 .....   | 123107      | 8                        | 8                       | 7   |
| 010108 .....   | 033108      | 7                        | 7                       | 6   |
| 040108 .....   | 063008      | 6                        | 6                       | 5   |
| 070108 .....   | 093008      | 5                        | 5                       | 4   |
| 100108 .....   | 123108      | 6                        | 6                       | 5   |
| 010109 .....   | 033109      | 5                        | 5                       | 4   |
| 040109 .....   | 123110      | 4                        | 4                       | 3   |
| 010111 .....   | 033111      | 3                        | 3                       | 2   |
| 040111 .....   | 093011      | 4                        | 4                       | 3   |
| 100111 .....   | 123111      | 3                        | 3                       | 2   |

Dated: October 12, 2011.

ALAN D. BERSIN,  
*Commissioner,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, October 19, 2011 (76 FR 64964)]

**NOTICE OF CANCELLATION OF CUSTOMS BROKER  
LICENSES**

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

**ACTION:** General notice.

**SUMMARY:** Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the U.S. Customs and Border Protection regulations (19 CFR 111.51), the following Customs broker licenses and all associated permits are cancelled without prejudice.

| Name                                    | License No. | Issuing port |
|---|-------------|--------------|
| Gwin Customs Consulting, Inc .....      | 23512       | Seattle      |
| Compass Customs Brokerage, Inc .....    | 16272       | Houston      |
| Delaware Valley Floral Group, Inc ..... | 21225       | Miami        |
| Deborah L. Butler .....                 | 10964       | Houston      |
| Neutral Customs Broker, Inc.....        | 13905       | Los Angeles  |

Dated: October 11, 2011.

RICHARD DiNUCCI,  
*Acting Assistant Commissioner,*  
*Office of International Trade.*

[Published in the Federal Register, October 20, 2011 (76 FR 65207)]

**NOTICE OF ISSUANCE OF FINAL DETERMINATION  
CONCERNING A SURGICAL MASK WITH A PROTECTIVE  
EYE SHIELD**

**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 a Surgical Mask with a Protective Eye Shield. Based upon the facts presented, CBP has concluded in the final determination that Turkey is the country of origin of the Surgical Mask with a Protective Eye Shield, for purposes of U.S. Government procurement.

**DATES:** The final determination was issued on October 5, 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 November 14, 2011.

**FOR FURTHER INFORMATION CONTACT:** Robert Dinerstein, Valuation and Special Programs Branch: (202) 325-0132.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on October 5, 2011, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of the Surgical Mask with a Protective Eye Shield, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, in HQ H175429, was issued at the request of Berkley Surgical Company, Inc. under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511-18). In the final determination, CBP explained that, because the surgical mask is classified in the Harmonized Tariff Schedule of the United States (HTSUS) as a textile product, its country of origin is governed by the country of origin rules for textile products, which is set forth in 19 U.S.C. 3592. The country of origin rules for textile products are implemented by the CBP Regulations at 19 CFR 102.21. Applying the specific rule of origin in 19 CFR 102.21 for products classified in subheading 6370.90, HTSUS, we determined that because the manufacturing process involved in producing the surgical face mask occurs in Turkey, the country of origin of the surgical mask with an eye-shield for purposes of government procurement is Turkey.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, 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: October 5, 2011.

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

Attachment



HQ H175429

October 5, 2011

MAR-02 OT:RR:CTF:VS H175429 RSD

CATEGORY: MARKING

MR. DOMENIC TOMMARELLO  
VICE PRESIDENT BERKLEY SURGICAL COMPANY  
49 VIRGINIA AVENUE  
UNIONTOWN, PENNSYLVANIA 15401

RE: Final Determination; U.S. Government Procurement; Country of Origin of a Surgical Face Mask with a Protective Eye Shield; 19 CFR § 177.21; Textile Rules of Origin, 19 CFR § 102.21(c)(4)

DEAR TOMMARELLO:

This is in response to a letter dated June 27, 2011, requesting a final determination pursuant to subpart B Part 177, Customs and Border Protection (“CBP”) Regulations (19 CFR § 177.21 et. seq.). Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (codified at 19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government. This final determination concerns the country of origin of a fluid resistant surgical face mask with an eye shield. We note that Berkley Surgical Company (Berkley) is a party-at-interest within the meaning of 19 CFR § 177.22(d)(1) and is entitled to request this final determination.

**FACTS:**

The product at issue is a surgical face mask with an eye shield. The product is made to be compliant with the United States Food and Drug Administration’s (FDA) requirements for such medical devices. Berkley imports fluid resistant surgical face masks without the eye shields from Turkey. According to the information submitted, the surgical face masks without eye shields are manufactured in Turkey. The outer facing of the surgical face masks are made from printed cellulose or colored polypropylene spun bond non-woven. The surgical mask has two filters inside of it. The first filter is made from 100 percent melt-blown polypropylene and is made in the U.S. The second filter is made of non-woven netting. The inner facing of the mask is made from a white cellulose material. In order to keep the surgical mask in place, it contains a nose wire made from aluminum or coated metal wire. To tie the mask around the face, edge tapes and tie tapes made of polypropylene or polyester non-woven are used. The surgical mask has ear loops made from knitted polyester. All of the other fabrics used in producing the surgical face mask are made in Turkey.

After the surgical mask is imported into the U.S., the transparent eye shield is permanently attached to it through an ultrasonic bonding process. The eye shield provides the wearer splash protection for the eyes, nose and mouth area in a single-device. This eliminates the need for separate and more expensive eye-wear. The eye-shield is made in the United States of optical quality polyester film. The eye-shield accounts for more than 68 percent of

the total value of the finished product. The final product is packaged in the United States with packer boxes and shipper boxes manufactured in the United States.

You have indicated that the finished surgical face mask with an eye-shield is classified in subheading 6307.90.98 of the Harmonized Tariff Schedule of the United States (HTSUS). Samples were submitted with your request.

**ISSUE:**

What is the country of origin of the finished surgical mask with a protective eye shield 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 purpose of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

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) defining “country of origin” in identical terms.

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of Subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 CFR § 177.21. In this regard, CBP recognizes that the Federal Procurement Regulations restrict the U.S. Government’s purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR § 25.403(c)(1).

The Federal Procurement Regulations define “U.S.-made end product” as: \* \* \* an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States 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 transformed. *See* 48 CFR § 25.003. Therefore, the question presented in this final determination is whether, as a result of the operations performed in the United States, the imported surgical face mask is substantially transformed into a product of the United States.

With regard to the surgical face mask with a protective eye shield at issue, your request involves determining whether the article is a U.S.-made end product or a product of Turkey. The information submitted indicates that the surgical mask is made chiefly from non-woven textile fabrics. You also indicate that it is classified in subheading 6307.90.98, HTSUS, as a textile

product. The rules of origin for textile products for purposes of the customs laws and the administration of quantitative restrictions are governed by 19 U.S.C. § 3592, unless otherwise provided for by statute. *See* Headquarters Ruling (HQ) H112725 dated October 6, 2010. These provisions are implemented in the CBP Regulations at 19 CFR § 102.21. Section 3592 has been described as Congress's expression of substantial transformation as it relates to textile products. Therefore, country of origin of the surgical face mask for government procurement purposes will be determined under the textile rules of origin.

As the finished surgical face mask is produced by processing in more than one country, its origin cannot be determined by application of 19 CFR § 102.21(c)(1), wholly obtained or produced rule, and resort must be made to 19 CFR § 102.21(c)(2). Section 102.21(c)(2) states that the origin of a good is the country "in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of [102.21]." Section 102.21(e) provides in pertinent part:

The following rules will apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section:

6307.90 The country of origin of a good classifiable under subheading 6307.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.

As you have indicated, while most of the fabric used in producing the surgical face mask is made in Turkey, the melt-blown polypropylene fabric used in one of the filter linings of the surgical mask is made in the United States. Consequently, there is more than one country involved in the fabric-making process, and thus 19 CFR § 102.21(c)(2) is inapplicable.

19 CFR § 102.21(c)(3) states in pertinent part,

Where the country of origin of a textile or apparel cannot be determined under paragraph (c)(1) or (2) of this section:

(ii) Except for goods of \*\*\* subheading \*\*\* 6307.90 \*\*\* if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

As the subject merchandise is not knit to shape, and is classified in heading 6307.90, HTSUS, section 102.21(c)(3) is also inapplicable.

Section 102.21(c)(4) states, "Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1), (2) or (3) of this section, the country of origin of the good is the single country, territory or insular possession in which the most important assembly or manufacturing process occurred".

In this case, there are two basic processes involved in producing the finished good. The first process is the manufacture of the surgical face mask in Turkey from the various non-woven textile fabrics. The second process is the attachment of the protective eye-shield to the surgical face mask using ultrasonic bonding which occurs in the United States. We believe of these two processes that the more important one is the manufacturing process of the surgical face mask from the various fabrics in Turkey. The surgical face mask is the more significant part of the completed item because even without the

protective eye-shield, the surgical face mask can still be worn across the face and be used when performing surgical procedures. On the other hand, the protective eye-shield must be attached to the surgical mask; otherwise, it is completely useless. The assembly of eye-shield to the surgical mask constitutes only an enhancement to the surgical face mask, but it does not change the fundamental nature or the basic use of the product. In addition, the manufacture of the surgical facial mask from the various fabrics seems to be a more complex operation than the relatively simple assembly operation of using an ultrasonic bonding process to attach the protective eye-shield to the surgical face mask. Consequently, we conclude that the manufacture of the surgical face mask from various non-woven fabrics occurring in Turkey is the most important process involved in producing the finished product. Therefore, we find in accordance with 19 CFR § 102.21(c)(4), the country of origin of the surgical face mask with a protective eye-shield for purposes of government procurement is Turkey.

**HOLDING:**

Based on the facts and analysis set forth above, the finished surgical face mask with a protective eye-shield is a product of Turkey for the purpose of government procurement.

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

*Sincerely,*

SANDRA L. BELL,

*Executive Director,*

*Office of Regulations and Rulings, Office of  
International Trade.*

[Published in the Federal Register, October 14, 2011 (76 FR 63942)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:**

**Small Vessel Reporting System**

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

**ACTION:** 60-Day Notice and request for comments; Establishment of a new collection of information.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement con-

cerning the Small Vessel Reporting System (SVRS). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

**DATES:** Written comments should be received on or before December 19, 2011, to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177.

**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). 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:** Small Vessel Reporting System.

**OMB Number:** Will be assigned upon approval.

**Form Number:** None.

**Abstract:** CBP proposes to establish a collection of information for the Small Vessel Reporting System (SVRS), which is a pilot program to allow certain participants using small pleasure boats to report their arrival telephonically instead of having to appear in person for inspection by a CBP officer each time they enter the

United States. In some cases, a participant may also be asked to report to CBP for an in person inspection upon arrival. Participants may be U.S. citizens, U.S. lawful permanent residents, Canadian citizens, and permanent residents of Canada who are nationals of Visa Waiver Program countries listed in 8 CFR 217.2(a). In addition, participants of one or more trusted traveler pilot programs and current Canadian Border Boater Landing Permit (CBP Form I-68) holders may also participate in SVRS.

In order to register for the SVRS pilot program, participants enter data via the SVRS Web site which collects information such as biographical information and vessel information. Participants will go through the in person CBP inspection process during SVRS registration, and in some cases, upon arrival in the United States. SVRS is authorized by 8 U.S.C. 1103, 8 U.S.C. 1225, 8 CFR 235.1, 19 U.S.C. 1433, 19 U.S.C. 1498, and 19 CFR 4.2.

**Current Actions:** CBP proposes to establish a new collection of information.

**Type of Review:** Approval of a new collection.

**Affected Public:** Individuals.

**Estimated Number of Respondents:** 10,000.

**Estimated Number of Responses per Respondent:** 4.

**Estimated Total Annual Responses:** 40,000.

**Estimated Time per Response:** 30 minutes.

**Estimated Total Annual Burden Hours:** 20,000.

Dated: October 17, 2011.

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

[Published in the Federal Register, October 20, 2011 (76 FR 65206)]

**PROPOSED REVOCATION OF RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
CLASSIFICATION OF A SKY BALL CATCH SET FROM  
CHINA**

**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 a sky ball catch set from China.

**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 a ruling concerning the classification of a Sky Catch Ball Set 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. This notice corrects the one published in the Customs Bulletin on June 9, 2010.

**DATES:** Comments must be received on or before December 2, 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 Sky Catch Ball Set. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) N023143, dated March 7, 2008 (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 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 N023143, CBP ruled that a Sky Catch Ball Set is classified in subheading 9506.99.60, HTSUS, which provides for "articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Other: Other: Other." The referenced ruling is incorrect because the subject Sky Catch Ball Set is correctly classified in subheading 9503.00.00, HTSUS, which provides for "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."



Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N023143, 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”) H092279. (see Attachment “B” 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: October 5, 2011

IEVA K. O’ROURKE

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## [ATTACHMENT A]

N023143

March 7, 2008

CLA-2-95:RR:OT:2:224

CATEGORY: Classification

TARIFF NO.: 9506.99.6080

MR. JOSEPH R. HOFFACKER  
BARTHCO TRADE CONSULTANTS  
THE NAVY YARD  
5101 S. BROAD STREET  
PHILADELPHIA, PA 19112-1404

RE: The tariff classification of a Sky Catch Ball Set from China

DEAR MR. HOFFACKER:

In your letter dated February 1, 2008, you requested a tariff classification ruling, on behalf of K.B. Toys of Massachusetts, Inc., your client.

The submitted sample, a Sky Catch Ball Set, item number 82270, is an outdoor game that is comprised of two plastic paddles and one plastic ball. The paddles are used to both throw and catch the ball. The game is designed for players, ages three and up. The sample will be returned, as requested.

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the harmonized system is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may be applied.

The imported merchandise consists of outdoor game equipment. Heading 9506, HTSUS, provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter..." Since the subject Sky Catch Ball Set is designed principally for outdoor game play, there is no need to go any further than this heading in the tariff for classification of the merchandise. There is no subheading provision in heading 9506 that specifically addresses or describes the subject merchandise and accordingly the set will be classified in the heading's residual provision, subheading 9506.99.6080, HTSUS.

The applicable subheading for the Sky Catch Ball Set will be 9506.99.6080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports...or outdoor games...Other...Other." The rate of duty will be 4% ad valorem.

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

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

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

imported. If you have any questions regarding the ruling, contact National Import Specialist James Forkan at 646-733-3025.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H092279  
CLA-2 OT:RR:CTF:TCM HQ H092279 TNA  
CATEGORY: Classification  
TARIFF NO.: 9503.00.00

MR. JOSEPH HOFFACKER  
BARTHCO TRADE CONSULTANTS  
THE NAVY YARD  
5101 S. BROAD STREET  
PHILADELPHIA, PA 19112-1404

RE: Revocation of NY N023143; Classification of a Sky Catch Ball Set from China

DEAR MR. HOFFACKER:

This letter is in reference to New York Ruling Letter (“NY”) N023143, issued to K.B. Toys on March 7, 2008, concerning the tariff classification of a Sky Catch Set from China. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the Sky Catch Ball Set under subheading 9506.99.60, Harmonized Tariff Schedule of the United States (“HTSUS”), as “articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Other: Other: Other.” We have reviewed NY N023143 and found it to be in error. For the reasons set forth below, we hereby revoke NY N023143. This ruling corrects the version published in the Customs Bulletin on June 9, 2010.

**FACTS:**

The subject merchandise consists of an outdoor game that is comprised of two plastic paddles and one plastic ball. The paddles are used to both throw and catch the ball. The game is designed for players ages three and older.

In NY N023143, dated March 7, 2008, CBP classified the Sky Catch Ball Set under subheading 9506.99.60, HTSUS, as: “Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Other: Other: Other.”

**ISSUE:**

Whether a Sky Catch Set is classified under heading 9503, HTSUS, as a toy, or under heading 9506, HTSUS, as an article or equipment for general physical exercise, gymnastics or other sports?

**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:

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

\* \* \* \* \*
\* \* \* \* \*

9506 Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:

Other:

9506.99 Other:

9506.99.60 Other

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).

The EN for heading 9503, HTSUS, states, in pertinent part: This heading covers:...

(D) Other toys

This group covers toys intended essentially for the amusement of persons (children or adults)... This group includes: All toys not included in (A) to (C).

Most of the toys are mechanically or electrically operated. These include:...

- (ix) Toy sports equipment, whether or not in sets (e.g., golf sets, tennis sets, archery sets, billiard sets; baseball bats, cricket bats, hockey sticks).

The EN for heading 9506, HTSUS, states, in pertinent part:

(B) Requisites for other sports and outdoor games (other than toys presented in sets, or separately, of heading 95.03), e.g. :

- (1) Snow-skis and other snow-ski equipment, (e.g., ski-fastenings (ski-bindings), ski brakes, ski poles).
- (2) Water-skis, surf-boards, sailboards and other water-sport equipment, such as diving stages (platforms), chutes, divers’ flippers and respiratory masks of a kind used with-

out oxygen or compressed air bottles, and simple underwater breathing tubes (generally known as “snorkels”) for swimmers or divers.

- (3) Golf clubs and other golf equipment, such as golf balls, golf tees.
- (4) Articles and equipment for table-tennis (ping-pong), such as tables (with or without legs), bats (paddles), balls and nets.
- (5) Tennis, badminton or similar rackets (e.g., squash rackets), whether or not strung.
- (6) Balls, other than golf balls and table-tennis balls, such as tennis balls, footballs, rugby balls and similar balls (including bladders and covers for such balls); water polo, basketball and similar valve type balls; cricket balls.
- (7) Ice skates and roller skates, including skating boots with skates attached.
- (8) Sticks and bats for hockey, cricket, lacrosse, etc.; chistera (jai alai scoops); pucks for ice hockey; curling stones.
- (9) Nets for various games (tennis, badminton, volleyball, football, basketball, etc.).
- (10) Fencing equipment: fencing foils, sabres and rapiers and their parts (e.g., blades, guards, hilts and buttons or stops), etc.
- (11) Archery equipment, such as bows, arrows and targets.
- (12) Equipment of a kind used in children’s playgrounds (e.g., swings, slides, see-saws and giant strides).
- (13) Protective equipment for sports or games, e.g., fencing masks and breast plates, elbow and knee pads, cricket pads, shin-guards.
- (14) Other articles and equipment, such as requisites for deck tennis, quoits or bowls; skate boards; racket presses; mallets for polo or croquet; boomerangs; ice axes; clay pigeons and clay pigeon projectors; bobsleighs (bobsleds), luges and similar non-motorised vehicles for sliding on snow or ice.

In NY N023143, CBP classified the subject merchandise under heading 9506, HTSUS, as articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading

pools; parts and accessories thereof. Multiple court cases and CBP rulings distinguish between objects which are used in competitive sports, and items that principally provide amusement, classifying the former in heading 9506, HTSUS, and the latter in heading 9503, HTSUS.

In particular, the Court of International Trade construes heading 9503 as a “principal use” provision insofar as it pertains to toys. See *Minnetonka Brands v. United States*, 110 F.Supp. 2d 1020, 1026 (Ct. Int’l Trade 2000). In order for the merchandise to be considered a toy under heading 9503, HTSUS, the item’s principal use must be for amusement. In *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, C.D. 4688 (1977), the court noted that “when amusement and utility become locked in controversy, the question becomes one of determining whether the amusement is incidental to the utilitarian purpose, or the utilitarian purpose incidental to the amusement.” *Ideal Toy Corp.*, 78 Cust. Ct. 28 at 33.

Courts have also 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).

Furthermore, *Newman Importing Co., Inc. v. United States* construed the term “sport” to include specific activities which possess, “to a meaningful degree, the same attributes of healthy, challenging and skillful recreation which characterize such acknowledged sports as scuba diving, skiing, horseback riding and mountain climbing.” *Newman Importing Co., Inc. v. United States*, 76 Cust. Ct. 143, 144.

Numerous CBP rulings distinguish between the items of heading 9503, HTSUS, and heading 9506, HTSUS, along these lines. HQ 950401, dated July 6, 1992, for example, classified a Frisbee under heading 9503, HTSUS, because it was a “source of fun and amusement” rather than being an activity that required “serious competition or intense testing of ones’ skills and athletic ability.” See HQ 950401. Other rulings have classified Velcro-surfaced paddles and a Velcro Ball as toys because their “relatively flimsy construction” indicated that they were “principally intended for use as a toy and not for rugged, serious athletic activity.” See HQ 950580, dated February 20, 1992. Other rulings have classified merchandise in heading 9503, HTSUS, based on a similar distinguishing between competitive sports and toys. See, e.g., HQ 953122, dated April 22, 1993 (“it is our determination that the item is a toy in that its principle use is to provide amusement to children or adults, not to equip them for competition and winning.”); HQ 959715, dated March 11, 1997; HQ 959885, dated December 30, 1997; HQ 961718, dated May 7, 1999.

In the present case, the subject merchandise consists of plastic paddles and a plastic ball, certainly a flimsier construction than the leather baseball gloves and hardballs used in competitive baseball, for example. Furthermore, the subject merchandise does little to foster participants’ athletic skills

and competitive edge. As a result, we find that the sky catch ball set is designed as a source of amusement rather than as a serious athletic activity meant to equip its users for competition.

As a result, CBP finds that the Sky Catch Ball Set is classified under subheading 9503.00.00, HTSUS, as “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.”

**HOLDING:**

Under the authority of GRI 1, K.B. Toys’ Sky Catch Ball set from China is provided for in subheading 9503.00.00, HTSUS, which provides for “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.” The general, column one, duty rate is free.

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

**EFFECT ON OTHER RULINGS:**

NY N023143, dated March 7, 2008, is REVOKED.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**GENERAL NOTICE**

**19 CFR PART 177**

**PROPOSED REVOCATION OF RULING LETTERS AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
CLASSIFICATION OF JINGLE BELL WREATHS AND  
HANGING DECORATIONS**

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

**ACTION:** Notice of proposed revocations of ruling letters and treatment relating to the classification of jingle bell wreaths and hanging decorations.

**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 jingle bell wreaths and hanging decorations under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB proposes 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 December 2, 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 two rulings pertaining to the classification of jingle bell wreaths and hanging decorations. Although in this notice CBP is specifically referring to New York Ruling Letters (NY) J85472, dated June 10, 2003 (Attachment A), and NY L85374, dated June 20, 2005 (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 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 his agents for importations of merchandise subsequent to this notice.

In NY J85472 and NY L85374, CBP ruled that subject merchandise was classified in subheading 9505.10.25, HTSUS, which provides for "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Articles for Christmas festivities and parts and accessories thereof: Christmas ornaments: Other: Other." These rulings are incorrect because the subject wreaths and decorations are made primarily of bells and are therefore classified in subheading 8306.10.00, HTSUS, which provides for: "bells, gongs, and the like."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY J85472 and NY L85378, 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 H118439. (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: October 5, 2011

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

## [ATTACHMENT A]

NY J85472

June 10, 2003

CLA-2-95:RR:NC:SP:225 J85472

CATEGORY: Classification

TARIFF NO.: 9505.10.2500

MS. KHEM LALL  
FEDERATED MERCHANDISING GROUP  
11 PENN PLAZA  
NEW YORK, NY 10001

RE: The tariff classification of metal ornaments from China.

DEAR MS. LALL:

In your letter dated April 26, 2003, you requested a tariff classification ruling.

You submitted the following samples:

1. Item TN3056642, "Bell Wreath", consists of silver metal jingle bells in the shape of a wreath that measures approximately 13-3/4 inches in diameter. The silver bells are decorated with glitter. At the top of the wreath are three metal holly leaves and three metal holly berries that jingle, and a metal loop for hanging.

2. Item TN30872642, "Christmas Tree Ornament", is a hanging Christmas tree ornament comprised of purple metal jingle bells that measures approximately 3-3/4 inches in diameter. The item has a cord loop for hanging and will be imported in various shades of purple, green, and silver.

3. Item TN30853642, "Spiral Cone", is a hanging metal Christmas tree ornament in the shape of a spiral with attached purple, silver and blue jingle bells. The item measures approximately 5-1/2 inches in length and has a cord loop for hanging.

Your samples are being returned upon your request.

The applicable subheading for Item TN3056642, "Bell Wreath", Item TN30872642, "Christmas Tree Ornament", and Item TN30853642, "Spiral Cone", will be 9505.10.2500, Harmonized Tariff Schedule of the United States (HTS), which provides for "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Articles for Christmas festivities and parts and accessories thereof: Christmas ornaments: Other: Other." The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alice Wong at 646-733-3026.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

NY L85374  
June 20, 2005  
CLA-2-95:RR:NC:SP:225 L85374  
CATEGORY: Classification  
TARIFF NO. 9505.10.2500

Ms. CHERYL SANTOS  
CVS PHARMACY  
ONE CVS DRIVE  
WOONSOCKET, RI 02895

RE: The tariff classification of Christmas metal Jingle Bell wreath from China.

DEAR Ms. SANTOS:

In your letter dated June 1, 2005, you requested a classification ruling.

The submitted sample is identified as item number 191680, a Christmas 10" Metal Jingle Bell Wreath. The Jingle Bell wreath contains 18 pieces of shiny red cross mouth bells and 12 pieces of shiny green round corner snowflake mouth bells. The bells are wire strung around a round metal piece covered with rubber tubing. The center top of the wreath is trimmed with green holly leaves, red berries and a gold ribbon bow all made of metal. A braided cord is attached to the top for the purpose of hanging the wreath.

The sample is returned as you requested.

The applicable subheading for item number 191680, the Metal Jingle Bell Wreath will be 9505.10.2500, Harmonized Tariff Schedule of the United States (HTS), which provides for articles for Christmas festivities and parts and accessories thereof: Christmas ornaments: Other: Other. The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alice Wong at 646-733-3026.

*Sincerely,*

ROBERT B. SWIERUPSKI  
*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT C]

HQ H118439  
CLA-2 OT:RR:CTF:TCM H118439 TNA  
CATEGORY: Classification  
TARIFF NO.: 8306.10.00

Ms. KHEM LALL,  
FEDERATED MERCHANDISING GROUP  
11 PENN PLAZA  
NEW YORK, NY 10001  
Ms. CHERYL SANTOS,  
CVS PHARMACY  
ONE CVS DRIVE  
WOONSOCKET, RI 02895

RE: Revocation of NY J85472 and NY L85374; Tariff Classification of metal jingle bell wreaths and hanging decorations

DEAR Ms. LALL:

DEAR Ms SANTOS:

This letter is regarding New York Ruling Letter (“NY”) J85472, dated June 10, 2003, and NY L85374, dated June 29, 2005, which pertain to the classification of jingle bell wreaths and hanging decorations under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed these rulings and have found them to be in error. Therefore, this ruling revokes NY J85475 and NY L85374.

**FACTS:**

The merchandise at issue consists of four different items that are made out of metal jingle bells.

Item TN3056642, named “Bell Wreath,” consists of silver metal jingle bells in the shape of a wreath that measures approximately 13–3/4 inches in diameter. The silver bells are decorated with glitter. At the top of the wreath are three metal holly leaves and three metal holly berries that jingle, and a metal loop for hanging.

Item TN30872642, named “Christmas Tree Ornament,” is a hanging decoration comprised of purple metal jingle bells that measures approximately 3–3/4 inches in diameter. The item has a cord loop for hanging and is imported in various shades of purple, green, and silver.

Item TN30853642, named “Spiral Cone,” is a hanging decoration in the shape of a spiral with attached purple, silver and blue jingle bells. The item measures approximately 5–1/2 inches in length and has a cord loop for hanging.

Item number 191680 is a 10 metal jingle bell wreath. It contains 18 pieces of shiny red cross mouth bells and 12 pieces of shiny green round corner snowflake mouth bells. The bells are wire strung around a round metal piece covered with rubber tubing. The center top of the wreath is trimmed with green holly leaves, red berries and a gold ribbon bow all made of metal. A braided cord is attached to the top for the purpose of hanging the wreath.

In NY J85475 and NY L85374, the subject merchandise was classified in subheading 9505.10.25, HTSUS, which provides for “Festive, carnival or other entertainment articles, including magic tricks and practical joke ar-

ticles; parts and accessories thereof: Articles for Christmas festivities and parts and accessories thereof: Christmas ornaments: Other: Other.”

**ISSUE:**

Whether strings of jingle bells fashioned in the shape of a wreath and hanging decorations made of jungle bells should be classified under subheading 8306.10.00, HTSUS, as bells, gongs, and the like, under subheading 8306.29.00, HTSUS, as a base metal statuette or ornament, or under subheading 9505.10.25, HTSUS, as a festive article?

**LAW AND ANALYSIS:**

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

|            |  |
|------------|--|
| 8306       | Bells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal; and base metal parts thereof: |
| 8306.10.00 | Bells, gongs and the like, and parts thereof...<br>Statuettes and other ornaments, and parts thereof:  |
| 8306.29.00 | Other...   |
| *          | * * * * *  |
| 9505       | Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof:  |
| 9505.10    | Articles for Christmas festivities and parts and accessories thereof:<br>Christmas ornaments:<br>Other:  |
| 9505.10.25 | Other...   |

Note 1(l) to Chapter 95, HTSUS, states, in pertinent part:

This chapter does not cover:...

- (1) Bells, gongs or the like of heading 8306.

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the Harmonized System at the international level, may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are gener-

ally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The EN for heading 8306 states, in pertinent part, the following:

(A) **BELLS, GONGS AND THE LIKE, NON-ELECTRIC**

This group covers **non-electric** bells and gongs of base metal. It includes bells for places of religious worship, schools, public buildings, factories, ships, fire-engines, etc.; door bells; table bells; hand-bells; cattle or other animal bells; bells for bicycles, scooters or perambulators; bells for fishing tackle (without the addition of external clamps, clips or other mounting devices); door chimes, table gongs, etc.; decorated bells such as those for tourist souvenirs.

This heading also covers metallic parts such as clappers, handles and domes (including those suitable equally for electric or other types of bells). It also includes metallic buttons and turn-keys for non-electric table or door bells....

(B) **STATUETTES AND OTHER ORNAMENTS**

This group comprises a wide range of ornaments of base metal (whether or not incorporating subsidiary non-metallic parts) of a kind **designed essentially for decoration**, e.g., in homes, offices, assembly rooms, places of religious worship, gardens.

It should be noted that the group **does not include** articles of more specific headings of the Nomenclature, even if those articles are suited by their nature or finish as ornaments.

The group covers articles which have no utility value but are wholly ornamental, and articles whose only usefulness is to contain or support other decorative articles or to add to their decorative effect, for example:

- (1) Busts, statuettes and other decorative figures; ornaments (including those forming parts of clock sets) for mantel-pieces, shelves, etc. (animals, symbolic or allegorical figures, etc.); sporting or art trophies (cups, etc.); wall ornaments incorporating fittings for hanging (plaques, trays, plates, medallions **other than** those for personal adornment); artificial flowers, rosettes and similar ornamental goods of cast or forged metal (usually of wrought iron); knick-knacks for shelves or domestic display cabinets.
- (2) Articles for religious use such as reliquaries, chalices, ciboriums, monstrances or crucifixes.
- (3) Table-bowls, vases, pots, jardinières (including those of cloisonné enamel).

Note 1(l) to Chapter 95, HTSUS, states that “this chapter does not cover bells, gongs or the like of heading 8306.” The subject merchandise is primarily made up of bells that function as bells by chiming to alert the house’s occupant that someone is at the front door. The merchandise is therefore described by heading 8306, HTSUS, and it cannot be classified in heading



9505, HTSUS, pursuant to the exclusion of Note 1(l). As a result, the remaining competing classifications are at the six digit level. Under GRI 6, the issue is whether the bells are classified as such in subheading 8306.10, HTSUS, or as other ornaments in subheading 8306.29, HTSUS.

The subject merchandise consists of cords bearing non-electric jingle bells made out of base metal. GRI 3 states that “when goods are classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description.” The EN to GRI 3 further states that a “description by name is more specific than a description by class.” Under this rule of relative specificity, we look to the provision with requirements that are more difficult to satisfy and that describe the article with the greatest degree of accuracy and certainty. *Russ Berrie & Co. v. United States*, 381 F.3d 1334, 1338 (Fed. Cir. 2004), citing to *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1441 (Fed. Cir. 1998).

Subheading 8306.10.00, HTSUS, is the more specific subheading at issue because subheading 8306.29.00, HTSUS, includes a broader range of goods, statuettes and other ornaments, made of base metal. Part A of the EN to heading 8306, HTSUS, lists “decorated bells” as included in subheading 8306.10.00, HTSUS, whereas Part B to the EN, describing ornaments of subheading 8306.29.00, HTSUS, excludes articles of more specific headings, and, by GRI 6, subheadings. The subject merchandise consists almost exclusively of bells rather than merely incorporating bells. The wires that hold and support the bells, and the ribbons that embellish them, are secondary components to the bells themselves.

CBP has consistently classified articles of bells, including items of jingle bells, in subheading 8306.10.00, HTSUS. See HQ H055383, dated January 4, 2010 (classifying strings of jingle bells meant to be hung on a door under subheading 8306.10.00, HTSUS); HQ H064916, dated August 10, 2010 (classifying a Snowman Bell Wreath in subheading 8306.10.00, HTSUS); NY G85029, dated November 30, 2000 (classifying “Trim-a-Home Bell Ornaments” that consisted of jingle bells mounted on steel wire to form a wreath in subheading 8306.10.00, HTSUS); NY L86302, dated July 18, 2005; NY I83301, dated June 19, 2002; NY E86535, dated September 8, 1999; NY 810536, dated June 1, 1995; NY N022642, dated February 6, 2008; NY M80871, dated March 16, 2006; NY L84397, dated May 2, 2005; NY L82383, dated February 16, 2005. As a result, we find that the subject jingle bell wreaths are classified under subheading 8306.10.00, as “bells, gongs, and the like.”

#### **HOLDING:**

By application of GRI 1, the jingle bell wreaths are classified in heading 8306, HTSUS, specifically under subheading 8306.10.00, HTSUS, which provides for: “bells, gongs, and the like.” As such, the applicable duty rate is 5.8% *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 internet at [www.usitc.gov/tata/hts/](http://www.usitc.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

NY J85472, dated June 10, 2003, and NY L85374, dated June 20, 2005, are REVOKED.

*Sincerely,*

MYLES B. HARMON

*Director,*

*Commercial and Trade Facilitation Division*

  
**GENERAL NOTICE****PROPOSED MODIFICATION OF A RULING LETTER AND  
REVOCATION OF A RULING LETTER AND PROPOSED  
REVOCATION OF TREATMENT RELATING TO THE  
CLASSIFICATION OF CERTAIN GAS GENERATORS**

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

**ACTION:** Notice of proposed modification of a tariff classification ruling letter, revocation of a tariff classification ruling letter and revocation of any treatment relating to the classification of certain gas generators.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is proposing to modify one ruling letter, Headquarters Ruling Letter (HQ) 967102, dated September 27, 2004, and revoke another ruling letter, HQ 087981, dated December 21, 1990, relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of certain gas generators. Similarly, CBP is proposing to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before December 2, 2011.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Commercial Trade and Regulations Branch, 799 9th St., N.W., 5th Floor, Washington, D.C., 20229–1179. Submitted comments may be inspected at U.S. 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:** Cynthia Reese, Valuation and Special Programs 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, this notice advises interested parties that CBP is proposing to modify HQ 967102, dated September 27, 2004, and revoke HQ 087981, dated December 21, 1990, relating to the tariff classification of certain gas generators under the HTSUSA. Although in this notice, CBP is specifically identifying two rulings subject to this action, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

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

As a consequence of a request to reconsider our decision in HQ 967102, CBP reviewed its rulings on gas generators imported to be combined with power turbines. CBP determined that the classification in HQ 967102 (Attachment A) was correct. However, CBP proposes to modify HQ 967102 in order to further expand upon the analysis supporting the classification of the gas generators at issue therein as other gas turbines in subheading 8411.82.80, HTSUS. In addition, CBP has determined that we erred in the classification of a substantially similar gas generator in HQ 087981 (Attachment B). In HQ 087981, CBP classified the gas generator at issue as a part of a gas turbine in subheading 8411.99.90, HTSUS. Based upon research performed in reconsidering our decision in HQ 967102, CBP has concluded that the gas generator in HQ 087981 is not a part of a gas turbine, but is itself, a gas turbine and therefore, classifiable as such.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to modify HQ 967102 and to revoke HQ 087981, and modify or revoke any other ruling not specifically identified on the same or substantially similar merchandise, to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ W968276 (Attachment C) and H108255 (Attachment D). 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: October 4, 2011

IEVA K. O'ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

HQ 967102

September 27, 2004

CLA-2 RR:CR:GC 967102 NSH

CATEGORY: Classification

TARIFF NO.: 8411.82.8000

MR. JOSEPH P. BRICK  
KPMG LLP  
CHARTERED ACCOUNTANTS  
SUITE 3300 COMMERCE COURT WEST  
PO BOX 31 STN COMMERCE COURT  
TORONTO ON M5L 1B2

RE: NY H81222 revoked; aero-derivative gas turbines

DEAR MR. BRICK:

This is in response to an internal request for reconsideration of NY H81222, dated May 31, 2001, on the classification of two gas turbines under the Harmonized Tariff Schedule of the United States (HTSUS). The merchandise was classified under subheading 8411.12.80, HTSUS. However, in researching a related issue, Customs and Border Protection (CBP) determined that NY H81222 should be revoked. This ruling letter sets forth the correct classification.

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 H81222, as described below, was published in the *Customs Bulletin* on July 21, 2004. No comments were received in response to the notice.

**FACTS:**

The merchandise at issue are the Rolls-Royce RB-211 and Rolls-Royce Avon gas turbines. Both engines, although originally designed as turbojets to provide motive power for aircraft, have been adapted for industrial use, thereby putting them in a class of engine referred to as "aero-derivative," a term of art indicative of their original design purpose.

In the case of the Rolls-Royce RB-211, the bypass fan and fan turbines have been removed, with the resulting product being a twin spool gas generator capable of generating power between 25,200 kilowatts and 44,500 kilowatts, depending on what type of use the engine is put to. Primarily, it is used for a variety of power generation and mechanical drive applications. The Rolls-Royce Avon has been reconfigured and matched with either the RT48 or RT56 power turbine, making it well suited for a variety of power generation and mechanical drive applications. Depending on what type of use the Rolls-Royce Avon is put to, it is capable of generating power between 14,672 kilowatts and 21,000 kilowatts. Because of their adapted designs, these aero-derivative gas turbines are now incapable of providing motive power for aircraft.

In NY H81222, CBP classified both gas turbines under subheading 8411.12.80, HTSUS, which provides for "Turbojets, turbopropellers and other gas turbines and parts thereof: Turbojets: Of a thrust exceeding 25 kN: Other."

**ISSUE:**

Whether the Rolls-Royce RB-211 and Rolls-Royce Avon gas turbines are turbojets of subheading 8411.12.80, HTSUS, or other gas turbines of subheading 8411.82.80, HTSUS.

**LAW AND ANALYSIS:**

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. The ENs, although neither dispositive or legally binding, facilitate classification by providing a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80.

The HTSUS provisions under consideration are as follows:

|      |   |
|------|---|
| 8411 | Turbojets, turbopropellers and other gas turbines, and parts thereof: |
|------|---|

Turbojets:

|         |                             |
|---------|-----------------------------|
| 8411.12 | Of a thrust exceeding 25kN: |
|---------|-----------------------------|

|            |       |
|------------|-------|
| 8411.12.80 | Other |
|------------|-------|

|   |   |   |   |
|---|---|---|---|
| * | * | * | * |
|---|---|---|---|

|   |   |   |   |
|---|---|---|---|
| * | * | * | * |
|---|---|---|---|

Other gas turbines:

|         |                                |
|---------|--------------------------------|
| 8411.82 | Of a power exceeding 5,000 kW: |
|---------|--------------------------------|

|            |       |
|------------|-------|
| 8411.82.80 | Other |
|------------|-------|

In NY H81222, CBP held that the Rolls-Royce RB-211 and Rolls-Royce Avon gas turbines at issue therein, recognized aircraft engines having been adapted for industrial use (aero-derivative), were classified as turbojets under subheading 8411.12.80, HTSUS. Having been adapted for industrial use, these engines are no longer capable of providing motive power to an aircraft. However, CBP classified them as turbojets, the classification of these engines in an unaltered state, in keeping with the position that an aero-derivative gas turbine is essentially still a turbojet. Heading 8411, HTSUS, covers three types of engines: Turbojets; Turbopropellers; and Other Gas Turbines. EN 84.11 parallels the heading listings for these three engine types and states in pertinent part as follows:

This heading covers **turbo-jets, turbo-propellers and other gas turbines.**

...

### (A) Turbo-Jets

A turbo-jet consists of a compressor, a combustion system, a turbine and a nozzle, which is a convergent duct placed in the exhaust pipe. The hot pressurized gas exiting from the turbine is converted to a high velocity gas stream by the nozzle. The reaction of this gas stream acting on the engine provides the motive force which may be used to power aircraft. In its simplest form the compressor and turbine are accommodated on a single shaft. In more complex designs the compressor is made in two parts (a two spool compressor) in which the spool of each part is driven by its own turbine through concentric shafting. Another variation is to add a ducted fan usually at the inlet to the compressor and drive this either by a third turbine or connect it to the first compressor spool. The fan acts in the nature of a ducted propeller, most of its output bypassing the compressor and turbine and joining the exhaust jet to provide extra thrust. This version is sometimes called a "bypass fan jet."

...

### (B) Turbo-Propellers

Such engines are similar to turbo-jets, but have a further turbine downstream of the compressor turbine, which is coupled to a conventional propeller such as is used on piston engined aircraft. This latter turbine is sometimes referred to as a "free turbine," meaning that it is not mechanically coupled to the compressor and compressor turbine shaft. Thus most of the hot pressurized gas leaving the compressor turbine is converted into shaft power by the free turbine instead of being expanded in a nozzle as is the case in turbo-jets. In some cases, the gases leaving the free turbine may be expanded in a nozzle to provide auxiliary jet power and assist the propeller.

### (C) Other Gas Turbines

This group includes industrial gas-turbine units which are either specifically designed for industrial use or adapt turbo-jets or turbo-propeller units for uses other than providing motive power for aircraft.

There are two types of cycles:

- (1) The simple cycle, in which air is ingested and compressed by the compressor, heated in the combustion system and passed through the turbine, finally exhausting to the atmosphere.
- (2) The regenerative cycle, in which air is ingested, compressed and passed through the air pipes of a regenerator. The air is pre-heated by the turbine exhaust and is then passed to the combustion system where it is further heated by the addition of fuel. The air/gas mixture passes through the turbine and is exhausted through the hot gas side of the regenerator and finally to the atmosphere.

There are two types of designs:



- (a) The single-shaft gas turbine unit, in which the compressor and turbine are built on a single shaft, the turbine providing power to rotate the compressor and to drive rotating machinery through a coupling. This type of drive is most effective for constant speed applications such as electrical power generation.
- (b) The two-shaft gas turbine unit, in which the compressor, combustion system and compressor turbine are accommodated in one unit generally called a gas generator, whilst a second turbine on a separate shaft receives the heated and pressurized gas from the exhaust of the gas generator. This second turbine known as the power turbine is coupled to a driven unit, such as a compressor or pump. Two-shaft gas turbines are normally applied where load demand variations require a range of power and rotational speed from the gas turbine

These gas turbines are used for marine craft and locomotives, for electrical power generation, and for mechanical drives in the oil and gas, pipeline and petrochemical industries.

We note initially that each type of engine designated under heading 8411, HTSUS, is considered to be a "Gas turbine," but it is the specific construction and use of the gas turbine that determines whether that model is classified as a "Turbojet," "Turboprop" or "Other Gas Turbine."

As in H81222, CBP had previously classified aero-derivative gas turbines under subheadings 8411.11/12, HTSUS, and 8411.21/22, HTSUS, in keeping with the position that, notwithstanding certain adaptations, they were still described under the *eo nomine* provisions for turbojets and turbopropellers, respectively. This prior approach to classifying such merchandise was followed despite the fact that, in their altered state for industrial use, aero-derivative gas turbines are no longer capable of providing motive power to aircraft. However, it should be noted that an *eo nomine* provision is one which describes a commodity by a specific name, usually one well known to commerce, i.e. "turbojets" or "turbopropellers." Ordinarily, use is not a criterion in determining whether merchandise is included within an *eo nomine* provision, but use may be considered where common and commercial meaning of the article at the time the tariff schedule was drafted included references to use. See *Admiral Div. Of Magic Chef, Inc. v. United States*, 754 F. Supp. 881 (1990) and *United States v. Quon Quon Co.*, 46 C.C.P.A. 70, 73, C.A.D. 699 (1959). In considering the scope of the *eo nomine* provisions at issue, EN 84.11 states that turbojets and turbopropellers specifically described in subheadings 8411.11/12 and 8411.21/22, HTSUS, may be used to power aircraft. In contrast, other gas turbines of subheading 8411.81/82, HTSUS, are described as including industrial gas-turbine units which are either specifically designed for industrial use or else adapt turbo-jets or turbo-propeller units for uses other than providing motive power for aircraft.

Recent Customs rulings further demonstrate that aero-derivative gas tur-



bines are not defined by the *eo nomine* provisions for turbojets or turbopropellers because those designations are reserved for gas turbines that provide motive power for aircraft. In HQ 966934, dated May 6, 2004, CBP ruled that aero-derivative gas turbines for industrial use and gas turbines designed specifically for industrial use are in all cases classified under subheading 8411.81/82, HTSUS. This position is further supported in NY J84449, dated June 2, 2003, NY J84454, dated June 2, 2003 and NY J84459, dated June 2, 2003, wherein engine parts of an aero-derivative gas turbine were classified under subheading 8411.99.9060, as parts for “nonaircraft gas turbines.”

The above analysis and cited rulings support the finding by CBP that turbojet and turbopropeller gas turbines, which provide motive power for aircraft, are classified under subheadings 8411.11/12, HTSUS, and 8411.21/22, HTSUS, respectively. In contrast, both aero-derivative gas turbines and gas turbines designed specifically for industrial use, and incapable of providing motive power to aircraft, form the class or kind of gas turbine that is considered a turboshaft engine and which comprise the “Other gas turbine” subheading group of 8411.81/82, HTSUS. In addition, and to further assist in classifying gas turbines, it is equally apparent that the power output of turbojet engines is measured in pound thrust, or so-called kilonewtons, while the power output of turboprop and turboshaft engines is normally measured in kilowatts. This expression of power is usually indicative of the type of use to which the engine is utilized. Turbojet engines are typically used on high-speed and commercial aircraft wherein compressed air and gas are exhausted from the engine, providing the thrust that powers the aircraft. In contrast, turboprop engines operate on low-speed, low-altitude aircraft, the exhaust flow from the compressor turbine being used to power a conventional propeller as opposed to exhausting into the atmosphere to provide thrust. And, turboshaft engines are typically used in industrial and marine applications, being derived from aircraft engines (aero-derivative), designed specifically for industry, or else used to power a helicopter or boat propeller.

In considering NY H81222, it seems apparent that the analysis used by CBP was consistent with the previous approach to gas turbine classification. Both the Rolls-Royce RB-211 and Rolls-Royce Avon gas turbines at issue have been adapted from their original designs for exclusive industrial use. In practical terms, this entailed removing the bypass fan and fan turbines of the Rolls-Royce RB-211 so that exhaust flow could be routed to another turbine that in turn generates power. In the case of the Rolls-Royce Avon, the engine has been reconfigured and matched with a separate power turbine, again for the purpose of generating power; in their adapted form, each is capable of generating power in excess of 5,000 kilowatts. In view of the foregoing, they are both aero-derivative engines and therefore classified under subheading 8411.82.80, HTSUS, as “Turbojets, turbopropellers and other gas turbines, and parts thereof: Other gas turbines: Of a power exceeding 5,000 kW: Other.” It should also be noted that in March 2004, CBP issued an Informed Compliance Publication (ICP) entitled “Turbojets, Turbopropellers and Other Gas Turbines, (HTSUS) and Parts Thereof.” Although an ICP is published for general information purposes only and therefore cannot serve as the sole basis upon which an importer claims, or CBP issues, a classification, the ICP nevertheless reflects the current CBP position on this merchandise.

**HOLDING:**

The Rolls-Royce RB-211 and Rolls-Royce Avon gas turbines are classified under subheading 8411.82.8000, Harmonized Tariff Schedule of the United States Annotated, as “Turbojets, turbopropellers and other gas turbines, and parts thereof: Other gas turbines: Of a power exceeding 5,000 kW: Other.” The general column one rate of duty is 2.5 percent *ad valorem*.

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

**EFFECT ON OTHER RULINGS:**

NY H81222 is REVOKED.

*Sincerely,*  
MYLES B. HARMON  
*Director,*  
*Commercial Rulings Division*

## [ATTACHMENT B]

HQ 087981

December 21, 1990

CLA-2 CO:R:C:G 087981 CMS

CATEGORY: Classification

TARIFF NO.: 8411.82.80 8411.99.90

MS. SUE KALLMAYER-BOCKRATH  
MANAGER, IMPORT COMPLIANCE  
GENERAL ELECTRIC AIRCRAFT ENGINES  
MAIL DROP A200  
ONE NEUMANN WAY  
CINCINNATI, OH 45215

RE: Gas Turbine; Gas Generator; Power Turbine; Compressor; Combustor;  
Engine; GRI 2(a)

DEAR Ms. BOCKRATH,

Your request dated August 7, 1990, for a classification ruling on certain gas turbine equipment has been forwarded by the Regional Commissioner of Customs, New York, to Customs Headquarters for a reply. Our ruling follows.

**FACTS:**

The merchandise consists of the "gas generator" section of a General Electric LM 5000 gas turbine engine. The gas generator consists of a low pressure compressor and turbine, a high pressure compressor and turbine, an annular combustor and an accessory drive gearbox. After importation, the gas generator is coupled to a power turbine to form a complete LM 5000 gas turbine engine.

The gas generator compresses air in a compressor and then heats the air in a combustor. In a complete LM 5000 turbine the gaseous emission is then passed from the gas generator through the power turbine. The power turbine then converts the aerodynamic energy into mechanical energy by turning a rotor which is coupled to a shaft. The accessory drive gearbox is used to control the lubrication, variable geometry controls and fuel system of the gas generator.

General Electric LM 5000 turbines are simple cycle turbines and are designed for marine and industrial applications. Complete LM 5000 turbines may, for example, be connected to a compressor for use in an oil platform/gas pumper industry application, or may be connected to an electrical generator for use in the power generating industry.

**ISSUE:**

Is the gas generator classified in subheading 8411.99.90 as a part of a gas turbine, or in subheading 8411.82.80 as an incomplete gas turbine having the essential character of a complete gas turbine pursuant to GRI 2(a)?

**LAW AND ANALYSIS:**

Gas turbines and parts thereof are described by Heading 8411. The Explanatory Notes to Heading 8411, p. 1154, provide that simple cycle gas turbines are turbines "...in which air is ingested and compressed by the compressor, heated in the combustion system and passed through the turbine, finally exhausting to the atmosphere."

Lexicographic authorities also describe gas turbines as apparatus that operate with a compressor, combustor and turbine. The McGraw Hill Encyclopedia Of Science And Technology, 6th Ed., Vol. 7 (1987), p. 574, provides:

In the usual gas turbine, the sequence of thermodynamic processes consists basically of compression, addition of heat in a combustor, and expansion through a turbine.

The “turbine” component in a gas turbine is only one of three main components in the turbine, the other two components being the compressor and combustor. Van Nostrand’s Scientific Encyclopedia, 7th Ed. (1989), p. 1292, provides:

Although the turbine is only part of the whole assembly, in modern terminology, the complete assembly is commonly referred to simply as a gas turbine. Air is compressed in the compressor after which it enters a combustion chamber where the temperature is increased while the pressure remains constant. The resulting high-temperature air then enters the turbine, thereby performing work.

The gas generator under consideration only consists of the compressor and combustor components and does not include the power turbine component. The gas generator does contain some turbines but these function in the compression process and not as the main turbine which makes up the third component of a gas generator. Without the main turbine, the gas generator under consideration essentially only shoots out hot air; only when the gas generator is coupled to the main turbine is any part of the aerodynamic to mechanical energy conversion process performed.

Without being entered with the power turbine component, the gas generator under consideration does not have the essential character of a complete gas turbine. The gas generator is classified as a part of a gas turbine in 8411.99.90, HTSUSA.

*Sincerely,*

JOHN DURANT,

*Director*

*Commercial Rulings Division*

## [ATTACHMENT C]

HQ W968276  
OT:RR:CTF:VS W968276 CMR  
CATEGORY: Classification  
TARIFF NO.: 8411.82.8000

MR. JOSEPH P. BRICK  
KPMG LLP  
SUITE 3300  
COMMERCE COURT WEST  
199 BAY STREET  
TORONTO, ON M5L 1B2  
CANADA

RE: Request for Reconsideration of Headquarters Ruling Letter (HQ) 967102;  
Classification of gas turbines; aero-derivative turbines

DEAR MR. BRICK:

This is in response to your submission of May 10, 2006, on behalf of your client, Rolls Wood Group (Repair & Overhauls) Limited ("RWG"), requesting this office reconsider its decision in Headquarters Ruling Letter ("HQ") 967102, dated September 27, 2004. HQ 967102 revoked New York Ruling Letter ("NY") H81222, dated May 31, 2001, which classified the Rolls-Royce Industrial RB-211 gas generator and the Rolls-Royce Industrial Avon gas generator in subheading 8411.12.8000, Harmonized Tariff Schedule of the United States ("HTSUS"), as turbojets, other than aircraft turbines, of a thrust exceeding 25 kiloNewton ("kN"). In HQ 967102, Customs and Border Protection ("CBP") reclassified these gas generators in subheading 8411.82.8000, HTSUS, as other gas turbines, other than aircraft turbines, of a power exceeding 5000 kilowatts ("kW"). We note that the revocation of NY H81222 was pursuant to the procedures of 19 U.S.C. § 1625. Although opportunity was provided for submission of public comments, no comments were received. Your client argues the RB-211 and Avon industrial generators are turbojets of subheading 8411.12.8000, HTSUS, and requests we revoke our decision in HQ 967102.

We have reviewed HQ 967102 and believe it to be correct. However, we are modifying the analysis in HQ 967102 to expand upon the analysis which relied on a distinction between gas turbines designed to provide propulsion to aircraft and gas turbines designed or adapted for industrial use. In addition, we wish to address your recent arguments regarding the proper classification of this merchandise. It was not clear in HQ 967102 that the merchandise at issue was limited to the RB211 gas generator and the Avon gas generator. This decision clarifies the facts regarding the merchandise at issue, *i.e.*, that it consists of the gas generators without power turbines, and sets forth our reasoning for upholding the classification in HQ 967102.

In reaching our decision in this matter, we have taken into consideration your submission of May 10, 2006, your supplemental submission of June 2, 2010, your presentation and the discussion from the teleconference held with CBP personnel on June 29, 2010, and the supplemental information you submitted via email dated July 5, 2010. We regret our delay in responding to your request.

**FACTS:**

The merchandise at issue consists of the Rolls-Royce Industrial RB-211 gas generator and the Rolls-Royce Industrial Avon gas generator. In NY H81222, these generators were referred to as aero-derivative turbojets, each having a thrust exceeding 25 kN. The description in the ruling indicates that the generators are designed for industrial use. The RB-211 generator is described as differing from the configuration for use in aircraft in that the bypass fan and fan turbines are removed. Thus, the RB-211 is a twin spool gas generator capable of producing thrust levels in the order of 97.8 kN.

The Avon generator is described as incorporating a seventeen stage, single spool compressor, eight individual combustion chambers, and a three stage turbine to drive the compressor. The ruling indicated that the typical thrust levels produced by the Avon gas generator are approximately 48.9 kN.

As to the operation of the Avon and RB-211 generators, the NY ruling stated:

The engine ingests a large volume of air through the front opening. The air is squeezed or compressed to many times atmospheric pressure by the lower pressure compressor. In the combustion chamber, fuel and air are mixed together and ignited. The resulting hot gases are expanded over the high pressure turbine. The high pressure turbine drives the low pressure compressor in the front end which causes more air to be ingested through the front opening. What remains is residual gas energy (thrust) either for expansion through a propulsive nozzle or through a separate free power turbine.

While NY H81222 described the goods at issue as turbojets and acknowledged that you identified them as gas generators, in HQ 967102, this office identified the goods at issue as gas turbines, originally designed as turbojets, but adapted for industrial use. In HQ 967102, the RB-211 was described as having had the bypass fan and fan turbines removed, resulting in "a twin spool generator capable of generating power between 25,200 kilowatts and 44,500 kilowatts, depending on what type of use the engine is put to." The Avon was described as having been reconfigured and matched with the RT48 or RT56 power turbine. It was indicated that, depending upon the use it is put to, the Avon is capable of generating power between 14,672 kilowatts and 21,000 kilowatts. It was further indicated that these goods are used for a variety of power generation and mechanical drive applications and are incapable of providing motive power to aircraft due to their adapted designs.

In your request for reconsideration of HQ 967102, you sought to clarify the description of the merchandise at issue. You again identified the Avon and RB-211 as gas generators. While you did refer to them as turbojets and you seek classification of these goods as turbojets, they are most specifically identified as gas generators. You indicate in the submission that:

A turbo-jet consists of a compressor, a combustion system, and a turbine to drive the compressor. A gas generator is a turbo-jet engine adapted for some use other than providing motive power for aircraft. There is fundamentally no difference between a turbo-jet and a gas generator. The difference in nomenclature lies in that the term turbo-jet is generally used in the aviation industry, whereas the term gas generator is used in other industries. A turbo-jet/gas generator does not have attached or integrated within it a mechanism to convert the exhaust gas energy into

kinetic energy. **It simply produces hot exhaust gas**, which when expanded through a final nozzle, produces a thrust reaction at the mounting points. \* \* \* [Emphasis added.]

You indicate that the imported gas generators are imported without free power turbines. Free power turbines are connected to either electric generators for production of electricity or to compressors for use in pumping oil or gas. The free power turbines used with the RB-211 and Avon gas generators are built separately on base frames designed to mount the gas generators. When the gas generators are shipped to RWG for servicing, the free power turbines are left in place on site. Therefore, the RB-211 and Avon gas generators that are imported by your client, RWG, are basically equipment for generating hot air.

**ISSUE:**

Were the aeroderivative gas generators at issue, *i.e.*, the RB-211 and Avon gas generators, properly classified as other gas turbines of subheading 8411.82.8000, HTSUS, in HQ 967102, or should they be classified as turbojets of subheading 8411.12.8000, HTSUS?

**LAW AND ANALYSIS:**

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRIs). GRI 1 provides that “classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to [the remaining GRIs taken in order].”

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

The tariff provisions at issue are subheadings of heading 8411 and provide as follows:

8411                   Turbojets, turbopropellers and other gas turbines, and parts thereof:

                          Turbojets:

8411.11                   Of a thrust not exceeding 25 kN:

\*                       \*                       \*

8411.12                   Of a thrust exceeding 25 kN:

\*                       \*                       \*

                          Turbopropellers:

8411.21                   Of a power not exceeding 1,100 kW:

\*                       \*                       \*

|         |   |                                    |
|---------|---|------------------------------------|
| 8411.22 |   | Of a power exceeding 1,100 kW:     |
| *       | * | *                                  |
|         |   | Other gas turbines:                |
| 8411.81 |   | Of a power not exceeding 5,000 kW: |
| *       | * | *                                  |
| 8411.82 |   | Of a power exceeding 5,000 kW:     |
| *       | * | *                                  |

Heading 8411, HTSUS, covers three types of engines: Turbojets; Turbopropellers; and Other Gas Turbines. EN 84.11 parallels the heading listings for these three engine types and states in pertinent part as follows:

This heading covers **turbo-jets, turbo-propellers and other gas turbines.**

The turbines of this heading are, in general, internal combustion engines which do not usually require any external source of heat as does, for example, a steam turbine.

#### (D) TURBO-JETS

A turbo-jet consists of a compressor, a combustion system, a turbine and a nozzle, which is a convergent duct placed in the exhaust pipe. The hot pressurized gas exiting from the turbine is converted to a high velocity gas stream by the nozzle. The reaction of this gas stream acting on the engine provides the  **motive force**  which may be used to power aircraft. In its simplest form the compressor and turbine are accommodated on a single shaft. In more complex designs the compressor is made in two parts (a two spool compressor) in which the spool of each part is driven by its own turbine through concentric shafting. Another variation is to add a ducted fan usually at the inlet to the compressor and drive this either by a third turbine or connect it to the first compressor spool. The fan acts in the nature of a ducted propeller, most of its output bypassing the compressor and turbine and joining the exhaust jet to provide extra thrust. This version is sometimes called a "bypass fan jet."

\* \* \*

#### (E) TURBO-PROPELLERS

Such engines are similar to turbo-jets, but have a further turbine downstream of the compressor turbine, which is coupled to a conventional propeller such as is used on piston engined aircraft. This latter turbine is sometimes referred to as a "free turbine", meaning that it is not mechanically coupled to the compressor and compressor turbine shaft. Thus most of the hot pressurised gas leaving the compressor turbine is converted into shaft power by the free turbine instead of being expanded in a nozzle as is the case in turbo-jets. In some cases, the gases leaving the free turbine may be expanded in a nozzle to provide auxiliary jet power and assist the propeller.



## (F) OTHER GAS TURBINES

This group includes industrial gas-turbine units which are either specifically designed for industrial use or adapt turbo-jets or turbo-propeller units for uses other than providing motive power for aircraft.

There are two types of cycles:

(3) The simple cycle, in which air is ingested and compressed by the compressor, heated in the combustion system and passed through the turbine, finally exhausting to the atmosphere.

(4) The regenerative cycle, in which air is ingested, compressed and passed through the air pipes of a regenerator. The air is pre-heated by the turbine exhaust and is then passed to the combustion system where it is further heated by the addition of fuel. The air/gas mixture passes through the turbine and is exhausted through the hot gas side of the regenerator and finally to the atmosphere.

There are two types of designs:

(c) The single-shaft gas turbine unit, in which the compressor and turbine are built on a single shaft, the turbine providing power to rotate the compressor and to drive rotating machinery through a coupling. This type of drive is most effective for constant speed applications such as electrical power generation.

(d) The two-shaft gas turbine unit, in which the compressor, combustion system and compressor turbine are accommodated in one unit generally called a gas generator, whilst a second turbine on a separate shaft receives the heated and pressurised gas from the exhaust of the gas generator. This second turbine known as the power turbine is coupled to a driven unit, such as a compressor or pump. Two-shaft gas turbines are normally applied where load demand variations require a range of power and rotational speed from the gas turbine.

These gas turbines are used for marine craft and locomotives, for electrical power generation, and for mechanical drives in the oil and gas, pipeline and petrochemical industries.

This group also includes other gas turbines without a combustion chamber, comprising simply a stator and rotor and which use energy from gases provided by other machines or appliances (e.g., gas generators, diesel engines, free-piston generators) and compressed air or other compressed gas turbines.

In your submission of May 10, 2006, you argue that the RB-211 and Avon gas generators do not meet the descriptions of the two types of designs of "other gas turbines" set forth in the EN to heading 8411. We agree with you that neither the RB-211 nor Avon fall within the description of a single shaft gas turbine unit. With regard to the two-shaft gas turbine unit description, you stated: "As turbo-jet/gas generators, neither the RB-211 nor Avon has power turbines as an integral part of their design." However, we believe that the RB-211 and the Avon gas generators fall within the description provided in the EN of one unit of the two-shaft gas turbine unit. The EN describes one unit of the two-shaft unit as being known as a gas generator and consisting of a compressor, combustion system and compressor turbine. The Avon gas generator consists of a compressor, combustion system and a compressor turbine. The RB-211 gas generator consists of intermediate pressure and

high pressure compressors, each with its own turbine, and a combustion system. Therefore, the RB-211 and Avon gas generators would appear to clearly meet the description of one unit of a two-shaft gas turbine unit as described in the EN.

The second unit of the two-shaft gas turbine is the power turbine. The EN explains that this power turbine is on a separate shaft and receives the heated and pressurized gas from the exhaust of the gas generator. This is exactly what occurs with the RB-211 and Avon gas generators. These gas generators are coupled or mounted with a separate power turbine that receives the hot air exhaust from the generators. On the Rolls-Royce web site, [www.rolls-royce.com](http://www.rolls-royce.com), Rolls-Royce provides a fact sheet and informational guide on the industrial RB-211 generating set. In the informational guide, the RB-211 is described as follows: “The two-shaft industrial RB211 delivers optimum power and fuel consumption through a geared, high speed power turbine allied to a four-pole, high efficiency alternator.” With regard to power turbines, the fact sheet states: “The power turbines are rugged two or three stage units designed specifically to match the RB211 by Rolls-Royce.” These statements in Rolls-Royce’s self-produced materials lend support to our belief that the RB-211 gas generator is one unit of a two-shaft gas turbine unit. Whether the power turbine is mechanically coupled or the shaft of the power turbine is physically connected to the gas generator, we believe the gas generators at issue fall within the description provided in the EN of one unit, *i.e.*, the gas generator, of two-unit gas turbines designed for industrial use.

You argue that the gas generators at issue are, and should be classified as, turbojets. All of the engines of heading 8411, HTSUS, are gas turbines. In considering whether the gas generators at issue are classifiable as a gas turbine, or more specifically as a turbojet, we need to more fully understand what a gas turbine is and its function. While the EN provide guidance, further clarification may be found from lexicographic sources. Tariff terms are to be construed according to their common meaning in the absence of contrary legislative intent and so it is proper to consult lexicographic and scientific authorities, dictionaries and other reliable sources in ascertaining the common meaning of a tariff term. *See Lyntec, Inc. v. United States*, 976 F.2d 693, 697 (1992).

“Gas turbine” is defined as follows:

An air-breathing internal-combustion engine composed of an air compressor, a combustion chamber, and a turbine wheel, used esp. for propulsion. *Webster’s II New Riverside University Dictionary*, at 521 (Houghton Mifflin Company, 1984).

An internal-combustion engine consisting of an air compressor, combustion chamber, and turbine wheel that is turned by the expanding products of combustion. The four major types of gas turbine engines are the turboprop, turbojet, turbofan, and turboshaft. *See more at turbojet. The American Heritage® Science Dictionary* (Houghton Mifflin Company, 2002).

A combustion turbine that converts the energy of hot compresses gases, produced by burning fuel in compressed air, in to mechanical power. “Glossary” at [www.power-technology.com](http://www.power-technology.com).

(combustion turbine) A turbine that converts the energy of hot compressed gases (produced by burning fuel in compressed air) into mechanical power. Often fired by natural gas or fuel oil. *Glossary of Bioenergy Terms*, at <http://bioenergy.ornl.gov/faqs/glossary.html>.

In addition, from “*Introduction to Gas Turbines for Non-Engineers*”, by Lee S. Langston, University of Connecticut, and George Opdyke, Jr., Dykewood Enterprises (Published in the *Global Gas Turbine News*, Volume 37: 1997, No. 2), we find the following discussion quite informative:

A greater understanding of the gas turbine and its operation can be gained by considering its three major components (. . .): the compressor, the combustor and the turbine. The features and characteristics will be touched on here only briefly.

**Compressors and Turbines:** The compressor components are connected to the turbine by a shaft in order to allow the turbine to turn the compressor. A *single shaft* gas turbine (. . .) has only one shaft connecting the compressor and turbine components. A *twin spool* gas turbine (. . .) has two concentric shafts, a longer one connecting a low pressure compressor to a low pressure turbine (the low spool) which rotates inside a shorter, larger diameter shaft. The shorter, larger diameter shaft connects the high pressure turbine with the higher pressure compressor (the high spool) which rotates at higher speeds than the low spool. A *triple spool* engine would have a third, intermediate pressure compressor-turbine spool. [References to illustrative figures omitted.]

“Gas generator” is defined as:

The basic gas turbine engine consisting of the compressor, diffuser, combustor, and turbine-driven compressor. The gas generator, also called a core engine, is that part of a gas turbine engine that produces hot, high-velocity gases. The gas generator does not include the inlet duct, fan section, free power turbine, or tailpipe. *An Illustrated Dictionary of Aviation*, Edited by Bharat Kumar (McGraw-Hill Companies, Inc., 2005).

The definitions and the discussion from “*Introduction to Gas Turbines for Non-Engineers*”, cited above, clarify that a basic gas turbine consists of a compressor, combustion chamber and a turbine to power the compressor. The gas generators at issue consist of a compressor, combustion chamber and turbine to power the compressor. Specifically, the industrial RB-211 gas generator is a twin spool design and the industrial Avon gas generator is a single spool design. We conclude therefore, based on the cited sources, that the gas generators at issue are gas turbines. However, we still must determine if they are classifiable as turbojets as claimed, or as other gas turbines.

Heading 8411, HTSUS, is an *eo nomine* provision. It specifically names the goods classifiable therein, *i.e.*, turbojets, turbopropellers and other gas turbines. “HTSUS terms are construed according to their common and commercial meanings, which are presumed to be the same absent contrary legislative intent.” *Len Ron Manufacturing Co., Inc. v. United States*, 334 F.3d 1304, 1309 (Fed. Cir. 2003), citing *North American Processing Co. v. United States*, 236 F.3d 695, 698 (Fed. Cir. 2001). In addition, an *eo nomine* designation

includes all forms of the named article. *Len Ron Manufacturing*, 334 F.3d 1304,1311, citing the Court of International Trade's decision under review therein. See *Nootka Packing Co. v. United States*, 22 C.C.P.A. 464, 470; T.D. 47464 (October 4, 1934) ("an *eo nomine* statutory designation of an article, without limitations or a shown contrary legislative intent, judicial decision, or administrative practice to the contrary, and without proof of commercial designation, will include all forms of said article."). See also, *The Pomeroy Collection, Ltd. v. United States*, 559 f. Supp. 2d 1374, 1396. In determining whether an article falls within an *eo nomine* provision, CBP may consider the use of the article. See *United States v. Quon Quon Company*, 46 C.C.P.A. 70, 73; C.A.D. 699 (1959) ("Of all things most likely to help in the determination of the identity of a manufactured article, beyond the appearance factors of size, shape, construction and the like, use if of paramount importance. To hold otherwise would logically require the trial court to rule out evidence of what things actually are every time the collector thinks an article, as he sees it, is specifically named in the tariff act.").

"Turbojet" is defined, in relevant part, as:

A jet engine having a turbine-driven compressor and developing thrust from the exhaust of hot gases. *Webster's II New Riverside University Dictionary*, at 1244 (Houghton Mifflin Company, 1984).

A turbine used as an engine, especially for an aircraft, **which provides a forward force for movement** from the gas it pushes out, or an aircraft driven by this type of engine. *Cambridge Advanced Learner's Dictionary*, Cambridge University Press, 2010). [Bold added.]

Jet engine in which a turbine-driven compressor draws in and compresses air, forcing it into a combustion chamber into which fuel is injected. Ignition causes the gases to expand and to rush first through the turbine and then through a nozzle at the rear. **Forward thrust** is generated as a reaction to the rearward momentum of the exhaust gases. \* \* \* *Britannica Concise Encyclopedia*, (Encyclopaedia Britannica, Inc., 1994–2010).

A gas turbine power plant **used to propel aircraft**, where the thrust is derived within the turbo-machinery in the process of accelerating the air and products of combustion out an exhaust jet nozzle. \* \* \* *McGraw-Hill Encyclopedia of Science and Technology*, (The McGraw-Hill Companies, Inc., 2005).

"Turbojet engine" is defined as:

A jet engine in which a turbine drives a compressor that supplies air to a burner and hot gases from the burner drive the turbine before being discharged rearward. *Merriam-Webster Online*.

In addition, the EN clearly describes turbojets as consisting of a compressor, a combustion system, a turbine and a nozzle.<sup>1</sup> The EN states with regard

<sup>1</sup> In your July 5, 2010, supplemental submission following the teleconference of June 29, 2010, you indicate that the Avon gas generator is shipped with a nozzle built in as part of the unit. You refer to this "nozzle" as a "converging annulus" and state that it follows the compressor turbine stage of the generator. You state that the converging annulus "creates

to “other gas turbines” that the group includes industrial gas turbine units which adapt turbojet or turbopropeller units for uses other than providing motive power for aircraft.

Your argument for classification of the subject gas generators as turbojets is based on the contention that turbojets produce thrust measured in kiloNewtons and other gas turbines produce power measured in kilowatts. You argue that at the time of importation these gas generators are only capable of providing thrust. However, you are moving beyond the language at issue in the tariff, *i.e.*, turbojets versus other gas turbines, to the next level of tariff language which is a division of the thrust or power generated by the classified good. We must first determine if the gas generators at issue are turbojets.

In HQ 967102, we stated “. . . it is the specific construction and use of the gas turbine that determines whether that model is classified as a “Turbojet,” “Turboprop” or “Other Gas Turbine.”” We still maintain that is the case. In the case of the aeroderivative gas generators, they are based upon aero engine designs, but have been adapted and changed so as to serve a different purpose than that of the aero engines. Aero engines are designed to provide thrust to create propulsion. While the aeroderivative gas generators, also known as aeroderivative gas turbines, may create thrust due to the hot exhaust gas produced by their operation, they are not intended or used to propel an object, such as an aircraft, forward. The aeroderivative gas generators are used to power a separate turbine to create mechanical or electrical power.

In your letter of June 15, 2009, to this office, you stated with regard to the use of the term aeroderivative:

This means that the goods at issue share common parts and design elements. This does not mean that a specific aircraft engine has been removed from service and adapted for use other than provided (sic) motive power for aircraft. This may have been the case many years ago, but the modern aero-derivatives are purpose built. They do share parts and core design with the aircraft engines. Certain functions related to the aero-derivative gas turbines are moved away from the engine such as the lube modules and as discussed, the by-pass is removed.

From the various definitions of turbojet cited herein and in consideration of the EN, we conclude that turbojets are commonly recognized as gas turbine engines intended to propel objects forward. Whereas, aeroderivative gas turbine engines have a completely different purpose and stream of commerce. The EN are clear in indicating that aeroderivative gas turbine engines used for electrical or mechanical power generation are within the scope of “other gas turbines.” While, as you indicate, aero engines and aeroderivative engines share some parts and design elements, it is our view that they are commercially distinct goods which are, by the language of the EN (which serve to guide in the interpretation of the tariff), classifiable in separate subheadings of heading 8411, HTSUS.

As the gas generators at issue do not meet the definition of turbojets and, as the gas generators are gas turbines and not parts of gas turbines, classification falls, pursuant to GRI 1, to “other gas turbines” of subheading 8411.81, HTSUS, which provides for other gas turbines of a power not exceeding 100 kW, “not shipped with the turbo jet but usually specific to an airframe design.” Furthermore, you submit that the nozzle is not part of the turbojet, but is a separate component, “not shipped with the turbo jet but usually specific to an airframe design.”

ceeding 5,000 kilowatts, or subheading 8411.82, HTSUS, which provides for other gas turbines of a power exceeding 5,000 kilowatts.

The gas generators produce mechanical energy from the combustion of the fuel and hot air gases. You explained in response to questions from CBP that: "With the goods at issue, the horsepower cannot be stated because the goods do not produce kinetic or linear energy." However, you went on to state that engineers can approximate the horsepower by substituting assumptions, the "first and biggest" being the presence of a turbine that is 100 percent efficient. You attached the formula used by engineers to convert the mass flow rate of air, *i.e.*, the exhaust, into power. Thus, the energy produced by the gas generators is measurable as horse power, albeit an approximation. Horse power may be converted to megawatts or kilowatts. Thus, even in the absence of a power turbine, it is possible to calculate the power output of the gas generators at issue in terms of kilowatts for purposes of classification.

**HOLDING:**

Based on the analysis above and pursuant to GRI 1, the Rolls-Royce RB211 gas generator and the Rolls-Royce Avon gas generator are classifiable in subheading 8411.82.8000, HTSUSA, which provides for: "Turbojets, turbo-propellers and other gas turbines, and parts thereof: Other gas turbines: Of a power exceeding 5,000 kW: Other." Goods classifiable in subheading 8411.82.8000, HTSUSA, are dutiable at the general column one rate of 2.5 percent *ad valorem*.

**EFFECT ON OTHER RULINGS:**

HQ 967102, dated September 27, 2004, is hereby modified with regard to its analysis. We affirm the classification of the gas generators at issue in HQ 967102 for the reasons set forth in this decision.

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

*Sincerely,*

MYLES B. HARMON

*Director,*

*Commercial and Trade Facilitation Division*

## [ATTACHMENT D]

HQ H108255

OT:RR:CTF:VS H108255 CMR

CATEGORY: Classification

TARIFF NO.: 8411.82.80

MANAGER, IMPORT COMPLIANCE  
GENERAL ELECTRIC AIRCRAFT ENGINES  
ONE NEUMANN WAY  
CINCINNATI, OH 45215

RE: Reconsideration of Headquarters Ruling Letter 087981, dated December 21, 1990; Classification of gas generator to be coupled with a power turbine

DEAR SIR OR MADAM:

On December 21, 1990, the U.S. Customs Service, the predecessor agency of U.S. Customs and Border Protection, issued Headquarters Ruling Letter (HQ) 087981 to your company classifying the gas generator of a General Electric LM 5000 gas turbine engine as a part of a gas turbine in subheading 8411.99.90 of the Harmonized Tariff Schedule of the United States (HTSUS). In the course of reconsidering another ruling letter on similar merchandise, we have reviewed HQ 087981 and determined the classification of the gas generator at issue therein as a part was an error. Therefore, we are revoking HQ 087981 and reclassifying the subject gas generator in accordance with the analysis set forth below.

**FACTS:**

The merchandise at issue in HQ 087981 was a gas generator for a General Electric LM 5000 gas turbine engine. The gas generator was described in the ruling as follows:

. . . . The gas generator consists of a low pressure compressor and turbine, a high pressure compressor and turbine, an annular combustor and an accessory drive gearbox. After importation, the gas generator is coupled to a power turbine to form a complete LM 5000 gas turbine engine.

The gas generator compresses air in a compressor and then heats the air in a combustor. In a complete LM 5000 turbine the gaseous emission is then passed from the gas generator through the power turbine. The power turbine then converts the aerodynamic energy into mechanical energy by turning a rotor which is coupled to a shaft. The accessory drive gearbox is used to control the lubrication, variable geometry controls and fuel system of the gas generator.

General Electric LM 5000 turbines are simple cycle turbines and are designed for marine and industrial applications. Complete LM 5000 turbines may, for example, be connected to a compressor for use in an oil platform/gas pumper industry application, or may be connected to an electrical generator for use in the power generating industry.

In HQ 087981, Customs determined that the gas generator at issue was classifiable as a "part" of a gas turbine based on a belief that the gas generator consisted only of the compressor and combustor components of a gas turbine and lacked the turbine component necessary for the unit to be



considered a gas turbine. We believe this was due to confusion with regard to the role of the compressor turbine and a belief that a gas generator imported without the power turbine with which it will be coupled would not fall within the definition of a gas turbine.

**ISSUE:**

Is the gas generator of the LM 5000 gas turbine properly classified as a part of a gas turbine (other than a part of a turbojet or turbopropeller) in subheading 8411.99.90, HTSUS, or is it classified as an “other gas turbine” of subheading 8411.82.80, HTSUS?

**LAW AND ANALYSIS:**

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRIs). GRI 1 provides that “classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to [the remaining GRIs taken in order].”

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

The tariff provisions at issue are subheadings of heading 8411 and provide as follows:

|         |   |   |
|---------|---|---|
| 8411    |   | Turbojets, turbopropellers and other gas turbines, and parts thereof: |
|         |   | Turbojets:  |
| 8411.11 |   | Of a thrust not exceeding 25 kN:                                      |
| *       | * | *   |
| 8411.12 |   | Of a thrust exceeding 25 kN:  |
| *       | * | *   |
|         |   | Turbopropellers:  |
| 8411.21 |   | Of a power not exceeding 1,100 kW:                                    |
| *       | * | *   |
| 8411.22 |   | Of a power exceeding 1,100 kW:  |
| *       | * | *   |
|         |   | Other gas turbines:   |
| 8411.81 |   | Of a power not exceeding 5,000 kW:                                    |
| *       | * | *   |



8411.82                      Of a power exceeding 5,000 kW:

\*                      \*                      \*

Parts:

8411.91                      Of turbojets or turbopropellers:

\*                      \*                      \*

8411.99                      Other:

\*                      \*                      \*

Heading 8411, HTSUS, covers three types of engines: Turbojets, Turbopropellers, and Other Gas Turbines, and their parts. EN 84.11 parallels the heading listings for these three engine types and states in pertinent part as follows:

This heading covers **turbo-jets, turbo-propellers** and **other gas turbines**.

The turbines of this heading are, in general, internal combustion engines which do not usually require any external source of heat as does, for example, a steam turbine.

(G) **TURBO-JETS**

A turbo-jet consists of a compressor, a combustion system, a turbine and a nozzle, which is a convergent duct placed in the exhaust pipe. The hot pressurized gas exiting from the turbine is converted to a high velocity gas stream by the nozzle. The reaction of this gas stream acting on the engine provides the motive force which may be used to power aircraft. In its simplest form the compressor and turbine are accommodated on a single shaft. In more complex designs the compressor is made in two parts (a two spool compressor) in which the spool of each part is driven by its own turbine through concentric shafting. Another variation is to add a ducted fan usually at the inlet to the compressor and drive this either by a third turbine or connect it to the first compressor spool. The fan acts in the nature of a ducted propeller, most of its output bypassing the compressor and turbine and joining the exhaust jet to provide extra thrust. This version is sometimes called a "bypass fan jet."

\*                      \*                      \*

(H) **TURBO-PROPELLERS**

Such engines are similar to turbo-jets, but have a further turbine downstream of the compressor turbine, which is coupled to a conventional propeller such as is used on piston engined aircraft. This latter turbine is sometimes referred to as a "free turbine", meaning that it is not mechanically coupled to the compressor and compressor turbine shaft. Thus most of the hot pressurised gas leaving the compressor turbine is converted into shaft power by the free turbine instead of being expanded in a nozzle as is the case in turbo-jets. In some cases, the gases leaving the free turbine may be expanded in a nozzle to provide auxiliary jet power and assist the propeller.

### (I) OTHER GAS TURBINES

This group includes industrial gas-turbine units which are either specifically designed for industrial use or adapt turbo-jets or turbo-propeller units for uses other than providing motive power for aircraft.

There are two types of cycles:

(5) The simple cycle, in which air is ingested and compressed by the compressor, heated in the combustion system and passed through the turbine, finally exhausting to the atmosphere.

(6) The regenerative cycle, in which air is ingested, compressed and passed through the air pipes of a regenerator. The air is pre-heated by the turbine exhaust and is then passed to the combustion system where it is further heated by the addition of fuel. The air/gas mixture passes through the turbine and is exhausted through the hot gas side of the regenerator and finally to the atmosphere.

There are two types of designs:

(e) The single-shaft gas turbine unit, in which the compressor and turbine are built on a single shaft, the turbine providing power to rotate the compressor and to drive rotating machinery through a coupling. This type of drive is most effective for constant speed applications such as electrical power generation.

(f) The two-shaft gas turbine unit, in which the compressor, combustion system and compressor turbine are accommodated in one unit generally called a gas generator, whilst a second turbine on a separate shaft receives the heated and pressurised gas from the exhaust of the gas generator. This second turbine known as the power turbine is coupled to a driven unit, such as a compressor or pump. Two-shaft gas turbines are normally applied where load demand variations require a range of power and rotational speed from the gas turbine

These gas turbines are used for marine craft and locomotives, for electrical power generation, and for mechanical drives in the oil and gas, pipeline and petrochemical industries.

This group also includes other gas turbines without a combustion chamber, comprising simply a stator and rotor and which use energy from gases provided by other machines or appliances (e.g., gas generators, diesel engines, free-piston generators) and compressed air or other compressed gas turbines.

### PARTS

**Subject** to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), parts of the engines and motors of this heading are also classified here (e.g., gas turbine rotors, combustion chambers and vents for jet engines, parts of turbo-jet engines (stator rings, with or without blades, rotor discs or wheels, with or without fins, blades and fins), fuel feed regulators, fuel nozzles).

All of the engines of heading 8411, HTSUS, are gas turbines. In considering whether the gas generator at issue is classifiable as a gas turbine, or as a part of a gas turbine, we need to more fully understand what a gas turbine

is and its function. While the EN provide guidance, further clarification may be found from lexicographic sources. Tariff terms are to be construed according to their common meaning in the absence of contrary legislative intent and so it is proper to consult lexicographic and scientific authorities, dictionaries and other reliable sources in ascertaining the common meaning of a tariff term. See *Lyntec, Inc. v. United States*, 976 F.2d 693, 697 (1992).

“Gas turbine” is defined as follows:

An air-breathing internal-combustion engine composed of an air compressor, a combustion chamber, and a turbine wheel, used esp. for propulsion. *Webster's II New Riverside University Dictionary*, at 521 (Houghton Mifflin Company, 1984).

An internal-combustion engine consisting of an air compressor, combustion chamber, and turbine wheel that is turned by the expanding products of combustion. The four major types of gas turbine engines are the turboprop, turbojet, turbofan, and turboshaft. See more at *turbojet*. *The American Heritage® Science Dictionary* (Houghton Mifflin Company, 2002).

A combustion turbine that converts the energy of hot compressed gases, produced by burning fuel in compressed air, into mechanical power. “Glossary” at [www.power-technology.com](http://www.power-technology.com).

(combustion turbine) A turbine that converts the energy of hot compressed gases (produced by burning fuel in compressed air) into mechanical power. Often fired by natural gas or fuel oil. *Glossary of Bioenergy Terms*, at <http://bioenergy.ornl.gov/faqs/glossary.html>.

In addition, from “*Introduction to Gas Turbines for Non-Engineers*”, by Lee S. Langston, University of Connecticut, and George Opdyke, Jr., Dykewood Enterprises (Published in the *Global Gas Turbine News*, Volume 37: 1997, No. 2), we find the following discussion quite informative:

A greater understanding of the gas turbine and its operation can be gained by considering its three major components (. . .): the compressor, the combustor and the turbine. The features and characteristics will be touched on here only briefly.

**Compressors and Turbines:** The compressor components are connected to the turbine by a shaft in order to allow the turbine to turn the compressor. A *single shaft* gas turbine (. . .) has only one shaft connecting the compressor and turbine components. A *twin spool* gas turbine (. . .) has two concentric shafts, a longer one connecting a low pressure compressor to a low pressure turbine (the low spool) which rotates inside a shorter, larger diameter shaft. The shorter, larger diameter shaft connects the high pressure turbine with the higher pressure compressor (the high spool) which rotates at higher speeds than the low spool. A *triple spool* engine would have a third, intermediate pressure compressor-turbine spool. [References to illustrative figures omitted.]

“Gas generator” is defined as:

The basic gas turbine engine consisting of the compressor, diffuser, combustor, and turbine-driven compressor. The gas generator, also called a core engine, is that part of a gas turbine engine that produces hot, high-velocity gases. The gas generator does not include the inlet duct, fan section, free power turbine, or tailpipe. *An Illustrated Dictionary of Aviation*, Edited by Bharat Kumar (McGraw-Hill Companies, Inc., 2005).

We believe a misunderstanding of the basic gas generator, the definition of gas turbines, and the turbine component in a basic gas generator led to the classification of the gas generator at issue in HQ 087981 as a part. The definitions and the discussion from “*Introduction to Gas Turbines for Non-Engineers*”, cited above, clarify that a basic gas turbine consists of a compressor, a combustion chamber and a turbine to power the compressor. The gas generator of the LM 5000 gas turbine consists of a compressor, a combustion chamber and a turbine to power the compressor. Therefore, it falls within the definition of a gas turbine. As the gas generator is not a turbojet or turbopropeller, it is classified as an “other gas turbine.”

In addition, we note that with regard to parts of gas turbines, the EN refer to components such as rotors, combustion chambers, vents, stator rings, rotor discs or wheels, fuel feed regulators and fuel nozzles. The gas generator at issue includes such parts, but is itself, not a part, but a gas turbine.

#### **HOLDING:**

The gas generator for a General Electric LM 5000 gas turbine engine imported without the power turbine with which it is to be coupled is classifiable as an other gas turbine of subheading 8411.82.80, HTSUS. Goods classifiable in this subheading are dutiable at the general column one rate of 2.5 percent *ad valorem*.

#### **EFFECT ON OTHER RULINGS:**

NY 087981, dated December 21, 1990, is hereby revoked.

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

*Sincerely,*

MYLES B. HARMON

*Director,*

*Commercial and Trade Facilitation Division*

**PROPOSED MODIFICATION OF ONE RULING LETTER  
AND PROPOSED REVOCATION OF TREATMENT  
RELATING TO THE TARIFF CLASSIFICATION OF  
JEWELRY BOXES COVERED IN PLASTIC-COATED PAPER**

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

**ACTION:** Notice of proposed modification of one ruling letter and proposed revocation of treatment relating to tariff classification of certain jewelry boxes covered with plastic-coated paper.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to modify one ruling letter relating to the tariff classification of certain jewelry boxes covered with plastic-coated paper 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 December 2, 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. 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:** Greg Connor, Tariff Classification and Marking Branch: (202) 325–0025.

**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 proposes to modify one ruling letter pertaining to the tariff classification of certain jewelry boxes covered with plastic-coated paper. Although in this notice, CBP is specifically referring to the modification of Headquarters Ruling Letter (HQ) 953610, dated April 30, 1993, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, 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 HQ 953610, set forth as Attachment A to this document, CBP determined that four styles of jewelry boxes covered in a plastic-coated paper known as Skivertex® were classified under heading 4202, HTSUS, and specifically under subheading 4202.99.10, HTSUS (1993), which provides for, in pertinent part: “..jewelry

boxes... of 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: Other: Other: Of material other than leather, composition leather, sheeting of plastics, textile materials, vulcanized fiber or paperboard wholly or mainly covered with paper: Of plastics....” It is now CBP’s position that one style of the subject jewelry boxes is classified under subheading 4202.92.90, HTSUS, which provides for, in pertinent part: “[t]runks, suitcases...and similar articles; traveling bags...jewelry boxes...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, Other.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify HQ 953610 and revoke or modify any other ruling not specifically identified, in order to reflect the proper tariff classification of the subject jewelry boxes covered in plastic-coated paper according to the classification analysis contained in proposed HQ H112716, set forth as Attachment B 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: October 4, 2011

IEVA K. O’ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

HQ 953610

April 30, 1993

CLA-2 CO:R:C:T 953610 ch

CATEGORY: Classification

TARIFF NO.: 4202.92.9020; 4202.99.1000

DIANE HUDYKA  
BRANCH MANAGER  
HARPER ROBINSON & Co.  
P.O. Box 81380  
CLEVELAND, OHIO 44181

RE: Classification of jewelry boxes; presentation cases; covered with paper and man-made fibers; hinged boxes

DEAR Ms. HUDYKA:

This is in response to your letters of December 21, 1992, and February 2, 1993, requesting tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) for four styles of hinged jewelry presentation boxes. Samples were provided to our office for examination and will be returned under separate cover. Please reference your client, Boxit Corporation.

**FACTS:**

The subject merchandise are four styles of hinged jewelry presentation boxes. The first style consists of a rigid plastic base over which a flocked nylon material has been blown.

The second sample features a flocked synthetic material that has been sprayed onto a textile backing. The material and backing are wrapped around a metal base.

The third box consists of a nylon material that is flocked onto a textile backing and wrapped around a plastic box.

The final sample is composed of a leatherette plastic coated paper with a caliper of approximately .006 inches wrapped over a plastic box.

Each box contains a textile covered insert fitted to hold various items of jewelry.

ISSUE:

What are the proper tariff classifications for the subject merchandise?

**LAW AND ANALYSIS:**

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification is determined first in accordance with the terms of the headings of the tariff and any relative section or chapter notes. Where goods cannot be classified on the basis of GRI 1, the remaining GRI will be applied in order.

Heading 4202, HTSUSA, provides for:

Trunks, Suit-Cases, Vanity-Cases, Executive-Cases, Briefcases, School Satchels, Spectacle Cases, Binocular Cases, Camera Cases, Musical Instrument Cases, Gun Cases, Holsters and Similar Containers; Travelling-Bags, Toilet Bags, Rucksacks, Handbags, Shopping-Bags, Wallets, Purses, Map-Cases, Cigarette-Cases, Tobacco-Pouches, Tool Bags, Sports Bags, Bottle-Cases, Jewellery Boxes, Powder-Boxes, Cutlery Cases and



Similar Containers, of Leather or of Composition Leather, of Sheetting of Plastics, of Textile Materials, of Vulcanised Fibre or of Paperboard, or Wholly or Mainly Covered with Such Materials or With Paper. (Emphasis added).

Thus, jewelry boxes covered with textile materials or paper are classified under heading 4202.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. While not legally binding, they do represent the considered views of classification experts of the Harmonized System Committee. It has therefore been the practice of the Customs Service to follow, whenever possible, the terms of the EN when interpreting the HTSUSA.

In April, 1988, the United States formally raised the issue of the scope of the term “jewellery boxes” with the Harmonized System Committee (HSC). Ultimately, the HSC amended the EN to heading 4202 so as to clarify the meaning of this term. This amendment became effective on January 1, 1990, and reads as follows:

The term “jewellery boxes” covers not only boxes specially designed for keeping jewellery, but also similar lidded containers of various dimensions (with or without hinges or fasteners) specially shaped or fitted to contain one or more pieces of jewellery and normally lined with textile material, of the type in which articles of jewellery are presented and sold and which are suitable for long-term use.

This language makes it clear that containers used in the presentation and sale of jewelry that are suitable for long-term use are included in the term “jewellery boxes.” Based on our examination of the instant articles, we conclude that they all are used for the presentation and sale of jewelry. In addition, the subject plastic and metal framed cases are suitable for long term use, as they are suitable for use after sale to store and protect their contents. Accordingly, the submitted samples are classifiable under heading 4202.

You have submitted copies of New York Ruling Letter (NYRL) 843812, dated August 1, 1989, and NYRL 837714, dated March 1, 1989, with your binding ruling request. In those rulings, plastic jewelry boxes covered with textile materials were classified under Chapter 39, HTSUSA, as articles of plastics. However, these decisions were issued prior to the amendment to the EN cited above and do not reflect the current interpretation of the term “jewelry boxes.” Accordingly, they do not operate as precedent in this instance and have been revoked.

#### **HOLDING:**

The jewelry presentation boxes with outer surfaces of nylon or synthetic textile materials are classifiable under subheading 4202.92.9020, HTSUSA, which provides for jewelry boxes: other: with outer surface of plastic sheeting or of textile materials: other: other, with outer surface of textile materials: other: of man-made fibers. The applicable rate of duty is 20 percent ad valorem. The textile quota category is 670.

The jewelry presentation box with outer surface of paper is classifiable under subheading 4202.99.1000, HTSUSA, which provides for jewelry boxes: other: of materials (other than leather, composition leather, sheeting of

plastics, textile materials, vulcanized fiber or paperboard) wholly or mainly covered with paper: of plastics. The applicable rate of duty is 3.4 percent ad valorem.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are the subject of frequent negotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an issuance of the U.S. Customs Service, which is updated weekly and is available at the local Customs office.

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

*Sincerely,*

JOHN DURANT,  
*Director*

## [ATTACHMENT B]

HQ H129655

CLA-2 OT:RR:CTF:TCM H129655 GC

CATEGORY: Classification and Marking

TARIFF NO.: 4202.92.90

Ms. DIANE HUDYKA  
HARPER ROBINSON & COMPANY  
POST OFFICE BOX 81380  
CLEVELAND, OHIO 44181

RE: Modification of HQ 953610; Tariff classification of jewelry presentation box covered plastic-coated paper

DEAR Ms. HUDYKA:

On April 30, 1993, U.S. Customs and Border Protection (then the U.S. Customs Service) issued Headquarters Ruling Letter (HQ) 953610 to your client, Boxit Corporation. HQ 953610 pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of four styles of hinged jewelry presentation boxes. We have since reviewed HQ 953610 and find it to be in error with respect to the fourth style of presentation box, which is described in detail herein.

**FACTS:**

According to HQ 953610, the sample jewelry box was covered by “a leath-erette plastic coated paper with a caliper of approximately .006 inches wrapped over a plastic box” and contained a textile covered insert fitted to hold various items of jewelry. We have since learned that the instant jewelry box was coated with Skivertex®.

In HQ 953610, the subject merchandise is classified in subheading 4202.99.10 (HTSUS) (1993), which provides for, in pertinent part: “...jewelry boxes... of 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: Other: Other: Of material other than leather, composition leather, sheeting of plastics, textile materials, vulcanized fiber or paperboard wholly or mainly covered with paper: Of plastics...”

**ISSUE:**

Is the subject jewelry box covered in Skivertex® classified under subhead-ing 4202.92, HTSUS, as having an outer surface of sheeting of plastic, or under subheading 4202.99, HTSUS, as having an outer surface of other materials?

**LAW AND ANALYSIS:**

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

4202 Trunks, suitcases, vanity cases, attaché cases, brief-cases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, camera cases, gun cases, holsters and similar containers; traveling 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, 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...

\* \* \*

4202.99 Other:

Of material other than leather, composition leather, sheeting of plastics, textile materials, vulcanized fiber or paperboard wholly or mainly covered with paper:

4202.99.10 Of plastics...

Because the instant classification dispute occurs beyond the four-digit heading level, GRI 6 is implicated. GRI 6 states:

For legal purposes, the classification of goods in the subheading 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.

At the six-digit level, the majority of goods under heading 4202, HTSUS, are classified by the material that comprises the “outer surface” of the good. In this instance, the material that comprises the outer layer is a composite material, i.e., the outer layer is composed of a base material of paper that is coated with plastic. CBP addressed this issue in Headquarters Ruling Letter (HQ) 963618, dated August 2, 2002 (citing HQ 087760, dated October 31, 1991), wherein CBP explained:

At the four-digit level, heading 4202, HTSUSA, requires that a good be “of or “wholly or mainly covered with” a specified material. However, at the six-digit level, the nomenclature classifies goods by the material which comprises the “outer surface.” In classifying goods such as these, we must distinguish between the requirements of the four and six-digit headings, since they dictate different criteria for classifying goods. This distinction was also discussed in (HQ) 954021 [dated November 1, 1993], wherein Customs, noting HQ 087760 [dated October 31, 1991], stated: “Evident in the above are two important distinctions: (1) a covering vs. an outer surface, and (2) classification at the four-digit (or heading) level vs. classification at the six-digit (or subheading) level.”

The “outer surface” is that which is both visible and tactile. See HQ 086775, dated July 9, 1990; see also HQ 954021, dated November 1, 1993. In a number of rulings, CBP has addressed the issue of whether jewelry box frames, which were made of plastic or metal and were covered with paper backings to which textile materials had been applied, had an outer surface of textiles or paper. Additional Note 2 to Chapter 42, HTSUS, is instructive in this regard, providing that:

For the purposes of classifying articles under subheadings 4202.12, 4202.22, 4202.32, and 4202.92, articles of textile fabric impregnated, coated, covered or laminated with plastics (whether compact or cellular) shall be regarded as having an outer surface of the textile material or of plastic sheeting, depending upon whether and the extent to which the textile constituent or the plastic constituent makes up the exterior surface of the article.

Additional Note 2 to Chapter 42, HTSUS, and its expression of the concept of “outer surface” by use of the term “exterior surface,” serves as guidance when classifying other articles in heading 4202, HTSUS, that are composed of composite materials. As indicated in HQ 953610, the subject jewelry box is coated entirely with the Skivertex® material, the outer surface of which consists of a thin layer of plastics material.

The issue of whether the boxes are covered with “sheeting of plastics” is controlled by *Sarne Handbags Corp. v. United States*, 100 F.Supp. 2d 1126; 2000 CIT 51 (2000), wherein the court, applying Additional U.S. Note 2 to Chapter 42, HTSUS, found that a handbag made of plastic coated textile was classified as having an outer surface of sheeting of plastic. In *Sarne*, the Court of International Trade articulated the definition of “sheeting” as “material in the form of or suitable for forming into a broad surface of something that is unusually thin, or is a material in the form of a continuous thin covering or coating.” *Id.* at 1134. Subsequent to *Sarne*, CBP has consistently ruled jewelry boxes covered in plastic-coated paper, including boxes covered by Skivertex®, are classified in subheading 4202.92, HTSUS. See HQ 966090, dated December 22, 2003; HQ 965563, dated September 24, 2002; HQ 963618, dated August 2, 2002.

Applying the principals set forth in Additional U.S. Note 2 of Chapter 42, HTSUS, *Sarne*, and the rulings following *Sarne*, we conclude that the outer surface of the subject jewelry box is “plastic sheeting” as contemplated

in subheading 4202.92, HTSUS, which provides for other articles “with outer surface of sheeting of plastic or of textile materials.”

**HOLDING:**

By application of GRI 1 the “final sample” identified in HQ 953610 is properly classified as a jewelry box under heading 4202, HTSUS. By application of GRI 1 and GRI 6, the subject merchandise is specifically provided for in subheading 4202.92.90, HTSUS, which provides for, in pertinent part: “[t]runks, suitcases...and similar articles; traveling bags...jewelry boxes...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, Other.” The general column one rate of duty, for merchandise classified in this subheading is 17.6 percent *ad valorem*.

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](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**


HQ 953610, dated April 30, 1993, is hereby MODIFIED.

*Sincerely,*

MYLES B. HARMON

*Director,*

*Commercial and Trade Facilitation Division*



**PROPOSED REVOCATION OF A RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF A LIGHT EMITTING  
DIODE BACKLIGHT**

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

**ACTION:** Notice of proposed revocation of a ruling letter and treatment relating to tariff classification of a light emitting diode (LED) backlight.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) proposes to revoke a ruling letter relating to the tariff classification of a light emitting diode (LED) backlight 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 December 2, 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 revoke one ruling letter pertaining to the tariff classification of an LED backlight. Although in this notice, CBP is specifically referring to the revocation of Headquarters Ruling Letter (HQ) 952718, dated February 3, 1993 (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 HQ 952718, CBP determined that the LED backlight was classified in the heading 8541, HTSUS, specifically 8541.40.20, which provides in relevant part for "[L]ight-emitting diodes ... : [L]ight-emitting diodes: Light-emitting diodes (LED's)".

It is now CBP's position that the LED backlight is properly classified in heading 8543, HTSUS, specifically under subheading 8543.70.70, HTSUS, which provides for "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Electric luminescent lamps".

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke HQ 952718 and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the subject LED backlight according to the analysis contained in proposed HQ H065855 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.



Dated: October 7, 2011

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

Attachments

## [ATTACHMENT A]

HQ 952718

February 3, 1993

CLA-2 CO:R:C:M 952718 RFA

CATEGORY: Classification

TARIFF NO.: 8541.40.20

DISTRICT DIRECTOR OF CUSTOMS  
909 FIRST AVENUE  
RM 2039  
SEATTLE, WA 98174

RE: Protest No. 3001-92-100315; Back light; Light-Emitting Diodes; LED;  
HQ 088495; 8531.90.00

DEAR DISTRICT DIRECTOR:

The following is our decision regarding the Protest and Request for Further Review No. 3001-92-100315, dated March 27, 1992. The protest was filed against your liquidation of the entry of certain merchandise which was classified in subheading 8531.90.00, Harmonized Tariff Schedule of the United States (HTSUS).

**FACTS:**

The merchandise, Back Light Model No. L316, measures 2 5/8 inches in length by 1 1/4 inches in height and a thickness of 1/8 inch. It is covered in a white plastic housing and has a diffuser panel. There are four Light Emitting Diodes (LEDs) under the diffuser panel, two on each side of the housing. There are two electrical leads extending from behind the housing.

The Back Light is designed to give uniform diffusion of light. Its slim design allows it to be placed between a base plate and a Liquid Crystal Display (LCD) in order to illuminate an LCD screen.

The importer maintains that the merchandise should be classified as an LED under subheading 8541.40.20, HTSUS, because it is a light emitting source.

**ISSUE:**

Is the Back Light classifiable as an LED under the HTSUS?

**LAW AND ANALYSIS:**

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

Van Nostrand's Scientific Encyclopedia, 7th Edition (1989), defines the operation of LEDs:

Recombination or injection electroluminescence was first observed in 1923 by Lossew, who found that when point electrodes were placed on certain silicon carbide crystals and current passed through them, light was often emitted. Explanation of this emission has been possible only with the development of semiconductor theory. If minority charge carriers are injected into a semiconductor, i.e., electrons are injected into p-type material or "positive holes" into n-type material, they recombine

spontaneously with the majority carriers existing in the material. If some of these recombinations result in the emission of radiation, electroluminescence results.

Subheading 8541.40.20, HTSUS, provides for: “[d]iodes, transistors and similar semiconductor devices; . . . light-emitting diodes; . . . : . . . light-emitting diodes: Light-emitting diodes (LED’s).”

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the Customs Cooperation Council’s official interpretation of the HTSUS. While not legally binding, 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. EN 85.41, page 1399, states

Light emitting diodes, or electroluminescent diodes, (based, inter alia, on gallium arsenide or gallium phosphide) are devices which convert electric energy into visible, infra-red or ultra-violet rays. They are used, e.g., for displaying or transmitting data in control systems. (emphasis in original)

The Back Light is an LED because it is a device which converts electric energy into visible rays which are used for displaying. At the time of entry, you held that the merchandise was a part for an indicator panel, classifiable under subheading 8531.90.00, HTSUS. This classification apparently is based upon the fact that the article included a housing.

In HQ 088495 (April 12, 1991), we held that the common and commercial meaning of an LED includes completed LED “devices” such as LEDs in plastic or metal housings. The Back Light is made up of four LEDs held together in a housing in order to evenly illuminate a display panel such as an LCD. Based upon HQ 088495, we find that the Back Light is classifiable as an LED, and the presence or absence of a housing is not determinative of classification.

**HOLDING:**

The submitted merchandise is classifiable under subheading 8541.40.20, HTSUS, which provides for: “[d]iodes, transistors and similar semiconductor devices; . . . light-emitting diodes; . . . : . . . light-emitting diodes: Light-emitting diodes (LED’s)”. The column 1, general rate of duty is 2 percent ad valorem.

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

*Sincerely,*

JOHN DURANT,

*Director*

*Commercial Rulings Division*

ATTACHMENT B

HQ H065855  
CLA-2 OT:RR:CTF:TCM H065855 AMM  
CATEGORY: Classification  
TARIFF NO.: 8543.70.70

PORT DIRECTOR  
U.S. CUSTOMS AND BORDER PROTECTION  
SERVICE PORT - SEATTLE  
1000 SECOND AVE, SUITE 1000  
SEATTLE, WA 98104

RE: Revocation of Headquarters Ruling Letter 952718; Tariff Classification of a Light Emitting Diode Backlight

DEAR PORT DIRECTOR,

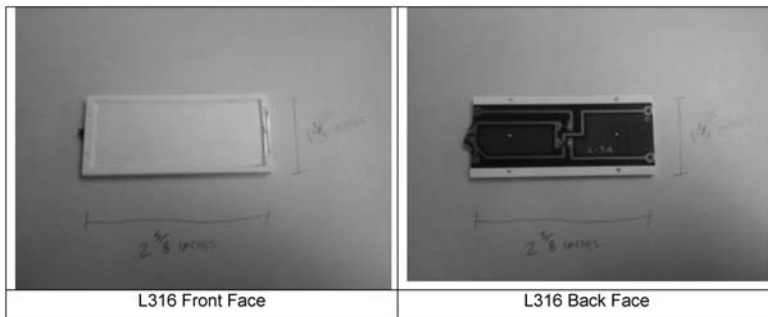
This is in reference to Headquarters Ruling Letter (HQ) 952718 dated February 3, 1993, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a certain light-emitting diode (LED) backlight identified as Model No. L316 (L316 LED backlight). In that ruling, Customs and Border Protection (CBP) classified the L316 LED backlight under heading 8541, HTSUS, which provides in part for "Light-emitting diodes (LED's)". We have reviewed HQ 952718 and found it to be incorrect.

**FACTS:**

In HQ 952718, CBP described the merchandise as follows:

The merchandise, Back Light Model No. L316, measures 2 5/8 inches in length by 1 1/4 inches in height and a thickness of 1/8 inch. It is covered in a white plastic housing and has a diffuser panel. There are four Light Emitting Diodes (LEDs) under the diffuser panel, two on each side of the housing. There are two electrical leads extending from behind the housing. The Back Light is designed to give uniform diffusion of light. Its slim design allows it to be placed between a base plate and a Liquid Crystal Display (LCD) in order to illuminate an LCD screen.

A picture of the sample provided by the importer is included here:



**ISSUE:**

What is the correct classification under the HTSUS of the L316 LED backlight?

**LAW AND ANALYSIS:**

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

The 2011 HTSUS provisions under consideration are as follows:

- |            |   |
|------------|---|
| 8541       | Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof: |
| 8541.40    | Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes:   |
| 8541.40.20 | Light-emitting diodes (LED's)   |
| -----      |   |
| 8543       | Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:   |
| 8543.70    | Other machines and apparatus:   |
| 8543.70.70 | Electric luminescent lamps  |
| -----      |   |

Note 8 to Chapter 85, HTSUS, provides, in part: “[f]or classification of the articles defined in this note, headings 8541 and 8542 shall take precedence over any other heading in the Nomenclature, except in the case of heading 8523, which might cover them by reference to, in particular, their function.”

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

EN 85.41 states, in pertinent part: “[l]ight emitting diodes ... are devices which convert electric energy into visible, infra-red or ultra-violet rays. They are used, e.g., for displaying or transmitting data in control systems.”

EN 85.43 states, in pertinent part:

This heading covers all electrical appliances and apparatus, not falling in any other heading of this Chapter, nor covered more specifically by a heading of any other Chapter of the Nomenclature, nor excluded by the

operation of a Legal Note to Section XVI or to this Chapter. The principal electrical goods covered more specifically by other Chapters are electrical machinery of Chapter 84 and certain instruments and apparatus of Chapter 90.

The electrical appliances and apparatus of this heading must have individual functions. The introductory provisions of Explanatory Note to heading 84.79 concerning machines and mechanical appliances having individual functions apply, *mutatis mutandis*, to the appliances and apparatus of this heading.

\* \* \*

The heading includes, *inter alia*:

\* \* \*

(16) Electro-luminescent devices, generally in strips, plates or panels, and based on electro-luminescent substances (e.g., zinc sulphide) placed between two layers of conductive material.

\* \* \*

EN 84.79 states, in pertinent part:

The machinery of this heading is distinguished from the parts of machinery, etc., that fall to be classified in accordance with the general provisions concerning parts, by the fact that it has individual functions.

For this purpose the following are to be regarded as having “individual functions”:

(A) Mechanical devices, with or without motors or other driving force, whose function can be performed distinctly from and independently of any other machine or appliance.

\* \* \*

According to Note 8 to Chapter 85, CBP must first consider whether the L316 LED backlight is properly classified under heading 8541, HTSUS, which provides, in part, for “light-emitting diodes.” CBP has previously determined that the provision for LEDs in heading 8541, HTSUS, covers only the individual LEDs (i.e., the semiconductor diodes without other components). See Headquarters Ruling Letter (HQ) H024874; HQ H024876; HQ H024878; and HQ H095035, all dated March 31, 2010. See also HQ H011693, dated December 18, 2007; HQ H010636, dated December 3, 2007; HQ H003215, dated October 10, 2007; and HQ 966401, dated June 29, 2004. The L316 LED backlight consists of four LED bulbs mounted in a housing which includes a diffuser panel and electrical leads. As such, the device is beyond the scope of heading 8541, HTSUS.

Heading 8543, HTSUS, is a basket provision which provides for: “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof”. The U.S. Court of International Trade has previously defined “apparatus” as “[a] group of devices, or a collection or set of materials, instruments or appliances to be used for a particular purpose or a given end.” *Whirlpool Corp. v. United States*, 505 F. Supp. 2d 1358, 1362 (Ct. Int’l. Trade 2007) (citing *ITT Thompson Industries*

*v. United States*, 3 CIT 36, 44, 537 F. Supp. 1272, 1277–78 (1982), *aff'd.*, 703 F.2d 585 (Fed. Cir. 1982)). The LED backlight consists of four LED bulbs, a printed circuit board, and a plastic housing which includes a translucent diffuser panel. When electric current is applied to the article, the LED bulbs inside produce light, visible light through the diffuser panel. Therefore, CBP finds that the LED backlight is an electrical apparatus, in that it is a “[s]et of materials ... to be used for a particular purpose or a given end,” namely, to generate light.

The definition of “individual functions” is contained in the EN to Heading 84.79. *See* EN 85.43. EN(A) to Heading 84.79 provides that “[m]echanical devices, with or without motors or other driving force, whose function can be performed distinctly from and independently of any other machine or appliance” are regarded as having individual functions. The function of the LED backlight is to create light when electric current is applied. It does not contain any motors or driving force, as it is designed to draw power from whatever device it is connected to. However, when connected to some sort of alternate power supply, it is capable of creating light without being attached to the device it is designed to connect to. Therefore, the light creation function can be performed distinctly from and independently of any other machine or appliance.

The LED Backlight is an apparatus with an individual function, not specified or included anywhere else in Chapter 85, HTSUS. Therefore, it is properly classified under heading 8543, HTSUS.

CBP’s conclusion is supported by the ENs, which indicate that heading 8543, HTSUS, covers “[e]lectro-luminescent devices, generally in strips, plates or panels, and based on electro-luminescent substances (e.g., zinc sulphide) placed between two layers of conductive material.” *See* EN(16) to Heading 85.43. “Luminescence” is defined as:

Light emission that cannot be attributed merely to the temperature of the emitting body. Various types of luminescence are often distinguished according to the source of the energy which excites the emission.

\* \* \*

There are also types of luminescence that are initiated by the flow of some form of energy into the body from the outside. According to the source of the exciting energy, the luminescences are designated as ... electroluminescence if the energy comes from the application of an electric field.

\* \* \*

*See McGraw Hill Concise Encyclopedia of Science and Technology*, 6th Edition (2009) at 1361.

CBP also notes that LEDs are considered an electroluminescent substance. *See Van Nostrand’s Encyclopedia of Chemistry*, 5th Edition (2005) at 947, which defines the operation of LEDs:

Recombination or injection electroluminescence was first observed in 1923 by Lossev, who found that when point electrodes were placed on certain silicon carbide crystals and current passed through them, light was often emitted. Explanation of this emission has been possible only with the development of semiconductor theory. If minority charge carriers

are injected into a semiconductor, i.e., electrons are injected into p-type material or “positive holes” into n-type material, they recombine spontaneously with the majority carriers existing in the material. If some of these recombinations result in the emission of radiation, electroluminescence results.

\* \* \*

As entered, the subject L316 LED backlight is an “electroluminescent device” because passing electric current through it will generate light that cannot be attributed merely to its temperature. Furthermore, it is based on an “electroluminescent substance,” namely its four internal LED light bulbs. As such, the ENs support CBP’s conclusion that the L316 LED backlight is properly classified under heading 8543, HTSUS.

Subheading 8543.70.70, HTSUS, provides in relevant part for “Electric luminescent lamps”. Relying on the common meaning of the term, CBP has previously determined that a “lamp” is a device which provides an isolated source of heat or light. *See* HQ H042586, dated January 29, 2009 (fiber optic lamp), HQ 966952, dated August 18, 2004 (litcube), and HQ 965248, dated July 26, 2002 (bubble lights). The L316 LED backlight meets CBP’s definition of a “lamp” in that it provides an isolated source of light. Therefore, it is classified by application of GRI 1 under heading 8543, HTSUS, specifically under subheading 8543.70.70, HTSUS, which provides for “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Electric luminescent lamps”.

#### **HOLDING:**

By application of GRI 1, the L316 LED backlight is classified under heading 8543, HTSUS, specifically under subheading 8543.70.70, HTSUS, which provides for “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Electric luminescent lamps”. The column one, general rate of duty is 2% *ad valorem*.

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

#### **EFFECT ON OTHER RULINGS:**

Headquarters Ruling Letter 952718 dated February 3, 1993, is hereby REVOKED.

*Sincerely,*

MYLES B. HARMON

*Director,*

*Commercial and Trade Facilitation Division*



**PROPOSED REVOCATION OF A RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF A PLASTIC RECORDER  
MUSICAL INSTRUMENT**

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

**ACTION:** Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the tariff classification of a plastic recorder musical instrument.

**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) intends to revoke a ruling concerning the tariff classification of a plastic recorder musical instrument. Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before December 2, 2011.

**ADDRESSES:** Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade, Regulations & 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 the address stated above 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:** Laurance W. Frierson, Tariff Classification and Marking Branch: (202) 325–0371.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke a ruling letter pertaining to the classification of a plastic recorder musical instrument. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) N012485, dated June 18, 2007, this notice covers any rulings on this merchandise that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In NY N012485, set forth as Attachment A to this document, CBP determined that the American BandJam Recorder, a plastic recorder measuring approximately 12½ inches in length, was classified in heading 9503, Harmonized Tariff Schedule of the United States (HTSUS). Specifically, CBP classified the product in subheading

9503.00.00, which provides for “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...” It is now CBP’s position that the American BandJam Recorder is properly classified in heading 9205, HTSUS, by operation of GRI 1. Specifically, it is classified in subheading 9205.90.40, HTSUS, which provides for “Wind musical instruments (for example, clarinets, trumpets, bagpipes): Other: Woodwind instruments: Other.”

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to revoke NY N012485, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H182776, set forth as Attachment B to this notice. 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 comment timely received.

Dated: October 6, 2011

RICHARD MOJICA  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

N012485

June 18, 2007

CLA-2-95:RR:NC:2:224

CATEGORY: Classification

TARIFF NO.: 9503.00.0080

MS. JOANN HOBBS  
JA-RU, INC.  
4030 PHILLIPS HIGHWAY  
JACKSONVILLE, FL 32207

RE: The tariff classification of American BanJam Recorder, Item # 51254, from China

DEAR MS. HOBBS:

In your letter dated May 29, 2007, you requested a tariff classification ruling.

The sample submitted, American BanJam Recorder, consists of a toy plastic recorder measuring approximately 12 ½ inches in length and 1½ inches in width. This toy product is a simple musical instrument which allows a child to play different musical notes by blowing air through the mouthpiece while closing various holes in the body of the instrument with their fingers. This toy is put up for the amusement of children.

The applicable subheading for the American BanJam Recorder will be 9503.00.0080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Other toys; reduced-size (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other: Other. The rate of duty will be 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Tom McKenna at 646-733-3025.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H182776  
CLA-2 OT:RR:CTF:TCM H182776 LWF  
CATEGORY: Classification  
TARIFF NO.: 9205.90.40

Ms. JOANN HOBBS  
JA-RU, INC.  
4030 PHILLIPS HIGHWAY  
JACKSONVILLE, FL 32207

RE: Revocation of New York Ruling Letter (NY) N012485; Classification of a plastic recorder musical instrument

DEAR Ms. HOBBS:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) N012485, issued to you on June 18, 2007. In NY N012485, we determined that the American BandJam Recorder (“BandJam”), a plastic recorder musical instrument made by Ja-Ru, Inc. (“Ja-Ru”), was classified under subheading 9503.00.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides in relevant part for “...dolls, other toys.” CBP has determined that NY N012485 is incorrect. Accordingly, for the reasons set forth below, we intend to revoke that ruling.

**FACTS:**

NY N012485 concerned the classification of Ja-Ru’s BandJam recorder. The BandJam recorder is a musical instrument that consists of a hollow, hard-plastic tube measuring approximately 12½ inches in length and 1½ inches in width. One end of the tube is molded to form the BandJam’s mouthpiece, and the body of the BandJam is fashioned with seven tone holes that are positioned along the shaft of the recorder. Holding the BandJam with two hands, a player exhales his breath through the BandJam’s mouthpiece and produces musical notes by closing different combinations tone holes with his fingers. The BandJam’s retail packaging describes the recorder as “full size,” “educational,” and “tunable.”

**ISSUE:**

Is the plastic recorder musical instrument properly classified under heading 9503, HTSUS, which provides for toys, or under heading 9205, HTSUS, which provides for wind musical instruments?

**LAW AND ANALYSIS:**

Classification of goods under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the heading 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 heading and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The 2011 HTSUS provisions at issue are as follows:

|            |   |
|------------|---|
| 9205       | Wind musical instruments (for example, clarinets, trumpets, bagpipes):  |
| 9205.90    | Other:  |
|            | Woodwind instruments:   |
| 9205.90.40 | 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... |
| *          | * * *   |

Note 1(c) to Chapter 92, HTSUS, states, in pertinent part: "This chapter does not cover: Toy instruments or apparatus (heading 9503)..."

The Explanatory Notes to the Harmonized Commodity Description and Coding System (ENs) 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 to heading 9205, HTSUS, states, in pertinent part, that the heading includes:

- (5) **So-called "wood-wind" instruments.** These instruments consist essentially of a tube (of wood or reed, metal, plastics, ebonite, glass) with holes generally fitted with keys and rings. They are usually sounded with reeds. This group includes flutes, recorders, fifes, flageolets, oboes, clarinets, corsanglais, bassoons, saxophones and sarrusophones...

\* \* \* \* \*

The EN to heading 9503, HTSUS, states, in pertinent part, that the heading includes:

(D) **Other Toys.**

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

These include:

...

- (xii) Toy musical instruments (pianos, trumpets, drums, gramophones, mouth organs, accordions, xylophones, musical boxes, etc...

\* \* \* \* \*

Heading 9205, HTSUS, provides for wind musical instruments. As is pertinent here, Note 1(c) to Chapter 92 states that toy instruments or apparatus (heading 9503) are excluded from classification in Chapter 92. Therefore, prior to considering classification of the BandJam under heading 9205,

HTSUS, as a wind musical instrument, we must first determine whether the BandJam can be classified in heading 9503, HTSUS, as a toy.

Heading 9503, HTSUS, provides, in pertinent part, for “other toys.” The term “toy” is not defined in the HTSUS. However, case law provides guidance on the types of articles that are properly classified under heading 9503, HTSUS. 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. Additional U.S. Rule of Interpretation 1(a), HTSUS, provides 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 good belong, and the controlling using is the principle use.”

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.”

In *Minnetonka*, the court determined that a toy must be designed and used principally for amusement and should not serve a utilitarian purpose. *See* 110 F. Supp. at 1026. In *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28, 33 (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. EN 95.03(d) also states that the principal use of a toy is “for the amusement of persons (children or adults).” Thus, to be classified as a toy in heading 9503, HTSUS, an article must belong to the class or kind of goods which are principally used for amusement.

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) (the “*Carborundum* factors”).

Applying the *Carborundum* factors, we find that the BandJam recorder does not belong to a class or kind of goods principally used for people’s amusement. The BandJam is a full-size, traditional recorder. Its size, shape, and appearance provide a clear indication that it is suitable for musical study or use. Secondly, it is not marketed as a toy, but instead, as a “full size,” “educational,” and “tunable” instrument. Thirdly, the expectation of its ultimate purchaser is that the BandJam will not be used for amusement, but instead will be used to produce musical notes and tunes. Finally, because the BandJam is used for musical study and performance in the same manner as



other recorders and wind musical instruments, it cannot be said that the BandJam is used in the same manner as other toys. Based on the foregoing, we conclude that the BandJam is not classifiable as a toy in heading 9503, HTSUS.

With regards to heading 9205, HTSUS, the courts have concluded that classification as a musical instrument is appropriate only if the article possesses “such quality and character as would ordinarily be used for serious musical study or use.” See *Montgomery Ward & Co. v. United States*, 62 Cust. Ct. 718, 723, C.D. 3853 (1969); see also *Carson M. Simon & Co. v. United States*, 66 Cust. Ct. 107, 111, C.D. 4177 (1971). In *Montgomery Ward*, the United States Customs Court classified a reduced-scale accordion as a toy. 62 Cust. Ct. at 724. The Court concluded that the accordion was not of such quality as would ordinarily be used for serious musical study or use because it was incapable of playing a tune in a minor key and incapable of playing certain cords necessary for a proper “accordion-type rendition” of a tune. *Id.* Furthermore, while noting that marketing materials are not determinative, the Court also found “obvious probative value” in the fact that the toy accordion was listed in the Montgomery Ward catalogue under a special section entitled, “Complete Index of Toys.” *Id.*; See also *Casio, Inc. v. United States*, 18 C.I.T. 952, 959 (1994) (noting that an importer’s description in advertising literature of keyboard synthesizers as musical instruments supports classification under heading 9205, HTSUS).

In the past, CBP has classified full-size, traditional recorders under heading 9205, HTSUS, as wind musical instruments. See NY C84746, dated March 12, 1998; NY K83676, dated March 30, 2004. By contrast, in NY N121016, dated September 12, 2010, CBP classified a children’s recorder under heading 9503, HTSUS, which provides for “...dolls, other toys.” In NY N121016, the merchandise at issue was a children’s plastic recorder that was put up for the amusement of children ages 18 months and older. The children’s recorder measured approximately 6½ inches in length and was ergonomically designed for small hands. Furthermore, the children’s recorder possessed three tone holes, as opposed to the seven tone holes found on a traditional recorder, and was capable of producing only four musical notes. Consequently, CBP concluded that the reduced-scale recorder did not possess the construction quality or produce tones of such genuine musical value typical of traditional recorders, and could not, therefore, be considered a musical instrument classifiable in Chapter 92 of the HTSUS.

Unlike the toy accordion at issue in *Montgomery Ward* and the reduced-scale recorder in NY N121016, the facts of the instant case demonstrate that the BandJam recorder possesses such qualities and characteristics suitable for serious musical study or use. The BandJam recorder is constructed in the style and quality of a traditional recorder musical instrument. It is a full-size, plastic tube that features seven tone holes and is capable of producing the same musical tones as a traditional recorder. Further supporting classification as a musical instrument, Ja-Ru has labeled the recorder “tunable” on the article’s retail packaging. We note that the BandJam is also suitable for musical study. The BandJam’s packaging materials state that the recorder is



“educational,” and, as a traditional recorder, the BandJam is of a style that is typically used in classrooms for music instruction. As such, it meets the terms of heading 9205, HTSUS.

Subheading 9205.90.40, HTSUS, provides for “Wind musical instruments (for example, clarinets, trumpets, bagpipes): Other: Woodwind instruments: Other.” The EN to heading 9205, HTSUS, states that the term “woodwind instruments” is used to describe a class of musical instrument that feature varied hollow tubes with holes. Despite the label “woodwind,” this class includes instruments whose tubes may be constructed from wood, reed, metal, plastics, ebonite, or glass. EN(B)(5) to heading 9205, HTSUS, specifically includes recorders constructed of plastics. As detailed above, the BandJam recorder consists of a hollow plastic tube that shares design characteristics of traditional woodwind recorder musical instruments.

Inasmuch as the BandJam recorder is described fully in heading 9205, HTSUS, as a wind musical instrument, its classification under heading 9503, HTSUS is precluded.

**HOLDING:**

By application of GRI 1, the American BandJam Recorder is classified under heading, 9205, HTSUS, specifically in subheading 9205.90.40, HTSUS, which provides for “Wind musical instruments (for example, clarinets, trumpets, bagpipes): Other: Woodwind instruments: Other.” The column one, general rate of duty is 4.9% *ad valorem*.

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

**EFFECT ON OTHER RULINGS:**

In accordance with the above analysis, NY N012485, dated June 18, 2007, is hereby REVOKED.

*Sincerely,*

ROBERT B. SWIERUPSKI  
*Director,*

*National Commodity Specialist Division*

**PROPOSED REVOCATION OF RULING LETTERS AND  
PROPOSED MODIFICATION OF TREATMENT RELATING  
TO THE TARIFF CLASSIFICATION OF CERTAIN LIGHT  
EMITTING DIODE LAMPS**

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

**ACTION:** Notice of proposed revocation of ruling letters and treatment relating to tariff classification of certain light emitting diode (LED) lamps.

**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 four ruling letters relating to the tariff classification of certain light-emitting diode lamps 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 December 2, 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 revoke four ruling letters pertaining to the tariff classification of certain light emitting diode lamps. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) N020620, dated December 18, 2007, (Attachment A), NY M83236, dated May 18, 2006, (Attachment B), NY L84113, dated April 19, 2005, (Attachment C), and NY E89000, dated December 22, 1999, (Attachment D), 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 N020630, CBP determined that the LR6C LED Lamp was classified in the heading 8539, HTSUS, specifically 8539.39.00, HTSUS, which provides for: "Electrical filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared lamps; ... : Discharge lamps, other than ultraviolet lamps: Other".

In NY M83236, CBP determined that the LED Lenser Reflector was classified in the heading 8539, HTSUS, specifically 8539.49.00, HTSUS, which provides for: "Electrical filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared lamps; ... : Ultraviolet or infrared lamps; ... : Other".

In NY L84113, CBP determined that the LED Light Bulb was classified in the heading 8539, HTSUS, specifically 8539.49.00, HTSUS, which provides for: "Electrical filament or discharge lamps,

including sealed beam lamp units and ultraviolet or infrared lamps; ... : Ultraviolet or infrared lamps; ... : Other”.

In NY E89000, CBP determined that the Frosty Super Bright Red LED lamp was classified in the heading 8541, HTSUS, specifically 8541.40.20, which provides for “[L]ight-emitting diodes; ... : [L]ight-emitting diodes: Light-emitting diodes (LED’s)”.

It is now CBP’s position that these LED lamps are properly classified in heading 9405, HTSUS. The products of NY N020620 and NY M83236 are specifically classified under subheading 9405.40.60, which provides for: “Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included;... : Other electric lamps and lighting fittings: Of base metal: Other”. The products of NY L84113 and NY E89000 are specifically classified under subheading 9405.40.80, HTSUS, which provides for: “Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; ... : Other electric lamps and lighting fittings: Other”.

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N020620, NY M83236, NY L84113, and NYE89000 and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the subject LED Lamps according to the analysis contained in proposed Headquarters Ruling Letters (HQ) H135615 (Attachment E), HQ H024762 (Attachment F), HQ H072515 (Attachment G) and HQ H024869 (Attachment H). 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: October 7, 2011

RICHARD MOJICA

*for*

MYLES B. HARMON

*Director*

*Commercial and Trade Facilitation Division*

Attachments

[ATTACHMENT A]

N020620  
December 18, 2007  
CLA-2-85:OT:RR:NC:1:110  
CATEGORY: Classification  
TARIFF NO.: 8539.39.0000

Ms. CYNTHIA MERRELL  
LED LIGHTING FIXTURES  
617 DAVIS DRIVE, SUITE 200  
MORRISVILLE, NC 27560

RE: The tariff classification of a light emitting diode lamp from China.

DEAR Ms. MERRELL:

In your letter dated November 20, 2007, you requested a tariff classification ruling.

The merchandise under consideration is identified as an LED (Light Emitting Diode) Recessed Lighting Fixture, Model LR6C. A sample of the item was submitted with your ruling request and will be returned to you.

The LR6C model is not a complete light fixture, but a complete 6-inch downlight module designed to replace a standard R40 size lamp (light bulb). The LR6C fits almost all 6-inch downlight recessed lighting fixture housings commonly known as High-Hats or Can fixtures. The lamps simply screw in place of a standard light bulb and feature "Flip Clips" for a secure fit inside the can. These lamps are dimmable using most standard dimmers.

The LR6C LED Lamp (bulb) is constructed of pressure-cast aluminum in the shape of an open container. The aluminum housing measures approximately 5 inches tall with a diameter of 5 inches. The open end of the housing features a 7½ inch diameter flange providing a built-in trim ring. An Edison type screw-in base is affixed to the top of the housing. Integrated within the housing are 10 LEDs, reflective and refractive optical components, and a high efficiency driver and power supply.

The applicable subheading for the Model LR6C Lamp will be 8539.39.0000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Electrical filament or discharge lamps...parts thereof: Discharge lamps, other than ultraviolet lamps: Other." The general rate of duty will be 2.4 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Thomas Campanelli at 646-733-3016.

*Sincerely,*

ROBERT B. SWIERUPSKI  
*Director,*

*National Commodity Specialist Division*

[ATTACHMENT B]

NY M83236  
May 18, 2006  
CLA-2-85: RR: NC: 1:108 M83236  
CATEGORY: Classification  
TARIFF NO.: 8539.49.0080

MR. PATRICK GALLAGHER  
GALLAGHER TRANSPORT INTERNATIONAL, INC.  
P.O. BOX 55488  
PORTLAND, OR 97238

RE: The tariff classification of an LED lamp from Germany.

DEAR MR. GALLAGHER:

In your letter dated May 8, 2006 you requested a tariff classification ruling.

The item in question is denoted as an LED Lenser Reflector. It functions as an LED lamp (light bulb) for use in a lighting fixture for illumination (sample included).

It is a non-filament type lamp that incorporates a shiny, mirror-like surface on its inside back to maximize the strength of illumination. It is powered by a 12-volt power source and must be installed in a light fixture to operate. It is heated to a high enough level to produce visible light.

The applicable subheading for the LED lamp will be 8539.49.0080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Electrical filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared lamps; arc lamps; parts thereof: Ultraviolet or infrared lamps; arc lamps: Other ... Other. The rate of duty will be 2.4 percent ad valorem.

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

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

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

*Sincerely,*

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

[ATTACHMENT C]

NY L84113  
April 19, 2005  
CLA-2-85: RR: NC: 12:108 L84113  
CATEGORY: Classification  
TARIFF NO.: 8539.49.00

MS. SAIMA LITT  
POLYBRITE  
1751 WEST DIEHL ROAD  
SUITE 110  
NAPERVILLE, IL 60563

RE: The tariff classification of LED light bulbs from China.

DEAR MS. LITT:

In your letter dated April 12, 2005 you requested a tariff classification ruling.

The item in question is an LED (light emitting diode) light bulb. It is designed to be used both as a bulb used as an indicator light and also in standard household lighting fixtures. They have a standard screw-in base and operate between 1 and 3 watts. The LED within the glass light bulb emits an ultraviolet light when activated.

The applicable subheading for the LED light bulb will be 8539.49.00, Harmonized Tariff Schedule of the United States (HTS), which provides for Ultraviolet or infrared lamps: arc lamps: Other. The rate of duty will be 2.4 percent ad valorem.

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

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

*Sincerely,*

ROBERT B. SWIERUPSKI  
*Director,*

*National Commodity Specialist Division*

[ATTACHMENT D]

NY E89000  
December 22, 1999  
CLA-2-85:RR:NC:MM:109 E89000  
CATEGORY: Classification  
TARIFF NO.: 8541.40.2000

MR. R. KEVIN WILLIAMS  
O'DONNELL & WILLIAMS  
20 NORTH WACKER DRIVE  
SUITE 1416  
CHICAGO, ILLINOIS 60606

RE: The tariff classification of Frosty Super Bright Red LED Lamps from China

DEAR MR. WILLIAMS:

In your letter dated November 17, 1999, you requested a tariff classification ruling on behalf of ITC, Incorporated of Holland, Michigan.

The merchandise is described in your letter as Frosty Super Bright Red LED lamps. It consists of the following components: LED's, capacitor, varistor, lead wires, silicon insulation sleeve, PC board, body, swivel socket, adapter and candelabra. The array of LED's protrude from a plastic housing that encloses the electrical components (PC board, varistor and capacitor) that regulate and distribute electricity. The components all comprise a module. The components of the Frosty LED lamps are essential to the general operation of the LED's and not to indicator signs or any other specific lamps. Although principally used in illuminated signs due to the red light produced by the LED's, the components of the Frosty LED lamps are only directed toward providing the correct amount of electricity from 120-volt circuits to power the LED's. The Frosty LED lamps do not contain any components of the exit sign itself and retain the character of an LED device. A sample of the merchandise was submitted to this office.

The applicable subheading for the Frosty Super Bright Red LED Lamps will be 8541.40.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Light-emitting diodes (LED's)." The rate of duty will be free.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Eileen S. Kaplan at 212-637-7048.

*Sincerely,*

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



[ATTACHMENT E]

HQ H135615  
CLA-2 OT:RR:CTF:TCM H135615 AMM  
CATEGORY: Classification  
TARIFF NO.: 9405.40.60

MS. CYNTHIA MERRELL  
LED LIGHTING FIXTURES  
617 DAVIS DRIVE, SUITE 200  
MORRISVILLE, NC 27560

RE: Revocation of New York Ruling Letter N020620; Tariff Classification of a Light Emitting Diode Lamp

DEAR MS. MERRELL,

This is in reference to New York Ruling Letter (NY) N020620, dated December 18, 2007, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a light-emitting diode (LED) lamp known as the “LR6C LED Lamp”. In that ruling, Customs and Border Protection (CBP) classified the LED Lamp under heading 8539, HTSUS, which provides for “Electrical filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared lamps; ...”. We have reviewed NY N020620 and found it to be incorrect.

**FACTS:**

In NY N020620, CBP described the merchandise as follows:

The LR6C model is ... a complete 6-inch downlight module designed to replace a standard R40 size lamp (light bulb). The LR6C fits almost all 6-inch downlight recessed lighting fixture housings commonly known as High-Hats or Can fixtures. The lamps simply screw in place of a standard light bulb and feature “Flip Clips” for a secure fit inside the can. These lamps are dimmable using most standard dimmers. The LR6C LED Lamp (bulb) is constructed of pressure-cast aluminum in the shape of an open container. The aluminum housing measures approximately 5 inches tall with a diameter of 5 inches. The open end of the housing features a 7½ inch diameter flange providing a built-in trim ring. An Edison type screw-in base is affixed to the top of the housing. Integrated within the housing are 10 LEDs, reflective and refractive optical components, and a high efficiency driver and power supply.

The LR6C LED Lamp is pictured below:



**ISSUE:**

What is the correct classification under the HTSUS of the LR6C LED Lamp?

**LAW AND ANALYSIS:**

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

The HTSUS provisions under consideration are as follows:

|      |   |
|------|---|
| 8539 | Electrical filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared lamps; arc lamps; parts thereof: |
|------|---|

Discharge lamps, other than ultraviolet lamps:

|            |       |
|------------|-------|
| 8539.39.00 | Other |
|------------|-------|

|      |   |
|------|---|
| 9405 | Lamps and lighting fittings including searchlights and spotlights and parts thereof, 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:<br>Of base metal: |
|---------|---|

|            |       |
|------------|-------|
| 9405.40.60 | Other |
|------------|-------|

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

Note 1 to Chapter 94, HTSUS, states, in part: "This chapter does not cover: ... (f) Lamps or lighting fittings of chapter 85 ...".

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

The EN to Heading 85.39 states, in pertinent part:

Electric light lamps consist of glass or quartz containers, of various shapes, containing the necessary elements for converting electrical energy into light rays (including infra-red or ultra-violet rays). The heading covers all electric light lamps, whether or not specially designed for particular uses (including flashlight discharge lamps). The heading covers filament lamps, gas or vapour discharge lamps and arc-lamps.

The General ENs to Chapter 94, state, in pertinent part:

This Chapter covers, **subject** to the exclusions listed in the Explanatory Notes to this Chapter: ... (3) Lamps and lighting fittings and parts thereof, not elsewhere specified or included, of any material (**excluding** those of materials described in Note 1 to Chapter 71), ...

The EN to Heading 94.05 states, in pertinent part:

Lamps and lighting fittings of this group can be constituted of any material (**excluding** those materials described in Note 1 to Chapter 71) and use any source of light (candles, oil, petrol, paraffin (or kerosene), gas, acetylene, electricity, etc). Electrical lamps and lighting fittings of this heading may be equipped with lamp-holders switches, flex and plugs, transformers, etc. ...

Heading 8539, HTSUS, provides in relevant part for: “Electric filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared lamps ...”. The heading only covers filament and discharge lamps. See NY L82536, dated March 4, 2005 (filament lamp) and NY L87569, dated October 6, 2005 (metal halide lamp). See also EN 85.39. It does not include LED lamps, which function differently. An LED is a rectifying semiconductor device which converts electrical energy into electromagnetic radiation when current is applied. *McGraw-Hill Concise Encyclopedia of Science and Technology*, 5th Ed., 2005 at 1252. In contrast, a filament lamp produces light by heating a filament to incandescence by the passage of an electric current. A discharge lamp does so by sending an electric discharge through a gas or vapor producing substance. Therefore, as the instant LED Lamp is not a filament or discharge lamp, it cannot be classified under heading 8539, HTSUS.

Heading 9405, HTSUS, provides in relevant part for “Lamps and light fittings ... not elsewhere specified or included.” Relying on the common meaning of the term, CBP has previously determined that a “lamp” is a device which provides an isolated source of heat or light. See HQ H042586, dated January 29, 2009 (fiber optic lamp), HQ 966952, dated August 18, 2004 (litecube), and HQ 965248, dated July 26, 2002 (bubble lights) (citing *The Random House College Dictionary* (1973) at 752 and *Webster’s New Collegiate Dictionary* (1979) at 639).

As entered, the subject LR6C LED Lamp comprises the light source of a completed lighting fixture. When installed into housings adequate for their intended purpose, and connected to a power source, they emit light. As such, we conclude that the LR6C LED Lamp meets the definition of “lamp” as enunciated in earlier CBP Rulings, in that it is a device which provides an isolated source of light. Therefore, as the good is a lamp not specified elsewhere in the Nomenclature, it is classified by application of GRI 1 under heading 9405, HTSUS, specifically under subheading 9405.40.60, HTSUS, which provides for “Lamps ... not elsewhere specified or included: Other electric lamps and light fittings: Of base metal: Other”.

**HOLDING:**

By application of GRI 1, the LR6C LED Lamp is classified under heading 9405, HTSUS, specifically in subheading 9405.40.60, which provides in rel-

evant part for “Lamps ... not elsewhere specified or included: Other electric lamps and light fittings: Of base metal: Other.” The column one, general rate of duty is: 6% *ad valorem*.

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

**EFFECT ON OTHER RULINGS:**

NY N020620, dated December 18, 2007, is hereby revoked.

*Sincerely,*

MYLES B. HARMON

*Director,*

*Commercial and Trade Facilitation Division*

[ATTACHMENT F]

HQ H024762  
CLA-2 OT:RR:CTF:TCM H024762 AMM  
CATEGORY: Classification  
TARIFF NO.: 9405.40.60

MR. PATRICK GALLAGHER  
GALLAGHER TRANSPORT INTERNATIONAL, INC.  
P.O. Box 55488  
PORTLAND, OR 97238

RE: Revocation of New York Ruling Letter M83236; Tariff Classification of a Light Emitting Diode Lamp

DEAR MR. GALLAGHER,

This is in reference to New York Ruling Letter (NY) M83236, dated May 18, 2006, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a certain light-emitting diode (LED) lamp known as the “LED Lenser Reflector.” In that ruling, Customs and Border Protection (CBP) classified the LED lamp under heading 8539, HTSUS, which provides for “Electrical filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared lamps; ...”. We have reviewed NY M83236 and found it to be incorrect.

**FACTS:**

In NY M83236, CBP described the merchandise as follows:

[The] LED Lenser Reflector ... functions as an LED lamp (light bulb) for use in a lighting fixture for illumination (sample included). It is a non-filament type lamp that incorporates a shiny, mirror-like surface on its inside back to maximize the strength of illumination. It is powered by a 12-volt power source and must be installed in a light fixture to operate. It is heated to a high enough level to produce visible light.

Additional product literature you provided on January 11, 2011, indicates that the housing is made of machined metal. You indicated during a phone discussion with CBP that you believed it be aluminum. The LED Lenser Reflector is pictured below.



**ISSUE:**

What is the correct classification under the HTSUS of the LED Lenser Reflector?

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods

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

The HTSUS provisions under consideration are as follows:

8539                   Electrical filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared lamps; arc lamps; parts thereof:

Discharge lamps, other than ultraviolet lamps:

8539.39.00                   Other

-----

9405                   Lamps and lighting fittings including searchlights and spotlights and parts thereof, 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:

9405.41                   Other electric lamps and lighting fittings:

Of base metal:

9405.40.60                   Other

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

Note 1 to Chapter 94, HTSUS, states, in part: "This chapter does not cover: ... (f) Lamps or lighting fittings of chapter 85 ...".

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

The EN to Heading 85.39 states, in pertinent part:

Electric light lamps consist of glass or quartz containers, of various shapes, containing the necessary elements for converting electrical energy into light rays (including infra-red or ultra-violet rays). The heading covers all electric light lamps, whether or not specially designed for particular uses (including flashlight discharge lamps). The heading covers filament lamps, gas or vapour discharge lamps and arc-lamps.

The General ENs to Chapter 94 state, in pertinent part:

This Chapter covers, **subject** to the exclusions listed in the Explanatory Notes to this Chapter: ... (3) Lamps and lighting fittings and parts thereof, not elsewhere specified or included, of any material (**excluding** those of materials described in Note 1 to Chapter 71), ...

The EN to Heading 94.05 states, in pertinent part:

Lamps and lighting fittings of this group can be constituted of any ma-

terial (**excluding** those materials described in Note 1 to Chapter 71) and use any source of light (candles, oil, petrol, paraffin (or kerosene), gas, acetylene, electricity, etc). Electrical lamps and lighting fittings of this heading may be equipped with lamp-holders switches, flex and plugs, transformers, etc. ...

Heading 8539, HTSUS, provides in relevant part for: “Electric filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared lamps ...”. The heading only covers filament and discharge lamps. See NY L82536, dated March 4, 2005 (filament lamp) and NY L87569, dated October 6, 2005 (metal halide lamp). See also EN 85.39. It does not include LED lamps, which function differently. An LED is a rectifying semiconductor device which converts electrical energy into electromagnetic radiation when current is applied. *McGraw-Hill Concise Encyclopedia of Science and Technology*, 5th Ed., 2005 at 1252. In contrast, a filament lamp produces light by heating a filament to incandescence by the passage of an electric current. A discharge lamp does so by sending an electric discharge through a gas or vapor producing substance. Therefore, as the instant LED Lamp is not a filament or discharge lamp, it cannot be classified under heading 8539, HTSUS.

Heading 9405, HTSUS, provides in relevant part for “Lamps and light fittings ... not elsewhere specified or included.” Relying on the common meaning of the term, CBP has previously determined that a “lamp” is a device which provides an isolated source of heat or light. See HQ H042586, dated January 29, 2009 (fiber optic lamp), HQ 966952, dated August 18, 2004 (litecube), and HQ 965248, dated July 26, 2002 (bubble lights) (citing *The Random House College Dictionary* (1973) at 752 and *Webster’s New Collegiate Dictionary* (1979) at 639).

As entered, the subject LED Lenser Reflector comprises the light source of complete lamps. When installed into housings adequate for their intended purpose, and connected to a power source, they emit light. As such, we conclude that the LED Lenser Reflector meets the definition of “lamp” as enunciated in earlier CBP Rulings, in that it is a device which provides an isolated source of light. Therefore, as the good is a lamp not specified elsewhere in the Nomenclature, it is classified by application of GRI 1 under heading 9405, HTSUS, specifically under subheading 9405.40.60, HTSUS, which provides for “Lamps ... not elsewhere specified or included: Other electric lamps and light fittings: Of base metal: Other”.

#### **HOLDING:**

By application of GRI 1, the LED Lenser Reflector is classified under heading 9405, HTSUS, specifically in subheading 9405.40.60, which provides in relevant part for “Lamps ... not elsewhere specified or included: Other electric lamps and light fittings: Of base metal: Other.” The column one, general rate of duty is: 6 % *ad valorem*.

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

#### **EFFECT ON OTHER RULINGS:**

NY M83236, dated May 18, 2006, is hereby revoked.

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



[ATTACHMENT G]

HQ H072515  
CLA-2 OT:RR:CTF:TCM H072515 AMM  
CATEGORY: Classification  
TARIFF NO.: 9405.40.80

Ms. SAIMA LITT  
POLYBRITE INTERNATIONAL  
1751 WEST DIEHL ROAD SUITE 110  
NAPERVILLE, IL 60563

RE: Revocation of New York Ruling Letter L84113; Tariff Classification of a Light Emitting Diode Lamp

DEAR MR. WILLIAMS

This is in reference to New York Ruling Letter (NY) L84113 dated April 19, 2005, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a light-emitting diode (LED) lamp. In that ruling, Customs and Border Protection (CBP) classified the LED lamp under heading 8539, HTSUS, which provides for “Electrical filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared lamps; ...”. We have reviewed NY L84113 and found it to be incorrect.

**FACTS:**

In NY L84113, CBP described the merchandise as follows:

The item in question is an LED (light emitting diode) light bulb. It is designed to be used both as a bulb used as an indicator light and also in standard household lighting fixtures. They have a standard screw-in base and operate between 1 and 3 watts. The LED within the glass light bulb emits an ultraviolet light when activated.

The LED lamp is pictured below.



**ISSUE:**

What is the correct classification under the HTSUS of the LED lamp?

**LAW AND ANALYSIS:**

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

The HTSUS provisions under consideration are as follows:

8539                   Electrical filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared lamps; arc lamps; parts thereof:

Discharge lamps, other than ultraviolet lamps:

8539.39.00                   Other

-----

9405                   Lamps and lighting fittings including searchlights and spotlights and parts thereof, 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:

9405.42                   Other electric lamps and lighting fittings:

9405.40.80                   Other

Note 1 to Chapter 94, HTSUS, states, in part: "This chapter does not cover: ... (f) Lamps or lighting fittings of chapter 85 ...".

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

The EN to Heading 85.39 states, in pertinent part:

Electric light lamps consist of glass or quartz containers, of various shapes, containing the necessary elements for converting electrical energy into light rays (including infra-red or ultra-violet rays). The heading covers all electric light lamps, whether or not specially designed for particular uses (including flashlight discharge lamps). The heading covers filament lamps, gas or vapour discharge lamps and arc-lamps.

The General ENs to Chapter 94 state, in pertinent part:

This Chapter covers, **subject** to the exclusions listed in the Explanatory Notes to this Chapter: ... (3) Lamps and lighting fittings and parts thereof, not elsewhere specified or included, of any material (**excluding** those of materials described in Note 1 to Chapter 71), ...

The EN to Heading 94.05 states, in pertinent part:

Lamps and lighting fittings of this group can be constituted of any material (**excluding** those materials described in Note 1 to Chapter 71) and use any source of light (candles, oil, petrol, paraffin (or kerosene), gas, acetylene, electricity, etc). Electrical lamps and lighting fittings of this heading may be equipped with lamp-holders switches, flex and plugs, transformers, etc. ...

Heading 8539, HTSUS, provides in relevant part for: "Electric filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared

lamps ...”. The heading only covers filament and discharge lamps. See NY L82536, dated March 4, 2005 (filament lamp) and NY L87569, dated October 6, 2005 (metal halide lamp). See also EN 85.39. It does not include LED lamps, which function differently. An LED is a rectifying semiconductor device which converts electrical energy into electromagnetic radiation when current is applied. *McGraw-Hill Concise Encyclopedia of Science and Technology*, 5th Ed., 2005 at 1252. In contrast, a filament lamp produces light by heating a filament to incandescence by the passage of an electric current. A discharge lamp does so by sending an electric discharge through a gas or vapor producing substance. Therefore, as the instant LED Lamp is not a filament or discharge lamp, it cannot be classified under heading 8539, HTSUS.

Heading 9405, HTSUS, provides in relevant part for “Lamps and light fittings ... not elsewhere specified or included.” Relying on the common meaning of the term, CBP has previously determined that a “lamp” is a device which provides an isolated source of heat or light. See HQ H042586, dated January 29, 2009 (fiber optic lamp), HQ 966952, dated August 18, 2004 (litecube), and HQ 965248, dated July 26, 2002 (bubble lights) (citing *The Random House College Dictionary* (1973) at 752 and *Webster’s New Collegiate Dictionary* (1979) at 639).

As entered, the subject LED lamp comprises the light source of complete lamps. When installed into housings adequate for their intended purpose, and connected to a power source, they emit light. As such, we conclude that the instant LED lamp meets the definition of “lamp” as enunciated in earlier CBP Rulings, in that it is a device which provides an isolated source of light. Therefore, as the good is a lamp not specified elsewhere in the Nomenclature, it is classified by application of GRI 1 under heading 9405, HTSUS, specifically under subheading 9405.40.80, HTSUS, which provides for “Lamps ... not elsewhere specified or included: Other electric lamps and light fittings: Other”.

**HOLDING:**

By application of GRI 1, the LED lamp is classified under heading 9405, HTSUS, specifically in subheading 9405.40.80, which provides in relevant part for “Lamps ... not elsewhere specified or included: Other electric lamps and light fittings: Other.” The column one, general rate of duty is: 3.9 % *ad valorem*.

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

**EFFECT ON OTHER RULINGS:**

NY L84113, dated April 19, 2005, is hereby revoked.

*Sincerely,*

MYLES B. HARMON

*Director,*

*Commercial and Trade Facilitation Division*

[ATTACHMENT H]

HQ H024869  
CLA-2 OT:RR:CTF:TCM H024869 AMM  
CATEGORY: Classification  
TARIFF NO.: 9405.40.80

MR. R. KEVIN WILLIAMS  
O'DONNELL & WILLIAMS  
20 NORTH WACKER DRIVE SUITE 1416  
CHICAGO, ILLINOIS 60606

RE: Revocation of New York Ruling Letter E89000; Tariff Classification of a Light Emitting Diode Lamp

DEAR MR. WILLIAMS

This is in reference to New York Ruling Letter (NY) E89000 dated December 22, 1999, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a certain light-emitting diode (LED) Lamp known as the "Frosty Super Bright Red LED Lamp." In that ruling, Customs and Border Protection (CBP) classified the LED Lamp under heading 8541, HTSUS, which provides in part for "Light-emitting diodes (LED's)". We have reviewed NY E89000 and found it to be incorrect. For the reasons set forth below, we intend to revoke that ruling.

**FACTS:**

In NY E89000, CBP described the merchandise as follows:

[The] Frosty Super Bright Red LED lamp ... consists of the following components: LED's, capacitor, varistor, lead wires, silicon insulation sleeve, PC board, body, swivel socket, adapter and candelabra. The array of LED's protrude from a plastic housing that encloses the electrical components (PC board, varistor and capacitor) that regulate and distribute electricity. The components all comprise a module.

**ISSUE:**

What is the correct classification under the HTSUS of the Frosty Super Bright Red LED Lamp?

**LAW AND ANALYSIS:**

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

The HTSUS provisions under consideration are as follows:

8539                   Electrical filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared lamps; arc lamps; parts thereof:

Ultraviolet or infrared lamps; arc lamps:

8539.49.00

Other

-----  
 8541 Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof:

8541.40 Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes:

8541.40.20 Light-emitting diodes (LED's)

-----  
 9405 Lamps and lighting fittings including searchlights and spotlights and parts thereof, 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:

9405.43 Other electric lamps and lighting fittings:

9405.40.80 Other

Note 8 to Chapter 85, HTSUS, provides, in part: "For classification of the articles defined in this note, headings 8541 and 8542 shall take precedence over any other heading in the Nomenclature, except in the case of heading 8523, which might cover them by reference to, in particular, their function."

Note 1 to Chapter 94, HTSUS, states, in part: "This chapter does not cover: ... (f) Lamps or lighting fittings of chapter 85 ...".

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

The EN to Heading 85.39 states, in pertinent part:

Electric light lamps consist of glass or quartz containers, of various shapes, containing the necessary elements for converting electrical energy into light rays (including infra-red or ultra-violet rays). The heading covers all electric light lamps, whether or not specially designed for particular uses (including flashlight discharge lamps). The heading covers filament lamps, gas or vapour discharge lamps and arc-lamps.

The EN to Heading 85.41 states, in pertinent part: “Light emitting diodes ... are devices which convert electric energy into visible, infra-red or ultra-violet rays. They are used, e.g., for displaying or transmitting data in control systems.”

The General ENs to Chapter 94 state, in pertinent part:

This Chapter covers, **subject** to the exclusions listed in the Explanatory Notes to this Chapter: ... (3) Lamps and lighting fittings and parts thereof, not elsewhere specified or included, of any material (**excluding** those of materials described in Note 1 to Chapter 71), ...

The EN to Heading 94.05 states, in pertinent part:

Lamps and lighting fittings of this group can be constituted of any material (**excluding** those materials described in Note 1 to Chapter 71) and use any source of light (candles, oil, petrol, paraffin (or kerosene), gas, acetylene, electricity, etc). Electrical lamps and lighting fittings of this heading may be equipped with lamp-holders switches, flex and plugs, transformers, etc. ...

According to Note 8 of Chapter 85, CBP must first consider whether the Frosty Super Bright Red LED Lamp is properly classified under 8541, HTSUS, which provides, in part, for “light-emitting diodes.” CBP has previously determined that the provision for LEDs in heading 8541, HTSUS, covers only the individual LEDs (i.e., the semiconductor diodes without other components). See Headquarters Ruling (HQ) H024874, dated March 31, 2010; HQ H024876, dated March 31, 2010; HQ H024878, dated March 31, 2010; and HQ H095035, dated March 31, 2010. See also HQ H011693, dated December 18, 2007; HQ H010636, dated December 3, 2007; HQ H003215, dated October 10, 2007; and HQ 966401, dated June 29, 2004. The Frosty Super Bright Red LED Lamp consists of a number of LED bulbs mounted in a housing, which includes PC board, varistor and capacitor. As such, the devices are beyond the scope of heading 8541, HTSUS.

Heading 8539, HTSUS, provides in relevant part for: “Electric filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared lamps ...”. The heading only covers filament and discharge lamps. See NY L82536, dated March 4, 2005 (filament lamp) and NY L87569, dated October 6, 2005 (metal halide lamp). See also EN 85.39. It does not include LED lamps, which function differently. An LED is a rectifying semiconductor device which converts electrical energy into electromagnetic radiation when current is applied. *McGraw-Hill Concise Encyclopedia of Science and Technology*, 5th Ed., 2005 at 1252. In contrast, a filament lamp produces light by heating a filament to incandescence by the passage of an electric current. A discharge lamp does so by sending an electric discharge through a gas or vapor producing substance. Therefore, as the instant LED Lamp is not a filament or discharge lamp, it cannot be classified under heading 8539, HTSUS.

Heading 9405, HTSUS, provides in relevant part for “Lamps and light fittings ... not elsewhere specified or included.” Relying on the common meaning of the term, CBP has previously determined that a “lamp” is a device which provides an isolated source of heat or light. See HQ H042586, dated January 29, 2009 (fiber optic lamp), HQ 966952, dated August 18, 2004 (litecube), and HQ 965248, dated July 26, 2002 (bubble lights) (citing *The*

*Random House College Dictionary* (1973) at 752 and *Webster's New Collegiate Dictionary* (1979) at 639).

As entered, the subject Frosty Super Bright Red LED Lamp comprises the light source of complete lamps. When installed into housings adequate for their intended purpose, and connected to a power source, they emit light. As such, we conclude that the Frosty Super Bright Red LED Lamp meets the definition of "lamp" as enunciated in earlier CBP Rulings, in that it is a device which provides an isolated source of light. Therefore, as the good is a lamp not specified elsewhere in the Nomenclature, it is classified by application of GRI 1 under heading 9405, HTSUS, specifically under subheading 9405.40.80, HTSUS, which provides for "Lamps ... not elsewhere specified or included: Other electric lamps and light fittings: Other".

**HOLDING:**

By application of GRI 1, the Frosty Super Bright Red LED Lamp is classified under heading 9405, HTSUS, specifically in subheading 9405.40.80, which provides in relevant part for "Lamps ... not elsewhere specified or included: Other electric lamps and light fittings: Other." The column one, general rate of duty is: 3.9 % *ad valorem*.

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

**EFFECT ON OTHER RULINGS:**

NY E89000, dated December 22, 1999, is hereby revoked.

*Sincerely,*

MYLES B. HARMON

*Director,*

*Commercial and Trade Facilitation Division*

**GENERAL NOTICE**

**19 CFR PART 177**

**PROPOSED REVOCATIONS AND MODIFICATION OF  
THREE RULING LETTERS AND PROPOSED REVOCATION  
OF TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF PLASTIC BEVERAGE BOTTLES**

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

**ACTION:** Notice of proposed revocation and modification of three ruling letters and proposed revocation of treatment concerning the tariff classification of plastic beverage bottles.

**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 U.S. Customs and Border Protection (CBP) intends to revoke two ruling letters, and modify one ruling letter, relating to the tariff classification of plastic beverage bottles under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the proposed action.

**DATES:** Comments must be received on or before December 2, 2011.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Office of International Trade, Attention: Trade and Commercial Regulations Branch, 799 9th Street, 5th Floor, N.W., Washington, D.C. 20229–1179. 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 Mr. Joseph Clark at (202) 325–0118.

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

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

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



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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke two ruling letters, and modify one ruling letter, pertaining to the tariff classification of plastic beverage bottles. Although in this notice, CBP is specifically referring to the modification of HQ 952264, dated November 25, 1992 (Attachment A), and the revocations of NY D82348, dated October 9, 1998 (Attachment B) and NY F80484, dated December 27, 1999 (Attachment C), this notice covers any rulings on this merchandise that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP 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 its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In HQ 952264, NY D82348, and NY F80484, CBP classified the plastic beverage bottles in heading 3924, HTSUS, specifically in subheading 3924.90, HTSUS, which provides for other household articles of plastics. It is now CBP's position that the plastic beverage bottles are properly classified in subheading 3924.10, HTSUS, which provides for tableware and kitchenware of plastics.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify HQ 952264, and revoke NY D82348, and NY F80484, and any other ruling not specifically identified, in order to reflect the proper analysis contained in proposed HQ H100800 (Attachment D), HQ H100801 (Attachment E), and HQ H100804 (Attachment F), respectively. 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: October 12, 2011

IEVA K. O'ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

[ATTACHMENT A]

HQ 952264  
CLA-2 CO:R:C:F 952264 ALS  
CATEGORY: Classification  
TARIFF NO.: 3924.90.5000; 3923.50.0000;  
3926.90.9090;  
3917.32.0010; 3917.32.0020; 3917.32.0050

Ms. JULIE C. VAIR  
AIR AND OCEAN SERVICES  
JAMES J. BOYLE AND Co.  
720 3RD AVENUE #2020  
SEATTLE, WASHINGTON 98104

RE: Plastic Sports Beverage Bottles and Plastic Sports Beverage Bottle Components

DEAR Ms. VAIR:

This is in reference to your inquiry of June 15, 1992, to our Seattle, Washington, Office regarding completely assembled plastic sports bottles and various components for such bottles. You requested information as to the classification of the bottles and the components as well as the marking of the country of origin thereon. This ruling only covers the classification portion of your request. You will receive a separate response as to the country of origin marking issue.

**FACTS:**

The articles under consideration are plastic sports bottles, for holding liquids, and various components for such bottles. The bottles consist of 6 separate pieces: the plastic bottle base, a 3 inch diameter plastic lid which screws onto the bottle, a cartridge which will contain the blue ice pack, a plastic lid which fits onto the cartridge, an 11 inch plastic drinking straw and a plastic stopper for the straw which prevents the liquids in the bottle from leaking out through the straw. The plastic stopper is 2 inches long. It has an open circular appendage on one end so that it can fit onto the straw to prevent the stopper from becoming lost. Its other end is a closed circular appendage with a tip which fits into the open end of the straw which permits the stopper to perform its function.

The bottles or components will be imported in one of 3 scenarios. Under scenario 1 all the components would be manufactured in Thailand and would be imported as complete sports bottles. Under scenario 2 the bottle base would be manufactured in the United States but all the remaining components would be manufactured in Thailand. Under scenario 3 all the components would be manufactured in the United States except the blue ice pack which would be manufactured in Thailand.

Non-U.S. components will be assembled with U.S. components subsequent to importation, as necessary, by screwing the components together to form complete sports bottles.

**ISSUE:**

What is the classification of complete plastic sports bottles and various plastic components for such sports bottles?

**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 heading and legal notes do not otherwise require, the remaining GRI's are applied taken in order.

In considering the subheadings of the HTSUSA in which the imported bottles or imported components would be classified, we noted that all the items are made of plastic. We also noted that some bottles will be fully assembled when imported. We further noted that plastic components which will be imported in an unassembled condition will be assembled with components of U.S. origin by screwing them together and that no further processing will be performed on the bottles or components subsequent to importation.

Based on the above we have concluded that the bottles and all the components are classifiable in Chapter 39 of the HTSUSA which covers plastics and articles thereof.

We initially considered which of the headings and subheadings of Chapter 39 might be applicable to the bottles when imported in completed condition. We noted two subheadings: subheading 3923.30.0090, HTSUSA, which provides for articles for the conveyance or packing of goods, of plastics, carboys, bottles, flasks and similar articles, other and subheading 3924.90.5000, HTSUSA, which provides for other household articles of plastics, other.

Sports bottles, while they can be transported from point to point with liquids therein, are not specifically designed for that purpose. Their essential features are that they have a cover(s) and a straw, that the cover seals liquids therein preventing spillage, that the straw permit the imbibing of the liquid contained therein with the user's head remaining in an upright position or while the user is in motion. We believe that the instant product is distinguishable from articles which are designed for the conveyance or packing of goods. They are not designed to be filled with foodstuffs or beverages by a purveyor of such products and then sold in a filled condition to the ultimate consumer. Based on our consideration of the Explanatory Notes to the Harmonized System (EN), specifically EN 39.23, which represents the opinion of the international tariff classification experts, we have concluded that the bottles referenced in subheading 3923.30.0090, HTSUSA, are bottles such as beverage bottles which are designed to be filled and sold to the ultimate consumer with a beverage therein. They are not containers to be filled by the end user. The subject sports bottles are like many other containers, some of which have covers, which are designed to hold beverages, e.g., beer steins, beverage cups such as those sold in fast food establishments. Also, these bottles do not have any characteristics which makes them particularly suitable for travel, e.g., a carrying strap.

While the subject bottles incorporate a blue ice pack as an additional feature, we believe that this feature merely permits each bottle to keep a beverage cooler for a longer period of time than other sports bottles. The bottles can perform this function whether used at home or at some distant location. This function is not unique to travel items.

Accordingly, we believe that sports bottles when imported in completed condition and empty would be classifiable in the provision for household articles of plastic.

The components manufactured overseas and only combined with U.S. manufactured components to form a completed bottle subsequent to importation, as suggested in scenarios 2 and 3, would be classifiable under the provisions of Chapter 39, HTSUSA. The 3 inch diameter plastic lid which screws on to the bottle, the 1- 1/2 inch diameter plastic lid which screws onto the blue ice cartridge and the stopper which seals the straw would be classifiable under the provisions of heading 3923, HTSUSA, which provides for stoppers, lids, caps and other closures, of plastics.

In accordance with Legal note 8 to Chapter 39, the straw would be classifiable in the provision for tubes, pipes and hoses, not reinforced or otherwise combined with other materials, without fittings in heading 3917, HTSUSA. That note states “[f]or the purposes of heading 3917, the expression ‘tubes, pipes and hoses’ means hollow products, whether semimanufactures or finished products, of a kind generally used for conveying, conducting or distributing gases or liquids (for example, ribbed garden hose, perforated tubes).” While drinking straws are not in the same class as other products classified in this provision and are not part of the category of merchandise known in the trade as tubes, they do meet the above definition insofar as they are hollow and are used to conduct liquids.

The empty blue ice pack cartridge would come under the provisions of heading 3926, HTSUSA, relative to other articles of plastics and articles of other materials of headings 3901 to 3914. If the cartridge were imported containing the blue ice and the blue ice were a polymer, e.g., carboxymethylcellulose, it would continue to be classifiable in heading 3926, HTSUSA.

#### **HOLDING:**

Plastic sports bottles, when imported as completed items, are classifiable in subheading 3924.90.5000, HTSUSA, which provides for other household articles of plastics, other. They are subject to a general rate of duty of 3.4 percent ad valorem.

The plastic lids and stopper, when imported separately, are classifiable in subheading 3923.50.0000, HTSUSA, which provides for stoppers, lids, caps and other closures, or plastics, and are subject to a general rate of duty of 5.3 percent ad valorem.

The blue ice pack cartridge, whether imported empty or with a blue ice polymer, is classifiable in subheading 3926.90.9090, HTSUSA, which provides for other articles of plastics and articles of other materials of headings 3901 to 3914. It is subject to a general rate of duty of 5.3 percent ad valorem.

The plastic drinking straws are classifiable in subheading 3917.32.00, HTSUSA, which provides for other tubes, pipes and hoses, not reinforced or otherwise combined with other materials, without fittings. The ninth and tenth digits of the subheading are dependent on the type of plastic used. They would be 10, 20 or 50 dependent on whether the plastic was polyvinyl chloride, polyethylene or another plastic. Plastic straws so classified are subject to a general rate of duty of 3.1 percent ad valorem.

The above articles, if the product of Thailand, which meet the requirements of General Note 3(a)(ii), HTSUSA, regarding the Generalized System of

Preferences (GSP), are eligible for a free special rate of duty upon compliance with the provisions of section 10.171 et seq., Customs Regulations (19 CFR 10.171 et seq.).

*Sincerely,*  
JOHN DURANT,  
*Director*  
*Commercial Rulings Division*

[ATTACHMENT B]

NY D82348  
October 9, 1998  
CLA-2-39:RR:NC:SP:222 D82348  
CATEGORY: Classification  
TARIFF NO.: 3924.90.5500

MS. JULIE KIM  
JCC COMPANY  
330 FIFTH AVENUE, SUITE 200  
NEW YORK, NY 10001

RE: The tariff classification of plastic water bottles with screw on/snap on covers and straws from Hong Kong.

DEAR MS. KIM:

In your letter dated September 11, 1998, you requested a tariff classification ruling.

You have submitted two samples of plastic water bottles. One bottle has a snap-on cover and straw, while the other bottle has a screw on cover with straw. Both samples are identical and vary only in the outer printed design. The bottles can hold 32 ounces of liquid. The bottles, covers and straws are made entirely of plastics.

Sample A, is a yellow bottle with a black snap-on cover, a clear plastic straw with a black cover on the tip. The printed label contains yellow, red, purple and green colors with a coca-cola bottle in the center. The label exhibits the words "Always Coca-Cola".

Sample B, is a white bottle with a black screw on cover, and white plastic straw with a black cover on the tip. The gold and black printed design features the face and front paws of a tiger above the word "MIZZOU". Printed below the word "MIZZOU" are large and small tiger footprints with the letter "M" on each one.

The applicable subheading for sample A and sample B will be 3924.90.5500, Harmonized Tariff Schedule of the United States (HTS), which provides for...other household articles...of plastics, other: other. The rate of duty will be 3.4 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alice Masterson at 212-466-5892.

*Sincerely,*

ROBERT B. SWIERUPSKI  
*Director,*

*National Commodity Specialist Division*

[ATTACHMENT C]

NY F80484  
December 27, 1999  
CLA-2-39:RR:NC:SP:221 F80484  
CATEGORY: Classification  
TARIFF NO.: 3924.90.5500

MS. LORI ALDINGER  
RITE AID CORPORATION  
P.O. BOX 3165  
HARRISBURG, PA 17105

RE: The tariff classification of the "Cool Gear Freezer Bottle" from China.

DEAR MS. ALDINGER:

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

The Cool Gear Freezer Bottle is composed of plastics. The freezer bottle is a three-piece construction consisting of a bottle, cap and cooling unit. The bottle holds 22 ounces of liquid, and is approximately 7 ¼ inches in height by 2 ½ inches in diameter, narrowing slightly at the top. The plastic threaded cap has a pull-up spout. When the spout is pulled up, the beverage can be released from the bottle. When the spout is pressed down, the bottle is sealed. The cooling unit, which contains a gel, is cylindrical and measures approximately 5 ½ inches in height by 1 inch in diameter. The cooling unit is placed in a freezer approximately four hours before use. After the gel freezes, the cooling unit is snapped onto the lid and inserted into the bottle. The cooling unit then keeps the beverage cool.

The applicable subheading for the Cool Gear Freezer Bottle will be 3924.90.5500, Harmonized Tariff Schedule of the United States (HTS), which provides for...other household articles...of plastics: other, other. The rate of duty will be 3.4 percent ad valorem. The rate will remain unchanged in 2000.

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 Alice Masterson at 212-637-7090.

*Sincerely,*

ROBERT B. SWIERUPSKI  
*Director,*

*National Commodity Specialist Division*



[ATTACHMENT D]

HQ H100800  
CLA-2 OT:RR:CTF:TCM HQ H100800 DSR  
CATEGORY: Classification  
TARIFF NO.: 3924.10.40

Ms. JULIE C. VAIR  
AIR AND OCEAN SERVICES  
*JAMES J. BOYLE AND Co.*  
720 3RD AVENUE, #2020  
SEATTLE, WA 98104

RE: Modification of HQ 952264, dated November 25, 1992; Subheading 3924.10.40, HTSUS; Classification of a plastic sports beverage bottle.

DEAR MRS. VAIR:

This is in regard to Headquarters Ruling Letter (HQ) 952264, issued to you on November 25, 1992, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a completely assembled plastic sports beverage bottle and various components for such bottle. We have reviewed HQ 952264 and find it to be in error with respect to the completely assembled plastic sports bottle.

**FACTS:**

The article under consideration is a plastic sports beverage bottle for holding liquids, and various components for such bottle. The bottle consists of six separate pieces: the plastic bottle base, a 3-inch diameter plastic lid which screws onto the bottle, a cartridge which will contain the blue ice pack, a plastic lid which fits onto the cartridge, an 11-inch plastic drinking straw and a plastic stopper for the straw which prevents the liquids in the bottle from leaking out through the straw. The plastic stopper is two inches long. It has an open circular appendage on one end so that it can fit onto the straw to prevent the stopper from becoming lost. Its other end is a closed circular appendage with a tip that fits into the open end of the straw which permits the stopper to perform its function.

The bottle or its components will be imported in one of three scenarios. Under scenario one all the components would be manufactured in Thailand and would be imported as a complete sports bottle. Under scenario two the bottle base would be manufactured in the United States, but all of the remaining components would be manufactured in Thailand. Under scenario three all the components would be manufactured in the United States except for the blue ice pack, which would be manufactured in Thailand. Non-U.S. components will be assembled with U.S. components subsequent to importation, as necessary, by screwing the components together to form a complete sports bottle. In HQ 952264, CBP determined that the bottle was classifiable under subheading 3924.90.50, HTSUS (1991), which provides for other household articles of plastics, other.

**ISSUE:**

Whether the plastic sports beverage bottle is classifiable under subheading 3924.10, HTSUS, as tableware of plastics, or under subheading 3924.90, HTSUS, other household articles of plastics.

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. In addition, in interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

The 2011 HTSUS provisions under consideration in this case are as follows:

|         |   |
|---------|---|
| 3924    | Tableware, kitchenware, other household articles and<br>hygienic and toilet articles, plastics: |
|         | *       *       *   |
| 3924.10 | Tableware and kitchenware:  |
| *       | *       *   |
| 3924.90 | Other:  |
| *       | *       *   |

Heading 3924, HTSUS, is organized in relevant part as a list of items or exemplars – tableware and kitchenware – followed by a general phrase, “other household articles.” The common characteristic or unifying purpose of the exemplars is to store or contain food and beverages. *See Dolly, Inc. v. United States*, 27 C.I.T. 1597, 293 F. Supp. 2d 1340 (2003) (*quoting SGI, Inc. v. United States*, 122 F.3d 1468, 1473 (Fed. Cir. 1997) (“The exemplars listed in Heading 3924 encompass various household containers for foodstuffs.”). Additionally, although the subject bottle is capable of being transported from point to point with liquids therein, the specific primary purpose of the bottle is to store or contain beverages. The bottle is thus *ejusdem generis* with the exemplars listed in heading 3924, HTSUS, and classifiable under that heading.

As pertains to the specific subheading under which the bottle is classifiable, EN 39.24 lists exemplars of “other household articles” that fall within subheading 3924.90, HTSUS. Those exemplars are ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust-covers. It is important to note that the only listed exemplar with any connection to foodstuffs – food storage containers – is used for storage, and is not used to dispense food or beverages.

By contrast, many of the exemplars of “tableware” in EN 39.24, and classifiable under subheading 3924.10, HTSUS, are items from which the consumer can directly consume beverages or food, a primary characteristic

shared with the bottle that is the subject of this ruling. It should also be noted that the expression “tableware” does not solely refer to items used in the home. Subheading 3924.10, HTSUS, provides for *all* tableware, regardless of whether it will be used inside or outside of the household, and CBP has consistently interpreted subheading 3924.10, HTSUS, to cover such goods. See N019128, dated November 28, 2007 (plastic bottle with pop-up drinking spout); N031727, dated July 23, 2008 (plastic water bottle with spout and carrying handle); N035015, dated September 5, 2008 (plastic bottle with spout and loop handle); N047581, dated July 20, 2009 (plastic bottle with twist spout); N048029 (plastic bottle with straw, carrying handle, mouthpiece and straw).

Here, the primary purpose of the subject bottle is to dispense beverages that its user can directly consume, whether in a home or elsewhere. It is not used for storage. Accordingly, we find that the subject plastic sports beverage bottle constitutes “tableware” and is properly classifiable under subheading 3924.10.40, HTSUS, as tableware of plastics, other.

**HOLDING:**

By application of GRI 1, the subject complete plastic sports beverage bottle is classifiable under heading 3924, HTSUS. Specifically, it is classifiable under subheading 3924.10.40, HTSUS, which provides for “Tableware, kitchenware, other household articles and hygienic and toilet articles, plastics: Tableware and kitchenware: Other.” The column one, general rate of duty is 3.4% *ad valorem*. Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at [www.usitc.gov/tata/hts](http://www.usitc.gov/tata/hts).

**EFFECT ON OTHER RULINGS:**

NY 952264, dated September 25, 1992, is hereby modified.

*Sincerely,*

MYLES B. HARMON

*Director,*

*Commercial and Trade Facilitation Division*

[ATTACHMENT E]

HQ H100801  
CLA-2 OT:RR:CTF:TCM HQ H100801 DSR  
CATEGORY: Classification  
TARIFF NO.: 3924.10.40

Ms. JULIE KIM  
JCC COMPANY  
330 FIFTH AVENUE, SUITE 200  
NEW YORK, NY 10001

RE: Revocation of NY D82348, dated October 9, 1998; Subheading 3924.10.40, HTSUS; Classification of plastic water bottles.

DEAR MRS. KIM:

This is in regard to New York Ruling Letter (NY) D82348, issued to you on October 9, 1998, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of two plastic water bottles. We have reviewed NY D82348 and find it to be in error.

**FACTS:**

The subject bottles, covers and straws are made entirely of plastics and each can hold thirty-two ounces of liquid. The first bottle is a yellow bottle with a black snap-on cover and a clear plastic straw with a black cover on the tip. The printed label contains yellow, red, purple and green colors with a Coca-Cola ® bottle logo in the center. The label exhibits the words “Always Coca-Cola”. The second bottle is a white bottle with a black screw-on cover and white plastic straw with a black cover on the tip. The gold and black printed design features the face and front paws of a tiger above the word “MIZZOU”. Printed below the word “MIZZOU” are large and small tiger footprints with the letter “M” on each one. In NY D82348, CBP determined that both bottles were classifiable under subheading 3924.90.5500, HTSUSA (1998), which provides for other household articles of plastics, other, other.

**ISSUE:**

Whether the subject water bottles are classifiable under subheading 3924.10, HTSUS, as tableware of plastics, or under subheading 3924.90, HTSUS, other household articles of plastics.

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. In addition, in interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

The 2011 HTSUS provisions under consideration in this case are as follows:

3924                    Tableware, kitchenware, other household articles and  
hygienic and toilet articles, plastics:

\*                    \*                    \*

3924.10                Tableware and kitchenware:

\*                    \*                    \*

3924.90                Other:

\*                    \*                    \*

Heading 3924, HTSUS, is organized in relevant part as a list of items or exemplars – tableware and kitchenware – followed by a general phrase, “other household articles.” The common characteristic or unifying purpose of the exemplars is to store or contain food and beverages. *See Dolly, Inc. v. United States*, 27 C.I.T. 1597, 293 F. Supp. 2d 1340 (2003) (*quoting SGI, Inc. v. United States*, 122 F.3d 1468, 1473 (Fed. Cir. 1997) (“The exemplars listed in Heading 3924 encompass various household containers for foodstuffs.”)). Additionally, although the subject bottles are capable of being transported from point to point with liquids therein, the specific primary purpose of the bottles is to store or contain beverages. The bottles are thus *ejusdem generis* with the exemplars listed in heading 3924, HTSUS, and classifiable under that heading.

As pertains to the specific subheading under which the bottles are classifiable, EN 39.24 lists exemplars of “other household articles” that fall within subheading 3924.90, HTSUS. Those exemplars are ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust-covers. It is important to note that the only listed exemplar with any connection to foodstuffs – food storage containers – is used for storage, and is not used to dispense food or beverages.

By contrast, many of the exemplars of “tableware” in EN 39.24, and classifiable under subheading 3924.10, HTSUS, are items from which the consumer can directly consume beverages or food, a primary characteristic shared with the bottles that are the subject of this ruling. It should also be noted that the expression “tableware” does not solely refer to items used in the home. Subheading 3924.10, HTSUS, provides for *all* tableware, regardless of whether it will be used inside or outside of the household, and CBP has consistently interpreted subheading 3924.10, HTSUS, to cover such goods. *See* N019128, dated November 28, 2007 (plastic bottle with pop-up drinking spout); N031727, dated July 23, 2008 (plastic water bottle with spout and carrying handle); N035015, dated September 5, 2008 (plastic bottle with spout and loop handle); N047581, dated July 20, 2009 (plastic bottle with twist spout); N048029 (plastic bottle with straw, carrying handle, mouthpiece and straw).

Here, the primary purpose of the subject bottle is to dispense beverages that its user can directly consume, whether in a home or elsewhere. It is not used for storage. Accordingly, we find that the subject plastic sports beverage

bottle constitutes “tableware” and is properly classifiable under subheading 3924.10.40, HTSUS, as tableware of plastics, other.

**HOLDING:**

By application of GRI 1, the subject plastic water bottles are classifiable under heading 3924, HTSUS. Specifically, they are classifiable under subheading 3924.10.40, HTSUS, which provides for “Tableware, kitchenware, other household articles and hygienic and toilet articles, plastics: Tableware and kitchenware: Other.” The column one, general rate of duty is 3.4% *ad valorem*. Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at [www.usitc.gov/tata/hts](http://www.usitc.gov/tata/hts).

**EFFECT ON OTHER RULINGS:**

NY D82348, dated October 9, 1998, is hereby revoked.

*Sincerely,*

MYLES B. HARMON

*Director,*

*Commercial and Trade Facilitation Division*

[ATTACHMENT F]

HQ H100804  
CLA-2 OT:RR:CTF:TCM HQ H100804 DSR  
CATEGORY: Classification  
TARIFF NO.: 3924.10.40

Ms. LORI ALDINGER  
RITE AID CORPORATION  
P.O. Box 3165  
HARRISBURG, PA 17105

RE: Revocation of NY F80484, dated December 27, 1999; Subheading 3924.10.40, HTSUS; Classification of the "Cool Gear Freezer Bottle" from China.

DEAR Ms. ALDINGER:

This is in regard to New York Ruling Letter (NY) F80484, issued to you on December 27, 1999, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a plastic beverage bottle. We have reviewed NY F80484 and find it to be in error.

**FACTS:**

The Cool Gear Freezer Bottle is composed of plastics. The freezer bottle is a three-piece construction consisting of a bottle, cap and cooling unit. The bottle holds twenty-two ounces of liquid, and is approximately 7 ¼ inches in height by 2 ½ inches in diameter, narrowing slightly at the top. The plastic threaded cap has a pull-up spout. When the spout is pulled up, the beverage can be released from the bottle. When the spout is pressed down, the bottle is sealed. The cooling unit, which contains a gel, is cylindrical and measures approximately 5 ½ inches in height by one inch in diameter. The cooling unit is placed in a freezer approximately four hours before use. After the gel freezes, the cooling unit is snapped onto the lid and inserted into the bottle. The cooling unit then keeps the beverage cool. In NY F80484, CBP determined that the bottle was classifiable under subheading 3924.90.55, HTSUS (1999), which provides for other household articles of plastics, other.

**ISSUE:**

Whether the subject beverage bottle is classifiable under subheading 3924.10, HTSUS, as tableware of plastics, or under subheading 3924.90, HTSUS, other household articles of plastics.

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. In addition, in interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are gener-

ally indicative of the proper interpretation of the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

The 2011 HTSUS provisions under consideration in this case are as follows:

|         |   |
|---------|---|
| 3924    | Tableware, kitchenware, other household articles and<br>hygienic and toilet articles, plastics: |
|         | *            *            *   |
| 3924.10 | Tableware and kitchenware:  |
|         | *            *            *   |
| 3924.90 | Other:  |
|         | *            *            *   |

Heading 3924, HTSUS, is organized in relevant part as a list of items or exemplars – tableware and kitchenware – followed by a general phrase, “other household articles.” The common characteristic or unifying purpose of the exemplars is to store or contain food and beverages. *See Dolly, Inc. v. United States*, 27 C.I.T. 1597, 293 F. Supp. 2d 1340 (2003) (*quoting SGI, Inc. v. United States*, 122 F.3d 1468, 1473 (Fed. Cir. 1997) (“The exemplars listed in Heading 3924 encompass various household containers for foodstuffs.”)). Additionally, although the subject bottle is capable of being transported from point to point with liquids therein, the specific primary purpose of the bottle is to store or contain beverages. The bottle is thus *ejusdem generis* with the exemplars listed in heading 3924, HTSUS, and classifiable under that heading.

As pertains to the specific subheading under which the bottle is classifiable, EN 39.24 lists exemplars of “other household articles” that fall within subheading 3924.90, HTSUS. Those exemplars are ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, food storage containers, curtains, drapes, table covers and fitted furniture dust-covers. It is important to note that the only listed exemplar with any connection to foodstuffs – food storage containers – is used for storage, and is not used to dispense food or beverages.

By contrast, many of the exemplars of “tableware” in EN 39.24, and classifiable under subheading 3924.10, HTSUS, are items from which the consumer can directly consume beverages or food, a primary characteristic shared with the bottles that are the subject of this ruling. It should also be noted that the expression “tableware” does not solely refer to items used in the home. Subheading 3924.10, HTSUS, provides for *all* tableware, regardless of whether it will be used inside or outside of the household, and CBP has consistently interpreted subheading 3924.10, HTSUS, to cover such goods. *See* N019128, dated November 28, 2007 (plastic bottle with pop-up drinking spout); N031727, dated July 23, 2008 (plastic water bottle with spout and carrying handle); N035015, dated September 5, 2008 (plastic bottle with spout and loop handle); N047581, dated July 20, 2009 (plastic bottle with twist spout); N048029 (plastic bottle with straw, carrying handle, mouthpiece and straw).



Here, the primary purpose of the subject bottle is to dispense beverages that its user can directly consume, whether in a home or elsewhere. It is not used for storage. Accordingly, we find that the subject plastic sports beverage bottle constitutes “tableware” and is properly classifiable under subheading 3924.10.40, HTSUS, as tableware of plastics, other.

**HOLDING:**

By application of GRI 1, the Cool Gear Freezer Bottle is classifiable under heading 3924, HTSUS. Specifically, it is classifiable under subheading 3924.10.40, HTSUS, which provides for “Tableware, kitchenware, other household articles and hygienic and toilet articles, plastics: Tableware and kitchenware: Other.” The column one, general rate of duty is 3.4% *ad valorem*. Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at [www.usitc.gov/tata/hts](http://www.usitc.gov/tata/hts).

**EFFECT ON OTHER RULINGS:**

NY F80484, dated December 27, 1999, is hereby 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 A UTILITY VEHICLE**

**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 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 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 a utility vehicle 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. 35, on August 24, 2011. CBP received no comments in response to the notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 2, 2012.

**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. 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)), notice proposing to revoke NY N129146 was published on August 24, 2011, in Volume 45, Number 35, of the *Customs Bulletin*. CBP received no 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 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."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N129146 and revoking or modifying any other ruling not specifically identified, in order to reflect the proper classification of the subject vehicle according to the analysis contained in Headquarters Ruling Letter H147081, 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.

Dated: October 14, 2011

ALLYSON MATTANAH  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

HQ H147081

October 14, 2011  
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: 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.

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 N129146 was published on August 24, 2011, in Volume 45, Number 35, of the *Customs Bulletin*. CBP received no comments in response to the notice.

**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 Harmonized Commodity Description and Coding System (HS) Explanatory Notes (“ENs”) constitute the official interpretation of the HS. While not legally binding or dispositive, the ENs provide a commentary on the scope of each heading of the HS at the international level, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

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/](http://www.usitc.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

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

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

*Sincerely,*

ALLYSON MATTANAH

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

◆◆◆◆◆

**PROPOSED MODIFICATION OF A RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF CERTAIN CARRYING  
CASES**

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

**ACTION:** Notice of proposed modification of a ruling letter and proposed revocation of treatment relating to the tariff classification of certain carrying cases.

**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 proposing to modify a ruling letter concerning the tariff classification of certain carrying cases. Similarly, CBP 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 December 2, 2011.

**ADDRESSES:** Written comments are to be addressed to the U.S. 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 the address stated above 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:** Albenia Peters, Regulations and Rulings: (202) 325–0321.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to modify one ruling letter pertaining to the tariff classification of certain carrying cases. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) M87216, dated November 15, 2006 (Attachment A), 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., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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



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

In NY M87216, CBP determined, in relevant part, that the "Intellect Legend Case P/N 27133" is classified under subheading 4202.92.30, Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for "travel, sports and similar bags."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to modify NY M87216 with respect to the "Intellect Legend Case P/N 27133," and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H035447, set forth as Attachment B to this notice.

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: October 4, 2011

IEVA K. O'ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachments

[ATTACHMENT A]

NY M87216  
November 15, 2006  
CLA-2-42:RR:NC:N3:341 M87216  
CATEGORY: Classification  
TARIFF NO.: 4202.92.3031

COURTNEY CABIN  
PHOENIX INTERNATIONAL  
855 IL ROUTE 83  
BENSENVILLE, IL 60106

RE: The tariff classification of travel bags

DEAR MS. CABIN:

In your letter dated October 5, 2006 you requested a classification ruling on behalf of S.I. Jacobson Manufacturing Company of Waukegan, IL.

The item you refer to as "Intelect Legend Case P/N 27133," is a travel bag constructed with an outer surface of man-made textile material. The bag is designed to provide storage, protection, organization, and portability to medical equipment, accessories, and personal effects during travel. It measures approximately 13" (W) x 16" (H) x 10" (D). It features a three-sided zippered opening, a top carrying handle, and a removable shoulder strap.

The item you refer to as "Intelect Transport Case P/N 27467," is a travel bag constructed with an outer surface of man-made textile material. The bag is designed to provide storage, protection, organization, and portability to medical equipment, accessories, and personal effects during travel. It measures approximately 17" (W) x 12" (H) x 14" (D). It features a hook-and-loop secured flap closure, a top carrying handle, an adjustable shoulder strap, and several interior pockets.

The applicable subheading for the bags will be 4202.92.3031, Harmonized Tariff Schedule of the United States (HTSUS), which provides for travel, sports, and similar bags, with outer surface of textile materials, other, of man-made fibers, other. The rate of duty will be 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

HTSUS 4202.92.3031 falls within textile category 670. With the exception of certain products of China, quota/visa requirements are no longer applicable for merchandise, which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at [www.cbpp.gov](http://www.cbpp.gov). For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at [otexa.ita.doc.gov](http://otexa.ita.doc.gov).

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 Vikki Lazaro at 646-733-3041.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director,*

*National Commodity Specialist Division*

[ATTACHMENT B]

HQ H035447  
CLA-2 OT:RR:CTF:TCM H035447 AP  
CATEGORY: Classification  
TARIFF NO.: 4202.92.30; 4202.92.90

Ms. FARIHA M. MASUD  
ATTORNEY-IN-FACT  
IMPORT BROKERAGE COMPLIANCE  
PHOENIX INTERNATIONAL FREIGHT SERVICES, LTD.  
*CHICAGO BRANCH*  
*855 IL ROUTE 83*  
*BENSENVILLE, IL 60106-1219*

RE: Reconsideration of NY M87216; Classification of carrying cases

DEAR Ms. MASUD:

This is in response to your request, dated June 27, 2008, made on behalf of S.I. Jacobson Mfg. Co., for reconsideration of New York Ruling Letter (“NY”) M87216, issued by U.S. Customs and Border Protection (“CBP”) on November 15, 2006. We have reviewed NY M87216, and find it to be in error with respect to the “Intellect Legend Case P/N 27133.”

In NY M87216, CBP classified two different models of carrying cases used to transport electrotherapy equipment under subheading 4202.92.30, Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “travel, sports and similar bags.”

**FACTS:**

In NY M87216, the merchandise is described as follows:

The item you refer to as “Intellect Legend Case P/N 27133,” is a travel bag constructed with an outer surface of man-made textile material. The bag is designed to provide storage, protection, organization, and portability to medical equipment, accessories, and personal effects during travel. It measures approximately 13” (W) x 16” (H) x 10” (D). It features a three-sided zippered opening, a top carrying handle, and a removable shoulder strap.

The item you refer to as “Intellect Transport Case P/N 27467” is a travel bag constructed with an outer surface of man-made textile material. The bag is designed to provide storage, protection, organization, and portability to medical equipment, accessories, and personal effects during travel. It measures approximately 17” (W) x 12” (H) x 14” (D). It features a hook-and-loop secured flap closure, a top carrying handle, an adjustable shoulder strap, and several interior pockets.

**ISSUE:**

Whether the carrying cases are classified in subheading 4202.92.30, HTSUS, as “travel, sports and similar bags,” or in subheading 4202.92.90, HTSUS as specialty cases.

Whether the carrying cases are articles “specially designed or adapted” for the handicapped within the meaning of the Nairobi Protocol, Annex E, to the

Florence Agreement, as codified in the Education, Scientific, and Cultural Materials Act of 1982, and therefore eligible for duty-free treatment under subheading 9817.00.96, HTSUS.

**LAW AND ANALYSIS:**

Classification under the HTSUS is governed by the General Rules of Interpretation (“GRIs”). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. The HTSUS provisions under consideration in this case 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:

Travel, sports and similar bags:

With outer surface of textile materials:

\* \* \*

**4202.92.30** Other .....

\* \* \*

Other:

**4202.92.90**

**Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons; parts and accessories (except parts and accessories of braces and artificial limb prosthetics) that are specially designed or adapted for use in the foregoing articles:**

Articles for the blind:

\* \* \*

**9817.00.96**

Other .....

There is no dispute that the instant merchandise is classified in subheading 4202.92, HTSUS. At issue is the proper 8-digit national tariff rate level. GRI 6 provides that for legal purposes, classification of goods in the subheading 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. GRI 6 thus incorporates GRIs 1 through 5 in classifying goods at the subheading level.

The additional U.S. notes become applicable at the 8-digit level. Concerning travel, sports and similar bags, Additional U.S. Note 1 to Chapter 42, HTSUS, notes that the expression “travel, sports and similar bags” means “goods, other than those falling in subheadings 4202.11 through 4202.39, HTSUS of a kind designed for carrying clothing and other personal effects during travel, including backpacks and shopping bags of this heading, but does not include binocular cases, camera cases, musical instruments, bottle cases and similar containers.”

You assert that the correct classification is subheading 4202.92.90, HTSUS, which provides for other than “travel, sports and similar bags.” In support of your argument you state that the carrying cases are designed to carry specific medical equipment, with compartments specially designed to hold the various parts of the medical equipment. You claim that the articles are not designed to carry clothes or other personal effects.

In HQ 957465, dated January 4, 1995, CBP determined that a carrying bag, which was imported with a device used in the treatment of a medical condition was not a specialty bag normally sold with the medical equipment. It was not shaped to the form of the medical equipment and its pockets could be used to hold personal effects. Moreover, the bag had the appearance and characteristics of an ordinary travel bag and was sold individually at retail.

In contrast, in HQ 962132, dated October 26, 2000, CBP concluded that carrying cases specifically and exclusively designed to hold blood glucose monitoring system had the same characteristics and functions as other specialty cases such as musical instrument cases, camera cases, binocular cases and compact disk cases. The carrying case was double-lined with polyurethane to provide additional protection for the blood glucose monitoring sys-

tem and had a sewn-on cloth label with the system's logo prominently displayed in stylized lettering. The cases were not available for purchase separately from the diabetic monitoring system. Similarly in HQ 964615 dated August 21, 2001, CBP concluded that the carrying cases, which were designed with specially fitted compartments to hold and carry small medical supplies needed by diabetics, were classified in subheading 4202.92.90, HTSUS, as "other" containers or cases and were excluded from classification as "travel, sports and similar bags" by operation of Additional U.S. Note 1 to Chapter 42, HTSUS.

In the instant case, we agree that the "Intellect Legend Case P/N 27133" is specially molded to the shape of the electrotherapy system it is designed to carry. The interior of the case is padded on all sides to protect the system during transport. The padding and the sleeve cannot be removed without destroying the case. The three-sided zippered opening is designed to allow the user to use the medical equipment without removing it from the bag. The interior pockets are designed for the system's accessories. This case has the same characteristics and functions as other specialty cases such as medical instrument cases, camera cases, binocular cases and compact disk cases. Like the carrying cases in HQ 964615 dated August 21, 2001, and in HQ 962132, dated October 26, 2000, the "Intellect Legend Case P/N 27133" carrying case is exclusively designed to hold and carry specific medical equipment. It is excluded from classification as a travel, sports and similar bag by operation of Additional U.S. Note 1 to Chapter 42, HTSUS. Therefore, it is properly classified under subheading 4202.92.90, HTSUS, as a specialty case.

Regarding the "Intellect Transport Case P/N 27467," we have no doubt that the carrying case is used to carry medical equipment. However, it is designed to carry personal effects as well. It is not specially shaped or fitted to hold the medical equipment. The carrying case has the appearance and characteristics of an ordinary travel bag. It is in the nature of a travel bag for carrying medical equipment and personal effects, and a reasonable consumer may purchase it to carry goods other than medical equipment. This is not a carrying case that has little or no use apart from its content. It is used to transport personal effects and medical equipment during travel and as such is classified in subheading 4202.92.30, HTSUS, as a travel, sports and similar bag.

We next turn to the question whether the carrying cases are specially designed for the handicapped and as such are classified duty-free in subheading 9817.00.96, HTSUS. You claim that the carrying cases are used to carry electrotherapy systems designed to relieve pain and promote healing in those suffering from musculoskeletal disorders ("MSDs"), which can lead to a permanent or chronic physical impairment if treatment is not satisfactory. The Agreement on the Importation of Educational, Scientific and Cultural Materials, 17 U.S.T. 1835, TIAS 6129, known as the Florence Agreement provides for the duty-free treatment of certain materials including scientific instruments and apparatus and articles for the blind. The Nairobi Protocol to the Florence Agreement on the Importation of Educational, Scientific, and Cultural Materials Act of 1982 expanded the scope of the Florence Agreement to provide duty free treatment for certain articles for the use or benefit of the handicapped. The 97th Congress passed Pub. L. 97-446 to ratify the Nairobi Protocol in the United States.

Subheading 9817.00.96, HTSUS covers certain articles specifically designed or adapted for the use or benefit of other physically or mentally

handicapped persons. U.S. Note 4(b), subchapter XVII, Chapter 98, HTSUS, states that subheading 9817.00.96, HTSUS does not cover “(i) articles for acute or transient disability.” U.S. Note 4(a), subchapter XVII, Chapter 98, HTSUS, provides that the term “*blind or other physically or mentally handicapped persons*” includes any person suffering from a **permanent or chronic** physical or mental impairment, which substantially limits one or more major life activities, such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working.” (emphasis added).

The product at issue has to be “specially designed or adapted” for the use or benefit of handicapped persons within the meaning of the Nairobi Protocol. CBP set forth factors it would consider in making this determination. These factors include: (1) physical properties of the article itself (*e.g.*, whether the article is easily distinguishable in design, form and use from articles useful to non-handicapped persons); (2) presence of any characteristics that create a substantial probability of use by the chronically handicapped so that the article is easily distinguishable from articles useful to the general public and any use thereof by the general public is so improbable that it would be fugitive; (3) importation by manufacturers or distributors recognized or proven to be involved in this class or kind of articles for the handicapped; (4) sale in specialty stores that serve handicapped individuals; and (5) indication at the time of importation that the article is for the handicapped. HQ H074876 dated November 19, 2009. These factors are weighed against each other to determine whether an article is specially designed or adapted for the handicapped. HQ H055815 dated May 26, 2010.

In this case, the goods at issue consist of two different models of carrying cases. The “Intelect Transport Case P/N 27467” is a product that would be used by the general public and by persons who have no disability. It is not specially shaped or fitted to hold electrotherapy equipment and has the appearance of an ordinary travel bag. It is available for purchase on the Internet and is not limited to specialty stores that serve the handicapped. The description of the article does not indicate that it is for the use or benefit of handicapped individuals. Therefore, we conclude that the “Intelect Transport Case P/N 27467” was not specially designed or adapted for the use of handicapped persons.

The “Intelect Legend Case P/N 27133” is specially molded to the shape of the electrotherapy unit it is designed to transport. Its interior is padded and the three-sided zippered opening allows use the electrotherapy unit without removing it from the bag. The electrotherapy unit is routinely used by medical professionals in treating patients whose impairment is “acute or transient disability” such as a moderate sports injury. Unlike in N095267 dated March 18, 2010, and NY J83008 dated April 10, 2003, this carrying case is used to transport electrotherapy equipment that is not specially designed and adapted for the benefit of persons suffering from a permanent or chronic physical impairment such as sleep apnea or diabetes. The electrotherapy equipment that the case transports is designed to stimulate injured joints and muscles to activate the body’s natural processes for relieving pain, building strength, and promoting healing in those suffering from MSDs. While permanent disability is possible in chronic cases if treatment is unsatisfactory, the electrotherapy equipment is not designed exclusively for the use of handicapped persons. Therefore, the “Intelect Legend Case P/N



27133” is not specially designed or adapted to carry medical equipment that is specially designed and adapted for the use of handicapped persons.

In addition, there is no evidence that the “Intellect Legend Case P/N 27133” is offered for sale in specialty stores that solely serve handicapped individuals, that it is imported by manufacturers/distributors recognized to be involved in this kind of articles for the handicapped, and that it was described as an article for the handicapped at the time of importation. This carrying case has not been described and/or marketed as a product for the handicapped. Thus, the “Intellect Legend Case P/N 27133” is within the exception for acute and transient disabilities and is not designed for the needs of persons suffering from permanent or chronic physical impairment.

Accordingly, neither carrying case is classified duty free in subheading 9817.00.96, HTSUS, as equipment specially designed for the handicapped.

**HOLDING:**

Pursuant to GRI 6, the “Intellect Legend Case P/N 27133” is classifiable under subheading 4202.92.90, HTSUS, which covers specialty cases. The column one, general rate of duty is 17.6% *ad valorem*. The textile quota category is 670.

The carrying cases are not eligible for duty-free treatment pursuant to subheading 9817.00.96, HTSUS.

Duty rates and quota categories 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*.

**EFFECT ON OTHER RULINGS:**

NY M87216, dated November 15, 2006, is hereby MODIFIED.

*Sincerely,*

MYLES B. HARMON

*Director,*

*Commercial and Trade Facilitation Division*

