U.S. Customs and Border Protection

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING CERTAIN INTERMODAL CONTAINERS

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection ("CBP") has issued a final determination concerning the country of origin of certain intermodal containers. Based upon the facts presented, CBP has concluded that the country of origin of the intermodal containers is the country of origin of the imported panels for purposes of U.S. Government procurement.

DATES: The final determination was issued on December 23, 2015. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within February 8, 2016.

FOR FURTHER INFORMATION CONTACT: Teresa M. Frazier, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202) 325–0139.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on December 23, 2015, pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain intermodal containers, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H267876, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concluded that the processing in the United States does not result in a substantial transformation. Therefore, the country of origin of the intermodal containers is the country of origin of the imported panels for purposes of U.S. Government procurement for purposes of U.S. Government procurement.

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

Dated: December 23, 2015.

MYLES B. HARMON,
Acting Executive Director,
Regulations and Rulings,
Office of International Trade.

H267876
OT:RR:CTF:VS H267876 TMF
CATEGORY: Country of Origin

MICHAEL G. MCMANUS
DUANE MORRIS LLP
505 9TH STREET, N. W., SUITE 1000
WASHINGTON, DC 20004–2166

Re: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); Substantial Transformation; Intermodal Shipping Containers

DEAR MR. MCMANUS:

This is in response to your correspondence of July 29, 2015, supplemented by your letter of September 30, 2015, requesting a final determination on behalf of Sea Box, Inc. ("Sea Box"), pursuant to subpart B of part 177, U.S. Customs and Border Protection ("CBP" Regulations (19 CFR 177.21 *et seq.*). Under pertinent regulations, which implement Title II 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.

This final determination concerns the country of origin of Sea Box shipping containers. We note that Sea Box, Inc. is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination. A meeting was held November 4, 2015.

FACTS:

You state that the subject containers are made in various sizes: 20 foot long; Bicon; Tricon and Quadcon. The 20' shipping container is considered to be a standard unit in the shipping industry.

1. Twenty Foot Shipping Containers

You state that a 20 foot ISO[1] -compliant container has the following external measurements:

19' 10.5″ in length with a tolerance of +0, -1/4 of an inch; 8.0' in width with a tolerance of +0, -3/16 of an inch; 8.0' in height with a tolerance of +0, -3/16 of an inch. The internal dimensions are: 19'4 11/ 64″ (L); 7'8 17/32″ (W); 7'4 3/16″ (H). The 20 foot container is comprised of corrugated steel sides and roofing which gives it a favorable strength to weight ratio; two sets of forklift "pockets" that permit forklifts to lift and move laden or unladen containers; wooden flooring tested to withstand 16,000 lbs. per square foot (144 square inches); 24 top and bottom wall tie down steel lashing rings each having a capacity of 4,000 lbs.; and two vents. The twenty foot containers weigh 5,000 lbs. each and can accommodate a payload of 47,910 lbs.

[1] International Organization for Standardization set standard sizes and manufacturing specifications for all containers.

2. Bicons

You state that a Bicon is a shipping container that is approximately half the size of a 20 foot container and manufactured to precise dimensions such that when two are linked together by connecting couplers, they form a 20 foot equivalent unit ("TEU") and may be transported as if the combination were a single 20 foot container. The ISO-compliant Bicon container has the following external dimensions: 9'9 3/4″ in length with a tolerance of +0, -3/16 of an inch; 8.0' in width with a tolerance of +0, -3/16 of an inch; 8.0' in height with a tolerance of +0, -3/16 of an inch. The internal dimensions are: 9'3 1/2″ (L); 7'8 17/32″ (W); 7'4 3/16″ (H). You state that the Bicon has similar features to the 20 foot unit, except that the Bicon only has one set of forklift "pockets" and uses several tie down steel lashings. You state that the Bicon has a weight of 2,900 lbs. and can accommodate a payload of 23,555 lbs., and has a storage capacity of 527 cubic feet.

3. Tricons

You state that a Tricon is approximately one-third the size of a 20 foot container and that it is manufactured to precise dimensions such that when three Tricons are linked together by connecting couplers, a TEU is formed and may be transported as if the combination was a single 20 foot container. The ISO-compliant Tricon container has the following external dimensions: 6'5 9/16″ in length with a tolerance of +0, -3/16 of an inch; 8.0' in width with a tolerance of +0, -3/16 of an inch; 8.0' in height with a tolerance of +0, -3/16 of an inch. The internal dimensions are: 6'3 25/64″ (L); 7'7 22/32″ (W); 7'5 9/64″ (H). You state that the Tricon has similar features to the 20 foot unit and the Bicon, except that instead of a wooden flooring, the Tricon has heavy duty steel flooring. You state the Tricon has a weight of 2,600 lbs. each laden and may accommodate a payload of 13,300 lbs., and has a storage capacity of 356 cubic feet.

4. Quadcons

You state that a Quadcon is approximately one-fourth the size of a twenty foot container and that it is manufactured to precise dimension such that when four Quadcons are linked together by connecting couplers, a TEU is formed and may be transported as if the combination were a single 20 foot container. The ISO-compliant Quadcon container has the following external dimensions: 4'9 7/16″ in length with a tolerance of +0, -3/16 of an inch; 8.0' in width with a tolerance of +0, -3/16 of an inch; 8.0' in height with a tolerance of +0, -3/16 of an inch. The internal dimensions are: 4'7 3/4″ (L); 7'6 9/16″ (W); 7'5″ (H). You state that the Quadcon has similar features to the Tricon, except that it also has swing doors on both sides for convenient access. You state the Quadcon has a weight of 2,300 lbs. each unladed and may accommodate a payload of 8,900 lbs., and has a storage capacity of 260 cubic feet.

Manufacturing Process

In your submission, you described Sea Box's manufacturing facilities to include a separate, free-standing, testing center with equipment capable of testing containers for ISO compliance to 1.8 times the maximum required load (which is equivalent to 846,720 lbs.). You advise that the manufacturing process requires the manipulation of large components to form a structurally sound container to its precise size in accordance with ISO specifications,

allowing containers to be capable of transport by rail, truck and ship with uniform fitting on preexisting truck and rail support structures. You provided a list of the 43 components of the containers. We note that that the front wall panel, side wall panel, right-hand door, right-hand door gasket, left-hand door gasket, roof panel, floor panel, lashing rings, front corner post tie downs, and corner blocks, all originate from one foreign country. Connecting couplers, hand assembly restraint bar, tie-back, rivets nuts and bolts, hinges, amongst other components, originate from the U.S. You indicate that by using grinders and/or cutting wheels, the components are ground to bare steel where welding is required. Specifically, the floor sections, wall section, front and rear-end sections, and roof section are ground to bare steel where welding is required. Next, the components are loaded into the Jig and once the dimensional tolerances are verified and adjusted, the components are tacked and stich-welded together, vertical seams are welded, and all outside components are fully welded. If required, roof corner plates and floor gussets are welded, and door tieback hooks are welded. Next, pilot holes are drilled into the floor and steel cross-members and doors are secured. The container is then moved to the blast booth for painting with primer and a top coat. You indicate that the particular steel that is used in the roof and sides is not available in the U.S.

You state that the containers must be capable of being stacked up to nine units high, with the base of a stack strong enough to support 470,400 static lbs. above a container (8 containers x 58,800 lbs. per container). You also state the container must be able to support a dynamic load taking into account a vessel's motion in conformity with the American Bureau of Shipping (ABS). You also advise that the containers must be CSC[2] certified at a CSC certified, manufacturer's facility that is preapproved by the U.S. Coast Guard.

ISSUE:

Whether the intermodal containers are considered to be products of the United States for U.S. Government procurement purposes.

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 CFR 177.21 *et seq.,* which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), CBP issues country-of-origin advisory rulings and final determinations as to whether an article is a product of a designated country for the purpose of granting waivers of certain "Buy American" restrictions on U.S. Government procurement.

In rendering 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 Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the Trade Agreements Act. *See* 48 CFR 25.403(c)(1). The Federal Acquisition Regulations define "U.S.-made end product" as "an article that is mined, produced, or manufactured in the

[2] International Container Safety Convention concerning testing, inspection, approval and maintenance of shipping containers.

United States or that is substantially transformed in the United States into a new and different article of commerce with name, character, or use distinct from that of the article or articles from which it was transformed." *See* 48 C.F.R 25.003.

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. *See also* 19 CFR 177.22(a).

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

Substantial transformation occurs when an article emerges from a process with a new name, character or use different from that possessed by the article prior to processing. A substantial transformation will not result from a minor manufacturing or combining process that leaves the identity of the article intact. *See United States v. Gibson-Thomsen Co.,* 27 C.C.P.A. 267 (1940). In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *See Belcrest Linens v. United States,* 6 Ct. Int'l Trade 204, 573 F. Supp. 1149 (1983), *aff'd,* 741 F.2d 1368 (Fed. Cir. 1984).

In *Uniroyal, Inc. v. United States,* the Court of International Trade held that no substantial transformation occurred because the attachment of a footwear upper from Indonesia to its outsole in the United States was a minor manufacturing or combining process which left the identity of the upper intact. *Uniroyal, Inc. v. United States,* 3 CIT 220, 224, 542 F. Supp. 1026, 1029 (1982), aff'd, 702 F.2d 1022 (Fed. Cir. 1983). The court found that the upper was readily recognizable as a distinct item apart from the outsole to which it was attached, it did not lose its identity in the manufacture of the finished shoe in the United States, and the upper did not undergo a physical change or a change in use. Also, under *Uniroyal,* the change in name from "upper" to "shoe" was not significant. The court concluded that the upper was the essence of the completed shoe, and was not substantially transformed.

In *National Hand Tool Corp.* v. *United States,* 16 CIT 308 (1992), aff'd, 989 F.2d 1201 (Fed. Cir. 1993), the court considered sockets and flex handles which were either cold formed or hot forged into their final shape prior to importation, speeder handles which were reshaped by a power press after importation, and the grip of flex handles which were knurled in the U.S. The

imported articles were heat treated, cleaned by sandblasting, tumbling, and/or chemical vibration before being electroplated. In certain instances, various components were assembled together which the court stated required some skill and dexterity. The court determined that the imported articles were not substantially transformed and that they remained products of Taiwan. In making its determination, the court focused on the fact that the components had been cold formed or hot forged "into their final shape before importation", and that "the form of the components remained the same" after the assembly and heat treatment processes performed in the U.S.

It is your position that the country of origin of the intermodal containers is the U.S. because your client's operations are "plainly complex and meaningful" in that every component loses its identity and becomes an integral part of the shipping container. You state that this process is more complex than processes found to effect a substantial transformation in certain past rulings, and you cite to Headquarters Ruling Letters (HQ) H248850, dated November 7, 2014; H259326, dated April 13, 2015; H192144, dated October 22, 2014; and H251592, dated June 24, 2014. You also state that the large scale industrial process that is employed to manipulate components weighing hundreds to thousands of pounds to manufacture a shipping container to narrow tolerances is surely a "complex operation requiring skilled workers." You also advise that this "large scale industrial" manufacturing process requires skilled labor, special equipment, facilities, labor resources and in-process quality assurance techniques and precision subject to ISO specifications and rigorous CSC certification. You argue that the strict dimensional tolerances that are required for safety and to assure compliance with ISO and CSC standards for use in international commerce makes the process precise, expensive, complex and meaningful. We reviewed your submission and note that although the large scale assembly requires skilled labor for safety and compliance with certain ISO and CSC certification requirements, this does not result in a substantial transformation of the non-U.S. components. Rather, the container assembly is distinguishable from the aforementioned cases where CBP found substantial transformation.

In H259326, the exoskeleton assistive walking device assembly consisted of hundreds of parts sourced from U.S. manufacturers, with the exception of three parts, all of which were assembled in the U.S. In H259326, CBP found the inclusion of the two of the three non-U.S. parts (a heat diffuser/shield, foot straps/binding) would be permanently attached to the finished devices such that they would "lose their separate identities and be subsumed into the finished exoskeleton," thereby resulting in a substantial transformation when used in the manufacturer of the finished exoskeleton. However, in this case, the foreign-origin front, side and roof and floor panels are not subsumed into a complex device.

Further, there is not complex assembly of the container like in H248850, dated November 7, 2014, in which CBP found a substantial transformation involving U.S. patented operations which consisted of bending of the HEX; brazing of various connections; and installing a control box which contained U.S. developed software. With the intermodal containers, although skilled workers are required to ensure safety and accuracy in accordance with ISO and CSC requirements, the grinding, welding and assembly processes essentially do not change the predetermined use of the panels, all of which originate from one foreign country. In regard to H251592, CBP determined that

certain AIO cartridges assembled with toner powder from Japan, a cleaning unit from Thailand, and a development unit from China, were substantially transformed because the toner powder was found to be the most critical element of the AIO cartridge. As in *Uniroyal,* the essential character of the container is imparted by the foreign-origin roof, side and bottom panels, which, like *National Handtool,* are already formed in the final shape prior to importation. In H192144, CBP found imported coated, optical lenses underwent a double substantial transformation in a beneficiary country to meet the 35 percent value-content GSP requirement, which is not at issue here. Therefore, we do not find a substantial transformation in the manufacture of the subject intermodal containers.

HOLDING:

Based upon the specific facts of this case, we find that the imported panels are not substantially transformed as a result of the described operations performed in the United States. The country of origin of the intermodal containers for purposes of U.S. Government procurement is imparted by the roof, side and floor panels, which are of non-U.S. origin.

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

Sincerely,

MYLES B. HARMON,
Acting Executive Director
Regulations & Rulings Office of
International Trade

[Published in the Federal Register, January 7, 2016 (81 FR 787)]

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING CERTAIN MULTIFUNCTION PRINTER PRODUCTS

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection ("CBP") has issued a final determination concerning the country of origin of certain multifunction printer products known as bizhub C3850FS multifunction digital printers ("bizhub MFP"). Based upon the facts presented, CBP has concluded that the country of origin of the bizhub MFP is Japan for purposes of U.S. Government procurement.

DATES: The final determination was issued on December 23, 2015. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within February 5, 2016.

FOR FURTHER INFORMATION CONTACT: Antonio J. Rivera, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202) 325–0226.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on December 23, 2015, pursuant to subpart B of part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin certain multifunction printer products known as bizhub C3850FS multifunction digital printers, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ 263561, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concluded that the processing in Japan resulted in a substantial transformation. Therefore, the country of origin of the bizhub MFP is Japan for purposes of U.S. Government procurement.

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

Dated: December 23, 2015.

MYLES B. HARMON,
Acting Executive Director,
Regulations and Rulings, Office of
International Trade.

Attachment

HQ H263561
December 23, 2015
OT:RR:CTF:VS H263561 AJR
CATEGORY: Origin

DANIEL E. WALTZ, ESQ., SQUIRE
PATTON BOGGS (US) LLP,
2550 M STREET, NW.,
WASHINGTON, DC 20037

RE: U.S. Government Procurement; Country of Origin of Multifunction Printers; Substantial Transformation

DEAR MR. WALTZ:

This is in response to your letter, dated March 23, 2015, requesting a final determination on behalf of Konica Minolta ("K/M"), pursuant to subpart B of part 177 of the U.S. Customs and Border Protection ("CBP") Regulations (19 CFR part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 ("TAA"), as amended (19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of K/M's bizhub C3850FS multifunction digital printers ("bizhub MFP(s)"). We note that K/M is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination.

FACTS:

K/M plans to sell its bizhub MFPs to the U.S. government. The bizhub MFPs are multifunction color machines that perform printing, copying, scanning, and faxing functions. According to K/M's counsel, the bizhub MFP was designed and developed in Japan, and its most important and complex components will be manufactured in Japan. The assembly process for the bizhub MFPs will start in Thailand and finish in Japan, assembling a total of 11 subassemblies into the final bizhub MFP product.

Assembly Processes in Thailand:

In Thailand, the following four subassemblies (collectively, "Subassemblies 1–4") will be assembled into their final form within the bizhub MFP's frame:

1. The **Print Head** will be produced in Thailand from five sub-components:

- a G1 lens manufactured in Japan;
- a G2 lens manufactured in Japan;
- a polygonal motor manufactured in China;
- a housing case manufactured in China; and,
- a laser diode manufactured in Taiwan.

According to K/M's counsel, while the quantity at which the G1 and G2 lenses are produced lowers their relative cost, the lenses are more complex

than the other sub-components of the Print Head as noted by the higher skill and technology levels needed to produce them. The Print Head operates by reflecting a laser beam off of the lenses and onto the rotating polygonal mirrors in order to produce a copied image in the Latent Image Unit's photoconductor ("OPC"). The Print Head will be assembled into, and permanently integrated within, each bizhub MFP in Thailand.

2. The **Optical Lens** will be manufactured in China from Chinese-origin materials. It operates by accurately collecting the light reflected from external documents onto its lens. It will be assembled into, and permanently integrated within, each bizhub MFP in Thailand.

3. The **Charge Coupled Device ("CCD") Board** will be manufactured in China. It separates the colors collected by the Optical Lens, and converts them into independent colors. It will be assembled into, and permanently integrated within, each bizhub MFP in Thailand.

4. The **Mechanical Control Board** will be manufactured in Thailand. It controls the bizhub MFP's input and output process through an engine that feeds the paper. It will be assembled into, and permanently integrated within, each bizhub MFP in Thailand.

Additionally, six subassemblies (collectively, "tested subassemblies") will be assembled into the bizhub MFP for testing purposes, but then removed after testing, as follows:

5. The **Latent Image Unit** will be produced in Thailand from three sub-components:

- OPC drums manufactured in Japan;
- a developer, with toner and carrier developing materials, manufactured in Japan; and,
- an electrostatic charging roller manufactured in Japan.

The OPC drums receive the laser beam. Then, the developing materials and electrostatic charging roller sense the image being transmitted by the laser, regulate its thickness and precision, and transfer it to the Image Transfer Belt. The Latent Image Unit will be installed within a bizhub MFP for testing purposes, and then removed, while in Thailand.

6. The **Image Transfer Belt Unit** will be manufactured in China from three sub-components:

- an image transfer belt manufactured in China;
- a 1st image transfer roller manufactured in China; and,
- a cleaning blade manufactured in China.

It receives the single-color image from the Latent Image Unit and creates a multi-color image to transfer onto paper. The Image Transfer Belt Unit will be shipped to Thailand, where it will be installed within a bizhub MFP for testing purposes, and then removed.

7. The **2nd Image Transfer Roller Unit** will be manufactured in China. It supports the Image Transfer Belt Unit. The 2nd Image Transfer Roller Unit will be shipped to Thailand, where it will be installed within a bizhub MFP for testing purposes, and then removed.

8. The **Fusing Unit** will be produced in Thailand from three sub-components:

- a fusing belt manufactured in Japan;

- a fusing roller manufactured in China; and,
- a pressure sub-component manufactured in China.

According to K/M's counsel, the fusing belt accounts for a significant percentage of the Fusing Unit's cost and is a key sub-component. The Fusing Unit will be installed within a bizhub MFP for testing purposes, and then removed, while in Thailand.

9. The **Hard Disk Drive ("HDD")** will be manufactured in China or Thailand. It will be installed within a bizhub MFP for testing purposes, and then removed, while in Thailand.

10. The **Power Supply Unit** will be manufactured in China. It will be shipped to Thailand, where it will be installed within a bizhub MFP for testing purposes, and then removed.

Assembly Process in Japan:

Once the tested subassemblies are removed, the bizhub MFPs as assembled with Subassemblies 1–4 will be shipped to Japan without the tested subassemblies. Instead of shipping the tested subassemblies, six separate but identical subassemblies (collectively, "Subassemblies 5–10," as described above) will be shipped to Japan for final assembly. In Japan, these integrated and unintegrated subassemblies will be assembled to completion with the following subassembly:

11. The **MFP Board** will be manufactured from Japanese materials, and installed with Japanese-developed software, in Japan. According to K/M"s counsel, it constitutes the machine's "brain", integrating the printer and copier functions, and converting electric signals to digital signals, which are sent to the Print Head to create the image. It will be assembled into, and permanently integrated within, each bizhub MFP in Japan.

The finished bizhub MFP will be tested, adjusted, and calibrated in Japan before shipment to the U.S. The testing conducted in Japan includes electronically adjusting the laser position and intensity of the laser diode's beam in the Print Head, and electronically and physically adjusting the Latent Image Unit to calibrate the unit's position and imaging accuracy. According to K/M's counsel, the testing conducted in Japan requires skilled workmanship, involving more complex and precise tests than the initial testing and adjustments conducted in Thailand.

ISSUE:

What is the country of origin of the bizhub MFP for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

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

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

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. *See also* 19 CFR 177.22(a).

To determine whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States,* 573 F. Supp. 1149 (Ct. Int'l Trade 1983), *aff'd,* 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. *See* C.S.D. 80– 111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89– 118, C.S.D. 90–51, and C.S.D. 90–97. CBP will make these decisions on a case-by-case basis, considering the totality of the circumstances. The country of origin of the article's components, the extent of the processing that occurs within a given country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, facts such as resources expended on product design and development, extent and nature of post-assembly inspection procedures, and worker skill required during the actual manufacturing process will be considered when analyzing whether a substantial transformation has occurred; however, no one such factor is determinative.

In various cases concerning similar merchandise, CBP has held that complex and meaningful assembly operations involving a large number of components will generally result in a substantial transformation. In Headquarters Ruling Letter ("HQ") 562936, dated March 17, 2004, CBP addressed the country of origin of certain MFPs assembled in Japan of various Japanese- and Chinese-origin parts. CBP determined that the MFP was a product of Japan based on the fact that a "substantial portion of the printer's individual components and subassemblies [were] of Japanese origin." Furthermore, CBP noted that some of the Japanese components and subassemblies were essential parts of the finished article, and other Japanese parts, including the reader scanner unit and the control panel unit, were critical to the production of the printer. Finally, CBP noted that the Japanese processing operations were complex and meaningful, that required "the assembly of a large number of components, and render[ed] a new and distinct article of commerce that possesse[d] a new name, character, and use."

In HQ H025106, dated June 11, 2008, CBP addressed the country of origin of certain photocopying machines, which had photocopying, printing, faxing, and scanning functions. The machines were comprised of a scanning unit, controller unit subassembly, laser scanning unit, photoconductor unit, developer unit, transfer unit, and fusing unit. Three of these components were assembled into the machine's frame in China, and the rest were assembled into the frame in Japan, where the machines were completed. CBP noted that though the developer unit and transfer unit were assembled in China, enough of the subassemblies and individual components (*e.g.* the transfer belt and photoconductor unit, among others) were from Japan, with the

photoconductor being made of entirely Japanese parts. It also noted that though the developer unit would be assembled in China, two of the unit's key components were from Japan; and while the transfer unit would be partially assembled in China, the transfer belt was from Japan. CBP also noted that there were a large variety of adjustments that were made to the subassemblies in Japan, using advanced equipment and firmware. As a result, CBP held that the country of origin of the machines was Japan because the Japanese and foreign origin parts were substantially transformed into the machines through the product assembly that took place in Japan. *See also* HQ H020516, dated November 7, 2008 (holding that the country of origin of certain MFPs was Japan, using the same reasoning as HQ 562936 and HQ H025106, and also noting that the MFPs were designed and developed in Japan).

Based on the facts presented, we note that though the assembly of the bizhub MFP will take place in Japan and Thailand, there are also operations that contribute to this assembly which will take place in China. In situations like these, no one country imparts the dominant portion of the work conducted. Nonetheless, based upon the applicable legal standard, we determine that, the frame and subassemblies of the bizhub MFP that will be imported into Japan will be substantially transformed in Japan such that Japan will be the country of origin for purposes of U.S. Government procurement. In making this determination, we note that only four of the bizhub MFP's subassemblies (*i.e.*Subassemblies 1–4) will be assembled into the bizhub MFP's frame in Thailand, while the remaining seven subassemblies (*i.e.* Subassemblies 5–10, plus the MFP Board) will be assembled into, and permanently integrated within, the bizhub MFP in Japan. Further, we note that the MFP Board (the "brain" of the bizhub MFP) will be manufactured from all Japanese parts, will be integrated into the bizhub MFP in Japan, and accounts for a significant percentage of total subassemblies cost. Although many of the individual subassemblies will be assembled outside of Japan, we note sufficient use of Japanese sub-components in producing these subassemblies, such as the fusing belt that will be used to make the Fusing Unit, and the OPC drums, developer, and electrostatic roller that will be used to make the Latent Image Unit. As a result, the Japanese subassemblies and sub-components collectively attribute a significant percentage of the total subassemblies cost. Moreover, though we note the importance of the subassemblies and sub-components from Thailand and China, these subassemblies and sub-components will be integrated into a product that was designed and developed in Japan, and will be operated by Japanese-developed software that will also be installed onto the bizhub MFP in Japan. *See* HQ H198875, dated June 5, 2012 (noting that a foreign HDD that was integrated into an MFP in Singapore and installed with Japanese software in Singapore contributed to the reason that the HDD was substantially transformed into the MFP in Singapore). In this case, K/M incurred significant resources in Japan by developing and designing the MFP product, and its proprietary software, in Japan. Finally, the assembly operations that occur in Japan will be sufficiently complex and meaningful. Through the product assembly, as well as the testing and adjustment operations, the individual subassemblies and

sub-components of Japanese and foreign-origin will be subsumed into a new and distinct article of commerce that has a new name, character, and use. Therefore, under the totality of the circumstances, we find that the country of origin of the bizhub MFP will be Japan for purposes of U.S. Government procurement.

HOLDING:

Based on the facts provided, the country where the last substantial transformation will take places is Japan. As such, the bizhub MFPs will be considered products of Japan for purposes of U.S. Government procurement.

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

Sincerely,

MYLES B. HARMON,
Acting Executive Director
Regulations and Rulings Office of
International Trade

[Published in the Federal Register, January 6, 2016 (81 FR 496)]

NOTICE OF REVOCATION OF CUSTOMS BROKERS' LICENSES

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

ACTION: Revocation of customs brokers' licenses.

SUMMARY: This document provides notice of the revocation of customs brokers' licenses by operation of law.

FOR FURTHER INFORMATION CONTACT: D. Peterson, Branch Chief, Broker Management, Office of International Trade, (202) 863–6601, *julia.peterson@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: This document provides notice that, pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and section 111.30(d) of title 19 of the Code of Federal Regulations (19 CFR 111.30(d)), the following customs brokers' licenses were revoked by operation of law, without prejudice, for failure to file a triennial status report. A list of revoked customs brokers' licenses appears, below, in alphabetical order by name, and the names are grouped according to the ports of issuance.

Last/Company name	First name	License	Port of issuance
Harris	Lisa	17048	Anchorage.
Sherman	Cynthia	12763	Anchorage.
Canty	Jeremain	21800	Atlanta.
Crist	Diane	23021	Atlanta.
Davis	Lisa	20146	Atlanta.
Dean	Sandra	23851	Atlanta.
Duru	Chioma	28256	Atlanta.
Godfrey	Kimberly	12089	Atlanta.
Hodgkins	Kristen	23043	Atlanta.
Johnson	Stephen	16226	Atlanta.
Kelly	Merrill Elizabeth	24351	Atlanta.
Leverett	Wesley	27943	Atlanta.
Nicholson	Caroline	24052	Atlanta.
Spencer Schulz	Elizabeth M	09658	Atlanta.
Wahl	Mark	28257	Atlanta.
Wang	Yueh	28079	Atlanta.
Willeby	Natalie Renee	15042	Atlanta.
Williams	Aria	29979	Atlanta.
Williamson	Heather	16752	Atlanta.
Bratt	Thomas	04409	Baltimore.
Brennan	Frank	10364	Baltimore.
Campion Samueleis	Jennifer	22259	Baltimore.
Connolly	Henry	09745	Baltimore.
Dash	Joseph	03433	Baltimore.
DiCarlo	Susan	11689	Baltimore.
Duckett	Dina	13012	Baltimore.
Gilmer	Jimmie	10299	Baltimore.
H.C. Bennett Company		14423	Baltimore.
Ian International, Inc		11886	Baltimore.
Kraus International Shipping Co		22112	Baltimore.
Leslie	Robert	05236	Baltimore.
Morgan	James	12466	Baltimore.
Stitt	Marsha	09739	Baltimore.
Blaisdell	Philip G	20063	Boston.
Ciampa	Rosemary	16662	Boston.
Doucette	Lawrence B	09020	Boston.
Gamblin	Glenn George	12091	Boston.
Gomez	Roger	04073	Boston.
Hellenbeck	Margaret M	16661	Boston.
Hooks	John H	06162	Boston.
Houston	Paul	06400	Boston.
Import Export Compliance, Inc		28217	Boston.

Last/Company name	First name	License	Port of issuance
LaRoque	Paul Kevin	03189	Boston.
Lasko	Dennis M	17501	Boston.
MacKenzie	Kathleen Irene	16553	Boston.
Murphy	Barry	10543	Boston.
Nickole	Kellie Rose	10451	Boston.
Powell	Paul Atkin	03687	Boston.
Votze	Janet C	11236	Boston.
Walsh	Pamela	16919	Boston.
World Express Inc.		09651	Boston.
Barrette	Robert	24206	Buffalo.
Behr	Donald	09125	Buffalo.
Bondi	Victor	04929	Buffalo.
Brocato	Joyce	09093	Buffalo.
Burke	Michele	16850	Buffalo.
Cain	Timothy	21447	Buffalo.
Deane (Bishop)	Jennifer	23291	Buffalo.
Ferrell	Martha	14676	Buffalo.
Fremont, Lancaster, LLC		28977	Buffalo.
Fyke Logistics (USA), Inc		28352	Buffalo.
Giumentaro	Joseph	16516	Buffalo.
Great Lakes Customs Brokerage, Inc		14150	Buffalo.
Hemstock	Kathleen	17193	Buffalo.
Hormell	Deborah	14768	Buffalo.
King	Deborah	13218	Buffalo.
Levitt	Glenn	09337	Buffalo.
MacGillivray	Karen	20554	Buffalo.
Mccaw	Rita	09154	Buffalo.
McLeod	Joan	09048	Buffalo.
Osborne	Andrew	28962	Buffalo.
Perrelli	John	15585	Buffalo.
Roulley	Douglas	09324	Buffalo.
Stroupe	Charles	09685	Buffalo.
Szewczyk	Pearl	20851	Buffalo.
Wald	Franklin	06653	Buffalo.
Westmoreland	Patricia	21083	Buffalo.
Brunell	Gary	06822	Champlain.
Burl	Wayne R	04338	Champlain.
Casey	William	02863	Champlain.
Columbe	Gloria	07639	Champlain.
Deloria	Dawn	20859	Champlain.
Perkins	Mary C	15335	Champlain.
Saunders	Ralph	05392	Champlain.

Last/Company name	First name	License	Port of issuance
Willette	Randall	06796	Champlain.
Blitch	Keri	15292	Charleston.
Enfinger	Katrina	11677	Charleston.
Fain	Angelic	15295	Charleston.
Fitzpatrick	Amy	12760	Charleston.
Inman	Jessica	21030	Charleston.
Sadler-Magliacane	Debbie	11477	Charleston.
Thompson	Theresa	14147	Charleston.
Walters	Willis	11393	Charleston.
West	Glennis	14474	Charleston.
Barlas	Georgia	17055	Charlotte.
Flock	Deborah	13907	Charlotte.
Nelson	John R.	21288	Charlotte.
Stults	Pamela N	15175	Charlotte.
Stutts, III	Kenneth	29379	Charlotte.
Arthur	Essie N	14007	Chicago.
Benson	Allison V	11591	Chicago.
Blaha	Jane E	15460	Chicago.
Cahill	Raymond	16066	Chicago.
Chew	Ken H	16052	Chicago.
Cieslak	Dennis D	28858	Chicago.
Denehy	Robert K	14909	Chicago.
Dompke	Leroy J	05562	Chicago.
Fluger	Carol A	11256	Chicago.
Frye	Jeffrey	11879	Chicago.
Garcia	Joe T	05420	Chicago.
Gosling	Sandra M	23429	Chicago.
Heinke	Lynn M	14621	Chicago.
Henneghan-Bernet	Annare	15505	Chicago.
Koelling	Bruce G	10825	Chicago.
Lentz	Arthur F	07708	Chicago.
Leviton	Fred G	16431	Chicago.
McGrath	James P	05968	Chicago.
Neary	James A	17172	Chicago.
Silberman	Gail E	15263	Chicago.
Stradley	Janis L	14317	Chicago.
Bennett	Diana Kay	16580	Cleveland.
Freese	Thomas	28740	Cleveland.
Groh	Peter	09797	Cleveland.
Hagarman	Connie	09880	Cleveland.
Haury	Joshua	23797	Cleveland.
Hoppes	Laura	13877	Cleveland.

Last/Company name	First name	License	Port of issuance
International Compliance Experts, LLC		27461	Cleveland.
McKeever	Kenneth Duane	27503	Cleveland.
Milklosovic	Bradley John	30029	Cleveland.
Neal	Todd	20176	Cleveland.
Ortiz	Henry	10402	Cleveland.
Peters	Kathy	13372	Cleveland.
Radomirov	Bridgette	23682	Cleveland.
Segovia	Amanda	23583	Cleveland.
Sireci	Joan	15649	Cleveland.
Sorenson	Robert	13514	Cleveland.
Chester	Jimmy	20567	Dallas.
Ellershaw	Sharon	10305	Dallas.
Lauritzen	Michael	17115	Dallas.
McElvany	Douglas Keith	10046	Dallas.
Reed	Douglas	21284	Dallas.
Renner	Carl	21342	Dallas.
Speegle	Joseph M	13038	Dallas.
Trojacek	Connie Dolores	22501	Dallas.
Acosta	Juan J	15089	El Paso.
Delgado	Jeanette Victoria	15614	El Paso.
Dotson	Lorna Yvonne	15777	El Paso.
Guzman	Gerardo	21814	El Paso.
Ogaz	Juan Antonio	14799	El Paso.
Ralin	Peter Leonard	07137	El Paso.
Suarez	Arturo	12152	El Paso.
Bell	Cynthia	11339	Great Falls.
Brett	Howard	17097	Great Falls.
Calhoun	Stephen	17444	Great Falls.
Chester	Shans	12276	Great Falls.
Crellin	Stephanie	12550	Great Falls.
Palmer	Michael	04901	Great Falls.
Parker	Irina	23180	Great Falls.
Rasmussen	Jeannine	12009	Great Falls.
Rode	Marie	12790	Great Falls.
Rotter	Kurt	16766	Great Falls.
Smedley	Marsha	15986	Great Falls.
Wasden	Benjamin	22206	Great Falls.
Aucoin	Samuel	22019	Honolulu.
Fujimori	Bert	04766	Honolulu.
BuitronEl	Ricardo A	14409	Houston.
Carranza	Elvia Irene	24300	Houston.

Last/Company name	First name	License	Port of issuance
Edward	Berlin E	07817	Houston.
Gastler	Jacklyn	11013	Houston.
K2 Customs Brokers, LLC		30009	Houston.
Leidy	Susan L	14713	Houston.
Marinis	Steven J	05577	Houston.
McClellan	Lavone W	07787	Houston.
Nygard	Karen Elaine	07524	Houston.
Pohutsky	Lori J	09580	Houston.
Stewart	Harold Wade	04313	Houston.
Thompson, Jr.	Eugene E	10979	Houston.
Travis	Cynthia B	11562	Houston.
Warner	Robert Bruce	05531	Houston.
Carrasco	Gonzalo	16478	Laredo.
Del Rio	Rafael Beltran	28908	Laredo.
Gonzalo Carrasco C.H.B., Inc		20897	Laredo.
International Express Brokers, Inc		21640	Laredo.
Munoz	Esteban	05243	Laredo.
Pohler	Randy	14458	Laredo.
Ronald E. Guerra, Inc		05526	Laredo.
Sumner	Gregory Joe	13935	Laredo.
Abramovic	Felice	17443	Los Angeles.
Abella	Joel	22608	Los Angeles.
Adams	Lorraine	07380	Los Angeles.
Allen	Thomas	10660	Los Angeles.
Beteta	Martin E. Berrera	16102	Los Angeles.
Brownfield	Jon	05981	Los Angeles.
Burns	Karen M	11353	Los Angeles.
Byler	Timothy	13929	Los Angeles.
Carandang-Webster	Mila	07016	Los Angeles.
Cawiezel	Sharon	07151	Los Angeles.
Chang	Goang Yih	13617	Los Angeles.
Choi	David	24195	Los Angeles.
Chung	Jin	29679	Los Angeles.
Cook	Calvin M	06979	Los Angeles.
Crow	Maria	21383	Los Angeles.
Danache	Charles	04183	Los Angeles.
Dependable Global Express, Inc		23369	Los Angeles.
Dew	Michael	15068	Los Angeles.
Ficklin	Terrence	27409	Los Angeles.
Fischer	Lewis Leland	14505	Los Angeles.
Hagedorn	Linda M.	05523	Los Angeles.

Last/Company name	First name	License	Port of issuance
Hampton	Madrienne	22905	Los Angeles.
Han	Qi	27433	Los Angeles.
Heck	Dennis	01042	Los Angeles.
Henry	Hiram	12779	Los Angeles.
Hofer	Marion	14056	Los Angeles.
Hu	Edith	13202	Los Angeles.
Huynh	Phuong	09389	Los Angeles.
Imbrogulio	John	14144	Los Angeles.
Krieger	Ian H	07232	Los Angeles.
Law	Kyran	22480	Los Angeles.
Lee	Jeffrey	23311	Los Angeles.
Lee	Linda	11143	Los Angeles.
Lee	Soo	07095	Los Angeles.
Li	Christopher	11323	Los Angeles.
Li	Valerie	11709	Los Angeles.
Liang	Philip	13628	Los Angeles.
Loza	Sally	05963	Los Angeles.
McGaughey	Deborah	10924	Los Angeles.
Michaels	Douglas	14482	Los Angeles.
Milne	Mark	05671	Los Angeles.
Min	Robert	11948	Los Angeles.
Montgomery	Randall	09926	Los Angeles.
Monto	Joseph	04792	Los Angeles.
Neal	Scott	22424	Los Angeles.
Nee	Howard	28518	Los Angeles.
Pirgyi	Diana	22906	Los Angeles.
Plumtree	Angelina	21491	Los Angeles.
Rae	Alan	04239	Los Angeles.
Reep	Denise	20645	Los Angeles.
Schafer Customs Brokerage, Inc		27648	Los Angeles.
Shay	Shane	15196	Los Angeles.
Sieren-Smith	Bridget	23312	Los Angeles.
Snitwongse	Chanpen	06669	Los Angeles.
Song	Deok	24184	Los Angeles.
Taslitt	Victory	16023	Los Angeles.
Tirsch	Wendy	22056	Los Angeles.
Tomlin	Robert	13995	Los Angeles.
VAB Services, Inc		28853	Los Angeles.
Valente	Giovanni	21221	Los Angeles.
Walden	Michael	16717	Los Angeles.
Walters	Michele	14044	Los Angeles.
Wismann	Enrique M	06707	Los Angeles.

Last/Company name	First name	License	Port of issuance
Yetter	Jesse	29429	Los Angeles.
Ziegler	Natalie	13179	Los Angeles.
Ziskrout	Philip	04171	Los Angeles.
Crowley Logistics, Inc		27721	Miami.
Espinet	Gilbert	16810	Miami.
Garcia	Jan	27681	Miami.
Gelbert	Norman E	09505	Miami.
Lopez	Eva M	22551	Miami.
Mearsheimer	Mark	14217	Miami.
Roque	Cynthia	28543	Miami.
Saltalamacchia	Felix	15967	Miami.
Stair	Peter J	22720	Miami.
Turner	David L	14884	Miami.
Vinals	Mercedes	22150	Miami.
Woolf	Eric F	16242	Miami.
Blachowski	Mark	13694	Milwaukee.
Chou	Hung-Liang	11936	Milwaukee.
Johnston	Donna	21327	Milwaukee.
Konruff	Dustin	29975	Milwaukee.
Morris	Freddie	06858	Milwaukee.
Pinter	Mark	12587	Milwaukee.
Rutland	Robert	12223	Milwaukee.
Schwalbe	Vincent	28705	Milwaukee.
Becnel	David Martin	17553	New Orleans.
Bourque	Michael	29150	New Orleans.
Dunbar	John Scott	21770	New Orleans.
Krupp	David	16970	New Orleans.
Noto-Diaz	Donna	17408	New Orleans.
Wegener	Paul F	03476	New Orleans.
Aguirre	Ricardo	09544	New York.
Alpi USA, Inc		15052	New York.
Bayer	Charles	23910	New York.
Bernstein	Steven	03765	New York.
Brandvold	Kirstin	13480	New York.
Braun	Linda	23184	New York.
C.W. Logistics Corp		23699	New York.
Castilla	Judith	06912	New York.
Castro	Salvatore	12659	New York.
Chakedis	James	05191	New York.
Chen	Zhen	28625	New York.
Chiaramonte	Charles	11868	New York.
Chiu	Christina	21475	New York.

Last/Company name	First name	License	Port of issuance
Cruz	Fidel	14678	New York.
Cunningham	Nancy	05895	New York.
David Vincent Associates, Inc		15541	New York.
Deresh	Steven	07097	New York.
Dobson	Marla	10038	New York.
Dockery	Maureen	10887	New York.
Encarnacion	Aurelio	05720	New York.
Espinal	Yanilcia	23319	New York.
Evans	William	05325	New York.
Fanok	Jeffrey	10611	New York.
Firpo	Laura	10015	New York.
Galvin	John	09320	New York.
Gavin Sambrook	Terry	10581	New York.
Geary	Chad	22487	New York.
Guengue	Nancy	20576	New York.
Gyomory	Barbara	10016	New York.
Hagedorn	William	07305	New York.
Highgrace International Corp		13612	New York.
Hodges	Mary	08069	New York.
Horsky	Tereza	22971	New York.
Imperiale	Lisa Ann	20313	New York.
Jackson	Tracey	22297	New York.
Joh	Justin	28317	New York.
La Russo	Patrick	04548	New York.
Lee	Diana	27777	New York.
Lee	John	13727	New York.
Li	Venching	28398	New York.
Liebgott	Charles	05771	New York.
Luzzo	Robert	20084	New York.
McCooey	Patrick	10420	New York.
Myers	James	03848	New York.
Palazzolo	Florence	06934	New York.
Poli	Gregory	10980	New York.
Rodriguez	Dominic	10705	New York.
Rose	Alan	05736	New York.
Saunders	Fred	11471	New York.
Scibelli	Gennaro	02583	New York.
Seltzer	Irwin	13301	New York.
Semins	John	07830	New York.
Shin	So	29272	New York.
Silvey	Alvin	02561	New York.
Singh	Inderjeet	07855	New York.

Last/Company name	First name	License	Port of issuance
Skrzypinski	Thomas	15022	New York.
Smith	Joseph	06928	New York.
So	Chun	29168	New York.
Sommella	Vincent	09249	New York.
Stebich	Oliver	16130	New York.
Sullivan	Maryellen	12657	New York.
Tao	Guoging	22646	New York.
Teabo	Scott	24069	New York.
Titone	Michael	06189	New York.
Trehan	Lalit	04851	New York.
Unsworth	Paul	11142	New York.
Van Deventer	Robert	10642	New York.
Vargas	Sonia	15938	New York.
Volz, Jr.	George	16292	New York.
Wallace	Robert	12110	New York.
Wang	Nengjia	28593	New York.
Weiss	Ted	07061	New York.
Wiedenhaft	Randall	16587	New York.
Zhu	Cheng	29169	New York.
Cramer	Earlyn	10186	Nogales.
Karfield	Marvin	15166	Nogales.
Van Nice	Nick	15918	Nogales.
Welsh	Warren	07459	Nogales.
Belangia	Richard T	05013	Norfolk.
Collins	Sarah R	12063	Norfolk.
Fischer	George	04023	Norfolk.
Grego	Cari	21612	Norfolk.
Jordan	Bonnie M	07725	Norfolk.
Leonard	Mary Susan	10880	Norfolk.
Lewis	Terry Lee	05275	Norfolk.
Lotz	Sandra C	07241	Norfolk.
O'Neal	Linda L	29988	Norfolk.
Shipp	Helen W	12020	Norfolk.
Coltharp	Jon	27683	Otay Mesa.
Coulford	Mildred	17123	Otay Mesa.
Hostetler	Sylvia	07679	Otay Mesa.
Jenkins	Presley	04452	Otay Mesa.
Jones	Nick	27958	Otay Mesa.
Morrell	Tammy	30409	Otay Mesa.
Porter	Stephen	06556	Otay Mesa.
Rocco	Valerie	15993	Otay Mesa.
Rocha	Claudia	28524	Otay Mesa.

Last/Company name	First name	License	Port of issuance
Villegas	Dolores	07096	Otay Mesa.
Kihle	Karen	16123	Pembina.
Margerum	Paul	11491	Pembina.
Bresani	Amelia	29621	Philadelphia.
Bunch	Lyn Foster	12498	Philadelphia.
Casciato	Patricia	17330	Philadelphia.
Coxson	Charles	15760	Philadelphia.
Edwards	Theresa	30498	Philadelphia.
Galik	Jane	10357	Philadelphia.
Given	Christina M	16456	Philadelphia.
Jones	Debra	12460	Philadelphia.
Kilpatrick	Amy	22108	Philadelphia.
Pinhak	Joseph	16394	Philadelphia.
Stevenson	William A	06516	Philadelphia.
Valkenburg	Per F	10292	Philadelphia.
Vielle	Bernard E	17065	Philadelphia.
ITCI, Inc.		21944	Portland, ME.
Hatton	James L	06269	Portland, OR.
Jones	Timothy P	14729	Portland, OR.
King	William Thomas	12652	Portland, OR.
Lords	Jolynn	09583	Portland, OR.
Takasumi	Richard C	07439	Portland, OR.
Thain	Betty	05942	Portland, OR.
Beliveau	Nicole	28663	Providence.
Santamaria	Richard	08017	Providence.
Alioto	Joseph	14755	San Francisco.
Ansel	Aaron	29724	San Francisco.
Berger	Jorg	04864	San Francisco.
Brun	John	04346	San Francisco.
Burns	Judith	07193	San Francisco.
C&F Drawback Consultants		21071	San Francisco.
Capil	Carina	16676	San Francisco.
Carpenter	Edmoundo	23428	San Francisco.
Ceccacci	Jeffrey	23165	San Francisco.
Celli	Machiko	10470	San Francisco.
Clark	Virgil	16356	San Francisco.
Conner	Gerald	14865	San Francisco.
Corr	Michael	06194	San Francisco.
Davis	Robert	14068	San Francisco.
Fleischman	Gary	17073	San Francisco.
Gattso	Rocco	13342	San Francisco.
Grey	Sara	29702	San Francisco.

Last/Company name	First name	License	Port of issuance
Iyer	Dharam	29405	San Francisco.
Jamin	Natanael	15844	San Francisco.
Jenkins	Presly	03640	San Francisco.
Lancellotti	Margot	14237	San Francisco.
Lee	Chansoo	23773	San Francisco.
McCaffrey	Michael	07334	San Francisco.
Parker	Dylan	28212	San Francisco.
Prince	Margaret	11636	San Francisco.
Raggio	Stanley	10250	San Francisco.
Scovell	Nancy	07086	San Francisco.
See	Donald	05220	San Francisco.
Sikka	Anil	12061	San Francisco.
Ting	Peter	10321	San Francisco.
Yang	Diana	24152	San Francisco.
Cameron	Jacob Leonard	24018	San Juan.
Ashley	Scott	15375	Savannah.
Chandler	Elaine	05028	Savannah.
Faircloth	Gloria	06412	Savannah.
Hodges	Lynette	06873	Savannah.
Johnston	Mary	14803	Savannah.
Parham	Thomas	07437	Savannah.
Russell	Ray	14292	Savannah.
Slayton	Julia Suber	18001	Savannah.
Stewart	Janice	18030	Savannah.
Tolbert	Shawn	12568	Savannah.
Usher	Clyde	10907	Savannah.
Bagnall	Richard	22255	Seattle.
Barnes	Sara	21271	Seattle.
Bartlett	Kathy	15128	Seattle.
Bogenshutz	Allan	06766	Seattle.
Bonney	Robert	04813	Seattle.
Carter	Alan	07833	Seattle.
Hall	Peter	28300	Seattle.
Hansen	Ronald	21870	Seattle.
Holmstrom	Roger	06423	Seattle.
Kincaid	Alan	13971	Seattle.
King	Jeffery	14974	Seattle.
Linehan	Larry	04415	Seattle.
Mullene	Daniel	06774	Seattle.
Pool	David	15235	Seattle.
Rasmussen	Kristie	12059	Seattle.
Sanders	George	03442	Seattle.

Last/Company name	First name	License	Port of issuance
Schrank	Dennis	07943	Seattle.
Shiner	Mark	05660	Seattle.
Shumate	Devin	24144	Seattle.
Stendal	Wendy	10237	Seattle.
Stevenson	Aimee	16688	Seattle.
Stoeser	Kathleen	11448	Seattle.
Stoeser	Stephen	11671	Seattle.
Sundaram	Anila	21391	Seattle.
VanWieringen	Debra	12311	Seattle.
Whitlock	Laura	17218	Seattle.
Doig	William	06696	St. Albans.
McKenny	Ronald	03736	St. Albans.
Middlemiss	Donald	10951	St. Albans.
Ferrell	Douglas	24359	St. Louis.
Lichtas	Tami	21233	St. Louis.
McMillan	Erin	23406	St. Louis.
Mudgett	Sandra K	20372	St. Louis.
Tasker	Robert	21654	St. Louis.
Trost	Thomas F	14753	St. Louis.
Waltos-Drake	Shirley	07375	St. Louis.
Armburst	Frederick C	11693	Tampa.
Coffey-Ramirez	Anna M.	14050	Tampa.
Joseph	Jean Claude	21405	Tampa.
Kiang-Wu	Maylene	14222	Tampa.
Leverette	Lucius	24318	Tampa.
Marshall	Robert	06390	Tampa.
Oswald, Jr.	Lowell	14137	Tampa.
Sailor	Stephen	21161	Tampa.
Saunders	Nydia	15232	Tampa.
Streker	John	21158	Tampa.
Arevalo	Cynthia	13681	Washington, DC.
Guntapalli	Mayuri	28832	Washington, DC.
Hill	John	22612	Washington, DC.
Lewis	Michael	12389	Washington, DC.
Martin	Jeffrey	29274	Washington, DC.
Moritsugu	Erika	23065	Washington, DC.
Wallace	Laura	20785	Washington, DC.

Dated: December 30, 2015.

BRENDA B. SMITH,
Assistant Commissioner,
Office of International Trade.

PROPOSED MODIFICATION OF ONE RULING, REVOCATION OF ONE RULING, AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF ALUMINUM COMPOSITE SHEETS

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

ACTION: Notice of proposed modification of one ruling, revocation of one ruling, and revocation of treatment relating to the classification of certain types of Aluminum Composite (ACP) sheets.

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") intends to modify a ruling concerning the classification of beBond-branded painted Aluminum Composite (ACP) sheets, consisting of one polyethylene layer bonded between two aluminum sheets and having peelable plastic protective film on both sides, under the Harmonized Tariff Schedule of the United States ("HTSUS"), and revoke a ruling concerning the classification of SIGNABOND®, a composite article also consisting of one polyethylene layer bonded between two aluminum sheets, under HTSUS. 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 February 19, 2016.

ADDRESSES: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K Street NE, 10th Floor, Washington, D.C. 20229–1177. Submitted comments may be inspected at the above address 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: Anthony L. Shurn, Tariff Classification and Marking Branch (202) 325–0218.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(1)), this Notice advises interested parties that CBP intends to modify a ruling letter pertaining to the tariff classification of painted beBond ACP sheets, consisting of one polyethylene layer bonded between two aluminum sheets and having peelable plastic protective film on both sides, and revoke a ruling concerning the classification of SIGNABOND®, a composite article also consisting of one polyethylene layer bonded between two aluminum sheets. Although in this Notice, CBP is specifically referring to the modification of CBP Ruling NY 230615 (September 13, 2012) and the revocation CBP Ruling NY N200119 (February 10, 2012) (Attachments A and B, respectively), 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 transac-

tions. 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 CBP Ruling NY 230615, CBP ruled that painted beBond ACP sheets, consisting of one polyethylene layer bonded between two aluminum sheets and having peelable plastic protective film on both sides, are to be classified under HTSUS subheading 7607.19.3000, which provides for "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics, or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm, not backed, other, other, cut to shape, of a thickness not exceeding 0.15 mm"; or HTSUS subheading 7607.19.6000, which provides for "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics, or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm, not backed, other, other", depending on the thickness of the ACP sheet. The referenced ruling is incorrect with respect to painted beBond ACP sheets because as a composite consisting of Aluminum Sheet/Polyethylene/ Aluminum Sheet, painted beBond ACP sheets do not meet the descriptions provided in the subheadings noted above in this paragraph. It more appropriately falls within the description of "aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm" under heading 7607. As aluminum foil that is backed and does not exceed 0.2 mm, painted beBond ACP sheets, as described in NY N230615, is properly classifiable under HTSUS subheading 7607.20.50 as "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness excluding any backing) not exceeding 0.2 mm: Backed: Other....."

In H230615, CBP also ruled on the tariff classification of mill-finished (unpainted) beBond ACP sheets and painted beBond ACP sheets with peelable plastic film on only one side. Those articles are not subject to the actions taken in this Notice.

In CBP Ruling NY N200119, CBP ruled that ACP sheets known by the name SIGNABOND®, consisting of one polyethylene layer bonded between two aluminum sheets, are to be classified under either HTSUS subheading 7606.11.3060, which provides for "Aluminum plates, sheets and strip, of a thickness exceeding 0.2 mm, rect-

angular (including square), of aluminum, not alloyed, not clad, with a thickness of 6.3 mm or less"; or HTSUS subheading 7607.19.3000, which provides for "Aluminum foil, (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm, not backed, other, other, cut to shape, of a thickness not exceeding 0.15 mm"; or HTSUS subheading 7607.19.6000, which provides for "Aluminum foil, (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm, not backed, other, other..." The particular subheading depended on the thickness of the ACP sheet. The referenced ruling is incorrect because as a composite consisting of Aluminum Sheet/Polyethylene/ Aluminum Sheet, SIGNABOND® does not meet the descriptions provided in the subheadings noted above in this paragraph. It more appropriately falls within the description of "aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm" under heading 7607. As aluminum foil that is backed and does not exceed 0.2 mm, SIGNABOND®, as described in NY N200119, is properly classifiable under HTSUS subheading 7607.20.50 as "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness excluding any backing) not exceeding 0.2 mm: Backed: Other....."

CBP, pursuant to 19 U.S.C. §1625(c)(1), proposes to modify NY N230615, and any other ruling not specifically identified, to reflect the proper classification of painted beBond ACP sheets having peelable plastic protective film on both sides pursuant to the analysis set forth in Proposed Headquarters Ruling Letter HQ H244174 (Attachment C). CBP also proposes to revoke NY N200119 pursuant to section 1625(c)(1) and the analysis set forth in Proposed Headquarters Ruling Letter HQ H244174 as noted. 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: December 2, 2015

GREG CONNOR
for
JOANNE ROMAN STUMP,
Acting Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY N230615
September 13, 2012
CLA-2–76:OT:RR:NC:1:117
CATEGORY: Classification
TARIFF NO.: 7607.19.3000; 7607.19.6000; 7607.20.5000

MS. JULIE VAIR
EXPEDITOR'S TRADEWIN, LLC.
1015 THIRD AVENUE, 12TH FLOOR
SEATTLE, WA 98104

RE: The tariff classification of beBond ACP sheets from China.

DEAR MS. VAIR:

In your letter dated August 10, 2012 you requested a tariff classification ruling on behalf of your client, Right Brain Materials, LLC. A representative sample was included with your submission and will be retained by this office.

The products under consideration are described as beBond ACP sheets, composite articles comprised of a polyethylene core sandwiched and permanently bonded between two Alloy 1100 aluminum sheets. These sheets meet the Chapter 76, Subheading Note 1(a) definition of not alloyed and range in thickness from 0.1 mm to 0.2 mm. They are available in a variety of cut sizes (4' X 8', 4' X 10' and 5' X 10') and are used in the signs and graphics industry.

In your request, you indicate that the sheets are imported two different ways depending on customer requirements. The aluminum is either mill finished (no finish) or painted with a polyester paint. In the case of the painted versions, a clean peel, protective, plastic covering will be applied to either one or both sides of the aluminum sheets. You state the function of the plastic film is to protect the painted surface during transit and will be removed before delivery to the end user.

Historically, peelable plastic film that is protective in nature has been considered backing material when applied to one side of an aluminum foil product. However, when the same film, or some other type of backing material, is applied to both sides of a foil product, the foil is no longer viewed as backed.

The applicable subheading for the painted beBond ACP aluminum sheets of a thickness of 0.1 mm or more but not exceeding 0.15 mm and having a peelable protective plastic film on both sides will be 7607.19.3000, HTSUS, which provides for aluminum foil (whether or not printed, or backed with paper, paperboard, plastics, or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm, not backed, other, other, cut to shape, of a thickness not exceeding 0.15 mm. The rate of duty will be 5.7 percent ad valorem.

The applicable subheading for the painted beBond ACP aluminum sheets of a thickness of 0.15 mm or more but not exceeding 0.2 mm and having a peelable protective plastic film on both sides will be 7607.19.6000, HTSUS, which provides for aluminum foil (whether or not printed, or backed with paper, paperboard, plastics, or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm, not backed, other, other. The rate of duty will be 3 percent ad valorem.

The applicable subheading for the mill finished (non-painted) and the painted beBond ACP aluminum sheets having a peelable protective plastic film on only one side will be 7607.20.5000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm, backed, 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 Mary Ellen Laker at (646) 733–3020.

Sincerely,

THOMAS J. RUSSO
Director
National Commodity Specialist Division

[ATTACHMENT B]

NY N200119
February 10, 2012
CLA-2–76:OT:RR:NC:1:117
CATEGORY: Classification
TARIFF NO.: 7606.11.3060; 7607.19.3000; 7607.19.6000

MR. JOHN K. MOBLEY
GLOBAL SIGN PRODUCTS LLC
110 INDUSTRIAL BLVD.,
P.O. BOX 817
EASTMAN, GA 31023–0817

RE: The tariff classification of SIGNABOND® from China.

DEAR MR. MOBLEY:

In your letter dated January 11, 2012 you requested a tariff classification ruling.

The product to be imported is SIGNABOND®, a composite article comprised of a polyethylene core sandwiched between two Alloy 1100 aluminum sheets. The exposed sides of the aluminum sheets will be covered with a peelable protective film. These sheets meet the Chapter 76, Subheading Note 1(a) definition of not alloyed and will have a thickness of .15 mm, .20 mm or .30 mm. SIGNABOND® is available in a variety of cut sizes, colors and textures and is used in the sign and graphics industry.

Historically, peelable plastic film that is protective in nature has been considered backing material when applied to one side of an aluminum foil product. However, when the same film, or some other type of backing material, is applied to both sides of a foil product, the foil is no longer viewed as backed.

The applicable subheading for the SIGNABOND® containing aluminum sheets of a thickness of 0.30 mm will be 7606.11.3060, Harmonized Tariff Schedule of the United States (HTSUS), which provides for aluminum plates, sheets and strip, of a thickness exceeding 0.2 mm, rectangular (including square), of aluminum, not alloyed, not clad, with a thickness of 6.3 mm or less. The rate of duty will be 3 percent ad valorem.

The applicable subheading for the SIGNABOND® containing aluminum sheets of a thickness of 0.15 mm will be 7607.19.3000, HTSUS, which provides for aluminum foil, (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm, not backed, other, other, cut to shape, of a thickness not exceeding 0.15 mm. The rate of duty will be 5.7 percent ad valorem.

The applicable subheading for the SIGNABOND® containing aluminum sheets of a thickness of 0.20 mm will be 7607.19.6000, HTSUS, which provides for aluminum foil, (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm, not backed, other, other. The rate of duty will be 3 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 Mary Ellen Laker at (646) 733–3020.

Sincerely,

THOMAS J. RUSSO
Director
National Commodity Specialist Division

[ATTACHMENT C]

HQ H244174
CLA-2 OT:RR:CTF:TCM H244174 ALS
CATEGORY: Classification
TARIFF NO.: 7607.20.50

MS. JULIE VAIR, SENIOR CONSULTANT
EXPEDITORS TRADEWIN, LLC
1015 3RD AVENUE, 12TH FLOOR
SEATTLE, WASHINGTON 98104

RE: Modification of Customs and Border Protection (CBP) Ruling NY N230615 (September 13, 2012) and Revocation of CBP Ruling NY N20019 (February 10, 2012); tariff classification of composite articles consisting of aluminum alloy sheets and polyethylene

DEAR MS. VAIR:

This letter is in response to your request for reconsideration of CBP Ruling NY N230615 (September 13, 2012), as noted above, on behalf of Right Brain Materials, LLC. The ruling and your request concern the legal tariff classification of beBond painted ACP sheets having peelable plastic protective film on both sides. During our review, we have found CBP Ruling NY N200119 also merits reconsideration along with NY N230615. Our discussion of both cases and our decision are set forth below.

FACTS:

These are the facts as were noted in NY N230615:

> The products under consideration are described as beBond ACP sheets, composite articles comprised of a polyethylene core sandwiched and permanently bonded between two Alloy 1100 aluminum sheets. These sheets meet the Chapter 76, Subheading Note 1(a) definition of not alloyed and range in thickness from 0.1 mm to 0.2 mm. They are available in a variety of cut sizes (4' X 8', 4' X 10' and 5' X 10') and are used in the signs and graphics industry.
>
> In your request, you indicate that the sheets are imported two different ways depending on customer requirements. The aluminum is either mill finished (no finish) or painted with a polyester paint. In the case of the painted versions, a clean peel, protective, plastic covering will be applied to either one or both sides of the aluminum sheets. You state the function of the plastic film is to protect the painted surface during transit and will be removed before delivery to the end user.
>
> Historically, peelable plastic film that is protective in nature has been considered backing material when applied to one side of an aluminum foil product. However, when the same film, or some other type of backing material, is applied to both sides of a foil product, the foil is no longer viewed as backed.

You request reconsideration of NY N230615 with regard to the painted beBond ACP sheets with a thickness of 0.1 mm or more but not exceeding 0.15 mm and having a peelable protective plastic film on both sides and the

painted beBond ACP sheets with a thickness of at least 0.16[1] mm or more but not exceeding 0.2 mm and having a peelable protective plastic film on both sides. You contend "that there were certain facts that were misunderstood or not taken into consideration...."

You expressly state that you agree with the ruling in NY N230615 with regard to mill finished (non-painted) beBond aluminum composite sheets and painted beBond aluminum composite sheets having a peelable protective plastic film on only one side as being properly classified under HTSUS subheading 7607.20.50.

As noted above, NY N200119 also merits reconsideration in light of our review of this case. The facts of that case were described in that decision as follows:

> The product to be imported is SIGNABOND®, a composite article comprised of a polyethylene core sandwiched between two Alloy 1100 aluminum sheets. The exposed sides of the aluminum sheets will be covered with a peelable protective film. These sheets meet the Chapter 76, Subheading Note 1(a) definition of not alloyed and will have a thickness of .15 mm, .20 mm or .30 mm. SIGNABOND® is available in a variety of cut sizes, colors and textures and is used in the sign and graphics industry.

ISSUE:

Are the painted beBond aluminum composite panel sheets with a thickness of 0.1 mm or more but not exceeding 0.15 mm and having a peelable protective plastic film on both sides properly classified under HTSUS subheading 7607.19.30 as "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness excluding any backing) not exceeding 0.2 mm: Not backed: Other: Cut to shape, of a thickness not exceeding 01.5mm," or under HTSUS subheading 7607.20.50 as "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness excluding any backing) not exceeding 0.2 mm: Backed: Other"?

Are the painted beBond aluminum composite panel sheets with a thickness of at least 0.16 mm or more but not exceeding 0.2 mm and having a peelable protective plastic film on both sides properly classified under HTSUS subheading 7607.19.60 as "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness excluding any backing) not exceeding 0.2 mm: Not backed: Other: Other," or under HTSUS subheading 7607.20.50 as "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness excluding any backing) not exceeding 0.2 mm: Backed: Other"?

LAW AND ANALYSIS:

Classification under the HTSUS is determined in accordance with the General Rules of Interpretation ("GRI") and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation ("ARI"). GRI 1 provides that the classification of goods shall

[1] In NY N230615, this particular article is described as having "a thickness of *0.15* mm or more but not exceeding 0.2 mm." This is incorrect. The article is correctly described as having a thickness of at least ***0.16*** mm or more but not exceeding 0.2 mm.

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

The following HTSUS provisions are under consideration:

7607	Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm:
	Not backed:
7607.19	Other:
7607.19.30	Cut to shape, of a thickness not exceeding 0.15 mm ...
7607.19.60	Other .....
**********	
7607.20	Backed:
7607.20.50	Other .....
**********	

GRI 1 provides the following:

> 1. The table of contents, alphabetical index, and titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, 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 following provisions:...

GRI 3(b) provides the following:

> 3. When, by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:
>
> (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

GRI 6 provides the following:

> 6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, mutatis mutandis, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

Subheading Note 1(a) to Chapter 76, HTSUS, provides the following:

> 1. In this chapter the following expressions have the meanings hereby assigned to them:
>
> (a) Aluminum, not alloyed
>
> Metal containing by weight at least 99 percent of aluminum,

provided that the content by weight of any other element does not exceed the limit specified in the following table:

TABLE - Other elements

Element	Limiting content percent by weight
Fe + Si (iron plus silicon)	1
Other elements(1), each	0.1(2)

(1) Other elements are, for example, Cr, Cu, Mg, Mn, Ni, Zn.

(2) Copper is permitted in a proportion greater than 0.1 percent but not more than 0.2 percent, provided that neither the chromium nor manganese content exceeds 0.05 percent.

****

Before we consider whether the subject article is backed or not, we must address the significance of the protective plastic packaging in this case. You state that "in accordance with GRI [5(b)], it is [CBP's] precedent to not take into consideration protective plastic packaging when determining the HTS assuming its meets both criteria of GRI [5(b)]: - that it is the type normally used for packing such goods; and that it is not suitable for repetitive use." You cite to CBP Ruling NY N004056 (December 21, 2006) (plastic film found to be display material) and CBP Ruling NY D81573 (September 29, 1998) (plastic cap found to be protective covering). You also cite to CBP Ruling NY 889128 (September 14, 1993) to distinguish it from the present case, noting that CBP ruled in NY 889128 that "GRI 5b requires that the packing material meet two qualifications: that it is the type normally used for packing such goods; and that it is not suitable for repetitive use", and as such the article at issue therein did not qualify.

GRI 5(b) states the following:

> 5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:
>
> (b) Subject to the provisions of rule 5(a) above, packing materials and packing containers entered with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

Upon further review and consideration of the foregoing, we find that the peelable plastic film applied to the ACP sheets before shipment is in fact packing material of the kind to which GRI 5(b) is applicable. It is normally used for packing the ACP sheets as a protection of the painted side or sides of the ACP sheets during shipment, and since it is discarded upon unpacking, it is not suitable for repetitive use. Thus, the peelable plastic film is not a backing material of the beBond ACP sheets. We find such to be the case whether or not the plastic film is applied to one side of the ACP sheet because only one side is painted, or to both sides when both sides are painted.

With regard to whether or not the subject article is backed or not, you state that "the only difference between the beBond ACP sheets that CBP classified as being 'not backed' is whether or not they were painted. The products are otherwise identical." You quote the following from CBP Ruling HQ H045859 (February 5, 2009):

The tariff does not define the term "backed." When a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. Rocknel Fastener, Inc. v. United States, 267 F.3d 1354, 1356 (Fed. Cir. 2001). "To ascertain the common meaning of a term, a court may consult 'dictionaries, scientific authorities, and other reliable information sources' and 'lexicographic and other materials.'" Id. (quoting C.J. Tower & Sons of Buffalo, Inc. v. United States, 673 F.2d 1268, 1271, 69 C.C.P.A. 128 (C.C.P.A. 1982); Simod Am. Corp. v. United States, 872 F.2d 1572, 1576 (Fed. Cir. 1989)). The Random House Dictionary of the English Language defines "backing" as "that which forms the back or is placed at or attached to the back of anything to support, strengthen, or protect it. The aluminum industry defines the term "backed foil" as "a lamination composed of foil and a coherent substrate. The substrates or backing may be either self-adherent or bonded to the foil by means of an interposed adhesive. Paper, woven fabrics, cellophane, polyethylene film and the like are typical examples of such backings or substrates." (Cited in *HQ 965210*, March 20, 2002, and *HQ 966769*, January 5, 2004.) Based on these sources, CBP has previously found that the word "backed" is defined, in pertinent part, as "having a back, setting or support." Id. We now note that the Oxford English Dictionary (Oxford University Press, 2008) defines the noun "back" as: "3. a. gen. That side or surface of any part ... of any object, which answers in position to the back; that opposite to the face or front, or side approached, contemplated or exposed to view; e.g. the back of the head, of the leg; the back of a house, door, picture, bill, tablet, etc." Also, "5. a. The side of any object away from the spectator, or spectators generally, the other or far side, at the back of: behind, on the farther side of[.]"

Furthermore, EN 74.10[2] (which applies, mutatis mutandis, to heading 76.07 (see EN 76.07)) explains that *"backing" may be added to a good to*

[2] **74.10 - Copper foil (whether or not printed or backed with paper, paperboard, plastics or similar backing materials), of a thickness (excluding any backing) not exceeding 0.15 mm.**

- Not backed:
7410.11 - - Of refined copper
7410.12 - - Of copper alloys
- Backed:
7410.2 - - Of refined copper
7410.22 - - Of copper alloys

This heading covers the products defined in Chapter Note 1 (g) when of a thickness not exceeding 0.15 mm.

Foil classified in this heading is obtained by rolling, hammering or electrolysis. It is in very thin sheets (in any case, **not exceeding 0.15 mm** in thickness). The thinnest foils, used for imitation gilding, etc., are very flimsy; they are generally interleaved with sheets of paper and put up in booklet form. Other foil, such as that used for making fancy goods, is often backed with paper, paperboard, plastics or similar backing materials, either for convenience of handling or transport, or in order to facilitate subsequent treatment, etc. Foil remains in the heading whether or not it has been embossed, cut to shape (rectangular or otherwise), perforated, coated (gilded, silvered, varnished, etc.), or printed.

The limiting thickness of 0.15 mm includes coatings of varnish, etc., but, on the other hand, backings of paper, etc., are excluded.

facilitate handling or transport or in order to facilitate subsequent treatment. Based on the common and commercial meaning of the word "backed" and the explanation provided in the ENs, we find that foil to one side of which a coherent substrate has been added (the "back") in order to strengthen, support, or protect the foil or to facilitate handing, transport or subsequent treatment may be classified in heading 7607 as "backed" foil on the basis of GRI 1. (*Emphasis* added.)

We note at this point that the Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). The EN for heading 7607 is as follows:

76.07 **Aluminium foil (whether or not printed or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm (+).**

- Not backed:
7607 -- Rolled but not further worked
7607.19 -- Other
7607.20 -- Backed

This heading covers the products defined in Chapter Note 1 (d), when of a thickness not exceeding 0.2 mm.

The provisions of the Explanatory Note to heading 74.10 relating to copper foil apply, mutatis mutandis, to this heading.

Aluminium foil is used in the manufacture of bottle caps and capsules, for packing foodstuffs, cigars, cigarettes, tobacco, etc. Aluminium foil is also used for the manufacture of the finely divided powder of heading *76.03*, in crinkled sheets for thermal insulation, for artificial silvering, and as a wound dressing in veterinary surgery.

The heading **does not cover** :

(a) Stamping foils (also known as blocking foils) composed of aluminium powder agglomerated with gelatin, glue or other binder, or of aluminium deposited on paper, plastics or other support, and used for printing book covers, hat bands, etc. (**heading *32.12***).

(b) Paper and paperboard for the manufacture of containers for milk, fruit juice or other food products and lined with aluminium foil (i.e., on the

---

The heading **does not include**:

(a) Stamping foils (also known as blocking foils) composed of copper powder agglomerated with gelatin, glue or other binder, or of copper deposited on paper, plastics or other support, and used for printing book covers, hat bands, etc. (**heading *32.12***).

(b) Printed copper foil labels being identifiable individual articles by virtue of the printing (**heading *49.11***).

(c) Metallised yarn of **heading *56.05***.

(d) Plates, sheets and strip, of a thickness exceeding 0.15 mm (**heading *74.09***).

(e) Foil in the form of Christmas tree decorations (**heading *95.05***).

face which will form the inside of the containers) **provided** they retain the essential character of paper or paperboard (**heading *48.11***).

(c) Printed aluminium foil labels being identifiable individual articles by virtue of the printing (**heading *49.11***).

(d) Plates, sheets and strip, of a thickness exceeding 0.2 mm (**heading *76.06***).

(e) Foil in the form of Christmas tree decorations (**heading *95.05*). (*Emphasis* added.)**

****

The guidance of the World Customs Organization's (WCO's) Harmonized System Committee (HSC) is also relevant and helpful in this case. As stated in T.D. 89–80, CBP accords HSC opinions the same weight as that of ENs, i.e., while not legally dispositive nor binding, these opinions are generally indicative of the proper interpretation of these headings. The HSC just recently issued an official position at its 56th Session[3] on reflective insulation consisting of a layer of polyethylene air bubble wrap sandwiched between two layers of aluminum foil. The HSC concluded that the aluminum foil/polyethylene air bubble wrap/aluminum foil article should be classified "under [HTSUS] heading 76.07 (subheading 7607.20) by application of GIRs [GRIs] 1, 3(b) and 6..." The HSC finds that the aluminum foil imparts the essential character of the article and that the inner layer bubble wrap functions as an insulator and as a backing, citing, *mutatis mutandis*, [Harmonized Tariff Schedule Explanatory Note] 74.10.

In this case, we find the aluminum sheet/polyethylene/aluminum sheet construction of the ACP sheets to be sufficiently similar to that of the article that the HSC recently issued its opinion on. In that regard the ACP sheet's polyethylene inner layer provides backing to the aluminum sheet layers to prevent "bowing, warping, swelling, and delamination" as is marketed by at least one retailer. Consequently, we find that our ruling in CBP Ruling HQ 960276 (August 1, 1997), that an article comprised of aluminum/polypropylene/aluminum is properly classified under HTSUS subheading 7607.20.50 as "Aluminum foil...: Backed: Other" is correct and dispositive in this case.

Based on these findings, the proper legal tariff classification of painted beBond aluminum composite panel sheets with a thickness of 0.1 mm or more but not exceeding 0.15 mm and having a peelable protective plastic film on both sides is HTSUS subheading 7607.20.50 as "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness excluding any backing) not exceeding 0.2 mm: Backed: Other....." The proper legal tariff classification of painted beBond aluminum composite panel sheets with a thickness of 0.16 mm or more but not exceeding 0.2 mm and having a peelable protective plastic film on both sides is also HTSUS subheading 7607.20.50 as "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness excluding any backing) not exceeding 0.2 mm: Backed: Other....." Accordingly, CBP Ruling NY N230615 should be modified only with respect to the beBond ACP sheets discussed in this paragraph.

As noted above, there are other rulings that warrant reconsideration in light of our findings here along with the underlying case. In CBP Ruling HQ H045859 (February 5, 2009), we held that a tri-laminate foil of PET (poly-

[3] The 56TH Session of the HSC was held on September 16–25, 2015.

ethylene terephthalate)/aluminum foil/peelable HDPE (high-density polyethylene) was not backed aluminum foil because the plastic composite layers comprised the two outer sides of the article, rather than one side of the aluminum foil layer. We distinguish H045859 from the present case in noting that the subject article is comprised of one inner layer of plastic composite with the two outer sides being aluminum sheets, and that the peelable plastic protective film is immaterial to its tariff classification, whether it is applied to one side or both sides.

In CBP Ruling NY N200119 (February 10, 2012), CBP held that a composite article called SIGNABOND®, which consists of a polyethylene core sandwiched between two aluminum sheets and covered with peelable protective film on both outer sides was not aluminum foil because the peelable protective film was applied to both sides, rather than just one side. As we now find such peelable protective film to be packing as defined under GRI 5(b), and given the very similar constitution of SIGNABOND® to beBond ACP sheets, we conclude that CBP Ruling NY N200119 should be revoked.

HOLDING:

In accordance with GRI 1, GRI 3(b), GRI 5(b), GRI 6, and Subheading Note 1(a) to Chapter 76, HTSUS, painted beBond aluminum composite panel sheets with a thickness of 0.1 mm or more but not exceeding 0.15 mm and having a peelable protective plastic film on both sides are properly classified under HTSUS subheading 7607.20.50 as "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness excluding any backing) not exceeding 0.2 mm: Backed: Other....."

In accordance with GRI 1, 3(b), GRI 5(b), GRI 6, and Subheading Note 1(a) to Chapter 76, HTSUS, painted beBond aluminum composite panel sheets with a thickness of 0.16 mm or more but not exceeding 0.2 mm and having a peelable protective plastic film on both sides are properly classified under HTSUS subheading 7607.20.50 as "Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness excluding any backing) not exceeding 0.2 mm: Backed: Other....."

The general column one rate of duty, for merchandise classified under HTSUS subheading 7607.20.50 is "Free."

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

EFFECT ON OTHER RULINGS:

CBP Ruling NY N230615 (September 13, 2012) is hereby modified as noted above.

CBP Ruling NY N200119 (February 10, 2012) is hereby revoked.

Sincerely,

JOANNE ROMAN STUMP,
Acting Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN METAL RESTOCKING CARTS

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

ACTION: Notice of proposed revocation of one ruling letter and revocation of treatment relating to the tariff classification of certain metal restocking carts.

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 one ruling letter concerning tariff classification of certain metal carts used for storage or display in retail stores under the Harmonized Tariff Schedule of the United States (HTSUS). 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 February 19, 2016.

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, 90 K St., NE, 10th Floor, Washington, DC 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: Emily Beline, Tariff Classification and Marking Branch, at (202) 325–7799.

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 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 one ruling letter pertaining to the tariff classification of certain metal backroom restocking carts. Although in this notice, CBP is specifically referring to New York Ruling Letter (NY) N019321, dated November 21, 2007 (Attachment A), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In NY N019321, CBP classified a backroom restocking cart (Item #30232) in heading 8716, HTSUS, specifically in subheading 8716.80.50, HTSUS, which provides for "...other vehicles, not mechanically propelled; ...: Other vehicles: Other: Other." CBP has reviewed NY N019321 and has determined the ruling letter to be in

error. It is now CBP's position that the backroom restocking cart is properly classified, by operation of GRI 1, in heading 9403, HTSUS, specifically in subheading 9403.20.00, HTSUS, which provides for "Other furniture and parts thereof: Other metal furniture: Other: Counters, lockers, racks, display cases, shelves, partitions and similar fixtures."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke NY N019321 and to revoke any other ruling not specifically identified to reflect the tariff classification of the subject merchandise according to the analysis contained in the proposed HQ H269233, 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: December 8, 2015

ALLYSON MATTANAH
for
JOANNE ROMAN STUMP,
Acting Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N019321
November 21, 2007
CLA-2–87:OT:RR:E:NC:N1:101
CATEGORY: Classification
TARIFF NO.: 8716.80.5090

ANGIE DUSTEN, CONSULTANT
EXPEDITORS TRADEWIN, LLC
11101 METRO AIRPORT CENTER DRIVE
BUILDING M2, SUITE 110
ROMULUS, MI 48174–1694

RE: The tariff classification of a cart from China

DEAR MS. DUSTEN,

In your letter dated November 1, 2007, you requested a tariff classification ruling on behalf of Rite Aid Corporation of Camp Hill, Pennsylvania.

The item concerned is a Backroom Restocking Cart (Item # 30232). It is a steel, rectangular, four-wheeled cart that measures approximately 6 or 7 feet high by 5 feet wide. The Cart has 5 platform shelves and four steel posts, one at each corner.

The applicable classification subheading for the Backroom Restocking Cart (Item # 30232) will be 8716.80.5090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for " ... other vehicles, not mechanically propelled; ...: Other vehicles: Other: Other: Other". The rate of duty will be 3.2%.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Richard Laman at 646–733–3017.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT B]

HQ H269233
CLA-2 OT: RR: CTF: TCM: H269233 ERB
CATEGORY: Classification
TARIFF NO.: 9403.20.0026

MS. ANGIE DUNSTEN
EXPEDITORS TRADEWIN, LLC
11101 METRO AIRPORT CENTER DRIVE
BUILDING M2, SUITE 110
ROMULUS, MI 48174–1694

RE: Revocation of NY N019321; Tariff classification of a backroom restocking cart

DEAR MS. DUNSTEN:

U.S. Customs and Border Protection (CBP) issued you, on behalf of Rite Aid Corporation, New York Ruling Letter (NY) N019321, on November 21, 2007. NY N019321 pertains to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a backroom restocking cart (Item #30232). We have since reviewed NY N019321 and found it to be in error with regards to the tariff classification.

FACTS:

NY N019321 provides the following:

> In your letter dated November 1, 2007, you requested a tariff classification ruling on behalf of Rite Aid Corporation of Camp Hill, Pennsylvania.
>
> The item concerned is a Backroom Restocking Cart (Item # 30232). It is a steel, rectangular, four-wheeled cart that measures approximately 6 or 7 feet high by 5 feet wide. The Cart has 5 platform shelves and four steel posts, one at each corner.
>
> The applicable classification subheading for the Backroom Restocking Cart (Item # 30232) will be 8716.80.5090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for " ... other vehicles, not mechanically propelled; ...: Other vehicles: Other: Other: Other". The rate of duty will be 3.2%.

ISSUE:

Whether a metal shelving restocking cart is classified as a vehicle, non-mechanically propelled, under heading 8716, HTSUS, or whether it is classified as racks, display cases, shelves, or similar fixtures, under heading 9403, HTSUS.

LAW AND ANALYSIS:

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

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

8716	Trailers, and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
8716.80	Other vehicles
***	
9403	Other furniture and parts thereof:
9403.20.00	Other metal furniture:
	Other:
	Counters, lockers, racks, display cases, shelves, partitions and similar fixtures:

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 HTSUS at the international level, may be utilized. The ENs, although not dispositive or legally binding, provides 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 EN 87.16 provides, in relevant part:

> The heading includes:
>
> ***
>
> (B) Hand- or foot-propelled vehicles.
>
> This group includes:
>
> (3) Food carts, buffet trolleys (other than the type falling in heading 94.03), of a kind used in railway stations.

The EN 94.03 provides, in relevant part:

> This heading covers furniture and parts thereof, not covered by the previous heading. It includes furniture for general use...other shelved furniture...and also furniture for special uses.
>
> The heading includes furnitures for:
>
> (5) Shops, stores, workshops, etc., such as: counters; dress racks; shelving units; compartment or drawer cupboards; cupboards for tools, etc.; special furniture (with cases or drawers) for printing works.

The General ENs to Chapter 94 state, in relevant part, with regard to the meaning of "furniture" classified therein, at Subsection (A) the following:

> For the purposes of this Chapter, the term "furniture" means:
>
> (A) Any "movable" articles (**not included** under other more specific headings of the Nomenclature), which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafés, restaurants, laboratories, hospitals, dentists' surgeries, etc. ...

Goods are classified in heading 8716, HTSUS, because they are used solely or principally for the transportation of goods from one location to another. *See* NY N201841, dated February 22, 2012 (classifying a metal cart where prod-

ucts are loaded onto the cart in one location and then moved via truck to a different location where the cart and its contents are unloaded. The cart is then transported by truck back to its original location where the process continues repeating itself); *and see* NY N059817, dated May 28, 2009 (classifying a multi-purpose hand truck).

Conversely, goods classified within the furniture provisions of chapter 94, specifically, within the shelved furniture provision of heading 9403, are not designed for the transportation of goods. These carts cannot be used solely or principally for the transportation of goods from location to location. Rather, as furniture, the carts must be of the type to fit and equip establishments with movable articles used in the readiness of an area for purposes of supporting various human activities. *See* NY N227676, dated August 20, 2012 (classifying various rolling metal shelves).

Upon review of the information contained in NY N019321, as well as a photograph included in the submission, the subject backroom restocking carts are not primarily constructed for the purposes of transportation of goods from one location to another, or for multiple locations, via commercial conveyance or personal vehicle. These carts are the types of carts ordinarily used by retail establishments to store items prior to their being displayed for customer purchase. They have multiple shelves for holding merchandise or other goods. Further, the sides are completely open for clear viewing of the goods contained thereon, which also makes the carts suitable for display purposes.

The carts may have a secondary use such as moving or distributing goods throughout a store, for stocking purposes. However, this intra-store movement is not equivalent to the long-haul movement associated with the trailers of heading 8716, HTSUS. Additionally, the subject goods are not described as a food carts or buffet trolleys of the kind used in railway stations which are provided for as included in heading 8716, HTSUS, pursuant to the EN 87.16(B)(3).

Accordingly, these carts fall within the definition of "furniture" and are classified in heading 9403, HTSUS, the provision which provides for racks, display cases and shelves. This is consistent with other rulings classifying identical or substantially similar goods. *See* NY N233415, dated October 16, 2012 (classifying rolling metal racks, referred to as food service carts).

HOLDING:

By application of GRI 1, the subject backroom restocking cart (Item #30232), is classified in heading 9403, HTSUS. It is specifically provided for under subheading 9403.20.0026, HTSUSA (Annotated), which provides for, "Other furniture and parts thereof: Other metal furniture: Other: Counters, lockers, racks, display cases, shelves, partitions and similar fixtures: Other". The column one, general rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY N019321, dated November 21, 2007, is hereby REVOKED.

Joanne Roman Stump,

ACTING DIRECTOR
Commercial and Trade Facilitation Division

REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF STYLE # 10162 "KALO" FOOTWEAR

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

ACTION: Notice of revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of style # 10162 "Kalo" footwear.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection ("CBP") is revoking New York Ruling Letter ("NY") N212500, dated April 25, 2012, relating to the tariff classification of style # 10162 "Kalo" footwear under the Harmonized Tariff Schedule of the United States ("HTSUS"). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 30, on July 29, 2015. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 21, 2016.

FOR FURTHER INFORMATION CONTACT: Elif Eroglu, Valuation and Special Programs Branch: (202) 325–0277.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI, (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(1)), a notice was published in the *Customs Bulletin*, Vol. 49, No. 30, on July 29, 2015, proposing to revoke a tariff classification ruling letter and treatment relating to the classification of style # 10162 "Kalo" footwear. As stated in the proposed notice, this action will cover NY N212500, dated April 25, 2012, as well as 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 additional rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. § 1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment 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 notice.

In NY N212500, CBP determined that the subject style # 10162 "Kalo" footwear was classifiable under subheading 6404.19.3940 HTSUS, which provides for "[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: "[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: [f]ootwear with outer soles of rubber or plastics: [o]ther: [f]ootwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of

laces or buckles or other fasteners, the foregoing except footwear of subheading 6404.19.20 and except footwear having a foxing or foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper: [o]ther: [o]ther: [o]ther: [f]or men." It is now CBP's position that the subject style # 10162 "Kalo" footwear described in NY N212500 is properly classified under subheading 6404.19.1520, HTSUS, the provision for "[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: [f]ootwear with outer soles of rubber or plastics]: [o]ther: [f]ootwear having uppers of which over 50 percent of the external surface area (including any leather accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is leather: [f]or men."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N212500 and any other ruling not specifically identified, to reflect the proper classification of the style # 10162 "Kalo" footwear according to the analysis contained in proposed Headquarters Ruling Letter ("HQ") H219215, set forth as Attachment A to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: December 7, 2015

IEVA K. O'ROURKE
for
JOANNE ROMAN STUMP
Acting Director,
Commercial and Trade Facilitation Division

Attachment

HQ H219215
December 7, 2015
OT:RR:CTF:TCM H219215 EE
CATEGORY: Classification
TARIFF NO.: 6404.19.1520

LUCILLE DE NOBREGA
OLUKAI
8955 RESEARCH DRIVE
IRVINE, CA 98618

RE: Revocation of NY N212500, dated April 25, 2012; style # 10162 "Kalo" footwear

DEAR MS. DE NOBREGA:

This letter is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered New York Ruling Letter ("NY") N212500 issued to you on April 25, 2012, concerning the tariff classification under the Harmonized Tariff Schedule of the United States ("HTSUS") of style # 10162 "Kalo" footwear. We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY N212500.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 30, on July 29, 2015. No comments were received in response to the notice.

FACTS:

The footwear is described in NY N212500 as follows:

> Style #10162 "Kalo," is a pair of men's open toe/heel flip-flop thong sandals with rubber or plastics outer soles. The two component V-shaped strap upper of each sandal, described as predominately leather (51.49%) in a "Test Report" by Intertek Testing Services, consist of three leather overlays stitched to a textile substrate. Two of these leather overlays which are lasted under and cemented to the sole, add structural strength to the textile upper and constitute external surface area. The remaining overlay is stitched to the center of the textile substrate (which is plausible upper material) and is considered an accessory or reinforcement. Consequently, this overlay is excluded from the external surface area measurement of the upper pursuant to Note 4(a) to Chapter 64, Harmonized Tariff Schedule of the United States (HTSUS). Therefore, we disagree with the findings of the "Test Report" and conclude that the constituent material having the greatest external surface area of the upper (no account being taken of accessories or reinforcements) is textile.

Style # 10162 "Kalo" was found to be classifiable under subheading 6404.19.3940, HTSUS, which provides for "[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: [f]ootwear with outer soles of rubber or plastics: [o]ther: [f]ootwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear of subheading 6404.19.20 and except footwear having a foxing or

foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper: [o]ther: [o]ther: [o]ther: [f]or men."

ISSUE:

Whether the subject merchandise is classified as footwear in subheading 6404.19.39, HTSUS, or as footwear under subheading 6404.19.15, HTSUS?

LAW AND ANALYSIS:

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

The 2015 HTSUS provisions under consideration are:

6404	Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials:
	Footwear with outer soles of rubber or plastics:
6404.19	Other:
6404.19.15	Footwear having uppers of which over 50 percent of the external surface area (including any leather accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is leather...
	* * *
	Footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear of subheading 6404.19.20 and except footwear having a foxing or foxing-like band wholly or almost wholly of rubber or plastics applied or molded at the sole and overlapping the upper:
6404.19.39	Other:
	Other...

Chapter 64, Note 4, HTSUS, provides in relevant part:

(a) The material of the upper shall be taken to be the constituent material having the greatest external surface area, no account being taken of accessories or reinforcements such as ankle patches, edging, ornamentation, buckles, tabs, eyelet stays or similar attachments.

General Explanatory Note ("EN") D to Chapter 64 reads, in pertinent part, as follows[1]:

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

> For the purposes of the classification of footwear in this Chapter, the constituent material of the uppers must also be taken into account. The upper is the part of the shoe or boot above the sole. However, in certain footwear with plastic moulded soles or in shoes of the American Indian moccasin type, a single piece of material is used to form the sole and either the whole or part of the upper, thus making it difficult to identify the demarcation between the outer sole and the upper. In such cases, the upper shall be considered to be that portion of the shoe which covers the sides and top of the foot. The size of the uppers varies very much between the different types of footwear, from those covering the foot and the whole leg, including the thigh (for example, fishermen's boots), to those which consist simply of straps or thongs (for example, sandals).
>
> If the upper consists of two or more materials, classification is determined by the constituent material which has the greatest external surface area, no account being taken of accessories or reinforcements such as ankle patches, protective or ornamental strips or edging, other ornamentation (e.g., tassels, pompons or braid), buckles, tabs, eyelet stays, laces or slide fasteners. The constituent material of any lining has no effect on classification.

In the instant case, the upper of the style # 10162 "Kalo" footwear consists of both textile and leather materials. As previously noted, two of the three leather overlays stitched to the sides of the upper are lasted under and cemented to the sole. In NY N212500, CBP determined that the third leather overlay, which is stitched to the center of the textile substrate, is an accessory or reinforcement. The Test Report by Intertek Testing Services indicated that the ESAU, including the leather component considered to be an accessory or reinforcement, consisted of 51.49% leather. Chapter 64, Note 4, HTSUS, provides that accessories or reinforcements are not considered when calculating the ESAU. Since the leather overlay attached to the center of the textile substrate, which was determined to be an accessory or reinforcement, is not considered when calculating the ESAU, the constituent material which provides the greatest ESAU is textile. Accordingly, the merchandise is considered to have uppers of textile materials and classifiable in heading 6404, HTSUS. However, in determining the applicable subheading, we find that the leather component considered to be an accessory or reinforcement is included in the ESAU requirement. Specifically, the merchandise is classified under subheading 6401.19.15, HTSUS, which provides for footwear having uppers of which over 50% of the external surface area is leather including any leather accessories or reinforcement such as those mentioned in Note 4(a) to Chapter 64.

HOLDING:

By application of GRI 1, the subject style # 10162 "Kalo" is classified in heading 6404, HTSUS, more specifically, it is classified in subheading 6404.19.1520, HTSUS, which provides for: "[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: [f]ootwear with outer soles of rubber or plastics]: [o]ther: [f]ootwear having uppers of which over 50 percent of the external surface area (including any leather accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is leather: [f]or men." The 2015 column one, general rate of duty, is 10.5% *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.

EFFECT ON OTHER RULINGS:

In accordance with the above analysis, NY N212500, dated April 25, 2012, is hereby REVOKED.

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

Sincerely,

IEVA K. O'ROURKE
for
JOANNE ROMAN STUMP
Acting Director,
Commercial and Trade Facilitation Division

REVOCATION OF RULING LETTER RELATING TO THE ELIGIBILITY OF COPPER SHEETS FOR A PARTIAL DUTY EXEMPTION UNDER SUBHEADING 9802.00.60, HTSUS

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

ACTION: Notice of revocation of one ruling letter relating to the eligibility of copper sheets for a partial duty exemption under subheading 9802.00.60 of the Harmonized Tariff Schedule of the United States (HTSUS).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter, Headquarters Ruling ("HQ") 540430, dated June 30, 1997, relating to the eligibility of copper sheets for a partial duty exemption under subheadings 9802.00.60 of the HTSUS. Similarly, CBP is revoking any treatment previously accorded to substantially identical transactions. Notice of the proposed action was published in the *Customs* Bulletin, Vol. 49, No. 39, on September 30, 2015. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 21, 2016.

FOR FURTHER INFORMATION CONTACT: Ross Cunningham, Valuation and Special Programs Branch, at (202) 325–0034.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the *Customs Bulletin*, Vol. 49, No. 39, on September 30, 2015, proposing to revoke Headquarters Ruling ("HQ") 540430, dated June 30, 1997, relating to the eligibility of copper sheets for a partial duty exemption under subheadings 9802.00.60 of the HTSUS. No comments were received in response to this notice.

As stated in the proposed notice, this action will cover HQ 540430 as well as any other 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 ruling identified above. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. § 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transac-

tions should have advised CBP during the comment 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 notice.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking HQ 540430 in order to reflect the analysis contained in HQ H265781, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: December 07, 2015

JOANNE ROMAN STUMP
Acting Director,
Commercial and Trade Facilitation Division

Attachment

HQ H265781
December 07, 2015
OT:RR:CTF:VS H265781 RMC
CATEGORY: Classification

PORT DIRECTOR
10 CAUSEWAY ST.
BOSTON, MA 02222–1059

Re: Subheading 9802.00.60; Revocation of HQ 560430; Copper Sheets; Scrap

DEAR SIR:

It has come to our attention that a decision issued to you, Headquarters Ruling ("HQ") 560430, dated June 30, 1997, regarding Waterbury Rolling Mills, Inc., concerning the eligibility of copper sheets for a partial duty exemption under subheading 9802.00.60, Harmonized Tariff Schedule of the United States ("HTSUS"), is in error. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published on September 30, 2015, in the Customs Bulletin, Vol. 49, No. 39. No comments were received in response to this notice.

FACTS:

HQ 560430 addresses the eligibility of imported copper sheets for a partial duty exemption under subheading 9802.00.60. Waterbury Rolling Mills imported refined copper sheets or copper alloy sheets and performed a variety of manufacturing processes, including splitting, annealing, milling, rolling, brushing, and leveling in the United States, which produced a certain amount of scrap metal. The scrap metal was returned to the manufacturer abroad, where it was used to create new copper sheets for import to the United States. HQ 560430 held that the copper sheets made from scrap metal were not eligible for a partial duty exemption under subheading 9802.00.60, HTSUS.

ISSUE:

Whether imported copper sheets made from scraps generated from splitting, annealing, milling, rolling, brushing, or levelling imported copper in the United States are eligible for a partial duty exemption under subheading 9802.00.60, HTSUS.

LAW AND ANALYSIS:

Subheading 9802.00.60, HTSUS, provides a partial duty exemption for:

> [a]ny article of metal . . . manufactured in the United States or subject to a process of manufacture in the United States, if exported for further processing, and if the exported article as processed outside the United States, or the article which results from the processing outside the United States, is returned for the United States for further processing.

HQ 560430 found that the copper sheets were "articles of metal" for the purposes of subheading 9802.00.60, HTSUS, and that the copper sheets were "exported for further processing." However, it found that the exported scrap was not "subject to a process of manufacture" in the United States.

With respect to the requirement that the scrap metal be "manufactured or subject to a process of manufacture in the United States," CBP has noted that there are two types of scrap metal: "obsolete" and "industrial." *See* HQ 555096, dated July 7, 1989. "Obsolete" scrap consists of worn-out or discarded metal articles, and "industrial scrap" consists of leftover metal from manufacturing operations performed on metal articles. In HQ 555096, it was determined that in order for scrap to be eligible under the statute where foreign metal is involved, the scrap must be obtained from the processing of foreign metal in the U.S. Furthermore, industrial scrap was found eligible under subheading 9802.00.60, HTSUS, where it resulted from the production of metal tool boxes in the United States. *See* NY N018085, dated Oct. 26, 2007. In NY N018085, an importer brought aluminum coils from Greece into the United States, where they were cut into sheets and sold to U.S. customers who manufactured them into tool boxes. As a result of the tool box manufacturing process, aluminum scrap was produced, which was sold to the aluminum supplier in Greece where it was melted down and used in the production of aluminum coils to be shipped back to the U.S. The new coils were eligible under subheading 9802.00.60, HTSUS, because the metal article from which the scrap was obtained (the tool boxes) was initially subjected to a process of manufacture in the United States (the cutting of aluminum coils into sheets).

Similarly, the metal article from which the scrap was obtained in this case (the imported copper sheets) was initially subjected to a variety of processes of manufacture in the United States including splitting, annealing, milling, rolling, brushing, and leveling. HQ 560430 is therefore incorrect that "the copper scrap, which is a by-product of the imported metal sheets that were subjected to a manufacturing process in the U.S., does not, itself, meet the subheading 9802.00.60 criteria of being an article of metal which was 'manufactured in the United States or subject to a process of manufacture in the United States' before exportation back to Germany to be made into more sheets of copper."

Accordingly, similar items are eligible for a partial duty exemption so long as the items are returned to the United States for further processing and the documentary requirements of 19 C.F.R. § 10.9 are met.

HOLDING:

The imported copper sheets made from scraps generated from splitting, annealing, milling, rolling, brushing, or levelling imported copper in the United States are eligible for a partial duty exemption under subheading 9802.00.60, HTSUS.

EFFECT ON OTHER RULINGS:

HQ 560430 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,

JOANNE ROMAN STUMP
Acting Director,
Commercial and Trade Facilitation Division

REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE COUNTRY OF ORIGIN MARKING OF TWO STYLES OF WRISTWATCHES

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the country of origin marking of two styles of wristwatches.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking a ruling concerning the country of origin marking of two styles of wristwatches. Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 49, No. 21, on May 27, 2015. One comment opposing the proposed action was received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 21, 2016.

FOR FURTHER INFORMATION CONTACT: Beth Jenior, Tariff Classification and Marking Branch, at (202) 325–0347.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) ("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 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, a notice was published in the *Customs Bulletin*, Vol. 49, No. 21, on May 27, 2015, proposing to revoke a ruling letter pertaining to the country of origin marking of two styles of wristwatches. One comment was received in response to this notice.

As stated in the proposed notice, this action will cover Headquarters Ruling Letter (HQ) 562543, dated December 27, 2002, as well as 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 ruling identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment 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 notice.

In HQ 562543, CBP ruled that two styles of wristwatches should be marked with Japan as the country of origin. It is now CBP's opinion that the wristwatches should be marked with both Japan and China as the countries of origin.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking HQ 562543, and is revoking any other ruling not specifically identified, to reflect the country of origin marking of the subject merchandise according to the analysis contained in HQ H234796, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: December 8, 2015

IEVA K. O'ROURKE
for
JOANNE ROMAN STUMP,
Acting Director
Commercial and Trade Facilitation Division

Attachment

HQ H243796
December 8, 2015
CLA-2 OT:RR:CTF:TCM H243796 EGJ
Category: Marking

MARGARET L. THOMAS
FTZ FOREIGN TRADE ZONE OPERATING CO. OF TEXAS
P.O. BOX 613307
DALLAS, TX 75261–3307

Re: Revocation of HQ 562543; Country of origin marking for two styles of wristwatches

DEAR MS. THOMAS:

This is in reference to Headquarters Ruling Letter (HQ) 562543, dated December 27, 2002, issued to you concerning the country of origin marking of two styles of wristwatches. You submitted the ruling request to U.S. Customs and Border Protection (CBP) on August 19, 2002, on behalf of Fossil Partners, LP.

In HQ 562543, CBP determined that the country of origin for both watches was Japan. We have reviewed HQ 562543 and find it to be in error. For the reasons set forth below, we hereby revoke HQ 562543.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice of proposed action was published on May 27, 2015, in the *Customs Bulletin*, Vol. 49, No. 21. One comment was received in opposition to this revocation, and it is addressed in the following decision.

FACTS:

The merchandise at issue is described in HQ 562543 as follows:

> Fossil Partners submitted two styles of dual function analog and digital wristwatches (Style AM3404 and JR8051). The time of day function of hours and minutes is determined by the quartz analog movement and displayed on a dial with the hour and minute hands. The digital portion of the movement shows the seconds by means of a liquid crystal display. The quartz analog movements are made in Japan. The digital movements are made in China. The various component parts are assembled in China into a wristwatch. The country of origin of the watch cases was not provided.
>
> The samples are marked by means of a paper hang tag attached to the watch. The paper hang tag also has the logo, style number and the price on it. Style AM3404 is marked "Japan Movement Strap Made In China." Style JR8051 is marked "China Movement Strap Made In China." There is no country of origin marking on the case or watch face.

ISSUE:

1. What is the country of origin of the two styles of wristwatches?
2. What is the proper country of origin marking for the two styles of wristwatches?

LAW AND ANALYSIS:

The marking statute, Section 304, Tariff Act of 1930, as amended (19 U.S.C. § 1304), provides that unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. § 1304. Section 134.41(b), Customs Regulations (19 CFR § 134.41(b)), mandates that the ultimate purchaser in the U.S. must be able to find the marking easily and read it without strain. In order to satisfy the requirements of 19 U.S.C § 1304, a watch must be legibly marked with the name of the country of manufacture of the watch movement in a conspicuous place.

For marking purposes under 19 U.S.C. § 1304, CBP has long held that the country of origin of a watch is the country of manufacture of the watch movement.[1] The term "watch movement," is defined in Note 3 to Chapter 91 of the Harmonized Tariff Schedule of the United States (HTSUS), which provides as follows:

> 3. For the purposes of this chapter, the expression "*watch movements*" means devices regulated by a balance wheel and hairspring, quartz crystal or any other system capable of determining intervals of time, with a display or a system to which a mechanical display can be incorporated. Such watch movements shall not exceed 12 mm in thickness and 50 mm in width, length or diameter.

In this case, both styles of wristwatches have two movements: a movement that determines the hours and minutes of day (the quartz analog movement) and a movement that determines the seconds (the digital movement). The quartz analog movements are manufactured in Japan and the digital movements are manufactured in China. As the country of origin for wristwatches is the country of manufacture of the watch movement, the countries of origin for both wristwatches are Japan and China. *See* NY N237747, dated February 22, 2013 (a wristwatch with a quartz analog movement from Thailand and an opto-electronic movement from China had both Thailand and China as countries of origin – each of the movements displayed the time in hours, minutes and seconds).

The countries of origin for marking purposes are Japan and China. The wristwatches should be marked "Analog Movement-Japan" and "Digital Movement - China", or with similar words. In order to satisfy the requirements of 19 U.S.C § 1304, they must be legibly marked with the name of the country of manufacture of the watch movement in a conspicuous place. Marking with secure self-adhesive labels or with hangtags is acceptable, as long as the labels or hangtags will reach the ultimate purchaser of the watch. If paper sticker labels or hangtags are used, 19 C.F.R. § 134.44 provides they

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[1] *See* New York Ruling Letter (NY) N237747, dated February 22, 2013, HQ 734758, dated March 1, 1993, HQ 733533, dated August 3, 1990; *see also* "What Every Member of the Trade Community Should Know About: Classification and Marking of Watches and Clocks: An Informed Compliance Publication" U.S. Customs and Border Protection (Feb. 2012) *available at* http://www.cbp.gov/xp/cgov/trade/legal/informed_compliance_pubs/.

must be affixed in a conspicuous place and so securely that unless deliberately removed they will remain on the article while it is in storage or on display and until it is delivered to the ultimate purchaser.

While the wristwatches must be conspicuously, legibly, and permanently marked in accordance with 19 U.S.C. § 1304, movements and cases must also be marked in accordance with the special marking requirements set forth in Additional U.S. Note 4 to Chapter 91. Additional U.S. Note 1(b) defines "cases" as follows:

> 1. For the purposes of this chapter:
>
> b) The term "*cases*" embraces inner and outer cases, containers and housings for movements, together with parts or pieces, such as, but not limited to, rings, feet, posts, bases and outer frames, and any auxiliary or incidental features, which (with appropriate movements) serve to complete the watches, clocks, time switches and other apparatus provided for in this chapter.

Additional U.S. Note 4 to Chapter 91 provides, in pertinent part, as follows:

> 4. Special Marking Requirements: With the following exceptions, any movement or case provided for in this chapter, whether imported separately or attached to an article provided for in this chapter, shall not be permitted to be entered unless conspicuously and indelibly marked by cutting, die-sinking, engraving, stamping (including by means of indelible ink), or mold-marking (either indented or raised), as specified below. Movements with opto-electronic display only and cases designed for use therewith, whether entered as separate articles or as components of assembled watches or clocks, are excepted from the marking requirements set forth in this note. The special marking requirements are as follows:
>
> (a) Watch movements shall be marked on one or more of the bridges or top plates to show:
>
> (i) the name of the country of manufacture;
>
> (ii) the name of the manufacturer or purchaser; and
>
> (iii) in words, the number of jewels, if any, serving a mechanical purpose as frictional bearings.
>
> ...
>
> (c) Watch cases shall be marked on the inside or outside of the back to show:
>
> (i) the name of the country of manufacture; and
>
> (ii) the name of the manufacturer or purchaser.

Additional U.S. Note 4(a), HTSUS, requires that watch movements shall be marked on one or more of the bridges or top plates to show the name of the country of manufacture, the name of the manufacturer or purchaser; and, in words, the number of jewels, if any serving a mechanical purpose as frictional bearings. Additional U.S. Note 4(c), HTSUS, requires that watch cases shall be marked on the inside or outside of the back cover to show the name of the country of manufacture, and the name of the manufacturer or purchaser. The country of manufacture in these requirements refers to where the movements are manufactured rather than where the watch was made. The special marking must be accomplished by one of the methods specified in Chapter 91, Additional U.S. Note 4.

Both wristwatches contain two movements, a quartz analog movement and an opto-electronic digital movement. The special marking requirements of Chapter 91, Additional U.S. Note 4 of the HTSUS do not apply to the opto-electronic movement. Therefore, only the quartz analog movement and its case must be marked in accordance with the special marking requirements set forth in Additional U.S. Note 4 to Chapter 91.

The commenter noted that there are many different styles of watches on the market, including watches which have multiple movements. The commenter observed that when a watch has multiple movements, there is a generally a "primary" movement which displays the hours, minutes and potentially the seconds measurements of time. The commenter observed that this type of primary movement may impart the essential character to the watch, by application of GRI 3(b). GRI 3(b) provides as follows:

> When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:
>
> ...
>
> (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable ...

For further support, the commenter cites to CBP's Informed Compliance Publication on the Classification and Marking of Watches and Clocks, which provides as follows on p. 8:

> Under 19 U.S.C.1304, as interpreted by Customs, **the country of origin of the movement of the watch or clock determines the country of origin of the watch or clock.** Although the addition of the hands, dial, or case adds definition to the timepiece, they do not substantially change the character or use of the watch or clock movement, which is the essence of the watch or clock. Accordingly, a watch with one country of origin for the movement, another for the case, and another for the battery, is considered, for purposes of 19 USC § 1304, to be a product of the country in which the movement was produced. The movement's country of origin should appear conspicuously and legibly on the dial face or on the outside of the back of the watch or clock.

The commenter cites to this paragraph to support the proposition that a primary movement may impart the essential character. The commenter also suggests that only the primary watch movement be marked on the watch.

We decline to adopt GRI 3(b) as a method of determining the country of origin of wristwatches. CBP has a long-standing policy, reflected in the aforementioned Informed Compliance Publication (ICP), which states that the country of origin of the watch movement determines the country of origin of the watch. If a wristwatch has multiple movements manufactured in multiple countries, then the country of origin of the watch will be each country where a movement was manufactured. This policy mirrors the statutory country of marking requirements set forth in Additional U.S. Note 4 to Chapter 91.

Next, the commenter notes that Additional U.S. Note 4 to Chapter 91 already places burdensome marking requirements on wristwatch manufac-

turers. The commenter asserts that marking the hang tags for its wristwatches with multiple countries of origin will add to the marking burdens which are already faced by the industry. Moreover, the commenter notes that software inventory platforms are generally not equipped to track multiple countries of origin for a single product. The commenter notes that the wristwatch industry is already required to track the country of manufacture of each movement and each watch strap.

The country of origin decision set forth in this ruling letter mirrors the special marking requirements set forth in Additional U.S. Note 4 to Chapter 91. We agree that these special marking requirements only apply to watches and clocks. However, we also note that Additional U.S. Note 4 to Chapter 91 is a statutory provision. As such, CBP does not have the authority to disregard or change the special marking requirements referenced by the commenter.

Next, the commenter asserts that using origin language such as "Movement(s) made in (Country A) and (Country B)" would confuse the ultimate purchaser. We disagree. CBP requires many other singular products to be marked with more than one country of origin whenever the facts require a product to be so marked. *See, e.g.* HQ 734479, dated January 29, 1993 (coffee blend with coffee from different countries had multiple countries of origin), HQ 560944, dated April 27, 1998 (olive oil which consisted of a blend of both Spanish and Italian olive oils required to be marked with both countries of origin), and HQ 562176, dated August 21, 2002 (blend of tobacco from different countries had multiple countries of origin).

The commenter notes that the Automated Commercial Environment (ACE) does not currently allow more than one country of origin to be provided for a single line item. ACE is the primary system through which the trade community reports imports and exports. We agree that ACE does not currently have this functionality, and this has been brought to the attention of the ACE Business Office in CBP's Office of International Trade. In the meantime, the subject merchandise must be marked in the manner stated above. ACE's system limitation does not preclude importers from properly marking the merchandise.

Finally, the commenter notes that the instant ruling does not mention whether this country of origin analysis also applies to clocks. We note that according to 19 C.F.R. § 177.9(a), "a ruling letter issued by [CBP] under the provisions of this part represents the official position of [CBP] with respect to the particular transaction or issue described therein and is binding on all [CBP] personnel ... until modified or revoked." Each CBP ruling is specific to a certain product or transaction. It would be improper to use this ruling to set forth CBP's position on the country of origin determination of clocks. In addition, we note that CBP's policy on the country of origin of clocks is already set forth in the aforementioned Informed Compliance Publication.

HOLDING:

Japan and China are the countries of origin for both wristwatches. Under 19 U.S.C. § 1304, each wristwatch must be marked conspicuously, legibly and permanently with these two countries of origin. Additionally, the quartz analog movement and its case must be marked according to the special requirements set forth in Additional U.S. Note 4 to Chapter 91, HTSUS.

EFFECT ON OTHER RULINGS:

HQ 562543, dated December 27, 2002, is hereby REVOKED.

Sincerely,

IEVA K. O'ROURKE
for
JOANNE ROMAN STUMP,
Acting Director
Commercial Trade and Facilitation Division

PROPOSED REVOCATION OF A RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO PHYSICAL VACUUM DEPOSITION PROCESS AS A "USE" FOR PURPOSES OF SAME CONDITION DRAWBACK

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

ACTION: Notice of proposed revocation of ruling letter and revocation of treatment relating to a vacuum deposition process as a "use" for purpose of same condition drawback pursuant to 19 U.S.C. § 1313(j)(1).

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 the following Headquarters Ruling Letter relating to a physical vacuum deposition process (PVD) as a "use" for purposes of same condition drawback pursuant to 19 U.S.C. § 1313(j)(1): H170624, dated August 3, 2012. CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATES: Comments must be received on or before February 19, 2016.

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, 90 K Street, NE, 10th Floor, Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 90 K Street, NE, Washington, D.C. 20002 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: Gail Kan, Entry Process and Duty Refunds Branch: (202) 325–0346.

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, as amended (19 U.S.C. § 1625(c)(1)), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to a physical vacuum deposition process as a "use" for purposes of same condition drawback pursuant to 19 U.S.C. § 1313(j)(1). Although in this notice CBP is specifically referring to the revocation of Headquarters Ruling Letter: H170624, dated August 3, 2012 (Attachment A), this notice covers any rulings involving these circumstances that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the circumstances 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 Headquarters Ruling Letter H170624, CBP determined that a PVD process was considered a "use" for purposes of qualifying for same condition drawback pursuant to 19 U.S.C. § 1313(j)(1). Pursuant to 19 U.S.C. § 1625(c)(1), CBP proposes to revoke Headquarters Ruling Letter H170624 and revoke or modify any other ruling not specifically identified, in order to reflect the proper determination that the described PVD process on chromed brass plumbing fixtures did not qualify as a "use" for purposes of same condition drawback pursuant to 19 U.S.C. § 1313(j)(1). *See* Attachment B, proposed Headquarters Ruling Letter H237075. 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: December 14, 2015

JOANNE ROMAN STUMP
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

OT:RR:CTF:ER
H170624 ASL

MR. JOHN T. DENNINGER, SR.
VICE PRESIDENT
J.G. EBERLEIN CO. INC.
145 HIGBIE LANE
WEST ISLIP, NY 11795

RE: Unused Drawback; 19 U.S.C. §1313(j)(1); 19 C.F.R. §191.2(q)

DEAR MR. DENNINGER,

This is in response to your letter, dated June 8, 2011, on behalf of Grohe Canada Inc., (herein "Grohe") requesting a ruling for unused merchandise drawback covering plumbing fixtures.

FACTS:

Grohe imports various types of plumbing fixtures into the United States. The items are then "coated to achieve a different type of finish." In an email dated June 16, 2012, Mr. Denninger stated that the coating process was called physical vapor deposition ("PVD"). According to Grohe, the PVD process is as follows:

> Brass, zinc or ABS plumbing components are loaded onto coating racks, A.K.A. pylons and the pylons are then placed into cleaning baskets. The baskets with pylons are passed through an automated cleaning system consisting of 9 tanks, three of which are strong soaps specially made to remove contaminants, e.g. grease, dirt etc. from the surface of components without damaging the component's surface. The remaining 6 tanks are rinsing tanks with high purity water used to rinse off the soaps from the components.
>
> The wetted pylons are then passed through two drying stations to dry off the remaining water from the cleaning process. The dried pylons are then placed onto batch fixtures, A.K.A. coating tables and placed inside heating ovens. The parts are then heated to a specific temperature to prepare the component surface for coating and "outgas" (remove remaining water left on part, if any). After the parts have been heated, they are removed from the oven and placed inside the PVD coating chamber. With the use of vacuum pumps, the air inside the chamber is evacuated and a vacuum is created in the chamber. The removal of air from the chamber assures that no contaminants present in the chamber atmosphere will mix with the coating to be deposited onto the components' surfaces.
>
> After a specific vacuum level (atmosphere) is reached inside the chamber, the coating tables start to rotate. An inert gas, argon, is then introduced into the chamber to create a plasma (ionized atmosphere) used in the process to create the right conditions to start coating the components. After the plasma is created in the chamber, an arc spot is created on the surface of a target (e.g. high purity chromium, zirconium or titanium metal slabs) facing the components. The arc spot is a low voltage-high current arc similar to a welding arc; it creates a localized area on the surface of the target reaching temperatures of 2000 – 4000 °C which rapidly melts the metal and creates a metallic vapor. The arc is then

> moved very fast around the target by using a magnetic field (arc steering) to evenly evaporate the metal and create an even metallic vapor throughout the chamber.
>
> While the arc is moved around the target evaporating the metal, ultra high purity (UHP) gases are introduced into the chamber, e.g. Nitrogen and Acetylene, which combine(s) with the evaporated metal on the surface of the components creating a ceramic nitride or ceramic carbo-nitride coating. The majority of the evaporated metals, mostly positively charged ions, e.g. $Cr^{+, 2+}$, Ti^{+}, combine with the gases on the surface of the components. Due to the application of a bias (negatively charged) voltage to the components' surfaces. The bias voltage makes the components' surfaces negatively charge; thus the negative surface attracts the positively charged metallic ions which combine with the UHP gases in the chamber at the components' surfaces.

Further, Grohe explains that this process creates a "ceramic (carbo) nitride coating deposited on the components' surfaces" and "depending on the composition, can increase the corrosion and erosion resistance of the component or other properties specifically required for the component. In the plumbing industry, the application of PVD coatings is mostly used to create a coating which is scratch resistant, and due to the stable nature of the ceramic (carbo) nitrides provides a consistent and lasting color which outlasts other coating processes in the market."

In an email dated October 5, 2011, Grohe stated that without the application of the "finish" the products would operate in the same manner and the only difference between the pre-finish and post-finished item would be that the former would have a dull finish and the latter a shiny finish. After the PVD finish is applied, the plumbing fixtures are assigned a different part number and then exported back to a Grohe warehouse in Canada. Grohe provided documents of a typical transaction, which include a CF 7501, entry summary, a *pro forma* invoice for the imported brass, an invoice of the brass after the finish was applied, and Canadian entry documentation.

We also note that Grohe requested a ruling on whether applying an "oil rubbed bronze" finish is a "use" of the merchandise. However, in an email dated July 26, 2012, we explained that we had insufficient facts to move forward with that request. Grohe may submit that process for a separate ruling request once it has gathered the necessary information.

ISSUE:

Does the application of a PVD "finish" on brass plumbing fixtures constitute a "use" for purposes of 19 U.S.C. § 1313(j)?

LAW AND ANALYSIS:

Under 19 U.S.C. § 1313(j)(1), drawback is authorized if imported merchandise, on which was paid any duty, tax, or fee imposed under Federal law upon entry, is, within three years of the date of importation, exported or destroyed under CBP supervision and was *not used* in the United States before such exportation or destruction. In addition, the drawback statute, under 19 U.S.C. § 1313(j)(3), describes the type of processing operations that represent

incidental operations that are not considered "uses" and, therefore, do not disqualify drawback claims under section 1313(j). Section 1313(j)(3) provides:

> The performing of any operation or combination of operations (including, but not limited to, testing, cleaning, repacking, inspecting, sorting, refurbishing, freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing components, relabeling, disassembling, and unpacking), not amounting to manufacture or production for drawback purposes under the preceding provisions of this section on—
>
> (A) the imported merchandise itself in cases to which paragraph (1) applies...
>
> shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B) or (2)(C).

CBP's regulations provide further guidance on what constitutes "a use" by defining a "manufacture or production." A "manufacture or production," as found in 19 C.F.R. § 191.2(q), means:

> (1) A process, including, but not limited to, an assembly, by which merchandise is made into a new and different article having a distinctive "name, character or use"; or
>
> (2) A process, including, but not limited to, an assembly, by which merchandise is made fit for a particular use even though it does not meet the requirements of paragraph (q)(1) of this section.

In particular, the definitions in section 191.2(q) reflect the holding in Customs Service Decision ("C.S.D.") 82–67, dated December 22, 1981. In that decision, Customs considered whether certain operations performed on imported cotton towels constituted a manufacture or production for purposes of manufacturing drawback. Those operations included the weighing, inspecting, trimming, folding, spraying, and wrapping the towels in polyethylene film for use by airline passengers. Regarding the second test for "use" in 19 C.F.R. § 191.2(q)(2), the holding in C.S.D. 82–67 adopted the "fit for a particular use" standard established by the former Court of Customs and Patent Appeals in *United States v. International Paint Co., Inc.,* 35 C.C.P.A. 87 (1948). The decision states:

> The latter decision [in International Paint] appears to support Customs more recent interpretation of "manufacture" as a process brought about by significant investment of capital and labor to produce articles or commodities which, despite the fact they are in some cases much the same as their conditions prior to processing, have been made suitable for a particular intended use. In determining what constitutes a manufacture, we have held in our administrative rulings that if an operation involves special treatment of merchandise to obtain certain properties required for a specific use by the entity performing the operation or his customers and the operation involves significant capital and labor expenditure, then that operation is a manufacture or production.

Consistent with that decision, in HQ 153066, dated May 31, 2012, CBP stated that "in determining whether there is a manufacture it is important to examine whether the merchandise has been made fit for a particular use."

Therefore, if the application of a finish on the brass fixtures was done in order to obtain certain properties required for a specific use by the entity performing the operation, then the articles were *used* and not eligible for drawback under 1313(j)(1).

The application of a "finish" is not listed as one of the operations within 19 U.S.C. § 1313(j)(3) or the regulations that will not be treated as a "use" of that merchandise. However, in HQ 225985, dated November 30, 1995, CBP concluded that the listed operations in 19 U.S.C. § 1313(j)(3) do not impose a limitation on the qualifying operations, but are illustrative of operations that do not amount to a manufacture or production.

In this case, the operations you listed would constitute a manufacture or production within the meaning of 19 C.F.R. § 191.2(q)(2). You stated that without the application of the "finish" the products would operate in the same manner and the only difference between the pre-finished and post-finished item would be that the former would have a dull finish and the latter a shiny finish. However, a PVD coating process is not merely the application of a "finish."

The PVD process, as detailed by Grohe, describes a significant and vital step in the manufacture of the brass fixtures. Specifically, the process where the brass fixtures' surface is exposed to a low voltage-high current arc that melts its surface and is introduced to high purity gases in order to bond with the metal's surface, changes the physical property of the brass surface, and thus, the physical characteristics of the merchandise. The result of this coating not only changes the color of the brass from dull to shiny, but also makes the brass corrosive and scratch resistant. The brass plumbing fixtures, while able to function in the same manner prior to the PVD coating process, would unlikely be sold without the coating as the brass would be susceptible to oxidization, which turns brass green upon exposure to moisture. In fact, after reviewing Grohe's website, there does not appear to be any brass plumbing fixture for sale without some sort of "finish." Thus, the brass fixtures with a PVD finish is a necessary requirement for Grohe's customers and is made fit for a particular use within the meaning of 19 C.F.R. § 191.2(q)(2).

Furthermore, in *International Paint,* the court found that "if an operation performs the function of fitting a substance for a use for which otherwise it is wholly unfitted, it falls within the letter and the spirit of the term manufactured ..." 35 C.C.P.A. at 94. In this case, upon importation the brass plumbing fixtures lack a protective coating that would make the fixtures commercially viable and thus, are unfit to be sold as plumbing fixtures. It is the ability of the bronze to remain shiny and corrosive and scratch resistant after a significant period of time that makes it commercially viable. Grohe's subsequent PVD coating operation "performs the function of fitting" the merchandise for a use that was "originally wholly unfit[]." *Id.* Consequently, we find that as a result of further processing operations performed in the United States the PVD "finishing" process made the brass fixtures fit for a particular use. Therefore, we conclude that this operation constitutes a manufacture or production, and thus a "use" under 19 U.S.C. § 1313(j)(3). Further, we do not need to reach the question of whether there is a distinct "name, character or use" under 19 C.F.R. § 191.2(q)(1), as the test under 19 C.F.R. § 191.2(q)(2) was satisfied.

HOLDING:

The application of a PVD "finish" on brass plumbing fixtures does constitute a "use" for purposes of 19 U.S.C. § 1313(j). This decision is limited to the specific facts set forth herein. If the terms of the import or export contracts vary from the facts stipulated to herein, this decision shall not be binding on Customs and Border Protection as provided in 19 C.F.R. § 177.2(b)(1), (2) and (4), and § 177.9(b)(1) and (2).

Please note that 19 C.F.R. §177.9(b)(1) provides that "[e]ach ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruing letter, either directly, by reference, or by implication, is accurate and complete in every material respect. The application of a ruling letter by a Customs Service field office to the transaction to which it is purported to relate is subject to the verification of the facts incorporated in the ruling letter, a comparison of the transaction described therein to the actual transaction, and the satisfaction of any conditions on which the ruling was based."

No later than 60 days from the date of this letter, the Office of Regulations and Rulings will make the decision available to CBP personnel, and to the public on the CBP Home Page on the World Wide Web at www.cbp.gov, by means of the Freedom of Information Act, and other methods of public distribution.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

[ATTACHMENT B]

OT:RR:CTF:ER
H237075 ASL

JOHN M. PETERSON
NEVILLE PETERSON LLP
17 STATE ST. 19TH FLOOR
NEW YORK, NY 10004

RE: Grohe Canada Inc.: Reconsideration of Headquarters Ruling Letter H170624

DEAR MR. PETERSON,

This is in reference to Headquarters Ruling Letter H170624, issued on August 3, 2012, with regard to a request for a prospective ruling concerning whether a physical vacuum deposition process ("PVD") is a "use" for purposes of same condition drawback pursuant to 19 U.S.C. § 1313(j)(1). Upon review, we have determined that the PVD process is not a "use" for purposes of 19 U.S.C. § 1313(j) drawback. Therefore, for the reasons set forth below, we are revoking the treatment previously accorded by Customs and Border Protection ("CBP") to substantially identical transactions.

CBP can modify or revoke a ruling to change the legal principles set forth in the decision. 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), 60 days after the date of issuance, CBP may propose a modification or revocation of a prior interpretive ruling or decision by publication and solicitation of comments in the *Customs Bulletin*. This revocation will be applicable to any transaction involving a set of circumstances that are similar in all material respects and that arises 60 days after publication of the final notice of revocation in the *Customs Bulletin.*

FACTS:

At issue in this reconsideration isa request for a prospective ruling concerning whether a PVD process is a "use" for purposes of same condition drawback pursuant to 19 U.S.C. § 1313(j)(1). Grohe Canada, Inc. ("Grohe") imports various types of plumbing fixtures into the United States. Grohe stated for the first time in its reconsideration letter that the merchandise is imported already finished, chromed, and read for final assembly or sale. In the United States, the items are then "coated to achieve a different type of finish," a PVD process. According to Grohe, the PVD process is as follows:

> Brass, zinc or ABS plumbing components are loaded onto coating racks, [a.k.a.] pylons and the pylons are then placed into cleaning baskets. The baskets with pylons are passed through an automated cleaning system consisting of 9 tanks, three of which are strong soaps specially made to remove contaminants, e.g. grease, dirt etc. from the surface of components without damaging the component's surface. The remaining 6 tanks are rinsing tanks with high purity water used to rinse off the soaps from the components.
>
> The wetted pylons are then passed through two drying stations to dry off the remaining water from the cleaning process. The dried pylons are then placed onto batch fixtures, [a.k.a.] coating tables and placed inside heat-

ing ovens. The parts are then heated to a specific temperature to prepare the component surface for coating and "outgas" (remove remaining water left on part, if any). After the parts have been heated, they are removed from the oven and placed inside the PVD coating chamber. With the use of vacuum pumps, the air inside the chamber is evacuated and a vacuum is created in the chamber. The removal of air from the chamber assures that no contaminants present in the chamber atmosphere will mix with the coating to be deposited onto the components' surfaces.

After a specific vacuum level (atmosphere) is reached inside the chamber, the coating tables start to rotate. An inert gas, argon, is then introduced into the chamber to create a plasma (ionized atmosphere) used in the process to create the right conditions to start coating the components. After the plasma is created in the chamber, an arc spot is created on the surface of a target (*e.g.* high purity chromium, zirconium or titanium metal slabs) facing the components. The arc spot is a low voltage-high current arc similar to a welding arc; it creates a localized area on the surface of the target reaching temperatures of 2000 – 4000 °C which rapidly melts the metal and creates a metallic vapor. The arc is then moved very fast around the target by using a magnetic field (arc steering) to evenly evaporate the metal and create an even metallic vapor throughout the chamber.

While the arc is moved around the target evaporating the metal, ultra high purity (UHP) gases are introduced into the chamber, *e.g.* Nitrogen and Acetylene, which combine(s) with the evaporated metal on the surface of the components creating a ceramic nitride or ceramic carbo-nitride coating. The majority of the evaporated metals, mostly positively charged ions, *e.g.* $Cr^{+, 2+}$, Ti^{+}, combine with the gases on the surface of the components. Due to the application of a bias (negatively charged) voltage to the components' surfaces. The bias voltage makes the components' surfaces negatively charge; thus the negative surface attracts the positively charged metallic ions which combine with the UHP gases in the chamber at the components' surfaces.

In its original submission, Grohe explained that this process creates a "ceramic (carbo) nitride coating deposited on the components' surfaces" and "depending on the composition, can increase the corrosion and erosion resistance of the component or other properties specifically required for the component. In the plumbing industry, the application of PVD coatings is mostly used to create a coating which is scratch resistant, and due to the stable nature of the ceramic (carbo) nitrides provides a consistent and lasting color which outlasts other coating processes in the market."

In an email dated October 5, 2011, Grohe stated that without the application of the "finish" the products would operate in the same manner and the only difference between the pre-finish and post-finished item would be that the former would have a dull finish and the latter a shiny finish. However, what is described is less a "finish," but more of a coating. After the PVD coating is applied, the plumbing fixtures are assigned a different part number and then exported back to a Grohe warehouse in Canada. Grohe provided documents of a typical transaction, which include a CF 7501, entry summary,

a *pro forma* invoice for the imported brass, an invoice of the brass after the coating was applied, and Canadian entry documentation.

On August 3, 2012, we issued Headquarters Ruling Letter H1270624, in which we found that the application of a PVD "finish" on brass plumbing fixtures constituted a "use" for purpose of 19 U.S.C. § 1313(j)(1) drawback. On December 21, 2012, Grohe filed a request for reconsideration of H1270624, stating that CBP drew incorrect conclusions in its ruling. Notably, Grohe clarified the PVD process and the fact that the brass plumbing fixtures have already underwent an electroplating process that coated the brass with a chrome plating before entry. This chrome plating makes the plumbing fixtures scratch resistant and anti-corrosive.

ISSUE:

1. Does the application of a PVD coating on brass plumbing fixtures constitute a "use" for purposes of 19 U.S.C. § 1313(j)(1)?
2. Is the merchandise in the "same condition" after the application of a PVD coating for purposes of 19 C.F.R. § 181.45?

LAW AND ANALYSIS:

Under 19 U.S.C. § 1313(j)(1), drawback is authorized if imported merchandise, on which was paid any duty, tax, or fee imposed under federal law upon entry, is, within three years of the date of importation, exported or destroyed under CBP supervision and was *not used* in the United States before such exportation or destruction. In addition, the drawback statute, under 19 U.S.C. § 1313(j)(3), describes the type of processing operations that represent incidental operations that are not considered "uses" and, therefore, do not disqualify drawback claims under section 1313(j). Section 1313(j)(3) provides:

> The performing of any operation or combination of operations (including, but not limited to, testing, cleaning, repacking, inspecting, sorting, refurbishing, freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing components, relabeling, disassembling, and unpacking), not amounting to manufacture or production for drawback purposes under the preceding provisions of this section on–
>
> (B) the imported merchandise itself in cases to which paragraph (1) applies...
>
> shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B) or (2)(C).

CBP's regulations provide further guidance on what constitutes "a use" by defining a "manufacture or production." In 19 C.F.R. § 191.2(q), CBP defines a "manufacture or production" for drawback purposes as follows:

(1) A process, including, but not limited to, an assembly, by which merchandise is made into a new and different article having a distinctive "name, character or use"; or

(2) A process, including, but not limited to, an assembly, by which merchandise is made fit for a particular use even though it does not meet the requirements of paragraph (q)(1) of this section.

In particular, the definitions in section 191.2(q) reflect the holding in Customs Service Decision ("C.S.D.") 82–67. C.S.D. 82–67, 16 Cust. B. & Dec. 800 (Dec. 22, 1981). In that decision, Customs considered whether certain operations performed on imported cotton towels constituted a manufacture or production for purposes of manufacturing drawback. Those operations included the weighing, inspecting, trimming, folding, spraying, and wrapping the towels in polyethylene film for use by airline passengers. In the analysis, the decision discusses the judicial test established by the Supreme Court in *Anheuser-Busch v. U.S.*, 207 U.S. 556, 562 (1907). In that case, the Court held:

> Manufacture implies a change, but every change is not manufacture, and yet every change in an article is the result of treatment, labor and manipulation. But something more is necessary . . . . There must be transformation; a new and different article must emerge, "having a different name, character, or use."

In addition, regarding the second test for "use" in 19 C.F.R. § 191.2(q)(2), the holding in C.S.D. 82–67 adopted the "fit for a particular use" standard established by the former Court of Customs and Patent Appeals in *United States v. International Paint Co., Inc.,* 35 C.C.P.A. 87 (1948). The decision states:

> The latter decision [in International Paint] appears to support Customs more recent interpretation of "manufacture" as a process brought about by significant investment of capital and labor to produce articles or commodities which, despite the fact they are in some cases much the same as their conditions prior to processing, have been made suitable for a particular intended use. In determining what constitutes a manufacture, we have held in our administrative rulings that if an operation involves special treatment of merchandise to obtain certain properties required for a specific use by the entity performing the operation or his customers and the operation involves significant capital and labor expenditure, then that operation is a manufacture or production.

Consistent with that decision, in HQ 153066, dated May 31, 2012, CBP stated that "in determining whether there is a manufacture it is important to examine whether the merchandise has been made fit for a particular use." Therefore, if the application of a coating on the brass fixtures was done in order to obtain certain properties required for a specific use by the entity performing the operation, or a new and different article having a distinctive name, character or use emerges, then the articles were *used* and not eligible for drawback under 1313(j)(1).

The application of a coating is not listed as one of the operations within 19 U.S.C. § 1313(j)(3) or the regulations that will not be treated as a "use" of that merchandise. However, in HQ 225985, dated November 30, 1995, CBP concluded that the listed operations in 19 U.S.C. § 1313(j)(3) do not impose a limitation on the qualifying operations, but are illustrative of operations that do not amount to a manufacture or production.

In this case, despite the significant capital and labor expenditure, the operations you listed would not constitute a manufacture or production within the meaning of 19 C.F.R. § 191.2(q). In your recent submission you clarified that the plumbing fixtures, while brass, have already undergone an electroplating process before entry, by which the brass was chrome plated.

This chrome plating makes the plumbing fixtures scratch resistant and anti-corrosive, while the chrome plated surface makes the PVD process work better. In the PVD process, the brass fixtures are placed in a vacuum and a metallic target (titanium, zirconium, or chromium) is exposed to a low voltage-high current arc that vaporizes and ionizes the metal. High purity gases are then introduced into the vacuum and the metallic ions react with the gases on the surface of the merchandise, concurrently bonding to it, and creating a new surface on the plumbing fixtures. Based on CBP's lab research and analysis, this surface is more anti-corrosive, scratch resistant, and harder than the chrome plated surface. It also has the effect of changing the color of the plumbing fixtures. However, the imported plumbing fixtures are not transformed into a new and different product. As noted in *Anheuser-Busch*, "[t]here must be a transformation; a new and different article must emerge, having a different name, character, or use." *Anheuser-Busch*, 207 U.S. at 562. Here, the merchandise is imported as plumbing fixtures and exported as plumbing fixtures. Their names did not change and moreover, neither their character nor use has changed, as they operate in the same manner as they would without the PVD processing. Consequently, we find that the PVD process as performed in this instance and on these plumbing fixtures in the United States, did not make the fixtures into a new and different article having a distinctive "name, character or use" within the meaning of 19 C.F.R. § 191.2(q)(1).

Furthermore, in *International Paint,* the court found that "if an operation performs the function of fitting a substance for a use for which otherwise it is wholly unfitted, it falls within the letter and the spirit of the term manufactured ..." 35 C.C.P.A. at 94. In this case, upon importation of the chromed plumbing fixtures, they are commercially viable and could be sold as plumbing fixtures. While Grohe's subsequent PVD coating operation changes the color, and improves the corrosive and scratch resistance of the merchandise, it does not "perform the function of fitting" the merchandise for a use that was "originally wholly unfit[...]." *Id.* The plumbing fixtures are able to function in the same manner prior to the PVD coating process, as they were already corrosive and scratch resistant as a result of undergoing an electroplating process prior to entry, and in fact are also sold with just the basic chrome plating and with no additional PVD processing. The PVD process is intended to make the plumbing fixtures more desirable to consumers by offering them different color styles, and is not to make the fixtures fit for a particular use. Consequently, we find that the PVD process as performed in this instance and on these plumbing fixtures in the United States, did not make the fixtures fit for a particular use within the meaning of 19 C.F.R. § 191.2(q)(2). Therefore, we conclude that this operation does not constitutes a manufacture or production, and thus is not a "use" under 19 U.S.C. § 1313(j)(3).

Since the merchandise is exported to Canada, the transactions are subject to the North American Free Trade Agreement ("NAFTA") provisions. Section 203 of the NAFTA Implementation Act (Public Law 103–182; 107 Stat. 2057, 2086; 19 U.S.C. § 3333), provides for the treatment of goods subject to the limitations of NAFTA drawback. Pursuant to 19 U.S.C. § 3333(a) (Section 203(a) of the NAFTA), goods "subject to NAFTA drawback" means any goods other than, among other things:

> (2) A good exported to a NAFTA country in the same condition as when imported into the United States. For purposes of this paragraph—
>
> (A) processes such as testing, cleaning, repacking, or inspecting a good, or preserving it in its same condition, shall not be considered to change the condition of the good[.] . . .

Therefore, in addition to goods being "unused" per 19 U.S.C. §1313(j)(1), the goods must also be in the "same condition" upon export as they were on import in order not to be subject to the limitations of NAFTA drawback. CBP regulations issued pursuant to the Act provide guidance for implementing the requirement that the imported and exported merchandise be in the "same condition." Under 19 C.F.R. § 181.45(b), the term "same condition" is defined in 19 C.F.R. § 181.45(b)(1) as follows:

> For purposes of this subpart, a reference to a good in the "same condition" includes a good that has been subjected to any of the following operations provided that no such operation materially alters the characteristics of the good:
>
> (i) Mere dilution with water or another substance;
>
> (ii) Cleaning, including removal of rust, grease, paint or other coatings;
>
> (iii) Application of preservative, including lubricants, protective encapsulation, or preservation paint;
>
> (iv) Trimming, filing, slitting, or cutting;
>
> (v) Putting up in measured doses, or packing, repacking, packaging or repackaging; or
>
> (vi) Testing, marking, labeling, sorting or grading.

19 C.F.R. § 181.45(b)(1). In HQ 228961, dated Jan. 23, 2002, we stated that the list in 19 C.F.R. § 181.45(b)(1) was not exhaustive and that the analysis should focus on whether the item in question is in the "same condition," which includes the absence of "material alterations to the characteristics of the good" regardless of the processes to which the item was subjected.

CBP has previously considered whether certain operations materially alter the characteristics of a good for purposes of section 181.45(b)(1). In HQ 230166, dated January 29, 2004, CBP determined that repackaging dried fruits and dried vegetables from industrial-sized bulk packages to smaller packages did not constitute a material alteration. However, HQ 231066 determined that the adding of a desiccant (i.e., silicon dioxide) to dried fruits and vegetables to prevent powdered food from clumping did materially alter the imported merchandise. This increase in pourability was a material alteration of the character of the imported powder resulting in a product that was not in the same condition as the imported product, and therefore not within the scope of 19 C.F.R. § 181.45(b). Therefore, whether an operation materially alters the characteristics of a good is a determination driven by the facts.

Most relevant to the case here, is HQ 225874, dated March 22, 1996, where CBP determined that the painting of John Deere parts with John Deere identifying colors was an operation of greater magnitude than those listed in section 181.45(b)(1). In HQ 225874, we noted that it was:

> [S]ignificant that "painting" itself is not included in this list. We consider painting to be an operation of greater magnitude than the operations stated in 19 CFR 181.45(b)(1)(iii). Painting is more than the application of a preservative, including lubricants, protective encapsulation, or preservation paint. We believe that if painting were intended to be within the scope of 19 CFR 181.45(b)(1), it would have been clear from the language of 19 CFR 181.45(b)(1). This is not the case. [...] Accordingly, because the parts are not exported in the same condition as they were imported, they are not eligible for drawback pursuant to 19 CFR 181.45(b).

Here, the PVD process is expensive and labor intensive, much more so than the simple painting described in HQ 225874. The PVD process, which imparts a coating that not only changes the fixtures' color, but also makes them more scratch and corrosive resistant, as well as harder, is a more significant process than simply painting. Thus, we find that the PVD process is an operation of greater magnitude than the operations stated in 19 C.F.R. 181.45(b)(1)(iii). As a result, the brass fixtures are not in the "same condition" as when they were imported and are subject to the limitations of NAFTA drawback.

HOLDING:

Upon reconsideration, we find that the application of a PVD coating on chromed brass plumbing fixtures does not constitute a "use" for purposes of 19 U.S.C. § 1313(j). However, we find that the merchandise is not exported in the "same condition" and is subject to NAFTA limitations on drawback. We have reached this conclusion based on the very specific set of facts presented. As a result, Headquarters Ruling Letter H170624, dated August 3, 2012, is hereby revoked.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN NOZZLES FOR THE DISPERSING OR SPRAYING OF HIGH-PRESSURE LIQUIDS

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

ACTION: Notice of proposed revocation of ruling letters and proposed revocation of treatment relating to the tariff classification of certain nozzles for the dispersing or spraying of high-pressure liquids.

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) is proposing to revoke two ruling letters concerning the tariff classification of certain nozzles for the dispersing or spraying of high-pressure liquids. 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 February 19, 2016.

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, 90 K Street, N.E., 10th 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 two ruling letters pertaining to the classification of certain nozzles for the dispersing or spraying of high-pressure liquids. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) N162918, dated May 26, 2011 (Attachment A) and NY C87376, dated May 14, 1998 (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 databases for rulings in addition to those 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 ruling letter NY N162918, CBP determined that two stainless steel sewer cleaning nozzles with steel inserts from Germany, the Standard Nozzle (Part No. 1–0133–6020) and the Chisel Nozzle (Part No. 1–0212–8020S), were classified in heading 7326, Harmonized Tariff Schedule of the United States (HTSUS). Specifically, CBP classified the nozzles in subheading 7326.90.85, HTSUS, which provides for "Other articles of iron or steel: Other: Other: Other: Other." It is now CBP's position that the nozzles are properly classified in subheading 8424.90.90, HTSUS, which provides for "Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof: Parts: Other."

In ruling letter NY C87376, CBP determined that certain TWK-model cleaning heads, used to clean tanks, reactors, pipes, totes,

vessels, and other enclosed spaces, were classified in heading 8424, HTSUS. Specifically, CBP classified the articles under subheading 8424.89, HTSUS, which provides for "Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof: Other appliances." It is now CBP's position that the TWK-model cleaning heads are properly classified in subheading 8424.90.90, HTSUS, which provides for "Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof: Parts: Other."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is proposing to revoke ruling letters NY N162918, NY C87376, 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) H185723, set forth as Attachment C 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: December 18, 2015

GREG CONNOR
for
JOANNE STUMP,
Acting Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N162918

May 26, 2011
CLA-2–73:T:RR:NC:1:104
CATEGORY: Classification
TARIFF NO.: 7326.90.8588

MS. CINDY VINSON
IFF, INC.
452A PLAZA DRIVE
P.O. BOX 45505
ATLANTA, GA 30320

RE: The tariff classification of nozzles from Germany

DEAR MS. VINSON:

In your letter dated April 22, 2011 you requested a tariff classification ruling.

The nozzles in question are used in sewer cleaning operations for cleaning pipes and channels. Each part number is composed of ten characters, i.e., the first character represents the manufacturer; the next four characters represent the part number, the next two indicate the flow rate of the pump and the remaining two characters indicate back water pressure (PSI).

The five specific nozzles are:

(1) Standard Nozzle – Part No. 1–0133–6020/Stainless steel construction with steel inserts,

(2) Chisel Nozzle – Part No. 1–0212–8020S/Stainless steel construction with steel inserts/Drill point allows the nozzle operated by a water supply to move efficiently for sewer lines with total obstruction,

(3) Aluminum Flying Nozzle – Part No. 1–0161–8020S/Aluminum construction with steel inserts,

(4) Grand Slam -3D Nozzle – Part No. 1–0101–8020C/Stainless steel construction with ceramic inserts and

(5) Pipe Wolf Nozzle – Part No. 1–0321–6020C/Stainless steel construction with ceramic inserts/Spins by means of a turbine wheel.

You state that the nozzles (1) are strictly operated by the water supply coming from a pressurized hose attached to water pumping source (generally plunger/piston- or triplex pumps), (2) do not require lubrication because they are not hydraulically, pneumatically or electrically operated, (3) do not incorporate any valves and (3) are imported separately and are not packaged for retail sale at time of importation. In addition, a nozzle's number of inserts is said to be determined by the size of the nozzle depending on the size of the connection for the water supply and said inserts, whether steel or ceramic, have different orifices due to the different flow rates and back pressure of the water pumps.

In your original request dated December 13, 2010, you proposed that the nozzles be classified in either subheading 8413.91.9080, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other parts of pumps for liquids or in subheading 8424.90.9080, HTSUS, which provides for mechanical appliances for projecting, dispersing or spraying liquids...; parts

thereof: parts: other, other. With regard to subheading 8413.91.9080, HTSUS, the nozzles do not complete a pump, nor are they necessary to a pump. While the nozzles may be used with pumps of heading 8413, HTSUS, their function, which is to create spray stream, is not necessary to the function of the pump, which is to move volumes of water. Thus, the nozzles are not within the scope of heading 8413, HTSUS.

We have reviewed the information you provided on the sewer cleaning nozzles. You suggest classification in 8424.90.9080, HTSUS. This heading provides for, "Mechanical appliances...for projecting, dispensing, or spraying liquids". The imported nozzles are not mechanical in nature, nor do they use mechanical means to transverse blocked pipes. From the information provided it is clear that the nozzles simply use water pressure exerted through a narrow ceramic or stainless steel nozzle as 'thrust" to propel itself along and as such would not be classified in 8424.

The applicable subheading for the Chisel Nozzles made of stainless steel construction with threaded steel nozzle inserts, and the Standard Nozzles made of stainless steel construction will be 7326.90.8588, HTSUS, which provides for other articles of iron or steel, other...other. The duty rate will be 2.9% 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/.

Your inquiry does not provide enough information for us to give a classification ruling on the balance of the nozzles described in your requests. Please submit the information described as follows:

> Regarding the Grand Slam 3D and Pipe Wolf Nozzles, please submit samples in their imported condition.
>
> Regarding the 3D Aluminum Flying Nozzles, you stated that the Aluminum Flying Nozzles are made of aluminum construction with threaded steel nozzle inserts. Please provide a breakdown by weight of each of the different types of metal (aluminum, steel, etc.) that comprise each Aluminum Flying Nozzle.

When this information is available, you may wish to consider resubmission of your request. We are returning any related samples, exhibits, etc. If you decide to resubmit your request, please include all of the material that we have returned to you.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding heading 7326, contact National Import Specialist Ann Taub at (646) 733–3018. If you have any other questions regarding the ruling, contact National Import Specialist Patricia O'Donnell at (646) 733–3011.

Sincerely,

ROBERT B. SWIERUPSKI
Director
National Commodity Specialist Division

[ATTACHMENT B]

NY C87376

May 14, 1998
CLA-2–84:RR:NC:MM:106 C87376
CATEGORY: Classification
TARIFF NO.: 8424.89.7090

MS. DONNA M. PALERMO-VOGEL
MID-AMERICA OVERSEAS, INC.
1180 MCLESTER STREET, SUITE #7
ELIZABETH, NEW JERSEY 07201

RE: The tariff classification of cleaning heads from Germany.

DEAR MS. PALERMO-VOGEL:

In your letter dated April 28, 1998, as a follow-up to our request for further information based upon your previous letter dated April 1, 1998, on behalf of Chemac, you requested a tariff classification ruling. You submitted descriptive literature with your request.

The articles in question are the TWK-model cleaning heads, which are cleaning devices that are used to clean tanks, reactors, pipes, totes, vessels and other enclosed spaces. The cleaning heads are tools used with high pressure water. They require a clean water source, a high pressure pump, high pressure hose and a device for positioning the cleaning head. The cleaning head is positioned in the vessel and the pump is brought up to pressure to feed high pressure water to the cleaning head via the hose. When the water reaches the cleaning head, the force of the water is used to turn the cleaning head which in turn blasts the wall of the vessel with the water. The cleaning force of the water jets clean the vessel walls by cutting through the surface contaminants and removing them via a drain below. The cleaning heads can fit into openings ranging from 4 inches and up. The cleaning heads are used mostly as tools for existing cleaning systems.

The applicable subheading for the cleaning heads will be 8424.89.7090, Harmonized Tariff Schedule of the United States (HTS), which provides for other mechanical appliances for projecting, dispersing or spraying liquids. The rate of duty will be 2.2 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Patrick J. Wholey at 212–466–5668.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT C]

CLA-2 OT:RR:CTF:TCM
CATEGORY: Classification
TARIFF NO.: 8424.90.90

REINHART LAIMER
USB-SEWER EQUIPMENT CORPORATION
1700 ENTERPRISE WAY
SUITE 116
MARIETTA, GA 30067

RE: Revocation of two ruling letters concerning the tariff classification of certain nozzles for the dispersing or spraying of high-pressure liquids; New York Ruling Letter ("NY") N162918, dated May 26, 2011; and NY C87376, dated May 14, 1998

DEAR MR. LAIMER:

This is in reference to your request for reconsideration of New York Ruling Letter ("NY") N162918, dated May 26, 2011, concerning the tariff classification under the Harmonized Tariff Schedule of United States (HTSUS) of certain nozzles for the dispersing or spraying of high-pressure liquids (the "Nozzles"). In ruling letter NY N162918, U.S. Customs and Border Protection (CBP) classified the Nozzles under subheading 7326.90.85, HTSUS, which provides for "Other articles of iron or steel: Other: Other: Other. Other." Upon review of NY N162918, CBP has determined that the ruling is incorrect. Accordingly, for the reasons set forth below, CBP is revoking ruling letter NY N162918.

Similarly, CBP believes that it can best meet its obligations regarding the sound administration of the HTSUS under 19 C.F.R. § 177.7(a) by reconsidering certain published rulings so that CBP does not have in force rulings that may be inconsistent with its current views. As such, CBP is also revoking ruling letter NY C87376, dated May 14, 1998, regarding the classification of certain TWK-model cleaning heads (the "Cleaning Heads"), used to clean tanks, reactors, pipes, totes, vessels, and other enclosed spaces with high-pressure water. In NY C87376, CBP classified the Cleaning Heads under subheading 8424.89, HTSUS, which provides for "Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof: Other appliances: Other." Similar to its review of NY N162918, CBP has determined that ruling letter NY C87376 is incorrect. Accordingly, CBP is revoking NY C87376.

FACTS:

The merchandise at issue in ruling letter NY N162918 consists of two types of nozzle heads used in sewer cleaning operations for clearing pipes and channels (the "Nozzles"). The first nozzle, the Standard Nozzle (Part No. 1–0133–6020), is described as a stainless steel nozzle with steel inserts. Similarly, the second nozzle, the Chisel Nozzle (Part No. 1–0212–8020S), is described as a stainless steel nozzle with steel inserts and an optional drill point attached to the nose of the article. Unlike the Standard Nozzle, the Chisel Nozzle also features small holes located at the front of the nozzle that

direct water spray forward, thereby increasing the nozzle's ability to penetrate obstructions and clear blockages and pipe deformations.

The Nozzles are operated by a supply of high pressure water, generated by a vehicle-mounted compressor and fed to the Nozzles via a high pressure hose. As pressurized water enters the Nozzles, the water is expelled backwards through small holes located along the sides and/or butt of the Nozzles, driving the device and attached hose forward through the sewer line. Additional openings along the sides of the Nozzles create high-pressure water jets that can blast and remove blockages, debris, and residue as the device advances through sewer piping. As the operator withdraws the extended Nozzle and attached hose from the sewer, the water jets are used to flush and clean the sewer line from obstructions such as sand, silt, and other debris. The Nozzles do not require lubrication because they are not hydraulically, pneumatically, or electrically operated and do not contain any valves. The Nozzles are imported separately and are not packaged for retail sale at the time of importation.

Similarly, in ruling letter NY C87376, CBP described certain "TWK-model cleaning heads" (the "Cleaning Heads"), as follows:

> TWK-model cleaning heads, which are cleaning devices that are used to clean tanks, reactors, pipes, totes, vessels and other enclosed spaces. The cleaning heads are tools used with high pressure water. They require a clean water source, a high pressure pump, high pressure hose and a device for positioning the cleaning head. The cleaning head is positioned in the vessel and the pump is brought up to pressure to feed high pressure water to the cleaning head via the hose. When the water reaches the cleaning head, the force of the water is used to turn the cleaning head which in turn blasts the wall of the vessel with the water. The cleaning force of the water jets clean the vessel walls by cutting through the surface contaminants and removing them via a drain below. The cleaning heads can fit into openings ranging from 4 inches and up. The cleaning heads are used mostly as tools for existing cleaning systems.
>
> * * * * *

ISSUE:

Whether the Nozzles and Cleaning Heads are properly classified under heading 7326, HTSUS, as other articles of iron or steel, or under heading 8424, as parts of mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders.

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (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 of Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The following HTSUS provisions will be referenced:

7326	Other articles of iron or steel:
	* * * * *
8424	Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof:
	[...]
	Other appliances:
	[...]
8424.89.00:	Other:
8424.90:	Parts:
	[...]
8424.90.90:	Other:
	* * * * *

Note 2(b) to Section XVI, HTSUS, states:

> Subject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified in their respective headings;
>
> ...
>
> (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTS and are thus useful in ascertaining the proper classification of merchandise. It is CBP's practice to follow, whenever possible the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The General Explanatory Note to Section XVI explains, in pertinent part:

(II) **PARTS**

(Section Note 2)

> In general, parts which are suitable for use solely or principally with particular machines or apparatus (including those of heading 84.79 or heading 85.43), or with a group of machines or apparatus falling in the same heading, are classified in the same heading as those machines or apparatus subject, of course, to the **exclusions** mentioned in Part (I) above. ...

Other parts which are recognisable as such, but are not suitable for use solely or principally with a particular machine or class of machine (i.e., which may be common to a number of machines falling in different headings), are classified in heading 84.87 (if not electrical) or in heading 85.48 (if electrical), unless they are **excluded** by the provisions set out above.

* * * * *

The EN to heading 84.24, HS, states, in pertinent part:

This heading covers machines and appliances for projecting, dispersing or spraying steam, liquids or solid materials (e.g., sand, powders, granules, grit or metallic abrasives) in the form of a jet, a dispersion (whether or not in drips) or a spray...

(C) STEAM OR SAND BLASTING MACHINES AND SIMILAR JET PROJECTING MACHINES

Sand blasting machines and the like are often of heavy construction and sometimes incorporate compressors. They are used for de-scaling or cleaning metal articles... by subjecting the articles to the action of high pressure jets of sand, metal abrasives, etc...

PARTS

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), the heading includes parts for the appliances and machines of this heading. Parts falling in this heading thus include, inter alia, reservoirs for sprayers, spray nozzles, lances and turbulent sprayer heads not of a kind described in **heading 84.81**.

* * * * *

Heading 8424, HTSUS, provides for "Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof." Similarly, the EN to heading 84.24, HS, states that the heading includes "parts for the appliances and machines of this heading... [and] thus include, *inter alia*, reservoirs for sprayers, **spray nozzles** , lances and **turbulent sprayer heads not of a kind described in heading 84.81.**" (Emphasis added).

Pursuant to Note 2(b) to Section XVI, HTSUS, parts of machines, if suitable for use solely or principally with a particular kind of machine, are to be classified with the machines of the same heading. We find that the instant Nozzles are attached via a hose to vehicle-mounted sewer cleaning machines that employ high-pressure water jets to remove pipe blockages, debris, and residue. The sewer cleaning machine consists of a high pressure water pump which feeds

pressurized water to the Nozzles. As the pressurized water is expelled through small openings along the sides and butt of the Nozzles, high pressure water jets are created which propel the Nozzles forward and scour the sides of the pipe, thereby removing blockages, debris, and residue. Therefore, insomuch as the sewer cleaning machine produces high pressure water jets for the purpose of cleaning sewer pipes and is similar to the jet projecting machines described by EN 84.24, we find that the machine is most specifically described by heading 8424, HTSUS. *See also* HQ 964635, dated January 4, 2001; HQ 964637, dated January 4, 2001; HQ 964666, dated January 4, 2001; and NY I81078, dated April 26, 2002.

The instant Nozzles are described as a type of spray nozzle or turbulent sprayer head, specifically designed to attach to a sewer cleaning machine and produce high pressure jets of water to remove blockages, debris, and residue from pipes and similar vessels. As such, they are not suitable for use as general parts. Consequently, insomuch as the Nozzles are suitable for use solely or principally with the spraying machines, they are classified in heading 8424, HTSUS, as parts of a jet projecting machine, per Note 2(b) to Section XVI, HTSUS. Specifically, they are classified under subheading 8424.90.90, HTSUS, which provides for "Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof: Parts: Other."

Our analysis also applies to the classification of Chemac Inc's TWK-model cleaning heads (the "Cleaning Heads"), which CBP classified in ruling letter NY C87376 under subheading 8424.89.70, HTSUS, the 1998 provision for "Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof: Other appliances: Other: Other."

In NY C87376, CBP described the Cleaning Heads as devices used to clean tanks, reactors, pipes, totes, vessels, and other enclosed spaces. Similar to the instant Nozzles, the Cleaning Heads are attached to a high pressure water pump via a pressure hose. High pressure water is fed to the Cleaning Head via the hose, and when the water reaches the Cleaning Head, the force of the water is used to propel the device, thereby projecting high-pressure jets of water against the walls of the vessel. The cleaning force of the water jets clean the vessel walls by blasting through surface contaminants.

Because the physical characteristics and function of the Cleaning Heads are substantially similar to the Nozzles, we find that they are appropriately described as parts of a water-jet cleaning system. Consequently, the Cleaning Heads are properly classified, pursuant to Note 2(b) to Section XVI, HTSUS, in subheading 8424.90.90, HTSUS, which provides for "Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof: Parts: Other."

HOLDING:

By application of GRIs 1 (Note 2(b) to Section XVI) and 6, the Nozzles and Clean Heads are classified under heading 8424, HTSUS, specifically in subheading 8424.90.90, HTSUS, which provides for "Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof: Parts: Other." The column one, general rate of duty is Free.

Duty rates are provides for 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 *http://www.usitc.gov*.

EFFECT ON OTHER RULINGS:

In accordance with the above analysis, ruling letters NY N162918, dated May 26, 2011, and NY C87376, dated May 14, 1998, are hereby REVOKED.

Sincerely,

JOANNE STUMP,
Acting Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF TWO RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF HYDRAULIC BRAKING SYSTEM PARTS

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

ACTION: Notice of proposed revocation of two ruling letters and proposed revocation of treatment relating to the tariff classification of hydraulic braking system parts.

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 two ruling letters concerning the tariff classification of hydraulic braking system parts. 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 February 19, 2016.

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, 90 K St., NE, 10th Floor, Washington, DC 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 hydraulic braking system parts. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter ("NY") A85455, dated August 1, 1996 (Attachment A), and Headquarters Ruling Letter ("HQ") 952719, dated January 13, 1993 (Attachment B), 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 ruling letter NY A85455, CBP determined that certain automotive hydraulic braking system parts were classified in heading 8708, Harmonized Tariff Schedule of the United States (HTSUS). Specifically, CBP classified the hydraulic braking system parts in subheading 8708.39.50, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Brakes and servo-brakes and parts thereof: Other: For other vehicles." Similarly, in ruling letter HQ 952719, CBP classified certain tractor hydraulic braking system parts for in subheading 8708.39.10, HTSUS (1993), which provided for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Brakes and servo-brakes and parts thereof: Other: For tractors suitable for agricultural use." It is now CBP's position that the hydraulic braking system parts are properly classified, by opera-

tion of General Rule of Interpretation (GRI 1), in chapter 84, HTSUS, which provides, in pertinent part, for machinery, mechanical appliances, and the parts thereof.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP proposes to revoke ruling letters NY A85455 and HQ 952719, and any other ruling not specifically identified, to reflect the tariff classification of the subject merchandise according to the analysis contained in proposed ruling letter HQ H222415, set forth as Attachment C 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: December 18, 2015

GREG CONNOR
for
JOANNE STUMP,
Acting Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY A85455

August 1, 1996
CLA-2–87:RR:NC:MA:101 A85455
CATEGORY: Classification
TARIFF NO.: 8708.39.5050

MR. SAMUEL ZEKSER, D.E.
SOBEL SHIPPING CO., INC.
170 BROADWAY
SUITE 1501
NEW YORK, NY 10038–4184

RE: The tariff classification of automotive parts from Far Eastern or Europen countries

DEAR MR. ZEKSER:

In your letter dated June 28, 1996 you requested a tariff classification ruling on behalf of EIS Brake Parts Division of Berlin, Connecticut.

The first item (shown below) concerned is a Brake Wheel Cylinder [Part #XEW104418] is a T-shaped piece of metal with rounded ends. There are black, soft rubber caps over each rounded end of the crossbar of the "T" and two blue plugs in the bottom of the of the stand of the "T". The item is 3 17/20" in width, 1 17/20" in height and 4 " in circumference.

[Item Pictured Here]

The second item (shown below) is a Brake Master Cylinder [Part #XE98174]; it is a black, metal cylinder with an indented male connector and female connector on one end and an indented female connector on the other, wider end and on one side. There is a white, semi-transparent, hard plastic liquid container attached on top. The item measures 9" in length, 3 " in circumference at the smaller end, 10" in circumference at the wider end and 4 " in height including the liquid container.

[Item Pictured Here]

The last item (shown below) is a Caliper Piston [Part #ZP8357]; it is a jar-shaped piece of metal with a circular opening on one end. It measures 2¬" in height and 7 3/5" in circumference.

[Item Pictured Here]

The applicable subheading for the Brake Wheel Cylinder [Part #XEW104418], Brake Master Cylinder [Part #XE98174] and Caliper Piston [Part #ZP8357] will be 8708.39.5050, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of . . . motor vehicles . . . : Brakes . . . and parts thereof: Other: For other vehicles: Other . The rate of duty will be 2.9% ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 212–466–5667.

Sincerely,

ROGER J. SILVESTRI
Director
National Commodity Specialist Division

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C.

JAN 13 1993

Brake Master : 8708

HQ 952719

Cylinders for Tractor

952719

CLA-2 CO:R:C:M 952719 CMS

CATEGORY: Classification

TARIFF NO.: 8708.39.10

Mr. Stanley J. A. Elder
Sales Manager
Lucas Automotive
5500 New King Street
P.O. Box 7002
Troy, MI 48007-7002

RE: Compensating Valve Brake Master Cylinders; Pushrods; Dual, Twin Pedal Braking Systems; Brake Fluid Reservoir; Mounting Bracket; Tractors; Suitable For Agricultural Use

Dear Mr. Elder:

This is in response to your request dated August 27, 1992, for a classification ruling on certain braking system components. The request was forwarded by the Regional Commissioner of Customs, New York, to Customs Headquarters for a reply.

FACTS:

The merchandise consists of two models of compensating valve brake master cylinders (part nos. 73067141 and 73067189), a brake fluid reservoir (part no. 73046077) and a brake fluid reservoir mounting bracket (part no. 64477544).

The compensating valve brake master cylinders are equipped with pushrods and are approximately 9" in length including the pushrod. The cylinder bore size ranges from .625" to 1" in diameter. The cylinders are designed for use in twin pedal braking systems. The brake fluid reservoir is designed to hold hydraulic mineral brake fluid in a capacity of 10.75 cu. in. (176 cc). The reservoir mounting bracket is exclusively designed to secure the brake fluid reservoir under consideration.

ISSUE:

Is the merchandise classified in Heading 8708, HTSUS, as parts of brakes for tractors suitable for agricultural use, or as parts of other vehicles in a different provision of the HTSUS?

MAY BE
MADE AVAILABLE TO THE PUBLIC

LAW AND ANALYSIS:

The HTSUS provides that the classification of articles is governed by the General Rules of Interpretation (GRI's). GRI 1 states in pertinent part that "...classification shall be determined according to the terms of the headings and any relative section or chapter notes...".

Heading 8708 in part describes parts of the motor vehicles of Heading 8701. Heading 8701 in part describes tractors, including tractors suitable for agricultural use.

The master cylinders under consideration may have several variations in the seals, port threads or other features depending on the particular vehicle in which the brake master cylinder is to be used. Regardless of the variations in features, it is Customs position, based on information obtained from the ruling requestor and other information, and considering principal use, that the compensating valve brake master cylinders and their fluid reservoirs and brackets are classified as parts of brakes for tractors, particularly tractors suitable for agricultural use.

The merchandise is described as "Parts and accessories of the motor vehicles of headings 8701...: ...Brakes and servo-brakes and parts thereof: ...Other: For tractors suitable for agricultural use", and is classified in subheading 8708.39.10, HTSUS.

HOLDING:

The merchandise is classified as "Parts and accessories of the motor vehicles of headings 8701...: ...Brakes and servo-brakes and parts thereof: ...Other: For tractors suitable for agricultural use", in subheading 8708.39.10, HTSUS, currently subject to a Column 1 free rate of duty.

Sincerely,

For John Durant, Director
Commercial Rulings Division

[ATTACHMENT C]

HQ H222415
CLA-2 OT:RR:CTF:TCM H222415 LWF
CATEGORY: Classification
TARIFF NO.: 8412.21.00; 8412.90.90; 8413.50.00; 8413.91.90

MR. SAMUEL ZEKSER
SOBEL SHIPPING CO., INC.
170 BROADWAY
SUITE 1501
NEW YORK, NY 10038

RE: Revocation of New York Ruling Letter (NY) A85455, dated August 1, 1996, and Headquarters Ruling Letter (HQ) 952719, dated January 13, 1993; Classification of various parts of hydraulic braking systems for motor vehicles and tractors

DEAR MR. ZEKSER:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) A85455, dated August 1, 1996, regarding the classification of certain hydraulic braking system parts for motor vehicles. In ruling letter NY A85455, CBP classified a brake wheel cylinder, brake master cylinder, and caliper piston under subheading 8708.39.50, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Brakes and servo-brakes and parts thereof: Other: For other vehicles." CBP has reviewed ruling letter NY A85455 and finds the ruling to be in error. Accordingly, for the reasons set forth below, CBP is revoking ruling letter NY A85455.

Similarly, CBP believes that it can best meet its obligations under 19 C.F.R. § 177.7(a), regarding the sound administration of the HTSUS, by reconsidering certain published rulings so that CBP does not have in force rulings that may be inconsistent with its current views. Specifically, CBP is revoking Headquarters Ruling Letter (HQ) 952719, dated January 13, 1993, concerning the classification under the HTSUS of hydraulic braking systems for tractors.

In HQ 952719, CBP classified two models of compensating valve brake master cylinders, a brake fluid reservoir, and a brake fluid reservoir mounting bracket under subheading 8708.39.10, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Brakes and servo-brakes and parts thereof: Other: For tractors suitable for agricultural use." CBP has reviewed ruling letter HQ 952719 and finds the ruling to be in error. Accordingly, for the reasons set forth below, CBP is revoking the ruling.

FACTS:

The instant merchandise is described as various subparts of hydraulic braking systems for motor vehicles. Hydraulic braking systems for motor vehicles use hydraulic pressure to transfer mechanical energy from a brake pedal to brake shoes located along the vehicle's wheels. The primary function of the brake master cylinder, therefore, is to generate hydraulic pressure within the braking system.

Hydraulic pressure within a hydraulic braking system is generated by the application of mechanical force on a brake pedal to drive a piston inside the brake master cylinder. As mechanical force is applied from the brake pedal to the piston, the piston transfers hydraulic fluid from the brake fluid reservoir into the hydraulic lines of the braking system, thereby pressurizing the system. The pressurized hydraulic fluid is then used to actuate brake wheel cylinders attached at the vehicle's wheels. The wheel cylinders convert the hydraulic pressure into mechanical energy by driving one or more caliper pistons against the vehicle's brake shoes, thereby engaging the brake liners and slowing the vehicle.

In NY A85455, CBP described the hydraulic braking system subparts at issue as follows:

> The first item... is a Brake Wheel Cylinder [Part #XEW104418] is a T-shaped piece of metal with rounded ends. There are black, soft rubber caps over each rounded end of the crossbar of the "T" and two blue plugs in the bottom of the of the stand of the "T". The item is 3 17/20" in width, 1 17/20" in height and 4 " in circumference.
>
> The second item... is a Brake Master Cylinder [Part #XE98174]; it is a black, metal cylinder with an indented male connector and female connector on one end and an indented female connector on the other, wider end and on one side. There is a white, semi-transparent, hard plastic liquid container attached on top. The item measures 9" in length, 3" in circumference at the smaller end, 10" in circumference at the wider end and 4" in height including the liquid container.
>
> The last item... is a Caliper Piston [Part #ZP8357]; it is a jar-shaped piece of metal with a circular opening on one end. It measures 2" in height and 7 3/5" in circumference.

In HQ 952719, CBP described the hydraulic braking system subparts at issue as follows:

> The merchandise consists of two models of compensating valve brake master cylinders (part nos. 73067141 and 73067189), a brake fluid reservoir (part no. 73046077) and a brake fluid reservoir mounting bracket (part no. 64477544).
>
> The compensating valve brake master cylinders are equipped with pushrods and are approximately 9" in length including the pushrod. The cylinder bore size ranges from .625" to 1" in diameter. The cylinders are designed for use in twin pedal braking systems. The brake fluid reservoir is designed to hold hydraulic mineral brake fluid in a capacity of 10.75 cu. in. (176 cc). The reservoir mounting bracket is exclusively designed to secure the brake fluid reservoir under consideration.

ISSUE:

Whether the brake master cylinders, brake wheel cylinder, caliper piston, compensating valve brake master cylinders, and brake fluid reservoir are properly classified under heading 8708, HTSUS, which provides for parts and accessories of motor vehicles, or in HTSUS Chapter 84, which provides for machinery and mechanical appliances.

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:

8412	Other engines and motors, and parts thereof:
8412.21.00	Hydraulic power engines and motors:
	Linear acting (cylinders)...
	* * * * *
8412	Other engines and motors, and parts thereof:
8412.90	Parts:
8412.90.90	Other...
	* * * * *
8413	Pumps for liquids, whether or not fitted with a measuring device; liquid elevators; part thereof:
8413.50.00	Other reciprocating positive displacement pumps...
	* * * * *
8413	Pumps for liquids, whether or not fitted with a measuring device; liquid elevators; part thereof:
8413.91.90	Parts:
	Other...
	* * * * *
8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:
8708.30	Brakes and servo-brakes; parts thereof:
8708.30.10	For tractors suitable for agricultural use...
	* * * * *
8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:
8708.30	Brakes and servo-brakes; parts thereof:
8708.30.50	For other vehicles...
	* * * * *

Note 2 to Section XVI, HTSUS, states, in pertinent part:

> Subject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified in their respective headings;
>
> (c) Parts which are goods included in any of the headings of chapter 84 or 85 (other than the headings 8409, 8431, 8448, 8466, 8473,

8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

(d) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;

* * * * *

Note 2(e) to Section XVII, HTSUS, states, in pertinent part:

The expressions "*parts*" and "*parts and accessories*" do not apply to the following articles, whether or not they are identifiable as for the goods of this section:

...

(e) Machines or apparatus of headings 8401 to 8479...

* * * * *

The Explanatory Notes to the Harmonized Commodity Description and Coding System (ENs) represent 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 ENs to Heading 84.12 state, in pertinent part:

The heading includes reaction engines (other than turbo-jets), pneumatic power engines and motors, wind engines (windmills), spring-operated or weight-operated motors, etc., certain hydraulic power engines and motors, and certain steam or other vapour power unites.

(B) **HYDARULIC POWER ENGINES AND MOTORS**

This group includes:

...

(3) **Hydraulic cylinders** consisting, for example, of a brass or steel barrel and a piston operated by oil (or other liquid) under pressure applied on one side (single-acting) of the piston, the energy of the liquid under pressure being converted into a linear motion. These cylinders are used on machine-tools, construction machinery, steering mechanisms, etc.....

...

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., combustion chambers and vents for jet engines, fuel feed regulators, fuel nozzles, windmill airwheels, cylinders, pistons, slide-valves, centrifugal ball or flyweight-type governors, connecting-rods).

* * * * *

The ENs to Heading 84.13 state, in pertinent part:

The machines of this heading can be subdivided, according to their system of operation, in the following five categories.

(A) **RECIPROCATING POSTIVE DISPLACEMENT PUMPS**

These use the linear suction or forcing action of a piston or plunger driven within a cylinder, the inlet and outlet being regulated by valves. "Single-acting" pumps utilize the thrust or suction of one end of the piston only; "double-acting" types pumps at both ends of the piston thus using both the forward and reverse strokes...

...

PARTS

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), parts of the goods of this heading are also classified here, e.g., pump housings or bodies; rods specially designed to connect and drive the piston in pumps placed at some distance from the prime mover (e.g., pumping rods, "sucker rods"); pistons, plungers, vanes; cams (lobes); helicoidal screws, impeller wheels, diffuser vanes; buckets and bucket-fitted chains; bands for band-type liquid elevators; pressure chambers.

* * * * *

The ENs to Section XVII, HS, state, in relevant part:

(III) PARTS AND ACCESSORIES

[...]

It should, however, be noted that [parts and accessories] headings apply **only** to those parts or accessories which comply with **all three** of the following conditions :

(a) They must not be excluded by the terms of Note 2 to this Section (see paragraph (A) below).

(b) They must be suitable for use solely or principally with the articles of Chapters 86 to 88 (see paragraph (B) below).

(c) They must not be more specifically included elsewhere in the Nomenclature (see paragraph (C) below).

(A) **Parts and accessories excluded by Note 2 to Section XVII.**

This Note **excludes** the following parts and accessories, whether or not they are identifiable as for the articles of this Section :

[...]

(5) **Machines and mechanical appliances, and parts thereof, of headings 84.01 to 84.79,** for example:

(d) Engines of all kinds including engines fitted with gear boxes and parts thereof, falling in headings 84.07 to 84.12.

(e) Pumps, compressors and fans (heading 84.13 or 84.14).

[...]

(C) **Parts and accessories covered more specifically elsewhere in the Nomenclature.**

Parts and accessories, even if identifiable as for the articles of this Section, are **excluded** if they are covered more specifically by another heading elsewhere in the Nomenclature[.] (Emphasis original).

* * * * *

The EN to Heading 87.08 states, in pertinent part:

This heading covers parts and accessories of the motor vehicles of headings 87.01 to 87.05, **provided** the parts and accessories fulfill **both** the following conditions:

(i) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles; and

(ii) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note).

[...]

The heading **does not cover** hydraulic or pneumatic cylinders of **heading 84.12**. (Emphasis original).

* * * * *

In ruling letter NY A85455, CBP determined that a brake master cylinder, brake wheel cylinder, and caliper piston were properly classified under subheading 8708.39.50, HTSUS (1996), which provided for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Brakes and servo-brakes and parts thereof: Other: For other vehicles." Likewise, in HQ 952719, CBP concluded that compensating valve brake master cylinders, a brake fluid reservoir, and a brake fluid reservoir mounting bracket were classified under subheading 8708.39.10, HTSUS (1993), which provided for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Brakes and servo-brakes and parts thereof: Other: For tractors suitable for agricultural use."

As an initial matter, however, this office notes that the U.S. Court of International Trade (CIT) has provided guidance concerning the classification of merchandise as "parts of motor vehicles" of heading 8708, HTSUS, and has held that a subpart of a particular automotive part should not be classified in heading 8708, HTSUS, if that subpart is more specifically provided for elsewhere in the Nomenclature. *See Mitsubishi Elec. Am., Inc. v. United States*, 19 C.I.T. 378 (1995). Specifically, the CIT in *Mitsubishi* addressed the classification of an automotive "starter drive assembly" and noted that:

> [I]f the subject merchandise is not a clutch, but rather a part of a starter motor, then it cannot be classified as a part of an automobile, even though it is used solely in automobiles. This is because a subpart of a particular part of an article is more specifically provided for as a part of the part than as a part of the whole. *Id.* at 383 n.3.

Similarly, because Note 2(e) to Section XVII, HTSUS, states that the terms "parts" and "parts and accessories" do not apply to articles classifiable in headings 8401 through 8479, HTSUS, CBP must first examine whether the articles classified in ruling letters NY A85455 and HQ 952719 are described

by the terms of headings 8401 through 8479, HTSUS. *See also* EN 87.08, HS ("[Parts and accessories of heading 87.08, HS] must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note).").

With respect to the classification of brake master cylinders, CBP observes that heading 8413, HTSUS, provides, in relevant part, for "Pumps for liquids, whether or not fitted with a measuring device." The term "pumps for liquids" is not defined in the Nomenclature; however, the ENs to heading 84.13, HS, describe the headings as covering certain "machines and appliances for raising or otherwise continuously displacing volumes of liquids." Specifically, EN 84.13(A), HS, states that the heading includes "reciprocating positive displacement pumps" that employ "linear suction or forcing action of a piston or plunger driven within a cylinder" to displace volumes of liquid.

Upon review of the physical characteristics and functions of the brake master cylinders, CBP finds that the articles are properly described as pumps of heading 8413, HTSUS, because they are displacement pumps used to pressurize hydraulic fluid within a hydraulic braking system. Pistons located inside the brake master cylinders are manually operated by movement of the brake pedal, and the linear action of the pistons forces hydraulic fluid from the brake fluid reservoir into the hydraulic lines of the brake system. Accordingly, CBP observes that the function of the brake master cylinders is akin to the description of "reciprocating positive displace pumps" provided in EN 84.13(A), HS, and therefore concludes that the brake master cylinders are properly identified as pumps of heading 8413, HTSUS, by application of GRI 1. Specifically, they are classifiable in subheading 8413.50.00, HTSUS, which provides for "Pumps for liquids, whether or not fitted with a measuring device; liquid elevators; parts thereof: Other reciprocating positive displacement pumps." *See* NY N096530, dated March 30, 2010; NY N107239, dated June 10, 2010; NY N014493, dated June 24, 2007; and NY N011979, dated June 28, 2007.

With respect to the classification of the brake fluid reservoir and brake fluid reservoir mounting bracket, this office notes that CBP has previously classified parts of brake master cylinders in subheading 8413.91, HTSUS. *See* NY N109341, dated July 6, 2010; and NY N113336, dated July 23, 2010. Pursuant to Note 2(b) to Section XVI, HTSUS, parts of pumps for liquids, if suitable for use solely or principally with a machine of heading 8413, HTSUS, are to be classified with the machines of the same heading. Consequently, because the brake fluid reservoir and brake fluid reservoir mounting bracket supply hydraulic fluid to the brake master cylinder and are suitable for use solely or principally with master brake cylinders, the reservoir and the reservoir mounting bracket are classified as "parts" of heading 8413, HTSUS, pursuant to Note 2(b) to Section XVI. Specifically, they are classified under subheading 8413.91.90, HTSUS, which provides for "Pumps for liquids, whether or not fitted with a measuring device; liquid elevators; part thereof: Parts: Of pumps: Other."

Because the brake master cylinders, brake fluid reservoir, and brake fluid reservoir mounting bracket are classified in heading 8413, HTSUS, their classification under heading 8708, HTSUS is precluded by operation of Note 2(e) to Section XVII, HTSUS.

Concerning the classification of the brake wheel cylinder, CBP observes that heading 8412, HTSUS, provides for, "Other engines and motors, and parts thereof." Specifically, the ENs to heading 84.12, HS, describe the heading as covering certain hydraulic power engines and motors, including:

> (3) **Hydraulic cylinders** consisting, for example, of a brass or steel barrel and a piston operated by oil (or other liquid) under pressure applied on one side (single-acting) or on both sides (double-acting) of the piston, the energy of the liquid under pressure being converted into a linear motion. These cylinders are used on machine-tools, construction machinery, steering mechanisms, etc. EN 84.12(B)(3), HS. (Emphasis original).
>
> * * * * *

Upon review of the physical characteristics and function of the brake wheel cylinder, CBP finds that the brake wheel cylinder features pistons operated by pressurized hydraulic fluid. When hydraulic pressure is applied to the brake wheel cylinder, the movement of the pistons converts the hydraulic pressure into mechanical force to move the vehicle's brake shoes. Accordingly, CBP observes that the brake wheel cylinder is akin in both form and function to the "hydraulic cylinder" exemplar described by the ENs to heading 84.12, HS, and is properly classified, by application of GRI 1, in heading 8412, HTSUS. Specifically, the brake wheel cylinder is classifiable in subheading 8412.21.00, HTSUS. *See* NY N091357, dated February 1, 2010.

With respect to the classification of the caliper piston, this office again notes that pursuant to Note 2(b) to Section XVI, HTSUS, parts of hydraulic power engines and motors, if suitable for use solely or principally with a machine of heading 8412, HTSUS, are to be classified with the machines of the same heading. Consequently, because the caliper piston is necessary for the proper functioning of the brake wheel cylinderand is suitable for use solely or principally within the brake wheel cylinder, the caliper piston is classified in heading 8412, HTSUS, as a part of a linear acting cylinder. Specifically, it is classified under subheading 8412.90.90, HTSUS, which provides for "Other engines and motors, and parts thereof: Parts: Other."

Because the brake wheel cylinder and caliper piston are classified in heading 8412, HTSUS, their classification under heading 8708, HTSUS is precluded by operation of Note 2(e) to Section XVII, HTSUS.

HOLDING:

By application of GRIs 1 (Note 2(a) to Section XVI) and 6, the brake master cylinders are classified under heading, 8413, HTSUS, specifically in subheading 8413.50.00, HTSUS, which provides for "Pumps for liquids, whether or not fitted with a measuring device; liquid elevators; part thereof: Other reciprocating positive displacement pumps." The column one, general rate of duty is Free.

By application of GRIs 1 (Note 2(b) to Section XVI), the brake fluid reservoir and brake fluid reservoir mounting bracket are classified under heading, 8413, HTSUS, specifically in subheading 8413.91.90, HTSUS, which provides for "Pumps for liquids, whether or not fitted with a measuring device; liquid elevators; part thereof: Parts: Of pumps: Other." The column one, general rate of duty is Free.

By application of GRIs 1 (Note 2(a) to Section XVI) and 6, the brake wheel cylinder is classified under heading, 8412, HTSUS, specifically in subheading

8412.21.00, HTSUS, which provides for "Other engines and motors, and parts thereof: Hydraulic power engines and motors: Linear acting (cylinders)." The column one, general rate of duty is Free.

By application of GRIs 1 (Note 2(b) to Section XVI), the caliper piston is classified under heading, 8412, HTSUS, specifically in subheading 8412.90.90, HTSUS, which provides for "Other engines and motors, and parts thereof: Parts: Other." The column one, general rate of duty is Free.

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

EFFECT ON OTHER RULINGS:

In accordance with the above analysis, ruling letters NY A85455, dated August 1, 1996, and HQ 952719, dated January 13, 1993, are hereby **REVOKED**.

Sincerely,

JOANNE STUMP,
Acting Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF TWO RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CLUTCH MASTER CYLINDERS AND CLUTCH SLAVE CYLINDERS

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

ACTION: Notice of proposed revocation of two ruling letters and proposed revocation of treatment relating to the tariff classification of clutch master cylinders and clutch slave cylinders.

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 two ruling letters concerning the tariff classification of clutch master cylinders and clutch slave cylinders. 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 February 19, 2016.

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, 90 K St., NE, 10th Floor, Washington, DC 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, at (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 two ruling letters pertaining to the classification of clutch master cylinders and clutch slave cylinders for motor vehicles. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letters ("NY") A86849, dated September 10, 1996 (Attachment A), and NY A85456, dated August 6, 1996 (Attachment B), this notice covers any rulings on this merchandise that may exist, but that 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 A86849 and NY A85456, CBP classified a clutch master cylinder and clutch slave cylinder for motor vehicles in subheading 8708.93.75, Harmonized Tariff Schedule of the United States (HTSUS) (1996), which provides for "Parts and accessories of the motor vehicles of heading 8701 to 8705: Other parts and accessories: Clutches and parts thereof: For other vehicles: Other."

CBP has reviewed ruling letter NY A86849 and NY A85456 and determined those letters to be in error. It is now CBP's position that the clutch master cylinder is classified in heading 8413, HTSUS, which provides for "Pumps for liquids, whether or not fitted with a measuring device; liquid elevators," and that the clutch slave cylinder is classified in heading 8412, HTSUS, which provides for "Other engines and motors, and parts thereof."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke ruling letters NY A86849 and NY A85456, 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") H195876, set forth as Attachment C 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: December 18, 2015

GREG CONNOR
for
JOANNE STUMP,
Acting Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

NY A86849
September 10, 1996
CLA-2–87:RR:NC:MA:101 A86849
CATEGORY: Classification
TARIFF NO.: 8708.93.7500

MR. SAMUEL ZEKSER, D.E.
SOBEL SHIPPING CO., INC.
170 BROADWAY
SUITE 1501
NEW YORK, NY 10038–4184

RE: The tariff classification of automotive parts from Far Eastern or European countries

DEAR MR. ZEKSER:

In your letter dated July 1, 1996 you requested a tariff classification ruling on behalf of EIS Brake Parts of Berlin, Connecticut.

The first item [Figure 1] concerned is a Clutch Master Cylinder (Part #XE150454). It is a piece of gray metal, solid on one end and with a brass-colored, extended connector on the other. It has two brass screws attached, a copper fitting on its side and a white and black, transparent liquid container on top. The item measures 9" in length X 4" in width (at its widest point) and 4«" in height.

[Figure 1]

The second item [Figure 2] is a Clutch Slave Cylinder (Part #XEW155162). It is a piece of black metal, shamrock-shaped on one end and with a soft, rubber billows coming to a gray, metal point on the other. It measures 6″L X 3¬″W, at its widest point.

[Figure 2]

The applicable subheading for the Clutch Master Cylinder [Part #XE150454] and the Clutch Slave Cylinder [Part #XEW155162] will be 8708.93.7500, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of . . . : motor vehicles . . . : Other parts and accessories: Clutches and parts thereof: For other vehicles: Other. The rate of duty will be 2.9% ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 212–466–5667.

Sincerely,

ROGER J. SILVESTRI
Director
National Commodity Specialist Division

[ATTACHMENT B]

NY A85456

August 6, 1996
CLA-2–87:RR:NC:MA:101 A85456
CATEGORY: Classification
TARIFF NO.: 8708.93.7500

MR. SAMUEL ZEKSER, D.E.
SOBEL SHIPPING CO., INC.
170 BROADWAY
SUITE 1501
NEW YORK, NY 10038–4184

RE: The tariff classification of automotive parts from Far Eastern or European countries

DEAR MR. ZEKSER:

In your letter dated July 1, 1996 you requested a tariff classification ruling on behalf of EIS Brake Parts of Berlin, Connecticut.

The first item [Figure 1] concerned is a Clutch Master Cylinder (Part #XE150454). It is a piece of gray metal, solid on one end and with a brass-colored, extended connector on the other. It has two brass screws attached, a copper fitting on its side and a white and black, transparent liquid container on top. The item measures 9" in length X 4" in width (at its widest point) and 4«" in height.

[Item pictured here]

[Figure 1]

The second item [Figure 2] is a Clutch Slave Cylinder (Part #XEW155162). It is a piece of black metal, shamrock-shaped on one end and with a soft, rubber billows coming to a gray, metal point on the other. It measures 6″L X 3¬″W, at its widest point.

[Figure 2]

The applicable subheading for the Clutch Master Cylinder [Part #XE150454] and the Clutch Slave Cylinder [Part #XEW155162] will be 8708.93.7500, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of . . . : motor vehicles . . . : Other parts and accessories: Clutches and parts thereof: For other vehicles: Other. The rate of duty will be 2.9% ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 212–466–5667.

Sincerely,

ROGER J. SILVESTRI
Director
National Commodity Specialist Division

[ATTACHMENT C]

HQ H195876
CLA-2 OT:RR:CTF:TCM H178115 LWF
CATEGORY: Classification
TARIFF NO.: 8412.21.00; 8413.50.00

MR. SAMUEL ZEKSER
SOBEL SHIPPING CO., INC.
170 BROADWAY, SUITE 1501
NEW YORK, NY 10038

RE: Revocation of New York Ruling Letters ("NY") A85456, dated August 6, 1996, and NY A86849, dated September 10, 1996; Classification of parts of clutch master cylinders and clutch slave cylinders for motor vehicles

DEAR MR. ZEKSER:

This letter is to inform you that U.S. Customs and Border Protection (CBP) has reconsidered New York Ruling Letter ("NY") A85456, dated August 6, 1996, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a clutch master cylinder and clutch slave cylinder for motor vehicles. In ruling letter NY A85456, CBP classified a clutch master cylinder and clutch slave cylinder under subheading 8708.93.75, HTSUS, which provides for, "Parts and accessories of the motor vehicles of heading 8701 to 8705: Other parts and accessories: Clutches and parts thereof: For other vehicles: Other." CBP has reviewed ruling letter NY A85456 and finds the ruling to be incorrect. Accordingly, for the reasons set forth below, CBP is revoking NY A85456.

Similarly, CBP believes that it can best meet its obligations regarding the sound administration of the HTSUS under 19 C.F.R. § 177.7(a) by reconsidering certain published rulings so that CBP does not have in force rulings that may be inconsistent with its current views. Specifically, CBP is also revoking ruling letter NY A86849, issued to you on September 10, 1996, and which concerned the classification of an identical clutch master cylinder and clutch slave cylinder under subheading 8708.93.75, HTSUS.

FACTS:

The instant merchandise is described as a clutch master cylinder and a clutch slave cylinder for a motor vehicle hydraulic clutch system. Hydraulic clutch systems use hydraulic pressure to transfer mechanical energy from a vehicle's clutch pedal to the clutch pressure plate, thereby allowing the driver of an automobile to manually disengage the rotational movement of the engine from the vehicle's transmission. The primary function of the clutch master cylinder, therefore, is to generate hydraulic pressure within the clutch system. The application of mechanical force on the clutch pedal drives pistons inside the clutch master cylinder that transfer and pressurize hydraulic fluid from the clutch master cylinder reservoir into the hydraulic lines of the clutch system. Conversely, the clutch slave cylinder converts hydraulic pressure generated by the clutch master cylinder into the mechanical energy that is ultimately used to move the clutch pressure plate.

In ruling letter NY A85456, CBP described the hydraulic clutch system parts as follows:

> The first item... concerned is a Clutch Master Cylinder (Part #XE150454). It is a piece of gray metal, solid on one end and with a

brass-colored, extended connector on the other. It has two brass screws attached, a copper fitting on its side and a white and black, transparent liquid container on top. The item measures 9" in length x 4" in width (at its widest point) and 4" in height.

The second item... is a Clutch Slave Cylinder (Part #XEW155162). It is a piece of black metal, shamrock-shaped on one end and with a soft, rubber billows coming to a gray, metal point on the other. It measures 6"L x 3"W, at its widest point.

* * * * *

ISSUE:

Whether the clutch master cylinder is classified in heading 8708, HTSUS, as parts and accessories of the motor vehicles of headings 8701 to 8705, or heading 8413, HTSUS, as pumps for liquids.

Whether the clutch slave cylinder is classified in heading 8708, HTSUS, as parts and accessories of the motor vehicles of headings 8701 to 8705, or heading 8412, HTSUS, as other engines and motors.

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 following HTSUS provisions will be referenced:

8412	Other engines and motors, and parts thereof:
8413	Pumps for liquids, whether or not fitted with a measuring device; liquid elevators; parts thereof:
8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:

* * * * *

Note 2(a) to Section XVI, HTSUS, states:

Subject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified in their respective headings;

(e) Parts which are goods included in any of the headings of chapter 84 or 85 (other than the headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

* * * * *

Note 2(e) to Section XVII, HTSUS, states, in relevant part:

The expressions "*parts*" and "*parts and accessories*" do not apply to the following articles, whether or not they are identifiable as for the goods of this section:

...

(e) Machines or apparatus of headings 8401 to 8479, or parts thereof; articles of heading 84.81 or 84.82 or, provided they constitute integral parts of engines or motors, articles of heading 84.43;

* * * * *

The Explanatory Notes to the Harmonized Commodity Description and Coding System (ENs) represent 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 ENs to heading 84.12, HS, state, in relevant part:

The heading includes reaction engines (other than turbo-jets), pneumatic power engines and motors, wind engines (windmills), spring-operated or weight-operated motors, etc., certain hydraulic power engines and motors, and certain steam or other vapour power unites.

...

(B) **HYDARULIC POWER ENGINES AND MOTORS**

This group includes:

...

(3) **Hydraulic cylinders** consisting, for example, of a brass or steel barrel and a piston operated by oil (or other liquid) under pressure applied on one side (single-acting) of the piston, the energy of the liquid under pressure being converted into a linear motion. These cylinders are used on machine-tools, construction machinery, steering mechanisms, etc.

* * * * *

The ENs to heading 84.13, HS, state, in relevant part:

The machines of this heading can be subdivided, according to their system of operation, in the following five categories.

(B) **RECIPROCATING POSTIVE DISPLACEMENT PUMPS**

These use the linear suction or forcing action of a piston or plunger driven within a cylinder, the inlet and outlet being regulated by valves. "Single-acting" pumps utilize the thrust or suction of one end of the piston only; "double-acting" types pumps at both ends of the piston thus using both the forward and reverse strokes...

* * * * *

The ENs to Section XVII, HS, state, in relevant part:

(III) PARTS AND ACCESSORIES

[...]

It should, however, be noted that [parts and accessories] headings apply **only** to those parts or accessories which comply with **all three** of the following conditions :

(a) They must not be excluded by the terms of Note 2 to this Section (see paragraph (A) below).

(b) They must be suitable for use solely or principally with the articles of Chapters 86 to 88 (see paragraph (B) below).

(c) They must not be more specifically included elsewhere in the Nomenclature (see paragraph (C) below)

(B) **Parts and accessories excluded by Note 2 to Section XVII.**

This Note **excludes** the following parts and accessories, whether or not they are identifiable as for the articles of this Section :

[...]

(5) **Machines and mechanical appliances, and parts thereof, of headings 84.01 to 84.79,** for example:

(d) Engines of all kinds including engines fitted with gear boxes and parts thereof, falling in headings 84.07 to 84.12.

(e) Pumps, compressors and fans (heading 84.13 or 84.14).

[...]

(C) **Parts and accessories covered more specifically elsewhere in the Nomenclature.**

Parts and accessories, even if identifiable as for the articles of this Section, are **excluded** if they are covered more specifically by another heading elsewhere in the Nomenclature[.] (Emphasis original).

* * * * *

The ENs to heading 87.08, HS, state, in relevant part:

This heading covers parts and accessories of the motor vehicles of headings 87.01 to 87.05, **provided** the parts and accessories fulfill **both** the following conditions:

(iii) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles; and

(iv) They must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note).

[...]

(C) Clutches (cone, plate, hydraulic, automatic, etc., but **not** the electromagnetic clutches of **heading 85.05**), clutch casings, plates and levers, and mounted linings.

[...]

(L) Control equipment, for example, steering wheels, steering columns and steering boxes, steering wheel axles; gear-change and handbrake levers; accelerator, brake and clutch pedals; connecting-rods for brakes, clutches.

[...]

The heading **does not cover** hydraulic or pneumatic cylinders of **heading 84.12**. (Emphasis original).

* * * * *

In ruling letter NY A85456 and NY A86849, CBP determined that a clutch master cylinder and clutch slave cylinder were properly classified under heading 8708, HTSUS (1996), which provides for "Parts and accessories of the motor vehicles of heading 8701 to 8705." As an initial matter, however, this office notes that the U.S. Court of International Trade (CIT) has provided guidance concerning the classification of merchandise as "parts of motor vehicles" of heading 8708, HTSUS, and has held that a subpart of a particular automotive part should not be classified in heading 8708, HTSUS, if that subpart is more specifically provided for elsewhere in the Nomenclature. *See Mitsubishi Elec. Am., Inc. v. United States*, 19 C.I.T. 378 (1995). Specifically, the CIT in *Mitsubishi* addressed the classification of an automotive "starter drive assembly" and noted that:

> [I]f the subject merchandise is not a clutch, but rather a part of a starter motor, then it cannot be classified as a part of an automobile, even though it is used solely in automobiles. This is because a subpart of a particular part of an article is more specifically provided for as a part of the part than as a part of the whole. *Id.* at 383 n.3.

Similarly, because Note 2(e) to Section XVII, HTSUS, states that the terms "parts" and "parts and accessories" do not apply to articles classifiable in headings 8401 through 8479, HTSUS, CBP must first examine whether the clutch master cylinder and clutch slave cylinder are classifiable in headings 8401 through 8479, HTSUS, before the merchandise can be classified as "parts and accessories" in heading 8708. HTSUS. *See also* EN 87.08, HS ("[Parts and accessories of heading 87.08, HS] must not be excluded by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note).").

With respect to the classification of the clutch master cylinder, CBP observes that heading 8413, HTSUS, provides, in relevant part, for "Pumps for liquids, whether or not fitted with a measuring device." The term "pumps for liquids" is not defined in the Nomenclature; however, the ENs to heading 84.13, HS, describe the headings as covering certain "machines and appliances for raising or otherwise continuously displacing volumes of liquids." Specifically, EN 84.13(A), HS, states that the heading includes "reciprocating positive displacement pumps" that employ "linear suction or forcing action of a piston or plunger driven within a cylinder" to displace volumes of liquid.

Upon review of the physical characteristics and function of the instant clutch master cylinder, CBP finds that the article is properly described as a pump of heading 8413, HTSUS, because it is a displacement pump that is used to pressurize hydraulic fluid within a hydraulic clutch system. Pistons located inside the clutch master cylinder are manually operated by movement of the clutch pedal, and the linear action of the pistons forces hydraulic fluid from the hydraulic fluid reservoir into the hydraulic lines of the clutch system. Accordingly, CBP observes that the function of the clutch master cylinder pistons to pressurize fluid within a hydraulic clutch system is akin to the description of "reciprocating positive displace pumps" provided in EN 84.13(A), HS, and therefore concludes the clutch master cylinder is properly identified as a pump of heading 8413, HTSUS. Specifically, the clutch master cylinder is classifiable, by application of GRI 1, in subheading 8413.50.00, HTSUS, which provides for, "Pumps for liquids, whether or not fitted with a measuring device; liquid elevators; parts thereof: Other reciprocating posi-

tive displacement pumps." *See* NY N096530, dated March 30, 2010; NY N107239, dated June 10, 2010; NY N014493, dated June 24, 2007; and NY N011979, dated June 28, 2007.

With respect to the classification of the clutch slave cylinder, CBP observes that heading 8412, HTSUS, provides for, "Other engines and motors, and parts thereof." Specifically, the ENs to heading 84.12, HS, describe the heading as covering certain hydraulic power engines and motors, including:

> (3) **Hydraulic cylinders** consisting, for example, of a brass or steel barrel and a piston operated by oil (or other liquid) under pressure applied on one side (single-acting) or on both sides (double-acting) of the piston, the energy of the liquid under pressure being converted into a linear motion. These cylinders are used on machine-tools, construction machinery, steering mechanisms, etc. EN 84.12(B)(3), HS. (Emphasis original).

Upon review of the physical characteristics and function of the clutch slave cylinder at issue in ruling letters NY A85456 and NY 86849, CBP finds that the slave cylinder features pistons operated by pressurized hydraulic fluid. When hydraulic pressure is applied, the movement of the pistons converts the hydraulic pressure into mechanical force to move a clutch pressure plate. Accordingly, CBP observes that the clutch slave cylinder is akin in both form and function to the "hydraulic cylinder" exemplar described in the ENs to heading 84.12, HS, and is properly classified, by application of GRI 1, in heading 8412, HTSUS. Specifically, the clutch slave cylinder is classifiable in subheading 8412.21.00, HTSUS. *See* NY N091357, dated February 1, 2010.

Because the clutch master cylinder and clutch slave cylinder are classifiable in headings 8413 and 8412, HTSUS, respectively, their classification under heading 8708, HTSUS, is precluded by operation of Note 2(e) to Section XVII, HTSUS.

HOLDING:

By application of GRIs 1 (Note 2(a) to Section XVI) and 6, the clutch master cylinder is classified under heading, 8413, HTSUS, specifically in subheading 8413.50.00, HTSUS, which provides for "Pumps for liquids, whether or not fitted with a measuring device; liquid elevators; part thereof: Other reciprocating positive displacement pumps." The column one, general rate of duty is Free.

By application of GRIs 1 (Note 2(a) to Section XVI) and 6, the clutch slave cylinder is classified under heading, 8412, HTSUS, specifically in subheading 8412.21.00, HTSUS, which provides for "Other engines and motors, and parts thereof: Hydraulic power engines and motors: Linear acting (cylinders)." The column one, general rate of duty is Free.

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

EFFECT ON OTHER RULINGS:

In accordance with the above analysis, NY A85456, dated August 6, 1996, and NY A86849, dated September 10, 1996, are hereby **REVOKED**.

Sincerely,

JOANNE STUMP,
Acting Director
Commercial and Trade Facilitation Division

PROPOSED REVOCATION OF FOUR RULING LETTERS AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF PARTS OF FRONT-DIFFERENTIAL AND REAR-DIFFERENTIAL ASSEMBLIES FOR MOTOR VEHICLES

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

ACTION: Notice of proposed revocation of four ruling letters and proposed revocation of treatment relating to the tariff classification of parts of front-differential and rear-differential assemblies for motor vehicles.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke four ruling letters concerning the tariff classification of parts of front-differential and rear-differential assemblies for motor vehicles under the Harmonized Tariff Schedule of the United States (HTSUS). 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 February 19, 2016.

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, 90 K St., NE, 10th Floor, Washington, DC 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, at (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 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 four ruling letters concerning tariff classification of parts of front-differential and rear-differential assemblies for motor vehicles under the Harmonized Tariff Schedule of the United States (HTSUS). Although in this notice, CBP is specifically referring to New York Ruling Letters (NY) N009213, dated April 10, 2007 (Attachment A), NY N009215, dated April 12, 2007 (Attachment B), NY N186430, dated September 30, 2011 (Attachment C), and NY N186432, dated September 30, 2011 (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 five 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 ruling letters NY N009213 and N009215, CBP classified certain parts of front-differential and rear-differential assemblies for motor vehicles in heading 8708, HTSUS, specifically subheading 8708.99.68, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other: Other: Other parts for power trains." It is now CBP's position that the parts of front-differential and rear-differential assemblies are properly classified, by operation of General Rules of Interpretation (GRIs) 1 and 6, in subheading 8708.50.89, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Drive-axels with differential, whether or not provided with other transmission components, and non-driving axels; parts thereof: Parts: For vehicles of heading 8703: Other: Other: Other."

In parallel with the proposed revocation of ruling letters NY N009213 and N009215, CBP believes that it can best meet its obligations regarding the sound administration of the HTSUS and other customs and related laws by proposing to also revoke ruling letters NY N186430 and N186432. *See* 19 C.F.R. § 177.7(a). In ruling letters NY N186430 and N186432, CBP reclassified the same parts of front-differential and rear-differential assemblies at issue in prior ruling letters NY N009213 and N009215 under subheading 8708.50.89, HTSUS. However, although CBP stated in ruling letters NY N186430 and N186432 that the ruling letters were being issued "to correct" previous ruling letters N009213 and N009215, CBP did not initiate a notice and comment procedure pursuant to 19 U.S.C. § 1625(c) to propose to revoke the prior ruling letters. Consequently, because CBP did not revoke ruling letters NY N009213 and N009215 pursuant to the requirements of 19 U.S.C. § 1625(c), NY N009213 and N009215 remain valid until such action is finalized.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is therefore proposing to revoke ruling letters NY N009213, N009215, N186430, and N186432 and to revoke any other ruling not specifically identified to reflect the tariff classification of certain parts of front-differential and rear-differential assemblies for motor vehicles, according to the analysis contained in the proposed Headquarters Ruling Letter (HQ)

H191698, set forth as Attachment E 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: December 18, 2015

GREG CONNOR
for
JOANNE STUMP,
Acting Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

N009213

April 10, 2007
CLA-2–87:RR:E:NC:N1:101
CATEGORY: Classification
TARIFF NO.: 8708.99.6890

LAURIE PEACH, MANAGER-CUSTOMS
AMERICAN HONDA MOTORS
1919 TORRANCE BLVD
TORRANCE, CA 90501–2722

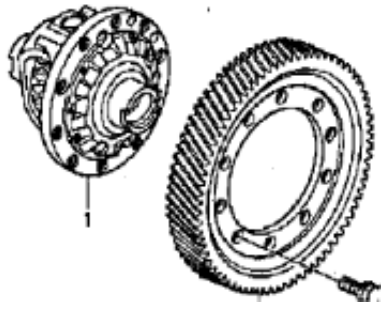
RE: The tariff classification of vehicle parts from Japan

DEAR MS. PEACH,

In your letter dated April 3, 2007, you requested a tariff classification ruling.

The items concerned are a Differential (Part # 41100-RCL-J05) and a Final Driven Gear (Part # 41233-RCL-010).

Both parts are components of a vehicle Front-Differential Unit or Assembly, which allows the tires of a vehicle to spin at different speeds when making turns.



The applicable classification subheading for the Differential (Part # 41100-RCL-J05) and a Final Driven Gear (Part # 41233-RCL-010) will be 8708.99.6890, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Parts and accessories of ... motor vehicles ... : Other parts and accessories: Other: Other: Other: Other parts for power trains: Other". The rate of duty will be 2.5%.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Richard Laman at 646–733–3017.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT B]

N009215

April 12, 2007
CLA-2–87:RR:E:NC:N1:101
CATEGORY: Classification
TARIFF NO.: 8708.99.6890

LAURIE PEACH, MANAGER-CUSTOMS
AMERICAN HONDA MOTORS
1919 TORRANCE BLVD
TORRANCE, CA 90501–2722

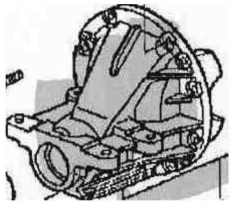
RE: The tariff classification of vehicle parts from Japan

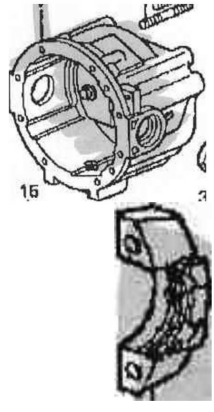
DEAR MS. PEACH,

In your letter dated April 3, 2007, you requested a tariff classification ruling.

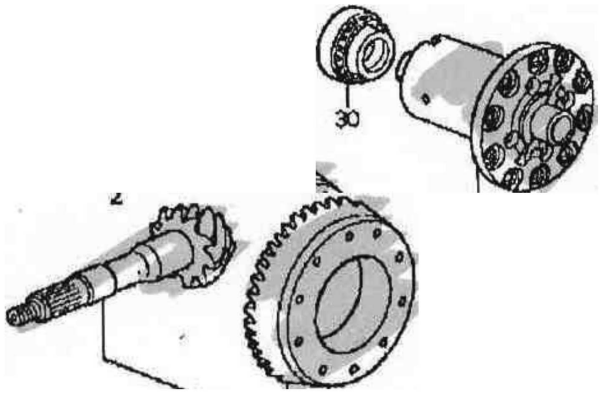
The items concerned are various parts of a rear-differential unit for rear-wheel drive vehicles which you have identified in your Ruling Request as the Differential Carrier Assembly, made up of two parts, (Part # 41120-PCZ-003 & Part # 41120-PCZ-023), Differential Case Assembly (Part # 41170-PCZ-003), Differential Assembly (Part # 41100-PCZ-003), Final Gear Set (Part # 41220-PCZ-003) and Output Shaft Assembly (Part # 40443-PCZ-003).

The Differential Carrier Assembly and the Differential Case Assembly together form the housing for the Differential Assembly.

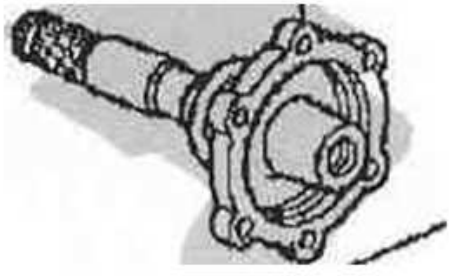




The Final Gear Set is comprised of an input drive pinion and ring gear. The input drive pinion receives rotary motive power from the propeller shaft and in turn meshes with the ring gear. The ring gear is mounted to the Differential Assembly and serves to transmit rotary motive power from the input drive pinion to the Differential Assembly.



The Differential Assembly contains gears that transmit engine power to the Output Shaft Assembly, and are arranged so as to permit the rear wheels to turn at different speeds when necessary, such as when the vehicle corners. These gears are arranged in a set ratio and can not be selected in alternative arrangements, either manually or automatically.



The applicable classification subheading for the Differential Carrier Assembly (Part # 41120-PCZ-003 & Part # 41120-PCZ-023), Differential Case Assembly (Part # 41100-PCZ-003), Differential Assembly (Part # 41100-PCZ-003), Final Gear Set (Part # 41220-PCZ-003) and Output Shaft Assembly (Part # 40443-PCZ-003) will be 8708.99.6890, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Parts ... of ... motor vehicles ... : Other parts ... : Other: Other: Other: : Other: Other parts for power trains: Other. The rate of duty will be 2.5%.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Richard Laman at 646–733–3017.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT C]

N186430
September 30, 2011
CLA-2–87:RR:NC:N1:101
CATEGORY: Classification
TARIFF NO.: 8708.50.8900

LAURIE PEACH, MANAGER-CUSTOMS
AMERICAN HONDA MOTORS
1919 TORRANCE BLVD
TORRANCE, CA 90501–2722

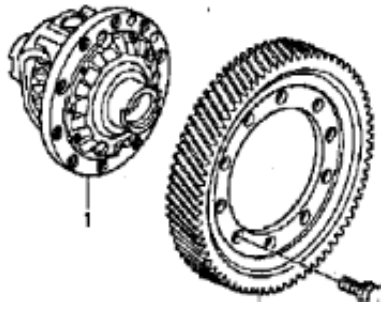
RE: The tariff classification of vehicle parts from Japan

DEAR MS. PEACH,

This ruling is being issued to correct Customs Ruling Number N009213, dated April 10, 2007. The ruling letter did not account for the pre-2007 language of the Harmonized Tariff Schedule of the United States (HTSUS) and the Explanatory Notes to the Harmonized Tariff Schedule (EN). A complete corrected ruling follows.

In your letter dated April 3, 2007, you requested a tariff classification ruling.

The items concerned are a Differential (Part # 41100-RCL-J05) and a Final Driven Gear (Part # 41233-RCL-010).



Both parts are components of a vehicle Front-Differential Unit or Assembly, which allows the tires of a vehicle to spin at different speeds when making turns.

The applicable classification subheading for the Differential (Part # 41100-RCL-J05) and a Final Driven Gear (Part # 41233-RCL-010) will be 8708.50.8900, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Parts ... of ... motor vehicles ... : Drive-axles with differential ... ; parts thereof: Drive-axles with differential ... : Parts: For vehicles [principally designed for the transport of persons]: Other: Other: Other." The rate of duty will be 2.5%.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Richard Laman at 646–733–3017.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT D]

N186432
September 30, 2011
CLA-2–87:RR:NC:N1:101
CATEGORY: Classification
TARIFF NO.: 8708.50.8900

LAURIE PEACH, MANAGER-CUSTOMS
AMERICAN HONDA MOTORS
1919 TORRANCE BLVD
TORRANCE, CA 90501–2722

RE: The tariff classification of vehicle parts from Japan

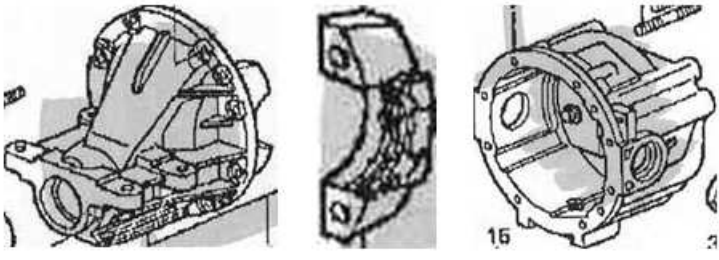
DEAR MS. PEACH,

This ruling is being issued to correct Customs Ruling Number N009215, dated April 12, 2007. The ruling letter did not account for the pre-2007 language of the Harmonized Tariff Schedule of the United States (HTSUS) and the Explanatory Notes to the Harmonized Tariff Schedule (EN). A complete corrected ruling follows.

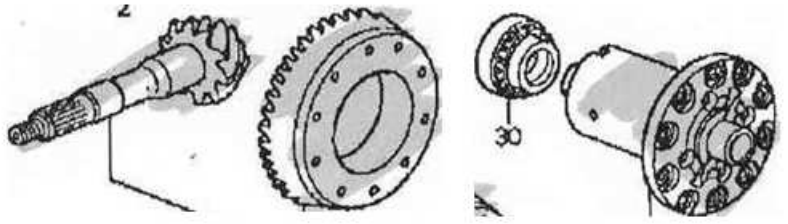
In your letter dated April 3, 2007, you requested a tariff classification ruling.

The items concerned are various parts of a rear-differential unit for rear-wheel drive vehicles which you have identified in your Ruling Request as the Differential Carrier Assembly, made up of two parts, (Part # 41120-PCZ-003 & Part # 41120-PCZ-023), Differential Case Assembly (Part # 41170-PCZ-003), Differential Assembly (Part # 41100-PCZ-003), Final Gear Set (Part # 41220-PCZ-003) and Output Shaft Assembly (Part # 40443-PCZ-003).

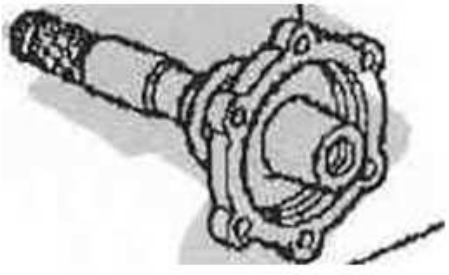
The Differential Carrier Assembly and the Differential Case Assembly together form the housing for the Differential Assembly.



The Final Gear Set is comprised of an input drive pinion and ring gear. The input drive pinion receives rotary motive power from the propeller shaft and in turn meshes with the ring gear. The ring gear is mounted to the Differential Assembly and serves to transmit rotary motive power from the input drive pinion to the Differential Assembly.



The Differential Assembly contains gears that transmit engine power to the Output Shaft Assembly, and are arranged so as to permit the rear wheels to turn at different speeds when necessary, such as when the vehicle corners. These gears are arranged in a set ratio and can not be selected in alternative arrangements, either manually or automatically.



The applicable classification subheading for the Differential Carrier Assembly (Part # 41120-PCZ-003 & Part # 41120-PCZ-023), Differential Case Assembly (Part # 41100-PCZ-003), Differential Assembly (Part # 41100-PCZ-003), Final Gear Set (Part # 41220-PCZ-003) and Output Shaft Assembly (Part # 40443-PCZ-003) will be 8708.50.8900, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Parts ... of ... motor vehicles ... : Drive-axles with differential ... ; parts thereof: Drive-axles with differential ... : Parts: For vehicles [principally designed for the transport of persons]: Other: Other: Other." The rate of duty will be 2.5%.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Richard Laman at 646–733–3017.

Sincerely,

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division

[ATTACHMENT E]

HQ H191698
CLA-2 OT:RR:CTF:TCM H191698 LWF
CATEGORY: Classification
TARIFF NO.: 8708.50.89

MS. LAURIE PEACH, MANAGER-CUSTOMS
AMERICAN HONDA MOTOR CO., INC.
1919 TORRANCE BLVD.
TORRANCE, CA 90501–2722

RE: Revocation of New York Ruling Letters (NY) N009213, N009215, N186430, and N186432; Classification of certain parts of front-differential and rear-differential assemblies for motor vehicles

DEAR MS. PEACH:

This letter is in reference to four ruling letters issued by U.S. Customs and Border Protection (CBP) to American Honda Motor Co., Inc. (Honda), concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of certain parts of front-differential and rear-differential assemblies for motor vehicles. Specifically, in New York Ruling Letters (NY) N009213, dated April 10, 2007, and N009215, dated April 12, 2007, CBP classified certain parts of front-differential and rear-differential assemblies ("differential assembly parts") in subheading 8708.99.68, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other: Other: Other parts for power trains." We have reviewed ruling letters NY N009213 and N009215 and have determined that they are incorrect and should be revoked.

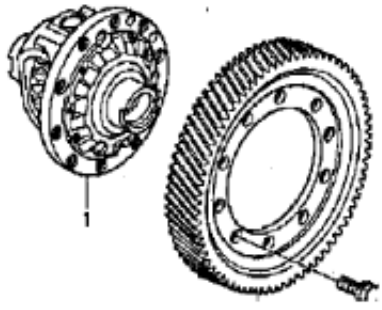
In parallel with the revocation of ruling letters NY N009213 and N009215, CBP believes that it can best meet its obligations regarding the sound administration of the HTSUS and other customs and related laws by also revoking ruling letters NY N186430 and N186432, issued to Honda on September 30, 2011. *See* 19 C.F.R. § 177.7(a). In ruling letters NY N186430 and N186432, CBP reclassified Honda's differential assembly parts under subheading 8708.50.89, HTSUS.[1] However, although CBP stated in ruling letters NY N186430 and N186432 that the ruling letters were being issued "to correct" previous ruling letters N009213 and N009215, CBP did not initiate a notice and comment procedure pursuant to 19 U.S.C. § 1625(c) to propose to revoke the prior ruling letters.

Accordingly, pursuant to 19 U.S.C. § 1625(c), CBP is revoking ruling letters NY N009213, N009215, N186430, and N186432.

[1] We note that in 2007, the scope of subheading 8708.50, HTSUS, was expanded to include a specific reference to "parts" of drive-axels with differential. As result, subheading 8708.50, HTSUS, currently provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Drive-axels with differential, whether or not provided with other transmission components, and non-driving axels; **parts thereof**" (emphasis added). Prior to the 2007 amendment, however, earlier versions of heading 8708, HTUS, provided only for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Drive-axels with differential, whether or not provided with other transmission components," without reference to parts of drive-axels with differential. *See, e.g.*, heading 8708, HTSUS (2006).

FACTS:

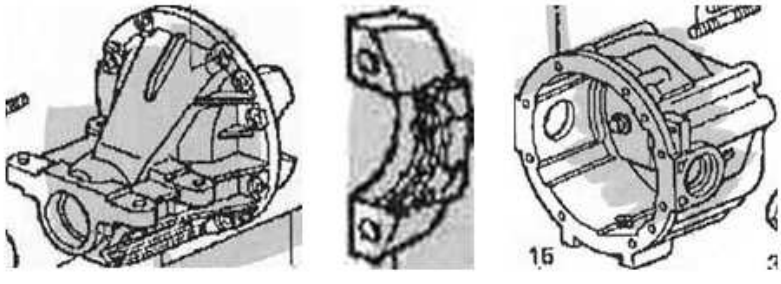
The articles classified in ruling letter NY N009213 consist of two component parts of a front-differential assembly for motor vehicles, which allow the tires of a vehicle to spin at different speeds when making turns. Specifically, CBP considered the Honda "Differential" (Part #41100-RCCL-J05) and "Final Driven Gear" (Part #41233-RCL-010) and provided the following illustration to identify the merchandise at issue:



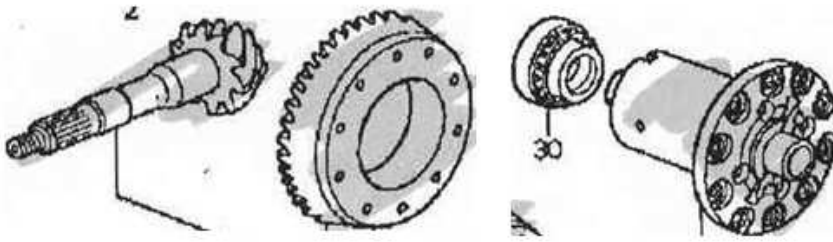
Honda "Differential" (Part #41100-RCCL-J05) and "Final Driven Gear" (Part #41233-RCL-010). See NY N009213, dated April 10, 2007.

* * * * *

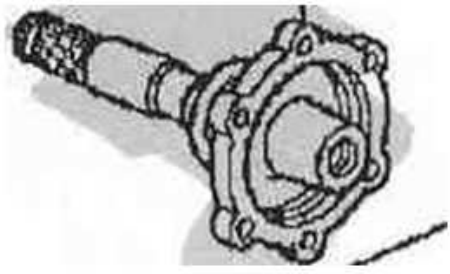
Similarly, the articles classified in ruling letter NY N009215 consist of various component parts of a rear-differential unit for rear-wheel drive motor vehicles. Specifically, CBP considered the Honda "Differential Carrier Assembly" (Part #41120-PCZ-003 and Part #41120-PCZ-023), "Differential Case Assembly (Part #41170-PCZ-003), "Differential Assembly" (Part #41100-PCZ-003), "Final Gear Set" (Part #41220-PCZ-003), and "Output Shaft Assembly" (Part #40443-PCZ-003) and provided the following illustrations to identify the merchandise at issue:



Honda "Differential Carrier Assembly" (Part #41120-PCZ-003 and Part #41120-PCZ-023), "Differential Case Assembly (Part #41170-PCZ-003), "Differential Assembly" (Part #41100-PCZ-003).



Honda "Final Gear Set" (Part #41220-PCZ-003).



Honda "Output Shaft Assembly" (Part #40443-PCZ-003). See NY N009215, dated April 12, 2007.

* * * * *

ISSUE:

Whether the parts of front-differential and rear-differential assemblies for motor vehicles are classified in heading 8708, HTSUS, specifically under subheading 8708.50, HTSUS, as parts of drive-axels with differential, whether or not provided with other transmission components, or under subheading 8708.99, HTSUS, as other parts.

LAW AND ANALYSIS:

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

GRI 1 requires that classification be determine first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order.[2]

The HTSUS provisions under consideration provide, in relevant part, as follows:

8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:
8708.50	Drive-axels with differentials, whether or not provided with other transmission components, and non-driving axels; parts thereof:
	Parts:
	For vehicles of heading 8703:
	Other:
	Other:
808.50.89	Other
...	
	Other parts and accessories:
8708.99	Other:
	Other:
	Other:
8708.99.68	Other parts for power trains

* * * * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HS and are thus useful in ascertaining the proper classification of merchandise. It is CBP's practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 87.08, HS, states, in pertinent part, as follows:

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

[2] GRI 6 states that, "For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, 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."

(E) Drive-axels, with differential; non-driving axles (front or rear); casings for differentials; sun and planet gear pinions; hubs, stub-axels (axle journals), stub-axle brackets.

* * * * *

As an initial matter, CBP notes that there is no dispute that the instant parts of front-differential and rear-differential assemblies for motor vehicles are properly classified under heading 8708, HTSUS. In accord with the Notes to Section XVII, HTSUS, the articles are suitable for use solely or principally with the motor vehicles of headings 87.01 to 87.05, HS, and are not excluded by the provisions of Note 2 to Section XVII. Accordingly, because the merchandise is *prima facie* classifiable in heading 8708, HTSUS, this matter concerns the proper classification of the merchandise at the 6-digit, subheading level of heading 8708.

Prior to the adoption of the 2007 amendments to the HS Nomenclature, subheading 8708.50, HTSUS, did not provide for parts of drive-axels with differentials[3], and it was the practice of CBP to classify such merchandise under subheading 8708.99, HTSUS, which provided for "other parts and accessories" of the motor vehicles of heading 8701 to 8705. *See, e.g.,*NY R03507, dated March 30, 2006 (classifying cast iron automotive carrier assemblies under subheading 8708.99, HTSUS); *and* HQ 965369, dated May 9, 2002 (classifying differential carriers under subheading 8708.99, HTSUS).

However, as result of amendments to the subheadings of heading 87.08, HS, adopted by the World Customs Organization (WCO) in the 2007 edition of the HS Nomenclature, the U.S. International Trade Commission (ITC) amended subheading 8708.50, HTSUS, with respect to the classification of parts of drive-axels with differentials and non-driving axels. Accordingly, the current version of subheading 8708.50, HTSUS, provides, in pertinent part, for "drive-axels with differentials, whether or not provided with other transmission components, and non-driving axels; **parts thereof**" (emphasis added).

The Honda "Differential" (Part #41100-RCCL-J05), "Final Driven Gear" (Part #41233-RCL-010), "Differential Carrier Assembly" (Part #41120-PCZ-003 and Part #41120-PCZ-023), "Differential Case Assembly (Part #41170-PCZ-003), "Differential Assembly" (Part #41100-PCZ-003), "Final Gear Set" (Part #41220-PCZ-003), and "Output Shaft Assembly" (Part #40443-PCZ-003) are component parts of differential assemblies for motor vehicles. Insomuch as they are suitable for use solely or principally with the motor vehicles of headings 87.01 to 87.05, HS, they are *prima facie* described by the terms of subheading 8708.50, HTSUS, as parts of drive-axels with differentials, whether or not provided with other transmission components. *See* EN 87.08(E), HS. Specifically, they are classified in subheading 8708.50.89, HTSUS, by application of GRI 1.

[3] The 2006 edition of subheading 8708.50, HTSUS, provided, in relevant part, for "Drive axels with differential, whether or not provided with other transmission components," but did not include a provision for "parts thereof."

HOLDING:

By application of GRI 1, the Honda "Differential" (Part #41100-RCCL-J05), "Final Driven Gear" (Part #41233-RCL-010), "Differential Carrier Assembly" (Part #41120-PCZ-003 and Part #41120-PCZ-023), "Differential Case Assembly (Part #41170-PCZ-003), "Differential Assembly" (Part #41100-PCZ-003), "Final Gear Set" (Part #41220-PCZ-003), and "Output Shaft Assembly" (Part #40443-PCZ-003) are classified in heading 8708, HTSUS, specifically in subheading 8708.50.89, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Drive-axels with differentials, whether or not provided with other transmission components, and non-driving axels; parts thereof: Parts: For vehicles of heading 8703: Other: Other: Other." The 2015 column one, general rate of duty is 2.5% *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 *http://hts.usitc.gov*.

EFFECT ON OTHER RULINGS:

Ruling letters NY N009213, dated April 10, 2007; NY N009215, dated April 12, 2007; NY N186430, dated September 30, 2011; and NY N186432, dated September 30, 2011, are hereby **REVOKED** in accordance with the above analysis.

Sincerely,

JOANNE STUMP,
Acting Director
Commercial and Trade Facilitation Division

U.S. Court of Appeals for the Federal Circuit

FORD MOTOR COMPANY, Plaintiff-Appellant v. UNITED STATES, Defendant-Appellee

Appeal No. 2014–1581

Appeal from the United States Court of International Trade in No. 1:03-cv-00115-JMB, Senior Judge Judith M. Barzilay.

Dated: January 6, 2016

Stephanie A. Douglas, Bush Seyferth & Paige, PLLC, Troy, MI, argued for plaintiff-appellant. Also represented by Ned H. Marshak, Joseph Martin Spraragen, Robert B. Silverman, Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP, New York, NY.

Edward Francis Kenny, International Trade Field Office, Commercial Litigation Branch, Civil Division, United States Department of Justice, New York, NY, argued for defendant-appellee. Also represented by Joyce R. Branda, Jeanne E. Davidson, Amy M. Rubin.

Before Prost, Chief Judge, Lourie and Reyna, Circuit Judges.

Opinion for the court filed by Chief Judge Prost.

Dissenting opinion filed by Circuit Judge Reyna.

PROST, Chief Judge.

This appeal concerns Customs and Border Protection's ("Customs") decision to treat Ford Motor Company's ("Ford") duty refund claims under the North American Free Trade Agreement ("NAFTA") differently depending on whether those claims were filed traditionally or through an electronic process known as "reconciliation." We previously remanded this long-running dispute to the Trade Court for a narrow inquiry: whether there is a reasonable explanation for Customs' decision to treat the claims differently. *Ford Motor Co. v. United States*, 715 F.3d 906, 917 (Fed. Cir. 2013) ("*Ford IV*"). On remand, Customs first explained that traditional refund claims and reconciliation claims are governed by different implementing statutes; thus, Customs was not inconsistent in its treatment of identical claims. Second, Customs noted that even if both types of claims were governed by the same statute, procedural differences among traditional and reconciliation claims justify treating the claims differently. The Court of International Trade ("Trade Court") found Customs' explanation reasonable. For the reasons stated below, we affirm.

BACKGROUND

We provided a detailed explanation of the background of this case in *Ford IV.* 715 F.3d at 908–12. Thus, we only briefly recite the pertinent facts here. Ford imported automotive goods into the United States and paid the duties on them. Ford later claimed NAFTA preference on those imports and filed for refund of the duties it paid under 19 U.S.C. § 1520(d). The parties agreed to rely on one entry as the test case: a June 27, 1997 entry via Detroit. Under § 1520(d)'s default procedures implemented by 19 C.F.R. § 181.22, Ford was required to file the certificates of origin within one year of importation. But Ford did not file the certificate of origin until November 5,1998, beyond the one-year filing deadline. Ford was also unable to secure the port director's written waiver for the certificates under 19 C.F.R. § 181.22(d)(1)(i). Customs denied Ford's claim, stating that the "Certificate of Origin was not furnished within one year of the date of importation." J.A. 224. Ford filed a protest to contest the denial, and Customs denied the protest on the same grounds.

In *Ford IV*, Ford contended that Customs had an affirmative obligation under its own regulation to accept Ford's untimely filing of the certificates. We rejected that argument. *Ford IV*, 715 F.3d at 915. Ford's only remaining contention was that Customs' refusal to grant Ford a waiver for the certificates was arbitrary and capricious based on Customs' waiver of the filing requirement in a separate reconciliation program. Ford argued that its traditional refund claims, although not processed through the reconciliation program, should nevertheless enjoy the same waiver benefit available through that program. *Id*. Previously, the Trade Court did not explore Customs' authority and reasoning for waiving the certificate filing requirement under the reconciliation program because Ford's claims at issue were not processed through that program. *Id*. We remanded to the Trade Court to conduct this limited inquiry. *Id.* at 917.

On remand, Customs explained that the reconciliation program, authorized by 19 U.S.C. § 1484(b), is a procedural means for processing import entries. *Ford Motor Co. v. United States*, 978 F. Supp. 2d 1350, 1353–54 (Ct. Int'l Trade 2014) ("*Ford V*"). Among the features of the reconciliation program is an ability to claim the substantive duty refund benefit under § 1520(d). *Id*. Customs explained that the reconciliation program has "a set of statutory safeguards that permit Customs to remedy mistakes and misconduct in awarding duty free treatment under NAFTA." *Id*. at 1356–57. Many of the reconciliation program's statutory safeguards are not available in the traditional post-entry duty refund process. *Id*. at 1356. The Trade Court noted that the reconciliation program provides Customs an added level of

confidence in the legitimacy of the importer's claims. *See id*. at 1358 ("The record keeping requirements and auditing procedures give Customs well-defined procedures for ensuring the correctness of entries made through the fully automated Reconciliation Program."). Under *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc*., 467 U.S. 837 (1984), the Trade Court concluded that Customs' interpretation of the statutory scheme entrusted to its administration was reasonable. *Ford V*, 978 F. Supp. 2d at 1352, 1359.

DISCUSSION

We review legal conclusions from Customs and the Trade Court de novo, *Universal Electronics Inc. v. United States*, 112 F.3d 488, 493 (Fed. Cir. 1997), subject to any deference owed to Customs' statutory interpretations, *Princess Cruises, Inc. v. United States*, 201 F.3d 1352, 1357 (Fed. Cir. 2000). We similarly review law of the case de novo. *See Laitram Corp. v NEC Corp.*, 115 F.3d 947, 950 (Fed. Cir. 1997).

When Congress has "explicitly left a gap for an agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation, and any ensuing regulation is binding in the courts unless procedurally defective, arbitrary or capricious in substance, or manifestly contrary to the statute." *United States v. Mead Corp*., 533 U.S. 218, 227 (2001) (citing *Chevron*, 467 U.S. at 843–44). "If a statute is ambiguous, and if the implementing agency's construction is reasonable, *Chevron* requires a federal court to accept the agency's construction of the statute, even if the agency's reading differs from what the court believes is the best statutory interpretation." *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 980 (2005) (citing *Chevron*, 467 U.S. at 843–44).

On appeal, Ford contends that Customs' remand explanation violates the law of the case and that it is not reasonable. We address each contention in turn.

A. Law of the Case

Ford argues that this court held in the prior appeals of this case that a single statute, 19 U.S.C. § 1520(d),codifies NAFTA's post-entry duty refund claims process. Ford therefore insists that Customs' remand explanation implicating a different statute violates the law of the case. We disagree.

In our prior decisions, we merely explained that § 1520(d) implements the post-entry duty refund allowed by a particular NAFTA article. *See Ford Motor Co. v. United States*, 635 F.3d 550, 552 (Fed.

Cir. 2011) ("*Ford II*"). We did not, however, state that it was the only statutory provision that implements the duty refund process. "The law of the case doctrine is limited to issues that were actually decided, either explicitly or by necessary implication, in the earlier litigation." *See Toro Co. v. White Consol. Indus., Inc.*, 383 F.3d 1326, 1335 (Fed. Cir. 2004). Because our prior decisions did not decide that NAFTA's post-entry duty refund claims process is exclusively governed by § 1520(d), Ford's contention based on the law of the case is incorrect.

B. Reasonableness of Customs' Remand Explanation

Ford argues that the Trade Court erred in both affording *Chevron* deference to Customs' remand explanation and in finding the explanation reasonable. We disagree on both counts.

1. Trade Court Correctly Applied *Chevron* Deference

Ford argues that Customs' remand explanation "conflict[s] with the law of the case, Customs' published interpretation of the Reconciliation Program, the relevant statutes, and the NAFTA treaty itself." Appellant's Br. 16. Ford relies on *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 212 (1988), for the proposition that there is no deference "to agency litigating positions that are wholly unsupported by regulations, rulings, or administrative practice." Appellant's Br. 17. Ford therefore concludes that "no deference is owed to Customs' incorrect interpretation of the NAFTA, § 1520(d), and the Reconciliation Program." *Id*. at 17.

The premise for all of Ford's alleged "conflicts" is that § 1520(d) is the exclusive authority for NAFTA's post-entry duty refund claims process and that a variety of legal and regulatory authorities have repeatedly said so. *See id*. at 29–30 ("NAFTA post-entry refund claims submitted through the Reconciliation Program are subject to all requirements of § 1520(d)—including its one-year filing deadline. . . . In sum, in nearly every published reference to NAFTA reconciliation, Customs includes a citation to § 1520(d)."). But Ford's contentions are based on a misreading of those legal and regulatory authorities.

It is true that those authorities mention § 1520(d) in discussing the reconciliation program's feature for claiming post-entry duty refunds. But those authorities do not state that § 1520(d) exclusively governs the procedure for claiming refunds through the reconciliation program, including the ability to obtain a waiver of certificates of origin. Rather, § 1520(d) explicitly delegates authority to Customs to prescribe regulations to govern the refund claims process. 19 U.S.C. § 1520(d). Customs exercised that authority by promulgating 19 C.F.R. § 181.22 to govern the traditionally filed duty refund claims process.

Similarly, Customs was duly authorized by 19 U.S.C. § 1484(b) to implement the reconciliation program, a procedural means for processing import entries. Customs has interpreted the various statutes as creating two separate frameworks: one governs Customs' waiver authority with respect to traditionally filed claims, and the other prescribes the particular process of waiver with respect to reconciliation-based claims. That interpretation is not inconsistent with relevant statutes, regulations, or administrative practices.

The dissent disagrees and concludes that "*Chevron* deference does not apply to Customs' remand explanation." Dissent at 11. It argues that Customs' present reliance on § 1484(b) during judicial review is contrary to its focus on § 1520(d) during the administrative process. *Id*. (emphasizing Customs' notice in the Federal Register that reconciliation is a "vehicle by which refunds and certificate of origin waivers are granted under § 1520(d)"); *id*. at 13 ("'Congress has delegated to the administrative official and not to appellate counsel the responsibility for elaborating and enforcing statutory commands.'" (quoting *Bowen*, 488 U.S. at 213)). Accordingly, the dissent dismisses Customs' explanation as merely a "convenient litigation position" not entitled to *Chevron* deference. *Id*. (internal quotation marks omitted).

The dissent's fault-finding is misplaced. In *Bowen*, the agency's litigation position was contrary to the agency's past implementation of the particular statutory provision governing the disputed claims. 488 U.S. at 212– 13; *see also id*. at 209, 211. The context here is far different. First, Ford's import entries at issue were not processed through the reconciliation program. *See Ford IV*, 715 F.3d at 915 ("It is undisputed that Ford's request for a refund of duties paid on the Entry was not made through the reconciliation program."). Indeed, the controversy over the reconciliation program was initially determined by the Trade Court to be irrelevant. *Id.* at 912 (noting that the Trade Court dismissed Ford's reconciliation program argument in a footnote, stating that Ford's "entries were not subject to the program and the court's inquiry must focus on the statutory and regulatory scheme which governed [Ford's] entries" (alteration in original) (internal quotation marks omitted)). Customs thus had no reason to address the argument that it was treating traditionally filed claims differently from those made under the reconciliation program until we specifically remanded to the Trade Court to make that determination in *Ford IV. Id.* at 916 (noting that, given the procedural history of the case, "it is not surprising that the record provides no explanation for Customs' divergent approaches to exercising its § 1520(d) waiver power" and remanding to the Trade Court to consider whether "there is a reasonable explanation for treating traditional § 1520(d)

claims differently than § 1520(d) claims made under the reconciliation program"). Because the reconciliation program was not previously material to the administrative adjudication of Ford's claims, Customs' remand explanation regarding § 1484(b) is not merely a "litigation position."

Second, there is no allegation that Customs had extended the reconciliation program's certificate filing waiver to other traditional tariff refund claims but refused to do the same for Ford's traditional refund claims at issue. The dissent's and Ford's reliance on *Bowen* is therefore misplaced and the Trade Court was correct to apply *Chevron* deference in reviewing Customs' remand explanation.

2. Customs' Remand Explanation is Reasonable

Customs justifies the reconciliation program's certificate filing waiver based on numerous procedural safeguards not available in the traditional claims process. *Ford V*, 978 F. Supp. 2d at 1356–57. Indeed, it is undisputed that the reconciliation program has additional safeguards, such as the requirement for importers to post a continuous bond. That alone is a reasonable explanation for the difference in treatment between traditional claims and reconciliation-based claims.

The dissent dismisses that explanation by citing the availability of other enforcement tools common to both processes. The fact that both processes have some of the same safeguards does not, however, negate the added protection that the additional safeguards provide under the reconciliation program. And, as stated above, there is no dispute that the reconciliation program's requirement of a continuous bond provides an additional protection for Customs against improper tariff refund claims.

We are satisfied with Customs' explanation that the differences between the reconciliation program and the traditional post-entry duty refund process warrant different filing requirements. We therefore agree with the Trade Court that Customs' remand explanation is reasonable. Having satisfied our mandate in *Ford IV*, our inquiry goes no further.

CONCLUSION

Customs' remand explanation provides a reasonable explanation for the different filing requirements in the traditional post-entry duty refund process and in claiming duty refund through the reconciliation program.

AFFIRMED

FORD MOTOR COMPANY, PLAINTIFF-APPELLANT v. UNITED STATES, DEFENDANT-APPELLEE

Appeal No. 2014–1581

Appeal from the United States Court of International Trade in No. 1:03-cv-00115-JMB, Senior Judge Judith M. Barzilay.

Reyna, Circuit Judge, dissenting.

I find no principled explanation for Customs' decision in this case to treat duty refund claims under NAFTA differently depending on whether those claims were filed traditionally or through an electronic process known as "reconciliation." I dissent.

BACKGROUND

The fundamental purpose of NAFTA is to provide preferential trade treatment to goods and services that originate within the NAFTA region. Central to NAFTA's purpose is the "certificate of origin." The certificate of origin is a document certifying that goods originate in the NAFTA region and hence qualify for preferential tariff treatment. North American Free Trade Agreement, Can. Mex.-U.S., art. 501(1), Dec. 17, 1992, 32 I.L.M. 289, 358(1993). An importer may claim preferential tariff treatment at importation or may later claim a refund under 19

U.S.C. § 1520(d) for excess duties paid at entry. *Id.* arts. 502(1), 502(3), 32 I.L.M. at 358 (implemented by § 1520(d)). Either claim requires a valid certificate of origin, unless the importation does not exceed a certain value, *id.* art. 503(a), (b), 35 I.L.M. at 358–59, or the importing country has "waived the requirement for a Certificate of Origin," *id.* art. 503(c), 35 I.L.M. at 359. Customs waives the certificate of origin for § 1520(d) refund claims in two contexts.

First, for "traditional" refund claims, Customs follows 19 C.F.R. § 181.22. Section 181.22(d) reflects the NAFTA certificate of origin exceptions set out in NAFTA Article 503 with some variation. The regulation provides that a certificate of origin is not required for non-commercial importation of goods, *id.* § 181.22(d)(1)(ii), commercial importation of goods whose value does not exceed $2,500(provided an interested party certifies the goods as originating goods or Customs waives this requirement), *id.*§ 181.22(d)(iii), and importation of goods for which Customs has waived the certificate of origin requirement, *id.* § 181.22(d)(1)(i). Customs waives "possession" of the certificate of origin under § 181.22(d)(1)(i) on a case-by case basis.

Second, for refund claims filed electronically through the Automated Commercial System (ACS) Reconciliation Prototype, Customs published a notice in the Federal Register indicating that Customs

would waive "presentation" of the certificate of origin for any importer who participates in the reconciliation program, "but the filer must retain [the certificate], which shall be provided to Customs upon request." Revised National Customs Automation Program Test Regarding Reconciliation, 63 Fed. Reg. 6257, 6259 (Feb. 6, 1998) (replacing notice published Feb. 6, 1997). This dispute arises from Customs' decision to waive the requirement for Ford to present certificates of origin for refund claims filed through reconciliation but not to waive the requirement for similar claims filed traditionally.

A. Factual History

Upon NAFTA's entry into effect, certificates of origin created difficulty for the respective Customs authorities of the contracting Parties, particularly in the automotive sector. Ford struggled to generate certificates in time to claim preferential tariff treatment at entry. In brief, the large number of suppliers and significantly large number of parts and components sourced around the world made it difficult for importers to acquire certificates, especially within NAFTA's time frames. As a result, Ford paid duties on originating goods at entry and filed traditional § 1520(d) refund claims when the certificates of origin for those entries became available. Due to increased NAFTA trade, Customs had difficulty processing the high volume of claims, and the lack of a paperless process for submitting certificates compounded the problem.

Reconciliation was designed to alleviate growing complexities in processing international trade, including problems associated with traditional § 1520(d) refund claims. Reconciliation allows importers to file entry summaries using the best available information and electronically "flag" indeterminable information, with the understanding that the importer will provide Customs the information at a later date. J.A. 45 (ACS Reconciliation Prototype: A Guide to Compliance (Sept. 2004)). When information becomes available, the importer files a new entry providing Customs with the information necessary to correct the original entry summary and adjust duties owed by the importer. Ford and other importers worked with Customs to develop Reconciliation in the years following NAFTA's effective date. Reconciliation took effect on October 1, 1998, and Customs extended the program indefinitely beginning October 1, 2000.

Before reconciliation was fully operational, Ford worked with local ports of entry to develop interim reconciliation for processing electronically submitted § 1520(d)refund claims. As Customs acknowledged during development of reconciliation, these "local, informal versions of 'reconciliation' were problematic because they varied a

great deal from place to place." J.A. 43. Ford nevertheless found success with interim reconciliation at several ports of entry. Some ports of entry allowed Ford to electronically file § 1520(d) refund claims without certificates of origin, given that Customs could not yet accommodate electronically filed certificates, even for claims that were otherwise filed electronically.

While Ford succeeded with interim reconciliation at some ports of entry, Ford met resistance at the Detroit port of entry. Anticipating difficulty with electronically filing certificates of origin, Ford wrote a letter dated July 16, 1996, to the (Customs) Detroit Port Director requesting permission to submit CD-ROM disks including certificate of origin data associated with electronically filed§ 1520(d) refund claims. The Detroit Port Director took Ford's request under advisement but did not formally respond until April 10, 1998.

In the interim, Ford imported automobile parts from Canada into the United States through the Port of Detroit as usual. Because Ford did not yet have certificates of origin, Ford did not claim preferential tariff treatment at the time of importation and instead paid non-preferential duties as prescribed by the applicable provisions of the Harmonized Tariff Schedule of the United States. Ford later submitted more than 600 refund claims under § 1520(d) through the Electronic Protest Module of Customs' Automated Commercial System ("ACS"). Because the Customs protest module could not accept paper documents such as copies of certificates of origin, Ford submitted refund claims without certificates, in accordance with interim reconciliation processes Ford had developed at other ports.

After Ford had submitted hundreds of § 1520(d) claims without certificates, the Detroit Port Director responded to Ford's request to provide certificates of origin on CD-ROM disks, which by now was close to two years old, through two letters dated April 10, 1998. In one letter, the Port Director permitted Ford to file § 1520(d) claims on a CD-ROM disk, yet required Ford to "supply the paper documentation required by the regulations." J.A. 162. In another letter, the Port Director acknowledged "some confusion" surrounding Ford's § 1520(d) claims filed without certificates of origin and requested the missing certificates within 60 days. *Id.* at 163.

In response to the Port Director's request, Ford attempted to work with the Port of Detroit to find an efficient process for submitting the certificates of origin. Ford proposed electronically filing the certificates, but the Port of Detroit rejected the proposal, stating that "no electronic format for receiving [certificates of origin] has been ap-

proved." J.A. 172. On June 12, 1998, Customs Headquarters informed Ford that its request to electronically file the missing certificates had been officially denied.

Negotiations having failed, Ford complied with the Port Director's request by submitting hard copies of the certificates during the period of August 11, 1998, to December 4, 1998. Despite Ford's submissions, on June 4, 1999, the Port of Detroit informed Ford that its § 1520(d)refund claims were being denied because, while the § 1520(d) claims were timely filed within one year of importation, the certificates of origin were not, and thus the claims were untimely.

Though hundreds of Ford's § 1520(d) claims were affected, the parties agree to use a single representative entry.[1] The representative automobile parts entered the United States from Canada on June 27, 1997. As with other entries, Ford did not claim preferential treatment at importation but instead filed a § 1520(d) refund claim(without certificates of origin) on May 13, 1998, less than one year after the date of importation. Ford submitted the certificates on November 5, 1998, over a year after importation. Customs denied Ford's claim, stating that the "Certificate of Origin was not furnished within one year of the date of importation." J.A. 224. Ford filed a protest to contest the denial, and Customs denied the protest on the same grounds.

At around the time Ford sought review by Customs of the representative entry, Ford had pending protests of denied § 1520(d) claims filed through reconciliation. Customs ruled in Ford's favor on each of these protests, reasoning that "there is no apparent dispute that the importations at issue met the substantive criteria for eligibility for NAFTA preference." J.A. 226. Customs acknowledged "the fact that Customs liquidated certain claims with preference under these same facts creates the risk that Ford's claim of treatment [in this case] might be accepted by a court." *Id.* For the representative entry, however, Customs did not waive the one-year certificate of origin requirement, as it had done for contemporaneous reconciliation claims.

B. Procedural History

Ford sought review of Customs' decision to deny its refund claim for the representative entry in the Trade Court. *Ford Motor Co. v. United States*, 32 I.T.R.D. 1103 (Ct. Int'l Trade 2010), *available at* 2010 WL 98699. The Trade Court dismissed Ford's complaint for lack of subject matter jurisdiction, reasoning that a certificate of origin is an element of a § 1520(d) refund claim that must be filed within one year of

[1] Entry No. 231–2787386–9.

importation. *Id.* at *2 (citation omitted). The Trade Court explained that by not filing the certificate of origin within one year of importation, Ford had not met § 1520(d)'s requirements. *Id.* Customs in turn had not reached a "decision" on Ford's protest sufficient for Trade Court jurisdiction under 28 U.S.C. § 1581(a), because a "decision" under § 1581(a) requires "a claim filed in accordance with law." *Id.*

This court reversed. *Ford II*, 635 F.3d at 558. The court explained that § 1520(d) is not a jurisdiction-granting provision because Congress "has not clearly labeled § 1520(d)'s timely certificate filing requirement as 'jurisdictional.'" *Id.* at 557. "[S]o long as notice of a party's § 1520(d) claim is timely filed within one year of importation, failure to adhere to § 1520(d)'s formalities . . . will not deprive the Trade Court of jurisdiction to hear the case." *Id.* The court predicated its holding on Customs' authority under § 1520(d) to waive the certificate of origin, noting that while § 1520(d) does not expressly mention certificate of origin waiver, "it is obvious that § 1520(d) was designed in part to permit the implementation of [NAFTA] Article 503(c)'s waiver authority." *Id.* at 555.

On remand, the Trade Court upheld the merits of Customs' decision, reasoning that § 1520(d) and implementing regulations "require importers to file within one year of importation copies of applicable certificates of origin." *Ford Motor Co. v. United States*, 800 F. Supp. 2d 1349, 1352 (Ct. Int'l Trade 2011). Ford argued that Customs improperly treated traditional claims filed under § 1520(d) differently than claims filed through reconciliation, waiving the one-year certificate of origin requirement for reconciliation claims but refusing to do so for traditional § 1520(d) claims. The Trade Court dismissed the argument, stating that Ford's "entries were not subject to the [reconciliation] program and the court's inquiry must focus on the statutory and regulatory scheme which governed [Ford's] entries." *Id.* at 1352–53 n.5.

This court vacated the Trade Court's decision. *Ford IV*, 715 F.3d at 917. The court held that Customs may deny a § 1520(d) claim if certificates of origin have not been filed within one year of importation, "and the requirement to file them has not been waived." *Id.* at 913. In contrast to the Trade Court's reasoning, however, the court found reconciliation relevant to Customs' denial of Ford's claims because "the record reflects that Customs has approved Ford's post-entry requests for refunds made through the reconciliation program when Ford did not submit the related [certificates of origin] within one year." *Id.* at 915. Accordingly, the *Ford IV* court remanded this case to the Trade Court to determine "whether there is a reasonable explanation for treating traditional § 1520(d)claims differently than §

1520(d) claims made under the reconciliation program." *Id.* at 917. On remand, the Trade Court ordered Customs to explain why it treated Ford's § 1520(d) claims differently depending on the manner in which Ford filed the claim. Customs explained that this court's inquiry "appears to be based upon the incorrect assumption that Customs' authority to waive presentation of the [certificate of origin] . . . stems solely from the NAFTA and 19 U.S.C. § 1520(d)." J.A. 302 (Remand Report). Customs argued that it had authority to waive the certificate of origin under a "wholly different set of statutes, namely, 19 U.S.C. §§ 1401(s), 1484, 1508, and 1509, which govern the reconciliation process." *Id.* Customs thus contended that its inconsistent treatment of Ford's refund claims "is not the result of two different interpretations of § 1520(d)." *Id.* Customs explained further that it was justified in granting blanket certificate of origin waivers for reconciliation claims and not doing the same for traditional refund claims because the reconciliation statutes, unlike § 1520(d) and associated regulations, "provide strong remedies to Customs should it later discover that the claimed goods are not entitled to NAFTA [preference]." *Id.* at 307–08.

After reviewing Customs' explanation, the Trade Court again upheld Customs' decision to deny Ford's refund claim. *Ford Motor Co. v. United States*, 978 F. Supp. 2d 1350 (Ct. Int'l Trade 2011). According to the Trade Court, Customs' statutory interpretation warrants deference because Customs' explanation involved the "interpretation of the statutory scheme [Customs] is entrusted to administer." *Id.* at 1352 (citing *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). The Trade Court found that Customs reasonably concluded that waiver for reconciliation claims is governed by statutory safeguards that are inapplicable to waiver for traditional § 1520(d) claims. *Id.*at 1357–59. Ford timely appealed, challenging both the Trade Court's authority to accept Customs' remand explanation under law of the case and this court's prior mandates, in addition to the merits of Customs' explanation.

DISCUSSION

This court reviews legal conclusions from Customs and the Trade Court de novo, *Universal Elecs. Inc. v. United States*, 112 F.3d 488, 493 (Fed. Cir. 1997), subject to any deference owed to Customs' statutory interpretations, *Princess Cruises, Inc. v. United States*, 201 F.3d 1352, 1357 (Fed. Cir. 2000). For the reasons explained below, I would find that no deference is due and therefore review the statutes de novo. *See id.* ("Statutory interpretation by the Court of International Trade . . . is . . .reviewed de novo.").

Customs' remand explanation includes two distinct arguments. First, Customs argues that its authority to waive certificates of origin stems from two separate statutory schemes. As a result, Customs stresses that it is not interpreting the same statute differently and thus need not offer a reasonable explanation for treating Ford's claims differently. Second, Customs argues that the *process* governing refund claims differs depending on whether a refund claim is filed traditionally or through reconciliation. Customs' second argument is consistent with the notion that even if waiver authority stems solely from § 1520(d), the difference between the regulatory process governing the two different types of refund claims provides a reasonable explanation for Customs' different treatment of waiver authority granted by the same statute, § 1520(d). *See Ford*, 978 F. Supp. 2d at 1358–59 ("Although § 1520(d) may establish Customs' waiver authority in general, it does not control the actual process of waiver with respect to reconciliation-based claims.").Neither argument is persuasive.

A. Statutory Authority to Waive Certificates of Origin

i. Deference

The majority opinion states that "the Trade Court was correct to apply *Chevron* deference in reviewing Customs' remand explanations." Maj. Op. at 8. A court reviewing an agency's interpretation of a statute it is entrusted to administer applies *Chevron* deference if the "agency interpretation claiming deference was promulgated in the exercise of [Congressionally delegated] authority." *United States v. Mead Corp.*, 533 U.S. 218, 227 (2001). An agency may exercise Congressionally delegated authority through adjudication, notice-and-comment rule making, or through some other "legislative type of activity" indicative of "comparable congressional intent." *Id.* at 227, 232.

Ford argues that no deference is due because Customs' remand explanation is "far removed not only from [the] notice-and-comment process, but from any other circumstances reasonably suggesting that Congress ever thought of . . . deserving [ ] deference." Appellant's Br. at 16 (quoting *Mead*, 533 U.S. at 231). Customs repeats the Trade Court's rationale that Customs' interpretation is reasonable under *Chevron*. Yet Customs fails to explain why its remand explanation should be afforded *Chevron* deference at all.

I would find that *Chevron* deference does not apply to Customs' remand explanation. Customs does not identify any instance in which it officially interpreted its authority to waive certificates of origin for

refund claims as stemming from reconciliation statutes. To the contrary, Customs' publications suggest that reconciliation is a vehicle by which refunds and certificate of origin waivers are granted under § 1520(d). *See, e.g.*, Modification of National Customs Automation Program Test Regarding Reconciliation, 62 Fed. Reg. 51,181, 51,182 (Sept. 30, 1997) (characterizing reconciliation as a "*vehicle to file* post-importation refunds claims *under 19 U.S.C. § 1520(d)*") (emphases added). *See also*, *e.g.*, Modification and Clarification of Procedures of the National Customs Automation Program Test Regarding Reconciliation, 67 Fed. Reg. 61,200, 61,201 (Sept. 27, 2002) ("There are two ways to make a 1520(d) NAFTA claim: One way is to file[a traditional 1520(d) claim] and the other is to make a 1520(d) claim in accordance with the Reconciliation process.").

The Trade Court agreed that Customs' sources consistently cite § 1520(d) as authority for issuing refunds through reconciliation. *Ford*, 978 F. Supp. 2d at 1358 ("The court notes that Customs has not always provided importers the clearest guidance on this issue and has referenced § 1520(d) when discussing the Reconciliation Program, which implies that 'waiver' is the same whether the claim was made through reconciliation or not.").Customs points to no regulations, letters, or documents supporting its current interpretation. Customs' remand explanation thus finds no basis in any source that would ordinarily demand *Chevron* deference.

Customs argued in its brief to this court prior to this court's most recent remand that the reconciliation program was consistent with waiver authority under § 1520(d). In its brief, Customs explained that "Customs expressly waived the timely submission of the Certificate of Origin requirement of § 1520(d) with regard to all claims submitted pursuant to Customs' Reconciliation Program." Appellee's Br. at 10. Customs explained that reconciliation program certificate waiver arose under § 181.22(d)(1)(i), because "Customs satisfies itself that imported goods will qualify for NAFTA treatment when it accepts participants into the reconciliation program." *Ford IV*, 715 F.3d at 916.

At oral argument, Customs still indicated that its ability to waive the certificate of origin filing requirement under reconciliation was pursuant to NAFTA section 503, therefore arising under § 181.22(d)(1)(i). Oral Argument at 17:49, available at http://oralarguments.cafc.uscourts.gov/default.aspx?fl=2012–1186.mp3. Customs argued that the application process governing reconciliation justified treating the two types of refund claims differently. *Ford IV*, 715 F.3d at 916.

Customs' interpretation morphed on remand. In its brief in the current appeal, Customs argues that its remand report "justifies the different treatment given to certificate of origin waivers under traditional section 1520(d) claims and to section 1520(d) claims made through the Reconciliation Program." Appellee's Br. at 29.

The majority opinion finds that Customs exercised its authority to prescribe regulations to govern traditional 19 U.S.C. § 1520(d) claims by promulgating 19 C.F.R. § 181.22, and that "Customs was duly authorized by 19 U.S.C. § 1484(b) to implement the reconciliation program." Maj. Op. at 6–7. It explains that "Customs has interpreted the various statutes as creating two separate frameworks: one governs Customs' waiver authority with respect to traditionally-filed claims, and the other prescribes the particular process of waiver with respect to reconciliation-based claims." While this may be Custom's current interpretation, I would not accord this interpretation deference, as there is no indication that Customs interpreted the statutes this way in the past.

It appears that Customs' current interpretation of the basis for waiver in reconciliation—as arising not under§ 1520(d) and 19 C.F.R. § 181.22(d)(1)(i) but instead under other statutes discussing reconciliation generally—was crafted for the purpose of this litigation. As a mere "convenient litigation position," Customs' interpretation is not entitled to *Chevron* deference. *See Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 213 (1988). "Congress has delegated to the administrative official and not to appellate counsel the responsibility for elaborating and enforcing statutory commands." *Id.* (quoting *Inv. Co. Inst. v. Camp*, 401 U.S. 617, 628 (1971)). I therefore would review the statutes without *Chevron* deference to Customs' interpretation.

Even if not entitled to *Chevron* deference, a statutory interpretation by Customs is ordinarily entitled to deference proportional to the "'thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade.'" *See Mead*, 533 U.S. at 228 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)); *Deckers Corp. v. United States*, 752 F.3d 949, 954 (Fed. Cir. 2014). An interpretation that a court finds unpersuasive, however, as I find Customs' interpretation, is not entitled to deference, particularly when the interpretation emerges during litigation with no opportunity for public comment. *See Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156, 2169–70 (2012). Accordingly, I would employ traditional tools of statutory interpretation to determine whether Customs has independent authority under reconciliation statutes to waive certificates of origin.

ii. Source of Certificate of Origin Waiver Authority

NAFTA Article 501(1) requires NAFTA governments to establish "a Certificate of Origin for the purpose of certifying that a good being exported from the territory of a Party into the territory of another Party qualifies as an originating good." NAFTA art. 501(1), 32 I.L.M. at 358. Article 502 defines certificate of origin requirements for claiming preferential tariff treatment at the time of importation or later through a refund claim. An importer claiming preferential tariff treatment at the time of importation must "make a written declaration, based on a valid Certificate of Origin, that the good qualifies as an originating good," and "have the certificate in its possession at the time the declaration is made." *Id.* art. 502(1), 32 I.L.M. at 358. Similarly, an importer applying for a refund of excess duties paid must present both "a written declaration that the good qualified as an originating good at the time of importation" and "a copy of the Certificate of Origin." *Id.* art. 502(3), 32 I.L.M. at 358.

NAFTA Article 503 is a provision establishing specific exceptions to the certificate of origin requirement. *See id.* art. 503, 32 I.L.M. at 358–59. Article 503 states that a "Certificate of Origin shall not be required" in three circumstances. *Id.* at 358. The first two exceptions apply to the importation of goods whose value does not exceed U.S. $1,000 or the equivalent. *Id.* art. 503(a), (b), 32 I.L.M. at 358–359. The third exception applies to the importation of goods into the territory of a party that has waived the certificate of origin requirement. *Id.* art. 503(c), 32 I.L.M at 359. Article 503's exceptions apply to both preferential tariff claims at importation and refund claims because, as a specific provision, Article 503 is an exception to Article 502's general requirements. *See, e.g.*, *Morton v. Mancari*, 417 U.S. 535, 550–51 (1974) ("Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one.") (citations omitted); *see also Medellin v. Texas*, 552 U.S. 491, 506 (2008) ("The interpretation of a treaty, like the interpretation of a statute, begins with its text.").

As this court explained in *Ford II*, by implementing NAFTA Article 502's refund provision, § 1520(d) also implemented Article 503's certificate of origin exceptions. *Ford II*, 635 F.3d at 555 ("While § 1520(d) does not specifically refer to the waiver provision of NAFTA Article 503(c), it is obvious that § 1520(d) was designed in part to permit the implementation of Article 503(c)'s waiver authority via Customs' regulations."). Like Article 502(3), § 1520(d) requires an importer to submit a copy of a certificate of origin. While no domestic statutory provision parallels NAFTA Article 503 precisely, NAFTA's Statement of Administrative Action, 19 U.S.C. § 3311, injects Article 503's ex-

ceptions into § 1520(d) for the purpose of refund claims. *Id.* at 555, n.2; *Bestfoods v. United States*, 165 F.3d 1371, 1374 (Fed. Cir. 1999) ("With [the NAFTA Implementation Act], Congress approved NAFTA, as well as a 'statement of administrative action' that was submitted with the legislation."); *Medellin*, 552 U.S. at 504–05 (explaining that a treaty is domestic law either when self-executing or when implemented by Congress). In sum, § 1520(d) implements NAFTA's certificate of origin waiver authority as negotiated by the NAFTA Parties. Absent § 1520(d)'s implementing provisions, the United States could not waive certificate of origin requirements for NAFTA-traded goods.

In contrast to § 1520(d), the statutory provisions governing reconciliation were not subject to NAFTA negotiations and not part of NAFTA's implementing legislation. The reconciliation provisions do not address NAFTA refund claims specifically. *See* 19 U.S.C. §§ 1401(s), 1484(b). Sections 1401(s) and 1484(b) define and regulate the electronic reconciliation process. That process did not exist at the time NAFTA entered into effect. It is true that the reconciliation statutes' language relates to imports generally. Yet such general language cannot be construed to independently authorize § 1520(d) refund claims or certificate of origin waivers associated with those refund claims because those matters are "dealt with in another part of the same enactment," § 1520(d). *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2071 (2012) (quoting *D. Ginsberg & Sons v. Popkin*, 285 U.S. 204, 208 (1932)). I would hold that the reconciliation statutes do not independently implement Article 503's certificate of origin exceptions for § 1520(d)refund claims.

B. Customs' Procedural Explanation

Customs' second argument in its remand explanation relates to procedural differences between traditional and reconciliation-based § 1520(d) claims. Customs argues that such procedural differences justify its inconsistent treatment of Ford's claims, even if authority to waive certificates of origin stems exclusively from § 1520(d). Customs explains that, by virtue of being an "entry" under § 1401(s), reconciliation claims are safeguarded by statutory recordkeeping and bond requirements, whereas traditional § 1520(d) claims are not. Appellee's Br. at 20–23 (citing §§ 1401(a), 1484, 1508, and 1059). I disagree.

NAFTA recordkeeping requirements apply regardless of the manner in which a § 1520(d) refund claim is filed. Section 1508(a) requires interested parties to "make, keep, and render for examination and inspection" all documents pertaining to importation. Even a refund claim that is not classified as an "entry" is governed by § 1508(a)'s recordkeeping requirements because all refund claims require "a

written declaration that the good qualified [as an originating good] at the time of importation."§ 1520(d)(1). Section 1508(a)(3) applies to "activities [that] require the filing of a *declaration*, or entry, or both." (emphasis added). Section 1509's inspection, examination, and audit procedures apply not only for the "purpose of ascertaining the correctness of any entry," but also "for determining the liability of any person for . . . duties, fees and taxes which may be due." *See* § 1509(a). Both traditional and reconciliation-based § 1520(d) claims require Customs to determine liability for duties.

Customs further argues that a bond is required for an "entry," whereas a bond is not required for a traditional§ 1520(d) refund claim. Whether a bond is required for an "entry," however, while not being required for a traditional § 1520(d) claim, is of little consequence. Unlike claims arising from reconciliation, traditional § 1520(d) refund claims do not rely on indeterminable information flagged at the time of importation. Rather, the entry is liquidated at importation as if no preferential treatment claim is being made. *See* § 1509(d). The importer thus pays all applicable liquidated duties and fees due at the time of importation, s*ee* J.A. 34, giving Customs an effective bond to guard against incorrect § 1520(d) refund claims. If Customs determines a § 1520(d) claim to be incorrect, Customs simply denies all or part of the refund and retains the duties paid at entry. Customs contends that it also needs a bond to guard against mistakes discovered *after* reliquidation, i.e., mistakes made after Customs has processed a § 1520(d) refund claim. If the importer is responsible for such mistakes, however, Customs has remedies available under § 1592. If Customs finds fraud or negligence, it has authority to administer severe penalties unless the NAFTA importer who discovers the incorrect claim "voluntarily and promptly makes a corrected declaration and pays any duties owing." § 1592(c)(5). Customs can therefore guard against mistakes and abuse without a bond.

Customs also argues that the technical manner in which it has defined waiver justifies treating waiver differently depending on whether an importer files a refund claim traditionally or through reconciliation. For refund claims made through reconciliation, Customs waives "[p]resentation" of the certificate of origin "but the filer must retain this document and provide it [Customs] upon request." J.A. 51. Under 19 C.F.R. § 181.22(d), on the other hand, Customs waives "possession" of the certificate of origin. Customs argues that because it grants "possession" waivers under § 181.22(d) but only "presentation" waivers through reconciliation, a waiver granted through reconciliation would not prevent Customs from later request-

ing an importer's certificate of origin if dishonest behavior was suspected. Customs' argument misses the point.

Under the circumstances of this case, Customs could have granted Ford a "presentation" waiver for its traditional § 1520(d) claims. By the time Customs Headquarters was reviewing Ford's traditional § 1520(d) claims, it was also reviewing denials of Ford's claims for preferential treatment filed through reconciliation. Customs thus had already acknowledged statutory authority to waive "presentment" of certificates of origin, i.e., authority to waive less than that authorized by NAFTA Article 503. On the basis of such waiver authority, Customs granted Ford's claims filed through reconciliation, while denying Ford's traditional claims. There was no principled reason for doing so because the same statutory safeguards applied to both sets of Ford's claims, and Ford had submitted all requisite certificates of origin, thus laying to rest any concerns about the authenticity of Ford's claims.

Customs mistakenly assumes that it could not have granted Ford a "presentation" waiver simply because Ford's traditional claims were not formally filed through the reconciliation portal. Ford's claims were filed electronically through the Electronic Protest Module of Customs' Automated Commercial System ("ACS"). Because the Customs protest module could not accept paper documents such as copies of certificates of origin, Ford submitted refund claims without certificates, in accordance with interim reconciliation processes Ford had developed at other ports, and Ford offered to submit certificates of origin on CD-ROM. Ford's claims thus reflected a claim filed under reconciliation in all substantive respects. The fact that Customs issued an informal, across-the-board "presentation" waiver for refund claims filed through reconciliation through notice in the Federal Register illustrates that it could have waived presentment here, particularly when it had no reason not to do so. "A fundamental norm of administrative procedure requires an agency to treat like cases alike." *Wester Energy, Inc. v. Fed. Energy Regulatory Comm'n*, 473 F.3d 1239, 1241 (D.C. Cir. 2007); *see also F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 549 (2009) ("an agency must act consistently").

CONCLUSION

Because Customs' remand explanation fails to identify a reasonable basis for its inconsistency, I dissent and would reverse and remand to the Trade Court with instructions to calculate and award Ford's excess duties paid, with interest.