

U.S. Customs Service

General Notices

RETRACTION OF REVOCATION NOTICE

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

ACTION: General notice.

SUMMARY: The following Customs broker license was erroneously included in a list of revoked Customs broker licenses.

<i>Name</i>	<i>License</i>	<i>Port Name</i>
Jose A. Ramos	05284	Houston

Customs broker license No. 05284 remains valid.

Dated: May 15, 2002.

BONNI G. TISCHLER,
*Assistant Commissioner,
Office of Field Operations.*

[Published in the Federal Register, May 28, 2002 (67 FR 36959)]

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

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the calendar quarter beginning April 1, 2002, the interest rates for overpayments will be 5 percent for corporations and 6 percent for non-corporations, and the interest rate for underpayments will be 6 percent. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298-1200, extension 1349.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

In Revenue Ruling 2002-13 (*see*, 2002-12 IRB ____, dated March 25, 2002), the IRS determined the rates of interest for the calendar quarter beginning April 1, 2002, and ending June 30, 2002. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). For corporate overpayments, the rate is the Federal short-term rate (3%) plus two percentage points (2%) for a total of five percent (5%). For overpayments made by non-corporations, the rate is the Federal short-term rate (3%) plus three percentage points (3%) for a total of six percent (6%). These interest rates are subject to change for the calendar quarter beginning July 1, 2002, and ending September 30, 2002.

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

<i>Beginning Date</i>	<i>Ending Date</i>	<i>Underpayments (percent)</i>	<i>Overpayments (percent)</i>	<i>Corporate Overpayments (Eff. 1-1-99) (percent)</i>
Prior to				
070174	063075	6 %	6 %	
070175	013176	9 %	9 %	
020176	013178	7 %	7 %	
020178	013180	6 %	6 %	
020180	013182	12 %	12 %	
020182	123182	20 %	20 %	
010183	063083	16 %	16 %	

<i>Beginning Date</i>	<i>Ending Date</i>	<i>Underpayments (percent)</i>	<i>Overpayments (percent)</i>	<i>Corporate Overpayments (Eff. 1-1-99) (percent)</i>
070183	123184	11 %	11 %	
010185	063085	13 %	13 %	
070185	123185	11 %	11 %	
010186	063086	10 %	10 %	
070186	123186	9 %	9 %	
010187	093087	9 %	8 %	
100187	123187	10 %	9 %	
010188	033188	11 %	10 %	
040188	093088	10 %	9 %	
100188	033189	11 %	10 %	
040189	093089	12 %	11 %	
100189	033191	11 %	10 %	
040191	123191	10 %	9 %	
010192	033192	9 %	8 %	
040192	093092	8 %	7 %	
100192	063094	7 %	6 %	
070194	093094	8 %	7 %	
100194	033195	9 %	8 %	
040195	063095	10 %	9 %	
070195	033196	9 %	8 %	
040196	063096	8 %	7 %	
070196	033198	9 %	8 %	
040198	123198	8 %	7 %	
010199	033199	7 %	7 %	6 %
040199	033100	8 %	8 %	7 %
040100	033101	9 %	9 %	8 %
040101	063001	8 %	8 %	7 %
070101	123101	7 %	7 %	6 %
010102	063002	6 %	6 %	5 %

Dated: May 22, 2002.

ROBERT C. BONNER,
Commissioner of Customs.

[Published in the Federal Register, May 28, 2002 (67 FR 36959)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, May 29, 2002.

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

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

PROPOSED REVOCATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF SKATE SHOES

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

ACTION: Notice of proposed revocation of tariff classification ruling letter and revocation of treatment relating to the classification of skate shoes.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of skate shoes. Similarly, Customs proposes to revoke any treatment previously accorded by it to substantially identical merchandise that is contrary to the position set forth in this notice. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before July 12, 2002.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Joe Shankle, Textiles Branch: (202) 927-2379. Effective June 8, 2002, call (202) 572-8824.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling relating to the tariff classification of skate shoes. Although in this notice Customs is specifically referring to the revocation of New York Ruling Letter (NY) G85697, dated January 19, 2001 (Attachment A); this notice covers any rulings on this merchandise which may exist but have not been specifically identified that are contrary to the position set forth in this notice. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to those identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise that is contrary to the position set forth in this notice. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or Customs previous interpretation of the HTSUSA. Any person involved with substantially identical merchandise should advise Customs during this notice period. An importer’s failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice that is contrary to the position set forth 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 G85697, Customs classified a skate shoe consisting of what appears to be a traditional athletic shoe with a heavy sole. The heel portion of the sole is hollowed out in order to house a polyurethane wheel and wheel assembly. The wheel extends approximately one half inch outward from the sole of the shoe and does not retract into the shoe. The wheel and wheel assembly are easily removed. The skate shoes are used by the wearer by placing one foot in front of the other as if he/she were in full stride. The person's weight centers on the wheel of the rear skate shoe. The rear foot is angled so that the toe of the shoe does not come into contact with the ground. The front foot is also angled so that only the wheel is in contact with the ground. The rear wheel operates as the main rolling wheel and the front wheel provides balance and steering. Customs classified the skate shoe in subheading 9506.99.6080, HTSUSA, which provides, in pertinent part, for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports * * *: Other: Other: Other, Other." Based on our analysis of the scope of the terms of subheadings 9506.99.6080, HTSUSA, and 9506.70.20, HTSUSA, the Legal Notes, and the Explanatory Notes, the skate shoe of the type discussed herein, is classifiable under subheading 9506.70.20, HTSUSA, which provides for: "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Ice skates and roller skates, including skating boots with skates attached; parts and accessories thereof: Roller skates and parts and accessories thereof."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY G85697 and any other ruling not specifically identified, that is contrary to the determination set forth in this notice, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter HQ 964985 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

Dated: May 24, 2002.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, January 19, 2001.
CLA-2-95:RR:NC:2:224 G85697
Category: Classification
Tariff No. 9506.99.6080

ROBERT C. THOMPSON
WJ BYRNES & Co.
P.O. Box 90595
Los Angeles, CA 90009

Re: The tariff classification of heeling apparatus made in the U.S., South Korea and other countries.

DEAR MR. THOMPSON:

In your letter dated December 13, 2001, you requested a tariff classification ruling on behalf of Heeling Sports Limited, Plano TX.

The provided sample is termed a heeling apparatus and consists of a wheel assembly provided in an opening in the heel portion of the sole of an otherwise conventional athletic shoe. In operation, a person wearing the heeling apparatus may either walk normally or roll on the wheel by lifting or raising the sole so that only the wheel contacts a surface.

A patent abstract defines the product as a heeling apparatus that: includes a shoe with a unique feature in the heel that allows one to walk, run, or roll seamlessly. The appearance is that of normal footwear because of the covert wheel assembly. The stealth wheel in the heel gives one the ability to roll or slide in areas you could only walk. Heeling is a new activity that employs a unique method of rolling and requires a newly learned skill set of balance, positioning, and coordination.

Heading 9506 of the Harmonized Tariff Schedule of the United States (HTSUS) provides, in part, for equipment used in outdoor physical recreation or general physical exercise. The applicable subheading for the heeling apparatus will be subheading 9506.99.6080, HTSUS, which provides for other article and equipment for general physical exercise, gymnastics, athletics, other sports or outdoor games, not specified or included elsewhere in this chapter. The rate of duty will be 4 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Tom McKenna at 212.637.7015.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

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

CLA-2 RR:CR:TE 964985 JFS
Category: Classification
Tariff No. 9506.70.20

JANET A. FOREST, ESQ.
MILLER & CHEVALIER
655 Fifteenth Street, N.W.
Suite 900
Washington, DC 20005-5701

Re: Revocation of NY G85697, dated January 19, 2001; Classification of Skate Shoe;
Chapter 95; Roller Skates.

DEAR MS. FOREST:

This letter is to inform you that Customs has reconsidered New York Ruling Letter (NY) G85697, issued on behalf of your client, Heeling Sports, Ltd., on January 19, 2001, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of skate shoes. After review of that ruling, it has been determined that the classification of the skate shoes in subheading 9506.99.6080, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes NY G85697.

Facts:

The article that is the subject of this revocation is a skate shoe. In NY G85697, it was classified in subheading 9506.99.6080, HTSUSA, which provides, in pertinent part, for: "Articles and equipment for general physical exercise, gymnastics, athletics, other sports * * *: Other: Other: Other: Other." The general column one rate of duty is 4 percent *ad valorem*.

The provided sample, termed a "heeling apparatus" and further identified as the Heelys™ skate shoe, consists of what appears to be a traditional athletic shoe with a heavy sole. The heel portion of the sole is hollowed out in order to house a polyurethane wheel and wheel assembly. The wheel extends approximately one half inch outward from the sole of the shoe and does not retract into the shoe. The wheel and wheel assembly are easily removed. The Heelys™ skate shoes are used by the wearer by placing one foot in front of the other as if he/she were in full stride. The person's weight centers on the wheel of the rear skate shoe. The rear foot is angled so that the toe of the shoe does not come into contact with the ground. The front foot is also angled so that only the wheel is in contact with the ground. The rear wheel operates as the main rolling wheel and the front wheel provides balance and steering.

Issue:

Whether the Heelys™ skate shoe with one removable wheel in the heel of the shoe is classifiable under the provision for roller skates.

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

The skate shoe has the attributes of a traditional roller skate and the attributes of an athletic shoe. Under a GRI analysis, it is, at times, necessary to determine whether the essential character of a good such as the skate shoe is imparted by the wheel or by the shoe. In this case, however, note 1(f) to chapter 64, and Note 1(g) to Chapter 95, render an essential character analysis unnecessary. In pertinent part, Note 1(f) to chapter 64, states that "This chapter does not cover toy footwear or skating boots with ice or roller skates at-

tached. * * *” Note 1(g) to chapter 95 states, in pertinent part, that “This chapter does not cover: Sports footwear (other than skating boots with ice or roller skates attached) of chapter 64. * * *” Accordingly, if it is determined that the Heelys skate shoe is a roller skate for classification purposes, chapter 64 is precluded from consideration.

The central issue is whether the Heelys™ skate shoe is encompassed by the term “roller skates, including skating boots with skates attached.” The definition of that term under the HTSUSA is uncertain. We find no clear definition in the Legal Notes and EN. Lexicographic sources define a “roller skate” as follows:

Merriam-Websters Collegiate Dictionary, defines a roller skate as “[a] shoe with a set of wheels attached for skating over a flat surface.” Available at <http://www.m-w.com/cgi-bin/dictionary>. *Encarta* defines a roller skate as:

1. Set of wheels attached to shoe: a metal or plastic frame with wheels attached, usually one pair at the front and another at the back, fastened onto a shoe and used for skating.
2. Shoe for roller-skating: a specially designed shoe or boot to which a roller skate is attached.

Available at <http://dictionary.msn.com/find/> (May 1, 2002).

While these definitions generally contemplate skates with more than one wheel, they do not necessarily preclude the determination that a shoe with only one wheel can be considered a roller skate for tariff classification purposes. The idea for a roller skate with one wheel dates back at least as far as 1877. In an English patent application, dated June 13, 1877, the inventor describes his idea for a skate with one wheel as follows: “My invention relates to an improved construction of roller skates, wherein each skate is provided with a single wheel or roller placed in the axial line of the foot plate.” Patent No. 2297. The accompanying diagram depicts a skate with only one wheel. Likewise, the protestant describes the Heelys™ skate shoe as a roller skate in a trademark application, dated June 2, 2000. The skate shoes were described as “Roller skates equipped with at least one roller used for walking, running and rolling.” Application for Trademark Registration, Attorney Docket No.: 4261.15 (trademark application allowed, May 23, 2001, Serial. No. 75/962102). While one-wheeled roller skates may not have been actively manufactured and marketed on a grand scale, the idea has been around for many years.

Turning to the common and commercial meaning of the term “roller skate” we are aware that the production of the Heelys™ skate shoe is such a recent development in the sport of skating, that it may not have been contemplated when any of the usual authorities (legislative history, dictionaries, etc.) were created. That it may be associated with the eo nomine provisions of subheading 9506.70.20, HTSUSA, is clear under several well settled tenets of Customs law: Eo nomine classification is not necessarily limited by the juxtaposition of descriptive words; an eo nomine designation will include all articles subsequently created which come within its scope. *Sears Roebuck & Co., v. United States*, 46 CCPA 79, C.A.D. 701 (1959); Eo nomine designation of a class will include all members of the class, as if provided by name, *Robert Bosch Corporation, et al v. United States*, 63 Cust.Ct. 187, C.D. 3895 (1969); and an eo nomine designation, without limitation will include all forms of the article. *T.M. Duche & Sons, Inc., et al v. United States*, 44 CCPA 60, C.A.D. 638 (1957).

The instant case is similar to that faced by Customs in Headquarters Ruling Letter (HQ) 086626, dated January 15, 1991, wherein Customs classified snowboards. At the time, the only tariff provision that came close to describing snowboards was the provision for skis. In ruling on the matter, Customs took note that the tariff is not set in time and that tariff provisions can encompass new articles that were not invented at the time of the drafting. Customs asked:

How then do we determine the classification of a new and novel article of commerce heretofore unknown under the current nomenclature? In particular, how do we determine whether that product is included under an existing nomenclature provision?

To help resolve the issue, Customs relied upon *FAG Bearings, Ltd. v. United States*, 9 CIT 227, 229 (1985), in which the Court stated that:

The basic requirement for classification of a new product such as these, under a given eo nomine heading is that the article possess an essential resemblance to the one named in the statute. If the essential character of the article is preserved or only incidentally altered, an unlimited eo nomine designation will include the goods.

Customs concluded that “although differences exist between snowboard skis and traditional alpine skis, they do not act as a bar to classification as other skis of subheading 9506.11.4000, HTSUSA.”

The major feature that a Heelys™ skate shoe has in common with a roller skate is that it is to be worn on a person's foot to enable the wearer to roll by means of self-propulsion. In order to accomplish this, the Heelys™ skate shoe incorporates many of the same features of a traditional roller skate as well as the newer in-line skates. These features are, a heavy duty reinforced sole, a polyurethane wheel, an axle mechanism and ball bearings to provide a smooth and easy ride. Moreover, similar skills are required for "heeling" as are required for roller-skating. As when snowboards were first compared to traditional alpine snow-skis, Heelys™ skate shoes differ noticeably from traditional roller skates. However, they do possess an essential resemblance to roller skates, and the differences between the two should not act as a bar to their classification as roller skates of subheading 9506.70.20, HTSUSA.

Customs has consistently classified new and similar articles such as in-line skates in subheading 9506.70.20, HTSUSA. Customs has classified skate shoes containing a set of retractable wheels as roller skates. See NY C85189, dated March 11, 1998 (classifying as a roller skate a "Walk and Roll" shoe/skate that could be converted between a walking shoe and a skate by the retraction of one or two roller mechanisms); NY F81566, dated January 13, 2000 (classifying as a roller skate a leather shoe or boot with two holes in the rubber sole where a retractable skate mechanism was attached); and NY H83263, dated July 19, 2001 (classifying as a roller skate a sneaker-like article with front and rear wheel mechanisms that were retractable).

To hold that the term "roller skate" in marketing and sporting circles is restricted to the traditional concept of pairs of wheels, is to ignore an important function of the tariff schedule, namely to provide *eo nomine* classification for most of the articles in international trade. HQ 086626, dated January 15, 1991. "Tariff provisions should be open to the invention of new and different products." *Id.* "Congress could not have intended to foreclose future innovations in [goods] from classification under the [*eo nomine*] provisions." *Simon Omega, Inc. v. United States*, 83 Cust.Ct. 14, C.D. 4815 (1979). "To hold otherwise would result in the classification of any and every new product in the basket provisions of the nomenclature." HQ 086626.

The instant skate shoe is classified in subheading 9506.70.20, HTSUSA, the provision for roller skates.

Holding:

NY G85697 is hereby revoked.

The Heelys™ skate shoe is classified under subheading 9506.70.20, HTSUSA, which provides, for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Ice skates and roller skates, including skating boots with skates attached; parts and accessories thereof: Roller skates and parts and accessories thereof." The general column one rate of duty is Free.

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

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF BOWLING BALL CARRIER
COMPONENTS OF MAN-MADE TEXTILE FIBERS IMPORTED
WITHOUT BOTTOM PANELS

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

ACTION: Notice of proposed revocation of tariff classification ruling letter and revocation of treatment relating to the classification of bowling ball carrier components of man-made textile fibers imported without bottom panels.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, 19 U.S.C. 1625(c), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke one ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of bowling ball carrier components of man-made textile fibers imported without bottom panels. Customs also proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before July 12, 2002.

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

FOR FURTHER INFORMATION CONTACT: J. Steven Jarreau, Textile Branch: (202) 927-2518 or after June 10, 2002, (202) 572-8817.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility.**" These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsi-

bilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, 19 U.S.C. 1484, the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, 19 U.S.C. 1625(c)(1), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke one ruling relating to the tariff classification of bowling ball carrier components of man-made textile fibers imported without bottom panels. Although in this notice Customs is specifically referring to one New York Ruling Letter (NY), this notice covers any rulings on this merchandise which may exist, but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, which classified the merchandise contrary to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, 19 U.S.C. 1625(c)(2), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importation of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUSA. Any person involved with substantially identical merchandise should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importers or their agents for importation of merchandise subsequent to the effective date of the final decision on this notice.

The Customs Service in NY E81303 (May 18, 1999) classified what was described as unfinished bowling ball bags of man-made textile fibers imported without bottom panels, pursuant to General Rule of Interpretation 2(a), in subheadings 4202.92.3031 and 4202.92.2000, HTSUSA. New York Ruling Letter E81303 is set forth as "Attachment A" to this document.

It is now Customs position that the bowling ball carrier components of man-made textile fibers imported without bottom panels are properly classified, pursuant to General Rule of Interpretation 1, in subheading 6307.90.9889, HTSUSA. Proposed Headquarters Ruling Letter (HQ)

965448 revoking NY E81303 is set forth as "Attachment B" to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY E81303 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 965448. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Dated: May 24, 2002.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, May 18, 1999.
CLA-2-42:RR:NC:341 E81303
Category: Classification
Tariff No. 4202.92.3031 and 4202.92.2000

MR. HERB LEVISON
PATRICK POWERS CUSTOM BROKERS INC.
Post Office Box 300155
JFK Airport Station
Jamaica, NY 11430

Re: The tariff classification of unfinished bowling ball bags from China.

DEAR MR. LEVISON:

In your letter dated October 29, 1998, on behalf of Tai Wah USA Inc. you requested a classification ruling for unfinished bowling ball bags.

The three samples submitted with your request are three unfinished bowling ball bags, one large, medium, and small. No style numbers were identified in your request. The large and medium bags are comprised of 100% polyester. The small bag is composed of 55% ramie and 45% polyester. Each of the bags is complete except for the bottom panel.

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Where goods cannot be classified solely on the basis of GRI 1, the remaining GRIs will be applied, in the order of their appearance.

GRI 2(a) states that, "Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article
* * *"

The applicable subheading for the large and medium bags will be 4202.92.3031, Harmonized Tariff Schedule of the United States (HTS), which provides for travel, sports and similar bags, with outer surface of textile materials, other, other, of man-made fibers, other. The duty rate will be 18.8% ad valorem.

Items classifiable under HTS subheading 4202.92.3031 fall within textile category designation 670. Based upon international textile agreements products of China are subject to quota and the requirement of a visa.

The applicable subheading for the small bags will be 4202.92.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for travel, sports and similar bags, with outer surface of textile materials, of vegetable fibers and not of pile or tufted construction, other. The duty rate will be 6.1% ad valorem.

Items classifiable under HTS subheading 4202.92.2000 fall within textile category designation 870. Based upon international textile trade agreements products of China are subject to the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web Site at WWW.CUSTOMS.USTREAS.GOV. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

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 Kevin Gorman at 212-637-7091.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

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

CLA-2 RR:CR:TE 965448 jsj
Category: Classification
Tariff No. 6307.90.9889

MR. HERB LEVISON
PATRICK POWERS CUSTOMS BROKERS, INC.
Post Office Box 300155
JFK Airport
Jamaica, NY 11430

Re: Textile Bowling Ball Carrier Components Without Bottom Panels; Revocation of NY E81303; Subheading 6307.90.9889, HTSUSA; HQ 964717.

DEAR MR. LEVISON:

The purpose of this correspondence is to advise you that the Customs Service is reconsidering New York Ruling Letter E81303 (May 18, 1999) issued to you as the customhouse broker of Tai Wah USA, Inc.

New York Ruling Letter E81303 classified man-made textile bowling ball carrier components imported without bottom panels in subheadings 4202.92.3031 and 4202.92.2000, HTSUSA. We have reviewed that ruling and found it to be in error. The Customs Service, in this reconsideration, is reclassifying the merchandise in subheading 6307.90.9889, HTSUSA, therefore, this ruling revokes NY E81303.

Facts:

The articles in issue are the textile components of three bowling ball carriers. The components include a large and a medium sized carrier made of one hundred (100) percent polyester, and a small carrier composed of fifty-five (55) percent ramie and forty-five (45)

percent polyester. The components will be imported into the United States without bottom panels. The Customs Service is advised that the country of origin of the textile components of the bowling ball carriers is China.

Issue:

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the above-described man-made textile components of the large, medium and small bowling ball carriers imported without bottom panels?

Law and Analysis:

The federal agency responsible for initially interpreting and applying the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is the U.S. Customs Service.¹ The Customs Service, in accordance with its legislative mandate, classifies imported merchandise pursuant to the General Rules of Interpretation (GRI) and the Additional U.S. Rules of Interpretation.²

General Rule of Interpretation 1 provides, in part, that classification decisions are to be “determined according to the terms of the headings and any relative section or chapter notes.” *General Rule of Interpretation 1*. General Rule of Interpretation 1 further states that merchandise which cannot be classified in accordance with the dictates of GRI 1 should be classified pursuant to the other General Rules of Interpretation, provided the HTSUSA chapter headings or notes do not require otherwise. According to the Explanatory Notes (EN), the phrase in GRI 1, “provided such headings or notes do not otherwise require,” is intended to “make it quite clear that the terms of the headings and any relative Section or Chapter Notes are paramount.” *General Rules for the Interpretation of the Harmonized System, Rule 1, Explanatory Note (V)*.

The Explanatory Notes constitute the official interpretation of the Harmonized System at the international level. See Joint Explanatory Statement *supra* note 1, at 549. The Explanatory Notes, although neither legally binding nor dispositive of classification issues, do provide commentary on the scope of each heading of the HTSUS. The EN are generally indicative of the proper interpretation of the headings. See T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989); *Lonza, Inc. v. United States*, 46 F.3d 1098, 1109 (Fed. Cir. 1995).

Commencing classification of the man-made textile components of the bowling ball carriers to be imported without bottom panels in accordance with the dictates of GRI 1, the Customs Service examined the headings of the HTSUSA. Customs review of the headings of the HTSUSA led it to heading 6307, HTSUSA. Heading 6307, HTSUSA, provides for “Other made up articles, including dress patterns.” It is Customs determination that this heading most accurately describes the merchandise in issue. See HQ 964717 (Jan. 28, 2002).

Completing the classification of the man-made textile components of the bowling ball carrier components, the articles are classified in subheading 6307.90.9889, HTSUSA. Subheading 6307.90.9889, HTSUSA, provides for:

6307	Other made up articles, including dress patterns:
6307.90	Other:
	Other:
6307.90.98	Other,
	Other:
6307.90.9889	Other.

The Customs Service, prior to deciding that this classification question should be resolved pursuant to GRI 1, contemplated whether the merchandise in issue was an incomplete or unfinished article classified pursuant to GRI 2. General Rule of Interpretation 2(a) provides that any reference in an HTSUSA heading to an article “shall be taken to include a reference to that article incomplete or unfinished * * *.” GRI 2 (a) requires, however, that the incomplete or unfinished article have the “essential character” of the complete or finished article.

¹ See 19 U.S.C. 1500 (West 1999) (providing that the Customs Service is responsible for fixing the final appraisement, classification and amount of duty to be paid); See also Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 100–576, at 549 (1988) reprinted in 1988 U.S. Code Cong. and Adm. News 1547, 1582 [hereinafter Joint Explanatory Statement].

² See 19 U.S.C. 1202 (West 1999); See generally, *What Every Member of The Trade Community Should Know About: Tariff Classification*, an Informed Compliance Publication of the Customs Service available on the World Wide Web site of the Customs Service at www.customs.gov, search “Importing & Exporting” and then “U.S. Customs Informed Compliance Publications.”

The issue Customs had to resolve was whether the articles imported by Tai Wah have the “essential character” of completed or finished products and whether they should, therefore, be classified pursuant to GRI 2(a) as if they were goods in their completed or finished state. The General Rules of Interpretation do not, however, define the phrase “essential character.” Its meaning may be understood from an examination of the Explanatory Notes to GRI 2(a).

The EN to GRI 2 (a) draw a distinction between a “blank” which possesses the essential character of an article and a “semi-manufacture[d]” item that does not have the essential character of an article. A “blank,” as defined in the EN, is an article “not ready for direct use, having the approximate shape or outline of the finished article or part * * *.” The EN continues stating that a “blank” is an article “which can only be used, other than in exceptional cases, for completion into the finished article or part * * *.” A plastic bottle preform is offered in the EN as an example of a blank. Bottle preforms of plastic are “intermediate products having tubular shape, with one closed end and one open end threaded to secure a screw type closure, the portion below the threaded end being intended to be expanded to a desired size and shape.”

“Semi-manufactures” are items that do not yet have the essential shape or character of the finished articles. Examples of semi-manufactures set forth in the EN are: “bars, discs, tubes, etc.” Semi-manufactures are specifically not regarded as “blanks.”

Completed bowling ball carriers are classified in heading 4202, HTSUSA. Heading 4202, HTSUSA, provides for the classification of:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, **sports bags**, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper. (Emphasis added.)

Additional U.S. Note 1 to Chapter 42 provides a definition of the phrase “sports bags.” The expression “*travel, sports and similar bags*” means “goods * * * of a kind designed for carrying clothing and other personal effects during travel, including backpacks and shopping bags of this heading, but does not include binocular cases, camera cases, musical instrument cases, bottle cases and similar containers.” *Chapter 42, HTSUSA, Additional U.S. Note 1.*

An examination of the instant large, medium and small bowling ball carrier components, in the condition in which they are imported, reveals articles that do not yet have the essential character of goods of a kind designed for carrying clothing and other personal effects during travel.

The Customs Service, following a line of reasoning employed for many years, concludes that the merchandise in issue lacks the essential character of “sports bags” of heading 4202, HTSUSA, because the goods cannot yet function as containers. The bowling ball carrier components, which do not have bottom panels, do not, in the condition in which they will be imported, have the capability of carrying clothing and other personal effects. See HQ 958915 (Feb. 27, 1996), HQ 959178 (June 24, 1996) and HQ 960883 (April 27, 1998). Since the textile components of the bowling ball carriers do not have the essential character of “sports bags,” they can not be classified pursuant to GRI 2(a) in heading 4202, HTSUSA.

Holding:

New York Ruling Letter E81303 is hereby revoked.

The man-made textile components of the large, medium and small bowling ball carriers, imported without bottom panels, are classified in subheading 6307.90.9889, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty is seven (7) percent, *ad valorem*.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF RELAYS

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

ACTION: Notice of proposed modification of a ruling letter and revocation of treatment relating to tariff classification of certain relays.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the tariff classification of certain relays under the Harmonized Tariff Schedule of the United States ("HTSUS"). Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before July 12, 2002.

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

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 927-2388. As of June 10, 2002, please call (202) 572-8780.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

ing reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the tariff classification of certain relays. Although in this notice Customs is specifically referring to one ruling, HQ 962138, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In HQ 962138 dated July 28, 1999, set forth as Attachment A to this document, Customs classified certain relays in subheading 9107.00.80, HTSUS, as: "Time switches with clock or watch movement or with synchronous motor: * * * Valued over \$5 each." In HQ 964656, Customs proposes to continue to classify three specific relays in subheading 9107.00.80, HTSUS. It proposes to classify the other two relays at issue in subheading 8536.49.00, HTSUS, as: "Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V: * * * Relays: * * * Other." Proposed HQ 964656, modifying HQ 962138, is set forth as Attachment B to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify HQ 962138 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 964656. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously ac-

corded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: May 22, 2002.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 28, 1999.
CLA-2 RR:CR:GC 962138 HMC
Category: Classification
Tariff No. 9107.00.80/8537.10.90/
9029.10.80/8531.80.90/3926.90.98

MR. RONALD P RICCA
ALLEN-BRADLEY/ROCKWELL AUTOMATION
*1 Allen-Bradley Drive
Mayfield Heights, OH 44124-6118*

Re: Timing Relays, Motor Controllers, Encoders, Pilot Lights, Marking Strips; PC 861139, Modified.

DEAR MR. RICCA:

This is in response to your letter, dated October 14, 1996, on behalf of Allen-Bradley, requesting reconsideration of Preclassification Ruling (PC) 861139, dated April 9, 1991 and its Supplement 1, dated May 21, 1991. In PC 861139, Customs classified various electric products, including timing relays, motor controllers, encoders, pilot lights and marking strips under different subheadings of the Harmonized Tariff Schedule of the United States (HTSUS). We regret the delay.

Facts:

In PC 861139, Customs determined the classification of various electrical equipment, including timing relays, motor controllers, encoders, pilot lights and marking strips. The PC merely lists the items and the applicable classification subheadings. No reasoning was provided. Customs classified the timing relays under subheading 9107.00.80, HTSUS, the motor controller under subheading 8537.10.00, HTSUS (now subheading 8537.10.90, HTSUS), the encoders under subheading 8543.80.40, HTSUS, the pilot lights under subheading 8543.89.70, HTSUS, and the marking strips under subheading 3926.90.90, HTSUS.

The following relevant descriptions were provided:

1. Bulletin 700 Solid State Timing Relays:

"These solid state timing devices can be mounted on either a 2-pole or 4-pole relay, or with the use of an adapter plate, you can mount this device directly on a panel or Type 700-MP universal mounting strip. Please refer to the attached literature for additional information." The attached literature provides a technical description of the relays.

2. Bulletin 150 Smart Motor Controllers

"The Bulletin 150 Smart Motor Controller is a compact, simple to use, solid-state controller designed for low horsepower squirrel cage induction motors. It is intended to re-

lieve the starting torque surge encountered in the typical across the line starting. This will allow for smoother starts and decreased equipment downtime due to shock and vibration problems.” It also refers to technical literature.

3. *Bulletin 845 Optical Encoders*

“Bulletin 845A, 845B and 845C industrial optical encoders are designed to convert mechanical rotary motion to an accurate electrical output. A non-contacting optical design provides for high speed, low torque operation. Single-turn and multi-turn module are available. The Bulletin 845D is a single turn Absolute Position Encoder that digitizes shaft angle position into one of a number of absolute code formats. The 845D uses a single laser diode and a fiber optic module to produce a concentrated beam of light that is passed through a code disk and picked up as high level optical signals.” It then refers to technical literature.

4. *Allen-Bradley Pilot Lights*

“Allen-Bradley offers three main types of pilot lights. They are standard, push-to-test and cluster. The standard and push-to-test pilot lights are basically the same device. The pilot light body consists of a plastic housing in which the contacts and transformer are housed. The push-to-test pilot light has a moveable operator that allows for voltage to be applied to the pilot light bulb in order to test it for illumination. The cluster Pilot Light can contain from 2-4 cluster LED type lamps.” It then refers to technical literature.

5. *Plastic Marking Strips*

“Allen-Bradley 1492 Marking Strips are molded, plastic articles designed specifically for the Bulletin 1492 Terminal Blocks. These marking strips fit on the top portion of terminal strip. A self-adhesive, pre-printed label is then affixed to the marking strip.” It then refers technical literature.

On June 23, 1999, and July 8, 1999, at our request, you submitted additional information on the encoders and the smart motor controllers. The encoders are described as follows:

“Encoders

An encoder is a device that converts mechanical rotary motion to an accurate electrical output. This conversion is done by counting the number of pulses per revolution on a coded disk built into the encoder. * * * On the outer edge of the disk, they [sic] are a number of slots that would allow light to pass through. The light is detected by a photoelectric sensor built into the encoder. As the disk rotates, the light beam is broken by the metal part of the disk between the slots. So when the light is sensed, there is a pulse generated.
* * *

Within the encoder, there is electronic circuitry that will sense the output waveform [the pulse] from the coded disk and convert it into a data format that can be read by the control system. A typical type of data format is BCD (Binary Coded Decimal). This data is read by the controller through some type of interface module. * * *

The smart motor controllers are further described as follows:

“Bulletin 150 Smart Motor Controllers

The Smart Motor Controller is a solid state device used to control the starting, stopping and overall operation of low horsepower motors. This controller has built in circuitry to reduce starting torque surge, allow for smoother starts and control the shut down of the motor. * * *

If you replace the conventional motor starter with a Smart Motor Controller, you now have a device the [sic] will control the starting of the motor by allowing the motor to ramp up to a desired speed, rather than just applying full power. The Smart Motor Controller will maintain that speed and will allow you to easily change the speed while the motor is running. When you are ready to shut the motor down, The Smart Motor Controller has a motor braking feature that will aid the motor in stopping.”

The HTSUS provisions under consideration for the timing relays are as follows:

8536	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V: Relays:
8536.49.00	Other.

*	*	*	*	*	*	*
9107.00	Time switches with clock or watch movement or with synchronous motor:					
9107.00.80	Valued over \$5 each.					
The HTSUS provisions under consideration for the motor controllers are as follows:						
8504	Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof:					
8504.40	Static converters:					
8504.40.40	Speed drive controllers for electric motors.					
*	*	*	*	*	*	*
8537	Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517:					
8537.10	For a voltage not exceeding 1,000 V:					
8537.10.90	Other:					
The HTSUS provisions under consideration for the encoders are as follows:						
8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:					
	Other machines and apparatus:					
8543.89	Other:					
	Other:					
8543.89.96	Other:					
*	*	*	*	*	*	*
9029	Revolution counters, production counters, taximeters, odometers, pedometers and the like; speedometers and tachometers, other than those of heading 9014 or 9015; stroboscopes; parts and accessories thereof:					
9029.10	Revolution counters, production counters, taximeters, odometers, pedometers and the like:					
9029.10.80	Other:					
The HTSUS provisions under consideration for the pilot lights are as follows:						
8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:					
	Other machines and apparatus:					
8543.89	Other:					
8543.89.70	Electrical luminescent lamps.					
*	*	*	*	*	*	*
8531	Electrical sound or visual signaling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530; parts thereof:					
8531.80	Other apparatus:					
	Other:					
8531.80.90	Other:					
The HTSUS provisions under consideration for the plastic marking strips are as follows:						
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:					
3926.90	Other:					
3926.90.98	Other:					
*	*	*	*	*	*	*
8538	Parts suitable for use solely or principally with the apparatus of heading 8535, 8536 or 8537:					
8538.90	Other:					
	Other:					
8538.90.80	Other:					

I. Timing Relays.

Issue:

Whether the timing relays are classifiable as time switches with a clock or watch movement or with a synchronous motor under subheading 9107.00.80, HTSUS, or as electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V under subheading 8536.49.00, HTSUS.

Law and Analysis:

Merchandise is classifiable under the HTSUS, in accordance with the General Rules of Interpretation (GRI). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GIS 2 through 6.

Section XVI, Note 1(n) states that this Section does not cover clocks, watches or other articles of chapter 91. Chapter 91, Note 1(g) states that Chapter 91 does not cover articles of Chapter 85, not yet assembled together or with other components into watch or clock movements or into articles suitable for use solely or principally as parts of such movements (Chapter 85).

The Harmonized Commodity Description And Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized system. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the Notes should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989). General EN to Chapter 91, at page 1663, states that

This Chapter covers certain apparatus designed mainly for measuring time or for effecting some operation in relation to time. It includes timepieces suitable for carrying on the person (watches and stop-watches), other timepieces (ordinary clocks, clocks with watch movements, alarm clocks, marine chronometers, clocks for motor vehicles, etc.), and also time recording apparatus, time interval measuring instruments and time switches; in general, it also covers parts of these articles.

Also, at page 1665, the General EN to Chapter 91 states

(E) **Synchronous motor clocks.** These are connected to a controlled frequency current and therefore consist solely of the motor and the train, without a controlling device. EN 91.07, at page 1671 states that

This heading covers devices which do not have the character of clocks of heading 91.05, but are mainly designed to make or break electric circuits automatically at given times, usually at times determined according to a previously established daily or weekly programme. To be included in this heading these devices must have a movement of the watch or clock type (including secondary or synchronous motor clock movements) or a synchronous motor with or without reduction gear.

Time switches are used for the control of lighting circuits (for public places, shop windows, staircases, illuminated signs, etc.), heating circuits (water heaters, etc.), cooling installations, pumps, two-rate electricity supply meters, etc. They consist essentially of a mechanical or electric movement of the watch or clock type or a synchronous motor; usually a dial with or without hands, a time-regulating device (levers and pins), together with systems of driving relays, switches and commutators. The whole is enclosed in a case with terminals. The dial is usually marked in hours and sometimes also in days and months; levers or pins around its periphery actuate the contact devices at the desired times.

Time switches may be set in action by thermostats, pressure regulators, water level regulators, etc.

The heading also includes switches for making and breaking the circuit supplying electrical apparatus (television receivers, irons, washing machines, billiard table lights, etc.), switching on when coins are inserted and switching off through the action of a synchronous motor, the interval being determined by the number of coins inserted.

In the original submission you state that the subject timing relays do not contain any type of watch or clock movement. The relay's time delay feature is obtained by either a

potentiometer or a self-contained time delay built into the relay to eliminate unwanted tampering. Hence, you argue the relays are classifiable under subheading 8536.49. You cite HQ 954491, dated July 18, 1997, and try to distinguish the products classified in that ruling from Allen-Bradley's solid state timing relays. In that ruling Customs found that timing relays which make or break electrical circuits automatically at given times are specifically classifiable under subheading 9107.00.80, HTSUS. We find that the function performed by the subject timing relays is like the one in HQ 954491. The literature you provided shows that the merchandise is available with up to two timed and two instantaneous contacts. They are designed for applications where a specific time delay is required and inadvertent timing changes must be avoided. Even though the time delays are self-contained, we find that the Bulletin 700, solid state timing relays are classifiable under subheading 9107.00.80, HTSUS.

2. Bulletin 150 Smart Motor Controllers

Issue:

Whether the motor controllers are classifiable as boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517, for a voltage not exceeding 1000 V, under subheading 8537.10.90, HTSUS, or as static converters, speed drive controllers for electric motors, under subheading 8504.40.40, HTSUS.

Law and Analysis:

EN 85.04, at page 1448, states:

(II) ELECTRICAL STATIC CONVERTERS

The apparatus of this group are used to convert electrical energy in order to adapt it for further use. They incorporate converting elements (e.g., valves) of different types. They may also incorporate various auxiliary devices (e.g., transformers, induction coils, resistors, command regulators, etc.). Their operation is based on the principle that the converting elements act alternately as conductors and non-conductors.

The fact that these apparatus often incorporate auxiliary circuits to regulate the voltage of the emerging current does not affect their classification in this group, nor does the fact that they are sometimes referred to as voltage or current regulators.

EN 85.37, at page 1506, states:

These consist of an assembly of apparatus of the kind referred to in the two preceding headings (e.g., switches and fuses) on a board, panel, console, etc., or mounted in a cabinet, desk, etc. They usually also incorporate meters, and sometimes also subsidiary apparatus such as transformers, valves, voltage regulators, rheostats or luminous circuit diagrams.

The goods of this heading vary from small switchboards with only a few switches, fuses, etc. (e.g., for lighting installations) to complex control panels for machine-tools, rolling mills, power stations, radio stations, etc., including assemblies of several of the articles cited in the text of this heading.

The heading also covers:

- (1) Numerical control panels with built-in automatic data processing machine, which are generally used to control machine-tools.
- (2) Programmed switchboards to control apparatus; these permit variations in the choice of operations to be followed. They are normally used in domestic electrical appliances, such as washing machines and dish washers.
- (3) "Programmable controllers" which are digital apparatus using a programmable memory for the storage of instructions for implementing specific functions such as logic, sequencing, timing, counting and arithmetic, to control, through digital or analog input/output modules, various types of machines.

The heading does not cover automatic controlling apparatus of heading 90.32.

The subject merchandise was described as a solid state controller designed for low horsepower squirrel cage induction motors. Its relieves the starting torque surge encountered in the typical across the line starting and has four standard modes of operation: soft start with selectable kickstart, current limit start, dual ramp start and full voltage start. Nothing provided shows that current is being converted. We find that the smart motor controllers are not described by heading 8504, HTSUS. They are classifiable under subheading 8537.10.90, HTSUS.

3. Bulletin 845 Optical Encoders

Issue:

Whether the optical encoders are classifiable as other revolution counters, production counters, taximeters, odometers, pedometers and the like under subheading 9029.10.80, HTSUS, or as other electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter under subheading 8543.89.96, HTSUS.

Law and Analysis:

EN 85.43, at page 1518, states:

This heading covers all electrical appliances and apparatus, not falling in any other heading of this Chapter, nor covered more specifically by a heading of any other Chapter of the Nomenclature, nor excluded by the operation of a Legal Note to Section XVI or to this Chapter. The principal electrical goods covered more specifically by other Chapters are electrical machinery of Chapter 84 and certain instruments and apparatus of Chapter 90.

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

Most of the appliances of this heading consist of an assembly of electrical goods or parts (valves, transformers, capacitors, chokes, resistors, etc.) operating wholly electrically. However, the heading also includes electrical goods incorporating mechanical features provided that such features are subsidiary to the electrical function of the machine or appliance.

EN 90.29, at page 1646, states:

(A) COUNTING DEVICES

(1) Revolution counters.

These instruments count the number of revolutions of a mechanical part (e.g., machine shaft). They consist mainly of a driving spindle geared to pointer or drum indicators. They usually have a device for re-setting the counter to zero. The counters may be coupled to the revolving part either directly (in some cases the part drives the gearing itself) or by remote control. The driving spindle may be operated by a rotary, alternating or pulsating movement of the turning part (e.g., encoders).

You describe the subject optical encoders as industrial optical encoders designed to convert mechanical rotary motion to an accurate electrical output. A non-contacting optical design provides for high speed, low torque operation. Single-turn and multi-turn modules are available. Model Bulletin 845D is described as a single turn Absolute Position Encoder that digitizes shaft angle position into one of a number of absolute code formats. It uses a single laser diode and a fiber optic module to produce a concentrated beam of light that is passed through a code disk and picked up as high level optical signals.

In your June 23, 1999 submission, you explain that encoders have a number of slots in a disk that allows a beam of light to pass through. The light is detected by a photoelectric sensor built into the encoder. As the disk rotates, the metal part between the slots breaks the light. The break in the light generates a pulse known as a high condition. For each slot on the disk, a pulse is generated. Thus, encoders are typically rated by the number of pulses per turn. If there are 500 slots on a coded disk that generates a 500 pulse waveform per one complete rotation, the encoder is rated as a 500 pulse per turn encoder. A single slot located just under the outer row of 500 slots acts as a marker to signal that a complete rotation was made. Electronic circuitry within the encoder senses the output waveform from the coded disk and converts it into a data format that can be read by a control system. No further information about the subject encoder's principal function or use was provided. We find that the encoders are described by heading 9029, HTSUS, because they perform the function of revolution counters described in the ENs. The Bulletin 845 optical encoders are thus classifiable under subheading 9029.10.80, HTSUS.

4. Pilot Lights

Issue:

Whether the pilot lights are classifiable as electric luminescent lamps under subheading 8543.89.70, HTSUS or as other electric sound or visual signaling apparatus under subheading 8531.80.90, HTSUS.

Law and Analysis:

As stated, EN 85.43, at page 1518, provides:

This heading covers all electrical appliances and apparatus, not falling in any other heading of this Chapter, nor covered more specifically by a heading of any other Chapter of the Nomenclature, nor excluded by the operation of a Legal Note to Section XVI or to this Chapter. The principal electrical goods covered more specifically by other Chapters are electrical machinery of Chapter 84 and certain instruments and apparatus of Chapter 90.

EN 85.31, states at page 1496, that

With the exception of signaling apparatus used on cycles or motor vehicles (heading 85.12) and that for traffic control on roads, railways, etc. (heading 85.30), this heading covers all electrical apparatus used for signaling purposes, whether using sound for the transmission of the signal (bells, buzzers, hooters, etc.) or using visual indication (lamps, flaps, illuminated numbers, etc.), and whether operated by hand (e.g., door bells) or automatically (e.g., burglar alarms).

Static signs, even if lit electrically (e.g., lamps, lanterns, illuminated panels, etc.) are not regarded as signaling apparatus. They are therefore not covered by this heading but are classified in their own appropriate headings (headings 83.10, 94.05, etc.).

The information provided shows that the pilot lights are electrical apparatus used for signaling purposes. The pilot lights are made of a plastic housing containing electrical contacts, a transformer and one or more LED's. They are used to indicate machine status, such as on/off, or other conditions. The merchandise is thus described by heading 8531, HTSUS. Since the pilot lights are described by heading 8531 they cannot be classified under subheading 8543.89.70, HTSUS. They are classifiable under subheading 8531.80.90, HTSUS.

*5. Plastic Marking Strips**Issue:*

Whether the plastic marking strips are classifiable as other parts suitable for use solely or principally with apparatus of heading 8535, 8536 or 8537 under subheading 8538.90.80, HTSUS, or as other articles of plastics under subheading 3926.90.98, HTSUS.

Law and Analysis:

PC 861139 classified the subject merchandise under subheading 3926.90.98 as other articles of plastics because they were considered parts of general use. Note 2(p) to Chapter 39, HTSUS, states that the Chapter does not cover articles of Section XVI. Thus, if the article is classifiable under a heading of Chapter 85 (a Chapter of Section XVI), it cannot be classified under heading 3926, HTSUS.

Note 1(g) to Section XVI states that the Section does not cover parts of general use, as defined in note 2 to Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39). Section XVI, Note 2(a), 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 according to the following rules:

(a) Parts which are goods included in any of the headings of chapters 84 and 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8485, 8503, 8522, 8529, 8538 and 8548) are in all cases 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 * * * are to be classified with the machines of that kind. * * *

You claim that the marking strips are molded specifically to fit terminal blocks that are described by heading 8536. Assuming, *arguendo*, that the terminal blocks are articles described by heading 8536, we find that the marking strips are not parts of the terminal blocks.

It has been held that a part of an article is something that is an integral component of the article with which it is used. See *Sharp Microelectronics Technology, Inc. v. United States*, 932 F. Supp. 1499, 1505 (Ct. Int'l Trade 1996), *aff'd*, 122 F.3d 1446, (Fed. Cir. 1997). See also 956884, dated November 18, 1994. It is Customs view that the marking strips are not integral to the terminal blocks and that they are necessary for their operation. The marking strips are designed to receive a self-adhesive, pre-printed label that serves to identify

the terminal blocks, but they could also be used for a similar purpose with other machines, i.e., they are “general purpose” type goods. Since the marking strips are not parts of the terminal blocks they must be classified according to their constituent material. The marking strips are therefore classifiable under subheading 3926.90.98, HTSUS.

Holding:

The timing relays are classifiable under subheading 9107.00.80, HTSUS, as “Time switches with clock or watch movement or with synchronous motor: Valued over \$5 each.”

The motor controllers are classifiable under subheading 8537.10.90, HTSUS, as “Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517: For a voltage not exceeding 1,000 V: Other.”

The encoders are classifiable under subheading 9029.10.80, HTSUS, as “Revolution counters, production counters, taximeters, odometers, pedometers and the like; speedometers and tachometers, other than those of heading 9014 or 9015; stroboscopes; parts and accessories thereof: Revolution counters, production counters, taximeters, odometers, pedometers and the like: Other.”

The pilot lights are classifiable under subheading 8531.80.90, HTSUS, as “Electrical sound or visual signaling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530; parts thereof: Other apparatus: Other: Other.”

The marking strips are classifiable under subheading 3926.90.98, HTSUS, as “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.”

Effect on Other Rulings:

PC 861139, dated April 9, 1991, is modified as set forth in this ruling.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

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

CLA-2 RR:CR:GC 964656 GOB
Category: Classification
Tariff No. 9107.00.80 and 8536.49.00

CURTIS W. KNAUSS
JOHN M. PETERSON
NEVILLE PETERSON LLP
80 Broad Street—34th Floor
New York, NY 10004

Re: HQ 962138 Modified; Solid State Timing Relays.

DEAR MESSRS. KNAUSS AND PETERSON:

This is in response to your letter of November 1, 2000, on behalf of Rockwell Automation/Allen-Bradley Co., LLC (“Allen-Bradley”), requesting reconsideration of HQ 962138 dated July 28, 1999, issued to Allen-Bradley with respect to the classification, under the Harmonized Tariff Schedule of the United States (“HTSUS”), of numerous articles. We have also considered the claims made by you in conference held at Customs Headquarters on November 26, 2001 and in a submission of December 18, 2001.

Facts:

HQ 962138 concerned the classification of numerous items. You request reconsideration of the classification of certain relays, which were classified in subheading 9107.00.80,

HTSUS, as; "Time switches with clock or watch movement or with synchronous motor:
* * * Valued over \$5 each."

In your letter of November 1, 2000, you describe the goods as follows:

The merchandise in question consists of certain "HR" and "HT" Series solid state electrical timing relays imported from Japan and Switzerland * * * These timing relays are connected in an electrical system, usually on a control panel in an appropriate socket. The timing relay is a component of an integrated electrical system that may include several other electrical components. The function of the timing relay is to provide electrical power to specific apparatus at a specified time after electrical power has been applied to the entire electrical system. When power is applied to the timing relay, the interior electrical components provide a specific delay period, programmed by the user, for the application of electrical current to the particular apparatus in the electrical circuit or system. The time intervals can be set by the customer within a range specified by the particular timing relay.

In order to set a delay period, the customer manually turns the timing potentiometer, or dial, on the timing relay with the use of a screwdriver.

The timing relays are used in various applications. The most widely used application for the timing relays is in a control panel on an assembly operation or conveyor line. Specific assembly operations are controlled with timing relays so that specific operations are performed in the correct sequence, at the correct time through the prescribed automated procedure * * *

The timing relay consists of a number of electrical components contained in a plastic housing. The interior electrical components are composed of: a set of moveable contact blocks; a set of stationary contact blocks; a wound magnetic coil mounted on a stack of steel laminations; and a circuit board containing various components including resistors that regulate the period of time between cycles of the timing relay.

You have provided samples of each of the subject five relays which you enumerate as follows:

1. 700DC-R130Z24 Series B
2. 700-FSA3UU23 Series B
3. 700-HB33A1-3 Series D
4. 700-HSF12F15A1 Series A
5. 700-HT12BA1 Series A

Issue:

What is the classification under the HTSUS of the subject relays?

Law and Analysis:

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

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

The HTSUS provisions under consideration are as follows:

8536	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V:
	Relays:
8536.49.00	Other
*	* * * * *
9107	Time switches with clock or watch movement or with synchronous motor:
9107.00.80	Valued over \$5 each

EN 85.36 provides in pertinent part as follows.

These apparatus consist essentially of devices for making or breaking one or more circuits in which they are connected, or for switching from one circuit to another * * * This group also includes change-over switches and relays * * *

* * * * *
 (C) **Relays** are electrical devices by means of which the circuit is automatically controlled by a change in the same or another circuit. They are used, for example, in telecommunication apparatus, road or rail signalling apparatus, for the control or protection of machine tools, etc. [Emphasis in original.]

EN 91.07 provides in pertinent part as follows:

This heading covers devices which do **not** have the character of clocks of heading 91.05, but are mainly designed to make or break electric circuits automatically at given times, usually at times determined according to a previously established daily or weekly programme. To be included in this heading these devices **must have** a movement of the watch or clock type (including secondary or synchronous motor clock movements) or a synchronous motor with or without reduction gear.

Time switches are used for the control of lighting circuits (for public places, shop windows, staircases, illuminated signs, etc.), heating circuits (water heaters, etc.), cooling installations, pumps, two-rate electricity supply meters, etc. They consist essentially of a mechanical or electric movement of the watch or clock type or a synchronous motor, usually a dial with or without hands, a time-regulating device (levers and pins), together with systems of driving relays, switches and commutators.

[All emphasis in original.]

The General EN for Chapter 91, HTSUS, provides in pertinent part as follows:

This Chapter covers certain apparatus designed mainly for measuring time or for *effecting some operation in relation to time*. [Emphasis provided.]

Chapter 91, Note 3, HTSUS, provides as follows:

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 display or a system to which a mechanical display can be incorporated. Such watch movement shall not exceed 12 mm in thickness and 50 mm in width, length or diameter. [Emphasis in original.]

Chapter 91, Additional U.S. Note 1(d) provides as follows:

The term “*clock 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 clock movements shall either exceed 12 mm in thickness or 50 mm in width, length or diameter, or both. [Emphasis in original.]

We referred this matter to the Customs Service Office of Laboratories and Scientific Services for its review. In Laboratory Report # SF20011771 dated April 18, 2001, the Customs San Francisco Laboratory stated in pertinent part as follows:

Relays (1) and (3) [700DC-R130Z24, Series B and 700-HB33A1-3, Series D, respectively; see the listing of the relays in the FACTS section] have no timing capability, although a timing module option is available for (1). Relays (1) and (3) do not have a clock or watch movement, or a synchronous motor. Relays of this type, in our opinion, fall under HTSUS heading 8536.

Relays (2), (4), and (5) [700-FSA3UU23, Series B, 700-HSF12F15A1, Series A, and 700-HT12BA1, Series A, respectively; see the listing of the relays in the FACTS section] are identified as timing relays and each has electronic circuitry that performs the timing functions. Each of these circuits contains a component that is “* * * capable of determining intervals of time * * *” The time delay for relay (4) is factory set, while it can be user-changed in (2) and (5). In our opinion, relays (2), (4), and (5) contain a watch or clock movement as described in Note 3 or Additional U.S. Note 1(d) to HTSUS Chapter 91. We believe that they are “time switches” of HTSUS heading 9107.

Our discussions with the Customs Laboratory indicated that relays (2), (4), and (5) have a system to which a mechanical display can be incorporated. See the definitions of “watch movements” and “clock movements,” above.

The Customs Laboratory provided us with the following definitions of “relays.” *IEEE 100, The Authoritative Dictionary of IEEE Standards Terms* (7th ed., 2000): “An electrical controlled, usually two-state, device that opens and closes electrical contacts to effect the operation of other devices in the same or another electrical circuit.” *Electromechanical Design Handbook* by Ronald Walsh (3rd ed, 2000): “Relays are switching devices that are available with a multitude of contact arrangements, coil-voltage ratings, contact-voltage ratings, and contact-current ratings.” *The Art of Electronics* by Paul Horowitz and Winfield Hill (2nd ed.; 1989): “Relays are electrically controlled switches.”

Other definitions of “relays” are as follows. *The Dictionary of Multimedia Terms & Acronyms* by Bill Hansen (1997): “A type of switch that is electronically opened or closed to connect circuitry.” *The Computer Glossary* by Alan Freedman (1998): “An electrical switch that allows a low power to control a higher one. A small current energizes the relay, which closes a gate, allowing a large current to flow through.”

In *American Division of Magic Chef, Inc. v. United States*, 14 CIT 868, 754 F. Supp. 881 (1990), the court considered Customs classification of defrost control timers as time switches under item 715.62, Tariff Schedules of the United States, which was the predecessor provision to heading 9107, HTSUS. (The superior heading to item 715.62 provided for: “Time switches with watch or clock movements, or with synchronous or subsynchronous motors.”) We believe certain language of the court is instructive as to heading 9107, HTSUS. The court stated:

Nothing in the record or authorities cited leads this Court to conclude that Congress intended time switches to carry the restrictive and technical definition which plaintiff attaches. If the Court were to adopt plaintiff’s definition of a time switch under TSUS item 715.62, then any device that makes or breaks an electric circuit after it measures an *interval* of time predetermined by the manufacturer, standing alone, could not be a time switch. As discussed herein, the Court finds that Congress did not contemplate that time switches tell the time of day, have dials, operate continuously without interruptions, and be set by the consumer to operate at clock times. Presumably, some time switches require those characteristics to carry out their intended functions. Nevertheless, the defrost control timers in their present condition satisfy the principal requirements for time switches found in the *Tariff Classification Study, the Brussels Nomenclature*, and in paragraph 368(a) of the Tariff Act of 1930. They make or break electric circuits after they have measured a specific time interval as predetermined by the manufacturer. [Emphasis in original.]

We believe that this language of the court is instructive as to the scope of heading 9107, HTSUS. For example, Congress has indicated that earlier tariff decisions must not be disregarded in applying the HTSUS. The conference report to the Omnibus Trade Bill of 1988 states that “on a case-by-case basis prior decisions should be considered instructive in interpreting the HTS[US], particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTS[US].” Rep. No. 100–576, 100th Cong, 2d Sess. 548, 550 (1988).

After a careful consideration of this matter we make the following determinations.

Relays (1) and (3), as enumerated in the FACTS section (700DC–R130Z24, Series B and 700–HB33A1–3, Series D, respectively) do not have a clock or watch movement or a synchronous motor. Therefore, they are not described in heading 9107, HTSUS. Accordingly, we find that they are described in heading 8536, HTSUS, and are classified in subheading 8536.49.00, HTSUS, as: “Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V: * * * Relays: * * * Other.”

Relays (2), (4), and (5), as enumerated in the FACTS section [700–FSA3UU23, Series B, 700–HSF12F15A1, Series A, and 700–HT12BA1, Series A, respectively] have watch or clock movements as defined in the Notes to Chapter 91 and are time switches. Therefore, they are classified in subheading 9107.00.80, HTSUS, as: “Time switches with clock or watch movement or with synchronous motor: * * * Valued over \$5 each.”

Holding:

Relays (1) and (3), as enumerated in the FACTS section (700DC–R130Z24, Series B and 700–HB33A1–3, Series D, respectively) are classified in subheading 8536.49.00, HTSUS, as: “Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors,

plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V: * * * Relays: * * * Other.”

Relays (2), (4), and (5), as enumerated in the FACTS section [700-FSA3UU23, Series B, 700-HSF12F15A1, Series A, and 700-HT12BA1, Series A, respectively] are classified in subheading 9107.00.80, HTSUS, as: “Time switches with clock or watch movement or with synchronous motor: * * * Valued over \$5 each.”

Effect on Other Rulings:

HQ 962138 is modified.

JOHN DURANT,
Director,
Commercial Rulings Division.

MODIFICATION AND REVOCATION OF RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF INVESTMENT GOLD BARS

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

ACTION: Notice of modification and revocation of ruling letters and revocation of treatment relating to tariff classification of investment gold bars.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying one ruling and revoking another ruling relating to the tariff classification of investment gold bars, and revoking any treatment Customs has previously accorded to substantially identical transactions. Notice of the proposed modification and revocation was published on April 24, 2002, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: This modification and revocation are effective for merchandise entered or withdrawn from warehouse for consumption on or after August 12, 2002.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927-0760.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are based on the premise that

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

Pursuant to Customs obligations, a notice was published on April 24, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 17, proposing to modify NY G88058, dated March 12, 2001, which in part classified investment gold bars as articles of goldsmiths' or silversmiths' wares, in subheading 7114.19.00, Harmonized Tariff Schedule of the United States (HTSUS), and to revoke NY D89806, dated March 31, 1999, which classified substantially similar bars as other semimanufactured forms of gold, in subheading 7108.13.55, HTSUS. No comments were received in response to this notice.

As stated in the proposed notice, this modification and revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying NY G88058 and revoking NY D89806 to reflect the proper classification of the merchandise in subheading 7115.90.05, HTSUS, HTSUS, as other articles of precious metal, pursuant to the analysis in *HQ* 965187 and *HQ*

965535, which are set forth as “Attachment A” and “Attachment B” to this document, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment it previously accorded to substantially identical transactions.

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

Dated: May 29, 2002.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, May 29, 2002.
CLA-2 RR:CR:GC 965187 JAS
Category: Classification
Tariff No. 7115.90.05

RICHARD L. FURMAN, ESQ.
DE ORCHIS, WALKER & CORSA, LLP
61 Broadway, 26th Floor
New York, NY 10006-2802

Re: NY G88058 Modified; Investment Gold Bars.

DEAR MR. FURMAN:

In your letter, dated July 19, 2001, on behalf of Manfra, Tordella & Brookes, Inc., you request a review of NY G88058, dated March 12, 2001, which classified certain investment gold bars, among other gold bars, as articles of goldsmiths’ or silversmiths’ wares, of precious metal, in subheading 7114.19.00, Harmonized Tariff Schedule of the United States (HTSUS).

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY G88058 was published on April 24, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 17. No comments were received in response to that notice.

Facts:

The merchandise in NY G88058, about which you inquire, is described as PAMP Fortuna investment gold bars (the “PAMP bars”). The ruling included gold bars in various shapes with different designs, but only the rectangular-shaped PAMP Fortuna gold bars are at issue here. A single page from a brochure on the merchandise which you submitted, depicts gold articles, generally rectangular in shape, with rounded corners and a raised edge. One side is stamped with the purity of the gold (99.99%), the weight of the bar ranging from 1 gram to 10 troy ounces, and a hallmark depicting the manufacturer (PAMP) and the country of manufacture (Suisse). A decorative profile of the Goddess Fortuna is stamped on the other side. The file reflects this to be a registered PAMP trademark. The brochure page depicts a bar in a clear plastic display folder with assay information at the bottom. Gold bars of this type are not cast; rather, they are struck, that is, generally stamped from bars rolled to strip form.

You maintain that these bars do not appear to be of the class or kind of articles regarded as goldsmiths’ or silversmiths’ wares. More importantly, you cite NY D89806, dated

March 31, 1999, which classified what appear to be substantially similar articles in subheading 7108.13.55, HTSUS, as other gold, unwrought or in semimanufactured forms. Alternatively, you maintain that the provision for other articles of precious metal, in rectangular or near rectangular shapes, in subheading 7115.90.05, HTSUS, represents the correct classification.

The HTSUS provisions under consideration are as follows:

7108	Gold (including gold plated with platinum) unwrought or in semimanufactured forms * * *.
7108.13	Other semimanufactured forms:
7108.13.55	Rectangular or near rectangular shapes, containing 99.5 percent or more by weight of gold and not otherwise marked or decorated than with weight, purity, or other identifying information
*	*
7114	Articles of goldsmiths' or silversmiths' wares * * * of precious metal or of metal clad with precious metal:
7114.19.00	Of other precious metal whether or not plated or clad with precious metal
*	*
7115	Other articles of precious metal or of metal with precious metal:
7115.90	Other:
7115.90.50	Articles of precious metal, in rectangular or near rectangular shapes, containing 99.5 percent or more by weight of a precious metal and not otherwise marked or decorated than with weight, purity or other identifying information

Issue:

Whether the PAMP Fortuna investment gold bars are articles of heading 7114 or heading 7115.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

Chapter 71, Note 10, HTSUS, states that for the purposes of heading 7114, the expression "articles of goldsmiths' or silversmiths' wares" includes such articles as ornaments, table ware, toilet-ware, smokers' articles and other articles of household, office or religious use. Clearly, one would be unlikely to purchase the PAMP investment gold bars at issue here solely for display purposes but, as the description implies, for purposes of investment, or to be melted down and reformed into jewelry or other gold articles. The identifying information stamped on the bars authenticates the gold content. These bars bear no demonstrated similarity to the goods of heading 7114 described in Chapter 71, Note 10.

As to classification under heading 7108, HTSUS, as gold in semimanufactured forms, Additional U.S. Note 1(b), HTSUS, states the term "semimanufactured" refers to wrought metal products in the form of bars, rods, sections, plates, sheets, strips, wire, tubes, pipes and hollows bars, and to powder (other than primary metals in powder form). In the main, the articles in Note 1(b) are made from the various primary forms of metal regarded as "unwrought" and delineated in Additional U.S. Note 1(a), HTSUS. However, as the term implies, these "semimanufactured" forms, while discrete articles of commerce in themselves, are intended for further manufacture into other articles. The gold bars at issue are generally stamped from bars rolled to strip form. But, they are not bars of the type identified in Note 1(b), but are further processed by die stamping on them the indicia of authenticity discussed previously. These bars are processed beyond semimanufactured forms into "articles" of gold. NY D89806, dated March 31, 1999, classified gold bars substantially similar to the ones at issue here in subheading 7108.13.55, HTSUS. That ruling is incorrect and has been revoked.

Holding:

Under the authority of GRI 1, the PAMP Fortuna investment gold bars in rectangular shapes are provided for in heading 7115. They are classifiable in subheading 7115.90.05, HTSUS.

Effect on Other Rulings:

NY G88058, dated March 12, 2001, is modified as to these bars. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)