

# Bureau of Customs and Border Protection

## *General Notices*

### **RECEIPT OF AN APPLICATION FOR “LEVER-RULE” PROTECTION**

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

**ACTION:** Notice of receipt of application for “Lever-rule” protection.

**SUMMARY:** Pursuant to 19 CFR 133.2(f), this notice advises interested parties that CBP has received an application from Canon U.S.A., Inc. seeking “Lever-rule” protection.

**FOR FURTHER INFORMATION CONTACT:** Rachel S. Bae, Esq., Intellectual Property Rights Branch, Office of Regulations & Rulings, (202) 572-8875.

### **SUPPLEMENTARY INFORMATION:**

#### **BACKGROUND**

Pursuant to 19 CFR 133.2(f), this notice advises interested parties that CBP has received an application from Canon U.S.A., Inc. seeking “Lever-rule” protection. Protection is sought against importations of fax toner cartridges not authorized for sale in the United States that bear the “FX” trademark (U.S. Patent & Trademark Office Registration No. 1,721,245; CBP Recordation No. TMK 04-00120). In the event CBP determines that the subject fax toner cartridges are physically and materially different from the fax toner cartridges authorized for sale in the United States, CBP will publish a notice in the Customs Bulletin, pursuant to 19 CFR 133.2(f), indicating that the trademark is entitled to Lever-rule protection.

Dated: May 19, 2004

Todd Reves for GEORGE FREDERICK MCCRAY, ESQ.  
*Chief, Intellectual Property Rights Branch,  
Office of Regulations and Rulings.*

DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS.  
*Washington, DC, May 26, 2004,*

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

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



#### 19 CFR PART 177

#### MODIFICATION OF RULING LETTER AND TREATMENT RELATING TO THE COUNTRY OF ORIGIN MARKING REQUIREMENTS FOR IMPORTED REPLACEMENT AUTOMOTIVE PARTS THAT ARE REPACKAGED WITHIN THE UNITED STATES FOR SALE AT RETAIL

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

ACTION: Notice of modification of ruling letter and treatment relating to the country of origin marking requirements for imported replacement automotive parts that are repackaged within the United States for sale at retail.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection ("CBP") is modifying one ruling letter and any treatment previously accorded by CBP to substantially identical transactions, concerning the country of origin marking requirements for imported replacement automotive parts that are repackaged within the United States for sale at retail. Notice of the proposed action was published in the Customs Bulletin on March 31, 2004. No comments were received in response to the notice.

DATE: This action is effective August 8, 2004.

FOR FURTHER INFORMATION CONTACT: Edward Caldwell, Commercial Rulings Division (202) 572-8872.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), a notice was published in the Customs Bulletin on March 31, 2004, proposing to modify a ruling letter pertaining to the country of origin marking requirements for imported replacement automotive parts that are repackaged in cartons within the United States for sale at retail. No comments were received in response to this notice.

As stated in the proposed notice, this modification will cover any rulings on similar merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on transactions similar to the one presented in this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is modifying any treatment previously accorded by CBP to substantially identical merchandise under the stated circumstances. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the relevant statutes. Any person involved with substantially identical merchandise or transactions should have advised CBP during the

comment period. An importer's failure to advise CBP of substantially identical merchandise or transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying HRL 734491 and any other rulings not specifically identified to reflect the proper country of origin marking requirements applicable to imported automotive parts that are repackaged in the United States pursuant to the analysis set forth in HRL 562867, attached. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is modifying any treatment previously accorded by CBP to substantially identical transactions. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Dated: May 20, 2004

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

Attachment

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
**HQ 562867**  
May 20, 2004  
MAR-2-05 RR:CR:SM 562867 EAC  
CATEGORY: Marking

CORPORATE PACKAGING MANAGER  
BALKAMP, INC.  
*2601 South Holt Road*  
*Indianapolis, IN 46241*

RE: Country of origin marking requirements for repackaged automotive parts; sealed and unsealed containers; 19 CFR 134.46; 19 CFR 134.26

DEAR SIR OR MADAM:

Pursuant to Mr. Eric Inman's request for a ruling on behalf of Balkamp Inc., pertaining to the country of origin marking requirements for imported automotive parts that are repackaged within the United States, U.S. Customs and Border Protection ("CBP") issued Headquarters Ruling Letter ("HRL") 734491 dated April 13, 1992, to your company. Upon further consideration of that ruling, we have determined that marking a sealed retail container with the statement "Contents Imported/See Article for Country of Origin" is not permitted under the circumstances presented in that case unless the sealed container is transparent so as to permit the ultimate purchaser to view the marking on the article. Therefore, HRL 734491 is hereby modified for the reasons set forth below.

**FACTS:**

Balkamp is a distributor and repackager of automotive replacement parts, including some which are imported. We have been advised that the imported parts enter the United States in bulk for repackaging in cartons. The parts are marked as to their origin either on the parts themselves or on their inner packaging. We assume for purposes of this ruling that these two types of marking satisfy the requirements of permanence, legibility, and conspicuousness. We also assume that the inner packaging consists of a plastic bag or the like which is not suitable by itself as packaging for retail sales. Balkamp's U.S. address is printed on the outside of the cartons which will be used to package the parts for retail sale.

In consideration of the foregoing, we held in HRL 734491 that marking sealed or unsealed cartons in which the automotive parts were repackaged with the statement "Contents Imported/See Article for Country of Origin" would be sufficient to advise the ultimate purchaser of the origin of the automotive part.

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 HRL 734491, as described below, was published in the Customs Bulletin on March 31, 2004. No comments were received in response to the notice.

**ISSUE:**

Whether marking sealed or unsealed retail containers with Balkamp's U.S. address as well as with the statement "Contents Imported/See Article for Country of Origin" satisfies the applicable marking requirements.

**LAW AND ANALYSIS:**

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

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and the exceptions of 19 U.S.C. § 1304. Section 134.1(b), Customs Regulations (19 CFR 134.1(b)), defines "country of origin" as the country of manufacture, production or growth of any article of foreign origin entering the United States.

The provisions of section 134.26, Customs Regulations (19 CFR 134.26), are applicable to imported articles that are repackaged within the United States. Specifically, section 134.26(a), Customs Regulations (19 CFR 134.26(a)), provides, in pertinent part, that:

If an imported article subject to these requirements is intended to be repackaged in retail containers . . . after its release from Customs custody,

or if the district director having custody of the article, has reason to believe that such article will be repacked after its release, the importer shall certify to the port director that: (1) If the importer does the repackaging, he shall not obscure or conceal the country of origin marking appearing on the article, or else the new container shall be marked to indicate the country of origin of the article in accordance with the requirements of this part; or (2) if the article is intended to be sold or transferred to a subsequent purchaser or repacker, the importer shall notify such purchaser or transferee, in writing, at the time of sale or transfer, that any repacking of the article must conform to these requirements.

As applied, section 134.26(a)(1) must be considered in this case because, as stated above, Balkamp repackages imported replacement automotive parts within the United States. As such, Balkamp is required to certify upon importation that, after repackaging operations are completed, either the country of origin markings on the individual automotive parts will not be obscured or that the new containers that will reach the ultimate purchaser (in this case, the consumer at retail) will be properly marked with the part's country of origin. In order to determine whether such containers are properly marked, however, we must consider whether the reference placed upon the containers that directs the ultimate purchaser to inspect the article for country of origin is permissible under the marking regulations when such containers also display Balkamp's U.S. address.

Under section 134.41(b), Customs Regulations (19 CFR 134.41(b)), the country of origin is considered to be conspicuous if the ultimate purchaser in the United States is able to find the marking easily and read it without strain. Potentially of concern in the instant case, however, are the requirements of a related provision of the marking regulations, section 134.46, Customs Regulations (19 CFR 134.46).

Section 134.46 requires that, in instances where the name of any city or locality in the United States, or the name of any foreign country or locality other than the name of the country or locality in which the article was manufactured or produced, appears on an imported article or its container, and those words or name may mislead or deceive the ultimate purchaser as to the actual country of origin of the article, there shall appear, legibly and permanently, in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in", "Product of" or other words of similar meaning. CBP has ruled that in order to satisfy the close proximity requirement, the country of origin marking must appear on the same side(s) or surface(s) in which the name of the locality other than the country of origin appears. See, HRL 708994 dated April 24, 1978.

The requirements of section 134.46 are designed to alleviate the possibility of misleading an ultimate purchaser with regard to the country of origin of an imported article, if such article or its container includes language which may suggest a U.S. origin (or other foreign locality not the correct country of origin). As applied, the requirements of section 134.46 are triggered in this case because Balkamp's U.S. address will be placed upon the containers sold at retail and this address could potentially deceive or mislead the ultimate purchaser of the automotive parts as to the actual country of origin of the items.

In regards to this issue, CBP has previously held that, under certain circumstances, a statement placed upon a product's packaging that directs the ultimate purchaser to inspect the actual article for country of origin information may satisfy the applicable marking regulations even if the packaging also contains the U.S. address of a domestic company. For example, in HRL 735332 dated August 18, 1994, automotive parts and accessories were imported in bulk and repackaged within the United States. The imported parts were repackaged into either six-sided opaque cardboard cartons or into transparent "blister pack" packages. The importer proposed to mark "Contents Imported. See Article for Country of Origin" on the outer surface of the opaque cartons or, in the case of the blister packs, on cardboard placards that were inserted into the blister packs. These markings were to be placed on the same panel, and in comparable print size, as the distributor's U.S. address on both the opaque cartons and the cardboard placards. It was further noted that the individual parts contained within the cartons and blister packs would be individually marked with their country of origin and that the opaque cartons would be unsealed when sold at retail whereas the blister packs would be sealed.

At issue in HRL 735332 was whether the marking schemes proposed for the opaque cartons and cardboard placards were acceptable under the marking regulations. Upon considering the facts involved, we held that printing the proposed marking on the *unsealed* opaque cardboard cartons directly below the U.S. reference satisfied the applicable marking regulations, whereas an identical marking printed upon cardboard placards that were placed within the *sealed* blister packs failed to satisfy the requirements of the same provision.

The determinative consideration in HRL 735332 was the ability of the ultimate purchaser in each situation to determine the country of origin of the actual article contained within either the opaque carton or blister pack. In this respect, the unsealed opaque boxes clearly afforded the ultimate purchaser the opportunity to obtain origin information by casually examining the article at retail. The sealed blister packs, on the other hand, precluded the ultimate purchaser from engaging in such a casual inspection of the individual article at retail. Therefore, considering that the country of origin markings on the actual parts were also obscured by the blister packaging, it was evident that sealing blister packaging and directing the ultimate purchaser to inspect the actual article for country of origin information failed to satisfy the marking requirements set forth above.

CBP has considered a number of cases (cited, *infra*) where an article's proposed packaging contained the U.S. address of a domestic company and simultaneously advised the ultimate purchaser to inspect the actual article of commerce for country of origin information. In such cases, we have consistently held that, to be compliant with the marking regulations, the country of origin markings located on the actual article of commerce must be discoverable upon a "casual examination of the article." It has been noted that, in order for a sealed container to satisfy the foregoing requirements, the container must be transparent. See, for example, HRL 560776 dated May 4, 1999 (sealed packages containing imported electronic accessories that were marked with actual country of origin could contain a statement that directed the ultimate purchaser to inspect the actual articles for country of origin provided that the articles were packaged in clear plastic that allowed the ultimate purchaser to easily view such markings prior to purchase). It follows

that, where transparent packaging is not used in such cases, a sealed container presumably denies the ultimate purchaser the opportunity to easily obtain country of origin information because undertaking a casual examination of the article would necessitate breaking the seal on the package. As such, CBP believes that directing the ultimate purchaser to inspect the actual article of commerce for country of origin information under such circumstances is not permissible under the marking regulations.

On the other hand, unsealed containers that include a reference to a U.S. address may be marked with a statement directing the ultimate purchaser to inspect the actual article for country of origin information, provided that the latter marking is in close proximity, on the same side, and in comparable print size as the U.S. address and that the country of origin marking on the article may be viewed by the ultimate purchaser upon a casual inspection of the item. See, for example, HRL 562832 dated October 10, 2003; HRL 559753 dated August 8, 1996; and HRL 559245 dated December 13, 1995.

**HOLDING:**

Marking a sealed container with the statement "Contents Imported/See Article for Country of Origin" is not permitted under the circumstances presented above unless the sealed container is transparent so as to permit the ultimate purchaser to view the marking on the article contained within.

**EFFECT ON OTHER RULINGS:**

HRL 734491 dated April 13, 1992, is hereby MODIFIED. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

**19 CFR PART 177**

**REVOCATION OF RULING LETTER AND TREATMENT  
RELATING TO THE TARIFF CLASSIFICATION OF RO-  
MET LARYNGECTOMY FILTER COVERS, BUCHANAN  
LARYNGECTOMY PROTECTORS AND STOMAFOAM  
SQUARES**

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

**ACTION:** Notice of revocation of tariff classification ruling letter and treatment relating to the classification of Romet laryngectomy filter covers, Buchanan laryngectomy protectors, and Stomafoam squares.

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

interested parties that Customs is revoking a ruling concerning the tariff classification of Romet laryngectomy filter covers, Buchanan laryngectomy protectors, and Stomafoam squares, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocation of the ruling was published on April 7, 2004, in Volume 38, Number 15, of the *Customs Bulletin*. No comments were received in response to this notice.

**EFFECTIVE DATE:** Merchandise entered or withdrawn from warehouse for consumption on or after August 8, 2004.

**FOR FURTHER INFORMATION CONTACT:** Allyson Mattanah, General Classification Branch, (202) 572-8784.

**SUPPLEMENTARY INFORMATION:**

**Background**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, Customs published a notice in the April 7, 2004, *Customs Bulletin*, Volume 38, Number 15, proposing to revoke Headquarters Ruling Letter (HQ) 951654, dated July 2, 1992, and to revoke any treatment accorded to substantially identical merchandise. No comments were received in response to this notice.

In HQ 951654, we ruled that all three laryngectomy covers were classified in subheading 9021.90.80, HTSUS, the provision for “Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof: Other: Other.” We also ruled that the merchandise could be entered duty-free under subheading 9817.00.96, HTSUS, the provision for “Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons; parts and accessories (except parts and accessories of braces and artificial limb prosthetics) that are specially designed or adapted for use in the foregoing articles: Other,” because the merchandise is specially designed for use by physically handicapped persons. We now believe that the items are correctly classified according to their material makeup, but retain duty free status under subheading 9817.00.96, HTSUS.

As stated in the proposed notice, this revocation will cover any rulings on this issue which may exist but have not been specifically identified. Any party, who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised Customs during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer’s reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving 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 have advised Customs during the 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 issues of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Customs, pursuant to section 625(c)(1), is revoking HQ 951654, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 966874, set forth as an attachment to this notice. Additionally, pursuant to section 625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

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

Dated: May 17, 2004

John Elkins for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

Attachment

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 966874  
May 17, 2004  
CLA-2 RR:CR:GC 966874AM  
**CATEGORY: CLASSIFICATION**  
**TARIFF NO.:** 3919.90.50, 3926.90.98,  
6117.80.9510, 9817.00.96

MR. THOMAS M. LENNOX  
LIMINAUD, INC.  
8688 Tyler Blvd.  
Mentor, OH 44060

**Re:** Revocation of HQ 951654; Romet laryngectomy filter covers, Buchanan laryngectomy protectors, and Stomafoam squares

DEAR MR. LENNOX:

This is in reference to Headquarters Ruling Letter (HQ) 951654, dated July 2, 1992, regarding the classification of Romet laryngectomy filter covers, Buchanan laryngectomy protectors, and Stomafoam squares, pursuant to the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reviewed the ruling and find it to be incorrect. This ruling sets forth the correct classifications.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, (Pub. L. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of HQ 951654 was published on April 7, 2004, in the *Customs Bulletin*, Volume 38, Number 15. No comments were received in response to this notice.

**FACTS:**

Stoma covers are used by people who have had a laryngectomy, the surgical removal of the larynx. In this procedure, the trachea is rerouted to an opening in the neck called a stoma. Hence, inhaled air bypasses the nasopharynx. Stoma covers serve to replace the lost functions of the nasopharynx, namely to filter, warm and moisturize inhaled air and to absorb secretions expelled from the stoma.

Romet laryngectomy filter covers are dickey-type cotton knit covers with velcro fastenings measuring about 8.5 by 11 inches. In advertisements for this article found on the Internet, the colors and styles of the covers are emphasized with slogans such as "let neckbreathers dress in a relaxed

and confident manner” ([www.luminaud.com/ images/bibs2.jpg](http://www.luminaud.com/images/bibs2.jpg)). The Romet filter covers do not actually include a filtering material. One website states “Filters can be worn underneath” ([www.eaglemedicalsupply.com/ProductDetails](http://www.eaglemedicalsupply.com/ProductDetails)). The cover can be washed and used indefinitely.

The Buchanan laryngectomy protector is made of white foam enclosed in a cotton mesh covering that ties around the neck. It can be worn under clothing or at home. It is typically worn for one day and then washed. After 10 washings it should be discarded. It comes in two sizes, 8.5 x 7.25 inches and 6.5x 4.25 inches.

Stomafoam squares are 2 x 2.5 inch pieces of foam either 1/8 or 3/16 inches thick. They are held in place over the stoma by a strip of adhesive. They are used at home or under regular clothing or neckwear and discarded after each use. They are sold in bags of 30 individually wrapped squares.

In HQ 951654, we ruled that all three laryngectomy covers were classified in subheading 9021.90.80, HTSUS, the provision for “Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof: Other: Other.” We also ruled that the merchandise could be entered duty-free under subheading 9817.00.96, HTSUS, the provision for “Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons; parts and accessories (except parts and accessories of braces and artificial limb prosthetics) that are specially designed or adapted for use in the foregoing articles: Other,” because the merchandise is specially designed for use by physically handicapped persons.

**ISSUE:**

Whether the three laryngectomy covers are classified as appliances worn on the body to compensate for a defect of disability, as filters, or as to their material make-up.

**LAW AND ANALYSIS:**

Merchandise imported into the U.S. is classified under the HTSUSA. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUSA and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

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

The HTSUS provisions under consideration are:

3919	Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls:
3919.90	Other:
3919.90.50	Other
* * *	* * * * *
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.98	Other
* * *	* * * * *
6117	Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories:
6117.80	Other accessories:
	Other:
6117.80.95	Other:
6117.80.9510	Of cotton (359)
* * *	* * * * *
8421	Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof:
	Filtering or purifying machinery and apparatus for gases:
8421.39	Other:
8421.39.80	Other
* * *	* * * * *
9021	Orthopedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; parts and accessories thereof:
9021.90	Other:
9021.90.80	Other

We have already recognized that the instant merchandise is classified in subheading 9817.00.96, HTSUS, which provides for duty-free treatment for articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons and parts and accessories of such articles. However, the heading text of 9817 and 9021, HTSUS, is not synonymous. Although the "defect or disability" language of heading 9021,

HTSUS, is very close to the terms “physically . . . handicapped” in heading 9817, HTSUS, (and we need not attempt to ascertain any differences here), the “articles specially designed or adapted” language of heading 9817 could refer to a much larger set of goods than the “high precision” “appliances” of heading 9021.

In describing the general content and arrangement of Chapter 90, the EN states in pertinent part that: “[T]his Chapter covers a wide variety of instruments and apparatus which are, as a rule, characterised by their high finish and high precision.” The EN also lists the following exceptions to the general rule that the instruments and apparatus of this Chapter are high precision types: “ordinary goggles (heading 90.04), simple magnifying glasses and non-magnifying periscopes (heading 90.13), divided scales and school rules (heading 90.17) and fancy hygrometers, irrespective of their accuracy (heading 90.25).” Stoma supplies in general are not listed as one of the exceptions to the high precision rule. Stoma supplies are either disposable plastic articles packaged in boxes of 30, worn for a day, washed a few times, and discarded, or textile articles, chosen for their color and style, and worn and washed indefinitely as with other neckware. Therefore, we do not believe they are characterized by high finish and high precision.

Furthermore, the ENs to heading 9021, HTSUSA, state, in pertinent part, the following:

#### (IV) HEARING AIDS

These are generally electrical appliances with a circuit containing one or more microphones (with or without amplifier), a receiver and a battery. The receiver may be worn internally or behind the ear, or it may be designed to be held in the hand against the ear.

This group is **restricted** to appliances for overcoming deafness; it therefore excludes articles such as headphones, amplifiers and the like used in conference rooms or by telephonists to improve the audibility of speech.

#### (V) OTHER APPLIANCES WHICH ARE WORN OR CARRIED, OR IMPLANTED IN THE BODY, TO COMPENSATE FOR A DEFECT OR DISABILITY

This group includes:

- (1) Speech-aids for persons having lost the use of their vocal cords as a result of an injury or a surgical operation. These consist essentially of an electronic impulse generator. When pressed against the neck, for example, they generate vibrations in the cavities of the throat which are modulated by the user to produce audible speech.
- (2) Pacemakers for stimulating defective heart muscles. These are roughly the size and weight of a pocket watch and are implanted beneath the skin of the patient's chest. They incorporate an electric battery and are connected by electrodes to the heart, which they provide with the impulses necessary for its functioning. Other types of pacemakers are used to stimulate other organs (for example, the lungs, the rectum or the bladder).
- (3) Electronic aids for the blind. These consist essentially of an ultrasonic transmitter-receiver powered by an electric battery. The frequency variations resulting from the time taken for the ultrasonic

beam to travel out to an obstacle and be reflected back enable the user, through an appropriate device (e.g., an internal ear-piece), to detect the obstacle and judge its distance.

- (4) Appliances implanted in the body, used to support or replace the chemical function of certain organs (e.g., secretion of insulin).

The stoma filters and filter covers are nothing like either the hearing aids of the heading text or the listed examples in the ENs. First, all of the appliances listed are precision electronic devices that actively compensate for the defect or disability. Second, all of the examples assist or replace the function of a failed organ: they amplify sound when the ears have failed, they stimulate the vocal cords or the heart muscle when the larynx or heart has failed, or they pump insulin when the pancreas has stopped working. The instant goods do not actually do anything to assist or replace the function of an organ after its failure. The trachea still functions as a pathway for inhaled and exhaled air, albeit bypassing the usual route through the nasopharynx. Foam stoma covers simply help filter and humidify the inhaled air and textile stoma covers keep the stoma discreet. Moreover, speech aids for people who have undergone a laryngectomy are specifically mentioned, whereas other accessories for the surgically created stoma are conspicuously absent.

The literature for both the Buchanan laryngectomy protectors and Stomafoam squares uses the word filter to describe their purpose. Heading 8421, HTSUSA, provides for filters for gases. EN 84.21 states, in pertinent part, the following:

**(B) Filtering or purifying machinery, etc., for gases.**

These gas filters and purifiers are used to separate solid or liquid particles from gases, either to recover products of value (e.g., coal dust, metallic particles, etc., recovered from furnace flue gases), or to eliminate harmful materials (e.g., dust extraction, removal of tar, etc., from gases or smoke fumes, removal of oil from steam engine vapours).

They include:

- (1) Filters and purifiers acting solely by mechanical or physical means;** these are of two types. In the first type, as in liquid filters, the separating element consists of a porous surface or mass (felt, cloth, metallic sponge, glass wool, etc.). In the second type, separation is achieved by suddenly reducing the speed of the particles drawn along with the gas, so that they can then be collected by gravity, trapped on an oiled surface, etc. Filters of these types often incorporate fans or water sprays.

\* \* \* \* \*

Filters of the second type include:

- (v) Dust extractors, smoke filters, etc.,** fitted with various types of obstructing elements to reduce the speed of the particles in the gas stream, e.g., baffle lattes, partitions perforated with non-corresponding orifices, circular or spiral circuits fitted with baffles, and cones of superimposed baffle rings.

[all emphasis in original.]

When worn over the stoma, the foam acts as a filter and humidifier for inhaled air. However, the examples of filters listed in EN 84.21 are incorpo-

rated into a device that moves the liquid or gas to be filtered. There are no examples in the EN that consist simply of the separating element or material as the filter. The Random House Dictionary of the English Language, the Unabridged Edition, (1973), defines apparatus as "1. A group or aggregate of instruments, machinery, tools, materials, etc., having a particular function or intended for a specific use. 2. Any complex instrument or mechanism for a particular purpose. 3. Any system or systematic organization of activities, functions, processes, etc., directed toward a specific goal: *the apparatus of government; espionage apparatus*. 4. *Physiol.* A group of structurally different organs working together in the performance of a particular function: *the digestive apparatus*." The foam stoma filters are not incorporated into a machine. Nor do they constitute a filtering "apparatus" based on the definition above. Other than the packaging of the foam, there is nothing to distinguish the foam from other foam cut to shape. Both the Buchanan laryngectomy protectors and the Stomafoam squares are simply pieces of foam worn over a stoma secured by textile ties or by adhesive; a dust mask, of sorts, for a stoma rather than for the nose and mouth.

In NY 858666, dated December 18, 1990, and in NY 867238, dated December 2, 1991, a dust mask composed of non-woven textile fabric was classified as an "other made up article" in subheading 6307.90, HTSUS. The instant foam stoma filters, which function exactly like a dust mask, are therefore also classified as articles of their material make-up in chapter 39. Therefore, the Stomafoam squares are classified in subheading 3919.90.50, HTSUS, the provision for "Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls: Other: Other."

The Buchanan laryngectomy protector is a composite good of foam and textile materials. The foam accounts for most of the weight and all of the function of the article. It is therefore classified by GRI 3(b) in subheading 3926.90.98, HTSUS, the provision for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other."

The Romet laryngectomy filter cover is worn much like a necktie or cravat. It hides the stoma in a stylish way. It is therefore classified in subheading 6117.80.9510, HTSUSA, the provision for "Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories: Other accessories: Other: Of cotton."

**HOLDING:**

The Romet laryngectomy filter cover is classified in subheading 6117.80.9510, HTSUSA, the provision for "Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories: Other accessories: Other: Of cotton," in quota category 359. The duty rate is 14.6% ad valorem.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available we suggest you check, close to the time of shipment, the Textile Status Report for Absolute Quotas, available on the CBP website at [www.cbp.gov](http://www.cbp.gov).

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories,

you should contact the local CBP office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

The Stomafoam squares are classified in subheading 3919.90.5060, HTSUSA, the provision for "Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls: Other: Other: Other." The rate of duty is 5.8% ad valorem.

The Buchanan laryngectomy protector is classified in 3926.90.9880, HTSUSA, the provision for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other." The rate of duty is 5.3% ad valorem.

However, duty free status under subheading 9817.00.96, HTSUS, for all three articles, is unaffected.

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

**EFFECT ON OTHER RULINGS:**

HQ 951654, dated July 2, 1992, is revoked.

In accordance with 19 U.S.C. § 1625(c)(1), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

John Elkins for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

CC: Mitchel Bayer, Robert Losche, Joan Mazzola, and James Sheridan  
NCSD

**19 CFR PART 177**

**PROPOSED MODIFICATION AND REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF POSITION SENSORS**

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

**ACTION:** Notice of proposed modification and revocation of ruling letters and revocation of treatment relating to tariff classification of position sensors.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (Customs) intends to revoke two rulings and modify a third ruling relating to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of position sensors, and to revoke any

treatment Customs has previously accorded to substantially identical transactions. These articles are devices which gauge the rotational position of spinning machine parts such as gears or crankshafts. Customs invites comments on the correctness of the proposed action.

**DATE:** Comments must be received on or before July 9, 2004.

**ADDRESS:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C. 20220, during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

**FOR FURTHER INFORMATION CONTACT:** James A. Seal, Commercial Rulings Division (202) 572-8779.

**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 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 two rulings and to modify a third ruling relating to the tariff classification of position sensors. Although in this notice Customs is specifically referring to

three rulings, HQ 965764, dated August 13, 2002, NY J87676, dated August 27, 2003, and NY G86705, dated March 1, 2001, 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 ones identified. No further rulings have been 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 advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In HQ 965764, a Hall-Effect Gear Tooth Sensor was held to be classifiable in subheading 8543.89.96, HTSUS, as electric machines and apparatus having individual functions, not specified or included elsewhere in [chapter 85]. The device generated electrical signals in relation to a rotating or spinning shaft or machine part which it relayed to an on-board printed circuit board (pcb). The pcb processed these signals and, in relation thereto, either initiated or modified some action in an engine or other machine. NY J87676 and NY G86705 classified substantially similar devices for measuring the rotational speed of automotive crankshafts and other spinning machine elements in the same provision. The devices at issue in these rulings were found to be essentially electrical in nature and were not more specifically provided for in any other provision of chapter 85. HQ 965764, NY J87676 and NY G86705 are set forth as "Attachment A," "Attachment B," and "Attachment C" to this document, respectively.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke HQ 965764 and NY G86705 and to modify NY J87676, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis in HQ 967134, HQ 967135 and HQ 967103 which are set forth as "Attachment D," "Attachment E," and "Attachment F" to this document, respectively. Additionally,

pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

**DATED:** May 19, 2004

John Elkins for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
**HQ 965764**  
August 13, 2002  
**CLA-2 RR: CR: GC 965764 TPB**  
**CATEGORY: Classification**  
**TARIFF NO.: 8543.89.9695**

MR. PETE MENTO  
EXPEDITORS TRADEWIN, LLC  
1015 3<sup>rd</sup> Avenue, 12th Floor  
Seattle, WA 98104

**RE:** Hall-Effect Gear Tooth Sensor

DEAR MR. MENTO:

This is in response to your letter dated May 14, 2002, to the Director, National Commodity Specialist Division ("NCSA"), New York, on behalf of Honeywell, Inc., Microswitch Division ("Honeywell"), requesting classification of a Hall-Effect Gear Tooth Sensor under the Harmonized Tariff Schedule of the United States ("HTSUS"). Your request was forwarded to this office for consideration.

**FACTS:**

The merchandise under consideration is a Hall-Effect Gear Tooth Sensor ("sensor"). The sensor is composed of the following elements:

1. Flex Circuit, composed of the following elements:
  - a. One Analogue Monolithic Integrated Circuit ("IC"), described at Honeywell as a "Solid State Switch." The IC is protected within a black plastic case. Five leads protrude from the IC case and are attached to the Flex Circuit at five solder points. The protruding leads are attached to the Flex Circuit by four 99.99% gold bonding wires with a diameter of 0.0001 inch each;
  - b. Four ceramic multi-layer capacitor chips of varying size and capacities;

- c. A series of solder points, including three solder joints at one end of the Flex Circuit, used for attaching the conductor wires to the circuit.
2. A standard Aluminum Nickel Cobalt magnet (AlNiCo).
3. A plastic mold surrounding the magnet.
4. Three electrically insulated conductor wires. Two wires are to be connected to a printed circuit board ("PCB"), such as an on-board automotive computer. Honeywell does not provide this PCB. The third wire is used for grounding purposes.
5. Epoxy resin, which fills air spaces and holds the components in place.
6. A hard black plastic housing.

The sensor is used in situations where the Hall-Effect technology is required, such as in an automotive engine cam or crankshaft areas, to accurately gauge the rotational position of a spinning metal object, such as a gear wheel. The gear tooth sensor is positioned perpendicular to the spinning target. The sensor is attached either through a hole existing on the outside of the engine, or it is secured via a mounting bracket. As the wheel spins, the Hall-Effect IC within the sensor detects the presence or absence of a metallic or spatial feature in the wheel, such as a gear tooth, due to the magnetic fields generated by the magnet inside the sensor and altered by a metal gear tooth. Once an anomaly is detected, the IC transmits an electrical signal via the conductor wires to the external PCB. The PCB, in turn, initiates or ceases an action within the automotive engine.

The gear tooth sensor is mostly used in automotive engines, however, it is also marketed for industrial uses, such as chain link conveyor speed and distance, sprocket speed and stop motion detection.

**ISSUE:**

What is the proper classification of the Hall-Effect Gear Tooth Sensor?

**LAW AND ANALYSIS:**

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

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

The HTSUS provisions under consideration are as follows:

- |      |  |
|------|--|
| 8542 | Electronic integrated circuits and microassemblies; parts thereof;   |
| 8543 | Electrical machines and apparatus having individual functions not specified or included elsewhere in this chapter: |

In its condition as imported, the sensor is a finished device that detects the presence of a metallic or spatial anomaly, and transmits an electrical signal during the detection of the anomaly. It is clear that this merchandise is more than just an analogue monolithic integrated circuit. The Hall-Effect IC, along with four ceramic multi-layer capacitor chips, are mounted on a flex circuit, which is bent around the plastic mold that encases the magnet in such a manner as to position the IC in close proximity to the wall of the plastic housing. This housing, connected to three electrically insulated conductor wires forms a complete electronic device.

Chapter 85 Note 5(b)(iii), HTSUS, gives a definition for microassemblies. It states, in pertinent part, as follows:

5. For the purposes of headings 8541 and 8542:

...

(b) “Electronic integrated circuits and microassemblies” are:

...

(iii) Microassemblies of the molded module, micromodule or similar types, containing discrete, active or both active and passive, components which are combined and interconnected.

EN 85.42 (II) goes on to further describe electronic microassemblies, in pertinent part, as follows:

Microassemblies are made from discrete, active or both active and passive components which are combined and interconnected.

Discrete components are indivisible and are the basic electronic construction components in a system. They may have a single active electrical function (semiconductor devices defined by Note 5(A) to Chapter 85) or a single passive electrical function (resistors, capacitors, interconnections, etc.).

However, components consisting of several electric circuit elements and having multiple electric functions, such as integrated circuits, are not considered discrete components.

Also, the ENs to 85.42 describe certain articles which are excluded from classification under that heading. They read, in pertinent part:

... the heading also **excludes** assemblies formed by mounting one or more discrete components on a support formed, for example, by a printed circuit and assemblies formed by adding an electronic microcircuit either one or more other microcircuits of the same or different types or one or more other devices, such as diodes, transformers, resistors. (*Emphasis original*)

2002 HTSUS ENs, 1701.

The article before us is an assembly that contains two types of microcircuits (i.e., the IC and the four capacitor chips) mounted on a flex circuit. This type of assembly would therefore be precluded from classification under heading 8542, HTSUS, based on the above exclusionary note.

Since this device does not provide any sort of measurement data or read-out to the PCB, the sensor is properly classified under heading 8543, which

provides for electrical machines and apparatus having individual functions, not specified or included elsewhere in this chapter.

You claim that the gear tooth sensor is properly classified as an analog monolithic integrated circuit. However, in its condition as imported, the sensor is a finished device with a Hall Effect IC and four capacitors mounted on a flex circuit that gauges the rotational position of a spinning metallic object, such as a gear wheel.

You indicate that classification under heading 8542 is consistent with Customs prior treatment of similar merchandise and refer to NY 815901, dated November 21, 1995, wherein Customs classified a closed-loop linear sensor that measured the amount of AC or DC current flowing through a wire under heading 8542, HTSUS, as an other monolithic integrated circuit. Even though the sensor is precluded from classification under heading 8542, HTSUS, because of the exclusionary language in EN 85.42, described above, reliance on NY 815901 is nonetheless unfounded.

Customs has recently had an opportunity to re-examine the classification of the closed-loop linear current sensor that was the subject of that ruling. In the July 10, 2002, Customs Bulletin, Customs proposed the revocation of NY 815901. Customs decided that based on the correct application of GRI 1, the current sensor subject to that ruling was described by the terms of heading 9030, HTSUS, in its entirety, rather than by just the IC of heading 8542. The final notice of revocation will be published in an upcoming issue of the Customs Bulletin with the issuance of HQ 965698 of this date.

You further claim that Customs has ruled in several previous ruling request submissions that a Hall-Effect IC imparts the essential character of certain sensors. Further classification of the sensor was dependant upon the type of IC being used and its output, whether it be digital, analog or mixed signal. You cite in support of this HQ 085688, dated January 25, 1990 and NY H80199, dated May 21, 2001. However, both of these rulings deal with articles that contain only one microcircuit or device, the Hall-Effect sensor. These articles would therefore not be precluded by the terms of Legal Note 5(b) to chapter 85 and EN 85.42, HTSUS, and would not be precluded from classification under that heading.

Therefore, through application of GRI 1, the sensor is classified under heading 8543, HTSUS, which provides for electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter.

**HOLDING:**

For the reasons stated above the Hall-Effect Gear Tooth Sensor is classified under subheading 8543.89.9695, HTSUS, as: "Other electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter . . . other machines and apparatus . . . other . . . other . . . other . . . other."

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

## [ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

**NY J87676**

August 27, 2003

CLA-2-85:RR:NC:1: 112 J87676

CATEGORY: Classification

TARIFF NO.: 8543.89.9695

MR. DENNIS FORHART  
PRICE WATERHOUSE COOPERS LLP  
WORLDTRADE MANAGEMENT SERVICES  
*400 Renaissance Center  
Detroit, MI 48243-1507*

RE: The Tariff Classification of A Torque-On-Demand Electronic Control Unit (Controller Assembly) and a Hall-Effect Speed Sensor. The Country of Origin is not stated.

DEAR MR. FORHART:

In your letter dated July 15, 2003, on behalf of Borg Warner Diversified Transmission Products Inc., you requested a tariff classification ruling.

The merchandise is a Torque-On-Demand Electronic Control Unit (Controller Unit) and a Hall-Effect Speed Sensor. The function of the Torque-On-Demand Electronic Control Unit (Controller Assembly), assembly part # 4450-000-031, is to monitor the vehicle input signal and make decisions based on these inputs to send input signals to the transfer-case electromagnetic clutch coil for increased or decreased amount of the torque to the front. It also provides signals to shift the transfer case-shift motor. Regarding the Controller Assembly, you propose classification in HTS 9032.89. You cite New York Ruling Letters G82747, 10-18-2000, and NYRL 852475, 5-30-90. However, the item in G82747 was a very different item and Headquarters Ruling Letter 085281 AJS, 11-8-89, ruled that optimizer systems were not classified in HTS 9032.

The function of the Hall-Effect Speed Sensor, part # 1386-140-006, is to detect the speed of a shaft via a square-toothed tone wheel on the shaft. Regarding the Speed Sensor, you propose classification in HTS 9032.90. You cite NYRL 878294. However, the item appears to be closer to the Hall-Effect Gear Tooth Sensor which HRL 965764 TPB, 8-13-02, ruled not to be classified in HTS 9032, but in HTS 8543.

The applicable subheading for the Torque-On-Demand Electronic Control Unit (Controller Assembly) and a Hall-Effect Speed Sensor will be 8543.89.9695, Harmonized Tariff Schedule of the United States (HTS), which provides for other electrical machines and apparatus, . . . , not specified or included elsewhere in Chapter 85, HTS. The rate of duty will be 2.6 percent ad valorem

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

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

ported. If you have any questions regarding the ruling, contact National Import Specialist David Curran at 646-733-3017.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
NY G86705  
March 1, 2001  
CLA-2-85:RR:NC:1:112 G86705  
CATEGORY: Classification  
TARIFF NO.: 8543.89.9695

MS. MARY ELIZABETH STROM  
AMERICAN HONDA MOTOR CO., INC.  
*1919 Torrance Boulevard*  
*Torrance, CA 90501-2746*

RE: The tariff classification of crankshaft position sensors from Japan

DEAR MS. STROM:

In your letter dated January 23, 2001 you requested a tariff classification ruling.

As indicated by the submitted samples and information, the crankshaft position sensors, identified as part #'s 37841-PK2-026 and 37840-PJ1-752, are used in conjunction with the crankshaft of an internal combustion piston engine. In operation, they produce and transmit electrical pulses to communicate the rotational position of the crankshaft to the electronic control unit (ECU) so that the fuel injection sequence is properly accomplished.

The applicable subheading for the crankshaft position sensors, part #'s 37841-PK2-026 and 37840-PJ1-752, will be 8543.89.9695, Harmonized Tariff Schedule of the United States (HTS), which provides for other electrical machines and apparatus, . . . , not specified or included elsewhere in Chapter 85, HTS. The rate of duty will be 2.6 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist David Curran at 212-637-7049.

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

## [ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.  
 BUREAU OF CUSTOMS AND BORDER PROTECTION,  
**HQ 967134**  
**CLA-2 RR:CR:GC 967134 JAS**  
**CATEGORY: Classification**  
**TARIFF NO.: 8543.89.4000**

MR. PETE MENTO  
 EXPEDITORS TRADEWIND, LLC  
 1015 Third Avenue, 12<sup>th</sup> Floor  
 Seattle, WA 98104

**RE:** Hall-Effect Gear Tooth Sensor; HQ 965764 Revoked

DEAR MR. MENTO:

In HQ 965764, dated August 13, 2002, issued to you on behalf of Honeywell Inc., Microswitch Division, Freeport, IL, a Hall-Effect Gear Tooth Sensor (sensor) was held to be classifiable in subheading 8543.89.9695, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as electrical machines and apparatus, having individual functions, not specified or included elsewhere in [chapter 85]. We have reconsidered this classification and now believe that it is incorrect.

**FACTS:**

The sensor consists of a flex circuit, aluminum nickel cobalt magnet, plastic mold surrounding the magnet, three electrically insulated conductor wires, two wires to be connected to a printed circuit board such as an on-board automotive computer, the third wire to be used as a ground, epoxy resin to fill air spaces and hold the components in place, all in a hard black plastic housing.

In HQ 965764 the sensor was described as being used mainly in automotive engines to generate electrical signals relative to a rotating cam or crankshaft which are relayed to an on-board printed circuit board (pcb). The pcb processes these signals and, in relation thereto, initiates or ceases an action within the automotive engine. The sensor was found to be more than just an analogue monolithic integrated circuit of heading 8542. It provided no measurement data or readout to the pcb, but was found to consist of an assembly of components that formed a complete electronic device.

The HTSUS provisions under consideration are as follows:

<b>8543</b>	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in [Chapter 85] . . . :
<b>8543.89</b>	Other:
<b>8543.89.40</b>	Electric synchros and transducers . . .
	Other:
<b>8543.89.96</b>	Other

**ISSUE:**

Whether the Hall-Effect Gear Tooth Sensor (sensor) is more specifically described within heading 8543 as electric synchros and transducers.

**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. With certain exceptions not at issue here, Section XVI, Note 2(a), HTSUS, states that parts of machines which are goods included in any of the headings of chapter 84 or chapter 85 are in all cases to be classified in their respective headings.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. Customs believes the ENs should always be consulted. *See* T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Subheading 8543.89.40 in part provides for electric synchros and transducers. The term *transducer* is not defined in the text of the HTSUS or in the ENs. When not so defined, terms are construed in accordance with their common and commercial meaning, which are presumed to be the same. *Nippon Kogasku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982), and related cases. Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. In HQ 964599, dated December 22, 2000, in considering the classification of optical encoders, we examined the term *transducer* and determined that it encompasses devices which convert variations in one energy form into corresponding variations in another, usually electrical form. Among these is the *velocity transducer* in which the velocity of rotating shafts can be measured by an optical encoder with a suitable light source and detector. By choosing an appropriate pattern, the output data can be produced in binary form suitable for direct input to a computer system. Optical encoders come in two kinds, *absolute encoders* and *incremental encoders*. The *absolute encoder* is a *position transducer* with output in the form of parallel binary digits. *See McGraw-Hill Encyclopedia of Science & Technology*, Vol. 18, pp. 459-462 (6<sup>th</sup> ed., 1987). Position sensors of the type at issue here are transducers which convert physical condition data such as position, speed and acceleration into electrical signals that can be recognized by a processor. The Hall-Effect Gear Tooth Sensor is a transducer which converts shaft rotations into an output of electric pulses. Notwithstanding the fact that position sensors might function as parts of larger instrumentation systems, they are goods included in heading 8543, in accordance with Section XVI, Note 2(a) and Chapter 90, Note 2(a), HTSUS.

**HOLDING:**

Under the authority of GRI 1, the Hall-Effect Gear Tooth Sensor is provided for in heading 8543. It is classifiable in subheading 8543.89.4000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The current column 1 rate of duty is 2.6 percent ad valorem. Duty rates are provided for your convenience and are subject to change. The text of the most

recent HTSUSA and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov). HQ 965764, dated August 13, 2002, is revoked.

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

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

**HQ 967135**  
**CLA-2 RR:CR:GC 967135 JAS**  
**CATEGORY:** Classification  
**TARIFF NO.:** 8543.89.4000

MS. MARY ELIZABETH STROM  
AMERICAN HONDA MOTOR CO., INC.  
*1919 Torrance Boulevard*  
*Torrance, CA 90501-2746*

**RE:** Crankshaft Position Sensor; NY G86705 Revoked

DEAR MS. STROM:

In NY G86705, which the Director of the National Commodity Specialist Division, New York, issued to you on March 1, 2001, crankshaft position sensors, part #s 37841-PK2-026 and 37840-PJ1-752, were held to be classifiable in subheading 8543.89.9695, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as electrical machines and apparatus, having individual functions, not specified or included elsewhere in [chapter 85]. We have reconsidered this classification and now believe that it is incorrect.

**FACTS:**

The position sensors were described in NY G86705 as being used in conjunction with the crankshaft of an internal combustion piston engine. They produce and transmit electrical pulses to communicate the rotational position of the crankshaft to the electronic control unit (ECU) so that the fuel injection sequence is properly accomplished.

The HTSUS provisions under consideration are as follows:

<b>8543</b>	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in [Chapter 85] . . . :
<b>8543.89</b>	Other:
<b>8543.89.40</b>	Electric synchros and transducers . . .
	Other:
<b>8543.89.96</b>	Other

**ISSUE:**

Whether crankshaft position sensors are more specifically described within heading 8543 as electric synchros and transducers.

**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. With certain exceptions not at issue here, Section XVI, Note 2(a), HTSUS, states that parts of machines which are goods included in any of the headings of chapter 84 or chapter 85 are in all cases to be classified in their respective headings.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. Customs believes the ENs should always be consulted. *See* T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Subheading 8543.89.40 in part provides for electric synchros and transducers. The term *transducer* is not defined in the text of the HTSUS or in the ENs. When not so defined, terms are construed in accordance with their common and commercial meaning, which are presumed to be the same. *Nippon Kogaku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982), and related cases. Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. In HQ 964599, dated December 22, 2000, in considering the classification of optical encoders, we examined the term *transducer* and determined that it encompasses devices which convert variations in one energy form into corresponding variations in another, usually electrical form. Among these is the *velocity transducer* in which the velocity of rotating shafts can be measured by an optical encoder with a suitable light source and detector. By choosing an appropriate pattern, the output data can be produced in binary form suitable for direct input to a computer system. Optical encoders come in two kinds, *absolute encoders* and *incremental encoders*. The *absolute encoder* is a *position transducer* with output in the form of parallel binary digits. *See McGraw-Hill Encyclopedia of Science & Technology*, Vol. 18, pp. 459-462 (6<sup>th</sup> ed., 1987). Position sensors of the type at issue here are transducers which convert physical condition data such as position, speed and acceleration into electrical signals that can be recognized by a processor. The crankshaft position sensors are transducers which convert shaft rotations into an output of electric pulses. Notwithstanding the fact that crankshaft position sensors might function as parts of larger instrumentation systems, they are goods included in heading 8543, in accordance with Section XVI, Note 2(a) and Chapter 90, Note 2(a), HTSUS.

**HOLDING:**

Under the authority of GRI 1, crankshaft position sensors, part #s 37841-PK2-026 and 37840-PJ1-752 are provided for in heading 8543. They are classifiable in subheading 8543.89.4000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The current column 1 rate of duty is

2.6 percent ad valorem. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov). NY G86705, dated March 1, 2001, is revoked.

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

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
**HQ 967103**  
**CLA-2 RR:CR:GC 967103 JAS**  
**CATEGORY:** Classification  
**TARIFF NO.:** 8543.89.4000

MR. DENNIS FORHART  
PRICE WATERHOUSE COOPERS LLP  
WORLDTRADE MANAGEMENT SERVICES  
*400 Renaissance Center*  
*Detroit, MI 48243-1507*

**RE:** Hall-Effect Speed Sensor; NY J87676 Modified

DEAR MR. FORHART:

In NY J87676, which the Director, National Commodity Specialist Division, New York, issued to you on August 27, 2003, on behalf of Borg Warner Diversified Transmission Products, Inc., a Hall-Effect Speed Sensor (sensor) and a Torque-On-Demand Electronic Control Unit were held to be classifiable in subheading 8543.89.9695, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as electrical machines and apparatus, having individual functions, not specified or included elsewhere in [chapter 85]. We have reconsidered the classification of the Hall-Effect Speed Sensor and now believe that it is incorrect.

**FACTS:**

The function of the sensor, part #1386-140-006, is to detect the speed of a shaft via a square-toothed tone wheel on the shaft. Typically, sensors of this type consist of a flex circuit, aluminum nickel cobalt magnet, plastic mold surrounding the magnet, three electrically insulated conductor wires, two wires to be connected to a printed circuit board such as an on-board automotive computer, the third wire to be used as a ground, epoxy resin to fill air spaces and hold the components in place, all in a hard black plastic housing. Hall-effect Speed Sensors are used mainly in automotive engines to generate electrical signals relative to a rotating cam or crankshaft which are relayed to an on-board printed circuit board (pcb). The pcb processes these signals and, in relation thereto, initiates or ceases an action within the automotive engine.

The HTSUS provisions under consideration are as follows:

**8543** Electrical machines and apparatus, having individual functions, not specified or included elsewhere in [Chapter 85] . . . :

**8543.89** Other:

**8543.89.40** Electric synchros and transducers..

Other:

**8543.89.96** Other

**ISSUE:**

Whether the Hall-Effect Gear Tooth Sensor (sensor) is more specifically described within heading 8543 as electric synchros and transducers.

**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. With certain exceptions not at issue here, Section XVI, Note 2(a), HTSUS, states that parts of machines which are goods included in any of the headings of chapter 84 or chapter 85 are in all cases to be classified in their respective headings.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. Customs believes the ENs should always be consulted. *See* T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Subheading 8543.89.40 in part provides for electric synchros and transducers. The term *transducer* is not defined in the text of the HTSUS or in the ENs. When not so defined, terms are construed in accordance with their common and commercial meaning, which are presumed to be the same. *Nippon Kogasku (USA), Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982), and related cases. Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. In HQ 964599, dated December 22, 2000, in considering the classification of optical encoders, we examined the term *transducer* and determined that it encompasses devices which convert variations in one energy form into corresponding variations in another, usually electrical form. Among these is the *velocity transducer* in which the velocity of rotating shafts can be measured by an optical encoder with a suitable light source and detector. By choosing an appropriate pattern, the output data can be produced in binary form suitable for direct input to a computer system. Optical encoders come in two kinds, *absolute encoders* and *incremental encoders*. The *absolute encoder* is a *position transducer* with output in the form of parallel binary digits. *See McGraw-Hill Encyclopedia of Science & Technology*, Vol. 18, pp. 459–462 (6<sup>th</sup> ed., 1987). Position sensors of the type at issue here are transducers which convert physical condition data such as position, speed and acceleration into electrical signals that can be recognized by a processor. The sensor at issue here is a transducer which converts shaft rotations into an output of electric pulses. Notwithstanding the fact that position sensors

might function as parts of larger instrumentation systems, they are goods included in heading 8543, in accordance with Section XVI, Note 2(a) and Chapter 90, Note 2(a), HTSUS.

**HOLDING:**

Under the authority of GRI 1, the Hall-Effect Gear Tooth Sensor is provided for in heading 8543. It is classifiable in subheading 8543.89.4000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The current column 1 rate of duty is 2.6 percent ad valorem. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov). NY J87676, dated August 27, 2003, is modified with respect to the Hall-Effect Speed Sensor.

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

**19 CFR PART 177**

**MODIFICATION OF RULING LETTERS RELATING TO  
TARIFF CLASSIFICATION OF CERTAIN MULTIPLE  
SWITCHES**

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

**ACTION:** Notice of modification of ruling letters relating to certain multiple switches.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection ("CBP") is modifying two ruling letters pertaining to certain multiple switches. While the final classification determinations of the original rulings under the Harmonized Tariff Schedule of the United States ("HTSUS") accorded this merchandise are correct, CBP believes that the reasoning in the **LAW AND ANALYSIS** section is incorrect.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse August 8, 2004.

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

**SUPPLEMENTARY INFORMATION:**

## Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice advising interested parties that CBP intended to modify two ruling letters pertaining to automotive switches which contain multiple replications of the same type of device joined in a single housing was published on March 10, 2004, in Vol. 38, No. 11 of the CUSTOMS BULLETIN. No comments were received in response to this notice.

As stated in the proposed notice, while CBP is specifically referring to two rulings, HQ 964533 and HQ 958708, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying HQ 964533 and HQ 958708 to the extent that they do not reflect the proper reasoning as to the classification of the switches as set forth in HQ 966188 and HQ 966298 as "Attachment A" and "Attachment B" respectively, attached to this document.

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

**DATED:** May 17, 2004

John Elkins for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

**HQ 966188**

May 17, 2004

**CLA-2 RR:CR:GC 966188 TPB**

**CATEGORY:** Classification

**TARIFF NO.:** 8537.10.90

MR. ROBERT J. RESETAR  
PORSCHE CARS NORTH AMERICA, INC.  
980 Hammond Drive, Suite 1000  
Atlanta, GA 30328

**RE:** Wiper Switch and Motor Vehicle Steering Column Switch; HQ 964533  
Analysis Modified, Classification Affirmed.

DEAR MR. RESETAR:

This is in reference to HQ 964533, issued to you on October 2, 2000, in which a wiper switch and steering column switch for motor vehicles were held to be classifiable under subheading 8537.10.90, Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for other bases, equipped with two or more apparatus of heading 8536 or 8537, for electric control or the distribution of electricity . . . for a voltage not exceeding 1,000 volts. That ruling revoked a previous ruling issued to you, HQ 963621, dated August 31, 2000, which classified those parts in subheading 8536.50.90, HTSUS. HQ 964533 indicated that the change in Customs position stemmed from its interpretation of *Universal Electronics, Inc. v United States*, 112 F.3d 488 (1997), *aff'g.* 20 CIT 337 (1996), which indicated that multiple switches for electronic control are classified under heading 8537.

We have had an opportunity to re-examine the issue and find that Customs interpretation of *Universal* was incorrect. However, the plain language of the heading indicates that the automotive switches were correctly classified under heading 8537, HTSUS. Thus, for the reasons set forth below, HQ 964533 is modified to the extent that it does not reflect our understanding of *Universal*, but the classification of the switches is affirmed.

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

American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of the above identified ruling was published on March 10, 2004, in the CUSTOMS BULLETIN, Volume 38, Number 11. No comments were received in response to the notice.

**FACTS:**

The article presently at issue is a 3-in-1 switch mounted on the steering column behind the steering wheel of a motor vehicle. It incorporates three individual levers mounted together, each consisting of a windshield wiper speed switch, a cruise control on/off/setting switch, and a turn signal and high/low headlight switch.

**ISSUE:**

Whether the wiper switch and the 3-in-1 steering column switch are automotive parts or accessories or electrical apparatus of Chapter 85.

**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.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding, 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 ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

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 a voltage not exceeding 1,000 V:
8536.50	Other switches:
8536.50.90	Other
	*
	* *
8537	. . . other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity . . . :
8537.10	For a voltage not exceeding 1,000 V:
8537.10.90	Other
	*
	* *

8708 Parts and accessories of the motor vehicles of headings 8701 to 8705:

Other parts and accessories of bodies (including cabs):

8708.99 Other:

Other:

Other:

8708.99.80 Other

Initially, Section XVI, Note 1(l), HTSUS, excludes articles of Section XVII. Heading 8708, parts and accessories of motor vehicles, is in Section XVII. But, Section XVII, Note 2(f), HTSUS, excludes from the expressions “parts” and “parts and accessories” electrical machinery and equipment of Chapter 85. The question, therefore, is whether these switches are described by a provision in Chapter 85.

In your original two ruling requests, both dated May 27, 1999, from which NY E81997 and NY E81998 resulted, you cited heading 8537, HTSUS, for possible consideration. The rulings that were issued, however, contained no discussion of that provision. Heading 8537, HTSUS, provides for other bases, equipped with two or more apparatus of heading 8535 or 8536.

The wiper switch consists of a single lever that performs separate switching functions and the 3-in-1 steering column switch consists of three individual switches joined in a common housing, each of which controls a separate function within the vehicle. Because these devices contain multiple switches, each of which is an apparatus found in heading 8536, HTSUS, they meet the plain language of heading 8537.

In *Universal*, the Court of Appeals for the Federal Circuit affirmed a decision by the Court of International Trade classifying hand-held remote control units under subheading 8537.10.00, HTSUS. However, the merchandise in *Universal* consisted of both switches and terminals. Because there was a combination of different types of devices that are classified under heading 8536, heading 8537, HTSUS was applicable. Here, we have multiples of a single type of device, i.e. switches. The court in *Universal* did not explicitly address a position on multiple replications of a single type of device. It ruled on devices containing both switches and terminals. Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents. *Webster v. Fall*, 266 U.S. 507, 511 (1925). Therefore, the finding in *Universal* is not a precedent with respect to the merchandise presently before us.

Customs believes that heading 8536 covers individual apparatus of the type named in the heading. Multiples of a single type of apparatus meet the plain language of heading 8537, HTSUS, since they are “two or more” of the apparatus. Because both the wiper switch and the 3-in-1 steering column switch are provided for in heading 8537, Section XVII, Note 2(f), HTSUS, eliminates heading 8708 from consideration.

HQ 964533 cited to several other Customs rulings, i.e. HQ 958711 and HQ 958708, both dated February 6, 1996 and HQ 958451, dated February 8, 1996, that classified apparatus with multiple devices in heading 8537, HTSUS. Although HQ 964533 indicated that these were classified for the

same reasons as the CAFC did in *Universal*, HQ 958708 actually contained both switches and connectors, which dictated classification under heading 8537, HTSUS. The merchandise in HQ 958711 and HQ 958451 was classified under heading 8537, HTSUS, in accordance with a plain text reading of the heading, i.e. the goods contained two or more apparatus of heading 8535 or 8536, rather than by application of *Universal*.

Finally, HQ 964533 rejected the reasoning found in HQ 963621, dated August 31, 2000, based on Customs view of *Universal*. This view was first expressed in HQ 963218, dated May 24, 2000. That ruling classified junction boxes and power distribution boxes which contained relays and fuses in heading 8537, HTSUS. Customs indicated in HQ 963218 that heading 8536, HTSUS, provides for “multiples of one . . . apparatus.” While Customs still believes this view is invalid, it is because of Customs understanding of the plain language of heading 8537, HTSUS, and not because of the holding in *Universal*. For that reason, the observation that heading 8536, HTSUS, provides for multiples of apparatus of heading 8535 or 8536, HTSUS, is again rejected, due to a plain text reading of heading 8537, HTSUS.

**HOLDING:**

For the reasons stated above, under the authority of GRI 1, Customs affirms that the 3-in-1 steering column switch is provided for in heading 8537, specifically, subheading 8537.10.90, HTSUS. The rate of duty according to the 2004 HTSUS is 2.7%. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

HQ 964533 is modified to the extent that it reflects Customs understanding of *Universal*. The views in HQ 963218 and HQ 963621 on the distinction between headings 8536 and 8537, HTSUS, is rejected and hereby modified. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

John Elkins for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

## [ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

**HQ 966298**

May 17, 2004

**CLA-2 RR: CR: GC 966298 TPB**

**CATEGORY:** Classification

**TARIFF NO.:** 8537.10.90

MR. J. G. BRADFORD  
AT&T  
*Guilford Center, P.O. Box 2500*  
*Greensboro, NC 27420-5000*

**RE:** HQ 958708 Clarified and Modified; Membrane Switch Assembly.

DEAR MR. BRADFORD:

This is in reference to HQ 958708, issued to you on February 6, 1996, which revoked HQ 088964. HQ 958708 classified certain membrane switch assemblies under subheading 8537.10.90, Harmonized Tariff Schedule of the United States ("HTSUS"). During the process of reviewing rulings, we discovered that while the final classification of the merchandise in question was correct, the reasoning set forth in the Law and Analysis section of HQ 958708 required clarification as to why the membrane switch assembly was classified in that subheading. This ruling clarifies that decision.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of the above identified ruling was published on March 10, 2004, in the CUSTOMS BULLETIN, Volume 38, Number 11. No comments were received in response to the notice.

**FACTS:**

The facts of the case as indicated in HQ 958708 are as follows:

Switch assemblies come in various configurations and are often used with printed circuit boards to connect circuits in telephones, computer keyboards, calculators, and children's games. The membrane switch assembly which is the subject of this inquiry is described in HQ 088964 as usually including two flexible membrane circuits, adhesive paper spacers, plastic graphics, and in some variations, molded plastic housings or backplates. The flexible membranes have a carbon ink circuitry printed on them. The switches are assembled in layers and bonded with the self-contained adhesive of the spacers and graphics. The switches vary in size from 2 inches to 8 inches in width and from 4 inches to 18 inches in length, including insertible tails (electrical connectors).

**ISSUE:**

Whether the membrane switch assembly is a good included in heading 8537.

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRIs"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tar-

iff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

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

The HTSUS provisions under consideration are as follows:

- |            |   |
|------------|---|
| 8517       | Electrical apparatus for line telephony or telegraphy, including such apparatus for carrier-current line systems; parts thereof:  |
| 8517.90    | Parts:  |
|            | Other parts, incorporating printed circuit assemblies:  |
| 8517.90.12 | Parts for telephone sets  |
|            | *   |
|            | * *   |
| 8537       | Boards, panels (including numerical control 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: |
| 8537.10    | For a voltage not exceeding 1,000 V:  |
| 8537.10.90 | Other   |

HQ 088964, which HQ 958708 revoked, classified the membrane switch assemblies in heading 8517, HTSUS. We hereby incorporate by reference the Law and Analysis section of HQ 958708 as to why the switch assemblies are classified under heading 8537, HTSUS, but add the following discussion by way of clarification.

The switch assemblies in question, as described in the Facts section of this ruling, contain individual switches bonded together in layers. The switch assemblies also include insertible tails (electrical connectors). Thus, the switch assemblies satisfy the terms of heading 8537, as bases equipped with two or more apparatus of headings 8535 or 8536 (i.e., switches and connectors) for electrical control or the distribution of electricity.

**HOLDING:**

For the reasons stated above, under authority of GRI 1, the membrane switch assembly is classified under subheading 8537.10.90, HTSUS, as: “Boards, panels (including numerical control 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: For a voltage not exceeding 1,000 V: Other”. The rate of duty according to the 2004 HTSUS is 2.7%. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

HQ 958708 is clarified by the discussion above and the classification is affirmed. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

John Elkins for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*