

Bureau of Customs and Border Protection

General Notices

AUTOMATED COMMERCIAL ENVIRONMENT (ACE): NATIONAL CUSTOMS AUTOMATION PROGRAM TEST OF AUTOMATED TRUCK MANIFEST FOR TRUCK CARRIER ACCOUNTS; DEPLOYMENT SCHEDULE

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

ACTION: General notice.

SUMMARY: The Bureau of Customs and Border Protection, in conjunction with the Department of Transportation, Federal Motor Carrier Safety Administration, is currently conducting a National Customs Automation Program (NCAP) test concerning the transmission of automated truck manifest data. This document announces the next group, or cluster, of ports to be deployed for this test.

EFFECTIVE DATES: The ports identified in this notice, all in the State of Michigan, are expected to deploy in October, 2005, as provided in this notice. Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Fitzpatrick via e-mail at Thomas.Fitzpatrick@dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

The National Customs Automation Program (NCAP) test concerning the transmission of automated truck manifest data for truck carrier accounts was announced in a General Notice published in the **Federal Register** (69 FR 55167) on September 13, 2004. That notice stated that the test of the Automated Truck Manifest will be conducted in a phased approach, with primary deployment scheduled for no earlier than November 29, 2004. The document identified the ports of Blaine, Washington, and Buffalo, New York, as the original deployment sites.

The September 13, 2004, notice stated that subsequent deployment of the test will occur at Champlain, New York; Detroit, Michigan; Laredo, Texas; Otay Mesa, California; and Port Huron, Michigan, on dates to be announced. The notice stated that the Bureau of Customs and Border Protection (CBP) would announce the implementation and sequencing of truck manifest functionality at these ports as they occur. The test is to be expanded eventually to include ACE Truck Carrier Account participants at all land border ports, and subsequent releases of ACE will include all modes of transportation. The September 13, 2004, notice announced that additional participants and ports will be selected throughout the duration of the test.

Implementation of the Test

The test commenced in Blaine, Washington in December 2004, but not at Buffalo, New York. In light of experience with the implementation of the test in Blaine, Washington, CBP decided to change the implementation schedule and published a General Notice in the **Federal Register** on May 31, 2005 (70 FR 30964) announcing the changes.

As noted in the May 31, 2005, General Notice, the next deployment sites will be brought up as clusters. In most instances, one site in the cluster will be identified as the "model site" or "model port" for the cluster. This deployment strategy will allow for more efficient equipment set-up, site checkouts, port briefings and central training.

The ports identified belonging to the first cluster announced in the May 31, 2005, General Notice included the original port of implementation: Blaine, Washington. Sumas, Washington, was designated as the model port. The other ports of deployment in the cluster included the following: Point Roberts, WA; Oroville, WA (including sub ports); Boundary, WA; Danville, WA; Ferry, WA; Frontier, WA; Laurier, WA; Metaline Falls, WA; Nighthawk, WA; and Lynden, WA.

In a General Notice published in the **Federal Register** (70 FR 43892) on July 29, 2005, CBP announced that the test was being further deployed, in two clusters, at ports in the States of Arizona and North Dakota. The test was to be deployed at the following ports in Arizona on July 25, 2005: Douglas, AZ; Naco, AZ; Lukeville, AZ; Sasabe, AZ; and Nogales, AZ. Douglas, AZ was designated as the model port. The test was to be deployed at the following ports in North Dakota on August 15, 2005: Pembina, ND; Neche, ND; Noyes, ND; Walhalla, ND; Maida, ND; Hannah, ND; Sarles, ND; and Hansboro, ND. Pembina, ND, was designated as the model port.

NEW CLUSTER

Through this Notice, CBP announces the next cluster of ports to be brought up for purposes of implementation of the test. The test will be deployed at the following ports, in the State of Michigan, no ear-

lier than the dates indicated (all in the year 2005): Windsor Tunnel, October 4; Barge Transport, October 5; Ambassador Bridge, October 7; Port Huron, October 14; Marine City, October 18; Algonac, October 18; and Sault St. Marie, October 28. No port in this cluster is designated as the "model port."

Previous NCAP Notices Not Concerning Deployment Schedules

On Monday, March 21, 2005, a General Notice was published in the **Federal Register** (70 FR 13514) announcing a modification to the NCAP test to clarify that all relevant data elements are required to be submitted in the automated truck manifest submission. That notice did not announce any change to the deployment schedule and is not affected by publication of this notice. All requirements and aspects of the test, as set forth in the September 13, 2004 notice, as modified by the March 21, 2005 notice, continue to be applicable.

DATED: October 6, 2005

JAYSON P. AHERN,
*Assistant Commissioner,
Office of Field Operations.*

[Published in the Federal Register, October 14, 2005 (70 FR 60096)]

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

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

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning October 1, 2005, the interest rates for overpayments will be 6 percent for corporations and 7 percent for non-corporations, and the interest rate for underpayments will be 7 percent. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

EFFECTIVE DATE: October 1, 2005.

FOR FURTHER INFORMATION CONTACT: Trong Quan, National Finance Center, Collections Section, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278; telephone (317) 614-4516.

SUPPLEMENTARY INFORMATION:**Background**

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

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

In Revenue Ruling 2005-62, the IRS determined the rates of interest for the calendar quarter beginning October 1, 2005, and ending December 31, 2005. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (4%) plus three percentage points (3%) for a total of seven percent (7%). For corporate overpayments, the rate is the Federal short-term rate (4%) plus two percentage points (2%) for a total of six percent (6%). For overpayments made by non-corporations, the rate is the Federal short-term rate (4%) plus three percentage points (3%) for a total of seven percent (7%). These interest rates are subject to change for the calendar quarter beginning January 1, 2005, and ending March 31, 2005.

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

Beginning Date	Ending Date	Under-payments (percent)	Over-payments (percent)	Corporate Overpayments (Eff. 1-1-99) (percent)
070174	063075	6%	6%	
070175	013176	9 %	9 %	
020176	013178	7 %	7 %	
020178	013180	6 %	6 %	
020180	013182	12 %	12 %	
020182	123182	20 %	20 %	

Beginning Date	Ending Date	Under-payments (percent)	Over-payments (percent)	Corporate Overpayments (Eff. 1-1-99) (percent)
010183	063083	16 %	16 %	
070183	123184	11 %	11 %	
010185	063085	13 %	13 %	
070185	123185	11 %	11 %	
010186	063086	10 %	10 %	
070186	123186	9 %	9 %	
010187	093087	9 %	8 %	
100187	123187	10 %	9 %	
010188	033188	11 %	10 %	
040188	093088	10 %	9 %	
100188	033189	11 %	10 %	
040189	093089	12 %	11 %	
100189	033191	11 %	10 %	
040191	123191	10 %	9 %	
010192	033192	9 %	8 %	
040192	093092	8 %	7 %	
100192	063094	7 %	6 %	
070194	093094	8 %	7 %	
100194	033195	9 %	8 %	
040195	063095	10 %	9 %	
070195	033196	9 %	8 %	
040196	063096	8 %	7 %	
070196	033198	9 %	8 %	
040198	123198	8%	7%	
010199	033199	7%	7%	6%
040199	033100	8%	8%	7%
040100	033101	9%	9%	8%
040101	063001	8%	8%	7%
070101	123101	7%	7%	6%

Beginning Date	Ending Date	Under-payments (percent)	Over-payments (percent)	Corporate Overpayments (Eff. 1-1-99) (percent)
010102	123102	6%	6%	5%
010103	093003	5%	5%	4%
100103	033104	4%	4%	3%
040104	063004	5%	5%	4%
070104	093004	4%	4%	3%
100104	033105	5%	5%	4%
040105	093005	6%	6%	5%
100105	123105	7%	7%	6%

Dated: October 11, 2005

ROBERT C. BONNER,
*Commissioner,
Customs and Border Protection.*

[Published in the Federal Register, October 17, 2005 (70 FR 60362)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, October 12, 2005

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.

Myles B. Harmon for MICHAEL T. SCHMITZ,
*Assistant Commissioner,
Office of Regulations and Rulings.*

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF AN ITEM DESCRIBED IN ERROR AS AN ETHERNET CARD

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

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to tariff classification of an item described, in error, as an Ethernet card under the Harmonized Tariff Schedule of the United States (“HTSUS”).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (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 CBP is revoking one ruling pertaining to the tariff classification of an item described as an Ethernet card under the HTSUS and any treatment previously accorded by CBP to substantially identical transactions. CBP invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before November 25, 2005.

ADDRESS: Written comments are to be addressed to the U.S. Bureau of 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 the offices of U.S. Customs and Border Protection, 799 9th

Street, NW, Washington, D.C. 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: Deborah Stern, General Classification Branch (202) 572-8785.

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the tariff classification of an item described in error as an Ethernet card. Although in this notice CBP is specifically referring to one ruling (NY K87985) this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No additional rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to

advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of the proposed action.

In NY K87985 (Attachment A), CBP classified a good identified and described as an Ethernet circuit card in subheading 8471.80.1000, Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"), which provides in relevant part for units of automatic data processing machines. However, the manufacturer and importer have informed CBP that the card we classified was misidentified and misdescribed. That is, the part number we identified does not exist, and the ruling's description of an Ethernet card is not the description associated with the line card for which the ruling was requested. CBP's review of relevant product literature supports this conclusion. As the ruling is based upon a part number that does not exist the ruling is being revoked. However, CBP is taking the opportunity to replace the ruling with a new ruling on the correct part number and correct description of a line card for network switching. CBP has determined it should be classified in heading 8517, specifically subheading 8517.90.4400, HTSUSA, which provides for "Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones; parts thereof: Parts: Other: Printed circuit assemblies: For telegraphic apparatus."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY K87985 and any other ruling not specifically identified to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analyses set forth in HQ 967631 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise. Before taking this action, we will give consideration to any written comments timely received.

Dated: October 11, 2005

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

[Attachments]

[Attachment A]

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

NY K87985

August 5, 2004

CLA-2-84:RR:NC:1:110 K87985

CATEGORY: Classification

TARIFF NO.: 8471.80.1000

MR. RICHARD ZUPITO
MONTGOMERY INTERNATIONAL, INC.
341 Erickson Ave.
Essington, PA 19029

RE: The tariff classification of an Ethernet Card from Singapore.

DEAR MR. ZUPITO:

In your letter dated June 29, 2004, on behalf of your client Data Q Internet Equipment Co., you requested a tariff classification ruling.

The merchandise under consideration is the Cisco WS-X4148RJ45 Ethernet Card. The WS-X4148RJ45 is an Ethernet circuit card for use in the Cisco 4000 series switch family. It is designed to work only when inserted into an expansion slot within the Cisco 4000 series switches. The Cisco 4000 series switches are used in Local Area Network (LAN) and or in conjunction with a telecommunications network. The WS-X4148RJ45 provides interface connection of up to 48 Ethernet ports to a LAN using RJ45 type connectors. It has a 100-meter range over category 5 copper cabling.

It is noted that Ethernet is a LAN standard. Ethernet cards are currently a class of device principally used in automatic data processing (ADP) systems. This ruling is based on evidence that the WS-X4148RJ45 is suitable for use solely or principally with the machines of heading 8471. With regard to principal use, Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that "a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use." Principal use can and does change. Generally, in order to determine principal use, U.S. Customs relies on the facts and these decisions are made on a case-by-case basis.

The WS-X4148RJ45 Ethernet Card appears to meet the definition of a "unit" of an ADP system, noting Legal Note 5 (B) to Chapter 84 of the Harmonized Tariff Schedule (HTS). It is principally used for the interconnection of ADP processors to other ADP units within the framework of a LAN system and would fall under the definition of a control or adaptor unit.

The applicable subheading for the Cisco WS-X4148RJ45 Ethernet Card will be 8471.80.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Automatic data processing machines and units thereof . . . Other units of automatic data processing machines: Control or adapter units." The general rate of duty will be free. This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

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

ported. If you have any questions regarding the ruling, contact National Import Specialist Eileen S. Kaplan at 646-733-3016. Sincerely,

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

[Attachment B]

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

HQ 967631

CLA-2 RR: CTF: TCM 967631 DBS

CATEGORY: Classification

TARIFF NO.: 8517.90.4400

MR. RICHARD ZUPITO
MONTGOMERY INTERNATIONAL, INC.
341 Erickson Ave.
Essington, PA 19029

RE: Revocation of NY K87985; Classification of line cards for network switches

DEAR SIR OR MADAM:

On August 5, 2004, the Director, National Commodity Specialist Division, issued to you on behalf of Data Q Internet Equipment Co ("Data Q"), New York Ruling Letter (NY) K87985, classifying what was understood at the time to be a Cisco Ethernet circuit card in subheading 8471.80.1000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as a unit of an automatic data processing (ADP) machine. According to new information submitted to this office by counsel for Cisco Systems, Inc. ("Cisco") and confirmed by Data Q, the good subject to the ruling was identified by an incorrect part number and the description is that of an entirely different card. This ruling constitutes a revocation of NY K87985 and a binding ruling on the classification for the line card properly identified and described below.

FACTS:

The merchandise in NY K87985 was described in relevant part as follows:

WS-X4148RJ45 Ethernet Card. The WS-X4148RJ45 is an Ethernet circuit card for use in the Cisco 4000 series switch family. It is designed to work only when inserted into an expansion slot within the Cisco 4000 series switches. The Cisco 4000 series switches are used in Local Area Network (LAN) and or in conjunction with a telecommunications network.

CBP was informed by counsel for Cisco that part number WS-X4148RJ45 does not exist; the actual part number is WS-X4148RJ45V (emphasis added). Further, the description matches not the WS-X4148RJ45V, but a different Cisco line card: a simple Ethernet card for LANs. Following this discovery, Data Q confirmed that the WS-X4148RJ45V line card is the merchandise for which the original ruling was requested, and not the good de-

scribed above (and incorrectly identified). We note that the confusion likely arose from the similarity of several part numbers and the variety of line cards described in the product literature website which accompanied the ruling request.

The WS-X4148RJ45V card is a 48-port switching line card (printed circuit assembly) with inline power for Cisco's Catalyst 4000 Series Switches for Internet Protocol (IP) telephony. The switches are used to create Virtual LANs between, e.g., corporate headquarters and branch offices in wide area networks. IP Telephony allows voice, data and video to be transmitted across a data network. Inline power, or "Power Over Ethernet" as described by Cisco is 48-volt DC power provided over standard Category 5 unshielded twisted-pair (UTP) cable up to 100 meters. The instant line card detects IP telephones and supplies power to them via the switch, in lieu of an electrical outlet. It permits the communication of telephone, fax and computers over a wide area. The card also provides an auxiliary VLAN feature which allows for configuration and network management of the VLANs while maintaining separate logical topologies for voice and data terminals. The card supports Cisco's Fast EtherCannel technology and the Link Aggregation standard used by Cisco's systems.

ISSUE:

Whether a line card for IP telephony is classified under heading 8517, Harmonized Tariff Schedule of the United States (HTSUS).

LAW AND ANALYSIS:

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

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

The HTSUS headings at issue are, in part, as follows:

8471 Automatic data processing machines and units thereof. . . .

* * *

8517 Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones; parts thereof:

To be classified in heading 8471, as an ADP unit, the merchandise must meet all three requirements of Note 5(B) to Chapter 84, HTSUS, which provides that:

Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph

(E) . . . a unit is to be regarded as being a part of a complete system if it meets all the following conditions:

- (a) It is of a kind solely or principally used in an automatic data processing system;
- (b) It is connectable to the central processing unit either directly or through one or more other units; and
- (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

Often, networked equipment can meet the requirements of Legal Note 5(B)(b) and 5(B)(c) to chapter 84, for the following reasons: they are connectable to the central processing unit either directly or through one or more other units; and, they are able to accept or deliver data in a form (codes or signals) which can be used by the system. Classification determinations often turn on whether networked equipment meet the terms of Legal Note 5(B)(a) to chapter 84, HTSUS. That is, CBP must determine whether the networked equipment is of a kind solely or principally used in an ADP system. Such a determination is consistent with CBP rulings on various networking equipment, including HQ 965047, dated June 19, 2002; HQ 963250, dated July 23, 2001; and HQ 963234 July 23, 2001.

In resolving this issue, importers must provide evidence of sole or principal use. An unsupported claim that these goods are solely or principally used in an ADP system is not evidence. The courts have provided the following factors to apply, which are indicative but not conclusive, when determining the principal use of merchandise: general physical characteristics; expectation of the ultimate purchaser; channels of trade; environment of sale (accompanying accessories, manner of advertisement and display); use in the same manner as merchandise which defines the class; economic practicality of so using the import; and recognition in the trade of this use. See Lenox Collections v. United States, 19 Ct. Int'l Trade 345, 347 (1995); Kraft, Inc. v. United States, 16 Ct. Int'l Trade 483 (1992); G. Heileman Brewing Co. v. United States, 14 CIT 614 (1990). See also United States v. Carborundum Company, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), cert. denied, 429 U.S. 979 (1976).

Information obtained from Cisco and confirmed by you, the importer, indicates that this line card is used exclusively in Cisco Catalyst 4000 Series Switches for IP telephony, which transmits voice, video and data over multi-mode Fast Etherchannel Links. The expectation of the ultimate purchasers, which are large enterprises including Internet Service Providers, is to transmit voice, video and data services over public or private lines, IP phone auto-detection, in-line power and configuration of multiple Virtual LANs (VLANs) over wide areas. The channels of trade and environment of sale for this line card are large enterprises for communication networks between corporate headquarters and branch locations. Because of its sole use in switches for IP telephony, their use is consistent with other apparatus for line telephony or line telegraphy, not simple Ethernet cards for use in an ADP system. We conclude the instant line card is not of a kind solely or principally used in an ADP system. As it does not satisfy Note 5(B)(a), Ch. 84, it cannot be classified in heading 8471, HTSUS.

In light of the card's use in line telephony and telegraphy, we turn to heading 8517, HTSUS. Explanatory Note (III)(A) to heading 8517 describes the automatic telephonic or telegraphic switching apparatus in relevant part as follows:

These are of many types. The key feature of a switching system is the ability to provide, in response to coded signals, an automatic connection between users. Automatic switchboards and exchanges may operate by means of circuit switching, message switching or packet switching which utilize microprocessors to connect users by electronic means. Many automatic switchboards and exchanges incorporate analogue to digital converters, digital to analogue converters, data compression/decompression devices (codecs), modems, multiplexors, automatic data processing machines and other devices that permit the simultaneous transmission of both analogue and digital signals over the network, which enables the integrated transmission of speech, other sounds, characters, graphics, images or other data.

As demonstrated by the facts above, the switches that the WS-X4148RJ45V card supports provide an automatic connection between users (e.g., of the VLANs) for the transmission of signals over a network, which enables the integrated transmission of speech, other sounds, characters, graphics, images or other data (i.e., IP telephony). Thus, they are included in heading 8517, HTSUS, as electrical apparatus for line telephony and line telegraphy. The line card at issue is a printed circuit assembly used exclusively with these switches, detecting and powering IP telephones through the switch.

It is a well-established rule that a 'part' of an article is an integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article." United States v. Willoughby Camera Stores, Inc., 21 CCPA 322, 324, T.D. 46,851 (1933) (emphasis in original), cert denied, 292 U.S. 640 (1934). In determining whether an item is a part of an article, the Court looks to the "nature, function, and purpose of an item in relation to the article to which it is attached or designed to serve . . ." Ideal Toy Corp. v. United States, 58 CCPA 9, 13, C.A.D. 996, 433 F. 2d 801, 803 (1979). However, a device may be considered a part of an article even though the device is not necessary to the operation of the article, provided that once the device is installed the article cannot function properly without it. United States v. Antonio Pompeo, 43 C.C.P.A. 9, C.A.D. 602 ((Cust. & Pat. App., 1955). To meet this requirement, the device must be dedicated for use upon the article. See Beacon Cycle Supply Co., Inc. v. United States, 81 Cust. Ct. 46, 50-51 C.D. 4764 (1978).

Further, EN 85.17 states that subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), parts of the apparatus of this heading are also classified here. Section XVI, Note 2 (b) provides that parts that are not themselves goods of another heading and are suitable for use solely or principally with a particular machine of Chapters 84 or 85 are to be classified with those machines. Based upon our review of the product literature, the line card, being designed for inline power and exclusively used with the particular series of switches for a inline power multi-service communications infrastructure, is classifiable as

a part of the apparatus of heading 8517, HTSUS. As the switch to which this is a part transmits voice and data, it would be classified as telegraphic apparatus. Thus, the line card is classified as a printed circuit assembly for telegraphic apparatus.

HOLDING:

The Cisco WS-X4148RJ45V is classified in heading 8517, HTSUS. It is specifically provided for in subheading 8517.90.4400, HTSUSA, as "Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones; parts thereof: Parts: Other: Printed circuit assemblies: For telegraphic apparatus." The 2005 column one rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY K87985, dated August 5, 2004, is hereby REVOKED.

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division.

19 CFR PART 177

**PROPOSED MODIFICATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO
CLASSIFICATION OF CHOCOLATE CONFECTIONERIES**

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

ACTION: Notice of proposed modification of ruling letter and treatment relating to the classification of chocolate confectioneries.

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

DATE: Comments must be received on or before November 25, 2005.

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

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, Tariff Classification and Marking Branch, 202-572-8778.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify a ruling letter pertaining to the tariff classification of certain chocolate confectioneries. Although in this notice CBP is specifically referring to one ruling, New York Ruling Letter (NY) C86680, dated May 21, 1998, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has

received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

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

In NY C86680, dated May 21, 1998, the classification of chocolate covered peanuts, almonds and pralines imported in bulk was determined to be in heading 1806.90.9011 or 1806.90.9019, HTSUS, depending on the ingredients. This ruling letter is set forth in "Attachment A" to this document. Since the issuance of that ruling, CBP has had a chance to review the classification of this merchandise and has determined that the classification is in error.

CBP, pursuant to 19 U.S.C. 1625(c)(1), intends to modify NY C86680, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 967865 (*see* "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: October 11, 2005

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division

Attachments

[Attachment A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY C86680
May 21, 1998
CLA-2-17:RR:NC:SP:232 C86680
CATEGORY: Classification
TARIFF NO.: 1704.90.1000; 1806.90.9011; 1806.90.9019

MR. PIERRE MERHEJ
30 Bassett Road
Brockton, MA 02401

RE: The tariff classification of Sugar Coated Confectionery from Lebanon.

DEAR MR. MERHEJ:

In your letter received on April 21, 1998, on behalf of Edibles S.A.R.L. of Beirut, Lebanon, you requested a tariff classification ruling. You submitted descriptive literature, product photographs, and samples of most of these products with your request. The merchandise in question is five varieties of sugar coated candies. All will be imported either in bulk or packaged for retail sale. The "Dark Chocolate Covered Almonds Coated With Sugar" are said to consist of 11.9 percent almonds, 4.76 percent cocoa butter, 74.72 percent sugar, 8.33 percent cocoa mass, and traces of lecithin, wax, gum arabic, and vanilla. The second product, "Milk Chocolate Covered Peanuts Coated With Sugar", is stated to contain 27.65 percent peanuts, 14.07 percent cocoa butter, 45.24 percent sugar, 7.04 percent cocoa mass, 5.03 percent whole milk powder, and traces of flour, wax, lecithin, gum arabic and vanilla. The "Roasted Almonds Covered With Sugar" are said to consist of 37.67 percent almonds, 61.64 percent sugar, and traces of wax, gum arabic, flour, and vanilla. The fourth item, the "Pistachios Covered With Sugar" are said to contain 32.74 percent pistachios, 65.48 percent sugar, and traces of wax, flour, gum arabic, and vanilla. The "Milk Chocolate Praline Coated With Sugar" is said to consist of 19.46 percent hazelnuts, 15.56 percent hydrogenated palm kernel oil, 47.8 percent sugar, 5.56 percent cocoa mass, 6.67 percent skimmed milk powder, 3.34 percent full cream milk powder, and traces of wax, flour, gum arabic, lecithin, and vanilla. The applicable subheading for the "Roasted Almonds Covered With Sugar" will be 1704.90.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for Sugar confectionery (including white chocolate), not containing cocoa: Other:

Confections or sweetmeats ready for consumption: Candied nuts. The rate of duty will be 5.3 percent ad valorem. The applicable subheading for "Milk Chocolate Covered Peanuts Coated With Sugar" will be 1806.90.9011, Harmonized Tariff Schedule of the United States (HTS), which provides for Chocolate and other food preparations containing cocoa: Other: Other . . . Confectionery:

Containing peanuts or peanut products. The duty rate will be 6.3 percent ad valorem.

The applicable subheading for "Dark Chocolate Covered Almonds Coated With Sugar" and the "Milk Chocolate Praline Coated With Sugar" will be 1806.90.9019, Harmonized Tariff Schedule of the United States (HTS), which provides for Chocolate and other food preparations containing cocoa:

Other: Other . . . Confectionery: Other. The duty rate will be 6.3 percent ad valorem.

Articles classifiable under subheadings 1704.90.1000, 1806.90.9011, and 1806.90.9019, HTS, which are products of Lebanon are entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations.

Your inquiry does not provide enough information for us to give a classification ruling on the "Pistachios Covered With Sugar". Your request for a classification ruling should include samples and/or photographs of this item.

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

A copy of this 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 John Maria at 212-466-5730.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[Attachment B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967865
CLA-2 RR:CTF:TCM 967865ptl
CATEGORY: Classification
TARIFF NO.: 1806.90.55, 1806.90.59

MR. PIERRE MERHEJ
30 Basset Road
Brockton, MA 02401

RE: Sugar and Chocolate Coated Confections; Modification of NY C86680

DEAR MR. MERHEJ:

On May 21, 1998, the Customs National Commodity Specialist Division, in New York, issued you a ruling, NY C86680, on behalf of Edibles S.A.R.L. of Beirut, Lebanon, that classified four varieties of sugar or chocolate coated candies in subheadings of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). These products were to be imported either in bulk or packaged for retail sale.

Since that ruling was issued, Customs and Border Protection (CBP) has determined that the ruling contains errors regarding the classifications of the products when imported in bulk. This document corrects those errors.

FACTS:

Your initial ruling request asked the National Commodity Specialist Division to provide you with the classification of five varieties of sugar-coated candies under the HTSUS. Because the inquiry lacked sufficient information about one product, only four products were classified. "Roasted Almonds Covered with Sugar" were classified in subheading 1704.90.1000, HTSUSA, which provides for "Sugar confectionery (including white chocolate), not con-

taining cocoa: Other: Confections or sweetmeats ready for consumption: Candied nuts.” “Milk Chocolate Covered Peanuts Coated with Sugar” were classified in subheading 1806.90.9011, HTSUSA, which provides for “Chocolate and other food preparations containing cocoa: Other: Other . . . Confectionery: Containing peanuts or peanut products.” The products “Dark Chocolate Covered Almonds Coated with Sugar” and “Milk Chocolate Praline Coated with Sugar” were both classified in subheading 1806.90.9019, HTSUSA, which provides for “Chocolate and other food preparations containing cocoa: Other: Other . . . Confectionery: Other.”

Although your classification request indicated that the products would be imported either in bulk or packaged for retail sale, NY C86680 did not provide classifications for both situations.

The classification of the Roasted Almonds Covered with Sugar is not dependent on the packaging of the product and will remain unchanged. However, the classification of the chocolate-covered products does depend on the type of packaging and the ruling should have provided classifications for both instances when the product would be imported in bulk and when the product was imported packaged for retail sale. This ruling modifies NY C86680 to provide the classifications when imported in bulk. The classification provided for the products packaged for retail sale is correct and is not affected by this ruling.

ISSUE:

What is the classification of chocolate covered confections when imported in bulk not packaged for retail sale?

LAW AND ANALYSIS:

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

Although the products under consideration for classification all contain chocolate and are classified in Chapter 18, HTSUS, which provides for “Cocoa and Cocoa Preparations,” they also contain a significant amount of sugar. Information provided with the classification request indicates that the dark chocolate covered almonds covered with sugar contain 74.72 percent sugar, the milk chocolate covered peanuts coated with sugar contain 45.24 percent sugar, and the milk chocolate praline covered with sugar contains 47.8 percent sugar.

Because of these ingredients, the HTSUS subheadings under consideration are as follows:

1806 Chocolate and other food preparations containing cocoa:

Other:

Other:

Other:

Other:

	Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17:
1806.90.5500	Described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions
1806.90.5900	Other ¹
1806.90.9000	Other

¹ See subheadings 9904.17.49–9904.17.65

Because these chocolate products all contain over 10 percent by weight sugar, we must consider whether they are described by additional U.S. note 3 to chapter 17 which provides:

3. For the purposes of this schedule, the term “articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17” means articles containing over 10 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, except (a) articles not principally of crystalline structure or not in dry amorphous form, the foregoing that are prepared for marketing to the ultimate consumer in the identical form and package in which imported; (b) blended syrups containing sugars derived from sugar cane or sugar beets, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported; (c) articles containing over 65 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported; or (d) cake decorations and similar products to be used in the same condition as imported without any further processing other than the direct application to individual pastries or confections, finely ground or masticated coconut meat or juice thereof mixed with those sugars, and sauces and preparations therefor.

Additional U.S. note 2, Section IV, HTSUS, defines the terms of Additional U.S. note 3, Chapter 17, HTSUS, as follows:

For the purposes of this section, unless the context otherwise requires—

(a) the term “percent by dry weight” means the sugar content as a percentage of the total solids in the product;

(b) the term “capable of being further processed or mixed with similar or other ingredients” means that the imported product is in such condition or container as to be subject to any additional preparation, treatment or manufacture or to be blended or combined with any additional ingredient, including water or any other liquid, other than processing or mixing with other ingredients performed by the ultimate consumer prior to consumption of the product;

(c) the term “prepared for marketing to the ultimate consumer in the identical form and package in which imported” means that the product is imported in packaging of such sizes and labeling as to be readily identifiable as being intended for retail sale to the ultimate consumer without any alteration in the form of the product or its packaging; and

(d) the term “ultimate consumer” does not include institutions such as hospitals, prisons and military establishments or food service establishments such as restaurants, hotels, bars or bakeries.

The chocolate products which are imported in bulk are not “prepared for marketing to the ultimate consumer in the identical form and package in which they are imported.” Therefore, they are described by the terms of additional U.S. note 3 and are therefore subject to the quota under additional U.S. note 8 to Chapter 17 and are classified in subheadings 1806.90.55, HTSUS, and 1806.90.59, HTSUS. The chocolate products packaged for retail sale are “prepared for marketing to the ultimate consumer in the identical form and package in which they are imported” and will remain classified in the same subheadings they were in NY C86680.

HOLDING:

The products “Dark Chocolate Covered Almonds Covered with Sugar,” “Milk Chocolate Covered Peanuts Coated with Sugar,” and “Milk Chocolate Praline Covered with Sugar,” described in NY C86680, dated May 21, 1998, when imported in bulk are classified in subheading 1806.90.55, HTSUS, which provides for “Chocolate and other food preparations containing cocoa: Other: . . . Other: Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17: Described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions.” The 2005 general duty rate is 3.5 percent *ad valorem*. When the quantities provided for in additional U.S. note 8 to Chapter 17 have been filled, the products will be classified in subheading 1806.90.59, HTSUS, which provides for “Chocolate and other food preparations containing cocoa: Other: . . . Other: Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17: Other.” The 2005 general duty rate for this over-quota subheading is 37.2¢/kg plus 6 percent *ad valorem* and such additional duties as may be imposed in chapter 99, HTSUS.

The classifications provided by NY C86680 for all products that are imported packaged for retail sale remain unchanged by this ruling, as does the classification for the product described as “Roasted Almonds Covered with Sugar.”

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.

NY C86680, dated May 21, 1998, is modified in accordance with this ruling.

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

19 CFR PART 177**MODIFICATION OF RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF CERTAIN GLOVES WITH COATED
OVERLAYS**

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

ACTION: Notice of modification of a tariff classification ruling letter and revocation of treatment relating to the classification of certain gloves with coated overlays.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain gloves with coated overlays. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice proposing these actions and inviting comments on their correctness was published in the *Customs Bulletin*, Volume 39, Number 36, on August 31, 2005. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 25, 2005.

FOR FURTHER INFORMATION CONTACT: Brian Barulich, Tariff Classification and Marking Branch, at (202) 572-8883.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify New York Ruling Letter (NY) L81297 was published in the *Customs Bulletin*, Volume 39, Number 36, on August 31, 2005. No comments were received in response to this notice. As stated in the proposed notice, the modification will cover any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice period.

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

In NY L81297, CBP classified three styles of gloves made in China. One of the styles, style #1510 or the "contractor's glove," was classified in subheading 6116.93.9400, HTSUS, which provides for: "Gloves, mittens and mitts, knitted or crocheted: Other: Of synthetic fibers: Other: Other: With fourchettes."

However, based on our review of the ruling and a sample of the article, we now believe that style #1510 is classified in subheading 6116.10.7520, HTSUS, which provides for: "Gloves, mittens and mitts, knitted or crocheted: Impregnated, coated or covered with plastics or rubber: Other: With fourchettes: Containing 50 percent or more by weight of cotton, man-made fibers or other textile fibers, or any combination thereof, Subject to man-made fiber restraints."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY L81297 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in Head-

quarters Ruling Letter (HQ) 967658, which is set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

DATED: October 11, 2005

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967658
October 11, 2005
CLA-2 RR:CTF:TCM 967658 BtB
CATEGORY: Classification
TARIFF NO.: 6116.10.7520

STEPHEN M. ZELMAN, ESQ.
STEPHEN M. ZELMAN & ASSOCIATES
888 Seventh Avenue-Suite 4500
New York, NY 10106

Re: Classification of gloves from China; NY L81297 modified

DEAR MR. ZELMAN:

This is in response to your letter dated February 25, 2005, on behalf of your client, Magla Worldwide, Ltd./Magla Products LLC, requesting reconsideration of one of the classifications set forth in New York Ruling Letter (NY) L81297, dated January 11, 2005.

In NY L81297, the Bureau of Customs and Border Protection (CBP) classified three styles of gloves made in China (style #1320 or the "garden glove," style #1420 or the "mechanic's glove," and style #1510 or the "contractor's glove"). CBP classified style #1320 and style #1420 in subheading 6116.10.7520, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for: "Gloves, mittens and mitts, knitted or crocheted: Impregnated, coated or covered with plastics or rubber: Other: With fourchettes: Containing 50 percent or more by weight of cotton, man-made fibers or other textile fibers, or any combination thereof, Subject to man-made fiber restraints." However, CBP classified style #1510 in subheading 6116.93.9400, HTSUSA, which provides for: "Gloves, mittens and mitts, knitted or crocheted: Other: Of synthetic fibers: Other: Other: With fourchettes."

In the ruling, the palm side of each of the three styles was held to impart the essential character to their respective gloves, and the gloves were classified pursuant to GRI 3(b), explained further below. CBP classified style #1510 differently than style #1320 and style #1420 because, while coated

knit material covered the entire palm side of style #1320 and style #1420, it did not cover the entire palm side of style #1510. As a result, the palm side of style #1510 was held not to be a coated fabric for tariff purposes and the glove was therefore not classified as a coated glove.

In your letter dated February 25, 2005, you request reconsideration of the classification set forth for style #1510. Per your request, we have reviewed NY L81297 and have determined that the classification set forth for style #1510 is incorrect. Therefore, this ruling modifies NY L81297.

The sample of style #1510, along with the other glove samples that you submitted, will be returned to you under separate cover.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY L81297 was published in the *Customs Bulletin*, Volume 39, Number 36, on August 31, 2005. CBP received no comments during the notice and comment period that closed on September 30, 2005.

FACTS:

In NY L81297, CBP describes style #1510, the contractor's glove:

It is unlined, with woven nylon spandex fourchettes, without cuffs and features a hook and loop closure on the backside wrist. The palm side is made up of knit nylon spandex, which has coated knit overlays on the palm side and palm side of the fingers and thumb. The thumb tip, and fingertips on both the palm and backsides also feature an additional set of overlays made up of a coated knit material. The backside is made of a knit polyester fabric with a few plastic designs running down the back of the knuckle area and backs of the fingers. A "sweat wipe" made of cotton terry material makes up the backside at the base of the thumb. A plastic overlay is also featured on the backside bearing the trademark/trade name of the licensor.

While not stated in NY L81297, the coated knit overlays (on the palm side and the palm side of the fingers and thumb) cover over 90 percent of the surface area of that side of style #1510. The areas not covered by overlays appear to have been left uncovered to give the palm side more flexibility, thereby enabling the wearer to grasp and grip articles more easily. The "plastic designs" on the backside of the glove are also small overlays. Most of these small overlays are in the shape of small arrows, extending from the top of the fingers to the knuckles.

In your letter dated February 25, 2005, you assert that style #1510 is properly classified in subheading 6116.10.7520, HTSUSA, because the coated knit overlays on the palm side impart the essential character to the glove.

ISSUE:

What is the classification of style #1510?

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes." If the goods cannot be classified solely on

the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied, in order.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

General EN to Chapter 61 states that where the presence of parts or accessories, such as woven fabrics, furskin, feathers, leather, plastics or metal, constitutes more than mere trimming on goods classified in Chapter 61, the articles are classified in accordance with the relative Chapter Notes . . . , or failing that, according to the General Interpretative Rules.

As the overlays on the palm side of style #1510 comprise over 90 percent of the surface area of that side, we do not regard them as "mere trimming." Therefore, pursuant to the General EN cited above, the glove is classified in accordance with the General Interpretative Rules, as there are no relative Chapter Notes.

Style #1510 cannot be classified solely on the basis GRI 1 because the style is a composite good consisting of different materials classifiable in different headings and no single heading provides for it. Consequently, the remaining GRI are applied, in order. GRI 2(a) relates to articles presented unassembled or disassembled and, as style #1510 is imported in finished condition, GRI 2(a) is not applicable in this case. As a result, GRI 2(b) is applied. GRI 2(b), in pertinent part, states that: "[t]he classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." Moving to rule 3, GRI 3(a) states that "[t]he heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials . . . contained in . . . composite goods . . . , those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods." As GRI 3(a) fails to determine the classification, GRI 3(b) is applied. GRI 3(b) states, in relevant part, that: "composite goods consisting of different materials . . . which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable."

EN VIII to GRI 3(b) provides the following guidance in regard to identifying the essential character of composite goods consisting of different materials:

The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

When classifying gloves consisting of different materials pursuant to GRI 3(b), CBP reviews each of the factors set forth in the above EN. Generally, the materials on a glove's palm side (from fingertips to wrist) will be given greater consideration than those on the backside, as these materials are

usually integral to a glove's functionality and use. In the instant case, the coated knit overlays on style #1510 predominate on the palm side and make the glove especially suited for its use as a contractor's glove. It is the palm side overlays that protect the hand and allow the wearer to grasp and grip articles more easily. Without these overlays, the glove could not effectively function as a contractor's, or work glove, as it would offer only negligible protection and no assistance in gripping or grasping. Without the overlays, its palm side's knit nylon spandex base would likely snag, pull and/or rip in work environments.

Given that the coated knit overlays on the palm side of the glove cover over 90 percent of the surface area of that side and provide the glove with its key attributes, we find these coated overlays to be the material which gives style #1510 its essential character.

HOLDING:

Style #1510, also identified as the contractor's glove, is classified in sub-heading 6116.10.7520, HTSUSA, which provides for: "Gloves, mittens and mitts, knitted or crocheted: Impregnated, coated or covered with plastics or rubber: Other: With fourchettes: Containing 50 percent or more by weight of cotton, man-made fibers or other textile fibers, or any combination thereof, Subject to man-made fiber restraints."

The applicable column one, general duty rate for the merchandise under the 2005 HTSUSA is 13.2% *ad valorem*. The textile category is 631.

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. Quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

EFFECT ON OTHER RULINGS:

NY L81297, dated January 11, 2005, 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 Trade and Facilitation Division.