

Bureau of Customs and Border Protection

CBP Decisions

(CBP DEC. 05-41)

Guidelines for the Assessment and Mitigation of Penalties for Failure to Comply with the Electronic Passenger and Crew Manifest Requirements for Vessel and Aircraft

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

ACTION: General Notice.

SUMMARY: On April 7, 2005, the Bureau of Customs and Border Protection (“CBP”) published in the Federal Register (70 FR 17819) a Final Rule (CBP Dec. 05-12) requiring the electronic transmission to CBP, by way of a CBP-approved electronic data interchange system, of Advance Passenger Information System (“APIS”) manifest information pertaining to passengers and crew members on board commercial aircraft and vessels arriving in, or departing from, the United States.

This document publishes guidelines for the assessment and mitigation of penalties incurred by arriving and departing air and vessel carriers for failing to provide the required advance electronic passenger, crew member, and/or non-crew member APIS manifest information to CBP in the time and manner prescribed by the regulations or for omitting or providing inaccurate or invalid APIS manifest information.

EFFECTIVE DATE: These guidelines will take effect upon publication.

FOR FURTHER INFORMATION CONTACT: Herminio M. Castro or Alan C. Cohen, Penalties Branch, Office of Regulations and Rulings, Customs and Border Protection (202-572-8700).

SUPPLEMENTARY INFORMATION:**BACKGROUND****I. Air Passenger, Crew Member, and Non-Crew Member Manifests.**

On April 7, 2005, the Bureau of Customs and Border Protection ("CBP") published in the Federal Register (70 FR 17819) a Final Rule (CBP Dec. 05-12) requiring the electronic transmission to CBP, by way of a CBP-approved electronic data interchange system, of manifest information pertaining to passengers and crew members on board commercial aircraft arriving in, or departing from, the United States. CBP Dec. 05-12 divided the air manifest information rules for arriving passengers and crew members into separate sections under section 122.49a (19 CFR 122.49a) (passenger arrival manifest) and new section 122.49b (19 CFR 122.49b) (crew member and non-crew member arrival manifest).

In addition to new section 122.49b, CBP Dec. 05-12 added the following new sections to the CBP air APIS regulations: section 122.49c (19 CFR 122.49c), requiring the electronic transmission of a master crew member list and a master non-crew member list; section 122.75a (19 CFR 122.75a), requiring the electronic transmission of a passenger departure manifest; and section 122.75b (19 CFR 122.75b), requiring the electronic transmission of crew/non-crew member departure manifests. The term "non-crew member" is defined as air carrier employees and their family members and persons traveling onboard a commercial aircraft for the safety of the flight (such as an animal handler when animals are onboard). The definition of "non-crew member" is limited to all-cargo flights. (See 19 CFR 122.49b(a).)

In particular, pursuant to section 122.49a of the CBP Regulations (19 CFR 122.49a), as amended by CBP Dec. 05-12, an appropriate official of each commercial aircraft arriving in the United States from any place outside the United States must, by means of a CBP-approved electronic data interchange system and no later than 15 minutes after departure of the aircraft, transmit to CBP an electronic passenger arrival manifest covering each passenger on board the aircraft. The 15-minute requirement does not apply to flights diverted to a U.S. port due to an emergency or to an aircraft operating as an air ambulance in service of a medical emergency, for which the electronic passenger manifest must be transmitted no later than 30 minutes prior to arrival. Also, section 122.49a excepts active duty military personnel being transported as passengers on arriving Department of Defense (DOD) commercial chartered aircraft.

Pursuant to new section 122.49b of the CBP Regulations (19 CFR 122.49b), an appropriate official of each commercial aircraft arriving in or overflying the United States from a foreign port or place, or continuing within the United States (foreign air carriers only) after

arriving at a U.S. port from a foreign port or place, must transmit to CBP an electronic crew manifest and, for all-cargo flights only, an electronic non-crew member manifest covering any crew members and non-crew members onboard. Each manifest must be transmitted to CBP by way of a CBP-approved electronic data interchange system, (i) no later than 60 minutes prior to departure of the aircraft from a foreign port or place, for aircraft arriving in and overflying the U.S., and (ii) no later than 60 minutes prior to departure from the U.S. port of arrival for aircraft continuing within the United States (foreign air carriers only).

The 60-minute requirement of section 122.49b does not apply to flights diverted to a U.S. port due to an emergency or to an aircraft operating as an air ambulance in service of a medical emergency, for which the electronic manifest must be transmitted no later than 30 minutes prior to arrival. Section 122.49b excepts Federal Aviation Administration (FAA) Aviation Safety Inspectors with valid credentials and authorization from the crew/non-crew member arrival manifest requirement, but 19 CFR 122.49a applies to these inspectors, as they are considered passengers on arriving flights. Section 122.49b also excepts from the arrival manifest requirements crew members traveling on board a DOD-chartered flight that is continuing a flight within the U.S. or overflying the U.S., and non-crew members traveling on board a DOD-chartered all-cargo flight that is arriving in the U.S., continuing a flight within the U.S., or overflying the U.S. (However, crew members traveling onboard an arriving DOD-chartered aircraft are subject to the electronic arrival manifest requirement of 19 CFR 122.49b and non-crew members arriving on board a DOD-chartered all-cargo flight are considered passengers on arriving flights and subject to 19 CFR 122.49a.)

Sections 122.49a(b)(3) and 122.49b(b)(3) (19 CFR 122.49a(b)(3), and 122.49b(b)(3)) set forth the data elements for the passenger, crew member, and non-crew member arrival manifests that must be transmitted to CBP. The transmission of the required data elements must be effected through the CBP-approved APIS syntax format. As of October 4, 2005, UN EDIFACT is the CBP-approved APIS syntax format; US EDIFACT is no longer the CBP-approved APIS syntax format. Also as of October 4, 2005, mere transmission of information contained in the preferred travel document (e.g., U.S. Alien Registration Card, U.S. Border Crossing Card, U.S. non-immigrant visa, U.S. Refugee Travel Document or Re-entry Permit, U.S. Passport, or non-U.S. passport) no longer constitutes full compliance with the APIS requirements.

Pursuant to new section 122.75a of the CBP Regulations (19 CFR 122.75a), an appropriate official of each commercial aircraft departing from the United States to any port or place outside the United States must, by means of a CBP-approved electronic data interchange system and no later than 15 minutes prior to departure of

the aircraft from the United States, transmit to CBP an electronic passenger departure manifest covering each passenger on board the aircraft. The 15-minute requirement does not apply to an air ambulance in service of a medical emergency, which must transmit the electronic manifest no later than 30 minutes after departure. Section 122.75a excepts active duty military personnel being transported as passengers on board a departing DOD commercial chartered aircraft.

Pursuant to new section 122.75b of the CBP Regulations (19 CFR 122.75b), an appropriate official of each commercial aircraft departing from the United States to any port or place outside the United States must transmit to CBP an electronic crew member departure manifest and, for all-cargo flights only, an electronic non-crew member departure manifest covering any crew members and non-crew members onboard. The manifest must be transmitted to CBP, by means of a CBP-approved electronic data interchange system, no later than 60 minutes prior to departure of the aircraft.

The 60-minute requirement of section 122.75b does not apply to an air ambulance in service of a medical emergency, which must transmit the electronic manifest no later than 30 minutes after departure. Section 122.75b excepts FAA Aviation Safety Inspectors with valid credentials and authorization from the departure crew/non-crew member manifest requirement, but 19 CFR 122.75a applies to these inspectors, as they are considered passengers on departing flights. Section 122.75b also excepts non-crew members traveling on board a DOD-chartered all-cargo flight departing from the U.S. from the departure manifest requirements, but they are considered passengers on departing flights and subject to 19 CFR 122.75a. Crew members traveling onboard departing DOD-chartered aircraft are subject to the electronic departure manifest requirement of 19 CFR 122.75b.

Sections 122.75a(b)(3) and 122.75b(b)(3) (19 CFR 122.75a(b)(3) and 122.75b(b)(3)) set forth the data elements for the passenger and crew member/non-crew member departure manifests that must be transmitted to CBP. The transmission must be effected through the CBP-approved APIS syntax format. As of October 4, 2005, the CBP-approved APIS syntax format is the UN EDIFACT; US EDIFACT is no longer the CBP-approved APIS syntax format. Also as of October 4, 2005, mere transmission of information contained in the preferred travel document (e.g., U.S. Alien Registration Card, U.S. Border Crossing Card, U.S. non-immigrant visa, U.S. Refugee Travel Document or Re-entry Permit, U.S. Passport, or non-U.S. passport) does not constitute full compliance with the APIS requirements.

Sections 122.49b(b)(2)(iii) and 122.75b(b)(2)(iii) (19 CFR 122.49b(b)(2)(iii) and 122.75b(b)(2)(iii)) provide for necessary changes to the crew member or non-crew member manifest after transmission of the manifest to CBP. The Transportation Security Administration (TSA) must approve the change to the manifest if it is submitted less

than 60 minutes before the scheduled flight departure. The new regulations do not provide for passenger manifest changes. However, CBP will not assess a penalty for failure to obtain TSA approval for crew or non-crew manifest changes.

II. Vessel Passenger and Crew Member Manifests.

CBP Dec. 05–12 amended the CBP Regulations, adding new sections 4.7b and 4.64 (19 CFR 4.7b and 19 CFR 4.64). In particular, pursuant to new section 4.7b of the CBP Regulations (19 CFR 4.7b), an appropriate official of each commercial vessel arriving in the United States from any place outside the United States must transmit to CBP an electronic passenger arrival manifest and an electronic crew member arrival manifest: (1) in the case of a voyage of 96 hours or more, at least 96 hours before entering the first U.S. port or place of destination, (2) in the case of a voyage of less than 96 hours but at least 24 hours, prior to departure of the vessel, (3) in the case of a voyage of less than 24 hours, at least 24 hours before entering the first U.S. port or place of destination. In the case of a vessel not destined to the U.S. but diverted to a U.S. port due to an emergency, the manifests must be transmitted before the vessel enters the U.S. port or place to which diverted. Section 4.7b excepts a commercial vessel operating as a ferry from the passenger and crew member manifest requirements. Section 4.7b also excepts active duty military personnel on board an arriving DOD commercial chartered vessel.

Pursuant to new section 4.64 of the CBP Regulations (19 CFR 4.64), an appropriate official of each commercial vessel departing from the United States to any port or place outside the U.S. must, by means of a CBP-approved electronic data interchange system and no later than 15 minutes before the vessel departs from the U.S., transmit to CBP an electronic passenger departure manifest and an electronic crew member departure manifest. Section 4.64 excepts a commercial vessel operating as a ferry from the passenger and crew member manifest requirements. Section 4.64 also excepts active duty military personnel on board a departing DOD commercial chartered vessel.

Sections 4.7b(3) and 4.64(b)(3) (19 CFR 4.7b(3) and 19 CFR 4.64(b)(3)) set forth the data elements that must be transmitted to CBP. The transmission must be effected through the CBP-approved APIS syntax format. The CBP-approved APIS syntax formats are the eNOA/D and XML methods of transmission. As of October 4, 2005, mere transmission of information contained in the preferred travel document (e.g., U.S. Alien Registration Card, U.S. Border Crossing Card, U.S. non-immigrant visa, U.S. Refugee Travel Document or Re-entry Permit, U.S. Passport, or non-U.S. passport) does not constitute full compliance with the APIS requirements.

Sections 4.7b(b)(2)(ii) and 4.64(b)(2)(ii) (19 CFR 4.7b(b)(2)(ii) and 19 CFR 4.64(b)(2)(ii)) provide for amendment to the crew member manifest after the initial submission of the manifest to CBP. The amended crew member arrival manifest information must be transmitted to CBP: (1) if the remaining voyage time after initial submission of the manifest is 24 hours or more, at least 24 hours before entering the first U.S. port or place of destination, or (2) in any other case, at least 12 hours before the vessel enters the first U.S. port or place of destination. The amended crew member departure manifest information must be transmitted to CBP no later than 12 hours after the vessel has departed from the U.S. The new regulations do not provide for amendment of the passenger manifest after initial transmission.

III. Carrier Responsibility for Comparing Information Collected With Travel Document.

The carrier collecting the required manifest information is responsible for comparing the travel document presented by the passenger, crew member, or non-crew member with the travel document information it is transmitting to CBP, in order to ensure that the information transmitted is correct, the document appears to be valid for travel, and the passenger, crew member, or non-crew member is the person to whom the travel document was issued.

IV. Assessment and Mitigation of Penalties:

This document publishes guidelines for the assessment and mitigation of penalties incurred by arriving and departing air and vessel carriers for failing to provide the required advance electronic passenger, crew member, and non-crew member APIS manifest information to CBP in the time and manner prescribed by the regulations or for omitting or providing inaccurate or invalid APIS manifest information. On February 22, 2002, and March 28, 2002, CBP issued guidelines for the mitigation of penalties for violations of the APIS interim regulations (T.D. 02-01). The guidelines below replace those previous guidelines and are effective upon publication.

Date: November 21, 2005

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

Guidelines for the Assessment and Mitigation of Penalties for Failure to Comply with the Electronic Passenger and Crew Manifest Requirements for Vessel and Aircraft

I. Commercial Aircraft Arriving in, or Departing from, the United States:

A. Penalty Assessment:

Pursuant to 19 U.S.C. 1644a(b)(1)(D), the Bureau of Customs and Border Protection (“CBP”) may by regulation, apply to civil air navigation the laws and regulations on carrying out the customs laws, to the extent and under conditions CBP considers necessary. Pursuant to 19 U.S.C. 1644(b)(2), a person violating a CBP Regulation is liable for a civil penalty of \$5,000 for each violation. An aircraft involved in the violation may be seized and forfeited under the customs laws.

1. Commercial Aircraft Arriving in the United States:

a. Violations Relating to the Passenger Manifest:

Port Directors may assess a civil monetary penalty under 19 USC 1644a(b)(2) and 19 CFR 122.161, for violation of the provisions of 19 CFR 122.49a, against an appropriate official (defined in 19 CFR 122.49a(a) as the master, commanding officer, or authorized agent, owner, or consignee) of a commercial aircraft arriving in the United States (defined in 19 CFR 122.49a(a) as including the U.S. Virgin Islands and Guam as well as the continental United States, Alaska, Hawaii and Puerto Rico) from any place outside the United States for the following violations:

- (1) Failing to transmit the required passenger arrival manifest;
- (2) Failing to transmit the required passenger arrival manifest in the CBP-approved electronic data interchange system or syntax format;
- (3) Untimely transmission of the manifest; or
- (4) Omitting manifest information or transmitting inaccurate or invalid manifest information in a required manifest for any of the required data elements.

This penalty under 19 U.S.C. 1644a(b)(2) and 19 CFR 122.161 may be assessed in the amount of \$5,000 for each passenger for whom one or more of the four violations listed above occurs, regardless of whether the violation is a first-time violation or a subsequent violation. In no case may the penalty exceed \$5,000 per passenger for each arrival of a commercial aircraft into the United States. For example, if the manifest is untimely transmitted and, when belatedly transmitted, omits manifest information or contains inaccurate data, the penalty notice should cite all violations, but the penalty may not exceed \$5,000 per passenger. Where penalties for multiple passengers are assessed under 19 U.S.C. 1644a(b)(2) and 19 CFR 122.161 for violation of 19 CFR 122.49a, these penalties may be combined for the

same arrival and included on a single notice of penalty (CBP Form 5955A). However, as a matter of policy, a cumulative penalty for multiple passengers will not exceed \$75,000 for any single flight. (The combined penalties for a single flight for violations relating to the passenger manifest, and violations relating to the crew/non-crew member manifest, may exceed \$75,000, provided neither penalty exceeds \$75,000)

For active duty military personnel being transported as passengers on arriving DOD commercial chartered aircraft, and FAA safety inspectors, see section I of Background.

The international carrier bond provided for at 19 CFR 113.64 guarantees the payment of penalties assessed for violations of the APIS regulations. If an agent obligates its bond to guarantee the transmission of any required APIS manifest, the agent's bond will be liable for payment of any penalty assessed for violations of the APIS regulations.

A conveyance involved in a violation of 19 CFR 122.49a may be seized under 19 U.S.C. 1644a(b)(2) and 19 CFR 122.161 generally only in the following circumstances: 1) there is lack of information necessary to assess a penalty (e.g., if the identity of the pilot or operator of the aircraft at the time of the violation cannot be ascertained, seizure of the aircraft would be appropriate); 2) seizure of the conveyance is necessary to secure payment of the penalty (e.g., if an aircraft lacks a bond to secure payment of a penalty or the pilot or operator of the aircraft is a foreign national and the likelihood of collection of a monetary penalty is remote).

b. Violations Relating to Manifest for Crew Members, (including Non-Crew Members on all-cargo flights):

Port Directors may assess a civil monetary penalty under 19 USC 1644a(b)(2) and 19 CFR 122.161 for violation of the provisions of 19 CFR 122.49b, against an appropriate official (defined in 19 CFR 122.49a(a), which 19 CFR 122.49b(a) incorporates, as the master, commanding officer, or authorized agent, owner, or consignee) of a commercial aircraft arriving in the United States (defined in 19 CFR 122.49a(a), which 19 CFR 122.49b(a) incorporates, as including the U.S. Virgin Islands and Guam as well as the continental United States, Alaska, Hawaii and Puerto Rico) from any place outside the United States for the following violations:

- (1) Failing to transmit the required crew member arrival manifest or, for all-cargo flights, the non-crew member arrival manifest;
- (2) Failing to transmit the required crew member arrival manifest or, for all-cargo flights the non-crew member arrival manifest in the CBP-approved electronic data interchange system or syntax format;
- (3) Untimely transmission of a manifest; or

(4) Omitting manifest information or transmitting inaccurate or invalid manifest information in a required manifest for any of the required data elements.

The term “non-crew member” is defined to mean air carrier employees and their family members and persons traveling onboard a commercial aircraft for the safety of the flight (such as an animal handler when animals are onboard). The definition of “non-crew member” is limited to all-cargo flights. (See 19 CFR 122.49b(a)).

This penalty under 19 U.S.C. 1644a(b)(2) and 19 CFR 122.161 may be assessed in the amount of \$5,000 for each crew member, or non-crew member (for all-cargo flights), for whom one or more of the four violations listed above occurs, regardless of whether the violation is a first-time violation or a subsequent violation. In no case may the penalty exceed \$5,000 per crew member or non-crew member (for all-cargo flights) for each arrival of a commercial aircraft into the United States. For example, if the manifest is untimely transmitted and, when belatedly transmitted, omits manifest information or contains inaccurate data, the penalty notice should cite all violations, but the penalty may not exceed \$5,000 per crew member or non-crew member (for all-cargo flights). Where penalties for multiple crew members or non-crew members (for all-cargo flights) are assessed under 19 U.S.C. 1644a(b)(2) and 19 CFR 122.161 for violation of 19 CFR 122.49b, these penalties may be combined for the same arrival and included on a single notice of penalty (CBP Form 5955A). However, as a matter of policy, a cumulative penalty for multiple crew members or non-crew members (for all cargo flights) will not exceed \$75,000 for any single flight. (The combined penalties for a single flight for violations relating to the passenger manifest, and violations relating to the crew/non-crew member manifest, may exceed \$75,000, provided neither penalty exceeds \$75,000)

For crew members arriving on DOD chartered flights, non-crew members arriving on DOD chartered all-cargo flights, and FAA safety inspectors, see section I of Background.

The international carrier bond provided for at 19 CFR 113.64 guarantees the payment of penalties assessed for violations of the APIS regulations. If an agent obligates its bond to guarantee the transmission of any required APIS manifest, the agent’s bond will be liable for payment of any penalty assessed for violations of the APIS regulations.

A conveyance involved in a violation of 19 CFR 122.49b may be seized under 19 U.S.C. 1644a(b)(2) and 19 CFR 122.161 generally only in the following circumstances: 1) there is lack of information necessary to assess a penalty (e.g., if the identity of the pilot or operator of the aircraft at the time of the violation cannot be ascertained, seizure of the aircraft would be appropriate); 2) seizure of the conveyance is necessary to secure payment of the penalty (e.g., if an aircraft lacks a bond to secure payment of a penalty or the pilot or

operator of the aircraft is a foreign national and the likelihood of collection of a monetary penalty is remote).

2. Commercial Aircraft Departing from the United States:

a. Violations Relating to the Passenger Manifest:

Port Directors may assess a civil monetary penalty under 19 USC 1644a(b)(2) and 19 CFR 122.161 for violation of the provisions of 19 CFR 122.75a, against an appropriate official (defined in 19 CFR 122.49a(a), which 19 CFR 122.75a(a) incorporates, as the master, commanding officer, or authorized agent, owner, or consignee) of a commercial aircraft departing from the United States (defined in 19 CFR 122.49a(a), which 19 CFR 122.75a(a) incorporates, as including the U.S. Virgin Islands and Guam as well as the continental United States, Alaska, Hawaii and Puerto Rico) to any port or place outside the United States, for the following violations:

- (1) Failing to transmit the required passenger departure manifest;
- (2) Failing to transmit the required passenger departure manifest in the CBP-approved electronic data interchange system or syntax format;
- (3) Untimely transmission of the manifest; or
- (4) Omitting manifest information or transmitting inaccurate or invalid manifest information in a required manifest for any of the required data elements.

This penalty under 19 U.S.C. 1644a(b)(2) and 19 CFR 122.161 may be assessed in the amount of \$5,000 for each passenger for whom one or more of the four violations listed above occurs, regardless of whether the violation is a first-time violation or a subsequent violation. In no case may the penalty exceed \$5,000 per passenger for each departure of a commercial aircraft from the United States. For example, if the manifest is untimely transmitted and, when belatedly transmitted, omits manifest information or contains inaccurate data, the penalty notice should cite all violations, but the penalty may not exceed \$5,000 per passenger. Where penalties for multiple passengers are assessed under 19 U.S.C. 1644a(b)(2) and 19 CFR 122.161 for violation of 19 CFR 122.75a, these penalties may be combined for the same departure and included on a single notice of penalty (CBP Form 5955A). However, as a matter of policy, a cumulative penalty for multiple passengers will not exceed \$75,000 for any single flight. (The combined penalties for a single flight for violations relating to the passenger manifest, and violations relating to the crew/non-crew member manifest, may exceed \$75,000, provided neither penalty exceeds \$75,000)

Active duty military personnel being transported as passengers on a departing DOD commercial chartered aircraft are excepted from passenger manifest reporting requirements.

The international carrier bond provided for at 19 CFR 113.64 guarantees the payment of penalties assessed for violations of the APIS regulations. If an agent obligates its bond to guarantee the transmission of any required APIS manifest, the agent's bond will be liable for payment of any penalty assessed for violations of the APIS regulations.

A conveyance involved in a violation of 19 CFR 122.75a may be seized under 19 U.S.C. 1644a(b)(2) and 19 CFR 122.161 generally only in the following circumstances: 1) there is lack of information necessary to assess a penalty (e.g., if the identity of the pilot or operator of the aircraft at the time of the violation cannot be ascertained, seizure of the aircraft would be appropriate); 2) seizure of the conveyance is necessary to secure payment of the penalty (e.g., if an aircraft lacks a bond to secure payment of a penalty or the pilot or operator of the aircraft is a foreign national and the likelihood of collection of a monetary penalty is remote).

b. Violations Relating to Manifest for Crew Members, (Including Non-Crew Members on All-Cargo Flights):

Port Directors may assess a civil monetary penalty under 19 USC 1644a(b)(2) for violation of the provisions of 19 CFR 122.75b, against an appropriate official (defined in 19 CFR 122.49a(a), which 19 CFR 122.75b(a) incorporates, as the master, commanding officer, or authorized agent, owner, or consignee) of a commercial aircraft departing from the United States (defined in 19 CFR 122.49a(a), which 19 CFR 122.75b(a) incorporates, as including the U.S. Virgin Islands and Guam as well as the continental United States, Alaska, Hawaii and Puerto Rico) to any port or place outside the United States, for the following violations:

(1) Failing to transmit the required crew member departure manifest or, for all-cargo flights, the non-crew member departure manifest;

(2) Failing to transmit the required crew member departure manifest or, for all-cargo flights, the non-crew member departure manifest in the CBP-approved electronic data interchange system or syntax format;

(3) Untimely transmission of a manifest; or

(4) Omitting manifest information or transmitting inaccurate or invalid manifest information in a required manifest for any of the required data elements.

The term "non-crew member" is defined to mean air carrier employees and their family members and persons traveling onboard a commercial aircraft for the safety of the flight (such as an animal handler when animals are onboard). The definition of "non-crew member" is limited to all-cargo flights. (See 19 CFR 122.49b(a)).

This penalty under 19 U.S.C. 1644a(b)(2) and 19 CFR 122.161 may be assessed in the amount of \$5,000 for each crew member, or

non-crew member (for all-cargo flights), for whom one or more of the four violations listed above occurs, regardless of whether the violation is a first-time violation or a subsequent violation. In no case may the penalty exceed \$5,000 per crew member or non-crew member (for all-cargo flights) for each departure of a commercial aircraft from the United States. For example, if the manifest is untimely transmitted and, when belatedly transmitted, omits manifest information or contains inaccurate data, the penalty notice should cite all violations, but the penalty may not exceed \$5,000 per crew member or non-crew member (for all-cargo flights). Where penalties for multiple crew members or non-crew members (for all-cargo flights) are assessed under 19 U.S.C. 1644a(b)(2) and 19 CFR 122.161 for violation of 19 CFR 122.75b, these penalties may be combined for the same departure and included on a single notice of penalty (CBP Form 5955A). However, as a matter of policy, a cumulative monetary penalty for multiple crew members or non-crew members (for all-cargo flights) will not exceed \$75,000 for any single flight. (The combined penalties for a single flight for violations relating to the passenger manifest, and violations relating to the crew/non-crew member manifest, may exceed \$75,000, provided neither penalty exceeds \$75,000)

For crew members departing on DOD chartered flights, non-crew members departing on DOD chartered all-cargo flights, and FAA safety inspectors, see section I of Background.

The international carrier bond provided for at 19 CFR 113.64 guarantees the payment of penalties assessed for violations of the APIS regulations. If an agent obligates its bond to guarantee the transmission of any required APIS manifest, the agent's bond will be liable for payment of any penalty assessed for violations of the APIS regulations.

A conveyance involved in a violation of 19 CFR 122.75b may be seized under 19 U.S.C. 1644a(b)(2) and 19 CFR 122.161 generally only in the following circumstances: 1) there is lack of information necessary to assess a penalty (e.g., if the identity of the pilot or operator of the aircraft at the time of the violation cannot be ascertained, seizure of the aircraft would be appropriate); 2) seizure of the conveyance is necessary to secure payment of the penalty (e.g., if an aircraft lacks a bond to secure payment of a penalty or the pilot or operator of the aircraft is a foreign national and the likelihood of collection of a monetary penalty is remote).

B. Penalty Mitigation For Manifest Violations - Arriving and Departing Commercial Aircraft

1. First Violation:

- a. Non Customs-Trade Partnership Against Terrorism ("C-TPAT") member: Mitigate to an amount between \$500 and \$1,500 for each \$5,000 penalty assessed.

b. Certified C-TPAT member: Mitigate to \$250 or to a lesser amount (e.g. \$200, \$150, etc.) for each \$5,000 penalty assessed.

2. Subsequent Violations:

a. Definition. A violation shall be considered a subsequent violation only if the violation involves a violation of the same regulation (19 CFR 122.49a, 122.49b, 122.75a or 122.75b), and involves the same type of violation within each regulation, and only if the subsequent violation was committed more than 30 days after the issuance of a notice of penalty (CBP Form 5955A) for the first violation, which is not remitted in full. A violation shall be considered a subsequent violation without regard to the port of departure or arrival, the flight number, or the identity of the pilot or other airline official.

Example 1. An air carrier untimely transmits the passenger manifest for an arriving flight on November 1, 2005. On November 15, 2005, CBP issues the notice of penalty against the air carrier. On December 20, 2005, and again on December 21, 2005, the same air carrier untimely transmits the passenger manifests for arriving flights. The December 20, 2005 and December 21, 2005 violations will be considered subsequent violations. However, if the violations occur on December 10, 2005, and December 21, 2005, the December 10, 2005, will not be considered a subsequent violation but the December 21, 2005, will be considered a subsequent violation.

Example 2. An air carrier untimely transmits the crew member manifest for an arriving flight, and, more than thirty days after the issuance of a penalty notice for this violation, untimely transmits the passenger manifest for a subsequent arriving flight. The second violation is not considered a subsequent violation.

Example 3. An air carrier untimely transmits the passenger manifest for an arriving flight, and, more than thirty days after the issuance of a penalty notice for this violation, untimely transmits the passenger manifest for a subsequent arriving flight. The second violation is considered a subsequent violation.

Example 4. An air carrier untimely transmits the passenger manifest for an arriving flight, and, more than thirty days after the issuance of a penalty notice for this violation, omits manifest information or transmits inaccurate or invalid passenger manifest information for a second arriving flight. The second violation is not considered a subsequent violation.

b. Mitigation:

- 1) Non C-TPAT member: Mitigate to an amount between \$500 and \$2,500 for each \$5,000 penalty assessed.
- 2) Certified C-TPAT member: Mitigate to \$250, or to a lesser amount (e.g. \$200, \$150, etc) for each \$5,000 penalty assessed.

- c. Exception: Subsequent violations for failing to transmit at all a required manifest to CBP, whether or not the violator is a certified C-TPAT: No mitigation.

3. Notwithstanding these mitigation guidelines, in the presence of one or more of the aggravating factors listed below (section III B) or if CBP determines that law enforcement goals were compromised by the violation, CBP may deny or limit the mitigation provided for herein, regardless of whether the violator is or is not a C-TPAT member.

4. Seizures of aircraft may be remitted in accordance with the guidelines set forth above.

II. Commercial Vessel Arriving In or Departing From the United States

A. Penalty Assessment

Pursuant to 19 U.S.C 1436 and 19 CFR 4.3a, any master of a commercial vessel who fails to comply with, or violate, the CBP Regulations prescribed at 19 CFR 4.7b and 19 CFR 4.64 or who presents or transmits electronically or otherwise, any forged, altered, or false document, paper, information, data or manifest to CBP is liable for a civil penalty of \$5,000 for the first violation, and \$10,000 for each subsequent violation. Any conveyance used in connection with any such violation is subject to seizure and forfeiture.

1. Commercial Vessel Arriving in the United States

Port Directors may assess a civil monetary penalty, under 19 USC 1436 and 19 CFR 4.3a for violation of the provisions of 19 CFR 4.7b, against a master of a commercial vessel arriving in the United States (defined in 19 CFR 4.7b(a) as including the U.S. Virgin Islands and Guam as well as the continental United States, Alaska, Hawaii and Puerto Rico), for the following violations:

- (1) Failing to transmit a required passenger arrival manifest and/or crew member arrival manifest;
- (2) Failing to transmit a required passenger arrival manifest and/or crew member arrival manifest in a CBP-approved electronic data interchange system or syntax format;
- (3) Untimely transmission of the required manifests; or

(4) Omitting manifest information or transmitting inaccurate or invalid information in a required manifest for any of the required data elements.

This penalty of \$5,000 under 19 U.S.C. 1436 and 19 CFR 4.3a may be assessed against the master of the commercial vessel, in care of the carrier, for one or more of the four violations listed above. A \$10,000 penalty (also under 19 U.S.C. 1436) may be assessed against the same master of the vessel, in care of the carrier, for any subsequent violation of the same type. For each arrival of a vessel in the United States, the penalty may not exceed these amounts, regardless of the number of passengers or crew members for whom the violation pertains, and regardless of whether several types of violations have occurred. For example, if the manifest is untimely transmitted and, when belatedly transmitted, omits manifest information or contains inaccurate data for several passengers or crew members, the penalty notice should cite all violations, but the penalty may not exceed \$5,000 for a first-time violation, or \$10,000 for a subsequent violation against the same master of the vessel. The international carrier bond provided at 19 CFR 113.64 guarantees the payment of penalties assessed for violations of the APIS regulations. If an agent obligates its bond to guarantee the transmission of any required APIS manifest, the agent's bond will be liable for payment of any penalty assessed for violations of the APIS regulations.

A conveyance involved in a violation of 19 CFR 4.7b may be seized under 19 U.S.C. 1436 and 19 CFR 4.3a generally only in the following circumstances: 1) there is lack of information necessary to assess a penalty (e.g., if the identity of the master of the vessel at the time of the violation cannot be ascertained, seizure of the vessel would be appropriate); 2) seizure of the conveyance is necessary to secure payment of the penalty (e.g., if a vessel lacks a bond to secure payment of a penalty or the master of the vessel is a foreign national and the likelihood of collection of a monetary penalty is remote).

2. Commercial Vessel Departing From the United States

Port Directors may assess a civil monetary penalty, under 19 USC 1436 and 19 CFR 4.3a for violation of the provisions of 19 CFR 4.64, against a master of a commercial vessel departing from the United States (defined in 19 CFR 4.7b(a), which 19 CFR 4.64(a) incorporates, as including the U.S. Virgin Islands and Guam as well as the continental United States, Alaska, Hawaii and Puerto Rico), for the following violations:

- (1) Failing to transmit a required passenger departure manifest and/or crew member departure manifest;
- (2) Failing to transmit a required passenger departure manifest and/or crew member departure manifest in a CBP-approved electronic data interchange system or syntax format;
- (3) Untimely transmission of the required manifests; or

(4) Omitting manifest information or transmitting inaccurate or invalid information in a required manifest for any of the required data elements.

This penalty of \$5,000 may be assessed against the master of the vessel, in care of the carrier, for one or more of the four violations listed above. A \$10,000 penalty (also under 19 U.S.C. 1436 and 19 CFR 4.3a) may be assessed against the **same** master of the vessel, in care of the carrier, for any subsequent violation of the same type. For each departure of a vessel from the United States, the penalty may not exceed these amounts, regardless of the number of passengers or crew members for whom the violation pertains, and regardless of whether several types of violations have occurred. For example, if the manifest is untimely transmitted and, when belatedly transmitted, omits manifest information or contains inaccurate data for several passengers and crew members, the penalty notice should cite all violations, but the penalty may not exceed \$5,000 for a first-time violation, or \$10,000 for a subsequent violation against the same master of the vessel. The international carrier bond provided at 19 CFR 113.64 guarantees the payment of penalties assessed for violations of the APIS regulations. If an agent obligates its bond to guarantee the transmission of any required APIS manifest, the agent's bond will be liable for payment of any penalty assessed for violations of the APIS regulations.

A conveyance involved in a violation of 19 CFR 4.64 may be seized under 19 U.S.C. 1436 and 19 CFR 4.3a generally only in the following circumstances: 1) there is lack of information necessary to assess a penalty (e.g., if the identity of the master of the vessel at the time of the violation cannot be ascertained, seizure of the vessel would be appropriate); 2) seizure of the conveyance is necessary to secure payment of the penalty (e.g., if a vessel lacks a bond to secure payment of a penalty or the master of the vessel is a foreign national and the likelihood of collection of a monetary penalty is remote).

B. Penalty Mitigation For Manifest Violations - Arriving and Departing Commercial Vessel

1. First Violation:

- a. Non C-TPAT member: Mitigate to an amount between \$1,000 and \$3,500.
- b. Certified C-TPAT member: Mitigate to \$500 or to a lesser amount (e.g. \$400, \$300, etc.).

2. Subsequent Violations by Same Master of A Vessel:

- a. **Definition.** A violation shall be considered a subsequent violation only if the violation involves a violation of the same regulation (19 CFR 4.7b or 4.64) and involves the same type of violation within each regulation, and only if the subsequent violation was committed more than 30 days

after the issuance of a notice of penalty (CBP Form 5955A) for the first violation, which is not remitted in full. A violation shall be considered a subsequent violation without regard to the vessel's port of departure or arrival; however, the commercial vessel or vessels involved in the subsequent violations must have had the same master.

Example 1. The master of a commercial vessel untimely transmits the passenger manifest for an arriving vessel on November 1, 2005. On November 15, 2005, CBP issues the notice of penalty against the master of the vessel in care of the carrier. On December 20, 2005, and again on December 21, 2005, the same master untimely transmits the passenger arrival manifests. The December 20, 2005 and December 21, 2005 violations will be considered subsequent violations. However, if the violations occur on December 10, 2005, and December 21, 2005, the December 10, 2005, will not be considered a subsequent violation but the December 21, 2005, will be considered a subsequent violation.

Example 2. The master of a commercial vessel untimely transmits the crew member manifest for an arriving vessel, and, more than thirty days after the issuance of a penalty notice for this violation, the same master untimely transmits the crew member manifest for a subsequent departing vessel. The second violation is not considered a subsequent violation.

Example 2. A master of a commercial vessel untimely transmits the crew member manifest for an arriving vessel, and, more than thirty days after the issuance of a penalty notice for this violation, the same master untimely transmits the crew member manifest for a subsequent arriving vessel. The second violation is considered a subsequent violation.

Example 3. A master of a commercial vessel untimely transmits the crew member manifest for an arriving vessel, and, more than thirty days after the issuance of a penalty notice for this violation, the same master omits manifest information or transmits inaccurate or invalid crew member manifest information for a second arriving vessel. The second violation is not considered a subsequent violation.

b. Mitigation:

- 1) Non C-TPAT member: Mitigate to an amount between \$3,500 and \$5,000.
- 2) Certified C-TPAT member: Mitigate to \$1,750 or to a lesser amount (e.g. \$1,500, \$1,250, \$1,000 etc.).

c. Exception: Subsequent violations for failing to transmit at all a required manifest to CBP, whether or not the violator is a certified C-TPAT member: No mitigation.

3. Notwithstanding these mitigation guidelines, in the presence of one or more of the aggravating factors listed below (section III B) or if CBP determines that law enforcement goals were compromised by the violation, CBP may deny or limit the mitigation provided for herein, regardless of whether the violator is or is not a C-TPAT member.

4. Seizures of vessels may be remitted in accordance with the guidelines set forth above.

III. Mitigating and Aggravating Factors (Vessels and Aircraft):

A. Mitigating Factors:

1. Inexperienced in transmitting advance electronic manifest information.
2. A general good performance and low error rate with regards to electronic transmission of manifest information.
3. Demonstrated remedial action has been taken to prevent future violations.

B. Aggravating Factors:

1. Lack of cooperation with CBP or CBP activity is impeded with regard to the case.
2. There is a rising error rate, indicative of deteriorating performance in the transmission of manifest information.
3. Evidence of smuggling or attempt to introduce or introduction of passenger, crew member or non-crew member contrary to law. This may be considered an extraordinary aggravating factor.
4. Evidence of link to terrorist activity or organization. This may be considered an extraordinary aggravating factor.



General Notices

Triennial Status Report and Status Report Fee: General Notice

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

ACTION: Notice of due date for Status Report and Fee

SUMMARY: This is to advise Customs brokers that the Triennial Status Report Fee of \$100 that is assessed for each license held by a broker whether it may be an individual, partnership, association or

corporation, is due during the month of February 2006 along with the corresponding status report.

DATES: Due date for payment of the fee and status report: February 28, 2006.

FOR FURTHER INFORMATION CONTACT: Russell Morris, Broker Management Branch, (202) 344-2717.

SUPPLEMENTARY INFORMATION: In accordance with 19 U.S.C. 1641(g) and 19 CFR 111.30(d), each broker must file a written status report and pay the corresponding fee of \$100 every three years. The report is due every three years regardless of the date the license was issued to the broker. The last status report and fee were due during the month of February 2003. Reports and fees must next be filed during the month of February 2006, and be addressed to the director of the port that originally delivered the license to the broker. No reports or fees should be submitted directly to Customs and Border Protection Headquarters.

The elements that must be included in the report are prescribed in 19 CFR 111.30(d). While no particular format is required, a model report may be obtained from your local Customs and Border Protection port office.

DATED: November 15, 2005

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

[Published in the Federal Register, November 22, 2005 (70 FR 70629)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.

Washington, DC, November 23, 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.

MICHAEL T. SCHMITZ,
*Assistant Commissioner,
Office of Regulations and Rulings.*

19 CFR PART 177

**REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF
YTTRIA C**

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 Yttria C.

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. 103–82, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (“CBP”) is revoking a ruling concerning the tariff classification of Yttria C, under the Harmonized tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed revocation was published on August 24, 2005, in Volume 39, Number 35, of the Customs Bulletin. One comment was received in accord with the classification proposed in the ruling letter attached to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 5, 2006.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, Tariff Classification and Marking 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 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 Title VI, a notice was published in the August 24, 2005, CUSTOMS BULLETIN, Volume 39, Number 35, proposing to revoke HQ 962804, dated July 20, 2001, and to revoke any treatment accorded to substantially identical transactions. One comment was received in favor of the ruling attached to that notice.

As stated in the notice of proposed revocation, the notice covered any rulings on this merchandise which may exist but have not been specifically identified. Any party, who has received an interpretive ruling or decision (i.e., 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.

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

In HQ 962804, the merchandise was classified in subheading 2846.90.20, HTSUS, the provision for "Compounds, inorganic or or-

ganic, of rare-earth metals, of yttrium or of scandium, or of mixtures of these metals: Other: Other," because the sintering aid added to the compound was considered a permissible impurity in the substance.

We now find that because the sintering aid was added to the yttrium oxide intentionally, and cannot be removed once the larger particle yttrium is formed, it cannot be considered an impurity. Although miniscule, there does appear to be the presence of a completely separate compound, not found in the starting material and not a rare earth oxide, mixed with the yttrium oxide, which causes the product to be classified in heading 3824, HTSUS, rather than heading 2846, HTSUS.

CBP, pursuant to 19 U.S.C. 1625(c)(1), is revoking HQ 962804 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 967300, 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 publication in the CUSTOMS BULLETIN.

Dated: November 18, 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 967300
November 18, 2005
CLA-2 RR:CTF:TCM 967300 AM
CATEGORY: CLASSIFICATION
TARIFF NO.: 3824.90.3900

MR. GEORGE R. TUTTLE
Three Ebarcadero Center, Suite 1160
San Francisco, CA 94111

Re: tariff classification of Yttria C; Revocation of HQ 962804

DEAR MR. TUTTLE:

This is in regard to Headquarters Ruling Letter (HQ) 962804, dated July 20, 2001, regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of Yttria C. That ruling held that the product was classified in subheading 2846.90.80, HTSUS, the provision for "Compounds, inorganic or organic, of rare-earth metals, of yttrium or of scandium, or of mixtures of these metals: Other: Other: Other." We have reviewed HQ 962804 and find it to be incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by Title VI, a notice was published in the August 24, 2005, CUSTOMS BULLETIN, Volume 39, Number 35, proposing to revoke 962804, dated July 20, 2001, and to revoke any treatment accorded to substantially identical transactions. One comment was received in favor of the ruling attached to that notice.

HQ 962804 is a Headquarters ruling on Protest 2904-99-100020. Under *San Francisco Newspaper Printing Co. v. United States*, 9 CIT 517, 620 F. Supp. 738 (1985), the liquidation of the entries covering the merchandise which was the subject of Protest 2904-99-100020 was final on both the protestant and CBP. Therefore, this decision has no effect on those entries.

FACTS:

Yttria C is a pale yellow powder consisting of more than 99% yttrium oxide and approximately .25 percent of a dopant that functions as a sintering aid. The sintering aid is used to create a larger particle yttrium oxide specifically for use in the metal casting industry. The sintering aid does not consist of a compound including yttrium, scandium or rare-earth metals of heading 2805, HTSUS.

Lab Report 2-96-21505-001, dated April 12, 1996, analyzing previous entries of Yttria C, by Grand Northern Products, states, in pertinent part, "The importer indicates that a small amount of [sintering aid] is blended and fired with the yttrium oxide resulting in crystals of increased particle size. This denotes a single compound." Lab Report 2-1999-22129, dated November 15, 1999, states, in pertinent part, "... the sample, a fine off-white powder, is yttrium oxide containing a small amount of [sintering aid]. Information from the manufacturer indicates that this product contains approx. 2300 PPM (0.23%) [sintering aid]."

Lab Report SF20010085, dated June 4, 2001, states, in pertinent part, the following:

This sample is a pale yellow powder named "Yttria C." Laboratory analysis and information from the maker indicates that it is composed of 99+ percent yttrium oxide and approximately .25 percent [of a dopant that functions as a sintering aid]. In our opinion, this material is not a mixture of chemical compounds. The [sintering aid] that was added functions as a sintering aid (...) that is used to densify the original yttrium oxide powder and to reduce its surface area. It apparently reacts with the yttrium oxide to either a solid solution (as claimed by the maker) or a mixed oxide of yttrium and [the sintering aid]. The latter is regarded as an unwanted impurity. This and other information (...) clearly indicate that the [sintering aid] is used in the manufacturing process for Yttria C. Otherwise, it has no functional role in Yttria C. ... [Thus, Yttria C is] a lower cost alternative to fused yttrium oxide.

ISSUE:

Is a greater than 99% yttrium oxide product excluded from classification in Chapter 28 by virtue of having a minute amount of another chemical added to it as a processing aid?

LAW AND ANALYSIS:

Merchandise imported into the U.S. is classified under the HTSUS. 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 HTSUS 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 related 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 sub-headings 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).

Furthermore, "it is a well-established principle that classification of an imported article must rest upon its condition as imported." E. T. Horn Company v. United States, Slip Op. 2003-20, (CIT, 2003), (citing Carrington Co. v. United States, 61 CCPA 77, 497 F.2d 902, 905 (CCPA 1974), United States v. Baker Perkins, Inc., 46 CCPA 128, (1959)).

The HTSUS provisions under consideration are as follows:

- 2846 Compounds, inorganic or organic, of rare-earth metals, of yttrium or of scandium, or of mixtures of these metals:
- 2846.90 Other:
- Other:
- 2846.90.80 Other
- * * * * * * *
- 3824 Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:
- 3824.90 Other:
- Other:
- Mixtures of two or more inorganic compounds:
- 3824.90.39 Other

Section note 1(b) to Section VI, HTSUS, provides as follows: "Subject to paragraph (a) above, goods answering to a description in heading 2843 or 2846 are to be classified in those headings and in no other heading of this section." Chapter Note 1(a) to chapter 28 states, in pertinent part, "[E]xcept where the context otherwise requires, the headings of this chapter apply only to: (a) [S]eparate chemical elements and separate chemically defined compounds, whether or not containing impurities, . . ."

In USR Optonix, Inc. v. United States, slip op. 05-27, February 18, 2005, the court relied on EN 28.46 to define the scope of the term "compounds" in heading 2846. The court found that the term "compounds" used in heading 2846 is sufficiently broad enough to include both a non-stoichiometric com-

pound or a mixture of yttrium oxide and europium oxide without deciding factually whether the substance was a compound or a mixture. *Id.* at 22. However, the case is silent on the matter of a mixture of yttrium oxide and a compound including elements other than yttrium, scandium or those rare-earth metals of heading 2805, HTSUS.

EN 28.46 states, in pertinent part, the following:

This heading covers the inorganic or organic compounds of yttrium, of scandium or of the rare-earth metals of heading 28.05 (lanthanum, cerium, praseodymium, neodymium, samarium, europium, gadolinium, terbium, dysprosium, holmium, erbium, thulium, ytterbium, lutetium). The heading also covers compounds derived directly by chemical treatment from mixtures of the elements. This means that the heading will include mixtures of oxides or hydroxides of these elements or mixtures of salts having the same anion (e.g., rare-earth metal chlorides), but not mixtures of salts having different anions, whether or not the cation is the same. The heading will not therefore, for example, cover a mixture of europium and samarium nitrates with the oxalates nor a mixture of cerium chloride and cerium sulphate since these examples are not compounds derived directly from mixtures of elements, but are mixtures of compounds which could be conceived as having been made intentionally for special purposes and which, accordingly, fall in heading 38.24.

In HQ 962804, we believed that, to the extent the Yttria C consisted of more than one compound, heading 2846 was broad enough to encompass that mixture under Section note 1(b) to Section VI and Chapter 28, note 1(a). Hence, we found that the miniscule amount of remaining sintering aid present in the yttrium oxide constituted an impurity.

However, the unique mixture found in Yttria C has been made intentionally for the special purpose of creating a larger particle yttrium oxide. Therefore, using EN 28.46, the mixture falls in heading 3824, HTSUS. Furthermore, because the sintering aid is not found in the starting material and is not a rare earth oxide, the holding in USR Optonix, *supra*, does not apply to these facts.

Yttria C is classified in subheading 3824.90.39, HTSUS, the provision for, "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Mixtures of two or more inorganic compounds: Other." This decision is consistent with a Harmonized System Committee decision to classify the substance in subheading 3824.90, HTS (HSC/34, Annex IJ/1 to Doc NC0892B2, Oct. 2004, pg. VI/11E).

However, this ruling is confined to the facts represented herein and does not diminish the scope of heading 2846, HTSUS, as outlined in USR Optonix, *supra*. Yttrium products will continue to be classified on a case by case basis.

HOLDING:

HQ 962804 is revoked. Yttria C is classified in subheading 3824.90.3900, HTSUSA (annotated), the provision for, "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Mixtures of two or more inorganic compounds: Other." The General 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 internet at www.usitc.gov.

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

EFFECT ON OTHER RULINGS:

HQ 962804 is revoked.

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

**REVOCAION OF RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF CERTAIN
FOOTWEAR WITHOUT APPLIED SOLES**

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the tariff classification of certain footwear without applied soles.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is revoking a ruling letter pertaining to the tariff classification of certain footwear without applied soles and revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed revocation was published in the Customs Bulletin, Volume 39, Number 41, on October 5, 2005. No comments were received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 5, 2006.

FOR FURTHER INFORMATION CONTACT: Greg Deutsch, Tariff Classification and Marking Branch, at (202) 572-8811.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI") became effective.

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(1)), a notice was published on October 5, 2005 in the Customs Bulletin, Volume 39, Number 41, proposing to revoke a ruling letter pertaining to the tariff classification of certain footwear without applied soles. No comments were received in response to this notice. As stated in the proposed notice, although CBP is specifically referring to New York Ruling Letter (NY) L83856, this notice covers any rulings relating to the specific issues of tariff classification set forth in the ruling 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 additional rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, an internal advice memorandum or decision, or a protest review decision) on the issues subject to this notice, should have advised CBP during the notice period.

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

In NY L83856, dated April 22, 2005, two styles of knit textile slipper socks were found to have separately applied soles and were clas-

sified in subheading 6405.20.90, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for "Other footwear: With uppers of textile materials: Other." Upon review of NY L83856, we find that the fabric patches that are applied to the slipper socks do not constitute outer soles in and of themselves, and the footwear does not incorporate pre-existing outer soles. The knit textile slipper socks should be classified in subheading 6115.93.9020, HTSUSA, which, in pertinent part, provides for "Panty hose...socks and other hosiery, including...footwear without applied soles, knitted or crocheted: Other: Of synthetic fibers: Other: Other, Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY L83856 and any other rulings not specifically identified, to reflect the proper classification of the slipper socks according to the analysis in Headquarters Ruling Letter (HQ) 967851, 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 that CBP may have previously accorded 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: November 18, 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 967851
November 18, 2005
CLA-2 RR:CTF:TCM 967851 GGD
CATEGORY: Classification
TARIFF NO.: 6115.93.9020

MS. SUSIE KOO
DML MARKETING GROUP, LTD. (Legale)
7711 Hayvenhurst Avenue
Van Nuys, California 91406

RE: Revocation of NY L83856; Slipper Socks; Not Footwear with Applied Soles

DEAR MS. KOO:

In New York Ruling Letter (NY) L83856, issued to you April 22, 2005, two styles of knit textile slipper socks were classified in subheading 6405.20.90,

Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for “Other footwear: With uppers of textile materials: Other,” with an applicable duty rate of 12.5 percent ad valorem. We have reviewed that ruling and have found it to be in error. Therefore, this ruling revokes NY L83856.

Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY L83856 was published in the Customs Bulletin, Volume 39, Number 41, on October 5, 2005. No comments were received in response to the notice.

FACTS:

In NY L83856, the two half pair samples of slipper socks, identified as styles A and B, were found to have separately applied soles. Style A has a knit upper of a textile material you state is composed of acrylic, polyester and nylon fibers. What was found to constitute an outer sole consists of two, separately sewn-on patches of textile fabric with small, widely spaced, plastic traction dots. Style A also has a padded, green frog face sewn-on at the ankle.

Style B has a knit upper of a textile material you state is composed of acrylic and nylon fibers. What was found to constitute an outer sole consists of two, separately sewn-on patches of textile fabric with small, widely spaced, plastic traction dots. Style B features a plush textile monkey figure accessory, with a head, plastic eyes and a tail, sewn onto the instep portion of the upper.

ISSUE:

Whether the textile footwear is properly classified in subheading 6405.20.90, HTSUSA, as “Other footwear: With uppers of textile materials: Other;” or in subheading 6115.93.9020, HTSUSA, textile category 632, as “Panty hose . . . stockings, socks and other hosiery, including . . . footwear without applied soles, knitted or crocheted: Other: Of synthetic fibers: Other: Other, Other.”

LAW AND ANALYSIS:

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

Among other merchandise, chapter 64, HTSUSA, covers footwear. Note 1(b) to chapter 64 states that “[t]his chapter does not cover: Footwear of textile material, without an outer sole glued, sewn or otherwise affixed or applied to the upper (section XI).” In pertinent part, note 4(b) to chapter 64

states that “[t]he constituent material of the outer sole shall be taken to be the material having the greatest surface area in contact with the ground, no account being taken of accessories or reinforcements such as spikes, bars, nails, protectors or similar attachments.”

Section XI, HTSUSA (the section under which chapter 61 falls), covers textiles and textile articles. Note 1(n) to section XI states that “[t]his section does not cover: Footwear or parts of footwear, gaiters or leggings or similar articles of chapter 64.” Chapter 61, HTSUSA, covers articles of apparel and clothing accessories, knitted or crocheted. Among other goods, heading 6115, HTSUSA, covers “. . . stockings, socks and other hosiery, including . . . footwear without applied soles. . . .”

The samples at issue are textile slipper socks whose entire underfoot area would be in contact with the ground. In order for such footwear to be classified in chapter 64, HTSUS, the outer sole must be a separately identifiable component prior to its application to the upper and encompass essentially the entire underfoot area, and the complete article must not be designed to be worn inside other footwear. Mere patches, pads, dots, strips, etc., that are attached to a sock’s underfoot area, do not, in and of themselves, constitute an applied sole. Such materials attached to a pre-existing outer sole, however, are considered in determining the constituent material having the greatest surface area in contact with the ground. Although neither style A nor B appears clearly designed to be worn inside other footwear, the textile fabric patches (with traction dots) that are applied to the slipper socks do not constitute separately identifiable components which encompass essentially the entire underfoot area. The textile fabric patches do not constitute an outer sole in and of themselves, and the socks do not incorporate a pre-existing outer sole. In light of the above analysis, we find that the two styles of slipper socks are properly classified under heading 6115, as footwear without applied soles.

HOLDING:

The slipper socks identified as styles A and B are classified in subheading 6115.93.9020, HTSUSA, the provision for “Panty hose . . . stockings, socks and other hosiery, including . . . footwear without applied soles, knitted or crocheted: Other: Of synthetic fibers: Other: Other, Other.” The general column one duty rate is 14.6 percent ad valorem.

NY L83856, issued April 22, 2005, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Merchandise classified in subheading 6115.93.9020, HTSUSA, falls within textile category 632. 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 negotiations 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 cite at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related is-

sues, we refer you to the web cite of the Office of Textiles and Apparel of the Department of Commerce at <http://otexa.ita.doc.gov>.

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

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERAMIC ARTICLES “AVAILABLE IN SPECIFIED SETS”

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

ACTION: Notice of proposed revocation of two ruling letters and revocation of treatment relating to the tariff classification of ceramic table and kitchenware “available in specified sets” under the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) intends to revoke two rulings concerning the tariff classification of ceramic articles “available in specified sets” and to revoke any treatment CBP has previously accorded to substantially identical merchandise. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before January 6, 2006.

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., 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 Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, Tariff Classification and Marking Branch: (202) 572–8776.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with 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 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke New York Ruling Letters ("NY") B88253, dated July 30, 1997, and NY 813612, dated September 13, 1995. In NY B88253, merchandise described as porcelain or "stoneware" dinnerware in patterned sets was classified under subheading 6912.00.39, HTSUSA, which provides for "ceramic household tableware, other than of porcelain or china, available in specified sets, in a pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of Chapter 69 is over \$38." In NY 813612, merchandise described as porcelain dinnerware in patterned sets was classified under subheading 6911.10.35, HTSUSA, which provides for "for ceramic household tableware, of porcelain or china, available in specified sets, in a pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of Chapter 69 is not over \$56." In reaching these conclusions, we reasoned that the maximum size limit set forth in Additional U.S. Note 6 to Chapter 69 which defines and sets forth parameters for tableware "available in specified sets" was a guideline rather than a rule. NY B88253 and NY 813612 are set forth as "Attachment A" and "Attachment B" respectively to this document. The holdings in these rulings contradict the holding of a prior Headquarters Ruling letter ("HQ") 955838, dated August 8, 1994. In HQ 955838, we held that the size

of any article “available in specified sets” cannot exceed the maximum dimensions set forth in Note 6 to Chapter 69.

Although in this notice CBP is specifically referring to two rulings, this notice covers any rulings on similar merchandise that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases; 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, other than the referenced ruling, should advise CBP during this notice period.

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

Pursuant to 19 U.S.C. §1625(c)(1), CBP intends to revoke NY B88253 and NY 813612 as they pertain to the classification of ceramic articles “available in specified sets,” and any other ruling not specifically identified, to reflect the proper classification of the merchandise. The merchandise in NY B88253 will be classified under subheading 6912.00.4810, HTSUSA, which provides for ceramic tableware, kitchenware . . . other than porcelain or china, other, other, other, pursuant to the analysis set forth in proposed HQ 967792 (*see* “Attachment C” to this document). The merchandise in NY 813612 will be classified under subheading 6911.10.8010, HTSUSA, which provides for ceramic tableware, kitchenware . . . of porcelain or china, tableware and kitchenware, other, other, other, other, pursuant to the analysis set forth in proposed HQ 967920 (*see* “Attachment D” 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: November 18, 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 B88253
July 30, 1997
CLA-2-69:RR:NC:2:227 B88253
CATEGORY: Classification
TARIFF NO.: 6912.00.39

MR. DONALD F. WRIGHT
EXCEL IMPORTING CORPORATION
100 Andrews Road
Hicksville, NY 11801

RE: The tariff classification of stoneware dinnerware from China.

DEAR MR. WRIGHT:

In your letter dated July 1, 1997, you requested a tariff classification ruling. The merchandise is stoneware dinnerware that is identified as in the patterns English Garden, Dorchester, Orchard and Cosmos. Previous information submitted indicates that the patterns are principally for household use and are "available in specified sets" in accordance with Chapter 69, additional U.S. note 6(b) of the Harmonized Tariff Schedule of the United States, with an aggregate value of over \$38.

The term "of the size nearest to 15.3 cm in maximum dimension" in headnote 2(b) of chapter 69 means either more or less than the dimension specified and within a rather wide range. For example a salad plate may actually be up to 20.38 cm in diameter or as small as 10.22 cm in diameter.

The applicable subheading for the above stoneware dinnerware sets will be 6912.00.39, Harmonized Tariff Schedule of the United States (HTS), which provides for ceramic household tableware, other than of porcelain or china, available in specified sets, in a pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of Chapter 69 is over \$38. The duty rate will be 4.5 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist George Kalkines at (212) 466-5794.

GWENN KLEIN KIRSCHNER,
Chief,
Special Products Branch,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY 813612
September 13, 1995
CLA-2-69:S:N:N3:227 813612
CATEGORY: Classification
TARIFF NO.: 6911.10.35

MR. CURT DEVLIN
ACTION INDUSTRIES, INC.
460 Nixon Rd.
Cheswick, PA 15024

RE: The tariff classification of porcelain dinnerware from China.

DEAR MR. DEVLIN:

In your letter dated August 8, 1995, you requested a tariff classification ruling. The merchandise at issue is porcelain dinnerware that is identified as in the Joy Of Christmas pattern, Item Number 17637. The information submitted indicates that the pattern is principally for household use and is "available in specified sets" in accordance with Chapter 69, additional U.S. note 6(b) of the Harmonized Tariff Schedule of the United States.

You submitted the following availability and cost breakdown for the above subject pattern dinnerware:

10 1/2" Dinner Plate 12 PC. \$ 7.74 7 1/2" Salad Plate 12 PC. 4.11 8" Soup/
Cereal 24 PC. 9.12 Cup 12 PC. 3.66 Saucer 12 PC. 2.73 15" Oval Platter 1
PC. 12.00 10" Open Oval Shape Veg. Dish 1 PC. 8.60 Large Sugar W/Cover 2
PC. 5.20 Large Creamer 1 PC. 4.50 77 PC. US\$57.66

The extreme disparity in the cost of the 5 completer pieces and the 72 basic pieces makes the accuracy of this breakdown questionable. Your explanation is that the cost difference is due to the manufacturing process used to produce the completer items as opposed to the process used to produce the basic items. The completer pieces are hand casted while the basic items are made on a jigger machine.

Trade information indicates that the cost of hand casting is approximately twice as much as making a comparable item on a jigger machine. From your cost breakdown, the cost of the 15" oval platter is over 18 times as much as the 10 1/2" dinner plate and the cost of the 10" oval vegetable dish is over 20 times as much as the 8" soup/cereal dish. On this basis we have determined that the prices of the completer pieces are unrealistic and self-serving. The applicable subheading for the Joy of Christmas porcelain dinnerware set will be 6911.10.35, Harmonized Tariff Schedule of the United States (HTS), which provides for ceramic household tableware, of porcelain or china, available in specified sets, in a pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of Chapter 69 is not over \$56. The duty rate will be 26 percent ad valorem.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed

without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
*Area Director,
New York Seaport.*



[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967792
CLA-2 RR:CTF:TCM 967792 AML
CATEGORY: Classification
TARIFF NO.: 6912.00.4810

MR. DONALD F. WRIGHT
EXCEL IMPORTING CORPORATION
*100 Andrews Road
Hicksville, NY 11801*

RE: The tariff classification of stoneware dinnerware “available in specified sets”; NY B88253 revoked

DEAR MR. WRIGHT:

This is in reference to New York Ruling Letter (“NY”) B88253, dated July 30, 1997, issued to you regarding the tariff classification of certain stoneware dinnerware “available in specified sets” under the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”). We have reconsidered the decision made in NY B88253 and have determined that the conclusions reached therein are incorrect. This letter sets forth the correct classification of the stoneware dinnerware “available in specified sets.”

FACTS:

We described the merchandise in NY B88253 as follows:

The merchandise is stoneware dinnerware that is identified as in the patterns English Garden, Dorchester, Orchard and Cosmos. Previous information submitted indicates that the patterns are principally for household use and are “available in specified sets” in accordance with Chapter 69, additional U.S. note 6(b) of the Harmonized Tariff Schedule of the United States, with an aggregate value of over \$38.

We held that:

The applicable subheading for the above stoneware dinnerware sets will be 6912.00.39, Harmonized Tariff Schedule of the United States (HTS), which provides for ceramic household tableware, other than of porcelain or china, available in specified sets, in a pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of Chapter 69 is over \$38. The duty rate will be 4.5 percent ad valorem.

In reaching that holding, we reasoned that:

The term “of the size nearest to 15.3 cm in maximum dimension” in headnote 2(b) of chapter 69 means either more or less than the di-

mension specified and within a rather wide range. For example a salad plate may actually be up to 20.38 cm in diameter or as small as 10.22 cm in diameter.

On August 8, 1994, we issued Headquarters Ruling Letter (“HQ”) 955838, which, in classifying a set of ceramic tableware, held that the maximum sizes set forth in Additional U.S. Note 6 to Chapter 69 could not be exceeded by any piece within the set.

ISSUE:

Whether any piece of table- or kitchenware “available in specified sets” may exceed the maximum size requirements of Additional U.S. Note 6 to chapter 69, HTSUS?

LAW AND ANALYSIS:

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

Additional U.S. Note 6 to Chapter 69 provides as follows:

6. For the purposes of headings 6911 and 6912:

(a) The term “available in specified sets” embraces plates, cups, saucers and other articles principally used for preparing, serving or storing food or beverages, or food or beverage ingredients, which are sold or offered for sale in the same pattern, but no article is classifiable as being “available in specified sets” unless it is of a pattern in which at least the articles listed below in (b) of this note are sold or offered for sale.

(b) If each of the following articles is sold or offered for sale in the same pattern, the classification hereunder in subheadings 6911.10.35, 6911.10.37, 6911.10.38, 6912.00.35 or 6912.00.39, of all articles of such pattern shall be governed by the aggregate value of the following articles in the quantities indicated, as determined by the appropriate customs officer under section 402 of the Tariff Act of 1930, as amended, whether or not such articles are imported in the same shipment:

12 plates of the size nearest to 26.7 cm in maximum dimension, sold or offered for sale,

12 plates of the size nearest to 15.3 cm in maximum dimension, sold or offered for sale,

12 tea cups and their saucers, sold or offered for sale,

12 soups of the size nearest to 17.8 cm in maximum dimension, sold or offered for sale,

12 fruits of the size nearest to 12.7 cm in maximum dimension, sold or offered for sale,

1 platter or chop dish of the size nearest to 38.1 cm in maximum dimension, sold or offered for sale,

1 open vegetable dish or bowl of the size nearest to 25.4 cm in maximum dimension, sold or offered for sale,

- 1 sugar of largest capacity, sold or offered for sale,
- 1 creamer of largest capacity, sold or offered for sale.

If either soups or fruits are not sold or offered for sale, 12 cereals of the size nearest to 15.3 cm in maximum dimension, sold or offered for sale, shall be substituted therefor.

The language of the additional U.S. note is unequivocal. The word “maximum” means “the greatest possible quantity or degree; the greatest quantity or degree reached or recorded; the upper limit of variation.” See www.thefreedictionary.com. This plain understanding was employed in HQ 955838. In deciding whether certain articles could be substituted for others, we stated:

Customs is of the opinion that the subject articles do not meet the necessary size requirements to be considered “available in specified sets”. As the measurements in the note above indicate, a “cereal” cannot exceed 15.3 cm. Protestant’s plate is 20.3 cm. It is too large to be substituted for a fruit plate or a cereal bowl. Therefore, the dinnerware is not considered “available for sale in specified sets”. The protested pieces are classifiable in subheading 6912.00.48, HTSUS, as other ceramic tableware and kitchenware.

The crux of the holding above is that “maximum” is taken in its ordinary meaning and denotes the upper allowable limit that cannot be exceeded. Stated plainly, articles of table- and kitchenware “available in specified sets” cannot exceed the maximum dimensions set forth in Additional Note 6 to Chapter 69.

Given that NY B88253 explicitly stated that Note 6 to Chapter 69 “means either more or less than the dimension specified and within a rather wide range,” in contravention of the plain language of the note and HQ 955838, NY B88253 must be revoked.

The HTSUS provisions under consideration are as follows:

6912.00 Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china:

Tableware and kitchenware:

6912.00.10 Of coarse-grained earthenware, or of coarse-grained stoneware; of fine-grained earthenware, whether or not decorated, having a reddish-colored body and a lustrous glaze which, on teapots, may be any color, but which, on other articles, must be mottled, streaked or solidly colored brown to black with metallic oxide or salt:

* * *

Other:

Available in specified sets:

6912.00.35 In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of this chapter is not over \$38

Other:

6912.00.48 Other.

Given the statement in NY B88253 that the term "maximum" in Additional U.S. Note 6 to Chapter 69 means "more or less" and given that the size of some of the articles in the stoneware dinnerware apparently (NY B88253 was lost on September 11, 2001) exceeded the maximum dimension set forth in the tariff, the goods fall to be classified under subheading 6912.00.4810, HTSUSA. This comports with the holding in HQ 955838.

HOLDING:

The stoneware dinnerware is classified under subheading 6912.00.4810, HTSUSA which provides for ceramic tableware, kitchenware . . . other than porcelain or china, other, other, other. The general, column 1 duty rate is 9.8% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY B88253 is revoked.

MYLES B. HARMON,
Director,

Commercial and Trade Facilitation Division.

cc: National Commodity Specialist Division
NIS Bunin



[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967920
CLA-2 RR:CTF:TCM 967920 AML
CATEGORY: Classification
TARIFF NO.: 6911.10.8010

MR. CURT DEVLIN
ACTION INDUSTRIES, INC.
460 Nixon Rd.
Cheswick, PA 15024

RE: Tariff classification of porcelain dinnerware "available in specified sets"; NY 813612 revoked

DEAR MR. DEVLIN:

This is in reference to New York Ruling Letter ("NY") 813612, dated September 13, 1995, issued to you regarding the tariff classification of certain porcelain dinnerware "available in specified sets" under the Harmonized

Tariff Schedule of the United States Annotated ("HTSUSA"). We have reconsidered the decision made in NY 813612 and have determined that the conclusions reached therein are incorrect. This letter sets forth the correct classification of the porcelain dinnerware "available in specified sets."

FACTS:

We described the merchandise in NY 813612 as follows:

The merchandise at issue is porcelain dinnerware that is identified as in the Joy Of Christmas pattern, Item Number 17637. The information submitted indicates that the pattern is principally for household use and is "available in specified sets" in accordance with Chapter 69, additional U.S. note 6(b) of the Harmonized Tariff Schedule of the United States.

After considering the cost per item information you provided, we held that:

The applicable subheading for the Joy of Christmas porcelain dinnerware set will be 6911.10.35, Harmonized Tariff Schedule of the United States (HTS), which provides for ceramic household tableware, of porcelain or china, available in specified sets, in a pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of Chapter 69 is not over \$56. The duty rate will be 26 percent ad valorem.

Included in your submission were measurements, in inches, of the various articles that comprised the specified set. The relevant measurements and our conversion from inches to centimeters (multiplying the number of inches by 2.54) are as follows:

10 1/2" Dinner Plate	26.7 centimeters
7 1/2" Salad Plate	19.1 centimeters
8" Soup/Cereal	20.32 centimeters
15" Oval Platter	38.1 centimeters
10" Oval Shape Veg. Dish	25.4 centimeters

On August 8, 1994, we issued Headquarters Ruling Letter ("HQ") 955838, which, in classifying a set of ceramic tableware, held that the maximum sizes set forth in Additional U.S. Note 6 to Chapter 69 could not be exceeded by any piece within the set.

ISSUE:

Whether any piece of table- or kitchenware "available in specified sets" may exceed the maximum size requirements of Additional U.S. Note 6 to chapter 69, HTSUS?

LAW AND ANALYSIS:

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

Additional U.S. Note 6 to Chapter 69 provides as follows:

6. For the purposes of headings 6911 and 6912:

(a) The term "available in specified sets" embraces plates, cups, saucers and other articles principally used for preparing, serving or storing food

or beverages, or food or beverage ingredients, which are sold or offered for sale in the same pattern, but no article is classifiable as being “available in specified sets” unless it is of a pattern in which at least the articles listed below in (b) of this note are sold or offered for sale.

(b) If each of the following articles is sold or offered for sale in the same pattern, the classification hereunder in subheadings 6911.10.35, 6911.10.37, 6911.10.38, 6912.00.35 or 6912.00.39, of all articles of such pattern shall be governed by the aggregate value of the following articles in the quantities indicated, as determined by the appropriate customs officer under section 402 of the Tariff Act of 1930, as amended, whether or not such articles are imported in the same shipment:

12 plates of the size nearest to 26.7 cm in maximum dimension, sold or offered for sale,

12 plates of the size nearest to 15.3 cm in maximum dimension, sold or offered for sale,

12 tea cups and their saucers, sold or offered for sale,

12 soups of the size nearest to 17.8 cm in maximum dimension, sold or offered for sale,

12 fruits of the size nearest to 12.7 cm in maximum dimension, sold or offered for sale,

1 platter or chop dish of the size nearest to 38.1 cm in maximum dimension, sold or offered for sale,

1 open vegetable dish or bowl of the size nearest to 25.4 cm in maximum dimension, sold or offered for sale,

1 sugar of largest capacity, sold or offered for sale,

1 creamer of largest capacity, sold or offered for sale.

If either soups or fruits are not sold or offered for sale, 12 cereals of the size nearest to 15.3 cm in maximum dimension, sold or offered for sale, shall be substituted therefor.

The language of the additional U.S. note is unequivocal. The word “maximum” means “the greatest possible quantity or degree; the greatest quantity or degree reached or recorded; the upper limit of variation.” See www.thefreedictionary.com. This plain understanding was employed in HQ 955838. In deciding whether certain articles could be substituted for others, we stated:

Customs is of the opinion that the subject articles do not meet the necessary size requirements to be considered “available in specified sets”. As the measurements in the note above indicate, a “cereal” cannot exceed 15.3 cm. Protestant’s plate is 20.3 cm. It is too large to be substituted for a fruit plate or a cereal bowl. Therefore, the dinnerware is not considered “available for sale in specified sets”. The protested pieces are classifiable in subheading 6912.00.48, HTSUS, as other ceramic tableware and kitchenware.

The crux of the holding above is that “maximum” is taken in its ordinary meaning and denotes the upper allowable limit that cannot be exceeded. Stated plainly, articles of table- and kitchenware “available in specified sets” cannot exceed the maximum dimensions set forth in Additional Note 6 to Chapter 69.

We did not apply the dimension standards in NY 813612, in contravention of the plain language of the Additional Note 6 and HQ 955838. Both the

salad plates which measure 19.1 cm and the soup/cereal bowls which measure 20.32 cm exceed the 15.3 and 17.8 cm size limits set forth in the Additional Note 6. Thus, NY 813612 must be revoked.

The HTSUS provisions under consideration are as follows:

6911 Tableware, kitchenware, other household articles and toilet articles, of porcelain or china:

6911.10 Tableware and kitchenware:

Other:

Other:

Available in specified sets:

6911.10.35 In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of this chapter is not over \$56

Other:

6911.10.80 Other.

Given the size of some of the articles in the porcelain dinnerware, which exceed the maximum dimensions set forth in the tariff, the goods fall to be classified under subheading, HTSUSA. This comports with the holding in HQ 955838.

HOLDING:

The porcelain dinnerware is classified under subheading 6911.10.8010, HTSUSA which provides for ceramic tableware, kitchenware . . . of porcelain or china, tableware and kitchenware, other, other, other, other. The general, column 1 duty rate is 20.8% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY 813612 is revoked.

MYLES B. HARMON,
Director,

Commercial and Trade Facilitation Division.

cc: National Commodity Specialist Division
NIS Bunin

19 CFR PART 177**MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CUTLERY SETS**

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

ACTION: Notice of modification of ruling letters and revocation of treatment relating to tariff classification of cutlery sets.

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 CBP is modifying two rulings relating to the tariff classification of cutlery sets under the Harmonized Tariff Schedule of the United States (HTSUS), and revoking any treatment CBP has previously accorded to substantially identical transactions. Notice of the proposed modifications was published on September 28, 2005, in the Customs Bulletin. No comments were received in response to this notice.

EFFECTIVE DATE: These modifications are effective for merchandise entered or withdrawn from warehouse for consumption on or after February 5, 2006.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Tariff Classification and Marking Branch (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 CBP 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 CBP 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 im-

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

Pursuant to CBP's obligations, a notice was published on September 28, 2005, in the Customs Bulletin, Volume 39, Number 40, proposing to modify HQ 956603, July 27, 1994, which classified a cutlery set consisting of multiple knives, a scissors, and hardwood storage block, as a set of assorted articles, including knives, in subheading 8211.10.00, HTSUS, and to modify HQ 087515, dated December 7, 1990, which classified three cutlery set models consisting of combinations of knives, forks and storage blocks/sharpening cassettes, as kitchen and butcher knives having fixed blades, in subheading 8211.92.20, HTSUS, and as spoons, forks, etc. and similar kitchen or table ware, other sets of assorted articles, in subheading 8215.20.00, HTSUS, as appropriate. No comments were received in response to this notice.

As stated in the proposed notice, these modifications will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should have advised CBP during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment it previously accorded to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying HQ 956603 to reflect the proper classification a cutlery set consisting of multiple knives, a scissors and a hardwood storage block for these articles, in subheading 8211.10.00, HTSUS, as sets of assorted articles, based on General Rule of Interpretation (GRI) 3(b), HTSUS, in accordance with the analysis in HQ 967754. CBP is also modifying HQ 087515 to reflect the proper classification of the three cutlery set models, as described, in subheading 8211.10.00, HTSUS, and in subheading 8215.20.00, HTSUS, respectively, based on GRIs 3(b) and 3(c), as appropriate, in accordance with the analysis in HQ 967755. These rulings are set forth as "Attachment A" and "Attachment B" to this document, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment it previously accorded to substantially identical transactions.

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

DATED: November 18, 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,
HQ 967754
November 18, 2005
CLA-2 RR:CTF:TCM 967754 JAS
CATEGORY: Classification
TARIFF NO.: 8211.10.0000, 8213

MR. WILLIAM J. MALONEY
RODE & QUALEY
295 Madison Avenue
New York, NY 10017

RE: Cutlery Set; HQ 956603 Modified

DEAR MR. MALONEY:

In HQ 956603, which the U.S. Customs Service, now U.S. Customs and Border Protection (CBP), issued to you on July 27, 1994, on behalf of Venture Stores, a cutlery set, as hereinafter described, was held to be classifiable in a provision of heading 8211, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as knives with cutting blades, serrated or not, and blades and other base metal parts thereof, sets of assorted articles. The classification for the cutlery set expressed in HQ 956603 is correct but the stated legal authority is incorrect. This ruling is being modified to state the correct legal authority. The classification expressed for the scissors imported separately is unaffected by this modification.

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 HQ 956603 was published on September 28, 2005, in the Customs Bulletin, Volume 39, Number 40. No comments were received in response to that notice.

FACTS:

HQ 956603 described the merchandise as consisting of the following: six 4 1/2-inch steak knives, 3-inch parer knife, 5 1/4-inch utility knife, 6-inch boner knife, 8-inch bread knife, 8-inch chef knife, 7-1/2 inch butcher's knife, a scissors, and a hardwood storage block for the knives and the scissors. All of the knives have stainless steel blades and wood handles while the scissors

has a plastic handle. In the alternative, the merchandise consists of all of the above items except for the scissors, which will be imported separately.

The HTSUS provisions under consideration are as follows:

- 8211** Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof:
- 8211.10.00** Sets of assorted articles
- * * * *
- 8213.00** Scissors, tailors' shears and similar shears, and blades and other base metal parts thereof:
- 8213.00.30** Valued not over \$1.75/dozen
Valued over \$1.75/dozen:
- 8213.00.60** Pinking shears, valued over \$30/dozen
- 8213.00.90** Other (including parts)

ISSUE:

Whether the merchandise is classifiable under subheading 8211.10.00, HTSUS, as knives with cutting blades, sets of assorted articles.

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 at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. CBP believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

HQ 956603 rejected the assertion that the cutlery set cannot be classifiable under subheading 8211.10.00, HTSUS, by authority of GRI 1, because of the presence of the scissors which are provided for in heading 8213. The relevant 82.11 subheading EN was cited:

The scope of subheading 8211.10 is limited to sets of different knives or sets of assorted articles in which the knives predominate in number over the other articles.

HQ 956603 then stated that the subject merchandise is a set of assorted articles (knives, scissors, and storage block) in which the knives predominate in number over the other articles, and noted that heading 8211, HTSUS, is the provision where knives are classifiable. The ruling concluded that "as long as knives predominate in numbers over the other articles of the set, under GRI 1, the terms of heading 8211, HTSUS, have been met. It is our position that the intent of the drafters of both the HTSUS and the Explanatory Notes was for sets such as the subject cutlery set to be classifiable under heading 8211, HTSUS." This interpretation is incorrect inasmuch as

it represents an expansion of the scope of heading 8211 not authorized under GRI 1.

GRI 3(b), HTSUS, states, in relevant part, that goods put up in sets for retail sale shall be classified as if they consisted of the component which gives them their essential character, insofar as this criterion is applicable. The EN for GRI 3(b) states, in part, that the term "goods put up in sets for retail sale" shall be taken to mean goods which consist of at least two different articles which are, *prima facie*, classifiable in different headings, are put up together to meet a particular need or carry out a specific activity, and are put up in a manner suitable for sale directly to users without repacking. The cutlery set meets these criteria. Knives are provided for in heading 8211 and scissors in heading 8213 while the hardwood storage block is considered a container, specially shaped or fitted to contain a specific article or set of articles, within the meaning of GRI 5(a), HTSUS, which is to be classified with the goods. The knives and scissors carry out the specific activity of cutting, and appear to be put up in a manner suitable for sale directly to users without repacking. Further, the GRI 3(b) EN notes that the factor which determines essential character will vary with the goods but may, for example, be determined by the nature of a component, its bulk, quantity, weight or value. In this case, the knives predominate by bulk, quantity, weight and, presumably, by value. Moreover, the different knives permit users to undertake various types of cutting operations while the scissors permit only a single cutting operation. We conclude that the knives impart the essential character to the cutlery set.

HOLDING:

Under the authority of GRI 3(b), the cutlery set, with or without the scissors, is provided for in heading 8211. It is classifiable in subheading 8211.10.0000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), at the rate of duty applicable to that article in the set subject to the highest rate of duty. Imported separately, the scissors are provided for in heading 8213, HTSUS, with the specific subheading dependent on the value of the scissors.

EFFECT ON OTHER RULINGS:

HQ 956603, dated July 27, 1994, is modified accordingly. 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 and Trade Facilitation Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967755
November 18, 2005
CLA-2 RR:CTF:TCM 967755 JAS
CATEGORY: Classification
TARIFF NO.: 8211.10.0000, 8215.20.0000

MR. JACK ALSUP
ALSUP & ALSUP
P.O. Box 1251
Del Rio, TX 78841

RE: Cutlery Sets; HQ 087515 Modified

DEAR MR. ALSUP:

In HQ 087515, which the U.S. Customs Service, now U.S. Customs and Border Protection (CBP) issued to you on December 7, 1990, various combinations of knives, forks and storage blocks/sharpening cassettes, represented by four samples, were held to be classifiable in provisions of heading 8211, Harmonized Tariff Schedule of the United States (HTSUS), as knives with cutting blades, and heading 8215, HTSUS, as forks.

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 HQ 087515 was published on September 28, 2005, in the Customs Bulletin, Volume 39, Number 40. No comments were received in response to that notice.

The classification expressed for the goods in sample one is correct and is not affected by this decision. The classification for the goods in samples two, three and four is incorrect and CBP is modifying HQ 087515 to insure the consistent classification of this and substantially similar merchandise.

FACTS:

As stated in HQ 087515, sample two consists of a carving knife with 8-inch blade, a utility knife with 4 3/4-inch blade, and a plastic combination storage scabbard/sharpening cassette for each knife containing two angled tungsten carbide sharpening blocks. The knives are sharpened as they are withdrawn through the carbide blocks. Sample three consists of a carving knife and utility knife, as in sample two, a paring knife with 3 1/8-inch blade, a vegetable knife with 6 1/4-inch blade and a chef's knife with 8 1/8-inch blade, plus a combination sharpening cassette/wooden block with individual slots for each knife. Sample four consists of the carving knife and combination scabbard/sharpening cassette, both described above, plus a carving fork attached to a plastic holder. The fork and all the knives in samples two, three and four are of stainless steel with polypropylene handles.

The HTSUS provisions under consideration are as follows:

3924 Tableware, kitchenware, other household articles and toilet articles, of plastics:

* * * *

8211	Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades and other base metal parts thereof:
8211.10.00	Sets of assorted articles
	Other:

8211.92	Other knives having fixed blades:
	With rubber or plastic handles:
8211.92.20	Kitchen and butcher knives
*	* * * *
8215	Spoons, forks, ladles, skimmers, . . . and similar kitchen or tableware; . . . :
8215.20.00	Other sets of assorted articles
	Other:

8215.99	Other:
	Forks:
8215.99.20	With rubber or plastic handles

ISSUE:

Whether the merchandise is classifiable under subheading 8211.10.00, HTSUS, and under subheading 8215.20.00, HTSUS, as appropriate.

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. GRI 6 states, in part, that goods are classified in the subheadings of a heading according to the terms of those subheadings and any related subheading notes and, by appropriate substitution of terms, to Rules 1 through 5, on the understanding that only subheadings at the same level are comparable.

Chapter 82, Note 3, HTSUS, states that sets consisting of one or more knives of heading 8211 and at least an equal number of articles of heading 8215 are to be classified in heading 8215.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the System. CBP believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

HQ 087515, in part, found that samples two and three constituted “goods put up in sets for retail sale” which, under GRI 3(b), HTSUS, are to be classified as if consisting of the component which gives them their essential character. We affirm that finding. Samples two and three each consist of multiple knives and a storage scabbard/ sharpening cassette. HQ 087515 determined that the knives imparted the essential character to the whole and classified these samples in subheading 8211.92.20, HTSUS, as kitchen and butcher knives. However, in comparing the subheadings of heading 8211 at the 1-dash level under GRI 6, we find that subheading 8211.10, sets of assorted articles, provides a more narrow and specific description for the goods than does Other. This is because the relevant subheading 8211.10 subheading EN states that the scope of that subheading is limited to sets of different knives or sets of assorted articles, in which the knives predominate in number over the other articles. We find that goods represented by samples two and three meet this description and are classifiable in subheading 8211.10.00, HTSUS.

HQ 087515 classified sample four at GRI 1 as sets of assorted articles, in subheading 8215.20.00, HTSUS, based on Chapter 82, Note 3. However, in applying this note, no consideration was given to the plastic scabbard which HQ 087515 found was described by heading 3924, HTSUS, as other household articles of plastic. For this reason, sample four cannot be classified at GRI 1. We conclude that sample four meets the sets criteria in GRI 3(b), as outlined above. However, unlike samples two and three, which contained multiple knives, sample four contains one knife and one fork. Admittedly, while it is the knife that does the actual carving or cutting, the fork is utilized both to stabilize what is being carved and also for serving what the knife carves. We also note that both the knife and the fork are modified by the adjective *carving*. For these reasons, we conclude that neither the knife nor the fork can be said to be more significant to the set than the other component. GRI 3(c), HTSUS, states that when goods cannot be classified by reference to [Rule] 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration. We conclude that goods represented by sample four are provided for in heading 8215. As HQ 087515 concluded, the good represented by sample four, consisting of a single knife, a single fork and a plastic scabbard/ sharpening cassette, meets the terms of subheading 8215.20.00 and is classifiable therein.

HOLDING:

Under the authority of GRI 3(b), cutlery sets represented by samples two and three are provided for in heading 8211. They are classifiable in subheading 8211.10.0000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), at the general, column 1 rate of duty applicable to that article in the set subject to the highest rate of duty.

Under the authority of GRI 3(c), cutlery sets represented by sample four are provided for in heading 8215. They are classifiable in subheading 8215.20.0000, HTSUSA, at the general, column 1 rate of duty applicable to that article in the set subject to the highest rate of duty.

EFFECT ON OTHER RULINGS:

HQ 087515, dated December 7, 1990, is modified accordingly. 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 and Trade Facilitation Division.


**PROPOSED REVOCATION OF RULING LETTER
AND REVOCATION OF TREATMENT RELATING TO
TARIFF CLASSIFICATION OF SAPPHIRE WAFERS**

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

ACTION: Proposed revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of sapphire wafers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is proposing to revoke one ruling letter relating to the tariff classification of sapphire wafers under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP is also proposing to revoke any treatment previously accorded by it to substantially identical merchandise.

DATE: Comments must be received on or before January 6, 2006.

ADDRESS: Written comments are to be addressed to the Bureau of Customs and Border Protection, Office of Regulations & Rulings, Attention: Trade and Commercial 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: Kelly Herman, Tariff Classification and Marking Branch: (202) 572-8713.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of sapphire wafers. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) R02101, dated June 20, 2005 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In NY R02101, CBP ruled that sapphire wafers were classified in subheading 7104.90.5000, HTSUSA, which provides for “Synthetic or reconstructed precious or semi-precious stones, whether or not worked or graded but not strung, mounted or set; Ungraded synthetic or reconstructed precious or semi-precious stones, temporarily strung for convenience of transport: Other: Other.” Since the issuance of that ruling, CBP has reviewed the classification of this item

and has determined that the cited ruling is in error, and that the sapphire wafers should be classified in subheading 7116.20.5000, HTSUS, which provides for "Articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke NY R02101 and is proposing to revoke or modify any other ruling not specifically identified, to reflect the proper classification of sapphire wafers according to the analysis contained in Headquarters Ruling Letter (HQ) 967923, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

DATED: November 18, 2005

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

Attachments

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[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY R02101
June 20, 2005
CLA-2-71:RR:NC:SP:233 R02101
CATEGORY: Classification
TARIFF NO.: 7104.90.5000

MR. JERRY GRAYSON
ALCONIX USA, INC.
32100 Solon Road, Suite 102
Cleveland, OH 44139

RE: The tariff classification of sapphire wafers from Japan.

DEAR MR. GRAYSON:

In your letter dated June 8, 2005, you requested a tariff classification ruling.

The merchandise to be imported consists of sapphire wafers used for production of light emitting diodes (LED). Each sapphire wafer measures 76.2mm (3 inches) in diameter and 533-584 micron thick and weighs approximately 10 grams. The wafers are grown in Japan as a single crystal, sliced and polished on one side. The application of this item is as a sapphire substrate used as a platform for the epitaxial deposition of GaN and other semiconductors. The sole purpose of the sapphire wafer is to provide a high temperature (900-1,000 degrees Celsius), non-metallic surface for the vapor

phase growth III–V semiconductors by a process termed Metal Organic Vapor Deposition. In the final use of the epitaxial structures, the substrate does not enter into any device performance function, but acts only as a support for very thin epitaxial films that are used for fabrication of Light Emitting Diodes.

The applicable subheading for the sapphire wafer will be 7104.90.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for “Synthetic or reconstructed precious or semi-precious stones . . . Other: Other.” The rate of duty will be 6.4% 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 Lawrence Mushinske at 646–733–3036.

ROBERT B. SWIERUPSKI
Director;
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967923
CLA–2 RR:CTF:TCM 967923 KSH
TARIFF NO.: 7116.20.5000

JOEL SIMON, ESQ.
SERKO & SIMON LLP
1700 Broadway, 31st Floor
New York, NY 10019

RE: Revocation of New York Ruling Letter (NY) R02101, dated June 20, 2005; Classification of sapphire wafers.

DEAR MR. SIMON:

This is in response to your letter of September 7, 2005, on behalf of your client Alconix USA, Inc., in which you request reconsideration of New York Ruling Letter (NY) R02101, issued on June 20, 2005, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of sapphire wafers. The sapphire wafers were classified in subheading 7104.90.5000, HTSUS, which provides for “Synthetic or reconstructed precious or semi-precious stones, whether or not worked or graded but not strung, mounted or set; Ungraded synthetic or reconstructed precious or semi-precious stones, temporarily strung for convenience of transport: Other: Other.” You assert that because the synthetic sapphire wafers have been advanced beyond the condition of synthetic sapphires to become unique articles of commerce, they are classified in subheading 7116.20.5000, HTSUS, which provides for “Articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Other.” In

accordance with your request for reconsideration of NY R02101, CBP has reviewed the classification of this item and has determined that the cited ruling is in error.

FACTS:

The sapphire wafer is a substrate for light-emitting diodes (LED). To obtain the sapphire wafer a synthetic sapphire must be grown. To do this, a crucible, which serves as the growth chamber, is filled with aluminum and an inert gas. The aluminum is then melted. A small crystal of sapphire, known as a "seed crystal", is mounted on a rod and dipped into the crucible until the seed crystal just touches the melted alumina. The rod is then pulled slowly out of the crucible at a slow, specified rate of speed. As the rod is pulled from the crucible the crystal grows as the seed pulls materials from the melt. The materials begin to cool and solidify forming a rod shape. The resulting rod of synthetic sapphire crystal is known as a boule. The raw boule is cut into a rod of specific dimensions, approximately 76.2mm in diameter and 80–100mm long using a diamond impregnated circular die. The angle of the cut can be altered to fit the client's preferences. To obtain the sapphire wafer, a diamond saw slices off 130–150 wafers from the rod, each of which is approximately 550 microns in thickness.

ISSUE:

Whether the sapphire wafers are classified as synthetic stones of heading 7104, HTSUS, or as articles of precious or semi-precious stone of heading 7116, HTSUS.

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings.

Chapter 71, HTSUS, provides in pertinent part for precious or semiprecious stones. Note 1, to Chapter 71, HTSUS, states:

[s]ubject to note 1(a) of section VI and except as provided below, all articles consisting wholly or partly:

(a) [o]f natural or cultured pearls or of precious or semiprecious stones (natural, synthetic or reconstructed) . . . are to be classified in this chapter.

The sapphire crystal is altered from its original formation as a boule. The sapphire crystal is cut subsequent to formation as a boule when it becomes a wafer used to make a LED.

In NY F85369, dated April 28, 2000 and NY F88737, dated February 12, 2001, CBP classified sapphire substrates for LEDs in subheading 7116.20.5000, HTSUS. Similarly, in NY G89563, dated May 10, 2001, CBP classified discharge tubes and aperture plates fabricated from synthetic sapphire in subheading 7116.20.5000, HTSUS, and in NY 802695, dated Octo-

ber 20, 1994, synthetic sapphire blanks were classified in 7116.20.2000, HTSUS. In contrast, in Headquarters Ruling Letter (HQ) 954877, dated December 21, 1993, sapphire crackle created from sapphire boules which were subsequently cracked were classified in subheading 7104.20.0000, HTSUS.

The instant sapphire wafers, like the sapphire substrates, discharge tubes, aperture plates and sapphire blanks of NY F85369, F88737, G89563 and 802695, have been advanced beyond the condition of synthetic sapphires into articles of sapphires. Accordingly, the sapphire wafers are classified in subheading 7116.20.5000, HTSUS.

HOLDING:

NY R02101, dated June 20, 2005, is hereby revoked.

The sapphire wafers are classified in subheading 7116.20.5000, HTSUS, which provides for "Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Other." The general column one rate of duty is Free.

MYLES B. HARMON,

Director;

Commercial and Trade Facilitation Division.

19 CFR PART 177

**MODIFICATION AND REVOCATION OF RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO
TARIFF CLASSIFICATION OF POWER STRIPS**

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

ACTION: Notice of modification and revocation of ruling letters and revocation of treatment relating to tariff classification of power strips.

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 CBP is modifying three rulings and revoking seven other rulings relating to the tariff classification of power strips under the Harmonized Tariff Schedule of the United States (HTSUS), and revoking any treatment CBP has previously accorded to substantially identical transactions. Notice of the proposed modifications and revocations was published on October 5, 2005, in the Customs Bulletin. No comments were received in response to this notice.

EFFECTIVE DATE: These modifications and revocations are effective for merchandise entered or withdrawn from warehouse for consumption on or after February 5, 2006.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Tariff Classification and Marking Branch (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 CBP 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 CBP 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 CBP to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to CBP's obligations, a notice was published on October 5, 2005, in the *Customs Bulletin*, Volume 39, Number 41, proposing to modify NY H89911, dated April 25, 2002, NY F82743, dated February 24, 2000, and NY D87643, dated February 22, 1999, and to revoke PD B89475, September 25, 1997, NY F87515, dated June 13, 2000, NY H89890, dated April 26, 2002, NY J81768, dated April 23, 2003, NY I86010, dated October 2, 2002, NY J83865, dated May 30, 2003, and NY J83866, dated May 29, 2003. These rulings classified assemblies consisting of power strips on a board, panel or console and combinations of extension cords, on/off switches, circuit breakers and surge protectors in provisions of heading 8536, HTSUS, as electrical apparatus for switching or protecting electrical circuits, for a voltage not exceeding 1,000 V. No comments were received in response to this notice.

As stated in the proposed notice, these modifications and revocations will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying or revoking, as appropriate, each of the ten listed rulings to reflect the proper classification of the power strips in provisions of heading 8537, HTSUS, as boards, panels or consoles, equipped with two or more apparatus of heading 8535 or 8536 for electric control or the distribution of electricity, in accordance with the analysis in HQ 967525, HQ 967869, HQ 967870, HQ 967871, HQ 967872, HQ 967873, HQ 967874, and HQ 967875, which are set forth as the Attachments to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment it previously accorded to substantially identical transactions.

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

DATED: November 18, 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,
HQ 967525
 November 18, 2005
CLA-2 RR:CTF:TCM 967525 JAS
CATEGORY: Classification
TARIFF NO.: 8537.10.90

MS. LORI ALDINGER
 IMPORT COORDINATOR
 RITE AID CORPORATION
 P.O. Box 3165
 Harrisburg, PA 17105

RE: Surge Protector; PD B89475 Revoked

DEAR MS. ALDINGER:

In PD B89475, which the Port Director, U.S. Customs and Border Protection (CBP), Phoenix, AZ, issued to you on September 25, 1997, a surge protector was found to be classifiable in subheading 8536.30.8000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as other apparatus for protecting electrical circuits, for a voltage not exceeding 1,000 V.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of PD B89475 was published on October 5, 2005, in the Customs Bulletin, Volume 39, Number 41. No comments were received in response to that notice.

FACTS:

The article in question, designated item number 972924, is a six-outlet surge protector with a 33-inch heavy-duty line cord. All outlets are grounded and polarized for safety. The article has a safety overload circuit breaker which shuts off immediately.

The HTSUS provisions under consideration are as follows:

- 8536** Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V:
- 8536.20.00** Automatic circuit breakers
- 8536.30** Other apparatus for protecting electrical circuits:
- 8536.30.40** Motor overload protectors
- 8536.30.80** Other

* * * *

- 8537** Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity . . . :
- 8537.10** For a voltage not exceeding 1,000 V:
- 8537.10.90** Other

ISSUE:

Whether the surge protector, as described, is a good of heading 8536 or heading 8537.

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 at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. CBP believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The 85.36 ENs, under **(II) APPARATUS FOR PROTECTING ELECTRICAL CIRCUITS**, discusses **fuses** and indicates further that the heading includes other devices for preventing overload of circuits (e.g., electromagnetic devices which automatically break the circuit when the current exceeds a certain value). Both the six-outlet surge protector and the safety overload circuit breaker in the article under consideration are devices that prevent overload of circuits. They constitute apparatus for protecting electrical circuits of heading 8536.

In *Universal Electronics, Inc. v. United States*, 112 F.3d 488 (Fed. Cir., 1997), articles incorporating two kinds of devices of heading 8536, i.e., switches and terminals, were found to be classifiable in heading 8537. See also HQ 964608, dated April 18, 2001, which noted that boards and panels were provided within the 8537 heading text, and classified video jacks having two or more apparatus of heading 8535 or 8536, i.e., connectors and switches, in heading 8537. Therefore, the device at issue, which incorporates a surge protector and a circuit breaker (two kinds of apparatus of heading 8536) on a board panel, console or other base, principally used for electric control, is provided for in heading 8537.

HOLDING:

Under the authority of GRI 1, the surge protector designated item number 972924 is provided for in heading 8537. It is classifiable in subheading 8537.10.90, HTSUS.

EFFECT ON OTHER RULINGS:

PD B89475, dated September 25, 1997, is revoked. 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 and Trade Facilitation Division.



[ATTACHMENT B]

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

HQ 967869

November 18, 2005

CLA-2 RR:CTF:TCM 967869 JAS

CATEGORY: Classification

TARIFF NO.: 8537.10.90

MR. JOSEPH STINSON
LISS GLOBAL, INC.
7746 Dungan Road
Philadelphia, PA 19111

RE: Power Strip, Power Stake; NY FJ83865 and NY J83866 Revoked

DEAR MR. STINSON:

In NY J83865 and NY J83866, which the Director, National Commodity Specialist Division, U.S. Customs and Border Protection (CBP), New York, issued to you on May 30 and 29, 2003, respectively, power strips and power stakes were held to be classifiable as other apparatus for protecting electrical circuits in subheading 8536.30.8000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

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 J83865 and NY J83866 was published on October 5, 2005, in the Customs Bulletin, Volume 39, Number 41. No comments were received in response to that notice.

FACTS:

The merchandise in NY J83865, identified as item W14G5358, is a six-outlet power strip with built-in circuit breaker and two-foot six-inch electrical cord. The power strip is housed within a plaster representation of a village scene. The merchandise in NY J83866, identified as item W14G5431, is a three-outlet power strip with built-in circuit breaker and 12-foot extension cord. The power strip is housed within a plaster representation of a snowman.

The HTSUS provisions under consideration are as follows:

- 8536** Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V:
- 8536.30** Other apparatus for protecting electrical circuits:
- 8536.30.80** Other
Lamp-holders, plugs and sockets:
- 8536.69** Other:
- 8536.69.80** Other
- * * * *
- 8537** Boards, panels, consoles, desks, cabinets, and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity . . . :
- 8537.10** For a voltage not exceeding 1,000 V:
- 8537.10.90** Other

ISSUE:

Whether merchandise represented by the power strip and power stake, items W14G5358 and W14G5431, are goods of heading 8536 or heading 8537.

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 at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. CBP believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The 85.36 ENs, under **(II) APPARATUS FOR PROTECTING ELECTRICAL CIRCUITS**, discusses **fuses** and indicates further that the heading includes other devices for preventing overload of circuits (e.g., electromagnetic devices which automatically break the circuit when the current exceeds a certain value). The built-in circuit breaker in NY J83865 and NY J83866 are apparatus that prevents overload of circuits. They meet the cited EN description and constitute apparatus for protecting electrical circuits of heading 8536.

The 85.36 ENs, under **(III) APPARATUS FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS**, includes apparatus for connecting together the various parts of an electrical circuit. Included in this group are plugs and sockets. A plug may have one or more pins or side con-

tacts which match corresponding holes or contacts in the socket. The six-outlet power strip in NY J83865 and the three-outlet power strip in NY J83866 function as sockets within the cited EN description. They are described in heading 8536 as apparatus for making connections to or in electrical circuits.

In *Universal Electronics, Inc. v. United States*, 112 F.3d 488 (Fed. Cir., 1997), articles incorporating two kinds of devices of heading 8536, i.e., switches and terminals, were found to be classifiable in heading 8537. See also HQ 964608, dated April 18, 2001, which noted that boards and panels were provided within the 8537 heading text, and classified video jacks having two or more apparatus of heading 8535 or 8536, i.e., connectors and switches, in heading 8537. Therefore, the merchandise in NY J83865, a six-outlet power strip with built-in circuit breaker (two or more different kinds of apparatus of heading 8536) housed in a plaster representation of a village scene on a board, panel, console or other base, principally used for electric control or the distribution of electricity, is provided for in heading 8537. The merchandise in NY J83866, a three-outlet power strip with built-in circuit breaker (two or more different kinds of apparatus of heading 8536) housed in a plaster representation of a snowman on a board, panel, console or other base, principally used for electric control or the distribution of electricity, is likewise provided for in heading 8537.

HOLDING:

Under the authority of GRI 1, the six-outlet power strip with built-in circuit breaker, identified as item W14G5358, is provided for in heading 8537. It is classifiable in subheading 8537.10.90, HTSUS. Under the authority of GRI 1, the three-outlet power strip with built-in circuit breaker, identified as item W14G5431, is provided for in heading 8537. It is classifiable in subheading 8537.10.90, HTSUS.

EFFECT ON OTHER RULINGS:

NY J83865 and NY J83866, dated May 30 and May 29, 2003, respectively, are revoked. 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 and Trade Facilitation Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967870
November 18, 2005
CLA-2 RR:CTF:TCM 967870 JAS
CATEGORY: Classification
TARIFF NO.: 8537.10.90

MS. GAIL MORIN
BLACK & DECKER
701 East Joppa Road
Towson, MD 21286

RE: Powerbag with Electrical Strip Set; NY I86010 Revoked

DEAR MS. MORIN:

In NY I86010, which the Director, National Commodity Specialist Division, U.S. Customs and Border Protection (CBP), New York, issued to you on October 2, 2002, a Powerbag with Electrical Strip Set was held to be classifiable as other apparatus for protecting electrical circuits in subheading 8536.30.8000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY I86010 was published on October 5, 2005, in the Customs Bulletin, Volume 39, Number 41. No comments were received in response to that notice.

FACTS:

The merchandise in NY I86010, the Powerbag with Electrical Strip Set, consists of a polyester storage bag containing a power strip with built-in surge protection. The electrical sockets of the strip can be accessed through an opening in the bag that is designed for that purpose. The bag also has an opening to accommodate an electric power cord.

The HTSUS provisions under consideration are as follows:

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

8536.30 Other apparatus for protecting electrical circuits:

8536.30.80 Other

Lamp-holders, plugs and sockets:

8536.69 Other:

8536.69.80 Other

* * * *

- 8537** Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity . . . :
- 8537.10** For a voltage not exceeding 1,000 V:
- 8537.10.90** Other

ISSUE:

Whether the Powerbag with Electrical Strip Set is a good of heading 8536 or heading 8537.

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 at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. CBP believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The 85.36 ENs, under **(II) APPARATUS FOR PROTECTING ELECTRICAL CIRCUITS**, discusses **fuses** and indicates further that the heading includes other devices for preventing overload of circuits (e.g., electromagnetic devices which automatically break the circuit when the current exceeds a certain value). The built-in surge protection in the device under consideration is apparatus that prevents overload of circuits. It meets the cited EN description and constitutes apparatus for protecting electrical circuits of heading 8536.

The 85.36 ENs, under **(III) APPARATUS FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS**, includes apparatus for connecting together the various parts of an electrical circuit. Included in this group are plugs and sockets. A plug may have one or more pins or side contacts which match corresponding holes or contacts in the socket. The power strip in the device under consideration functions as a socket within the cited EN description. It is described in heading 8536 as apparatus for making connections to or in electrical circuits.

In *Universal Electronics, Inc. v. United States*, 112 F.3d 488 (Fed. Cir., 1997), articles incorporating two kinds of devices of heading 8536, i.e., switches and terminals, were found to be classifiable in heading 8537. See also HQ 964608, dated April 18, 2001, which noted that boards and panels were provided within the 8537 heading text, and classified video jacks having two or more apparatus of heading 8535 or 8536, i.e., connectors and switches, in heading 8537. Therefore, the merchandise at issue, the Powerbag with Electrical Strip Set, containing a power strip with built-in surge protection (two or more different kinds of apparatus of heading 8536) on a board, panel, console or other base, principally used for electric control or the distribution of electricity, is provided for in heading 8537.

HOLDING:

Under the authority of GRI 1, the Powerbag with Electrical Strip Set is provided for in heading 8537. It is classifiable in subheading 8537.10.90, HTSUS.

The polyester storage bag, as described, is a container specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and entered with the articles for which they are intended, within GRI 5(a), HTSUS. It is classifiable with the Powerbag with Electrical Strip Set when of a kind normally sold therewith.

EFFECT ON OTHER RULINGS:

NY I86010, dated October 2, 2002, is revoked. 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 and Trade Facilitation Division.



[ATTACHMENT D]

HQ 967871
November 18, 2005
CLA-2 RR:CTF:TCM 967871 JAS
CATEGORY: Classification
TARIFF NO.: 8537.10.90

MS. ALICE LIU
ATICO INTERNATIONAL USA, INC.
501 South Andrews Avenue
Ft. Lauderdale, FL 33301

RE: Power Stake Strip; NY H89911 Modified

DEAR MS. LIU:

In NY H89911, which the Director, National Commodity Specialist Division, U.S. Customs and Border Protection (CBP), New York, issued to you on April 25, 2002, a power stake strip was held to be classifiable as other apparatus for protecting electrical circuits in subheading 8536.30.8000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The classification expressed for the outlet adapter, item W14G4765, is unaffected by this 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 NY H89911 was published on October 5, 2005, in the Customs Bulletin, Volume 39, Number 41. No comments were received in response to that notice.

FACTS:

The merchandise in NY H89911, a power stake strip identified as item W14G4743, is a three-outlet power strip with built-in circuit breaker. It is designed for outdoor use. The article is not further described.

The HTSUS provisions under consideration are as follows:

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

8536.30 Other apparatus for protecting electrical circuits:

8536.30.80 Other

Lamp-holders, plugs and sockets:

8536.69 Other:

8536.69.80 Other

* * * *

8537 Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity . . . :

8537.10 For a voltage not exceeding 1,000 V:

8537.10.90 Other

ISSUE:

Whether the power stake strip with built-in circuit breaker is a good of heading 8536 or heading 8537.

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 at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. CBP believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The 85.36 ENs, under **(II) APPARATUS FOR PROTECTING ELECTRICAL CIRCUITS**, discusses **fuses** and indicates further that the heading includes other devices for preventing overload of circuits (e.g., electromagnetic devices which automatically break the circuit when the current exceeds a certain value). The built-in circuit breaker in the power stake strip is apparatus that prevents overload of circuits. It meets the cited EN description and constitutes apparatus for protecting electrical circuits of heading 8536.

The 85.36 ENs, under **(III) APPARATUS FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS**, includes apparatus for connecting together the various parts of an electrical circuit. Included in this group are plugs and sockets. A plug may have one or more pins or side contacts which match corresponding holes or contacts in the socket. The power

stake strip functions as a socket within the cited EN description. It is described in heading 8536 as apparatus for making connections to or in electrical circuits.

In *Universal Electronics, Inc. v. United States*, 112 F.3d 488 (Fed. Cir., 1997), articles incorporating two kinds of devices of heading 8536, i.e., switches and terminals, were found to be classifiable in heading 8537. See also HQ 964608, dated April 18, 2001, which noted that boards and panels were provided within the 8537 heading text, and classified video jacks having two or more apparatus of heading 8535 or 8536, i.e., connectors and switches, in heading 8537. Therefore, the merchandise at issue, a three-outlet power strip with built-in circuit breaker (two or more different kinds of apparatus of heading 8536) on a board, panel, console or other base, principally used for electric control or the distribution of electricity, is provided for in heading 8537.

HOLDING:

Under the authority of GRI 1, the power stake strip, a 3-outlet power strip with built-in circuit breaker, item W14G4743, is provided for in heading 8537. It is classifiable in subheading 8537.10.90, HTSUS.

EFFECT ON OTHER RULINGS:

NY H89911, dated April 25, 2002, is modified accordingly. 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 and Trade Facilitation Division.



[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967872
November 18, 2005
CLA-2 RR:CTF:TCM 967872 JAS
CATEGORY: Classification
TARIFF NO.: 8537.10.90

MS. KAREN A. SOUSA
APC CORPORATION
P.O. Box 278
132 Fairgrounds Road
West Kingston, RI 02892

RE: Power Distribution Unit; NY H89890 and NY J81768 Revoked

DEAR MS. SOUSA:

In NY H89890 and NY J81768, which the Director, National Commodity Specialist Division, U.S. Customs and Border Protection (CBP), New York, issued to you on April 26, 2002, and April 23, 2003, respectively, power distribution units were held to be classifiable as other apparatus for protecting

electrical circuits in subheading 8536.30.8000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY H89890 and NY J81768 was published on October 5, 2005, in the Customs Bulletin, Volume 39, Number 41. No comments were received in response to that notice.

FACTS:

The merchandise in NY H89890, identified as item AP9553, is a 12-outlet power strip with built-in circuit breaker. It is designed for rack mounting and is intended for use with various types of electronic equipment. The merchandise in NY J81768, item number AP7626, is an electrical multi-outlet power strip with built-in overload protection.

The HTSUS provisions under consideration are as follows:

- 8536** Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V:
- 8536.30** Other apparatus for protecting electrical circuits:
- 8536.30.80** Other
- Lamp-holders, plugs and sockets:
- 8536.69** Other:
- 8536.69.80** Other
- * * * *
- 8537** Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity . . . :
- 8537.10** For a voltage not exceeding 1,000 V:
- 8537.10.90** Other

ISSUE:

Whether power distribution units represented by items AP9553 and AP7626, are goods of heading 8536 or heading 8537.

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 at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. CBP believes the ENs

should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The 85.36 ENs, under **(II) APPARATUS FOR PROTECTING ELECTRICAL CIRCUITS**, discusses **fuses** and indicates further that the heading includes other devices for preventing overload of circuits (e.g., electromagnetic devices which automatically break the circuit when the current exceeds a certain value). The built-in circuit breaker in NY H89890 and the built-in overload protection in NY J81768 are apparatus that prevents overload of circuits. They meet the cited EN description and constitute apparatus for protecting electrical circuits of heading 8536.

The 85.36 ENs, under **(III) APPARATUS FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS**, includes apparatus for connecting together the various parts of an electrical circuit. Included in this group are plugs and sockets. A plug may have one or more pins or side contacts which match corresponding holes or contacts in the socket. The 12-outlet power strip in NY H89890 and the electrical multi-outlet power strip in NY J81768 function as sockets within the cited EN description. They are described in heading 8536 as apparatus for making connections to or in electrical circuits.

In *Universal Electronics, Inc. v. United States*, 112 F.3d 488 (Fed. Cir., 1997), articles incorporating two kinds of devices of heading 8536, i.e., switches and terminals, were found to be classifiable in heading 8537. See also HQ 964608, dated April 18, 2001, which noted that boards and panels were provided within the 8537 heading text, and classified video jacks having two or more apparatus of heading 8535 or 8536, i.e., connectors and switches, in heading 8537. Therefore, the merchandise in NY H89890, a twelve-outlet power strip with built-in circuit breaker (two or more different kinds of apparatus of heading 8536) on a board, panel, console or other base, principally used for electric control or the distribution of electricity, is provided for in heading 8537. The merchandise in NY J81768, an electrical multi-outlet power strip with built-in overload protection on a board, panel, console or other base, principally used for electric control or the distribution of electricity, is likewise provided for in heading 8537.

HOLDING:

Under the authority of GRI 1, the twelve-outlet power strip with built-in circuit breaker, identified as item AP9553, is provided for in heading 8537. It is classifiable in subheading 8537.10.90, HTSUS. Under the authority of GRI 1, the electrical multi-outlet power strip with built-in overload protection, identified as item AP7626, is provided for in heading 8537. It is classifiable in subheading 8537.10.90, HTSUS.

EFFECT ON OTHER RULINGS:

NY H89890, dated April 26, 2002, and NY J81768, dated April 23, 2003, are revoked. 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 and Trade Facilitation Division.

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967873
November 18, 2005
CLA-2 RR:CTF:TCM 967873 JAS
CATEGORY: Classification
TARIFF NO.: 8537.10.90

MS. MARY MARTIN
LYNX INTERNATIONAL, INC.
24760 South Main Street
Carson, CA 90745

RE: Electrical Power Strip; NY F87515 Revoked

DEAR MS. MARTIN:

In NY F87515, which the Director, National Commodity Specialist Division, U.S. Customs and Border Protection (CBP), New York, issued to you on June 13, 2000, on behalf of S. Michael Nostrant & Associates, electrical power strips were held to be classifiable as other apparatus for protecting electrical circuits in subheading 8536.30.8000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY F87515 was published on October 5, 2005, in the Customs Bulletin, Volume 39, Number 41. No comments were received in response to that notice.

FACTS:

The merchandise in NY F87515, identified as samples PR-6 and ET2, consists of electrical power strips with built-in surge protection. Each device is affixed to an electrical cord with a plug. The articles are not further described.

The HTSUS provisions under consideration are as follows:

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

8536.30 Other apparatus for protecting electrical circuits:

8536.30.80 Other

Lamp-holders, plugs and sockets:

8536.69 Other:

8536.69.80 Other

* * * *

- 8537** Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity . . . :
- 8537.10** For a voltage not exceeding 1,000 V:
- 8537.10.90** Other

ISSUE:

Whether the electrical power strips with built-in surge protection are goods of heading 8536 or heading 8537.

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 at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. CBP believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The 85.36 ENs, under **(II) APPARATUS FOR PROTECTING ELECTRICAL CIRCUITS**, discusses **fuses** and indicates further that the heading includes other devices for preventing overload of circuits (e.g., electromagnetic devices which automatically break the circuit when the current exceeds a certain value). The built-in surge protection in the device under consideration is apparatus that prevents overload of circuits. It meets the cited EN description and constitutes apparatus for protecting electrical circuits of heading 8536.

The 85.36 ENs, under **(III) APPARATUS FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS**, includes apparatus for connecting together the various parts of an electrical circuit. Included in this group are plugs and sockets. A plug may have one or more pins or side contacts which match corresponding holes or contacts in the socket. The electrical power strips function as sockets within the cited EN description. They are described in heading 8536 as apparatus for making connections to or in electrical circuits.

In *Universal Electronics, Inc. v. United States*, 112 F.3d 488 (Fed. Cir., 1997), articles incorporating two kinds of devices of heading 8536, i.e., switches and terminals, were found to be classifiable in heading 8537. See also HQ 964608, dated April 18, 2001, which noted that boards and panels were provided within the 8537 heading text, and classified video jacks having two or more apparatus of heading 8535 or 8536, i.e., connectors and switches, in heading 8537. Therefore, the merchandise at issue, electrical power strips with built-in surge protection and electrical cord (two or more kinds of apparatus of heading 8536) on a board, panel, console or other base, principally used for electric control or the distribution of electricity, is provided for in heading 8537.

HOLDING:

Under the authority of GRI 1, the electrical power strips with built-in surge protection and electrical power cord with plug, samples PR-6 and ET2, are provided for in heading 8537. They are classifiable in subheading 8537.10.90, HTSUS.

EFFECT ON OTHER RULINGS:

NY F87515, dated June 13, 2000, is revoked. 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 and Trade Facilitation Division.

[ATTACHMENT G]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967874
November 18, 2005
CLA-2 RR:CTF:TCM 967874 JAS
CATEGORY: Classification
TARIFF NO.: 8537.10.90

MR. ORLANDO RODRIGUEZ
ALMACENES PITUSA, INC.
P.O. Box 839
Hato Rey Station
San Juan, PR 00919-0839

RE: Power Strip; NY F82743 Modified

DEAR MR. RODRIGUEZ:

In NY F82743, which the Director, National Commodity Specialist Division, U.S. Customs and Border Protection (CBP), New York, issued to you on February 24, 2000, a power strip and two models of outlet adapters held to be classifiable as insulated electrical conductors in a provision of heading 8544, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), and as other lamp holders, plugs and sockets in a provision of heading 8536, HTSUSA, respectively. The classification of the outlet adapters is not affected by this 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 NY F82743 was published on October 5, 2005, in the Customs Bulletin, Volume 39, Number 41. No comments were received in response to that notice.

FACTS:

Item W-14-G-4536, is described as a 125 volt, six-outlet power strip containing a switch/circuit breaker combination, and a three-foot electrical cord with plug attached. This article is not further described.

The HTSUS provisions under consideration are as follows:

8536	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V:
8536.30	Other apparatus for protecting electrical circuits:
8536.30.80	Other
8536.50	Other switches:
	Other:
8536.50.90	Other
	Lamp-holders, plugs and sockets:
8536.69	Other:
8536.69.80	Other
*	* * * *
8537	Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity . . . :
8537.10	For a voltage not exceeding 1,000 V:
8537.10.90	Other

ISSUE:

Whether the six-outlet power strip containing a switch/circuit breaker combination is a good of heading 8536 or heading 8537.

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 at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. CBP believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The 85.36 ENs, under **(I) APPARATUS FOR SWITCHING ELECTRICAL CIRCUITS**, includes apparatus consisting essentially of devices for making or breaking one or more circuits in which they are connected, or for switching from one circuit to another. The switch in the switch/circuit breaker combination meets this description and is apparatus for switching electrical circuits of heading 8536.

The 85.36 ENs, under **(II) APPARATUS FOR PROTECTING ELECTRICAL CIRCUITS**, discusses **fuses** and indicates further that the head-

ing includes other devices for preventing overload of circuits (e.g., electromagnetic devices which automatically break the circuit when the current exceeds a certain value). The circuit breaker in the switch/circuit breaker combination meets this description as apparatus that prevents overload of circuits. It constitutes apparatus for protecting electrical circuits of heading 8536.

The 85.36 ENs, under **(III) APPARATUS FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS**, includes apparatus for connecting together the various parts of an electrical circuit. Included in this group are plugs and sockets. A plug may have one or more pins or side contacts which match corresponding holes or contacts in the socket. The 125 volt six-outlet power strip functions as a socket and is described in heading 8536 as apparatus for making connections to or in electrical circuits.

In *Universal Electronics, Inc. v. United States*, 112 F.3d 488 (Fed. Cir., 1997), articles incorporating two kinds of devices of heading 8536, i.e., switches and terminals, were found to be classifiable in heading 8537. See also HQ 964608, dated April 18, 2001, which noted that boards and panels were provided within the 8537 heading text, and classified video jacks having two or more apparatus of heading 8535 or 8536, i.e., connectors and switches, in heading 8537. Therefore, the device at issue, a 125 volt six-outlet power strip with switch/circuit breaker combination (two or more kinds of apparatus of heading 8536) on a board, panel, console or other base, principally used for electric control or the distribution of electricity, is provided for in heading 8537.

HOLDING:

Under the authority of GRI 1, the 125 volt six-outlet strip with switch/circuit breaker combination is provided for in heading 8537. It is classifiable in subheading 8537.10.90, HTSUS.

EFFECT ON OTHER RULINGS:

NY F82743, dated February 24, 2000, is modified accordingly. 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 and Trade Facilitation Division.

[ATTACHMENT H]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967875
November 18, 2005
CLA-2 RR:CTF:TCM 967875 JAS
CATEGORY: Classification
TARIFF NO.: 8537.10.90

MS. BRENDA E. SMITH
FRITZ COMPANIES, INC.
7001 Chatham Center Drive
Savannah, GA 31405

RE: Power Station; NY D87643 Modified

DEAR MS. SMITH:

In NY D87643, which the Director, National Commodity Specialist Division, U.S. Customs and Border Protection (CBP), New York, issued to you on February 22, 1999, on behalf of Lowes Companies, Inc., components of a device called the Power Station were found to be separately classifiable. We have reconsidered these classifications and now believe that one of them, the six-outlet power strip with surge protection, is incorrect.

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 D87643 was published on October 5, 2005, in the Customs Bulletin, Volume 39, Number 41. No comments were received in response to that notice.

FACTS:

The Power Station consists of a five-foot extension cord, a six-outlet wall tap, a three-outlet wall tap, a six-outlet power strip with surge protection, and a night light with bulb. NY D87643 classified the six-outlet power strip with surge protection in subheading 8536.30.8000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as other apparatus for protecting electrical circuits.

The HTSUS provisions under consideration are as follows:

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

8536.30 Other apparatus for protecting electrical circuits:

8536.30.80 Other

Lamp-holders, plugs and sockets:

8536.69 Other:

8536.69.80 Other

* * * *

- 8537** Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity . . . :
- 8537.10** For a voltage not exceeding 1,000 V:
- 8537.10.90** Other

ISSUE:

Whether the six-outlet power strip with surge protection is a good of heading 8536 or heading 8537.

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 at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. CBP believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The 85.36 ENs, under **(II) APPARATUS FOR PROTECTING ELECTRICAL CIRCUITS**, discusses **fuses** and indicates further that the heading includes other devices for preventing overload of circuits (e.g., electromagnetic devices which automatically break the circuit when the current exceeds a certain value). The surge protector is apparatus that prevents overload of circuits. It constitutes apparatus for protecting electrical circuits of heading 8536.

The 85.36 ENs, under **(III) APPARATUS FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS**, includes apparatus for connecting together the various parts of an electrical circuit. Included in this group are plugs and sockets. A plug may have one or more pins or side contacts which match corresponding holes or contacts in the socket. The power strip functions as a socket and is described in heading 8536 as apparatus for making connections to or in electrical circuits.

In *Universal Electronics, Inc. v. United States*, 112 F.3d 488 (Fed. Cir., 1997), articles incorporating two kinds of devices of heading 8536, i.e., switches and terminals, were found to be classifiable in heading 8537. *See* also HQ 964608, dated April 18, 2001, which noted that boards and panels were provided within the 8537 heading text, and classified video jacks having two or more apparatus of heading 8535 or 8536, i.e., connectors and switches, in heading 8537. Therefore, the device at issue, a six-outlet power strip with surge protection (two kinds of apparatus of heading 8536) on a board panel, console or other base, principally used for electric control or the distribution of electricity, is provided for in heading 8537.

HOLDING:

Under the authority of GRI 1, the six-outlet power strip with surge protection is provided for in heading 8537. It is classifiable in subheading 8537.10.90, HTSUS.

EFFECT ON OTHER RULINGS:

NY D87643, dated February 22, 1999, is modified accordingly. 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 and Trade Facilitation Division.