

Bureau of Customs and Border Protection

General Notices

DATES AND DRAFT AGENDA OF THE THIRTY-EIGHTH SESSION OF THE HARMONIZED SYSTEM COMMITTEE OF THE WORLD CUSTOMS ORGANIZATION

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security, and U.S. International Trade Commission.

ACTION: Publication of the dates and draft agenda for the thirty-eighth session of the Harmonized System Committee of the World Customs Organization.

SUMMARY: This notice sets forth the dates and draft agenda for the next session of the Harmonized System Committee of the World Customs Organization.

DATE: July 31, 2006

FOR FURTHER INFORMATION CONTACT: Joan A. Jackson, Staff Assistant, Tariff Classification and Marking Branch, U.S. Customs and Border Protection (202-572-8831), or David Beck, Acting Director, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission (202-205-2592).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The United States is a contracting party to the International Convention on the Harmonized Commodity Description and Coding System ("Harmonized System Convention"). The Harmonized Commodity Description and Coding System ("Harmonized System"), an international nomenclature system, forms the core of the U.S. tariff, the Harmonized Tariff Schedule of the United States. The Harmonized System Convention is under the jurisdiction of the World Customs Organization (established as the Customs Cooperation Council).

Article 6 of the Harmonized System Convention establishes a Harmonized System Committee ("HSC"). The HSC is composed of representatives from each of the contracting parties to the Harmonized System Convention. The HSC's responsibilities include issuing clas-

sification decisions on the interpretation of the Harmonized System. Those decisions may take the form of published tariff classification opinions concerning the classification of an article under the Harmonized System or amendments to the Explanatory Notes to the Harmonized System. The HSC also considers amendments to the legal text of the Harmonized System. The HSC meets twice a year in Brussels, Belgium. The next session of the HSC will be the thirty-eighth, and it will be held from October 2, 2006 to October 13, 2006.

In accordance with section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418), the Department of Homeland Security, represented by U.S. Customs and Border Protection, the Department of Commerce, represented by the Census Bureau, and the U.S. International Trade Commission (“ITC”), jointly represent the U.S. government at the sessions of the HSC. The Customs and Border Protection representative serves as the head of the delegation at the sessions of the HSC.

Set forth below is the draft agenda for the next session of the HSC. Copies of available agenda-item documents may be obtained from either Customs and Border Protection or the ITC. Comments on agenda items may be directed to the above-listed individuals.

GAIL A. HAMILL,

Chief,

Tariff Classification and Marking Branch.

Attachment





WORLD CUSTOMS ORGANIZATION
 ORGANISATION MONDIALE DES DOUANES
 Established in 1952 as the Customs Co-operation Council
 Créée en 1952 sous le nom de Conseil de coopération douanière

HARMONIZED SYSTEM
 COMMITTEE

NC1060E1b

-
 38th Session

O. Eng.

Brussels, 26 July 2006.

**DRAFT AGENDA FOR THE 38TH SESSION
 OF THE HARMONIZED SYSTEM COMMITTEE**

From : Monday, 2 October 2006 (11.00 a.m.)

To : Friday, 13 October 2006

N.B. : **Thursday, 28 September 2006 (10.00 a.m.) and Friday, 29 September 2006** :
 Pre-session Working Party (to examine the questions under Agenda Item VI)

Monday, 2 October 2006 (9.30 a.m. – 10.30 a.m.) : Adoption of the Report of the
 33rd Session of the Review Sub-Committee

I. ADOPTION OF THE AGENDA

- | | | |
|----|-----------------------|------------------|
| 1. | Draft Agenda | NC1060E1b |
| 2. | Draft Timetable | NC1061B1a |

II. REPORT BY THE SECRETARIAT

- | | | |
|----|---|------------------------|
| 1. | Position regarding Contracting Parties to the HS Convention and related matters | NC1063E1a |
| 2. | Report on the last meetings of the Policy Commission (55 th Session) and the Council (107 th /108 th Sessions) | NC1064E1a |
| 3. | Approval of decisions taken by the Harmonized System Committee at its 37 th Session | NG0112E1a
NC1062E1a |
| 4. | Capacity building activities of the Nomenclature and Classification Sub-Directorate | NC1065E1a |
| 5. | Co-operation with other international organisations | NC1066E1a |
| 6. | New information provided on the WCO Web site | NC1067E1a |

NC1060E1b

- | | | |
|-----|---|-----------|
| 7. | Annual survey to determine the percentage of national revenue represented by Customs duties | NC1068E1a |
| 8. | Survey on Free Trade Agreements | NC1069E1a |
| 9. | Progress report on the use of working languages for HS matters . | NC1106E1a |
| 10. | Other | |

III. GENERAL QUESTIONS

- | | | |
|----|---|-----------|
| 1. | Possible amendment of Article 8 of the HS Convention with a view to removing the Council from its purely administrative role with regard to HS reservations, and to making the fast-track procedure the default reservation procedure | NC1070E1a |
| 2. | Progress report on the implementation of the HS 2007 edition | NC1071E1a |
| 3. | Correlation Tables between the 2002 and 2007 versions of the Harmonized System : Possible corrigendum | NC1107E1a |

IV. RECOMMENDATIONS

- | | | |
|----|---|-----------|
| 1. | Draft Recommendation of the Customs Co-operation Council on the insertion in national statistical nomenclatures of subheadings for substances controlled under the Convention on the Prohibition of the development, production, stockpiling and use of Chemical Weapons and on their destruction | NC1072E1a |
|----|---|-----------|

V. REPORT OF THE REVIEW SUB-COMMITTEE

- | | | |
|----|--|-----------------------|
| 1. | Report of the 33 rd Session of the Review Sub-Committee | NR0643E1b
(RSC/33) |
| 2. | Matters for decision | NC1073E1a |

VI. REPORT OF THE PRESESSIONAL WORKING PARTY

- | | | |
|----|--|----------------------|
| 1. | Possible amendment of the Annex to the Explanatory Note to Chapter 29 consequential to the amendments to the Explanatory Notes to Chapter 29 (HS 2007) | NC1074E1a |
| 2. | Amendments to the Compendium of Classification opinions to reflect the decision to classify certain flooring panels in subheading 4418.30 | NC1075E1a
Annex A |
| 3. | Amendments to the Compendium of Classification opinions to reflect the decision to classify spray guns in subheading 8424.81 | NC1075E1a
Annex B |

- | | | |
|----|---|----------------------|
| | | NC1060E1b |
| 4. | Amendments to the Compendium of Classification opinions to reflect the decision to classify a scroll bending machine with a computer control and pole changing motor in subheading 8462.21 or 8462.29 | NC1075E1a
Annex C |
| 5. | Amendments to the Compendium of Classification opinions to reflect the decision to classify certain halogen lamps for guns in subheading 8513.10 | NC1075E1a
Annex D |
| 6. | Amendments to the Compendium of Classification opinions to reflect the decision to classify a base unit retail bundle presented as a retail set with a handset with telephone charger in subheading 8517.11 | NC1075E1a
Annex E |
| 7. | Amendments to the Compendium of Classification opinions to reflect the decision to classify a particular base unit in subheading 8517.50 | NC1075E1a
Annex F |

VII. FURTHER STUDIES

- | | | |
|----|--|---|
| 1. | Classification of ADMUL DATEM 1954 and Muted Data 2520/S (Reservations by Australia and the EC) | NC1078E1a |
| 2. | Classification of a product containing more than 98.5 % of sodium sulphate (Reservation by Russia) | NC1077E1a |
| 3. | Classification of a product containing more than 99.2 % of sodium sulphate (Reservation by Russia) | NC1078E1a |
| 4. | Classification of separately presented outdoor units of compression-type split-system air conditioning machines (Reservation by South Africa , Brazil , the EC and Argentina) | NC1079E1a |
| 5. | Classification of separately presented indoor units of air conditioning machines (Reservation by South Africa) | NC1080E1a |
| 6. | Classification of tubes with reagents and tubes without reagents (Reservation by the EC) | NC1081E1a |
| 7. | Classification of Kobe 3-piece Dinette Set" (Reservation by Brazil) | NC1082E1a |
| 8. | Classification of frozen chicken cuts with addition of salt | NC1041E1a
NC1054E1a
(HSC/37)
NC1083E1a |
| 9. | Possible amendment of the Explanatory Notes to headings 28.23 and/or 32.06 | NC1084E1a |

NC1060E1b

10. Classification of pradefovir (INN)	NC1085E1a
11. Classification of pegfilgrastim (INN)	NC1086E1a
12. Classification of ivermectin (INN) and similar products	NC1087E1a
13. Study on the scope of Note 2 to Chapter 30 and of subheading 3002.10	NC1088E1a
14. Classification of certain non-wovens	NC1051E1a (HSC/37) NC1089E1a
15. Possible amendment of the General Explanatory Note to Chapter 84 (Proposal by <u>Australia</u>)	NC1052E1a (HSC/37)
16. Classification of certain power modules, used in electrical converters	NC1090E1a
17. Possible amendment of the Explanatory Notes to Chapter 87	NC1091E1a

VIII. NEW QUESTIONS

1. Possible amendment of the Explanatory Notes to Chapter 2 (Proposal by <u>Norway</u>)	NC1092E1a
2. Classification of heat-treated soya beans	NC1048E1a (HSC/37)
3. Classification of sets of spices, oil and vinegar (Request from <u>Norway</u>)	NC1093E1a
4. Possible amendment of the Explanatory Notes with respect to mercury compounds	NC1094E1a
5. Classification of INN products (List 94)	NC1095E1a
6. Possible amendment of the Subheading Explanatory Note to subheading 4101.20	NC1049E1a (HSC/37)
7. Possible amendment of the Explanatory Notes to headings 49.11 and 85.43	NC1096E1a
8. Classification of a heat expandable mineral wool mat by the name "3M INTERAM™ 100HD"	NC1032E1a (HSC/37)
9. Classification of thin, lightweight disposable aluminium containers (Request by <u>South Africa</u>)	NC1097E1a
10. Possible amendment of the Explanatory Note to heading 84.24 ..	NC1098E1a

	NC1060E1b
11. Possible amendment of the Explanatory Note to heading 85.13 ..	NC1099E1a
12. Possible amendment to Classification Opinions 8473.40/1 , 8525.20/1 and 8528.12/4 (HS 2002)	NC1100E1a
13. Possible amendment of the General Explanatory Note to Chapter 90 (Proposal by Canada)	NC1101E1a
14. Classification of lamp posts (Request from Madagascar)	NC1102E1a
15. Classification of a two-wheeled electrical device for the transport of a person	NC1040E1a (HSC/37)
16. Classification of a vehicle by the name " Jacobsen® Model 1100 and 1110 Haulers " (Requests from Canada and Brazil)	NC1103E1a
17. Possible amendment of the Explanatory Note to heading 95.04 ..	NC1104E1a
18. Classification of certain containers of polystyrene (Request from Nigeria)	NC1105E1a
19. Possible amendment of the Explanatory Note to heading 90.10 ..	NC1109E1a
20. Classification of optical discs of a kind used solely with a game machine of heading 95.04 (Request by Brazil)	NC1110E1a
21. Scope of headings 22.06 and 22.08	NC1111E1a
22. Classification of black tea in souvenir containers	NC1112E1a
23. Classification of water pipe tobacco	NC1113E1a
24. Classification of milk proteins	NC1114E1a
25. Classification of a printed cotton fabric (Request by Sri Lanka)	NC1115E1a

IX. ADDITIONAL LISTX. OTHER BUSINESS

1. List of questions which might be examined at a future session	NC1108E1a
---	-----------

XI. DATES OF NEXT SESSIONS

Notice of Issuance of Final Determination Concerning Chairs

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that the Bureau of Customs and Border Protection (Customs) has issued a final determination concerning the country of origin of certain office chairs to be offered to the United States Government under an undesignated government procurement contract. The final determination found that based upon the facts presented, the country of origin of the subject chair is the United States.

DATES: The final determination was issued on [insert date of issuance of final determination]. A copy of the final determination is attached. Any party-at-interest as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of August 4, 2006.

FOR FURTHER INFORMATION CONTACT: Fernando Peña, Esq., Valuation and Special Programs Branch, Office of Regulations and Rulings; telephone (202) 572-8740.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on [insert date of issuance of final determination], pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), Customs issued a final determination concerning the country of origin of certain office chairs to be offered to the United States Government under an undesignated government procurement contract. The Customs ruling number is HQ 563456. This final determination was issued at the request of Herman Miller, Inc. under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511-18).

The final determination concluded that, based upon the facts presented, the assembly in the United States of over 70 U.S.-origin and foreign components to create the subject office chair substantially transformed the foreign components into a product of the U.S.

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

judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: July 31, 2006

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

Attachment

MAR-2-05 RR:CTF:VS 563456 FRP

July 31, 2006

CATEGORY: Marking

Ms. Lisa A. Crosby

Sidley Austin LLP

1501 K Street, N.W.

Washington, D.C. 20005

RE: U.S. Government Procurement; Final Determination; country of origin of office chairs; substantial transformation; 19 CFR Part 177

Dear Ms. Crosby:

This is in response to your letter dated February 22, 2006, on behalf of Herman Miller, Inc. (hereinafter "HM"), in which you seek a final determination pursuant to subpart B of Part 177, Customs Regulations, 19 CFR 177.21 *et seq.* Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended, (19 U.S.C. § 2411 *et seq.*), U.S. Customs and Border Protection ("Customs") issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated foreign country or instrumentality for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of certain office chairs, which HM is considering selling to the U.S. Government. We note that HM is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination.

FACTS:

HM is a manufacturer of office furniture. It imports components which the company assembles with domestic components into finished furniture goods.

We are told that HM assembles the subject chair in the U.S. from over 70 U.S.-origin and foreign components. HM provided a copy of a costed bill of materials for a typical chair that was recently sold to

another Government agency. The features of the chair allow the height of the chair to be adjusted and to be tilted to allow the body to naturally pivot at the ankles, knees and hips. Two back support options are available to improve posture and lower back comfort. Three arm choices are available: fixed, height-adjustable and fully adjustable, which allows the arms to pivot sideways.

According to that bill of materials, 87.6 percent of the cost of the materials is attributable to materials of U.S. origin. Some of the materials used are as follows: base, tilt assembly, pneumatic activator assembly, seat frame assembly, arm adjustment kit, back assembly (all of U.S. origin); telescoping cylinder, casters, armpad and lumbar pad (all of which are of non-U.S. origin).

You state that all components, whether purchased locally or imported, are received at HM's production facility in Holland, Michigan. Assembly begins by attaching a telescoping cylinder to a chair base. This telescoping cylinder is what permits the height of the chair to be adjusted. The casters selected by the ultimate purchaser are then added to the chair legs. The swing arms, seat, arm rests, back, and lumbar support are then added in that order.

After final assembly, each chair is quality tested by a worker who adjusts the height of the seat, reclines the chair, and adjusts the armrests to determine that all are working correctly. The chair is then boxed or blanket-wrapped for delivery to the purchaser.

Additionally, you state that significant resources are expended on the chair's design and that development research continues in HM's U.S. design studios to ensure that it remains the benchmark when compared to other available work chairs.

ISSUE:

Whether the assembled HM chairs are considered to be products of the United States for purposes of U.S. Government procurement.

LAW AND ANALYSIS:

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

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

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use dis-

tinct from that of the article or articles from which it was so transformed.

See also, 19 CFR 177.22(a).

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. Belcrest Linens v. Unites States, 573 F. Supp. 1149 (CIT 1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). In Carlson Furniture Industries et al. v. United States, 65 Cust. Ct. 474 (1970), the court ruled that U.S. operations on imported chair parts constituted a substantial transformation and thus conferred U.S. origin on the finished chair. The court stated:

The imported articles are not chairs in unassembled or knocked-down condition. They are at best the wooden parts which go into the making of chairs. [I]t is not contemplated that these imported chair parts are to be sold [. . .] in the condition in which they are imported.

[A]dditional work would have to be performed on them and materials added to them to create with them a functional article of commerce.

We regard these operations as being substantial in nature, and more than the mere assembly of parts together. And the end result of the activities performed on the imported articles by the plaintiff Carlson Furniture is the transformation of parts into a functional whole – giving rise to a new and different article . . .

Customs has also previously considered, in a number of cases, whether components imported into a country for assembly have been substantially transformed as a result of such processing. Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. See C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 85–118, C.S.D. 90–51, and C.S.D. 90–97. In C.S.D. 85–25, 19 Cust. Bull. 844 (1985), we held that for purposes of the Generalized System of Preferences, the assembly of a large number of fabricated components onto a printed circuit board in a process involving a considerable amount of time and skill resulted in a substantial transformation. In that case, in excess of 50 discrete fabricated components (such as resistors, capacitors, diodes, integrated circuits, sockets, and connectors) were assembled.

In Headquarters Ruling Letter (“HRL”) 563110, dated October 20, 2004, Customs addressed whether assembly of fishing fly reels in the U.S. of imported and U.S.-origin components resulted in a substantial transformation. The reels comprised over 20 separate parts and the U.S.-origin components accounted for over 50 percent of the

total cost of each assembled reel. In addition, some of the imported components were further processed in the U.S. before final assembly into fishing fly reels. Based on the totality of the circumstances, Customs held that the imported reel components were substantially transformed as a result of the assembly operations in the U.S.

In HRL 561734, dated March 22, 2001, 66 Fed. Reg. 17222, Customs ruled that Sharp multifunctional machines (printer, copier and fax machines) assembled in Japan were a product of Japan for purposes of government procurement. The machines in that case were comprised of 227 parts (108 parts obtained from Japan, 92 from Thailand, 3 from China, and 24 from "other" countries) and eight subassemblies, each of which was assembled in Japan. It was further noted that the scanner unit (one of the eight subassemblies assembled in Japan) was characterized as "the heart of the machine." See also, HRL 561568 dated March 22, 2001, 66 Fed. Reg. 17222.

As the cases set forth above demonstrate, in order to determine whether a substantial transformation occurs when components of various origins are assembled to form completed articles, Customs considers the totality of the circumstances and makes such decisions on a case-by-case basis. The country of origin of the article's components, extent of the processing that occurs within a given country, and whether such processing renders a product with a new name, character, or use are primary considerations in such cases. Additionally, facts such as resources expended on product design and development, extent and nature of post-assembly inspection procedures, and worker skill required during the actual manufacturing process will be considered when analyzing whether a substantial transformation has occurred; however, no one such factor is determinative.

Like the importer in *Carlson Furniture*, you inform us that HM does not import chairs in knock-down condition. You claim that the imported components alone are insufficient to create a finished chair and that substantial additional work and materials are added to the imported components in the U.S. to produce a finished chair. Additionally, we are advised that the assembly operation in the U.S. involves a large number of parts and the addition of high-value U.S. subassemblies. We find that the assembly processing that occurs in the U.S. is complex and meaningful, requires the assembly of a large number of components, and renders a new and distinct article of commerce that possesses a new name, character, and use. We further note that the U.S.-origin seat and back frame assemblies, which are made with your trademark fabric, together with the tilt assembly, are of U.S. origin and give the chair its unique design profile and essential character.

Therefore, we find that the imported components lose their individual identities and become an integral part of the chair as a result of the U.S. assembly operations and combination with U.S. components; and that the components acquire a different name, character,

and use as a result of the assembly operations performed in the U.S. Accordingly, the assembled chair will be considered a product of the United States for purposes of U.S. Government procurement in making this determination.

HOLDING:

On the basis of the information provided, we find that the assembly in the U.S. substantially transforms the components of foreign origin. Therefore, the country of origin of the chair is the United States for purposes of U.S. Government procurement.

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

/s/ Sandra L. Bell
SANDRA L. BELL,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*

[Published in the Federal Register, August 4, 2006 (71 FR 44302)]

19 CFR PARTS 4 and 122

USCBP-2005-0003

RIN 1651-AA62

**PASSENGER MANIFESTS FOR COMMERCIAL AIRCRAFT
ARRIVING IN AND DEPARTING FROM THE
UNITED STATES; PASSENGER AND CREW MANIFESTS
FOR COMMERCIAL VESSELS DEPARTING FROM
THE UNITED STATES**

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

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: This document provides an additional 60 days for interested persons to submit comments on the proposed rule to amend the Customs and Border Protection Regulations pertaining to the electronic transmission of passenger manifests for commercial air-

craft arriving in and departing from the United States and of passenger and crew manifests for commercial vessels departing from the United States. The proposed rule provides air carriers a choice to make manifest transmissions either for each passenger as passengers check in for the flight, up to but no later than 15 minutes prior to departure, or in batch form (a complete manifest containing all passenger data) no later than 60 minutes prior to departure. The proposed rule also provides for vessel carriers transmitting passenger and crew manifests no later than 60 minutes prior to the vessel's departure from the United States. The proposed rule was published in the **Federal Register** on July 14, 2006, and the comment period was scheduled to expire on August 14, 2006.

DATES: Comments on the proposed rule must be received on or before October 12, 2006.

ADDRESSES: You may submit comments, identified by docket number USCBP-2005-0003, by one of the following methods:

(1) Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

(2) Mail: Comments by mail are to be addressed to the Bureau of Customs and Border Protection, Office of Regulations and Rulings, Border Security Regulations Branch, 1300 Pennsylvania Ave., N.W. (Mint Annex), Washington, D.C. 20229.

(3) Hand delivery/courier: 799 9th Street, N.W., Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Charles Perez, Program Manager, Office of Field Operations, Bureau of Customs and Border Protection (202-344-2605).

SUPPLEMENTARY INFORMATION:

Public Participation

The Bureau of Customs and Border Protection (CBP) invites interested persons to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to CBP in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and docket number for this rulemaking (USCBP-2005-0003).

All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected at the Bureau of Customs and Border Protection, 799 9th Street, N.W., Washington, D.C. 20220. To inspect comments, please call (202) 572-8768 to arrange for an appointment.

Background

CBP published a document in the **Federal Register** (71 FR 40035) on July 14, 2006, proposing to amend the CBP Regulations pertaining to the electronic transmission of passenger manifests for commercial aircraft arriving in and departing from the United States and of passenger and crew manifests for commercial vessels departing from the United States. The proposed changes were designed to implement the mandate of the Intelligence Reform and Terrorism Prevention Act of 2004 to require screening of aircraft passengers and vessel passengers and crew traveling to and from the United States against a government established terrorist watch list prior to departure. Thus, the proposed rule provides air carriers a choice to make manifest transmissions either for each passenger as passengers check in for the flight, up to but no later than 15 minutes prior to departure, referred to as APIS Quick Query (AQQ), or in batch form (a complete manifest containing data for all passengers) no later than 60 minutes prior to departure, referred to as APIS 60. The proposed rule also provides for vessel carriers transmitting passenger and crew manifests no later than 60 minutes prior to the vessel's departure from the United States. In addition, the proposed rule proposes to change the definition of "departure" for aircraft to mean the moment the aircraft pushes back from the gate to commence its approach to the point of takeoff (as opposed to the moment the wheels are drawn up into the aircraft just after takeoff).

The document invited the public to comment on the proposal, including the Regulatory Assessment containing an analysis of the expected economic impact of the changes. The Regulatory Assessment is posted on <http://www.regulations.gov> and on the CBP Web site at <http://www.cbp.gov> (it is also summarized in the proposed rule). Comments on the proposed rule were requested on or before August 14, 2006.

Extension of Comment Period

In response to the proposed rule published in the **Federal Register**, CBP has received comments from the Air Transport Association (ATA), the Air Carrier Association of America (ACAA), and the International Air Transport Association (IATA), requesting an extension of the comment period for an additional 60 days. CBP has deter-

mined to grant the requests for extension. Accordingly, the period of time for the submission of comments is being extended 60 days. Comments are now due on or before October 12, 2006.

Dated: July 28, 2006

DEBORAH J. SPERO,
Deputy Commissioner,
Customs and Border Protection.

[Published in the Federal Register, August 2, 2006 (71 FR 43681)]

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

Washington, DC, August 2, 2006.

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

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

19 CFR PART 177

PROPOSED REVOCATION OF TREATMENT RELATING TO THE
CLASSIFICATION OF CERTAIN FASTENER REPAIR KITS

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

ACTION: Notice of proposed revocation of treatment relating to the classification of certain fastener repair kits.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is proposing to revoke any treatment relating to the classification of certain fastener repair kits previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before September 15, 2006.

FOR FURTHER INFORMATION CONTACT: Karen Greene, Valuation and Special Programs Branch: (202) 562–8838.

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)(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 relating to the classification of fastener repair kits 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 Headquarters Ruling Letter (“HRL”) 563322, dated October 26, 2005 (“Attachment”), CBP determined that certain fastener repair kits should be classified in subheading 8207.40, HTSUS. Evidence has been presented that substantiates that there exists a treatment previously accorded to substantially identical transactions that certain fastener repair kits are classified in subheading 7318.29, HTSUS in accordance with 19 CFR 177.12(c). CBP determined that the treatment is in error. CBP reached this conclusion because it determined in HRL 563322 that all of the components of the set are equally important and therefore, they merit equal consideration. Pursuant to GRI 3(c), the kit was classified based on the component that was classified in the heading that occurs last in numerical order.

Pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transac-

tions. Before taking this action, consideration will be given to any written comments timely received.

DATED: July 28, 2006

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

ATTACHMENT

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 563322
October 26, 2005
CLA-2 RR:CTF:VS 563322 KSG
CATEGORY: Classification

MELVIN S. SCHWECHTER, ESQ.
BRAD BROOKS-RUBIN, ESQ.
LEBOEUF, LAMB, GREENE & MACRAE, LLP
125 West 55th Street
New York, NY 10019-5389

RE: Eligibility for UAFTA Preference for fastener repair kits

DEAR MR. SCHWECHTER AND MR. BROOKS-RUBIN:

This is in response to your letters dated July 28, 2005, and September 22, 2005, requesting a binding ruling on behalf of Alcoa Global Fasteners, Inc. ("Alcoa"), as to the classification of certain imported fastener repair kits and whether they would qualify for preferential tariff treatment under the United States-Australia Free Trade Agreement ("UAFTA"). Samples were submitted with your request.

FACTS:

This case includes four (4) fastener repair kits that Alcoa plans to import into the U.S. The kits include a varying number of steel wire inserts, installation tools, and recoil STI taps.

INSERTS

The wire inserts are used in the repair of stripped or damaged internal threads. They are also used to create a stronger thread assembly in original equipment, especially in lighter alloys. The inserts are made of stainless steel and are helically wound, appearing as wound wire coils.

Typically, the inserts are wound by means of a special tool (such as threaded mandrel or collar-type tool) into a specially tapped hole, which is smaller than the outside diameter of the insert. The wire insert is elongated during the installation process and its outside diameter is compressed so that it anchors into the parent material. A fastener, such as a screw, is inserted into the hole. The wire insert serves to secure the screw more tightly and to prevent its thread from stripping.

The inserts are of Australian origin and their value relative to the total value of the kits ranges from 1.7% to 12%. The inserts are stated to be classified in subheading 7318.29 of the Harmonized Tariff Schedule of the United States ("HTSUS").

INSTALLATION TOOL

The tool is used to install the wire inserts. The tool is manufactured from low carbon steel and generally, will work for multiple thread forms and sizes. The tools are of Australian origin and their value relative to the total value of the kits range from 6.8% to 40.3%. The tools are stated to be classified in subheading 8205.59.5560, HTSUS.

TAP

The taps are special taps used to prepare holes for the installation of steel wire inserts. The recoil screw thread insert (STI) taps are manufactured from high speed steel and its general range is 2-56 through 1 1/2" diameter and equivalent metric sizes. The taps used in the four kits are either from South Korea or the United Kingdom. Their value relative to the total value of the kits ranges from 19.6% to 55.5%. The taps are stated to be classified in subheading 8207.40.3000, HTSUS.

Kit style no. 25606 contains three inserts, one tap from South Korea, and an installation tool.

Kit style no. 33004 contains 40 inserts, 5 installation tools and 5 taps from the U.K.

Kit style no. 33046 contains 36 inserts, one tap from South Korea and one installation tool.

Kit style no. 33060 contains 10 inserts, one tap from the U.K. and one installation tool.

ISSUES:

What is the proper tariff classification of the fastener repair kits?

Whether the imported fastener kits described above are eligible for preferential tariff treatment under the U.S.- Australia FTA.

LAW AND ANALYSIS:

I. Tariff Classification of the Fastener Repair Kits

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 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 are then applied taken in order. 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 HTSUS by offering guidance in understanding the scope of the headings and GRI.

In considering the headings eligible for classification of these goods, we note that the components which permit the kits to perform their function fall into three different headings of the HTSUS. For purposes of classification, the packaging is not considered. There is no specific heading that refers to all the components of the kits. Since each of the headings refer to only a part of the article, reference is made to GRI 3 which, pursuant to GRI 2, provides that goods classifiable under two or more headings shall be classified according to the provisions of GRI 3. Although GRI 3(a) provides that the

heading with the most specific description shall be preferred to other headings, when two or more headings refer to only a part of the materials or substances contained in mixed or composite goods, the headings are to be considered as equally specific. We find that to be the case with this article so it could not be classified under GRI 3(a).

Next, reference is made to GRI 3(b) which covers mixtures, composite goods consisting of different materials or made up of different components and goods put up in sets for retail sale which cannot be classified by reference to GRI 3(a). GRI 3(b) states that such groupings are to be classified as if they consisted of the material or component that gives them their essential character. Explanatory Note (EN) Rule 3(b)(VII) lists as factors to help determine the essential character of such goods the nature of the materials or components, their bulk, quantity, weight or value, and the role of the constituent materials or components in relation to the use of the good.

In this case, counsel argues that the steel inserts give the kits their essential character. Counsel contends that the reason a consumer would purchase the kit is for the steel wire inserts that will be used to strengthen and maintain a fastener hole. Counsel contends that although the inserts do not predominate in bulk, weight or value, they perform the kit's indispensable function of repairing fastener holes and predominate in total quantity. Counsel cites to Headquarters Ruling Letter ("HRL") 962307, dated April 9, 2001, and a line of rulings involving pumpkin carving kits which includes HRL 966981, dated March 7, 2005.

HRL 962307 involved an imported setting tool packaged with 100 anchors. Customs noted that recent cases have looked primarily to the role of the constituent materials or components in relation to the use of the goods to determine essential character. Customs concluded in that case that the drop-in anchors performed the "indispensable function" and therefore, imparted the essential character of the set. The anchors in HRL 962307 were solid pieces with an internally threaded chamber. They could be set without the tool provided, although not as easily. The tool was offered more as a marketing incentive to purchase that set of anchors rather than anchors without a tool.

In HRL 966981, the knife was determined to be indispensable to the pumpkin carving set because the knife alone could be used to carry out the purpose of the kit, carving a design into a pumpkin.

However, in this case, the inserts cannot be set without the assistance of the tools although inserts are sold independently of the tools. The taps are needed to prepare the hole in which the inserts will be used. Based on the above, Customs concludes that in this case, the kits have no essential character. The tool, taps and inserts are equally important. Hence, they merit equal consideration. Therefore, reference is made to GRI 3(c).

GRI 3(c) provides that if the set cannot be classified pursuant to GRI 3(a) or (b), it will be classified in the heading that occurs last in numerical order among those that merit equal consideration. Accordingly, in this case, the kit would be classified in subheading 8207.40, HTSUS, which provides for tools for tapping or threading, and parts thereof: with cutting part containing by weight over 0.2 percent of chromium, molybdenum, or tungsten or over 0.1 percent of vanadium.

II. U.S.- Australia Free Trade Agreement

The U.S.-Australia Free Trade Agreement was signed on May 18, 2004, and entered into force on January 1, 2005, as approved and implemented by

the UAFTA Implementation Act, Pub. L. 108–286, 118 Stat. 919 (August 3, 2004), and set forth in General Note 28, HTSUS.

General Note 28(b), HTSUS, provides, in pertinent part:

For purposes of this note, subject to the provisions of (c), (d), (m) and (n) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good of a UAFTA country under the terms of this note only if –

- (i) the good is a good wholly obtained or produced entirely in the territory of Australia or of the United States, or both;
- (ii) the good was produced entirely in the territory of Australia or of the United States, or both, and—

(A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (n) of this note; . . .

Therefore, we must determine whether the fastener repair kits would satisfy the applicable change in tariff classification. The fastener repair kits are classified in subheading 8207.40, HTSUS. The rule set forth in GN 28(n) is:

A change to subheadings 8207.19 through 8207.90 from any other chapter.

In this case, the taps are claimed to be the only nonoriginating materials in the kits. The taps are classified in subheading 8207.40.30, HTSUS, and do not undergo the requisite chapter change required in GN 28(n). Accordingly, the imported fastener repair kits are not eligible for preferential treatment under the U.S.-Australia FTA.

Counsel also argues that the taps should be treated as accessories or tools under GN 28(h). GN 28(h)(i) provides that accessories, spare parts or tools delivered with a good that form part of the good's standard accessories, spare parts or tools shall— (A) be treated as originating goods if the good is an originating good; and (B) be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo the applicable change in tariff classification set out in subdivision (n) of this note. This provision only applies if the accessories, spare parts or tools are not invoiced separately from the good. GN 28(ii)(A).

CBP stated in Headquarters Ruling Letter ("HRL") 966441, dated June 12, 2003, that:

The term 'accessory' is not defined in either the tariff schedule or the Explanatory Notes. An accessory is generally an article which is not necessary to enable the goods with which it is used to fulfill their intended function. An accessory must be identified as being intended solely or principally for use with a specific article. Accessories are of secondary or subordinate importance, not essential in and of themselves. They must, however, somehow contribute to the effectiveness of the principal article (e.g. facilitate the use or handling of the principal article, widen the range of its uses or improve its operation).

As stated above, the taps are necessary to prepare the holes in which the inserts will be used. Therefore, the taps are not of secondary or subordinate importance. Accordingly, we find that the provisions of GN 28(h) are not applicable to the imported taps.

Furthermore, based on the information presented, the taps represent more than 10% of the adjusted value of the kits so they would not satisfy the de minimis exception set forth in GN 28(e).

HOLDING:

The imported fastener repair kits described above are classified in sub-heading 8207.40.30 pursuant to GRI 3(c). The fastener repair kits are not eligible for preferential tariff treatment under the U.S.-Australia FTA.

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

MONIKA R. BRENNER,

Chief,

Valuation & Special Programs Branch.



**PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO TARIFF CLASSIFICATION
OF DISPOSABLE COSTUMES PACKAGED WITH
HEADPIECES AND BAGS**

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

ACTION: Notice of proposed revocation of treatment and revocation of ruling relating to the classification of disposable costumes packaged for retail sale with headpieces and bags.

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 intends to revoke one ruling letter relating to the tariff classification of disposable costumes packaged for retail sale with headpieces and bags under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), and to revoke any treatment CBP has previously accorded to substantially identical transactions.

DATE: Comments must be received on or before September 15, 2006.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., 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: Ann Segura Minardi, Tariff Classification and Marking Branch, (202) 572-8822.

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 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 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 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 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 a ruling letter relating to the tariff classification of disposable costumes retail packaged with headpieces and bags. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) L83457, dated April 26, 2005, this notice covers any rulings on this merchandise, which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should advise 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 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 the effective date of the final decision on this notice.

In NY L83457, CBP determined that the articles packaged together for retail sale (jumpsuit, headpiece, bag) were not a “retail set” within the meaning of the HTSUSA, and the jumpsuit and hat were classified separately. It was also noted that CBP could not rule on the bag without a fuller description of the type of fabric and construction, the fiber content by generic name, and the percent by weight of the exterior surface material. CBP further held that all three jumpsuit styles had met the flimsy, non-durable requirements for classification within Chapter 95 of the HTSUSA, and classified them in subheading 9505.90.6000, HTSUSA, which provides for “Festive, carnival or other entertainment articles, . . .”; the headpieces were classified in subheading 6505.90.8015, HTSUSA, which provides for “Hats and other headgear, . . .”. NY L83457 is set forth as “Attachment A” to this document.

CBP has determined that this merchandise is classified as GRI 3(b) “sets”, with the jumpsuit providing the essential character, in subheading 9505.90.6000, HTSUSA, which provides for “Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other”. Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY L83457 and any other rulings not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 967728, which is set forth as “Attachment B” to this document.

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

DATED: July 27, 2006

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 L83457
April 26, 2005
CLA-2-95:RR:NC:SP:225 L83457
CATEGORY: Classification
TARIFF NO.: 9505.90.6000; 6505.90.8015

MS. SARA MAY
DAN DEE INTERNATIONAL LTD.
7282 123rd Circle North
Largo, FL 33773

RE: The tariff classification of costumes from an unknown country.

DEAR MS. MAY:

In your letter dated undated but received on April 4, 2005, you requested a tariff classification ruling.

You submitted a sample and photograph of a "Devil Disposable Costume" and photographs of a "Scary Creature Disposable Costume" and a "Ghost Disposable Costume" identified as assortment number H559404RA. You indicate in your letter that all three costumes are exactly the same except for their color, the print on the front of the costumes, and whether they have attached tails or ears/horns on their headpieces. You also indicate that the construction of each costume is such that they are intended for one-time use and disposal afterwards. Each costume consists of a jumpsuit, detachable headpiece, and bag, with the jumpsuit imparting the essential character. Although the jumpsuit has well-made raglan sleeve styling and the "Devil" and "Creature" have tails, the jumpsuit has flimsy construction of the neck, flimsy elastic sewn directly to the arms and ankles, a flimsy hook and loop tab closure, and flimsy edges at the arms, ankles, and closure. The disposable headpieces are made of non-woven textile fabric. All three jumpsuits meet the flimsy, non-durable requirements for classification within Chapter 95 of the Harmonized Tariff Schedule. However, although packaged together, these three costumes are not considered sets for Customs' purposes.

The Explanatory Notes to the Harmonized Tariff System provide guidance in the interpretation of the Harmonized Commodity Description and Coding System at the international level. Explanatory Note X to GRI 3(b) states that the term "goods put up in sets for retail sale" means goods that: (a) consist of at least two different articles which are, prima facie, classifiable in different headings; (b) consist of articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking.

The "Devil Disposable Costume", "Scary Creature Disposable Costume", and "Ghost Disposable Costume" identified as assortment number H559404RA are not considered to be sets for tariff classification purposes since the components are not put up together to meet a particular need or carry out a specific activity. "Trick or Treat" bags are not considered parts of costumes. Therefore, the jumpsuits, headpieces, and bag must be classified separately.

Your sample is being returned as requested.

The applicable subheading for the costume of the “Devil Disposable Costume”, “Scary Creature Disposable Costume” and “Ghost Disposable Costume” will be 9505.90.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for “Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other.” The rate of duty will be Free.

The applicable subheading for the detachable headpiece of the “Devil Disposable Costume”, “Scary Creature Disposable Costume” and “Ghost Disposable Costume” will be 6505.90.8015, HTS, which provides for “Hat and other headgear . . . Other: Of man-made fibers: . . . Not in part of braid, Non-woven disposable headgear without peaks or visors.” The rate of duty will be 18.7 cents/kg + 6.8% ad valorem. We are unable to rule on the bag without a full description of the type of fabric and construction, the fiber content by generic name, and percent by weight of the exterior surface material. If you still wish a ruling on this item, please supply this requested information along with resubmitting a sample of the bag, your original ruling request, and the requested information. Additionally, please state the country of origin of the bag.

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 Alice Wong at 646-733-3026.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967728
CLA-2 RR:CTF:TCM 967728 ASM
CATEGORY: Classification
TARIFF NO.: 9505.90.6000

MS. SARA MAY
DAN DEE INTERNATIONAL LTD.
7282 123rd Circle North
Largo, FL 33773

RE: Request for reconsideration of NY L83457: Classification of Disposable Costumes packaged for retail sale with detachable headpieces and bags

DEAR MS. MAY:

This is in response to your request for reconsideration of the Customs and Border Protection (CBP) New York Ruling letter (NY) L83457, dated April 26, 2005, which classified certain disposable costumes packaged with headpieces and bags under the Harmonized Tariff Schedule of the United States

Annotated (HTSUSA). A single sample, identified as the “Devil Disposable Costume”, was submitted to CBP for examination.

FACTS:

The subject merchandise consists of disposable costumes identified as the “Devil Disposable Costume”, “Scary Creature Disposable Costume”, and the “Ghost Disposable Costume”, which have been referenced in NY L83457 as “assortment number H559404RA”. These items are described as disposable Halloween costumes for infants and have been constructed of non-woven fabric consisting of 90 percent polypropylene, 5 percent elastic, and 5 percent hook and loop fasteners. Each of the three styles consists of a costume, headpiece, and bag packaged together.

The costume submitted for our review is a jumpsuit that has been constructed with loose overlock stitching and straight stitching of a loose gauge. A decorative iron on appliqué design has been adhered to the front of the jumpsuit. Thin elastic, less than ¼ inch in width, has been sewn directly to the costume at the ankles, neck, and cuffs. Each leg panel has a split opening at the inside seam that allows the leg panels to be completely opened for diaper changes. There are six hook and loop fasteners attached to each leg panel for closure. There is a raw edged 3 inch slash opening at the back which closes with a hook and loop fastener. The neckline also has a raw edge. Hook and loop fasteners have been sewn to the front and back neckline to form a secure attachment with the headpiece. With respect to the devil costume, a stylized tail has been stuffed with fiber filling and sewn to the back center seam of the costume.

The headpiece is constructed in five panels, with elastic, gathers, and darts to create a bonnet style headpiece. A string tie of matching fabric has been sewn to the lower edge to secure the headpiece. All other edges are unfinished/raw. With respect to the devil costume, two devil horns have been sewn to the top of the headpiece and incorporated into the seams which join the panels together at the crown. Hook and loop fasteners have been sewn to the lower edge so that the headpiece can fasten to the jumpsuit at the neckline.

The bag is a small rectangular tote that is approximately 5 inches wide x 7 inches long. The bag has two 3 ½ inch loop handles sewn to the inside edge of the bag, no lining, and an iron on appliqué with a stylized notation of the words “Trick or Treat”.

In NY L83457, dated April 26, 2005, CBP determined that the articles packaged together for retail sale were not a “retail set” within the meaning of the HTSUSA, and the jumpsuit and hat were classified separately. It was also noted that CBP could not rule on the bag without a fuller description of the type of fabric and construction, the fiber content by generic name, and the percent by weight of the exterior surface material. CBP further held that all three jumpsuit styles had met the flimsy, non-durable requirements for classification within Chapter 95 of the HTSUSA, and classified them in sub-heading 9505.90.6000, HTSUSA, which provides for “Festive, carnival or other entertainment articles, . . .”, the headpieces were classified in sub-heading 6505.90.8015, HTSUSA, which provides for “Hats and other headgear, . . .”.

In setting forth a GRI 3 analysis, you arrive at the conclusion that the jumpsuit, hat, and bag are retail packaged and imported together as “goods put up in sets for retail sale” pursuant to GRI 3(b), with the jumpsuits providing the essential character. Thus, you assert that pursuant to a GRI 3(b)

analysis, the retail sets, which include all three articles, would be classified as “festive articles” under subheading 9505.90.6000, HTSUSA, which provides for “Festive, carnival or other entertainment articles, . . .”.

ISSUE:

Whether the subject articles, which are packaged together for sale and importation into the United States, are classifiable pursuant to a GRI 3(b) analysis as retail sets. What is the proper classification for the merchandise?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (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 Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The subject merchandise contains three articles packaged together, which cannot be classified pursuant to a GRI 1 analysis because the articles are *prima facie*, classifiable in three different headings. If imported separately, the textile costume may be classifiable in heading 9505, HTSUSA, which provides, in part, for “Festive, carnival or other entertainment articles”, the hat would be classifiable in heading 6505, HTSUSA, which provides, in part, for “Hats or other headgear”, and the trick or treat bag may be classifiable in heading 4202, HTSUSA, which provides, in part, for “travel bags”.

When goods are, *prima facie*, classifiable in two or more headings, they must be classified in accordance with GRI 3, which provides in relevant part as follows:

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

* * *

GRI 3 establishes a hierarchy of methods for classifying goods that fall under two or more headings. GRI 3(a) states that the heading providing the most specific description is to be preferred to a heading, which provides a more general description. However, GRI 3(a) indicates that when two or more headings each refer to part only of the materials or substances in a

composite good or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description than the other. In this case, the headings 9505, 6505, and 4202, HTSUSA, each refer to only part of the items in the set. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b).

In classifying the articles pursuant to a GRI 3(b) analysis, the goods are classified as if they consisted of the component that gives them their essential character and a determination must be made as to whether or not these are "goods put up in sets for retail sale". In relevant part, the ENs to GRI 3(b) state:

- (VII) In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character**, insofar as this criterion is applicable.
- (VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

* * *

- (X) For the purposes of this Rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which:
 - (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule;
 - (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
 - (c) are put up in a manner suitable for sale directly to users without repacking (*e.g.*, in boxes or cases or on boards).

In accordance with GRI 3(b), we find that the subject component articles are properly classified as "sets" because they consist of goods put up in a set for retail sale. In this instance, the bag is designed to coordinate with the Halloween costume in that it is constructed of the same fabric, bears a stylized "Trick or Treat" iron on appliqué, and is color coordinated to match the devil horns sewn to the headpiece. In addition, the bag is quite small (5 inches wide x 7 inches long) so that an older infant or toddler can easily grasp the handles and carry the bag for "Trick or Treating". Thus, the jumpsuit/costume, coordinating hat and bag, are designed to carry out a specific activity, i.e., "Trick or Treating" on Halloween. Furthermore, the components in this set are, *prima facie*, classifiable in different headings and have been put up in retail packaging suitable for sale directly to users without repacking.

There have been several court decisions on "essential character" for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. See, *Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), *affirmed*, 119 F. 3d 969 (Fed. Cir. 1997); *Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), *rehearing denied*, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging Co., v.*

United States, 19 CIT 868, 890 F. Supp. 1095 (1995). See also, *Pillowtex Corp. v. United States*, 983 F. Supp. 188 (CIT 1997), *affirmed*, 171 F. 3d 1370 (Fed. Cir. 1999).

The essential character of the subject sets can be determined by comparing each component as it relates to the use of the product. In this instance, it is the textile costume that imparts the essential character to the set. The jumpsuit is the largest component, uses the most material, and provides the wearer with an immediately recognizable character. Clearly, the jumpsuit was more costly to manufacture than the small tote bag and hat. In most instances, CBP has held that the costume and not the headgear imparts the essential character to a GRI 3(b) set. See Headquarters Ruling Letter (HQ) 959545, dated June 2, 1997, in which it was noted that by application of GRI 3(b), the “Cute and Cuddly Clown” hat, which was retail packaged with the costume was also classifiable under Chapter 62, HTSUSA, because the essential character of the set was determined by the garment.

In classifying the jumpsuit, we note that Heading 9505, HTSUSA, includes articles, which are “Festive, carnival, or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof”. Note 1(e), Chapter 95, HTSUSA, excludes articles of “fancy dress, of textiles, of chapter 61 or 62” from classification in Chapter 95. In relevant part, the ENs to 9505 state that the heading covers:

(A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:

* * *

(3) Articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and moustaches (not being articles of postiche - heading 67.04), and paper hats. **However, the heading excludes fancy dress of textile materials, of Chapter 61 or 62.** [emphasis supplied]

The case of *Rubie's Costume Company v. United States*, 337 F.3d 1350 (Fed Cir. 2003), presented the question of whether CBP's decision in HQ 961447, dated July 22, 1998, merited deference when CBP determined that textile costumes of a flimsy nature and construction, lacking in durability, and generally recognized as not being normal articles of apparel were classifiable as duty free “festive articles” under subheading 9505.90.6090 (now 9505.90.6000), HTSUSA. The court found that HQ 961447 was entitled to deference and upheld the reasoning set forth in that ruling, which classified textile costumes of a flimsy nature and construction, lacking in durability, and generally recognized as not being normal articles of apparel, as “festive articles” in heading 9505, HTSUSA. Of particular relevance to the merchandise now in question is the fact that the court specifically noted that HQ 961447 had correctly compared functional and structural deficiencies of “festive article” costumes with the standard features found in “wearing apparel” in order to determine whether articles are properly classified in Chapter 95 or Chapters 61 and 62, HTSUSA.

HQ 961447 affirmed CBP's decision in HQ 959545, dated June 2, 1997, which responded to a domestic interested party petition filed pursuant to Section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516) and Title 19 Code of Federal Regulations Section 175.1 (19 C.F.R. 175.1). In HQ 959545, CBP set forth the criteria used to determine the textile costumes that were classifiable as “festive articles” in subheading 9505.90.6090,

HTSUSA, and held that the “Witch of the Webs” (No. 11062), “Abdul Sheik of Arabia (No. 15020), “Pirate Boy” (No. 12013), and “Witch (No. 11005), were considered flimsy, lacking in durability, and not normal articles of apparel, and were properly classified as “Festive, carnival or other entertainment articles . . .” in heading 9505, HTSUSA. These textile costumes shared the following characteristics: There were no significant styling features and each costume had raw edges on fabrics that could “run” or fray. In assessing the subject costumes, we note that there is only one significant styling feature, i.e., a stuffed tail sewn to the back seam of the costume. All other features on the jumpsuit are flimsy and lacking in durability, sharing similarities to the flimsy costumes in HQ 959545. The neckline and all edges on the jumpsuit have been left raw and unfinished, the sewing is of poor quality with loose stitching, and the jumpsuit has a raw edged slash opening in the back with only one hook and loop closure.

Additional characteristics used to distinguish between textile costumes classifiable as “Festive articles” of Chapter 95, HTSUSA, and fancy dress of Chapters 61 or 62, HTSUSA, have been set forth in CBP’s Informed Compliance Publication (ICP), dated June 2006, entitled “What Every Member of the Trade Community Should Know About: Textile Costumes under the HTSUS”. As noted in this ICP, we generally consider four areas in making classification determinations for textile costumes, i.e., “Styling”, “Construction”, “Finishing Touches”, and “Embellishments”. As noted in the ICP, the criteria used by CBP in determining what is meant by the terms “flimsy, non-durable” or “well-made” in order to classify textile costumes as festive articles in subheading 9505.90.6000, HTSUSA, or as fancy dress in Chapters 61 or 62, HTSUSA, has been set forth in the following rulings: HQ 957973, August 14, 1995; HQ 958049, August 21, 1995; HQ 958061, dated October 3, 1995; HQ 957948, May 7, 1996; HQ 957952, May 7, 1996; HQ 959545, June 2, 1997; HQ 959064, June 19, 1997; HQ 960805, August 22, 1997; HQ 960107, October 10, 1997; HQ 961447, July 22, 1998; HQ 962081, November 25, 1998; HQ 962184, November 25, 1998; and HQ 962441, March 26, 1999.

With regard to “Styling”, the examples provided in the ICP note that a “flimsy” costume of Chapter 95, HTSUSA, would have little or no styling. The subject jumpsuit has only one “Styling” feature with a fiber filled tail sewn to the back seam. The ICP also provides examples of flimsy “Construction” elements, which include an assessment of the neckline and seams, e.g., raw edges and loose stitching at the seams. The jumpsuit has a raw edged neckline with no facing or protective edging and the garment has been constructed with loose stitching. The ICP notes that flimsy “Finishing Touches” include thin elastics ($\frac{1}{4}$ inch in width) sewn directly to the fabric, raw edges, and a hook and loop closure. All of the exposed edges have been left raw, the jumpsuit has thin elastic (less than $\frac{1}{4}$ inch in width) that is sewn directly to the fabric at the wrists and ankles, and a slash opening in the back which has hook and loop tab closures. The ICP notes that embellishments are usually minor components of a costume, but are considered flimsy and non-durable if glued or otherwise insufficiently attached to the costume. There is only a single embellishment on the front of the costume, which is an iron on appliqué design.

In view of the foregoing, we find that the subject merchandise, identified in NY L83457 as “assortment number H559404RA”, is properly classified as retail sets pursuant to a GRI 3(b) analysis and that the jumpsuit imparts

the essential character to the set. Although we concur with NY L83457 that the jumpsuits are flimsy, non-durable, and classifiable in subheading 9505.90.6000, HTSUSA, we find that NY L83457 incorrectly classified the jumpsuit and headpiece separately rather than as a GRI 3(b) set.

HOLDING:

The subject merchandise, identified as the “Devil Disposable Costume”, “Scary Creature Disposable Costume”, and the “Ghost Disposable Costume” (referenced in NY L83457 as “assortment number H559404RA”), packaged for retail sale with a jumpsuit, headpiece, and bag, are properly classified as GRI 3(b) “sets”, with the jumpsuit providing the essential character, in subheading 9505.90.6000, HTSUSA, which provides for “Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other”. This provision is “Free” at the general column one rate of duty.

EFFECT ON OTHER RULINGS:

NY L83457, dated April 26, 2005, is hereby revoked.

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



19 CFR PART 177

**PROPOSED REVOCATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
CLASSIFICATION OF CERTAIN DC TO DC CONVERTERS**

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

ACTION: Notice of proposed revocation of one ruling letter and revocation of treatment relating to the classification of certain DC to DC converters.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain DC to DC converters. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before September 15, 2006.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Trade and Commercial 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, Trade and Commercial Regulations Branch, at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Tariff Classification and Marking Branch, at (202) 572-8828.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke one ruling letter relating to the tariff classification of certain DC to DC converters. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) K83213, dated March 10, 2004, (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 ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or pro-

test review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. § 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved with 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 K83213, CBP classified certain DC to DC converters in subheading 8542.60.0095, HTSUS, which provides for: "Electronic integrated circuits and microassemblies; parts thereof: Hybrid integrated circuits, Other." As provided by Note 5(b)(ii) to Chapter 85, HTSUS, hybrid integrated circuits have passive elements obtained by thin- or thick-film technology and active elements obtained by semiconductor technology. Based on our recent review of NY K83213, we have determined that the classification set forth for the DC to DC converters in NY K83213 is incorrect. It is now CBP's position that the subject DC to DC converters are properly classified in subheading 8504.40.95, HTSUS, which provides for: "Electrical converters, static converters (for example, rectifiers) and inductors; parts thereof: Static converters: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP intends to revoke NY K83213 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 968273 (Attachment B). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

DATED: July 27, 2006

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

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY K83213
March 10, 2004 CLA-2-85:RR:NC:MM:109 K83213
CATEGORY: Classification
TARIFF NO.: 8542.60.0095

MR. W. ROBB LANE
IMPORT COMPLIANCE MANAGER
ERICSSON INC.
*6300 Legacy Drive
Plano, TX 75024*

M/S: EV-B1.152 RE: The tariff classification of DC/DC power converters as hybrid integrated circuits from China

DEAR MR. LANE:

In your letter dated February 18, 2004, you requested a tariff classification ruling.

You are seeking the classification of four different series of converters, which are among Ericsson's family of converters. This ruling specifically pertains to the classification of your company's PKM, PKL, PKJ, and PKB series of DC/DC power converters. Samples of one of the PKM and one of the PKJ series were submitted to this office. Both samples are being returned to you as per your request.

The PKM, PKL, PKJ, and PKB series are all manufactured on Fire Retardant, level 4 (FR4) printed circuit board (PCB) material. The parts, capacitors, resistors, diodes, transistors, integrated circuits (ICs), etc., are soldered onto the PCB using a thick film process, in two stages. Stage one involves lamination of a copper foil onto an insulating polyamide substrate. In stage two, a conductive pattern is photo-exposed onto the copper, which is then layered with solder and a protective coating is applied to the substrate. The printed circuit board is then sent to Ericsson Simtek Electronics Co., Ltd., in China where the substrate is populated with discrete and passive and active components, directly onto the conductive pattern. It is then heat-bonded.

The indivisible combination of the passive elements, obtained by thick-film technology, and active elements, obtained by semiconductor technology, which were mounted directly onto a single insulating substrate, qualify these converters as hybrid integrated circuits under subheading 8542.60.00.

The PKM series of DC/DC converters address the converging "New Telecoms" market by specifying the input voltage range in accordance with European Telecommunications Standards Institute (ETSI) specifications. Included in the PKM 4000 series is over-voltage protection, under-voltage protection, over temperature protection and soft-start and short circuit protection. The PKM series are made up of 2 hybrid circuits, consisting of a PKM control board and a PKM 100W 20A power board, a transformer, assorted microcircuits, transistors, diodes, capacitors, and resistors, in an industry standard quarter package.

The PKL series is made up in the same way as the PKM series and offers the same functionality. Additionally, it represents a breakthrough achievement in the continued development of high density, high efficiency power converter in a half-brick footprint that has been enhanced to include two ad-

ditional output pins for motherboard connection reliability, utilizing integrated magnetics and synchronous rectification on a low-resistivity multilayer printed circuit board.

The PKJ and PKB series offer the same as the PKM and PKL series in half-brick and 1/8th brick formats, respectively. These formats are developed from the same high efficiency topologies employed throughout the Ericsson product family, allowing for precise customer application.

The applicable subheading for the PKM, PKL, PKJ, and PKB series of DC/DC power converters will be 8542.60.0095, Harmonized Tariff Schedule of the United States (HTS), which provides for "Hybrid integrated circuits, Other." The rate of duty will be free. This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Linda M. Hackett at 646-733-3015.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968273
CLA-2 RR:CTF:TCM 968273 HkP
CATEGORY: Classification
TARIFF NO.: 8504.40.95

MR. W. ROBB LANE
IMPORT COMPLIANCE MANAGER
ERICSSON, INC.
6300 Legacy Drive
Plano, TX 75024

RE: Revocation of NY K83213; DC/DC power converters from China

DEAR MR. LANE:

This is in reference to New York Ruling Letter ("NY") K83213, issued to you on March 10, 2004, on behalf of your company, Ericsson, Inc. ("Ericsson"). In NY K83213, U.S. Customs and Border Protection ("CBP") classified Ericsson's PKM, PKL, PKJ, and PKB series of DC to DC converters as hybrid integrated circuits under subheading 8542.60.0095 of the Harmonized Tariff Schedule of the United States ("HTSUS"). We have reviewed NY K83213 and found it to be incorrect. This letter sets forth the correct classification.

FACTS:

NY K83213 described the manufacture of the subject merchandise as follows:

The PKM, PKL, PKJ, and PKB series are all manufactured on Fire Retardant, level 4 (FR4), printed circuit board (PCB) material. The parts, capacitors, resistors, diodes, transistors, integrated circuits (ICs), etc., are soldered onto the PCB using a thick film process, in two stages. Stage one involves lamination of a copper foil onto an insulating polyamide substrate. In stage two, a conductive pattern is photo-exposed onto the copper, which is then layered with solder and a protective coating is applied to the substrate. The printed circuit board is then sent to Ericsson Simtek Electronics Co., Ltd., in China where the substrate is populated with discrete and passive and active components, directly onto the conductive pattern. It is then heat-bonded.

CBP concluded that because of “the indivisible combination of the passive elements, obtained by thick-film technology, and active elements, obtained by semiconductor technology, which were mounted directly onto a single insulating substrate”, these converters were classifiable as hybrid integrated circuits under subheading 8542.60.00, HTSUS.

It is now CBP’s position that the manufacturing process described is neither thin- nor thick-film technology and, accordingly, the subject merchandise are not hybrid integrated circuits as defined by the HTSUS.

ISSUE:

What is the correct classification of Ericsson’s PKM, PKL, PKJ, and PKB series DC/DC power converters?

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

8504 Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof:

8504.40 Static converters:

8504.40.95 Other

8542 Electronic integrated circuits and microassemblies; parts thereof:

8542.60.00 Hybrid integrated circuits

Heading 8542, which is in Chapter 85, HTSUS, provides for electronic integrated circuits. Note 5(b) to Chapter 85, HTSUS, provides, in pertinent part:

“Electronic integrated circuits and microassemblies” are:

- (ii) Hybrid integrated circuits in which passive elements (resistors, capacitors, interconnections, etc.) obtained by thin- or thick-film technology and active elements (diodes, transistors, monolithic integrated circuits, etc.) obtained by semiconductor technology, are combined to all intents and purposes indivisibly, on a single insulat-

ing substrate (glass, ceramic, etc.). These circuits may also include discrete components.

The Electrical Engineering Handbook (the "Engineering Handbook") (Richard C. Dorf, Ed.) explains that thick film resistors are formed by screen printing on a substrate, usually alumina, followed by sintering at approximately 800 degrees Celsius for 10 minutes. At 1104. The Oxford English Dictionary (www.askoxford.com) states that to "screen-print" is to "force ink on to (a surface) through a prepared screen of fine material so as to create a picture or pattern." More generally, the Engineering Handbook explains, "deposited film resistors are formed by depositing resistance films on an insulating substrate which are etched and patterned to form the desired resistive network. Depending on the thickness and dimensions of the deposited films, the resistors are classified into thick-film and thin-film resistors." At 13. See generally Headquarters Ruling Letter ("HQ") 961050, dated May 1, 2000, regarding the manufacturing of hybrid integrated circuits.

In NY K83213, we are told that the converters under consideration are formed by laminating copper foil onto a polyamide substrate, which is then photo-exposed to a conductive pattern. The copper is then layered with solder and a protective coating applied. We find this process to be different from the thick-film process described above. We note that, in order to be considered a "hybrid integrated circuit", Note 5(b) to Chapter 85, HTSUS, requires (1) the passive elements to be obtained by thin- or thick-film technology, and (2) the active elements to be obtained by semiconductor technology. The subject converters do not fulfill the terms of Note 5(b), because their passive elements are not manufactured using thick- or thin-film technology. Consequently, the subject converters are not classifiable in heading 8542, HTSUS.

Heading 8504, HTSUS, provides for, *inter alia*, static converters. The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80. Explanatory Note 85.04(II)(D) indicates that direct current converters, by which direct current is converted to different voltages, are included in the group "electrical static converters". Because the subject converters convert direct current to different voltages, we find that they are properly classified in heading 8504, HTSUS.

HOLDING:

By application of GRI 1, Ericsson's PKM, PKL, PKJ, and PKB series of DC to DC converters are correctly classified in heading 8504, HTSUS, and are specifically provided for in subheading 8504.40.95, HTSUS, which provides for: "Electrical converters, static converters (for example, rectifiers) and inductors; parts thereof: Static converters: Other."

EFFECT ON OTHER RULINGS:

NY K83213, dated March 10, 2004, is hereby revoked.

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

