

Bureau of Customs and Border Protection

General Notices

General Program Test Extended: Quota Preprocessing

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

ACTION: General notice.

SUMMARY: With this notice, the Bureau of Customs and Border Protection (CBP) announces that the duration of the quota preprocessing program test, which provides for the electronic processing of certain quota-class apparel merchandise prior to arrival of the importing carrier, is extended until December 31, 2008. The quota preprocessing program test is currently being conducted at all CBP ports and was set to expire on December 31, 2006. The duration of the test is being extended so that CBP can continue to evaluate the program's effectiveness. Public comments concerning any aspect of the program test as well as applications to participate in the test are requested.

DATES: The program test is extended to run until December 31, 2008. Applications to participate in the test and comments concerning the test will continue to be accepted throughout the testing period.

ADDRESSES: Written comments regarding this notice or any aspect of the program test should be addressed to Christine Kegley, Quota Enforcement and Administration, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 5.3-D, Washington, DC 20229, or may be sent via e-mail to HQ.Quota@dhs.gov. An application to participate in the program test must be sent to the CBP port(s) (Attention: Program Coordinator for Quota Preprocessing) where the applicant intends to submit quota entries for preprocessing. Information on CBP port addresses may be obtained from the CBP web site at <http://www.cbp.gov> (Office Locations).

FOR FURTHER INFORMATION CONTACT: Christine Kegley, Quota Enforcement and Administration, 202-344-2319.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1998, the Bureau of Customs and Border Protection (CBP) published a general notice in the **Federal Register** (63 FR 39929) announcing the limited testing of a new operational procedure regarding the electronic processing of quota-class apparel merchandise. The test, authorized under § 101.9(a), CBP Regulations (19 CFR 101.9(a)), was commenced on September 15, 1998, at two ports. Quota preprocessing permits certain quota entries (merchandise classifiable in chapter 61 or 62 of the Harmonized Tariff Schedule of the United States (HTSUS)) to be filed, reviewed for admissibility, and to have their quota priority and status determined by CBP prior to arrival of the carrier, similar to the method of preliminary review by which non-quota entries are currently processed. The purpose of quota preprocessing is to reduce CBP processing time for qualified quota entries and to expedite the release of the subject merchandise to the importer. To this end, participants in the quota preprocessing test have been allowed to submit quota entries to CBP up to 5 days prior to vessel arrival or after the wheels are up on air shipments. The July 24, 1998, **Federal Register** notice described the new procedure, specified the eligibility and application requirements for participation in the program test, and noted the acts of misconduct for which a participant in the test could be suspended and disqualified from continued participation in the program. The test was scheduled to continue for a six-month period that expired on March 14, 1999.

On March 25, 1999, January 6, 2000, and November 30, 2000, CBP published general notices in the **Federal Register** (64 FR 14499, 65 FR 806, and 65 FR 71356, respectively) that extended the program test through December 31, 2002. These extensions of the test procedure were undertaken so that CBP could further evaluate the effectiveness of the program and determine whether the program test should be expanded to other ports. By a notice published in the **Federal Register** (66 FR 66018) on December 21, 2001, the test was expanded to a selected number of additional ports in order to enable CBP to continue to study the program's effectiveness and determine whether the program should be established nationwide on a permanent basis.

The expansion of the test to the additional 15 ports was determined by the volume of quota lines of apparel merchandise entered at these ports. By a notice published in the **Federal Register** (67 FR 57271) on September 9, 2002, CBP expanded the test to all CBP ports effective as of October 9, 2002, and extended the duration of the program test until December 31, 2004. CBP further extended the duration of the test until December 31, 2006, by a notice published in the **Federal Register** (70 FR 1732) on January 10, 2005.

The duration of the test is now being further extended so that CBP can continue to evaluate the program's effectiveness. Prospective applicants may consult the July 24, 1998 and December 21, 2001, **Federal Register** notices for a more detailed discussion of the quota preprocessing program and the September 9, 2002, **Federal Register** notice for eligibility criteria. All requirements and aspects of the quota preprocessing test, as set forth in these notices, continue to apply.

Dated: September 18, 2006

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

[Published in the Federal Register, September 21, 2006 (71 FR 55205)]

PROPOSED COLLECTION; COMMENT REQUEST

Administrative Rulings

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Administrative Rulings. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 3, 2006, to be assured of consideration.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Administrative Rulings

OMB Number: 1651-0085

Form Number: N/A

Abstract: This collection is necessary in order for CBP to respond to requests by importers and other interested persons for the issuance of administrative rulings with respect to the interpretation of CBP laws and prospective and current transactions.

Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses/Institutions

Estimated Number of Respondents: 12,200

Estimated Time Per Respondent: 10 hours

Estimated Total Annual Burden Hours: 128,000

Estimated Total Annualized Cost on the Public: N/A

Dated: September 11, 2006

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, September 18, 2006 (71 FR 54674)]

Aircraft/Vessel Report

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protec-

tion (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Aircraft/Vessel Report (Form I-92). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 3, 2006, to be assured of consideration.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Aircraft/Vessel Report

OMB Number: 1651-0102

Form Number: Form I-92

Abstract: The Form I-92 is part of manifest requirements of Sections 231 and 251 of the Immigration and Nationality Act.

Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses

Estimated Number of Responses: 720,000

Estimated Time Per Respondent: 11 minutes

Estimated Total Annual Burden Hours: 129,600

Estimated Total Annualized Cost on the Public: N/A

Dated: September 11, 2006

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, September 18, 2006 (71 FR 54676)]

Application to Establish Centralized Examination Station

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application to Establish Centralized Examination Station. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 3, 2006, to be assured of consideration.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and

clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application to Establish Centralized Examination Station

OMB Number: 1651-0061

Form Number: N/A

Abstract: If a port director decides their port needs one or more Centralized Examination Stations (CES), they solicit applications to operate a CES. The information contained in the application will be used to determine the suitability of the applicant's facility, the fairness of his fee structure, his knowledge of cargo handling operations and his knowledge of CBP procedures.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 50

Estimated Time Per Respondent: 2 hours

Estimated Total Annual Burden Hours: 100

Estimated Total Annualized Cost on the Public: N/A

Dated: September 11, 2006

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, September 18, 2006 (71 FR 54675)]

Delivery Ticket

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protec-

tion (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Delivery Ticket (Form 6043). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 3, 2006, to be assured of consideration.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Delivery Ticket

OMB Number: 1651-0081

Form Number: Form-6043

Abstract: This collection is intended to cover a warehouse proprietor's receipt of transport to the warehouse from custody of the arriving carrier.

Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses/Institutions

Estimated Number of Respondents: 200

Estimated Time Per Respondent: 20 minutes

Estimated Total Annual Burden Hours: 6,600

Estimated Total Annualized Cost on the Public: N/A

Dated: September 11, 2006

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, September 18, 2006 (71 FR 54675)]

Passenger List/Crew List

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Passenger List/Crew List (Form I-418). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before December 3, 2006, to be assured of consideration.

ADDRESS: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and

clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Passenger List/Crew List

OMB Number: 1651-0103

Form Number: Form I-418

Abstract: The Form I-418 is used by masters, owners or agents of vessels to comply with the requirements of Sections 231 and 251 of the Immigration and Nationality Act.

Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses

Estimated Number of Responses: 95,000

Estimated Time Per Respondent: 1 hour

Estimated Total Annual Burden Hours: 95,000

Estimated Total Annualized Cost on the Public: N/A

Dated: September 11, 2006

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, September 18, 2006 (71 FR 54674)]



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

Washington, DC, September 20, 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.

Richard F. Chovanec for SANDRA L. BELL,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*

19 CFR PART 177

REVOCATION OF TREATMENT RELATING TO THE CLASSIFI-
CATION OF CERTAIN FASTENER REPAIR KITS

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

ACTION: Notice of 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 revoking any treatment relating to the classification of certain fastener repair kits previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 40, No. 34, on August 16, 2006. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 3, 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, a notice was published in the Customs Bulletin on August 16, 2006, proposing to revoke any treatment previously accorded by CBP relating to the tariff classification of certain fastener repair kits. No comments were received in response to this notice. As stated in the proposed notice, this revocation will cover any rulings on the subject 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 treatment identified above. No further rulings have been found. Any party involved with substantially identical transactions on the merchandise subject to this notice should have advised CBP during this notice period.

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

Pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions in accordance with the analysis set forth in Headquarters Ruling Letter (HQ) 563322 (Attachment).

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

DATED: September 18, 2006

Monika R. Brenner for 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 subheading 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
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF CERTAIN ACRYLIC
FILAMENT TOW**

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

ACTION: Notice of proposed revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of certain acrylic filament tow.

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 acrylic filament tow. 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 November 3, 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 of the Trade and Commercial Regulations Branch at (202) 572-8768.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke one ruling letter relating to the tariff classification of certain acrylic filament tow. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter ("NY") L84817, dated May 17, 2005 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved 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 L84817, CBP classified what was described by the requestor of the ruling as "synthetic filament yarn (non-twisted)" in subheading 5402.49.9040, Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"), which provides for: "Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex: Other yarn, single, untwisted or with a twist not exceeding 50 turns/m: Other: Other, Monofilament; multifilament, untwisted or with twist of less than 5 turns per meter: Other: Other." As a result of the receipt of additional information from the importer of the merchandise and our review of a sample of the merchandise, CBP now recognizes that the merchandise that is the subject of NY L84817 is not synthetic filament yarn, but synthetic filament tow that is correctly classified in subheading 5501.30.0000, HTSUSA, which provides for: "Synthetic filament tow: Acrylic or modacrylic."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY L84817 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") 968128 (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: September 7, 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 L84817
May 17, 2005
CLA-2-54:RR:NC:N3:351 L84817
CATEGORY: Classification
TARIFF NO.: 5402.49.9040

EUGENE RICCI
PIER INTERNATIONAL
61 Broadway Suite 1115
New York, NY 10006

RE: The tariff classification of acrylic monofilament yarn from Japan

DEAR MR. RICCI:

In your letter dated May 9, 2005, you requested a tariff classification ruling on behalf of your client, Grafil, Inc., of Sacramento, CA.

You have submitted a sample of acrylic monofilament yarn. You state that it will not be put up for retail sale but will be used in the production of carbon fiber for use in such products as fishing rods and tennis rackets.

The applicable subheading for the acrylic monofilament yarn will be 5402.49.9040, Harmonized Tariff Schedule of the United States (HTS), which provides for synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex; other yarn, single, untwisted or with a twist not exceeding 50 turns/m; other; other; monofilament; multifilament, untwisted or with twist of less than 5 turns per meter; other; other. The general rate of duty will be eight percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mitchel Bayer at 646-733-3102.

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



[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968128
CLA-2 RR:CTF:TCM 968128 BtB
CATEGORY: Classification
TARIFF NO.: 5501.30.0000

EUGENE RICCI
PIER INTERNATIONAL
61 Broadway
Suite 1115
New York, NY 10006

Re: Classification of acrylic filament tow from Japan; revocation of NY L84817

DEAR MR. RICCI:

On May 17, 2005, U.S. Customs and Border Protection ("CBP") issued New York Ruling Letter ("NY") L84817 to you, on behalf of Grafil, Inc. In NY L84817, CBP classified what you described in your request as "synthetic filament yarn (non-twisted)" in subheading 5402.49.9040, Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"), which provides for: "Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex: Other yarn, single, untwisted or with a twist not exceeding 50 turns/m: Other: Other, Monofilament; multifilament, untwisted or with twist of less than 5 turns per meter: Other: Other."

We have recently recognized that the merchandise that is the subject of NY L84817 is not synthetic filament yarn, but synthetic filament tow. Consequently, this ruling, Headquarters Ruling ("HQ") 968128, revokes NY L84817 and provides the correct classification of the synthetic filament tow at issue.

We note that CBP issued a separate ruling (NY L89976) directly to Grafil, Inc. on January 27, 2006, on the classification of acrylic filament tow. We believe that the tow that is the subject of NY L89976 is identical to the tow that is the subject of NY L84817 and, in turn, this ruling letter. The holding of this ruling letter corresponds with the holding of NY L89976.

FACTS:

NY L84817 provides the following very limited details about the merchandise at issue:

You have submitted a sample of acrylic monofilament yarn. You state that it will not be put up for retail sale but will be used in the production of carbon fiber for use in such products as fishing rods and tennis rackets.

After issuance of NY L84817, CBP retained the sample noted in the quotation above. During the preparation of NY L89976, Grafil, Inc. provided the following additional information to CBP regarding the merchandise at issue (referred to below as "tow"):

... the tow exceeds 2 meters in length (it is greater than 50,000 meters); it has fewer than 5 twists per meter (it is not twisted); it measures less than 67 decitex per filament (each filament is between 1.0 and 1.3 decitex); the tow cannot be stretched by more than twice its length (it cannot be stretched to more than 10% of its length); and the total measurement of the sample tow is more than 20,000 decitex (the total is between 24,000 and 31,000).

Additionally, Grafil, Inc. informed us that the tow at issue would not be resold in this [tow] form, but would be carbonized to form carbon fiber, which would then be used in products such as golf club shafts, bows and arrows, bicycle frames, and aerospace applications. We also note that the tow at issue consists of parallel filaments of uniform length equal to the length of the tow. The tow is made in Japan.

As a result of the additional information from Grafil, Inc. (obtained after the issuance of NY L84817) and our recent re-review of the sample, it is now clear that the merchandise at issue was incorrectly classified in NY L84817.

ISSUE:

What is the classification of the article at issue?

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation ("GRI"). GRI 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes." If the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied, in order.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN") constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subhead-

ings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

Note 1 to Chapter 55, HTSUSA, states that

Headings 5501 and 5502 apply only to man-made filament tow, consisting of parallel filaments of a uniform length equal to the length of the tow, meeting the following specifications:

- (a) Length of tow exceeding 2 m;
- (b) Twist less than 5 turns per meter;
- (c) Measuring per filament less than 67 decitex;
- (d) Synthetic filament tow only: the tow must be drawn, that is to say, be incapable of being stretched by more than 100 percent of its length; and
- (e) Total measurement of tow more than 20,000 decitex.

The article at issue consists of parallel filaments of uniform length equal to the length of the tow. The article also satisfies the other requirements of Note 1 to Chapter 55, HTSUSA, listed above. As a result, we find that the article is provided for by heading 5501, HTSUSA, which provides for synthetic filament tow, and was incorrectly classified as synthetic filament yarn in NY L84817. As the tow at issue is acrylic, it is specifically provided for by 5501.30.0000, HTSUSA, which provides for: "Synthetic filament tow: Acrylic or modacrylic."

HOLDING:

The article at issue is classified in subheading 5501.30.0000, HTSUSA, which provides for: "Synthetic filament tow: Acrylic or modacrylic." The applicable column one (general) duty rate for the merchandise under the 2006 HTSUSA is 7.5% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the world wide web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY L84817, dated May 17, 2005, is hereby revoked.

MYLES B. HARMON,
Director,

Commercial and Trade Facilitation Division.

**PROPOSED MODIFICATION OF RULING LETTER
RELATING TO THE TARIFF CLASSIFICATION OF
CERTAIN CUT-TO-LENGTH INSULATED WIRE WITH
CONNECTORS AND TERMINALS SUBASSEMBLIES**

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

ACTION: Notice of proposed modification of ruling letter and revocation of treatment relating to the classification of certain cut-to-length insulated wire with connectors and terminals.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain cut-to-length insulated wire with connectors and terminals. 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 November 3, 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 modify a ruling letter relating to the tariff classification of certain cut-to-length insulated wire with connectors and terminals. Although in this notice CBP is specifically referring to the modification of New York Ruling Letter (NY) L85665, dated July 12, 2005 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the rulings identified above. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved 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 L85665 CBP classified certain cut-to-length insulated wire with connectors and terminals in subheading 8544.30.0000, HTSUSA, which provides for, *inter alia*: "Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; . . . : Ignition wiring sets and other wiring sets of a kind used in vehicles, aircraft or ships", using a GRI 2(a) essential character analysis. Based on our recent review of NY L85665, we have determined that although the classification of the cut-to-length insulated wire with connectors and terminals in subheading 8544.30.0000, HTSUSA, is correct, the GRI 2(a) analysis on which this classification is based is not correct. It is now CBP's position that the proper legal analysis for classification of the merchandise in subheading 8544.30.0000, HTSUSA, is based on the application of GRI 1.

Pursuant to 19 U.S.C. §1625(c)(1), CBP intends to modify NY L85665 and any other ruling not specifically identified to reflect the

proper legal analysis set forth in proposed Headquarters Ruling Letter (HQ) 967801 (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: September 15, 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 L85665

July 12, 2005

CLA-2-85:RR:NC:N1:112 L85665

CATEGORY: Classification

TARIFF NO.: 8544.30.0000

PAULA S. SMITH
COUNSEL FOR ALCOA FUJIKURA LTD.
LEBOEUF, LAMB, GREENE & MACRAE, L.L.P.
1875 Connecticut Ave., N.W. Suite 1200
Washington, D.C. 20009-5728

RE: The tariff classification of automotive wiring harness subassemblies from Honduras

DEAR MS. SMITH:

In your letter dated June 2, 2005, you requested a tariff classification ruling on behalf of Alcoa Fujikura Ltd..

The items consist of cut-to-length insulated wires connected together by terminals on one or both ends and have at least one attached connector.

The purpose of the wires is to serve as subassemblies of automotive wiring harnesses.

You propose classification of these items in subheading 8544.41.8000 of the Harmonized Tariff Schedule of the United States (HTS). Classification of merchandise in the HTS is governed by the General Rules of Interpretation (GRIs):

GRI 1. states, "... classification shall be determined according to the terms of the headings ...". HTS heading 8544 provides for "Insulated ... wire, whether or not fitted with connectors ...".

General Note 3. (h) (vi) states, "... a reference to "headings" encompasses subheadings indented thereunder."

GRI 2. (a) states, "Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that,

as entered, the incomplete or unfinished article has the essential character of the complete or finished article.”. HTS subheading 8544.30.0000 provides for “. . . other wiring sets of a kind used in vehicles . . .”. The Merriam-Webster Dictionary defines “set” as, “a number of things of the same kind that belong together or are so used”. Since the subassemblies in question physically have the essential character of wiring sets and are to be used in vehicles, this subheading is appropriate.

The applicable subheading for the Automotive Wiring Harness Subassemblies will be 8544.30.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for “Insulated . . . wire . . ., whether or not fitted with connectors . . . : . . . other wiring sets of a kind used in vehicles . . .”. The rate of duty will be 5%.

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 Richard Laman at 646-733-3017.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967801
CLA-2 RR:CTF:TCM 967801 HkP
CATEGORY: Classification
TARIFF NO.: 8544.30.0000

MELVIN S. SCHWECHTER, ESQ.
PAULA S. SMITH, ESQ.
LEBOEUF, LAMB, GREENE & MACRAE, LLP
1875 Connecticut Avenue, NW
Suite 1200
Washington, DC 20009

RE: Modification of NY L85665; cut-to-length insulated wire with connectors and terminals

DEAR MR. SCHWECHTER & MS. SMITH:

This is in reference to your letter dated August 23, 2005, requesting reconsideration of New York Ruling Letter (“NY”) L85665, issued to you on July 12, 2005, on behalf of your client Alcoa Fujikura Ltd. (“AFL”), in which the tariff classification of certain types of cut-to-length insulated wire with connectors and terminals subassemblies (the “subassemblies”) were determined under the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”). U.S. Customs and Border Protection (“CBP”), using a GRI 2(a) analysis, classified the subassemblies in subheading 8544.30.0000, HTSUSA, as articles having the essential character of wiring sets and other

wiring sets of a kind used in vehicles, aircraft or ships. You contend that the subassemblies are properly classified in subheading 8544.41.8000, HTSUSA, as other electrical conductors for a voltage not exceeding 80V. For the reasons set forth below, we hereby modify NY L85665.

FACTS:

The subject subassemblies consist of cut-to-length insulated wire (ranging in number from 2 to 50) joined with at least one connector and with terminals on one or both ends of each wire and will be imported from Honduras. Some models of subassemblies also contain clips, retainers, light bulbs, brackets, corrugated plastic tubing and/or tape. We were informed that in all cases the insulated wire is of a voltage not exceeding 80V. These subassemblies will be used in the manufacture of automobile wiring harnesses.

CBP was informed that, after importation into the United States the subassemblies will undergo finishing operations, including routing, splicing, twisting, taping, and inserting additional connectors or terminals where required. Clips, brackets, relays and/or fuses may also be added. The subassemblies will then be known as "modules." Each module will be assembled with other Honduran subassemblies imported and converted into modules to form a complete and finished wiring harness. However, in no case will all of the subassemblies needed to complete a finished wiring harness be imported together. Each wiring harness will be dedicated for use in a particular model of automobile.

We were also told that, with respect to the majority of the types of subassemblies, the circuits contained in each subassembly are not dedicated for use in a particular electrical system of an automobile. Rather, the subassemblies contain circuits assigned to a variety of the vehicle's electrical systems. For example, some of the circuits on one subassembly may be dedicated for use in the air conditioning unit, others for the CD player, and others for the sunroof of a vehicle. However, we note that all of the samples provided for our consideration are dedicated to a particular use.

There are nine subassemblies under consideration. Samples have been provided of seven types of subassemblies. The samples are identified in Exhibit D by model number as follows:

- (1) 1J1 970 039 – *modulo radiador* (radiator module)
- (2) 1J1 970 043 – *modulo faros* (headlight module)
- (3) 1J1 970 083 – *mod. tanque de combustible* (fuel tank module)
- (4) 1J1 970 126 – *mod. cinturones* (security system module)
- (5) 1J5 970 149 – *arnes tanque de combustible* (fuel tank harness)
- (6) 1J1 970 076 – *arnes bocina* (speaker harness)
- (7) 1J1 970 016 – *modulo de radio* (radio module)

These photographs are included as representative of the items under consideration:



Sample 1 – radiator module



Sample 7 – radio module

You have provided us with photographs of model numbers: (8) 1K5 970 113, which is for an undetermined use, and (9) 1K5 970 091, which is identified in Exhibit E as a “*bocinas*”, a speaker assembly.

ISSUE:

Whether the subject subassemblies are wiring sets of subheading 8544.30, HTSUS.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

8544 Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; . . . :

* * *

8544.30.0000 Ignition wiring sets and other wiring sets of a kind used in vehicles, aircraft or ships

Other electric conductors, for a voltage not exceeding 80V:

8544.41 Fitted with connectors:

* * *

8544.41.8000 Other

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.

Heading 8544, HTSUS, provides for, *inter alia*: “Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors.” EN 85.44 explains that the goods of heading 8544, HTSUS, are made up of (A) a conductor, (B) one or more coverings of insulating material, (C) in certain cases, a metal sheath, and (D) sometimes a metal armoring. Because the subject subassemblies are made up of conductors (*i.e.*, wire) and one or more cover-

ings of insulating material, we find that they are properly classified in heading 8544, HTSUS. CBP has consistently found that the main function of articles of heading 8544, HTSUS, is the conduction of electricity.

Classification must therefore take place at the subheading level. GRI 6 provides that the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to GRIs 1 through 5, on the understanding that only subheadings at the same level are comparable.

You argue that the subject subassemblies are not “wiring sets” of subheading 8544.30.00, HTSUS, because they do not, in their condition as imported, meet the definition of “wiring sets” as used in that subheading and are therefore not specifically described by its terms. You state that all of the subassemblies have incomplete connections and are incapable of functioning by themselves without being assembled with up to 49 other modules to form a completed wiring harness. You further state that incomplete wiring sets are not classifiable in subheading 8544.30.0000, HTSUSA. You contend that AFL’s subassemblies are properly classified in subheading 8544.41.8000, HTSUSA, as other electrical conductors, for a voltage not exceeding 80 V, fitted with connectors.

As an initial matter, we agree that unfinished wiring sets cannot be classified in subheading 8544.30.0000, HTSUSA, because the terms of the subheading make it clear that articles classified therein must constitute a “set”. CBP erred in NY L85665 when it applied a GRI 2(a) essential character analysis to wiring sets.

As you have stated, the term “wiring sets” is not defined in the tariff. EN 85.44 merely provides an example of a wiring set, stating that heading 8544, HTSUS, “includes wire, etc. of the types described above made up in sets (e.g., multiple cables for connecting motor vehicle sparking plugs to the distributor).” You argue that this language indicates that “sets” may include more than one cable, and that a “wiring set” should perform a discrete specific function in a vehicle. However, we note that ENs are not dispositive or legally binding. In support of your position, you cite ITT Thompson Industries, Inc., v. United States (“ITT Industries”), 537 F. Supp. 1272 (citations omitted) (1982). In that case the court noted, “there is no patterned commercial definition of the term ‘wiring sets.’” On consulting a dictionary, the court found that “wiring” meant, *inter alia*, “an arrangement of wires used for electric distribution”, and that “sets” meant, *inter alia*, “an apparatus of electrical or electronic components assembled so as to function as a unit (radio set, television set, amplifying set, sending set).” The court concluded, “It is apparent from these definitions and related examples that a ‘set’ must be capable of performing a specific function by itself without assistance from an outside source.” The court went on to find that “a conclusion that the harnesses do not constitute a wiring set designed for use in motor vehicles would be directly in contrast to the visual samples as well as the weight of the overall evidence.” At 1280. Yet, despite concluding that a set must be capable of performing a specific function without assistance, the court also found that the harnesses constituted only parts of either electric lighting equipment designed for motor vehicles, or only parts of other sound or visual signaling apparatus because, “[t]he harnesses, standing alone, cannot produce actual illumination nor can they produce an actual sound or visual signal. They are only parts of those respective systems.” At 1281.

Decisions by the courts interpreting nomenclature under the HTSUS' predecessor tariff code, the Tariff Schedules of the United States ("TSUS"), are not deemed dispositive under the HTSUS. However, on a case-by-case basis, such decisions should be deemed instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTS. Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418, August 23, 1988, 102 Stat. 1107, 1147; H.R. Rep. No. 576, 100th Cong., 2d Sess. 549-550 (1988); 1988 U.S.C.C.A.N. 1547, 1582-1583. In this instance, we find that the definition of wiring sets found in ITT Industries is not helpful because of the inherent conflict that exists within that definition.

A tariff term that is not defined in the HTSUS or in the ENs is construed in accordance with its common and commercial meaning. Nippon Kogaku (USA) Inc. v. United States, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. C.J. Tower & Sons v. United States, 69 CCPA 128, 673 F.2d 1268 (1982). The online Oxford English Dictionary (www.askoxford.com) defines "wiring" as "a system of wires providing electric circuits for a device or building", and "set" as "a number of things or people grouped together as similar or forming a unit." Taken together, we consider the common and commercial meaning of "wiring set" to be a system of wires, grouped together to form a unit, to provide electric circuits for an automobile.

Your argument for classification in subheading 8544.41.8000, HTSUSA, appears to be based, in part, on the notion that only wiring harnesses, as defined by you, are properly classified in subheading 8544.30.0000, HTSUSA. Based on your description of the production process, a wiring harness is formed only after several subassemblies are converted into "modules" and then several modules are assembled into a wiring harness. Anything less must be classified in subheading 8544.41, HTSUSA. We call your attention to the fact that subheading 8544.30.0000, HSTUSA, is an *eo nomine* provision for wiring sets; "harness" is not a part of the language of the provision. However, because *eo nomine* provisions normally include all forms of the article, and because wiring harnesses are within the terms of heading 8544, HTSUS, as explained by the ENs they have a conductor and one or more coverings of insulated material, then insulated wiring sets, such as wiring harnesses, are classified in subheading 8544.30.0000, HTSUSA, as if provided for by name. Indeed, this was the finding of the court in ITT Industries. Similarly, any other article that falls within the terms of the subheading are classified there as if provided for by name. A wiring harness is simply "the major assembly of a vehicle's electrical system" usually bundled together in a loom or assembly, and more generally, a "harness" is "a group of electrical conductors laced or bundled in a given configuration, usually with several breakouts." (www.autoglossary.com.) Based on these definitions, we find it possible that both a harness and a wiring harness are sets of subheading 8544.30.0000, HSTUSA. In fact, the language of the subheading, "ignition wiring sets" (a group of electrical conductors in a given configuration) and "other wiring sets" (an assembly of a vehicle's electrical system), appears to aid such an interpretation.

With regard to the issue of whether or not a set is required to have connectors, we are aided by the rules of construction, which instruct that a sub-

heading is subordinate to the terms of its superior heading. Heading 8544, HSTUS, provides for insulated wire, cable and other electric conductors, “whether or not fitted with connectors”. Generally, an electrical connector joins electrical circuits together. A search on the Internet for “electrical connector” revealed that there are many types of connectors, broadly classified in five groups: terminal blocks, crimp-on terminals, insulation displacement connectors, plug and socket connectors, and component and device connectors. In automotive terms, a “harness connector” is “an electrical connector at the end of a wire or harness used to connect the conductor to a device or system.” (www.autoglossary.com.) Subheading 8544.30.0000, HTSUSA, provides for ignition wiring sets and other wiring sets of a kind used in vehicles. When read in the context of heading 8544, HTSUS, it becomes clear that this subheading includes wiring sets *whether or not* fitted with connectors. Note the difference between this subheading and subheading 8544.41.8000, HTSUSA, which specifically includes the optional limiting language found in heading 8544, HTSUS: “fitted with connectors.” See **HQ 966989**, dated Feb. 10, 2005, stating CBP’s position on the relationship of subheadings to headings under the tariff. Based on the foregoing, we find that wiring sets of subheading 8544.30.0000, HTSUSA, need not be fitted with connectors.

You have told us that after importation the subassemblies may be routed, spliced, twisted, taped, and have additional connectors or terminals inserted, and that clips, brackets, relays and/or fuses may also be added. You have also said that after this additional assembly operation, the module, as it is now called, must be further assembled with other modules in order to form a complete wiring harness. It is for these reasons that you argue these imports are not sets classifiable under subheading 8544.30.0000, HTSUSA. However, EN 85.44 explains, “[p]rovided they are insulated, . . . heading [8544] covers electric wire, cable and other conductors (e.g. braids, strip, bars) used as conductors in electrical machinery, apparatus or installations.” CBP has previously found that the only requirement for classification in subheading 8544.30.0000, HTSUSA, is that the insulated wires or other electrical conductors be in sets. See **HQ 955026**, dated September 27, 1993, and **HQ 958653**, dated April 15, 1996. See also **HQ 088477**, dated May 9, 1991, and **HQ 959173**, dated September 10, 1996. Therefore, once the subject subassemblies (which are imported in sets) are capable of conducting electricity, then even if they are not routed, spliced, twisted, taped, and do not have additional connectors or terminals inserted, or clips, brackets, relays and/or fuses added, or other additions not required for conducting electricity, they are classified in subheading 8544.30.0000, HTSUSA. In the present case, we find that none of the items added in the post-importation assembly stage is essential for conducting electricity, even though they may aid in the proper management of such electricity. Consequently, we find that the lack of these additional components on importation does not preclude the subassemblies from being classified in subheading 8544.30.0000, HTSUSA.

It is your belief that a wiring set must be capable of performing a specific function by itself without assistance from an outside source. You argue that the subassemblies under consideration do not materially resemble the automotive wire harness assemblies typically classified under subheading 8544.30.0000, HTSUSA. You state that CBP has classified wiring harnesses or wiring harness assemblies dedicated to a specific function in this subheading. You also state that an AFL subassembly may contain many differ-

ent types of circuits, such as for headlights, air conditioning, and an alarm system, and therefore will perform multiple rather than a specific function within an automobile. You argue that because the subassemblies will not perform a specific function, they are not wiring harnesses and therefore cannot be classified in subheading 8544.30.0000, HTSUSA. However, we note that the samples you have provided to us as representative of your imports are all each dedicated to a specific function.

We believe that your reasoning indicates a misperception of the function of a wiring harness as the major assembly of a vehicle's electrical system. By its nature, such an assembly contains circuits assigned to different components of a vehicle, but its specific function is to conduct electricity throughout the vehicle. The court has found such articles provided for in subheading 8544.30.0000, HTSUSA. *See* ITT Industries. As we have previously stated, it is our position that wiring sets, whether assigned to one or many of a vehicle's components, are classified in subheading 8544.30.0000, HTSUSA. As we have consistently ruled, the unifying characteristic of wiring sets of subheading 8544.30.0000, HTSUSA, is that their main function is to control the flow of electricity. We refer your attention to **HQ 958653**, dated April 15, 1996, in which we classified circuitry for most of a car's engine control elements (sensors, fuel injectors, ignition control, air conditioning, clutch coil control, idle speed control, exhaust gas recirculation solenoid control, alternator and battery, oil pressure sensor, water temperature control, radio noise suppression, and some steering components) in subheading 8544.30.0000, HTSUSA. In **HQ 955026** (September 27, 1993) we classified an instrument panel assembly, the main function of which is to interface between the body computer, instrument cluster, radio, air bag module, I/P switches, body wiring, engine compartment wiring, and all other modules in the panel, in subheading 8544.30.0000, HTSUSA. *cf* **HQ 962623**, dated July 22, 1999, and **HQ 958653**, dated April 15, 1996. AFL's subassemblies are imported as sets, that is, as wires grouped together to form a unit, either by being taped together, or by being housed together in plastic casing, or fitted together with connectors, and are used to conduct electricity within an automobile. They are substantially similar to articles classified in subheading 8544.30.0000, HTSUSA, in previous CBP rulings.

Finally, we consider your argument that wiring sets of subheading 8544.30.0000, HTSUSA, must conform to the characteristics of other "set" provisions found elsewhere in the tariff. Those other provisions require that the subject items be imported packaged together for retail sale without re-packing. However, subheading 8544.30.0000, HTSUSA, specifically provides that a wiring set need not have connectors in order to be considered a set, even though connectors are needed for the set to function as intended. Because the tariff implicitly recognizes that the wiring sets of subheading 8544.30.0000, HTSUSA, may require further assembly, we find that these wiring sets are distinguished from other sets provided for in the tariff.

HOLDING:

By application of GRI 1 we find that the AFL subassemblies are provided for in heading 8544, HTSUS, which provides for: "Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors," and are specifically provided for in subheading 8544.30.0000, HTSUSA, which provides for: "Ignition wiring sets and other wiring sets of a kind used in vehicles."

EFFECT ON OTHER RULINGS:

NY L85665, dated July 12, 2005, is hereby modified with respect to its legal analysis. The classification of the items described therein is unchanged.

MYLES B. HARMON,

Director,

Commercial & Trade Facilitation Division.

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REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF AN AUDIO VISUAL LAPTOP

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

ACTION: Revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of an audio visual laptop.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that the Bureau of Customs and Border Protection (CBP) is revoking a ruling letter relating to the tariff classification of an audio visual laptop under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published on July 12, 2006, in Volume 40, Number 29, of the CUSTOMS BULLETIN. CBP received no comments in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 3, 2006.

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Tariff Classification and Marking Branch: (202) 572-8713.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice advising interested parties that CBP is revoking one ruling letter (NY K88339) pertaining to the tariff classification of an audio visual laptop was published in the July 12, 2006, CUSTOMS BULLETIN, Volume 40, Number 29. No comments were received in response to the notice.

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

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

In NY K88339, CBP ruled that the Qosimo AV Notebook PC E15 was classified in heading 8528, HTSUS, which provides for: "Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY K88339 and is revoking or modifying any other ruling not specifically identified, to reflect the proper classification of audio visual laptops according to the analysis contained in Headquarters Ruling Letters (HQ) 967655, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. In accordance with 19 U.S.C. 1625 (c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

DATED: September 15, 2006

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967655
September 15, 2006
CLA-2 RR: CTF:TCM 967655 KSH
CATEGORY: Classification
TARIFF NO.: 8471.30.0000

MR. JOEL WINNICK, ESQ.
MS. TERRY POLINO, ESQ.
HOGAN & HARTSON, LLP
Columbia Square
555 13th Street, N.W.
Washington, D.C. 20004-1109

RE: Revocation of New York Ruling Letter (NY) K88339, dated August 17, 2004; Classification of an Audio/Video Laptop.

DEAR MR. WINNICK and MS. POLINO:

This is in response to your letter of April 1, 2005, on behalf of your client Toshiba America Information Systems, Inc. (TAIS), in which you request reconsideration of New York Ruling Letter (NY) K88339, issued on August 17, 2004, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of the Qosmio AV Notebook PC E15 (Qosmio). The Qosmio was classified in heading 8528, HTSUS, which provides for: "Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors." We regret the delay in responding.

In your request for reconsideration, you have advised us that the Qosmio's audio visual function requires the user to turn on the computer and is fully dependent upon the PC's operating systems. You have also stated that the Qosmio has the general characteristics of an automatic data processing (ADP) machine, the purchaser of the Qosmio expects to principally be buying an ADP machine, the Qosmio is designed, manufactured, marketed and sold in a channel of trade and an environment of sale devoted to ADP machines and it is used principally by consumers as an ADP machine. Accordingly, you argue that the principal function of the Qosmio is as an ADP machine that should be classified in heading 8471, HTSUS, which provides for: "Automatic data processing machines and units thereof . . .". In accordance with your request for reconsideration of NY K88339 and in light of this newly submitted information, including information submitted in conjunction with the meeting held with members of my staff on January 27, 2006, the Bureau of Customs and Border Protection (CBP) has reviewed the classification of this item and has determined that the cited ruling is in error.

Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY K88339 was published in the Customs Bulletin, Vol. 40, No. 29, on July 12, 2006. No comments were received in response to the notice.

FACTS:

The Qosmio is a clamshell-configured notebook computer which measures 13.31" by 11.22" by 1.70" and weighs approximately 8.2 lbs. The Qosmio contains the following core hardware and software components:

80GB Hard Disk Drive
 512 MB RAM
 Intel Pentium M Processor 735
 Intel 855PM System Chipset
 Microsoft XP Media Center Edition Operating System
 15" XGA TruBrite Display
 CD/DVD
 NVIDIA GeForce FX Go5200 Graphics
 Harmon/Kardon premium stereo speakers
 Four USB 2.0 Ports
 Integrated V.92 Modem, 10/100 Ethernet
 Keyboard and touchpad
 Parallel Linux Operating System
 Wireless LAN B and G
 Bluetooth Enabled
 Surround Sound
 Bridge Media Adapter
 DVD
 S-video input and output for DVR, DVD and other video applications
 i.Link for high speed communications
 Analog TV tuner

The audio visual features of the Qosmio may be employed through either of the Qosmio's two operating systems (Windows XP Media Center Edition and Linux). However, users who do not need to simultaneously run the audio visual features and perform data processing functions controlled by the Windows XP Media Center may chose to exclusively run the Linux operating system. Two separate power buttons allow the user to choose either the TV or computer features.

If the TV power button is used, the data stream is picked up by the ADP peripheral interconnect bus and is transferred through the ADP system bus to the ADP processor and memory. Stated another way, the TV cannot function without the ADP hardware. Its electrical and logical functions are directed through the ADP machine.

ISSUE:

Whether the Qosmio is classified in heading 8528, HTSUS, as reception apparatus for television or in heading 8471, HTSUS, as an automatic data processing machine.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRIs"). GRI 1 provides that the classification of

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

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

The HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof:
8471.30.00	Portable digital automatic data processing machines, weighing not more than 10 kg, consisting of at least a central processing unit, a keyboard and a display
8528	Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors:
	Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus:
8528.12	Color:
	With a flat panel screen:
	Other:
8528.12.7201	Other."

Note 5(A) to chapter 84, HTSUS, defines the term "automatic data processing machines" for the purposes of heading 8471 as digital machines which must be capable of (1) storing the processing program or programs and at least the data immediately necessary for execution of the program; (2) being freely programmed in accordance with the requirements of the user; (3) performing arithmetical computations specified by the user; and (4) executing, without human intervention, a processing program which requires them to modify their execution, by logical decision during the processing run.

Pursuant to Note 5(A)(a), the Qosmio *prima facie* meets the terms of Heading 8471, HTSUS, as an ADP machine. However, it is also capable of displaying a variety of tv signals and other audio visual information which is provided for, *eo nomine*, under heading 8528, HTSUS, as reception apparatus for television.

The Qosmio is therefore considered a composite machine that has the functions of both an ADP machine and a reception apparatus for television. Classification of composite machines is regulated by Note 3 to Section XVI, HTSUS, which provides that:

Unless the content otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

It is the principal use of the class or kind of goods to which the imports belong at or immediately prior to the time of importation and not the principal use of the specific import that is controlling under the General Rules of Interpretation. See *Group Italglass U.S.A., Inc. v. United States*, 17 C.I.T. 1177, 1177, 839 F. Supp. 866, 867 (1993)

The courts have provided factors, which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: (1) general physical characteristics; (2) expectation of the ultimate purchaser; (3) channels of trade; (4) environment of sale (accompanying accessories, manner of advertisement and display); and (5) usage of the merchandise. See *Lenox Collections v. U.S.*, 20 CIT 194, 196 (1996). See also *U.S. v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976); *Kraft, Inc. v. U.S.*, 16 CIT 483, 489 (1992); and *G. Heileman Brewing Co. v. U.S.*, 14 CIT 614, 620 (1990).

In considering these factors, we note that the 15 inch screen size, screen resolution of 1024 by 768, standard 84 key keyboard and touch pad, USB and i.Link ports, hard drive and clamshell configuration are consistent with the general physical characteristics of an ADP machine. In this regard, we note that the Qosmio is not an ADP unit but is a complete, integrated ADP machine. (Cf. the classification opinion by World Customs Organization (WCO), Harmonized System Committee (HSC), at its 19th Session to classify a multimedia personal computer system consisting of three separately housed units: a 14" (35 cm) colour television receiver (display) with a digital processing unit, a keyboard (input unit), and an infra-red remote control device in subheading 8471.49, HTS, and NY K82971, dated February 26, 2004, in which a Gateway 610 Media Center PC desktop computer system with integrated TV tuner card was classified in subheading 8471.49.1095, HTSUS.

The TV tuner and ADP are not two separate machines. Rather, the TV function is dependent on the ADP hardware. Even when the TV is in use the Intel Pentium M Processor 735, Intel 855PM chipset and memory chips are ADP hardware that must be used.

Probative evidence included in your submission indicates that consumers are primarily purchasing the Qosmio for its ADP functions with ancillary interest in the audio visual functions. The Qosmio is marketed and sold in channels of trade for ADP machines. The Qosmio is sold in the ADP departments of consumer electronic retailers and are advertised as such. The Qosmio is also sold to retailers who primarily sell ADP equipment and software. Further, evidence has been submitted that the overwhelming majority of purchasers use the Qosmio for its data processing functions while few regularly use the Qosmio to watch television.

Based on the *Carborundum* factors and the information above, we find that the principal function of the Qosmio is an ADP machine of heading 8471, HTSUS.

HOLDING:

By application of GRI 1 and Note 3 to Section XVI, the Qosmio is classified in heading 8471, HTSUS. It is specifically provided for in subheading 8471.30.0000, HTSUS, which provides for: "Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included: Portable digital automatic data processing machines, weighing not more than 10kg, consisting of at least a central processing unit, a keyboard and a display." The column one, general rate of duty is free.

EFFECT ON OTHER RULINGS:

NY K88339, dated August 17, 2004, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

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

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