

Bureau of Customs and Border Protection

General Notices

Automated Commercial Environment (ACE): Ability of Third Parties To Submit Manifest Information on Behalf of Truck Carriers Via the ACE Secure Data Portal in the Test of the ACE Truck Manifest System

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

ACTION: General notice.

SUMMARY: This document announces that truck carriers participating in the ACE Truck Manifest Test and electing to use third parties to submit manifest information to the Bureau of Customs and Border Protection (CBP) via the Automated Commercial Environment (ACE) Secure Data Portal are no longer required to have ACE portal accounts. Thus, truck carriers without ACE portal accounts, while participating in the test of the ACE truck manifest system, may now use third parties (such as Customs brokers or other truck carriers) with ACE portal accounts to electronically transmit truck manifest information, via the ACE portal, on their behalf.

DATES: Truck carriers participating in the ACE Truck Manifest Test without ACE portal accounts may use third parties with ACE portal accounts to electronically transmit truck manifest information via the ACE portal, on their behalf, beginning March 15, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. James Swanson, via e-mail at james.d.swanson@dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 2004 and September 13, 2004, CBP published general notices in the **Federal Register** (69 FR 55167 and 69 FR 5360) announcing a test, in conjunction with the Federal Motor Carrier Safety Administration (FMCSA), allowing participating truck carriers to transmit electronic manifest data in ACE, including advance cargo information as required by section 343(a) of the Trade Act of

2002, as amended by the Maritime Transportation Security Act of 2002. The advance cargo information requirements are detailed in the final rule published in the **Federal Register** at 68 FR 68140 on December 5, 2003. Truck carriers participating in the test opened up Truck Carrier [Portal] Accounts which provided them with the ability to electronically transmit truck manifest data and obtain release of their cargo, crew, conveyances, and equipment via the ACE Portal or electronic data interchange (EDI) messaging.

In the September 13, 2004, notice, CBP stated that, in order to be eligible for participation in this test, a carrier must have:

1. Submitted an application (*i.e.*, statement of intent to establish an ACE [Portal] Account and to participate in the testing of electronic truck manifest functionality) as set forth in the February 4, 2004, notice;
2. Provided a Standard Carrier Alpha Code(s) (SCAC); and
3. Provided the name, address, and e-mail of a point of contact to receive further information.

In addition, the notice provided that participants intending to use the ACE Secure Data Portal as the means to file the manifest must submit a statement certifying the ability to connect to the Internet. Participants intending to use an EDI interface are required to first test their ability to send and receive electronic messages in either American National Standards Institute (ANSI) X12 or United Nations / Directories for Electronic Data Interchange for Administration, Commerce and Transport (UN/ EDIFACT) format with CBP. The September 13, 2004, notice indicated that acceptance into this test does not guarantee eligibility for, or acceptance into, future technical tests.

Subsequently, in a **Federal Register** notice published on March 29, 2006 (71 FR 15756), CBP announced a change advising truck carriers that they were no longer required to open ACE Truck Carrier [Portal] Accounts to participate in the ACE test. Specifically, truck carriers were advised that they could elect to use a third party to submit electronic manifest information to CBP via EDI. Truck carriers participating in this fashion would not have access to operational data and would not receive status messages on ACE Accounts, nor would they have access to integrated Account data from multiple system sources. These truck carriers would be able to obtain release of their cargo, crew, conveyances, and equipment via EDI messaging back to the transmitter of the information. A truck carrier using a third party to transmit via EDI cargo, crew, conveyance and equipment information to CBP would be required to have a Standard Carrier Alpha Code (SCAC). Any truck carrier with a SCAC could arrange to have a third party transmit manifest information to CBP via EDI consistent with the requirements of the ACE Truck Manifest Test. Due to limited functionality available via the portal at that time, truck carriers were advised that if they elected to use a third

party to transmit the truck manifest information to CBP via the ACE portal (rather than EDI), the truck carrier who is submitting that information to the third party (for transmission to CBP) would be required to have an ACE Truck Carrier Account as described in the February 4, 2004, notice. In clarification of the March 29, 2006, notice, if a truck carrier elects to use a third party to transmit the truck manifest information to CBP via EDI, the truck carrier would need to have a non-portal account.

Implementation

Since the publication of the March 29, 2006, notice, additional functionality has been deployed in the ACE portal so that a party with an ACE portal account now has the ability to transmit the manifest information via the ACE portal on behalf of other truck carriers. As a result, CBP announces in this document that truck carriers participating in the ACE Truck Manifest Test and electing to use a third party to submit manifest information to CBP via the ACE portal are no longer required to have ACE portal accounts as previously set forth in the March 29, 2006, notice.

By making this change, CBP is opening the ACE Truck Manifest Test to parties previously ineligible to participate. Truck carriers who do not have ACE portal accounts and who elect to use third parties to submit manifest information to CBP will no longer be restricted to electronic data interchange (EDI) messaging only.

Any party, whether a truck carrier or other entity, planning to transmit electronic truck manifest information on behalf of other truck carriers must establish or have established an ACE portal account. Interested parties must submit an application as set forth in the February 4, 2004, notice. Eligibility requirements specified in that notice include providing CBP with a Standard Carrier Alpha Code(s) (SCAC), if applicable, and providing the name, address, and e-mail of a point of contact to receive further information. Current portal truck carrier accounts wishing to transmit a manifest on behalf of another carrier will be able to do so through their existing accounts.

Carriers who use a third party to transmit manifest information will not have access to their manifest data unless they establish their own ACE Secure Data Portal Accounts. Truck carriers who elect to use the third party transmitter method will not receive status messages on ACE transactions. Those messages will be provided to the party transmitting the manifest information. Carriers without portal accounts who use a third party to transmit manifest information will need to have a non-portal account.

Previous Notices Continue To Be Applicable

All of the other aspects of the ACE Truck Manifest Test as set forth in the September 13, 2004, notice (69 FR 55167), as modified by the

general notice published in the **Federal Register** (70 FR 13514) on March 21, 2005, continue to be applicable. The March 21, 2005, notice clarified that all relevant data elements are required to be submitted in the automated truck manifest submission. All of the aspects of the February 4, 2004, notice (69 FR 5360) also continue to be applicable, except as revised in this notice.

Date: March 5, 2007

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

[Published in the Federal Register, March 15, 2007 (72 FR 12181)]

PROPOSED COLLECTION; COMMENT REQUEST

Application - Alternative Inspection Services/FAST Commercial Driver Application

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, 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 - Alternative Inspection Services/FAST Commercial Driver Application. 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 May 14, 2007, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2.C, 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, 1300 Pennsylvania Avenue NW, Room 3.2C, 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 CBP 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 – Alternative Inspection Services/FAST Commercial Driver Application.

OMB Number: 1651-0121

Form Number: CBP Forms I-823 and 823F

Abstract: The purpose of the Alternative Inspection Services and FAST Programs are to prescreen applicants and their vehicles in order to expedite travelers seeking admission to the United States. CBP plans to institute a web-based system for applicants to apply for Alternative Inspection Services and the FAST Program, and to phase out the paper versions of the I-823 and the 823F.

Current Actions: This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change to the burden hours)

Affected Public: Businesses, Individuals

Estimated Number of Respondents: 275,000

Estimated Time Per Respondent: 1 hour and 6 minutes

Estimated Total Annual Burden Hours: 304,000

Estimated Total Annualized Cost on the Public: \$7,740,000

Dated: March 7, 2007

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

[Published in the Federal Register, March 15, 2007 (72 FR 12181)]

PROPOSED COLLECTION; COMMENT REQUEST

Regulations Relating to Recordation and Enforcement of Trademarks and Copyrights

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Regulations Relating to Recordation and Enforcement of Trademarks and Copyrights (Part 133 of the CBP Regulations). 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 May 14, 2007, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2.C, 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, 1300 Pennsylvania Avenue NW, Room 3.2C, 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 CBP 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: Regulations Relating to Recordation and Enforcement of Trademarks and Copyrights (Part 133 of the CBP Regulations)

OMB Number: 1651-0123

Form Number: None

Abstract: Trademark and trade name owners and those claiming copyright protection must provide information sufficient to enable CBP officers to identify violative articles at the borders.

Current Actions: This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change to the burden hours)

Affected Public: Businesses, Individuals

Estimated Number of Respondents: 2,000

Estimated Time Per Respondent: 2 hours

Estimated Total Annual Burden Hours: 4,000

Estimated Total Annualized Cost on the Public: \$380,000

Dated: March 7, 2007

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

[Published in the Federal Register, March 15, 2007 (72 FR 12180)]

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

Washington, DC, March 14, 2007

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

SANDRA L. BELL,

Executive Director;

Regulations and Rulings Office of Trade.

GENERAL NOTICE

19 CFR PART 177

**PROPOSED MODIFICATION OF ONE RULING LETTER
AND REVOCATION OF TREATMENT RELATING TO THE
CLASSIFICATION OF A CERTAIN DRYER TIMER
KNOB OF PLASTIC**

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

ACTION: Notice of proposed modification of one ruling letter and revocation of treatment relating to the classification of a plastic dryer knob.

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 one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a plastic dryer knob. 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 April 27, 2007.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, 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 com-

ments 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 one ruling letter relating to the tariff classification of Electrolux Home Products part no. 1316524, a plastic dryer knob. Although in this notice CBP is specifically referring to the modification of New York Ruling Letter (NY) J82174, dated March 31, 2003 (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 substan-

tially 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 J82174, CBP classified a plastic dryer timer knob in subheading 8451.90.9010, HTSUSA, which provides for, *inter alia*: "Machinery (other than machines of heading 8450) for . . . drying . . . textile yarns, fabrics or made up textile articles . . . ; parts thereof: Parts: Other: Of machines for washing, dry-cleaning, ironing, pressing or drying made up textile articles or of other household or laundry type machines." Based on our recent review of NY J82174, we have determined that the tariff classification set forth for the plastic dryer timer knob is incorrect. It is now CBP's view that the proper tariff classification is subheading 8451.90.3000, HTSUSA, which provides for, *inter alia*: "Machinery (other than machines of heading 8450) for . . . drying . . . textile yarns, fabrics or made up textile articles . . . ; parts thereof: Parts: Drying chambers for the drying machines of subheading 8451.21 or 8451.29, and other parts of drying machines incorporating drying chambers."

Pursuant to 19 U.S.C. §1625(c)(1), CBP intends to revoke NY J82174 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper tariff classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letters (HQ) H007106 (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: March 9, 2007

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 J82174
March 31, 2003
CLA-2-84:RR:NC:1:104 J82174
CATEGORY: Classification
TARIFF NO.: 8450.90.6000; 8451.90.9010;
8516.90.8000; 3926.90.2500

MR. LAWRENCE M. FRIEDMAN
BARNES, RICHARDSON & COLBURN
303 East Wacker Drive
Chicago, Illinois 60601

RE: The tariff classification of plastic knobs for various appliances from Taiwan

DEAR MR. FRIEDMAN:

In your letter dated March 3, 2003 on behalf of Electrolux Home Products, North America of Augusta, Georgia you requested a tariff classification ruling.

You have provided samples and drawings of plastic knobs which your client plans to import for use with its washers, dryers and stoves. They include:

Part number 1340445, a rotary control knob that is used to activate selector switches on a home laundry washing machine

Part number 1316524, a plastic timer knob assembly that is used to activate the timer on a home laundry dryer

Part number 3162230, a plastic temperature control knob used on electric stoves

Part number 3162200, a plastic temperature control knob used on gas stoves

All of the above knobs are made of plastic. The knobs contain negligible amounts of metal due to the insertion of metal spring clips or threaded metal within plastic shafts that fit into the knobs themselves and allow them to be affixed to timers and switches. The knobs are molded and shaped to EHP's specifications. All of the above knobs are imprinted with an indicator line that allows the user to determine the temperature or timer setting.

You have suggested that the terms of the headings, section and chapter notes and the explanatory notes necessitate classification of these plastic knobs under the relevant parts provision for each appliance. You continue that all but one of the appliances in question are classified in chapters 84 and 85, with gas stoves of heading 7321 being the exception. You state that neither the Section XV notes nor chapter 73 notes preclude classification of plastic knobs within the parts provision of gas stoves.

You state further that treatment of plastic knobs within Customs has been somewhat inconsistent. NY rulings 859215 and 869235 classified plastic control knobs for gas grills and gas stoves under HTS subheading 3926.90.2500 while HQ ruling 082334 classified control knobs for refrigerators, washers and dryers as parts of those machines and HQ ruling 083984 classified control knobs for air conditioners as parts of air conditioning machines.

The rulings are not inconsistent. Heading 7321 provides for stoves, ranges, . . . and similar non-electric domestic appliances, and parts thereof, of iron or steel. The terms of the heading preclude classification of plastic articles as parts hence the NY rulings were correct. The HQ rulings dealt with products of section XVI which does not exclude plastic articles by section or chapter note or the terms of any individual heading.

The applicable subheading for the rotary control knob, part number 1340445, will be 8450.90.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for other parts of household or laundry-type washing machines, including machines which both wash and dry. The rate of duty will be 2.6 percent.

The applicable subheading for the timer knob, part number 1316524, will be 8451.90.9010, HTS, which provides for other parts of machinery (other than machinery of heading 8450) for washing, cleaning, wringing, drying, . . . textile yarns, fabrics or made up textile articles. The rate of duty will be 3.5 percent.

The applicable subheading for the control knob for the electric stove, part number 3162230, will be 8516.90.8000, HTS, which provides for other parts for the cooking stoves, ranges and ovens of subheading 8516.60.40. The rate of duty will be free.

Finally, the applicable subheading for the control knob for the gas stove, part number 3162200, will be 3926.90.25, HTS, which provides for other articles of plastic: handles and knobs, not elsewhere specified or included, of plastics. The rate of duty will be 6.5 percent.

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 Robert Losche at 646-733-3011.

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

[ATTACHMENT B]

HQ H007106
CLA-2 RR:CTF:TCM H007106 HkP
CATEGORY: Classification
TARIFF NO.: 8451.90.3000

MR. LAWRENCE M. FRIEDMAN
BARNES, RICHARDSON & COLBURN
303 East Wacker Drive
Chicago, IL 60601

RE: Electrolux Home Products plastic dryer timer knob - part no. 1316524;
Modification of NY J82174

DEAR MR. FRIEDMAN:

This is in reference to New York Ruling Letter (NY) J82174, dated March 31, 2003, regarding the classification of a plastic timer knob for a home laundry dryer (part no. 1316524) under the Harmonized Tariff Schedule of

the United States (“HTSUS”). We have reconsidered NY J82174 and have determined that the classification of the dryer knob at the 8-digit level is not correct. The tariff classifications of the other articles described in that ruling are not affected.

FACTS:

In NY J82174 the knob was described, in relevant part, as follows:

2. Part number 1316524, a plastic timer knob assembly that is used to activate the timer on a home laundry dryer.

* * *

All of the above knobs are made of plastic. The knobs contain negligible amounts of metal due to the insertion of metal spring clips or threaded metal within plastic shafts that fit into the knobs themselves and allow them to be affixed to timers and switches. The knobs are molded and shaped to EHP’s specifications. All of the above knobs are imprinted with an indicator line that allows the user to determine the temperature or timer setting.

U.S. Customs and Border Protection (“CBP”) previously classified this knob in subheading 8451.90.9010, HTSUSA. It is now CBP’s position that the correct classification is subheading 8451.90.3000, HTSUSA.

ISSUE:

What is the correct classification of the dryer knob?

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:

8451 Machinery (other than machines of heading 8450) for washing, cleaning, wringing, drying, ironing, pressing (including fusing presses), bleaching, dyeing, dressing, finishing, coating or impregnating textile yarns, fabrics or made up textile articles and machines for applying the paste to the base fabric or other support used in the manufacture of floor coverings such as linoleum; machines for reeling, unreeling, folding, cutting or pinking textile fabrics; parts thereof:

* * *

8451.90 Parts:

8451.90.3000 Drying chambers for the drying machines of subheading 8451.21 or 8451.29, and other parts of drying machines incorporating drying chambers

* * *

8451.90.90 Other

8451.90.9010 Of machines for washing, dry-cleaning, ironing, pressing or drying made-up textile articles or of other household or laundry type machines

Chapter 84 is found in Section XVI of the tariff. Legal Note 1 to Section XVI, HTSUS, excludes “[p]arts of general use, as defined in note 2 to Section XV, of base metal (section XV), or similar goods of plastics (chapter 39)” from the section. Note 2 to Section XVI provides, in relevant part:

Subject to note 1 to this section, note 1 to chapter 84 and note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

* * *

- (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading . . . are to be classified with the machines of that kind or . . . as appropriate.

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 8451, HTSUS, provides for, among other things, machinery for drying textile yarns, fabrics, or made up textile articles. EN 84.51(D) explains, in relevant part, that drying machines are “made up of two main types: those consisting essentially of a closed chamber in which the goods to be dried are subjected to the action of hot air, and those in which fabrics are passed over heated rollers.” We have reviewed your original ruling request of March 3, 2003, and the arguments made therein. Although you make no mention of the type of dryer that the knob will operate, it is the understanding of this office (based on research on the Internet) that Electrolux dryers for household use consist of a closed chamber in which the goods to be dried are subjected to the action of hot air. Dryers of this nature are classified in subheadings 8451.21 through 8451.29, HTSUS.

It is not in dispute that the dryer knob meets the terms of Note 2(b) to Section XVI of the tariff. Knobs are not described in Note 2 to Section XV, HTSUS, nor are they similar to any of the articles mentioned therein. Therefore, they are not excluded from classification in Chapter 84 by operation of Note 1 to Section XVI. Further, you have previously indicated that the knobs at issue are suitable for use solely or principally with drying machines of subheading 8451.21 or 8451.29, HTSUS.

Subheading 8451.90.3000, HTSUSA, provides for, in relevant part: “Parts: Drying chambers for the drying machines of subheading 8451.21 or 8451.29, and other parts of drying machines incorporating drying chambers. This is an *eo nomine* provision for parts of drying machines incorporating drying chambers. *Eo nomine* provisions normally include all forms of a named article unless specifically excluded. In this instance, there are no exclusions. Accordingly, we find that an article which is a part of a household dryer of subheading 8451.21 or 8451.29, HTSUS, and which fulfills the requirements of Note 2(b) to Section XVI, must be classified in subheading 8451.90.3000, HTSUSA. We find this to be the case with the knob under consideration.

HOLDING:

By application of GRI 1 and Note 2(b) to Section XVI, we find that the dryer knob at issue is classified in heading 8541, HTSUS. It is provided for in subheading 8451.90.3000, HTSUSA, which provides for, *inter alia*: "Machinery for . . . drying . . . parts thereof: Parts: Drying chambers for the drying machines of subheading 8451.21 or 8451.29, and other parts of drying machines incorporating drying chambers."

EFFECT ON OTHER RULINGS:

NY J82174, dated March 31, 2003, is hereby modified with respect to the classification of part number 1316524, a plastic dryer knob used to activate the timer on a home laundry dryer. The classification of the other items described therein is unchanged.

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


19 CFR PART 177**REVOCATION OF RULING LETTERS AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF SILENT ELECTRIC MUSICAL
INSTRUMENTS**

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

ACTION: Notice of revocation of tariff classification ruling letters and revocation of treatment relating to the classification of silent electric instruments.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking eight ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of silent electric musical instruments, including a silent electric violin, silent electric cello and a silent electric bass, silent electric drums and percussion systems, and EZ electric guitars. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise. A notice of the proposed actions was published in the Customs Bulletin on September 14, 2005. One comment was received in response to the proposed notice.

DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 27, 2007.

FOR FURTHER INFORMATION CONTACT: Robert Dinerstein, Tariff Classification and Marking Branch, at (202) 572-8721.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is revoking eight ruling letters relating to the tariff classification of certain silent electric musical instruments including a silent electric violin, a silent electric cello, a silent electric bass, silent electric drums and percussion systems and EZ electric guitars. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letters (NY) B89582, dated October 14, 1997; NY G86610, dated February 26, 2001; NY G88068, dated March 14, 2001; NY B84187, dated May 7, 1997; NY B85746, dated June 12, 1997; NY D85594, dated January 14, 1999; NY E89544, dated November 26, 1999 and NY K82460, dated February 9, 2004, 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 eight 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 is revoking any treatment previously accorded by CBP to substantially identical merchandise. 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 B89582, NY G86610, NY G88068, NY D85594, NY E89544, and NY K82460, CBP classified silent electric violins, cellos, basses, drum sets and percussion systems, and EZ guitars in subheading 8543.89.96, HTSUS, which provides for “[e]lectrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; . . . :[o]ther machines and apparatus: [o]ther: [o]ther: [o]ther: [o]ther.” In NY B84187 and NY B85746, CBP classified drum sets and percussion systems, in subheading 8543.89.90, HTSUS, which provided for “[e]lectrical machines and apparatus, having individual functions, not specified or included elsewhere in [chapter 85]; parts thereof: Other . . . other.”

The silent electric violin, cello, bass, drum sets and percussion systems, and EZ guitars that were the subject of NY B89582, NY G86610, NY G88068, NY B84187, NY B85746, NY D85594, NY E89544 and NY K82460 are musical instruments that in order to produce effective audible musical sounds require electrical amplification provided by another device such as a speaker system or headphones. Once the silent electric musical instruments are plugged into these other devices, they can be played the same way a conventional musical instrument is played to produce musical sounds. Therefore, we have determined that the silent electric musical instruments subject to this notice fit within the terms of heading 9207, HTSUS, specifically in subheading 9207.90.00 as: “Musical instruments, the sound of which is produced, or must be amplified, electrically (for example, organs, guitars, accordions): Other.”

However, in NY A88586, which CBP proposed to revoke in its notice of September 14, 2005, we considered silent electronic brass systems consisting of a ST9 battery operated personal studio amplifier, a specific SB family of electronic pickup mutes (each designed for a different brass instrument), and earphones, cable, strap battery, bag and carrying case which we incorrectly referred to as a French horn, trumpet & trombone. After receiving the comment in response to our notice of proposed revocation and the accompanying additional information, we now believe that the silent electronic brass systems that were the subject of NY A88586 are not musical instruments because they do not produce musical sounds. Instead, the silent electronic brass systems function by muting and transmitting the musical

sounds produced by brass instruments such as trumpets, french horns or trombones so that they can be listened to through a set of earphones. Therefore, rather than being classified in heading 9207, HTSUS, as musical instruments, we have now determined that the silent brass systems, should remain classified in subheading 8543.70.9650, HTSUS, as: "Electrical machines and apparatus, having individual functions not specified elsewhere in this chapter: parts thereof: Other machines and apparatus; Other: Other: Other: Other". Thus, we find that NY A88586 will remain in effect.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY B89582, NY G86610, NY G88068, NY B84187, NY B85746, NY D85594, NY E89544, NY K82460 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) W967583 (Attachment). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. As a result of the comment that CBP received clarifying the product at issue in NY A88586, that ruling will not be revoked. In accordance with 19 U.S.C 1625(c), this action will become effective 60 days after publication in the Customs Bulletin.

DATED: March 9, 2007

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 W967583
March 9, 2007
CLA-02 RR:CTF:TCM W967583 RSD
CATEGORY: Classification
TARIFF NOs: 9207.90.00

MR. DENNIS HECK
YAMAHA CORPORATION of AMERICA
6600 Orangethorpe Avenue
P.O. Box 6600
Buena Park, California 90622-6600

RE: Revocation of NY B89582, NY G86610, NY G88068, NY B84187, NY B85746, NY D85594, NY E89544, and NY K82460 regarding the Tariff Classification of Silent Electric Musical Instruments, including a Silent Electric Violin, Cello, Bass, Brass Systems, Electric Drums, Digital Drums, and EZ Electric Guitars

DEAR MR. HECK:

The National Commodity Specialist Division of Customs and Border Protection (CBP) has previously issued to Yamaha Corporation of America (Yamaha) a series of rulings that concern the classification of silent electric instruments under the Harmonized Tariff Schedule of the United States (HTSUS). The specific rulings in which CBP ruled on the classification of silent electric instruments are New York Ruling (NY) B89582 dated October 14, 1997, concerning a silent electric violin; NY G86610 dated February 26, 2001, concerning a silent electric cello and a silent electric bass; NY G88068 dated March 14, 2001, also concerning a silent electric cello and a silent electric bass and cases; NY B84187 dated May 7, 1997, concerning silent electric drums; NY B85746 dated June 12, 1997, concerning a electric drum set; NY D85594 dated January 14, 1999, concerning a digital drum; NY E89544 dated November 26, 1999, concerning digital drums; and NY K82460 dated February 9, 2004, concerning EZ electric guitars. In these rulings, CBP held that these silent electric instruments were classified in heading 8543, HTSUS as: "other electrical machines and apparatus . . . , not specified or included elsewhere in [Chapter 85, HTSUS]." We have reconsidered these rulings, and we now believe that the classification of the silent electric instruments set forth in these rulings is incorrect. This ruling sets forth the correct classification of the silent electric instruments that were the subject of the previously cited rulings. In the proposed ruling we also reviewed NY A88586 dated November 6, 1996, concerning silent brass systems. We now believe that our analysis in the proposed ruling regarding these products was incorrect. Therefore, we will not be revoking NY A88586, as we believe these products were correctly classified in heading 8543 as "other electrical machines and apparatus."

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), a proposed notice revoking the above cited rulings as described below was published in the Customs Bulletin, Volume 39, No.

38, on September 14, 2005. In response to this notice, you submitted a comment. This was the only comment received. We regret the delay in responding to the comment and publishing this final ruling and notice.

FACTS:

In NY B89582, CBP considered the classification of a silent electric violin, designated as Model SV-100. The ruling describes the musical instrument as a non-acoustic violin with a spruce body, maple neck, and an ebony fingerboard and pegs. The instrument also has a plastic side body, a chin rest, and a tailpiece. The violin utilized a piezo pickup sensor and built-in reverb. The silent feature of the violin allows a musician to practice or play through the use of earphones. Instead of having an internal resonating chamber that a traditional acoustic violin has, the silent electric violin has a studio quality audio pickup below its bridge. An internal effect processor is added to the violin to produce a full bodied tone that could be amplified for live performances or studio recording. An auxiliary input on the body on each of these instruments can easily be connected to an external CD player or tape machine for practicing with pre-recorded material. A second input jack allows musicians to duet with another silent instrument player.

NY G86610 and NY G88068 concerned the Yamaha SVC-100 Silent Electric Cello and SVB-100 Silent Electric Bass. According to these rulings, each of these units employs a piezo pickup sensor with a built-in reverb. Like the silent electric violin, the silent design of the electric cello and bass allows the musician to practice or play without disturbing others. According to an article published on the *Popular Mechanics* web site dated April 1, 1999, the silent electric cello weighs 7 pounds 11 ounces. The instrument uses a high-quality pickup, which senses the vibration of the strings, which is connected to an internal effects processor. This replaces the traditional internal amplification cavity of an acoustic cello. Either two AA batteries or AC current powers the silent electric cello. The silent electric cello uses the same technology as the silent electric violin.

In NY G88068, CBP also considered the classification of nylon cases for the silent electric bass and cello. CBP separately classified the nylon cases in subheading 4202.92.90, HTSUS, as "cases with outer surface of sheeting of plastic or of textile materials: Other: Other: Other."

CBP has previously issued four rulings concerning electric percussion instruments. NY B84187 concerned the DTX "Silent Session" Electronic Drum System (Model DTK 10), an interactive electronic percussion system which allows the user to play specially designed drums and cymbals through the use of headphones. The system is operated through a trigger module and consists of various integrated components.

NY B85746 also dealt with the classification of an electronic drum basic system. It has five specific components. The TP80S Drum Pads and the PCY 80S Cymbal Pads consist of rubber pads containing a piezo-electric pick up that detects the subtle nuances of a drumbeat and a cymbal sound. The KP80 kick pad operates on a similar principle and detects the sounds of an acoustic bass drum. The HH80 Hi-Hat Controller is a foot-operated control pedal that regulates the sound output and can control the various pitches. The TPCL80 Tom Holder is a device for holding the "tom" which strikes the kick pad.

In NY E89544, CBP considered a digital drum set, the Yamaha DD-50. It is an electronic percussion drum set with four large and three small touch sensitive drum pads and two built-in-speakers with tempo control. Various

preprogrammed tempos, ranging from disco to waltz, are produced when the drumsticks strike the pads. The unit is packaged with two drumsticks, foot switches and an AC/DC power adapter. A second digital drum set was considered in NY D85594. In that case, CBP considered the Yamaha DD-9(M) Digital Drum, an electronic percussion drum set with four-touch sensitive drum pads and one built-in speaker. Various tempos, ranging from disco to waltz can be selected thereby producing background rhythm to the drum-beat created when a drumstick strikes the pads. There are also four separate sound effect buttons which produce sounds representing a barking dog, a ringing alarm and breaking glass.

In NY K82460, CBP classified the EZ-EG and EZ-AG electric guitars. The submitted literature indicated that they were “electronic” acoustic guitars without strings. Since these guitars do not have strings, the chord changes and strumming can be made automatically.

In the rulings cited above, CBP classified the silent electronic musical instruments in heading 8543, HTSUS, as other electrical machines and apparatus not specified or included elsewhere in Chapter 85, HTSUS. CBP classified these instruments in heading 8543, HTSUS, as electrical articles because the instruments did not have the required external audio system to broadcast sound.

ISSUE:

Whether the silent electric musical instruments are classified in heading 8543, HTSUS, as other electrical machines and apparatus not specified or included elsewhere in Chapter 85, HTSUS, or in heading 9207, HTSUS, as musical instruments, the sound of which is produced or must be amplified electrically.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI's). 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.

Pursuant to title 19 United States Code, Section 3005, the Harmonized Tariff Schedule of the United States is in the process of being amended to reflect changes recommended by the World Customs Organization. The amendments are expected to affect the classification of your merchandise. On January 4, 2007, Presidential Proclamation 8097 containing these changes was published in the Federal Register. See 72 FR 453, Volume 72, No. 2. The proclaimed changes are effective for goods entered or withdrawn from warehouse for consumption on or after February 3, 2007.

The HTSUS provisions under consideration are as follows:

- | | |
|---------|---|
| 8543 | Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: |
| 8543.70 | Other machines and apparatus: |
| | Other: |
| | Other: |

8543.70.96 ¹	Other: * * *
9207	Musical instruments, the sound of which is produced, or must be amplified, electrically (for example, organs, guitars, accordions):
9207.90.00	Other: * * *
9503.00.00	Tricycles, scooters, pedal car and similar wheeled toys; dolls' carriages; dolls, other toys; reduced-scale ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof. * * *

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

EN 85.43 states, in relevant part:

This heading covers all electrical appliances and apparatus, **not falling** in any other heading of this Chapter, **nor covered more specifically** by a heading of any other Chapter of the Nomenclature, nor excluded by the operation of a Legal Note to Section XVI or to this Chapter. The principal electrical goods covered more specifically by other Chapters are electrical machinery of **Chapter 84** and certain instruments and apparatus of **Chapter 90**.

* * *

Most of the appliances of this heading consist of an assembly of electrical goods or parts (valves, transformers, capacitors, chokes, resistors, etc.) operating wholly electrically. However, the heading also includes electrical goods incorporating mechanical features **provided** that such features are subsidiary to the electrical function of the machine or appliance.

* * *

The language of EN 85.43 indicates that heading 8543, HTSUS, covers only electrical appliances and apparatus that are not described more specifi-

¹In the prior rulings regarding silent electrical musical instruments, the instruments were classified in subheading 8543.89.96, HTSUS, as: "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other: Other. This subheading was subsequently changed by the revisions in the HTSUS that are effective on February 3, 2007.

cally by a heading of Chapter 85 or of another Chapter of the Nomenclature. Thus, we must determine if there is a heading which more specifically describes the silent electric musical instruments. We consider the alternative provision, heading 9207, HTSUS, a heading that covers musical instruments that require electrical amplification.

The general notes in the ENs for Chapter 92 explain that Chapter 92 covers:

- (A) Musical instruments (heading 92.01 to 92.08).
- (B) Parts and accessories of these instruments (heading 92.09).

Some musical instruments (pianos, guitars, etc.) may have an electrical sound pick-up and amplifying device; they nevertheless remain classified in their respective headings in this Chapter, **provided** that, without the electrical equipment, they can still be used like the similar conventional-type instruments. The electrical equipment itself, **unless** forming an integral part of the instrument or housed in the same cabinet as the instrument, is however in all cases **excluded (heading 85.18)**.

Electrical or electronic instruments (other than the automatic pianos of heading 92.01) which are not suitable for playing without the electrical or electronic equipment fall in heading 92.07 (see the corresponding Explanatory Note). The latter heading therefore covers, for example, electrostatic, electronic or similar guitars, organs, pianos, accordions, carillons.

* * *

EN 92.07 states:

This heading covers musical instruments in which the sound is generated or amplified **electrically** (including **electronically**) (i.e., those which cannot be played for normal hearing without their electrical or electronic components, even though the vibrating devices with which they are fitted may produce faint sounds). In this respect, they differ from certain other instruments (e.g., pianos, accordions, guitars) which, while they may be equipped with an electrical sound pick-up and amplifying device, are nevertheless independent instruments suitable for playing without such devices, in the same way as similar conventional-type instruments. . . .

* * *

Although they may generally be essential for the normal operation of the instruments of this heading, electrical or electronic apparatus (in particular the amplifier and loudspeaker) are **excluded** and fall in their respective headings (**Chapter 85**) whenever they are not built into the unit itself. When, however, they are incorporated in or housed in the same cabinet as the instrument they are classified with the instrument, even though they may be packed separately for convenience of transport.

The silent electric violin, cello, and bass that were the subject of NY B89582, NY G86610, and NY G88068, clearly appear to meet the terms of heading 9207, HTSUS. These articles are musical instruments that require some type of electrical amplification provided by another device in order to produce audible musical sounds. In addition, they fit the description set

forth in EN 92.07 for articles that are classified in heading 9207, HTSUS. The silent electric violin, cello and bass are described in the product literature as musical instruments that need to be attached to an electrical apparatus, such as a speaker system or headphones for a listener to be able effectively to hear the musical sounds that they produce.

The silent electric string instruments, percussion systems and EZ guitars also need to be plugged into other electronic devices to function. While the silent electronic instruments require some other form of amplification by being attached to some type of speaker system, it is also understood that plugging the instruments into a speaker system, headphones or some other type of amplification device is a rather simple operation. Once the instruments are plugged into a speaker system or headphones, they can be played basically the same way a conventional musical instrument is played to produce musical sounds. The other electronic musical instruments that we have ruled upon such as the digital and electronic drum systems, and the EZ guitars operate in the same general manner as the silent electric string instruments meaning that they also must be plugged into some type of speaker system to be effectively heard. Thus, they also meet the description of heading 9207, HTSUS.

EN 92.07 indicates that the electrical apparatus needed to amplify sound from electrical musical instruments are classified in Chapter 85 of the HTSUS. In addition, EN 92.07 further specifies that the electrical apparatus necessary to amplify the sound produced by electrical musical instruments are classified separately from the instruments themselves even when they are imported together unless they are both contained in the same built-in unit. Because musical instruments and electrical apparatus, like speakers, amplifiers and headphones, are considered as separate articles for classification purposes, it is evident that the drafters of the HTSUS intended that electronic musical instruments such as the silent electric violins, cellos, basses, brass instruments, drums, etc., be classified in heading 9207, HTSUS, even when they are imported without the electrical apparatus that is used to amplify their sound. Consequently, in accordance with EN 92.07, the silent electric musical instruments are classified in heading 9207, HTSUS, even if they are imported without the electrical apparatus that is needed to amplify their sound.

In your comment, you indicate you agree with our analysis in the proposed ruling that the silent string instruments that were the subject of NY B89582, NY G86610, and NY G88068 are classified in heading 9207, HTSUS, as musical instruments rather than in heading 8543, HTSUS. However, with respect to digital drum sets DD-9 and DD-50 that were classified in NY D85594 and NY E89544, you state that the electronic digital drum sets are not designed for the professional musician.² You point out that the DD-9 is marketed to children as it has the capability to produce special effect sounds for a monkey, horse, cat, dog, etc. The DD-50 is marketed for the hobbyist, through your consumer product division and is sold

² You also state that the older digital drum family DD-9 and DD-50 are now discontinued and have been replaced by their newer versions, the DD-20 and DD-55. Most of the information you have provided concerns the DD-20 and DD-55. DD-20 and DD-55 are basically the same as the DD-9 and DD-50 and there are only insignificant and minimal differences between these products. Thus, the same analysis regarding the classification of the DD-9 and DD-50 percussion sets should also apply to the DD-20 and DD-55.

to retailers like Toys R Us, Best Buys, Costco, B.J.'s, Aldi (grocery store) and Meijer (grocery store). Based on their low value, marketing channels, their design and their small size, you propose that the digital drum sets be classified as toy musical instruments in subheading 9503.50.00, HTSUS, which provides for: "Other toys; reduced-size ('scale') models and similar recreation models . . . Toy musical instruments and apparatus and apparatus and parts and accessories thereof." You state that you believe that the EZ electric guitars that were the subject of NY K82460 should also be classified as toy musical instruments that are classified in subheading 9503.50.00, HTSUS.³

The General EN for Chapter 95 states that the "Chapter covers toys of all kinds whether designed for the amusement of children or adults." The U.S. Court of International Trade (CIT) construes heading 9503, HTSUS, as a "principal use" provision, insofar as it pertains to "toys." See *Minnetonka Brands v. United States*, 110 F. Supp. 2d 1020, 1026 (CIT 2000). Thus to be a toy, the "character of amusement involved [is] that derived from an item which is essentially a plaything." *Wilson's Customs Clearance, Inc. v. United States*, 59 Cust. Ct. 36, C.D. 3061 (1967). It has been CBP's position that the amusement requirement means that toys should be designed and used principally for amusement.

We have reviewed the brochures that describe the drum sets. The brochure for D-50 indicates that it is a 7-pad digital drum for the serious drummer. The brochure for DD-9 claims that drum set has top sound quality in an entry-level digital drum. The brochure further indicates that it has 4 touch sensitive drum pads, the built-in speaker provides great sound, the headphone jack allows private practice, and drumsticks are included. We note that the equipment in question is not flimsy and that it contains some sophisticated electronic components. We believe that the information regarding the DD-9 and DD-50 demonstrates that they are digital drum sets used primarily as systems for making music rather than for play or amusement. The fact that these percussion systems are not of high enough quality to be used by professional musicians does not mean that they should not be considered as musical instruments. The digital drum sets seem to be more than items that children or adults would use in a pretend activity (i.e., making believe that they are playing the drums). Accordingly, we continue to consider the position set forth in the proposed ruling regarding the classification of the DD-9 and DD-50 to be correct. Thus, we reiterate our finding that the digital drum sets DD-9 and DD-50 in question are electronic instruments that are classified in heading 9207, HTSUS, as musical instruments, the sound of which is produced, or must be amplified, electrically.

You also contend that the EZ guitars that were the subject of NY K82460 should be classified in subheading 9503.50.00, HTSUS. However, the brochure that you have submitted shows that the EZ guitars in question are products primarily designed for people interested in learning how to play the guitar. The information further indicates that an individual can play songs on the EZ guitars. The pictures of the products further show that they are substantial not flimsy articles. Thus, it appears that the EZ guitars will be primarily used for actually playing or learning to play the guitar and not for a pretend activity of playing a guitar. Therefore, we believe that the EZ

³ In accordance to the revisions to the HTSUS that were effective on February 3, 2007, subheading 9503.50.00 was collapsed into subheading 9503.00.00.

guitars should not be considered as toys that are classified in 9503, HTSUS. Rather, we affirm our determination in the proposed ruling that the EZ guitars are classified heading 9207, HTSUS.

In NY G88068, CBP also classified the nylon carrying cases that were used to carry the silent electric cello and bass. The ruling indicated that the cases appeared to be specifically shaped carrying bags designed for a specific instrument. CBP held that the applicable subheading for the nylon cases was 4202.92.90, HTSUS, which provides for: "Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases . . . musical instrument cases . . . : Other: With outer surface of sheeting of plastic or of textile materials: Other: Other." Assuming that the nylon cases are imported together with the silent electric cellos and basses, GRI 5(a) becomes applicable. GRI 5(a) provides, in pertinent part that "[c]amera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specifically shaped or fitted to contain a specific article or set of articles, suitable for long-term use and entered with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith." Based on the description provided in NY G88068 that the nylon cases are specially fitted for the electric cellos and basses, we find that the cases are musical instrument cases that meet the requirements of GRI 5(a), and thus they are classified together with the silent electric cellos and basses in heading 9207, HTSUS. If the bags are imported separately without the silent electric instruments, in order to be classified in subheading 4202.92.50, HTSUS, as musical instrument cases, rather than in subheading 4202.92.9026, as other cases, of man-made fibers, the burden will be on the importer to show that the imported bags are specially fitted for the specific musical instruments.

HOLDING:

The Silent Electric Musical Instruments described above are classified in heading 9207, HTSUS. They are specifically provided for in subheading 9207.90.00, HTSUS, as "[m]usical instruments, the sound of which is produced, or must be amplified, electrically . . . : Other", at a general, column one rate of duty of 5 percent ad valorem.

Duty rates are provided for requester's convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at <http://www.usitc.gov/tata/hts/>.

EFFECT ON OTHER RULINGS:

NY B89582 dated October 14, 1997; NY G86610, dated February 26, 2001; NY G88068 dated March 14, 2001; NY B84187 dated May 7, 1997; NY D85594 dated January 14, 1999; NY E89544 dated November 26, 1999; NY K82460 dated February 9, 2004; and NY B85746 dated June 12, 1997 are revoked. NY A88586 dated November 6, 1996 will remain in effect. 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.